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THE COMPOSITION AND STRUCTURE OF MISHNAH "SOTAH"

*Yeshiva University*

Ph.D.

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THE COMPOSITION AND STRUCTURE  
OF MISHNAH SOTAH

by

David Ebner

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of the requirements for the degree of  
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in the Bernard Revel Graduate School  
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by

David Ebner

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My life has been marked by the devotion of my mother, ע"ה, who, though suffering an excruciating illness for many years, never wavered in her love. Her faith stands behind this thesis and I pray that my life will be a justification of that faith. - לא יכבה נלילה נר

My wife, Rachel, is owed a debt of gratitude that cannot be adequately expressed. She is a true אשת חיל who lives the life of an עזר כנגדו. In the darkest hours of my soul she but whispers and the storm clouds scatter.

הן דמה בודמי זורם,

הן קולה בי לך...

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## **Introduction**

Intellectual Background of  
the Modern Study of Mishnah

The modern study of the Mishnah is an intellectual product of the nineteenth century. Edited in second and third century Palestine, the Mishnah had, with the passage of time and the excrescence of commentaries and super-commentaries assumed the character of a sacred text.<sup>1</sup> Its very letters were counted, its text was cantillated, and it became for some a font of mystical and revelatory wisdom.

Thus, Mishnah was elevated to a position second only to the Bible.<sup>2</sup> The resolution of internal contradictions and the search for implied meanings which characterize the millenia of Jewish Biblical exegesis were applied to Mishnah as well.

This approach was firmly anchored with the ascendancy of the great masters of Medieval France and

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1. For general information on Mishnah, as well as references to specific works cited in the Introduction, see the Bibliography, Section B.

2. In actual practice, the study of Mishnah and Talmud was often more intensively pursued than that of the Bible. See Tosafot, Kiddushin, 30a, s.v. כז .

German Talmudic scholarship - the Tosafists. For them, all Talmudic texts were woven of the same logical and literary fabric. Their breadth of vision was one which did not generally entertain the notion of contradiction and the acuity of their conceptual analysis was focused not only on the solution of internal textual difficulties but in squaring contradictions and inconsistencies between texts. Not for them were notions of discrete sources; of Talmudic texts as a stitching together of different, perhaps contradictory, sources. Rather, they viewed the entire corpus of literature as one unified and seamless whole in which contradictions and inconsistencies demanded the razor-sharp application of logic for their resolution. An unanswered question or an unresolved contradiction was, first and foremost, an indication of a conceptual shortfall.<sup>1</sup>

The nineteenth century European mind was

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1. It should be emphasized that this characterization of the Tosafists' approach is a generalization admitting of many exceptions. Indeed, numerous citations may be adduced which indicate a keen grasp of the editorial process to which the sources were subjected. Nonetheless, the main thrust of their work fits within our broad description. See Hyman Klein, "Gemara and Sebara," Jewish Quarterly Review 38:70-71.

dominated by a bedrock faith in the law of development. Its major intellectual products were rooted in the Hegelian philosophy of the movement of history through a dialectical process. This philosophy, in both its radical and reactionary forms, came to dominate even the most recondite areas of scholarship - including those that had largely escaped the effects of the Enlightenment's cultural renaissance.

Biblical scholarship soon became the battlefield on which the forces of the Young Hegelians, proponents of the revolutionary aspects of Hegel's thought, argued their case. The key notion of development was therein spelled out in two related forms. On the one hand, it concentrated on the change over time which marked the development of Biblical religion. Thus, its focus was on the historical as it sought to gauge the socio-political determinants of such development. However, such analysis was rooted in one basic source - the Biblical text itself. Hence, the second and more radical thrust of this approach led to an analysis of the text itself as a product of development.

The major result of this effort was the application of a new perspective composed of three distinct,



yet interrelated, features. First, the existing text was not necessarily accurate. Second, it was not composed by one hand at one time but, rather, represented an amalgamation of different sources. Third, the editorial process through which these sources were interwoven is most clearly visible at the points at which the different sources do not constitute a neat literary fit. Hence, Biblical scholarship was grounded in an attempt to both establish the original Biblical text and to determine the disjunctions between texts. These disjunctions were classified and became the basis for the identification of the different literary sources of the text.

These two strands of analysis - that of the historical development of religion and the literary analysis of its sacred text - serve as the cornerstones of the modern study of the Talmud. Whether the Wissenschaft des Judentums movement was conceived as apologetics or an attack on Judaism and its textual sources is, essentially, a moot point. What is significant is its utilization of the same intellectual framework which guided general scholarship.

The modern study of Mishnah began in the European philosophical orientations of men such as Nachman Krochmal and Zekaria Frankel.<sup>1</sup> Krochmal emphasized the evolution of the Law and, more importantly, sought to detail the literary manifestations of this development. Working within and expanding this general framework, Frankel is generally considered as the founder of the historical school of Judaism.<sup>2</sup>

David Hoffman must be credited with the introduction of a more refined method of research. Hoffmann was a Biblical scholar of the first rank who fully understood the methods, implications and results of modern textual criticism. His life's work is divided into a paradoxical symmetry. On the one hand, he sought to refute the conclusions of modern Biblical scholarship in his marshalling of evidence and arguments against

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1. See, particularly, Jacob Neusner, ed., The Modern Study of the Mishnah (Leiden, 1973) for brief summaries of the works of the seminal thinkers of the nineteenth and twentieth centuries. The articles provide fair, if brief, summaries of their work although the accompanying critiques are, all too often, facile.

2. The most articulate twentieth century spokesmen for this socio-historical position were Louis Ginzberg and Louis Finkelstein. See Gedaliahu Alon's review of the latter's work in Mehkarim, 2 vols. (Tel Aviv, 1967) 2:181-227 which contains a serious critique of the methods of the sociological form of research.

Wellhausen. On the other hand, he was apparently attracted by the plausibility of the methodology of Biblical criticism and applied it with great facility to the study of Tannaitic literature. This application was extremely productive and proved groundbreaking in its identification of distinct units assignable to specific sources in the broad corpus of extant Tannaitic works, particularly Midrash Halakah.<sup>1</sup>

An odd quirk resulted in the emphasis on the second plank of the Hegelian inspired Talmudic scholarship. Frankel's studies were tantalizing material for the overwhelming majority of scholars capable of adequately dealing with the sources under consideration. Not surprisingly, many of these scholars were Orthodox and, hence, their scholarship was no mere academic concern. In addition, they saw themselves as "guardians of the faith" in the ongoing struggle with the inroads of European culture which found its expression in Reform Judaism and conversion to Christianity. Thus, Frankel's historical analysis which focused on the development of Jewish law as a function of historical forces was

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1. An excellent summary of his groundbreaking work in Midrash Halaka is found in Zvi Yehuda, "The Two Mekhiltot on the Hebrew Slave" (Ph.D dissertation, Yeshiva University, 1974).

the immediate subject of suspicion. Was the Oral Law an historical product linked to specific historical conditions and, therefore, a man-made system subject to change and revision or was it a Divinely ordained, immutable system transmitted to Moses at Sinai?<sup>1</sup> On this question Frankel remained silent, perhaps recognizing that he was caught in an intellectual no-win situation.

Thus, the onslaught on this approach to Talmudic scholarship was occasioned by sharp, ideological

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1. The question is addressed to Frankel by S. Rappaport, Dibre Shalom WeEmet (Prague, 1861). The challenge differs little from that levelled against the halakic position articulated by Frankel's intellectual heirs of the twentieth century. Jacob Neusner, "Two Settings for Jewish Studies," Conservative Judaism 27 (Fall 1972), p. 35 notes that the attack on Frankel as theoretically heretical was justified but that the major shortcoming of his work is really his lack of critical method. However, Neusner's claim that "scarcely a line of [Frankel's] Darke haMishnah can be taken seriously" should be softened considerably.

attacks on the part of Orthodox scholars.<sup>1</sup> In the forefront of this attack was the East European scholar transplanted to Germany, Y. I. Halevi. This attack on the developing historical position was carried out from the standpoint of both a historian and a Talmudic scholar. While maintaining a bitter, at times unfair, polemical attack on Frankel's adoption of the historical aspects of the development of Jewish law, Halevi actually utilized an equally radical method himself. Focusing on the nature of Talmudic literature, particularly the Tannaitic texts, Halevi opted for the other aspect of Hegelian influenced scholarship. He emphasized the need to analyze the development of the text rather than the development of law. The great irony in Halevi's work is that, masked behind the strident ultra-Orthodox rejection of the historical school, lies a revolutionary new approach. He sees in the Mishnaic text a set of distinct literary units molded together by the work of an editor. Thus, this work was, in fact, the first sustained effort of an Orthodox Talmudic scholar to introduce a new perspective on Talmudic study, a

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1. See I. H. Weiss, "En haMishnah Yozet Miyde Feshutah," Bet haMidrash 2 (Tishre 1885) in which he attempts to defend the freedom for original interpretation of Mishnah. However, the article appears as but an introduction to the problem, the subsequent chapters of which never appeared.

perspective that at times yielded conclusions sharply different from that of traditional scholarship.

Thus, the close of the nineteenth century saw the broad concerns of the modern study of Mishnah beginning to take shape. The twentieth century has seen a refinement of these questions as scholars increasingly moved away from general solutions to the grand theoretical questions toward detailed analysis of specific Talmudic literary units. Of course, the broad questions remain and guide all such specialized studies but an implicit recognition has developed that the solutions to the great problems must await a full and detailed analysis of the texts made from the particular perspective of modern scholarship. Thus, the painstaking labor of induction, based on an analysis of all texts, has become the central concern of the twentieth century. In a word, a consensus has formed that the solutions to the problems of Mishnah as a work of literature can emerge only through an internal study of the text itself. The search for sources and determinants beyond the text is valuable but can in no wise supplant the fundamental necessity of close internal analysis.

Essentially, then, all the varied questions of modern scholarship return in another form to the same queries posed by the scholars of Kairouan to R. Sherira Ga'on. What was the role assumed by the Mishnah's editor

in its redaction? How closely did he follow the structure and composition of prior sources? The answers to questions of a broader nature must perforce await solutions to these more circumscribed concerns. Thus, for example, one cannot state whether Rabbi intended his composition of Mishnah to serve as a legal code or a pedagogical tool unless one can clearly identify what his editorial policy was.

The methodology employed in this exercise involves the application of a form of literary analysis in which the primary focus is on the nature of inconsistencies in the Mishnah. Such inconsistencies are of two major types. On the one hand, there are logical inconsistencies in which positions stated or implied in one text are explicitly or implicitly contradicted in another. On the other hand, there are literary inconsistencies such as lack of uniform style or disorder of material. The identification and explication of these two forms of inconsistencies constitute the marrow of the modern study of the Mishnah.<sup>1</sup>

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1. It should be emphasized that this focus is unique only to the extent that it is a concentrated effort. Many of the questions and, indeed, some of the solutions offered by modern scholars are to be found episodically in the works of traditional scholars, particularly among the Rishonim.

A most striking metaphor for this method is that of the arts of weaving and sewing.<sup>1</sup> Indeed, a tract of Mishnah is known as masseket, which implies that it is the end-product of a stitching process in which various materials have been sewn together to form a single cloth. It is the interstitial areas, the points at which the threads link the sundry parts into a whole that yield the clues as to the work of the craftsman. So too, it is those areas in which the inconsistencies are most visible that identify the work of the editor. Such inconsistencies are in reality the mark of the seam at which sources of different style or purpose (no matter how minute the difference) were joined by the editor. Thus, the clues to the how and why of his work are ultimately secreted in these seams. The task of the scholar is to unravel the binding threads and examine the pieces of material as separate and distinct units.

Let us continue this craft metaphor but one more step. The problem of any woven garment is not merely the how and why of the stitching of the individual pieces into a single fabric but, indeed, the very selection of

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1. See Jacob Neusner, A History of the Mishnaic Law of Purities, 22 vols. (Leiden, 1974-1977), 3:273-275 who develops this metaphor in great detail.



these pieces. Thus, it is most important to know what fabrics and designs were available to, but omitted by, the craftsman. In the study of Mishnah, the parallel situation requires a close analysis of all Tannaitic literature not incorporated into the Mishnah. Does omitted material help to cast sharper focus on the basic configurations of Mishnaic material? Do unseen patterns of Mishnaic composition stand in sharp relief as a result of such wider analysis? Furthermore, it may not only be omitted material but also parallel material, phrased differently and/or set in different context, that serves to highlight the nature of Mishnah composition.

This brief, metaphorical statement of methodology should indicate the importance of the prior insistence that the nature of Mishnah composition can be solved only by internal analysis of all the extant material. Indeed, the possibility of different editorial principles for different material must now be entertained much in the same way that the ultimate use of a particular garment will serve to determine the

selection and stitching of the disparate fabrics.<sup>1</sup>

The metaphor must, however, be laid aside for one additional and crucial factor. The Mishnah is composed of material formulated over the course of centuries and thus a new, historical element must be introduced. It is not the history of the socio-political forces underlying law but the history of its expansion or application as reflected in the text. Furthermore, this fact requires the analysis of the texts into discrete units that can, at times, be stratified into historical layers. The predominance of particular eras serves to indicate the major sources of the Mishnah. Finally, the notion of such development can serve to elucidate the logical consistency of groups of legal formulations.

#### Tractate Sotah

It is with these concerns that the present work on Tractate Sotah was initiated. The analysis of

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1. Thus, for example, the question of Rabbi's intent in his edition of Mishnah assumes that he had a univocal purpose. The possibility that different units of material were edited with different purposes has not been seriously entertained. Furthermore, an editor faithful to different collections of sources with varying purposes may not wish or even be able to impose a uniform purpose or aim to his work.

the first six of its nine chapters covers the material directly related to the ceremony of the ordeal of bitter waters to which a suspected adulteress can be subjected.<sup>1</sup> The tractate is distinguished by a number of features which make it ideal for such a study. First, the Mishnaic account of the ceremony follows the order spelled out in the Bible with few exceptions. Are these exceptions representative of an oral tradition of actual practice which differed from the Biblical account or may they represent particular items of Mishnaic structure? Second, the sixth chapter seems to be misplaced since it deals with material that should have logically been integrated into the first chapter. Finally, the parallel material in Tosefta appears to reflect a different order of material as well as providing copious

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1. Numbers, 5:11-31. This case is the only resort to ordeal in Biblical law although the application of an ordeal was taken by some as the sense of Exodus, 32:20-35. See Louis Ginzberg, The Legends of the Jews, 7 vols. (Philadelphia, 1928), 6:54-55, n. 281 for sources. It is not the intention of this study to analyze the ordeal per se as a cultural phenomenon. For relevant anthropological parallels to this form of ordeal, see Theodore H. Gaster, Myth, Legend and Custom in the Old Testament, 2 vols. (New York, 1969), 1:280-300; Julian Morgenstern, "Trial by Ordeal among the Semites and in Ancient Israel" in Hebrew Union College Jubilee Volume (Cincinnati, 1925), pp. 113-143; and Michael Fishbane, "Accusations of Adultery: A Study of Law and Scribal Practice in Numbers 5:11-31," Hebrew Union College Annual, 45:25-45.

additional material not found in the Mishnah. Thus, E. Z. Melamed has indicated that a detailing of the relationship of Tosefta and Mishnah in Sotah would greatly enhance our understanding of Mishnah-Tosefta relationship.<sup>1</sup>

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1. E. Z. Melamed, Pirke Mabo LeSifrut haTalmud, (Jerusalem, 1973) p. 125.

Studies of Tractate Sotah

There are a number of important works dealing with Tractate Sotah. Therefore, a brief review of such efforts is in order.

Nachum Wahrmann's Untersuchungen über die Stellung der Frau im Judentum im Zeitalter der Tannaiten (Breslau, 1933) has but little value in relation to this study. The author has attempted to briefly summarize the laws and process of the sotah ritual as reflected in Tannaitic and Amoraic literature. In terms of this specific purpose the work is basically successful. In addition, the fairly extensive footnotes often cite substantial variants of texts as they appear in several sources. However, the author rarely attempts to deal in any critical fashion with the texts. Basically, his focus is on the historical account of the ritual to be derived from the sources and not on features of the sources' literary composition and structure.

Saul Lieberman's Tosefta Kifeshutah (New York, 1973) does not deal with the Mishnah per se but rather serves as a commentary to the parallel material in Tosefta. The importance of this work can in no wise be overstated. It is an indispensable tool to anyone who

seeks to understand Tannaitic literature. Lieberman marshals all relevant literature in his attempt to make sense of the texts and his encyclopedic grasp of the material rarely fails to introduce sources that would otherwise be unknown to even the most serious of scholars. Thus, the search for parallel literature begins and often ends with this work.

Nonetheless, the focus of TK differs markedly from that of the present study. TK is essentially a lengthy commentary rather than an attempt to analyze Mishnah itself or even the interrelation between Mishnah and Tosefta. It draws no conclusions and rarely attempts to elucidate the texts on the basis of a general theory as to the nature and composition of Tannaitic texts. Of course, it may well be that Lieberman recognized the pitfalls of such an attempt before the entire corpus of the literature is elucidated and critical texts prepared.

Whatever the reason, the fact remains that the masterful compositional and structural analyses of

Talmudah shel Kesarin (Jerusalem, 1931) and Sifre Zuta (New York, 1968) in which Lieberman demonstrates his mastery of this genre of analysis are absent in TK.

Finally, and perhaps most important, there remains the simple fact that TK is not a work on the Mishnah but rather on Tosefta. Thus, the author's concern is ultimately not the elucidation of Mishnaic texts. While for many Talmudic scholars there is a tendency to roam freely from one text to another as long as there is even the thinnest thread of connection, Lieberman succeeds rather well in holding fast to the specific ground carved out for his work.

An interesting example of the above-described nature of Lieberman's work may be found in his commentary to Tosefta 5:6.<sup>1</sup> The Tosefta states:

"עם הכל ראשה מסמאת חרץ מן הקטן ומשי שאיבר איש"

The phrase "איבר איש" obviously demands clarification and Lieberman cites the relevant texts and attempts to elucidate them. Now, Lieberman's conclusions are based on an interpretation of the halakic exegesis of Numbers 5:13 found in Sifre and constitute a remarkably persuasive interpretation of the Tosefta. However, the Tosefta

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1. See TK, pp. 655-657 and below pp. 278-291.

is but a parallel of Sotah 4:4. The Mishnah too may be interpreted in light of the Sifre source. Such an interpretation might shed light on the relationship of the two sources and the Mishnaic roots in a halakic mid-rash.

However, Lieberman fails to raise and consider any of these questions. Indeed, his discussion warrants the suspicion that he in no wise seeks to interpret the Mishnah in a manner that, however appealing, would be without precedent. Hence, although his interpretation runs counter to that of T.B.,<sup>1</sup> he seeks to demonstrate that it probably accords with that of T.P. since the latter offers no explanation of "מי שאינו איתם".<sup>2</sup> However, in order to arrive at this conclusion he must first invalidate the reading in Ms. Vatican of T.P. as a later

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1. T.B., 26b.

2. The emphasis on T.P.'s approach to Mishnah is shared by all modern scholars. At times, however, it appears that there are attempts to mask original interpretations behind those of T. P. Lieberman's citation of the silence of T.P. as proof that it interprets the Mishnah to refer to a minor is a case in point.



marginal gloss since it accords with the understanding of "אינו איים" as referring to an animal as T.B. takes it.

Chanoch Albeck's edition of the Mishnah (Jerusalem, 1959) is provided with lengthy explanations and notes in the form of an appendix. Perhaps more than any other work it has served to popularize the modern approach to Mishnah. Albeck's comments often suggest new and accurate explanations of the Mishnah based on parallel sources or the simple reading of the text. The collective force of these notes suggests a spirit of intellectual independence in the analysis of Mishnah texts. They serve to open the analytical horizons of the average student to the importance of both parallel sources and original analysis.

However, many of the comments about TK are applicable to Albeck's work as well. Albeck was intensely concerned with the nature of Mishnah composition and his Mabo LaMishnah has deservedly become one of the most important introductions to the modern study of the Mishnah. However, much of this concern is absent in his edition of the Mishnah. Rather, his insightful commentary at times serves as the intellectual impetus for hypotheses concerning Mishnah structure.

An example of this may be found in his note to Sotah, 5:1.<sup>1</sup> The Mishnah includes a statement by Rabbi which seems to be superfluous in that it merely reproduces a prior statement of R. 'Akiba. Indeed, T.B.<sup>2</sup> attempts to demonstrate the difference between Rabbi's and R. 'Akiba's positions. Albeck, for his part, correctly suggests that Rabbi's comment should be taken as an explication of the exact nature of R. 'Akiba's exegesis.

The implications of this approach vis-a-vis Rabbi's role of editor are most significant but are left unstated by Albeck. Apparently, Rabbi was himself faced with a number of versions of the exegesis, versions which were close to each other and, yet, not identical. The mere recording of a particular version may well have resulted once again in the confusion of the exact sense of the exegesis since the versions were so close. Hence, Rabbi attempted to negate the possibility of confusion by inserting the version that he recognized under his own name into the Mishnah. Thus, the element of repetition can be accepted as a function of editorial

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1. See below, pp. 292-301.

2. T.B., 28a.

policy which sought to sacrifice redundancy for clarity. The nature of Albeck's commentary, however, precludes any such discussion.

Even Albeck's introduction to Sotah fails to deal with these types of questions. For example, in summarizing the order of the Mishnah he notes that the sixth chapter is but an appendix to the laws of Sotah. Why was it not integrated into the Mishnah text in its logical place as part of the first chapter? This crucial question as to the nature of editorial policy guiding Mishnah composition is left untouched.<sup>1</sup>

Thus, Albeck's work must be taken as a source of raw material from which insights may be mined and refined. However, it is the student who must do this spade work since the author rarely engages in it.

Whereas the works of Lieberman and Albeck are not concerned with the general questions of Mishnah structure and composition, a section of J. N. Epstein, Mebo'ot LeSifrut haTannaim (Jerusalem, 1957) is.

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1. Albeck catalogs such appendices in Untersuchungen über die Redaktion der Mischna (Berlin, 1923), pp. 126-138. However, he fails to offer a theory to explain their function within the Mishnah.

Epstein's method is to draw conclusions through an analysis of relevant pericopae in Sotah. He attempts to detail the layers of the Mishnah, notes that the Tosefta is based on a Mishnah order different from the present one, and elucidates the differences between the ritual portrayed in Mishnah and that in Philo and Josephus. Hence, the present work most closely follows Epstein's approach.

An appreciation of this work must be tempered by two factors. In his classic Mabo Lenusah haMishnah, Epstein dwells at some length on some specific texts in Sotah. A comparison of these analyses in Nusah with those in Tannaim indicates that the former work, which was essentially unconcerned with Mishnah structure and composition, nonetheless contains material on this topic more fully worked out and defined than in Tannaim. For example, his analysis of the strata of Sotah, 1:2 in Nusah is a full explication of an important structural phenomenon. In Tannaim, on the other hand, the point is completely undeveloped.

This anomaly may be explained by the fact that this section of Tannaim is composed of lecture notes on individual tractates. Thus, the lecturer could assume that the intended audience of students was familiar

with many details of the material since the particular text itself was the subject of study. Furthermore, as the editor of Tannaim, E. Z. Melamed, indicates, these lecture notes were incompletely edited. Of course, the key difference between a lecturer's notes and a published work is the completeness characterizing the latter but unnecessary in the former. The lecturer has the opportunity denied the author to answer questions, to rephrase; indeed, to retract. He is not bound by his notes and they may serve only as guidelines.

Epstein died after editing Nusah but before completing the similar task for Tannaim. As a faithful student and meticulous editor, Melamed could not rewrite and expand on the text before him.

This consideration of the nature of Tannaim is critical for an understanding of the one major shortcoming of Tannaim which is, quite simply, its brevity. Epstein is concerned with the historical strata of Mishnah, its layers over generations. However, he rarely analyzes the texts in order to prove a point. Thus, the student is faced with broad, far-reaching generalizations with little more than an occasional hint at their bases. For example, Epstein makes the significant point that the original text of Mishnah Sotah was to some

degree reworked and expanded by later generations of Tannaim. He indicates that in Chapter I, Mishnayot 1, 3, part of 5, and 7-9 are the work of later Tannaim.<sup>1</sup> However, he fails to define "later" other than to indicate that in 1:5 R. Judah is quoted and 1:7-9 appears to be a collection stemming from R. Me'ir. He does not indicate why 1:3 should be considered late but merely quotes T.P. which speaks of the mishnah aharonah and mishnah rishonah of Nedarim, 11:12. Sotah, 1:1 contains a disagreement between R. Eliezer and R. Joshua which Epstein takes as "late." He does not specify whether this includes the proem of 1:1 - .

Actually, an analysis of Chapter I provides no evidence of material redacted earlier than the R. Eliezer/R. Joshua debate<sup>2</sup> nor does it indicate that

1. Tannaim, p. 404. The short list of later additions is consistently bracketed with references to later discussions of each point. Most of these references are non-existent.

2. See Tannaim, p. 399, n. 32. Epstein assumes Sotah, 1:4 to be "early" since it refers to Sanhedrin, 4:8 which is itself an early Mishnah. This assumption based on association is most tenuous even if the characterization of Sanhedrin, 4:8 is valid.

the remark of R. Judah in 1:5 is a late addition.<sup>1</sup> 1:3 may reflect a transfer of material, perhaps by the editor himself, and thus may be considered late but the material itself may be of an "early" origin.<sup>2</sup>

This abbreviated example highlights the major difficulties with Epstein's work - the drawing of unsupported and ill-defined conclusions. To speak of "late" compositions in an undefined manner and to fail to support each instance is confusing. Indeed, one cannot help but hypothesize that in Epstein's work on Sotah, the anonymous is often synonymous with an early date. In addition, the fact that some material may stem from the earlier Tannaitic literature is seen as warrant to so date other literature.

Despite these rather weighty shortcomings which seriously flaw its value, Epstein's work is important as a systematic attempt to explain the text, demonstrate its relationship to other Tannaitic literature, and point to the stitching of units into a single whole.

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1. See Sifre, p. 17 (#11) in which it is clear that R. Judah's remarks are based on a dispute of the prior generation of Tannaim. Thus, in Epstein's terms, this material cannot be considered early. See below, pp. 138-147.

2. See below, pp. 272-276.

### Analyses of Other Tractates

In addition to these works which are specifically concerned with Sotah, there are several recent attempts to analyze specific Mishnaic tractates from the standpoint of modern scholarship. Of prime importance is the recent work of Abraham Goldberg, Masseket Shabbat 'im Perush Maḏa'i (Jerusalem, 1976), in which he presents a literary-critical commentary concentrating on the arrangement of Mishnaic material, identification of setam material, and related problems. In addition, he analyzes the relationship of Mishnah and Tosefta, attempts to focus on the various layers that make up both Mishnah and Tosefta, and details the position of these units in the existing Mishnah and Tosefta structure.

Particularly important are the following contentions:

My particular approach to the explication of the Mishnah is literary. The Mishnah (as is the case of all Tannaitic and Amoraic sources) has a distinct literary form. It is arranged layer by layer and it is inconsequential as far as our commentary if the layers before us represent the actual development of each layer itself through the generations of Tannaim...or if the Mishnah's final organizer arranged it afresh in a layered structure. In general, each layer is a commentary, expansion, or addendum to its predecessor. Thus a proper understanding of the meaning of a later layer will greatly aid us in arriv-



ing at an accurate explanation of the prior layer and vice versa.

To me, the literary approach also means that the Mishnah is not a book of legal decisions, but rather a collection of laws for the purpose of learning the law. Ancients and moderns have long debated the intent of Rabbi Judah the Prince in editing the Mishnah.... The inclination gaining support among scholars is to accept the approach of Albeck which maintains that the Mishnah cannot be viewed as a legal code. However, Albeck also maintained that Rabbi's intent was to arrange all extant material, and that which he didn't incorporate must have been unknown to him. Once again, the literary position requires a different approach.... On the contrary, he was aware of it but did not incorporate it because everything R. Judah the Prince arranged was initially planned for the purpose of the Mishnah's literary structure. He always selected from the many sources before him and arranged our Mishnah according to clear editorial rules...<sup>1</sup>

Particularly ambitious is the work by Jacob Neusner on the corpus of the order of Tohorot.<sup>2</sup> Neusner is also concerned with identifying the various strata within the Mishnah and their relation to other Tannaitic

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1. Shabbat, p. 26 of introduction (translation mine).

2. Jacob Neusner, A History of the Mishnaic Laws of Purity, 22 vols. (Leiden, 1974-1977). Neusner's major concern centers about the history of the law but an equal emphasis is placed on Mishnaic structure. His work on Kodeshim, A History of the Mishnaic Laws of Holy Things, 6 vols. (Leiden, 1978-forthcoming) is concerned only with the history of law.

material, particularly Tosefta. His approach is grounded on one key insight. There are master concepts in the laws of purity which are laid down in one generation and become the building blocks for further elucidation, development, and refinement in later generations. Hence, the identification of this train of conceptual development is at the same time a record of the development of strata in the layered structure of Mishnah and, as the title of his work indicates, a history of Mishnaic law.

### Methodology

The present study consists of an analysis of those sections of Mishnah that are for the most part of a difficult nature and that fit the category of interstitial material. In other words, they are essentially indications of the nature of the literary structure and composition of the Mishnah. It is this literary approach which distinguishes this work from the standard Talmudic commentaries which rarely utilize such a method in their analysis of Mishnah.<sup>1</sup>

Of course, the commentaries have proven invaluable at times in highlighting problems and raising questions which yield to such analysis. Nevertheless, their approach is so radically different that an analysis of their solutions would have made the present work unwieldy.<sup>2</sup> Thus, the reader is advised that the

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1. It should be remarked that the Tosafot on Sotah in all standard editions of T.B. display an unusual concern with structural problems. See E. E. Urbach, Ba'ale haTosafot (Jerusalem, 1957), pp. 496-498 for a discussion of their authorship.

2. Neusner has also recognized that working within such a conceptual framework makes it unnecessary "to continue this thankless work of analytical criticism of the prior, harmonistic exegesis of Mishnah." Hence, his work on Kodeshim differs from that on Tohorot in not citing and discussing this literature.<sup>3</sup> See Jacob Neusner, Holy Things, p. X.

problems raised are rarely original questions and that solutions to them have been given within a different analytical framework.

Furthermore, the analyses are not summations of the work of others. While these works underlie some of the conclusions stated in the introduction, the analyses represent original contributions for which the author bears sole responsibility.

No work of this nature can be conducted without critical attention to the texts themselves. Fortunately, critical editions exist for all the major texts except T.P. and it is these editions which have been utilized throughout. References to the texts have been given in both standard form and by the page numbers of the specific critical edition. Appendix II contains a list of texts employed and a key to the manuscripts referred to in the textual variants.

A complete list of all textual variants would have been both unwieldy and served little purpose. Therefore, the method chosen was a selective one in which only those variants of major importance and/or referred to in the analyses were recorded. The reader

may consult the various texts if he chooses to engage in further analyses of a particular topic. Such a selection of variants is arbitrary; nonetheless, it is guided by the overall function of the work and, hopefully, does not give a false picture of the texts.

The importance of careful consideration of variants cannot be overstressed. An interesting example of this fundamental point is found in Sotah 1:4 in which the Mishnah describes the process by which the woman is brought before the High Court in Jerusalem and there subjected to a powerful exhortation to confess her guilt and spare herself the agony of the ordeal and the erasure of the Holy Name. Now, the account of the Mishnah would clearly indicate that this charge is delivered by the Court. The actions of the priest are only subsequently introduced into the Mishnah narrative.

However, an examination of the readings yields two variants vis-a-vis this statement. One text reads "ואומרם לה" and obviously refers to the Court. The other reading, however, is in the singular: "ואמר". Now, it may well be that the singular refers to the particular person who delivers the charge. On the other hand, this reading may echo the indications found in

other sources that the statement is made by a priest rather than by the Court.<sup>1</sup>

It should be noted that single-minded attention to the text, which in Biblical criticism has led to a surfeit of emendation, actually demonstrates the danger of emendations. Thus, it is rarely a single word that serves as the basis of a textual problem but rather the contradictory implications of contiguous statements. An open season on the text is an invitation to solve such problems by the application of emendation rather than by the method of literary analysis focusing on structural aspects of the text.<sup>2</sup>

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1. See the critical edition of Sotah, p. 66, n. 69. See also the variants of Tosefta, 1:6 (11.26 and 29) which may also reflect the possibility of reference to the priest rather than to the Court. This is particularly significant in light of Tosefta, 1:5 which introduces the priest and 1:7 which speaks of the lottery held by the priests as to who will conduct her degradation. Thus, the priest referred to in 1:5 may serve to deliver the exhortation. The role of the high court is attested to in 'Eduyot, 5:6 and T.P., 18b (2:5). On this question, see also Albeck's introduction to his commentary on Sotah, p. 227, n. 2.

2. See J. N. Epstein, Mebo'ot LeSifrut haAmoraim (Jerusalem, 1963), p. 92 for a list of T.B.'s emendations of the Mishnah in Sotah. (Epstein notes that the standard introductory formula for emendation - חסורי מחסרה is lacking throughout Sotah).

The Mishnah states that the woman who is enjoined from speaking with a specific man but then disregards this warning and engages in such conversation is not subject to the ordeal. However, seclusion following such a warning does carry the consequence of the ordeal. T.B. raises the question as to the meaning of the verb d'b'r in this context since, at one and the same time, it is taken both literally and as a euphemism for seclusion.<sup>1</sup> The solution offered by T.B. involves a textual emendation. However, J. N. Epstein takes note of T.P.'s discussion and suggests that the text is actually composed of two units and as such presents no insuperable difficulty. Hence, the emendation may be unnecessary if the text is analyzed from a different standpoint.<sup>2</sup>

Editorial process may be judged from three perspectives. On the one hand, one may search for statements about the process and historical descriptions of its nature. The Mishnah itself provides no such direct

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1. T.B., 5b.

2. Epstein, Nusah, pp. 374-375. For another example, see our discussion of Sotah 1:6 below, pp. 138-147.

information and the few other sources are open to varying interpretations. The other method, which forms the basis of the present work, is to examine the Mishnah's structure through a study of its literary features. This effort yields a picture of the literary concerns employed in its redaction. In addition, there is a growing interest in a third method - the examination of the order of Mishnaic material. The editorial mind may be perceived not only in the formulation of specific pericopae but in the order in which they are linked - Order to Order, tractate to tractate, chapter to chapter, and mishnah to mishnah.

The works of Abraham Weiss along these lines have demonstrated that this line of inquiry is a most fertile one.<sup>1</sup> His researches detailed the underlying logic of Mishnah order and as such served to define the editorial policy which guided Rabbi's work.

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1. These articles have been collected in 'Al haMishnah (Ramat Gan, n.d.). For other examples of this method see the bibliographical note in J. Tabory, "LeSidron Shel haMishnayot BePerek 'A shel Bezah" in Miktam LeDavid, ed. Isaac Gilat and Eliezer Stern (Ramat Gan, 1968), p. 55, n. 2.



Order of Tractates and Position of Sotah

Tractate Sotah is contained within the third<sup>1</sup> of the six Orders of the Mishnah, Nashim. Its position vis-a-vis the other tractates of Nashim varies from one manuscript to another.<sup>2</sup> However, before analyzing the specific locus of Sotah, it is necessary to investigate the

1. This follows the order of Nashim, Mo'ed, Zera'im, Tohorot, Kodeshim, and Nezikin spelled out by R. Simeon b. Lakish in T.B. Shabbat, 31a. Jacob N. Epstein cites a different arrangement by R. Tanhuma in Nusah, pp. 980-981. The sequence in this source is Zera'im, Nashim, Nezikin, Kodeshim, Mo'ed, and Tohorot. Epstein maintains that R. Tanhuma must be concerned with a real, rather than a theoretical, order since his proof-text from Psalms 19:8-10 is rearranged to fit the Tractate sequence. Solomon Buber's rearrangement of the pericope in his edition of Midrash Tehilim (Vilna, 1891) p. 171, to fit the actual text order, is completely unsupported. A parallel reading in Midrash Rabbah: Numbers (Warsaw, 1867) 13:15 is itself an emendation as noted by Albeck in Mishnah: Mo'ed, p. 3. It may well be that R. Simeon b. Lakish should not be taken as a source for the arrangement of the six Orders since the force of his comment is not to find such an order to be mirrored in or based on the verse in Isaiah 33:4 but, rather, to stress the overriding importance of the fear of God " -even when compared to knowledge of the immense corpus of Jewish law. One should be wary of the anonymous, possibly late sources on this subject cited by Albeck, since these may well have interpreted R. Simeon b. Lakish to indicate a definite arrangement and/or may well reflect the arrangement current at a late date. For source material on the question of Mishnah order, see Epstein, Nusah, pp. 980-989 and Eliezer Rosenthal, "Lishemu'at haPetihah shel Babli Ta'anit" in Shlomo Pines, ed., Sefer Zikafon LeYa'akov Friedman (Jerusalem, 1974), pp. 237-248. See, also, Shmuel Shmida, "LeBa'ayat 'Ede Sheker" (Ph.D. dissertation, Yeshiva University, 1965), pp. 4-8.

2. Epstein, Nusah, pp. 984-986.

evidence for and implications of the theories as to a specific arrangement of tractates within the Mishnah.

R. Yohanan or R. Pappa is of the opinion that

" מחלוקת ואחר כך סתם הלכה כסתם סתם האחר כך מחלוקת אין  
 "1. If such an approach were

applied to relevant inter-tractate material, it would prove the existence of a definite order in the arrangement of tractates. However, an anonymous *sugya* maintains " כי לא אמרינו אין סדר למשנה בהרא מסכתא אבל בתרי מסכות

"2. This qualification itself admits of two אמרו

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1. In T.B. it is quoted in Yebamot, 42b as " פפא ואיתכא ר' יוחנן " while in Baba Kama, 102a and 'Abodah Zarah, 7a the first half of the rule is quoted anonymously. In Niddah, 11b the second half is so quoted. In T.P. Yebamot, 6b, Megillah, 70d, and Sotah 20d this rule appears in the name of R. Eleazar - " אָזַר ר' הַזְקֵינָה, אֵלְעָזָר כֵּל מְקוּמָה שְׁטַנְהוּ רַבִּי מַחְלֻקָה וְחֻזֵר וְשׁוֹבָה סַתָּם

" Although only the first half of the rule is quoted, the T.B. Yebamot passage demonstrates the Palestinian origin of the second half in its subsequent citation of R. Abbahu who appears to be identical to the R. Abbahu involved in the R. Eleazar tradition in T.P. On R. Pappa's role in the transmission of Palestinian material in Babylonia, see Zvi Dor, Torat Eretz Israel BeBabel (Tel Aviv, 1971) pp. 79-115.

2. This *sugya* is found in identical form in both Baba Kama, 102a and 'Abodah Zarah, 7a, but it is clear from the context that the latter source should be considered as its original locus and its appearance in Baba Kama the result of a transfer of material. R. Sherira Ga'on, Iggeret R. Sherira Ga'on, ed. Benjamin M. Lewin (Haifa, 1921) p. 32 quotes this statement, not as an anonymous one, but rather as a comment of R. Huna himself. However, the extant texts of the Talmudic passage indicate it to be a statement about his opinion and not one by him. In fact, Ms. Munich omits his name entirely in the relevant 'Abodah Zarah passage. It is unlikely that R. Sherira Ga'on had a different reading and he probably attributes this directly to R. Huna because the force of the anonymous passage is that R. Huna would actually maintain this position.

possible interpretations. First, in arranging the order of tractates, the editor was guided by literary-pedagogical, rather than legal, concerns. Hence, we cannot assume a conscious attempt to indicate legal decisions through the arrangement of inter-tractate material.

Secondly, the editor was concerned with a topical compilation of legal matter and played no role in assigning ordinal volume numbers to the individual tractates. Hence, any order that does exist is of no legal consequence, since it is not to be attributed to the editor.

Maimonides is clearly of the opinion that the editor himself arranged the order of the tractates and that this order is based on literary-pedagogical considerations.<sup>1</sup> On the other hand, R. Sherira Ga'on maintains that Rabbi was totally unconcerned with the whole matter and that the scope of his work did not include any such arrangement.<sup>2</sup>

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1. Maimonides, Mishnah 'Im Perush haRambam, vol. 1: Seder Zera'im, ed. and trans. Joseph Kapach (Jerusalem, 1963), pp. 24-33.

2. R. Sherira Ga'on, Iggeret, p. 32. The positions of both Tosafot and Me'iri are midway between those of Maimonides and R. Sherira and attempt to reconcile the conflicting evidence. See the sources noted by Rosenthal, "Lishemu'at haPetihah," p. 244, n. 23.

Maimonides' position gains support from the following Talmudic passage which relates both to the general question and the specific problem of Sotah:

T.B. Sotah, 2a (pp. 3-4)

1 מכדי תנא מוזיר סליק מאי תנא דקא תנא סוטה, כדדבי, דתנאי  
 2 רבי אומר למה נמסכת פרשת בזיר לפרשת סוטה, לומר לך שכל הרואה  
 3 סוטה בקלקולה יזיר עצמו מן היין. וליחגי סוטה דהרר ליתני  
 4 בזיר, איידי דתנא כחובות ותנא המזיר תנא בזיר, ואיידי דתנא  
 5 בזיר תנא בזיר דומי לבזיר, וקתני סוטה כדדבי

1 מוזיר סליק / דימ'נ מסכת בזיר קא סליק ( אגרת רס"ג - גרסה ס' )  
 מאי תנא / מ'ר מאי שנא

This opening comment of the Talmudic discussion in Tractate Sotah<sup>1</sup> assumes that there is a definite order to the arrangement of the tractates. A similar formulation "תנא מ ... סליק" is to be found linking Rosh HaShanah-Ta'anit and Makkot-Shebu'ot.<sup>2</sup> According to a variant reading<sup>3</sup> the

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1. Cf. T.B. Nazir, 2a. On the nature of the introductory sugyot and their possible Saboraic origin, see the bibliography in Rosenthal, "Lishemu'at haPetihah," pp. 239-242, n. 16. Abraham Weiss, "He'arot" in Bet Shemuel (1937), p. 25 (reprinted in He'arot Lesugyot hashas hababli Vehayerushalmi; Ramat Gan, 1970, p. 242) opines the late date of the "תנא מ ... סליק" sugyot. For literature concerning the nature of Saboraic material in general, see Shamma Friedman, "Hosafot Uketa'e Sebara Beperek HaHovel" Tarbiz 40 (July-September, 1971) p. 418, n. 1.

2. T.B. Ta'anit, 2a; T.B. Shebu'ot, 2a.

3. Preserved in the commentary of R. Menahem HaMe'iri, Bet haBehira: Sotah VeNazir, ed. Abraham Liss (Jerusalem, 1967) p. 6 (Nažir). See, also, Rosenthal, p. 244, n. 23.

opening sugya in Nazir reads " חנא מעגלה ערופה סליק ", thus reversing the order previously noted of Nazir-Sotah to Sotah-Nazir.

Despite the fact that these sources clearly indicate a definite order they are disregarded not only by R. Sherira<sup>1</sup> but by Maimonides as well.<sup>2</sup> In fact, the

1. R. Sherira Ga'on, Iggeret, pp. 33-34. The difference between the Spanish (S) and French (F) versions of this point is most striking:

<u>נוטח צרפתי</u>	<u>נוטח ספרדי</u>
והכין רגילין רבנן למיתנא ראי אית דביחא ליה לאקדומי ולאחורי הרשות בידו. ואית מסכתא דאמרינן חנא אמאי קאי כגון שנועות בתר מכות ומאימתי קורין על פסקא דקרא.	הכי רגילי רבנן למחבי ואי אית דביחא ליה לאקדומי ולאחורי הרשות בידו. ואפי"ג דחז"נן מסכייתא דאמרי' מכדי חנא מסכתא פלונית סליק כגון מסכת סוטה דאמרינן בגמרא מכדי חנא מסכתא בזיר קא סליק וכגון מסכת שנועות דאמרינן מכדי חנא מסכתא סליק אלמא דינש להם סדר.

S. takes note of " חנא מ... סליק " sources, admits they indicate definite order, but disregards them. (S. also had previously disregarded the sugya linking Ta'anit to Rosh HaShanah by offering a reason other than that advanced by the sugya. See the different formulations in S. and F., p. 33.) The statement in S " אלמא דינש להם סדר " must be interpreted to mean either that only those tractates which are so specified have a set order or, more likely, that any existing order does not originate with the Mishnah's editor and is, therefore, not of binding character. If the passage is not so understood, it would contradict R. Sherira's previous point. I prefer these explanations to one that would maintain that he simply ignores these sugyot.

F. is interesting because of the lack of any conclusion drawn from the sources and it may be that this version does not understand cross-references " חנא מ... סליק " as necessarily implying set order ("...מאי קאי " See Rosenthal, p. 243, n. 21. Indeed, this interpretation is the only one that can make sense of the inclusion of " מאימתי קורין על פסקא דקרא " in this context.

On the differences between S. and F., see Lewin, (intro.) pp. 47-71; Jacob N. Epstein, Amoraim, pp. 610-615; and Moshe Beer, "Iyunim Be'Iggeret R. Sherira Ga'on" in Bar-Ilan, ed. H.Z. Hirschberg and Moshe Beer; vol. 4-5 (Jerusalem, 1967) pp. 181-196.

2. Despite the fact that the " חנא מ... סליק "

paucity of these sugyot may indicate that there is, generally, no logically ordained structure to tractate arrangement whatsoever and that the order under consideration in these cases may be due to special considerations.

Geiger makes the suggestion that the order of tractates is based on formal, rather than logical, considerations. He finds them to be arranged according to a pattern in which the largest tractate, determined by the number of its chapters, is placed at the beginning of the Order, followed by the other tractates in descending size order.<sup>1</sup>

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sources could serve to prove his contention that the editor did arrange the tractates in a definite order, Maimonides consistently ignores or contradicts the logic and results of these passages. In the case of Makkot - Shebu'ot he notes the sugya but adds an original explanation. In addition he completely disregards the statement in Makkot linking it to Sanhedrin. See below, p. , n. . Maimonides' attitude to Saboraic material of a halakhic nature is discussed by Meyer Feldblum in a forthcoming article. He argues that Maimonides took a critical attitude to such material which, at times, led to halakhic decisions running counter to such sugyot. Hence, Maimonides' lack of concern with the passages under discussion is consistent with his general approach.

1. Abraham Geiger, "Einiges über Plan u. Unordnung b. Mischnah," Wissenschaftliche Zeitschrift für Jüdische Theologie 2 (1836): 474-492. The order in Zera'im was recognized by Geiger to be the major problem in his theory. The most recent attempt at its solution by Abraham Goldberg, Mabo LaMisnah VeTosefta, ed. Michael Asulin (Jerusalem, 1970), p. 56, remains unconvincing.

A logical result of such an arrangement would be the development of variations in the order of those tractates which are of equal length. Indeed, even a cursory examination of various manuscripts shows this to be the case.<sup>1</sup>

Perhaps this phenomenon can explain the nature of the four " סליק ... ד תנא " sugyot as well. In three of the cases in which it appears, it is concerned with the order of tractates of equal length in which the formal consideration of size can in no wise determine their arrangement and, therefore, logical grounds are sought for the order. In the fourth case, Makkot-Shebu'ot, we may be faced with the case of a larger tractate following a smaller one. Hence, it is necessary to advance a logical reason to explain this anomaly.<sup>2</sup>

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1. See Epstein, Nusah, pp. 985-987. Albeck, Mishnah: Mo'ed, p. 4, makes this point explicitly.

2. The sugya in Shebu'ot considers Makkot to be an independent unit. See Albeck, Mishnah: Nezikin p. 165 and Epstein, Nusah, p. 983 for sources to the effect that Sanhedrin-Makkot are actually a single tractate. Maimonides, Mishnah, p. 28, rejects this but in explaining the logic of this position he completely ignores the sugya in Makkot and offers a different reason.

Thus, it seems clear that there is little evidence to guide us, both as to the existence of a possible Mishnah order in the original Mishnah formulation and, specifically, as to the place of Sotah within Nashim. On the other hand, there are indications that a definite order of tractates was assumed to exist.<sup>1</sup> However, the anonymity of these sources obviates the possibility of determining a terminus post quem for the idea of a set order. These sources may be of relatively late origin and are, in fact, disregarded by many of the earliest authorities who deal directly with the problem.

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1. The question " תנא...סליק " implies that the order dates back to the time of the Mishnah. It would be most far-fetched to explain the "Tanna" here as referring to the official memorizer and reciter of Tannaitic material.



Mishnah Order in Sotah

The sequence of the chapters within the Tractate, however, does suggest a logically ordered scheme. The first three chapters basically follow the order of the ceremony, from the initial warning to the actual effects of the ordeal. The fourth chapter provides details as to which women are subject to the ordeal and the circumstances governing this eligibility while the fifth speaks of the halakic consequences of a guilty verdict.

Chapters 1, 3, and 5 each close with tangential material. The first chapter closes with a collection on the principle of "measure for measure" which appears as the symbolic underpinning of all aspects of the ordeal. The third chapter contains a list of halakic differences between male and females<sup>1</sup> which is occasioned by a distinction drawn in respect to the meal offering in Mishnah 3:7. The fifth chapter opens with an exegesis of R. 'Akiba which fits into a particular pattern and of which further examples are adduced. Thus, the basic scheme of the material follows the ritual's sequence with an appendice detailing the specific personae against whom

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1. Many additional cases are found in Tosefta, 2:7-8 and it is difficult to determine the basis for inclusion and exclusion. See below, p. 51, n. 2.

the ritual sequence which governed the placement of Chapter VI.<sup>1</sup> This chapter contains material about the qualifications of the witnesses to her behavior. As such its logical place should have been as part of Chapter I in which the requirement for witnesses is introduced.<sup>2</sup> However, if it is assumed that the editor wished to preserve the narrative - like quality of his presentation, then his failure to include it in the first chapter may well reveal a finely-tuned pedagogical sense. Thus, whereas the tangent in Mishnah 1:7-9 breaks the flow of the narrative, it is pedagogically effective in setting a tone through which the symbolic basis of the ceremony becomes patent.

This concern with a step by step account of the ceremony may help to explain additional Mishnaic phenomena. For example, Mishnah 1:3 speaks of women who are enjoined from the heave offering in perpetuity. The Mishnah is obviously linked to 1:2 in which the law is spelled out that immediately upon seclusion following the warning the woman is forbidden to partake of terumah.

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1. For another explanation, see below pp. 336-342.

2. Such appears to be the order of Tosefta. See, however, below, pp. 313-342.

Now, this Mishnah seems to interrupt the flow of material and thus do injury to the scheme of the narrative. In addition, the material may be a transfer from Mishnah 3:6 and, thus, represent the work of an editor who has located it at this specific point.<sup>1</sup> However, it may be the editor's very concern with the sequence of events that forms the basic motivation for this transfer. Rabbi<sup>2</sup> may have felt that one of the most likely results of her being observed in disobedience to the husband's warning would be her subsequent admission of guilt and refusal to partake of the ceremony or the husband's having second thoughts about actually subjecting her to the ceremony. Hence, he sought to indicate what the results of this likely situation would be. In order to effect this, he transferred a ready-made pericope which had considered these eventualities, albeit, within another context.<sup>3</sup>

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1. Epstein, Tannaim, p. 404, also characterizes this as a later addition. However, he offers no substantial proof for this contention.

2. The crucial point is that of the transfer itself. Whether the transfer was actually made by Rabbi is a somewhat open question.

3. See below, pp. 272-276.

### Mishnah - Tosefta Relationship

The question of order is sharpened when we examine the relationship of Mishnah and Tosefta. The central question of this relationship may be simply put. Is the Tosefta based on the Mishnah as edited by Rabbi? This question exists in tandem with another one - is the Tosefta a commentary, an assembly of additional information, on a parallel of a more basic work? Now, an examination of Tosefta reveals two major features. On the one hand, there are elements in Tosefta which have no obvious reference to Mishnah and stand as completely self-contained, independent units. Thus, Tosefta may well serve many functions regardless of the text to which it ultimately relates. However, it is the order of Tosefta Sotah which has led Epstein to suggest that Tosefta Sotah is, in fact, not a commentary to the Mishnah of Rabbi but rather to another (older) Mishnah form with a different order.<sup>1</sup> This proposition is based on the fact that the Tosefta order seems to diverge from

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1. Particularly important is his contention that the material of the sixth chapter of Mishnah is integrated with that of the first in Tosefta order. This is based on Tosefta, 1:2. However, this proposition is actually contradicted by Tosefta 5:8. See below, pp. 336-342.

that of the Mishnah at many points. The following chart indicates the nature of Tosefta and its relation to Mishnah and a comparison of Mishnah-Tosefta order.

<u>Tosefta</u> <sup>1</sup>	<u>Mishnah</u>	<u>Nature of Relationship</u>
1:1	1:1	Additional position
1:2 (ll. 3-4)	6:3	Commentary <sup>2</sup>
(ll. 4-11)	1:2	Commentary
(ll. 11-16)	1:3	Additional Material
1:3	1:3	Additional position
1:4	1:4	Exegetical source
1:5	1:5	Additional material
1:6 (ll. 25-29)	1:5	Additional material <sup>3</sup>
(ll. 29-31)	1:6	Additional material <sup>4</sup>
1:7	1:5	Additional material and commentary
1:8	2:2	Additional cases in collection form

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1. The lines referring to specific units of Tosefta pericopae are based on Lieberman's edition of Tosefta. The reader should have no difficulty in identifying the specific point of reference.

2. See, however, below, pp. 88-100.

3. To the degree that Tosefta follows the order of Mishnah, 1:4, 1:5 and 1:6 should have been reversed with 1:6 preceding 1:4. The question is, once again, the scope of the court's role. See above, pp. 33-34.

4. The relationship is to be found in the identical reason of unwarranted but, natural, pride.

<u>Tosefta</u>	<u>Mishnah</u>	<u>Nature of Relationship</u>
1:9	---	No obvious reference
1:10 (ll. 39-41)	2:1	Additional material and exegetical basis
(ll. 41-45)	2:1	Additional cases in collection form
2:1 (ll. 1-5)	---	No obvious reference; Additional material
(ll. 5-6)	2:5(?) <sup>1</sup>	Additional material
2:2 (ll. 7-9)	2:5	Commentary and exegetical source
(l. 9)	---	No obvious reference; Additional material
(ll. 9-11)	3:3	Additional material
2:3 (ll. 12-19)	3:3	Additional material
(ll. 19-27)	3:4	Additional material <sup>2</sup>

1. I am unsure if this material is related to 2:5 or merely deals with the same subject.

2. It is of some interest that the Mishnah fails to discuss the fate of the innocent woman with which the Tosefta is here concerned. Perhaps this relates to the Mishnah's acceptance of the principle of a delayed punishment for the woman who is guilty but has other merits; a position which may negate the possibility of special rewards for the truly innocent woman. See below, pp. 215-239.

<u>Tosefta</u>	<u>Mishnah</u>	<u>Nature of Relationship</u>
2:3 (l. 27)	3:4	Additional case
2:4 (ll. 27-28)	3:6	Commentary <sup>1</sup>
(ll. 28-30)	3:6	Commentary
2:5	3:6	Additional material
2:6 (ll. 34-35)	3:6	Additional material
(ll. 35-39)	3:6	Additional material and commentary
(ll. 39-40)	3:7	Additional case
2:7-2:9	3:8	Additional cases <sup>2</sup>

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1. See Lieberman, *TK*, p. 629, who refers it to this Mishnah. However, the Tosefta itself cites the case of witnesses which precedes that of the husband in all Mishnaic citations of this list (1:3, 3:6, 4:2). See T.P., 16d (1:3) in which the reference of this pericope is to a guilty woman. Accepting this interpretation, the Tosefta could be taken as shifting from the effects for the innocent woman to those for the guilty woman.

2. I can find no logical basis for the inclusion of the cases in Mishnah and the exclusion of the additional ones in Tosefta. Perhaps this Mishnah is based on the number principle of thirteen examples suggested by Louis Ginzberg, "Al haYahas Sheben haMishnah VeHaMekilta," Louis Ginzberg and Abraham Weiss, eds., *Kobez Mada'i LeZeker Moses Schorr* (New York, 1944), p. 81 n. 1. However, this principle itself, which would prove an interesting formal element of Mishnah structure, must be more fully checked before being accepted as fact. See also Jacob Bazak, "Sod Nosaf MiSodot 'Arikat haMishnah," *Sinai* 79 (Nisan-Ellul 1976) :12.

<u>Tosefta</u>	<u>Mishnah</u>	<u>Nature of Relationship</u>
3-4	1:7-9	Additional material <sup>1</sup>
5:1	4:1	Additional material
5:2	4:3	Commentary
5:3	4:3	Additional material
5:4 (ll. 8-12)	4:3	Commentary
(ll. 12-16)	4:3	Additional position
(ll. 16-18)	4:1	Additional material
5:5 (ll. 19-21)	4:3	Commentary
(ll. 21-24)	4:3	Additional material
5:6 (ll. 24-26)	4:4	Commentary <sup>2</sup>
(ll. 26-29)	4:5	Commentary

1. Chapters three and four of Tosefta appear to be the basic source collection from which the "measure for measure" material in the Mishnah is digested. Note that Rabbi glosses the cases of Samson and Absalom which are cited in Mishnah (Tosefta 3:15-16). There are three distinct forms of application of "measure for measure," two of which are included in Mishnah. See below, pp. 148-156. Each unit of examples in Tosefta is introduced with an analogy to the case of sotah (3:2 4:10, 4:16). The manner of the Mishnaic digest is most interesting. Tosefta 3:2-4 contains many examples, the first and last of which, covering her actions from their inception until the resolution of her fate, are included in Mishnah. (I take Mishnah's "גלה עליה... היא גלתה" to equal Tosefta's "מציג סתרה בגלוי" and refer to the effects of the ordeal, rather than to her degradation. See, however, the standard commentaries.)

2. The material in Chapter 5 of Tosefta until this point is actually a parallel formulation of Mishnaic material which has a different structure and can stand as an independent unit. The symmetry and order of the cases are not matched in Mishnah. The other material beyond this point which refers to the fourth chapter of Mishnah cannot stand as an independent unit.



<u>Tosefta</u>	<u>Mishnah</u>	<u>Nature of Relationship</u>
5:7	4:4(?) <sup>1</sup>	Commentary
5:8	(6:4) <sup>2</sup>	Additional material and position
5:9-12	---	No reference <sup>3</sup>
5:13 (11. 110-115)	5:2	Commentary
(11. 115-128)	5:3	Additional material
6:1	5:5	Additional material
6:2-3	5:4	Additional material <sup>4</sup>
6:4-5	5:4 <sup>5</sup>	Additional material
6:6-10	---	Additional material <sup>6</sup>

1. See below, pp. 278-291.

2. It may also refer to 6:2. See below, pp. 343-362

3. This collection about women's behavior and men's reactions to it, unparalleled in Mishnah, rounds out the conclusion of strictly sotah material and thus parallels the third and fourth chapters of Tosefta. Note that this unit is also ascribed to R. Me'ir and that it contains at certain points the basic notion of "measure for measure" (Note that 5:12, 11. 90-92 are an anonymous reproduction of R. 'Akiba's position in Tosefta, 6:6.)

4. The Toseftan parallels to Mishnah, 5:2-4 consist of a fuller unit which is ordered differently and can stand independently.

5. The nature of the connection is most tenuous since it in no way explicates the positions recorded in Mishnah. However, it does provide further information on the general topic and this is the basis for not considering it as completely autonomous material.

6. This material comprises exegeses by R. 'Akiba challenged by others. Thus, its link to Mishnah may be located in this feature. However, it actually appears to be a separate collection and, thus, we have not provided a Mishnah parallel in the chart.

This chart clearly demonstrates that Tosefta Sotah fits most of the categories for Tosefta description detailed by Melamed:<sup>1</sup>

- (1) The division of chapters differs from Mishnah;
- (2) Order of material differs;
- (3) Some Mishnaic material has no Tosefta parallel;
- (4) Tosefta functions as -
  - (a) a commentary
  - (b) adds details
  - (c) deals with material not found in Mishnah
  - (d) provides parallel formulations to Mishnaic material
  - (e) cites exegetical bases for law.

While the weight of evidence clearly suggests that the Tosefta has its basis in a different order, the question remains as to whether each individual case can be analyzed in such a fashion as to account for its position. Abraham Goldberg argues this position in his

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1. See E. Z. Melamed, Mabo, pp. 148-153 in which he summarizes the nature of Tosefta Baba Kamma. (See also the summaries for Tohorot in Neusner, Purities.)

introduction to his commentary on Shabbat:

Until the present, the majority of scholars took the different order of laws in Tosefta in various places as an indication of a different order of Mishnah - an "early" order - that the Toseftan editor followed in his edition. It is to be understood that no scholar ever proved this, a point which cannot be proved and nobody imagines the eventual discovery of an "early" order of Mishnah. However, the inability to account for the deviations in the order of Toseftan laws from that of the Mishnah forced them to postulate that the Toseftan editor had a different order of Mishnah. In our commentary...we have sought to explain the deviations in the order of Toseftan laws and have thereby demonstrated that the Toseftan editor had only the order of Mishnah found in Rabbi's [edition].<sup>1</sup>

However, Goldberg's position merely takes the other side of the coin without proving the point. To explain each individual deviation as a logical improvement, refinement, or different approach to the Mishnah material by the Tosefta editor is, in effect, to question the fealty of the Toseftan editor to the Mishnah structure.

For example, the position of the "measure for measure" material in Tosefta follows the sequence of the entire ritual and, thus its order differs markedly from that of the Mishnah.<sup>2</sup> Now, it may be argued that the

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1. Goldberg, Shabbat, intro. p. 23 (translation mine).

2. Tosefta, Chs. 3-4 = Mishnah 1:7-9.

Tosefta editor did not want to interrupt the flow of material with such a lengthy collection, or that the references in this collection to material not yet introduced in the Mishnah demanded such a placement.<sup>1</sup> However, the contention that this reflects a different Mishnah order to which R. Me'ir's collection of measure for measure cases served as a closing appendix is just as persuasive.

This argument can be applied to every instance in which the Toseftan order differs from that of the Mishnah. Thus, the question as to whether the Tosefta is based on the Mishnah as formulated by Rabbi is open. However, even if such is, in fact, the case, it is clear that Tosefta does not blindly follow the logic of Mishnah order but differs from it at many points.<sup>2</sup>

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1. E.g., the nature of the meal offering or the vessel used for drinking.

2. It should be noted that the major differences between Mishnah and Tosefta involve the Toseftan record and placement of fairly large, autonomous units (some of which have parallel sections in Mishnah). This phenomenon lends credence to the application of Goldberg's contention vis-a-vis Mishnah-Tosefta relation.

Case Presentations: Selected Summaries

Conclusions reached as to the nature of the Mishnah must be judged by the accuracy of the discrete analyses of specific material. These literary-critical examinations must, perforce, reach the core of the material under consideration so as to present the most logical approach to the pericope.

Therefore, it is valuable to present full summaries of two such analyses, with special emphasis on the methodology employed, in order to make the mechanics of the literary-critical method more patent.

A. Sotah 1:6<sup>1</sup>

The Mishnah describes the humiliation visited on the suspected adulteress in the course of the ordeal:

Sotah, 1:6 (pp. 70-73)<sup>2</sup>

1	וכהן אחדו ובגדיה אם נקדעו נקדעו ואם נפרטו נפרטו, עד
2	שהוא מגלה את לבה וסותר את שפחה, רבי יהודה אומר אם היה
3	לבה בזה לא היה מגלהו ואם היה שפחה בזה לא היה סותר.
4	היתה פתחה בלבנים מכסה בשחורים. היה עליה כלי זהב
5	וקטליארה בזסים וטבעות סבירין מסנה כדי לגדולה. ואחר
6	כן מביא חבל מצרי וקושרו למעלה מדויה, וכל הרוצה לראות
7	בא לראות חוץ מעבדיה ושפחותיה מפני שלבה גם בהן, וכל
8	הבשים מותרות לראותה, שנאמר ונוסרו כל הבשים ולא
9	תעטיבה כזמתכנה.
2	רבי יהודה / פ' ר' יהשע. 4 כלי זהב / ר' בגרי זהב
5	כדי לגדולה / א כדי לביישה (ובגליון : צ"א לגדולה).
7 - 8	וכל הבשים / ר' ק' פ' ל' וסאר כל הבשים. 8 מותרות / ב' חייבות

1. See below, pp. 138-147 .

2. See below, pp. 363 - 374 for a key to the texts and variants cited. Translations of Mishnah and T.B. are those of the Soncino translation of the Talmud (London, 1936); other texts are my translations.

3. Ezekiel, 23:48

[A priest seizes her garments - if they are rent they are rent, and if they become unstitched they are unstitched - until he uncovers her bosom. And he undoes her hair. R. Judah says: If her bosom was beautiful he does not uncover it, and if her hair was beautiful he does not undo it. - If she was clothed in white, he clothes her in black. If she wore golden ornaments and necklaces, earrings and finger-rings, they remove them from her in order to make her repulsive. After that the priest takes a comon rope and binds it over her breasts. Whoever wishes to look upon her comes to look with the exception of her male and female slaves, because her heart is made defiant through them. All women are permitted to look upon her, as it is said, that all women may be taught not to do after your lewdness.]

One of the keys to an understanding of Mishnah formulation is the evidence of inconsistencies and internal contradictions in the text. Such phenomena must be carefully investigated to determine whether they evidence the seams at which a literary source has been re woven in Mishnah context.

Clearly, this Mishnah presents a puzzling problem. It opens with a statement allowing any and all to observe the ordeal and concomittant humiliation and closes with one that singles out women alone as potential spectators.

Two possible directions for the solution of this problem lie open. On the one hand, attention may be paid to the individual words or phrases causing difficulty. Such an approach would maintain that either an emendation

or reinterpretation of the text is in order. This is in effect the nature of the proposals advanced by Abbaye and Raba in T.B.:

T.B. Sotah, 8b (pp. 87-88)

1   הא גופא קשיא, אמרת כל הרוצה לראות בה רואה, אלמא לא שבא  
2   גברי ולא שבא נשי, והדר תני כל הנשים מותרות לראותה, נשים  
3   אין אנשים לא, אמר אבוי תרגמה אנשים. אמר ליה רבא ווא כל הרוצה  
4   לראות בה רואה קתני, אלא אמר רבא כל הרוצה לראות בה רואה לא  
5   שבא גברי ולא שבא נשי, ונשים חייבות לראותה, שנאמר ובוטרו כל  
6   הנשים ולא תעסיבה כזמתכנה.

3   תרגמה אנשים / א תרגמה זעירי כל הרוצה לראות אנשים. אמר ליה  
ר'בא / ס' א' אבוי. 5   גברי - נשי/ אבשים - נשים מוקתבי הוץ מעבדיה  
ושפחהתיה

[Whoever wishes to look upon her comes to look, etc. This is self contradictory! You say, "whoever wishes to look upon her comes to look"; consequently it makes no difference whether they be men or women. Then it is taught: "All women are permitted to look upon her" - hence women are [permitted] but men are not! Abaye answered, Explain it as referring to women. Raba said to him, But the Mishnah states, "whoever wishes to look upon her comes to look!" But, said Raba, [the meaning is:] whoever wishes to look upon her comes to look, it makes no difference whether they be men or women; but women are obliged to look upon her, as it is said, 'that all women may be taught not to do after your lewdness.']

Of course, the problem with any major emendation or reinterpretation is the actual fact of the text itself. How did a particular word or phrase, whether merely ambiguous (reinterpretation) or actually incorrect (emendation), come to fore in the text?

Epstein<sup>1</sup> proposes a different emendation which would read "וְשָׂרָא כָּל אָדָם" ("and all other people"). The technicalities and value of his suggestion need not now concern us; however, its significance is considerable since it is based on a parallel Tannaitic text:

Sifre, p. 17 (#11)

1 ... ר' יהודה אומר אם היה בית חליצתה באה לא היה מגלהו ראם היה  
 2 שערה באה לא היה סותרו היתה מכוסה לבנים מכסה שחורים היו  
 3 שחורים באים לה מפסיטן ומלבישים אותה כעורים היו עליה כלי זהב  
 4 קלאות ובזמים וסבעות מסלקת הימנה כדי לבוולה ר' יוחנן כן  
 5 ברוקה אומר אין מבוולים בנות ישראל יותר ממה שכתוב בתורה אלא  
 6 לפני ה' ופרע את ראש האשה סדין של בוץ היה פודם ביבו לבין העם  
 7 כהן פובה לאחוריה ופורעה כדי לקיים בה מצות פריעה אמרו לו כשם  
 8 שלא חסת על כבוד המקום כן אין חסין על כבודה אלא כל הנידול הזה  
 9 מבוולה כל הרוצה לראות בא ורואה חוץ מעבודה ושפחהתיה מפני שלבה  
 10 גם בהן אחד האנשים ואחד הנשים אחד קרובים ואחד רחוקים מותרים  
 11 לראותה שנאמר ובוטרו כל הנשים ולא תפסינה כוימתכבה.<sup>2</sup>

1-4 ר' יהודה - לבוולה / ם חסרה / 5 אלא / ר חסר. 6 לפני ה' /  
 ם חסרה. 8 אלא / ד חסרה. כל / - זימתכבה / ם חסרה.

[If she was clothed in white he clothes her in black; if black were becoming to her he removes them and she is dressed in ugly ones. If she was wearing golden ornaments - necklaces, earrings and finger-rings, he removes them from her in order to make her repulsive. R. Yohanan b. Berokah says Daughters of Israel must not be made more repulsive than that described in the Bible. But 'before the Lord, and loosen the hair of the woman's head'<sup>2</sup> he (the priest) would spread out a sheet of fine linen between himself and the people. The priest turns to her back and loosens her hair in order to fulfill in her the command of loosening.' They said to him

1. Cited below, p. 140.

2. Numbers, 5:18.



(R. Yohanan b. Berokah), "Just as she evidenced no concern for the honor of God so no concern is evidenced for her honor. But she is subjected to all this repulsion; anyone who wants to look comes to look except for her male and female slaves, for her spirit will wax haughty in their presence. Whether men or women, relatives or strangers - they are permitted to see her, as it is said, 'that all women may be taught not to do after your lewdness.)

This text is doubly important. First, it presents a parallel to the Mishnah text and may thus provide a clue to the internal difficulty noted. Second, it provides the actual literary context of the laws recorded in Mishnah. Now, if the inconsistency in Mishnah can find some sense in this context and if this context may be posited as Mishnah's source then we may conclude that the difficulty in Mishnah stems from an editorial, rather than logical, position. In fact, the difficulty may serve as both evidence of a source reworked in transfer to Mishnah and of the nature of the editor's approach. Therefore, an examination of the Sifre context is crucial.

The first point to be noted is the dialogic nature of the source. There is a clear-cut dispute between R. Yohanan b. Berokah and other sages. The former maintains that both the audience for and extent of indignity should not be expanded beyond the bald statement of the Biblical

text. Thus, others are not allowed to witness her humiliation which must be limited to the treatment of her hair alone.

Now, there are two statements made as far as the expanded audience. It would appear that the original statement of permission to watch the ceremony is to be found in the " **אחד המושבים ... שנאמר** " ("whether men... as it is stated"). The formulation of " **כל הרוצה** " ("all who want...") appears as a rejoinder to R. Yohanan b. Berokah's response. The crucial consideration is that the Ezekiel passage proves that the Numbers text cannot indicate a totally private ceremony.

In the transfer of the text to Mishnah, both the basic statement and the ensuing dialogic response were preserved. However, whereas the statement in Sifre is designed to prove the point of the public nature of the ceremony, in Mishnah it appears as a limiting statement since the dialogic response is presented as a legal formula. The editor, attempting to remain faithful to his source, sought to indicate that the public nature of the ceremony was assured by the Ezekiel source, which at least mentions women, while the Numbers source mentions nobody.

Of course, the difficulty in the Mishnah remains

unsolved. Taken by themselves, the formulae are difficult. Yet, it may be safely said that this literary approach has resolved the nature of the difficulty by pointing to basic editorial concerns evidenced by the pericope. In the unravelling of the stitches evidenced by this seam, we are able to gain insight into the literary structure and history of the Mishnah text and the fealty of its editor to the sources at his disposal.

B. Sotah, 2:5-6<sup>1</sup>

Sotah. 2:5-6 (pp. 262-264)

על מה היא אומרת אמן אמן,	1
אמן על האלה אמן על השנועה,	2
אמן מאיש זה אמן מאיש אחר,	3
אמן שלא שמיתי ארוטה ובטואה ושוברת יבם וכנוסה,	4
אמן שלא בטמאתי ואם בטמאתי יבואו בי, ר"ם אומר אמן שלא בטמאתי	5
אמן שלא אטמא.	6
הכל שרין שאין מתנה עמה לא על קודם שתתארס ולא על אחר שתתגרש,	7
בסתר לאחר ובטמאת ואח"כ החזירה לא היה מתנה עמה.	8
זה הכלל כל שתבעל ולא היתה אסורה לו לא היה מתנה עמה.	9

[MISHNAH. To what does she respond 'Amen, Amen?']<sup>2</sup> An 'amen' over the curse and an 'amen' over the oath; an 'amen' with respect to this man and an 'amen' with respect to any other man; an 'amen' that I did not go astray as a betrothed maiden or married woman or [a childless widow] waiting for my brother-in-law's [decision whether he would marry me] or taken to his house, and an 'amen' that I have not misconducted myself and if I have may [the curses] befall me. R. Me'ir says: One 'amen' is that I have not misconducted myself and the other 'amen' that I will not misconduct myself.

1. See below, pp. 180-194.

2. Numbers, 5:22.

All agree that a man cannot make a stipulation with her in respect of the time before she was betrothed or after she is divorced. If she secludes herself with another man and misconduct herself and subsequently [her husband] takes her back, he cannot make a stipulation with her [in respect of this]. This is the general rule: he cannot make a stipulation with her in respect of any act of cohabitation which does not render her prohibited to him.]

The statement of R. Me'ir must certainly be accounted as puzzling. The notion of an oath against future infidelity in the context of the ordeal is most strange. It surely cannot mean that the effects of the ordeal are evidenced in the present because of future behavior. The rejection of such an outlandish possibility is made explicit in a Tosefta passage:

Tosefta 2:2

1 ר' מאיר אום' אמן, שלא בטמאתי, אמן, שאיני עתידה ליטמא. לא  
 2 שהמים בודקין אותה מיד, אלא אפ"י תקלקל לאחר עשרים שנה, והמים  
 3 מתעריין עליה, שב' מנחת זכרון מזכרת עון.

[R. Me'ir says: 'Amen' that I have not misconducted myself; 'amen' that I will not misconduct myself in the future. This is not to say that the waters affect her immediately but, rather, even should she behave improperly after twenty years the waters affect her as it says, 'A meal-offering of memorial; a reminder of inquit

Further examination of the Mishnah text reveals an apparent redundancy in the statement of "אמן שלא בטמאתי..".  
 "אמן שלא בטמאתי.. יבאר כי 'Amen' that I have not misconducted myself

and if I have may [the curses] befall me." Commentators generally take this unit to be but an explication of the earlier "אמן על האלה אמן על השנועה" ('Amen over the curse; 'amen' over the oath). However, even if this is the case one must wonder what it adds to the initial formulation and why it is not directly appended to it.

In the context of the Mishnah, the possibility exists that this pericope is so placed as to highlight the nature of the dispute between R. Me'ir and the anonymous Sages. Surely, were R. Me'ir's statement to precede this pericope such would be the clear intent. An examination of the parallel source in Sifre confirms this hypothesis as to Mishnah's structure:

Sifre, p. 20 (#15)

- 1 דאמרה האשה אמן אמן, אמן שלא בטמתי אמן שלא אטמא דברי ר'  
 2 מאיר ואין חכמים סודים בדבר אלא אמן שלא בטמתי ואם בטמתי  
 3 יבאר לה אמן עם איש זה אמן עם איש אחר אמן אם ארוסה אמן  
 4 אם בשואה אמן אם שוטרת יום אמן אם טמתיבמתי זה הכלל  
 5 כל שתיבעל וזוהא אסורה לו על אדמה שעה הוה טמיה עמה.

5 השעה / ל שנועה

[And the woman shall say 'Amen, Amen.'  
 'Amen' that I have not misconducted myself; 'amen'  
 that I will not misconduct myself. This is the  
 opinion of R. Me'ir, but the Sages do not agree  
 in this matter. Rather (the Sages maintain)  
 'amen' that I have not misconducted myself; and  
 if I have misconducted myself may (the curse)  
 befall her. 'Amen' with respect to this man;  
 'amen' with respect to any other man. 'Amen'

whether betrothed; 'amen' whether married. 'Amen' whether awaiting the levirate; 'amen' whether I have entered the levirate. This is the general rule: in any case of cohabitation in which she would then be rendered prohibited to him at that time - he may make a stipulation.]

The Sifre formulation sheds light on Mishnah's literary character. The editor presented the majority opinion in toto and then returned to the dispute itself. However, he framed the position of the Sages within the majority opinion while juxtaposing it to that of R. Me'ir. In so doing, he gained a unity of presentation even at the cost of an appearance of redundancy. There can be no doubt of the literary relationship between the Sages' statement and R. Me'ir's future oath. Once again, we note evidence of the editor's concern with source and style.

However, this does not exhaust the subject, inasmuch as the logic of R. Me'ir's position must still be explicated. The search for a rationale leads us to the following beraita:

T.P., 18b (2:5)

תורת הקבאות. תורת העולמים זו. אין האשה שותה ושווה. אמר רבי	1
יודה העיד בחסיה איש סיהין . את רבי עקיבה האשה שותה ושווה.	2
אמר ר' עקיבה אבי אפרש מאיש אחד אין האשה שותה ושווה. מסני	3
אנשים האשה שותה ושווה וחכמים אום' בין מאיש אחד בין מסני	4
אנשים שותה ושווה. כורכמית תרכיח ששתת ושנת וטילשה לפני	5
שטעיה ואבטליון מאיש אחד.	6

['This'<sup>1</sup> - the woman may not (be made to) repeat the ordeal. R. Judah said: "Nehemiah ish Sihin testified before R. Akiba that a woman may repeat the ordeal (and) R. Akiba said: 'I will explain - in the case of one man a woman may not repeat the ordeal but from two men the woman may repeat it.' However, the Sages say that a woman may repeat the ordeal whether from one man or from two men. (The case of) Korkemit proves the point for she underwent the ordeal thrice from one man under the direction of Shemayah and Abtalion.]

This text actually suggests the possible motive behind the future oath. R. 'Akiba limited the conditions under which a woman could be subjected to the ordeal. Such a limitation might lead to difficulties should future suspicions develop. These problems are mitigated by the future oath.

Thus, the concern which extends the number of possible paramours in the Sages' oath - a concern which would obviously limit the frequency of the ordeal - lies behind the future extension proposed by R. Me'ir as well. Furthermore, it may well be that the Sages' rejection of the future oath is itself conceptually linked to the positive possibility of ordeal repetitions. Finally, the

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1. Numbers, 5:29. (Assuming that " וַיּוֹרֵם " refers to this verse.)

common ground of limitation shared by the interlocutors may explain the further, almost redundant, definitions of the area of agreement between them as to the nature of such limitations.



### Literary Phenomena of Mishnah

The major emphasis of this analysis of Mishnah Sotah has been to demonstrate that a literary approach to the Mishnah as a document composed of integrated layers with specific editorial methods and principles is capable both of forging new understandings of Mishnah as well as serving to develop a picture of the nature of the editorial method. What follows is a condensed selection of some results and categories derived from this approach.

#### A. Mishnah as Dialogue

The record of laws in Mishnah is at times presented as bald statement; at others given the appearance of dialogue. One of the most important analytical tasks is to determine the context in which the material originated.

On the one hand, an appreciation of the dialogic origin may help to account for what otherwise appears as a blank statement. For example, the background of Mishnah 1:6 is found in the dialogue preserved in Sifre.<sup>1</sup>

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1. See above, pp. 57 - 63 .

In addition, Mishnah 3:4 appears as a dialogue between Ben 'Azzai and R. Eliezer on the advisability of teaching women Torah.<sup>1</sup> Furthermore, Ben 'Azzai, who favors such teaching, seems to base his position on the acceptance of the possibility that a guilty woman's merits may save her from the immediate consequences of the bitter waters; that, in effect, the deleterious effects will be held in abeyance for a length of time ( זכות תוילה ). However, an analysis of this subject gives rise to the hypothesis that Ben 'Azzai and R. Eliezer are not engaged in dialogue nor did Ben 'Azzai base himself on the possibility that the punishment might be held in abeyance. In fact, both Ben 'Azzai and R. Eliezer may be commenting on another source which required that women be instructed in Torah.<sup>2</sup> The Mishnah formulation is one that (unintentionally) creates the appearance of a dialogue in which Ben 'Azzai seems to be the original source of such a requirement.

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1. See below, pp. 240-256 .

2. The existence of such a source cannot be demonstrated. This, of course, indicates another problem in the field - the probable fact that no complete collection of material exists and, hence, references to non-extant formulations may go unnoted.

## B. Exegetical Context

The search for context highlights another feature of Mishnah composition. Some pericopae of the Mishnah are grounded in an exegetical source;<sup>1</sup> in most cases this source is not provided. Nonetheless, the lack of exegetical base should not obscure the possibility that the original formulation of the law may actually be rooted in an exegetical framework.<sup>2</sup> Thus, an analysis of the notion that punishment may be held in abeyance as a result of the woman's merits<sup>3</sup> reveals its origin to lie in the framework of an exegetical debate between R. 'Akiba and R. Ishmael. The latter,

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1. In general, there are no lengthy exegetical sources in Sotah except for 6:3. (I do not include the tangential material which closes the first chapter nor that of the fifth since these are collections of exegeses.) The lengthy discussion in 6:3 should be seen in light of our comments below, pp. 336-342.

2. It should be emphasized that this possibility pertains to literary formulation rather than the ultimate basis of the law. The nature of law in its relation to Biblical exegesis is a well-worn topic but not the subject of our inquiries.

3. Sotah, 3:4-5. See below, pp. 217-224.

applying the principle of Kelal u'ferat arrives at this position. However, there is no reason for R. 'Akiba to accept this rather startling notion and an analysis of the material contained in midrash halakah suggests that R. 'Akiba's school may not, in fact, have accepted this position.

However, Rabbi does not raise the exegetical foundation of the debate but rather its logical side. Hence, he quotes R. Simeon's strong objections to this notion and modifies the position of R. Ishmael's school in such a way as to counter the rather strong objections of R. Simeon. The Mishnah presents only the statement of zekut tolah with the attendant logical controversy. However, its very raison d'etre is left unstated. The nature of this periope remains obscure without the examination of its exegetical basis.

### C. Foreshadowing

The previous examples demonstrate the necessity for the examination of the sources of the Mishnah as a conditio sine qua non for the proper grasp of its composition and structure. The method involves a search of external Tannaitic sources as explications of Mishnaic material. On the other hand, the literary device

of foreshadowing suggests that the inclusion or exclusion of material in the Mishnah can be apprehended through its own internal structure. Information generated in one pericope may well be molded by its relation to another context. For example, Sotah, 2:1 provides a list of distinctions between the meal offering of sotah and that of other cases.<sup>1</sup> It states that all meal-offerings require oil and frankincense whereas that of the sotah does not. It then distinguishes between the barley meal-offering of sotah and that of the 'Omer which, although it consists of barley, is of sifted barley while that of sotah is unsifted. T.B. raises the problem that the meal offering of the sinner also excludes oil and frankincense and indicates that the text should be taken to include this case.<sup>2</sup> The real problem is obviously conditioned by the fact that the Mishnah does find it necessary to distinguish between the meal-offering of 'Omer and that of sotah. However, the principle of foreshadowing can adequately explain this distinction. Immediately following this pericope is the

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1. See below, pp. 157-165.

2. T.B., 15a. Cf., Tosefta 1:10.

statement of R. Gamaliel explaining the reason for the barley meal-offering as a symbol of her animal-like behavior. In effect, her actions are symbolized by an offering of fodder. The essential point of R. Gamaliel's comment has to do with the barley composition of the minhah. The Mishnah sought to distinguish sotah from the other exception on this point in light of R. Gamaliel's comment.

#### D. Omission of Material

The omission of material is one of the crucial questions for the proper grasp of editorial policy. Any analysis of this question must, perforce, operate with the hypothesis that this material was known to Rabbi and yet consciously omitted.<sup>1</sup> Now, R. Sherira Ga'on may be correct in maintaining that Rabbi was constrained from including all available material by the problem of unwieldy length.<sup>2</sup> However, the question of selection still remains. In other words, what were the guiding principles in the inclusion of particular material as opposed to the exclusion of other material?

Essentially, a good case can be made that the first three chapters omit material which would interrupt the narrative flow of the presentation. Thus, for example, the lengthy "argument" exactly defining the length of time for coitus recorded in Tosefta would destroy the flow of material with a side-issue.<sup>3</sup> The Mishnah, therefore, is content to indicate that the seclusion must last a length of time for defilement to take place (כרי טומאה)

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1. It should be emphasized that this is an operational hypothesis. As such, no definitive conclusions are intended concerning its factual validity.

2. Iggeret, p. 36.

3. Tosefta, 1:2. See below, pp. 115-121.

without defining that time-span.<sup>1</sup>

Nowhere can this process of editorial selection be seen more clearly than in Rabbi's selection of tangential material for the "measure for measure" collection at the end of Chapter 1.<sup>2</sup> Chapters 3 and 4 of Tosefta contain an extensive catalogue of such cases from which Rabbi apparently selected material. The material included actually highlights the major aspects of the principle as it applies to sotah. For example, the extensive material contains a long list of her actions which find symbolic representation in the ceremony. The Mishnah contains only the opening and closing examples of this collection which form the basis of her treatment in the ordeal from its inception (נווילה) to its close (גלה עליה). Rabbi's selection of parallel Biblical cases of "measure for measure" from a long list of cases is also marked by a desire to continue the sotah theme and, hence, both cases are concerned with

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1. In general, omission of material occurs only in the first three chapters which are composed in a narrative-like form. Chapters 4-6 show very little omission in a comparison with other sources. The material omitted from Chapter 5 (found in Tosefta 6:4-10) is genuinely tangential.

2. See below, pp. 148-156, and above, p. 52, n. 1.



sexual misadventure.

#### E. Transfer of Material

The question of context must be carefully examined when parallel formulations are found for different material. Thus, Sotah, 1:3, 3:6, and 4:2 all contain an identical list of cases. An analysis of the application of this list to its various contexts suggests that its original locus is that of 3:6.<sup>1</sup> This hypothesis serves to explain some difficulties in the other contexts but, beyond that, demonstrates how the editor sought to use formulations extant in similar contexts in order to deal with topics not covered in the available sources.

#### F. Appendices and Editorial Process

The above examples allow us to draw certain conclusions about the editorial process which guided the work of Rabbi. Out of the many sources available, the editor attempted a selection of those which most closely represented essential details of the ritual. These

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1. See below, pp. 272-276

were molded into a form that provided a more or less uniform quality to the material. However, the attempt to make a uniform presentation may, at times, obscure the nature of the original source while creating difficulties in understanding the Mishnah. These difficulties, however, aid in deciphering the puzzle of Mishnah composition.

An analysis of the sixth chapter suggests the possibility that it can serve as a clue to the editorial process. It demonstrates a host of problems in that it should be integrated with the first chapter; its sense is at time most obscure; it has an uncharacteristically lengthy exegesis; it contains statements that are implicitly contradictory; and its exact text is the subject of serious debate.<sup>1</sup> An analysis of these phenomena leads to the somewhat radical suggestion that this chapter was incompletely edited and, thus, represents an earlier stage in the redaction process than the rest of the tractate. As such, it may demonstrate the complexity of the editorial process.

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1. See below, pp. 336-342.

### Intent of Editor

The analysis of these chapters of Sotah tends to support Albeck's contention that the Mishnah was not intended to serve as a legal code.<sup>1</sup> For it is this assumption that most succinctly accounts for the order of material,<sup>2</sup> the lengthy tangents, the appendix-like nature of the sixth chapter, and for the omission of material. These types of phenomena, noted by Albeck in the argument for his position, cannot be easily accounted for by those who would see the Mishnah's function as a legal code. The very problems of Sotah which are so often are rooted in the work of an editor trying to faithfully reproduce and integrate varied sources and layers of material point to its pedagogical rather than pragmatic function.

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1. See the convincing, if contentious, discussion in Chanoch Albeck, Mabo LaMishnah, (Jerusalem, 1967) pp. 270-283. Note particularly his discussion of T.P. 19a (3:6), pp. 276-278. See also T.P. 20d (6:1) in which the Amoraic assumption of structural order as indicative of legal decisions is made. If the sixth chapter is seen as an appendix the foundations of such an assumption may be untenable.

2. Thus, the order of the ceremony may not reflect a legal decision as to sequence. See Epstein, Tannaim, pp. 394-395, and below, pp. 173 - 179 .

Layers of Mishnah

Indeed, the ultimate intent of Sotah yields to a much simpler resolution than does the question of its origins. Having demonstrated the importance of viewing the Mishnah as a woven fabric integrating strata or layers of material, the question of origin still remains.

The following chart of the Mishnah's layers<sup>1</sup> serves to highlight the problem:

<u>Mishnah</u>	<u>Source</u>
1:1	Dispute of R. Eliezer and R. Joshua (parenthetical to proem?)
1:2	Unattributed (pericope of ... עדיין may gloss ... דברה ; phrase כרי סומאה may be basis for lengthy debate beginning with R. Eliezer)
1:3 A	Unattributed (transfer from 3:6?)
1:3 B (כיבוד )	Unattributed

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1. The attributions are based on information in all Tannaitic sources. Thus, the specific attributions are actually absent from Mishnah in some cases. (Where a Mishnah has distinguishable sections, I have labelled them alphabetically and given the opening word for sections subsequent to the first.) Why some material is attributed and other not is a separate question. At this point I am concerned only with identification of actual sources.

<u>Mishnah</u>	<u>Source</u>
1:3 C ( ומרטין )	Dispute of Sages and R. Judah
1:4	Unattributed
1:5 A	Unattributed ( שמם may gloss שער בקנור )
1:5 B ( וכהן )	Subject of dispute between R. Yohanan b. Berokah and Sages which is glossed by R. Judah
1:6 A	Position of Sages <u>contra</u> R. Yohanan b. Berokah
1:6 B ( ואחר )	Unattributed (May derive from <u>or</u> be glossed by R. Eliezer)
1:6 C ( וכל )	Position of Sages <u>contra</u> R. Yohanan b. Berokah
1:7-8	Collection of R. Me'ir
1:9 A	Unattributed
1:9 B ( ירסף )	Collection of R. Me'ir
1:9 C ( לא )	Unattributed
2:1A	Unattributed (may be glossed by R. Eliezer)
2:1 B ( כל )	Unattributed
2:1 C ( רבן ) <sup>1</sup>	R. Gamaliel (the Elder?) <sup>1</sup>
2:2 A	Unattributed (may contain gloss of R. Ishmael)

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1. See Epstein, Tannaim, p. 404, who suggests the possibility that this may be R. Gamaliel the Elder and points to the similarity between this interpretation and that of Philo. See, also, Wahrmann, Untersuchungen, pp. 25-27, n. 33-34, and the literature referred to therein.

<u>Mishnah</u>	<u>Source</u>
2:2 B ( גנותן )	Unattributed (Disputed by R. Judah whose comment is glossed by an explanatory reference)
2:2 C ( בכנס )	Unattributed (Note stylistic parallel to <u>Tamid</u> ) <sup>1</sup>
2:3	Dispute between unattributed source, R. Judah and R. Yose
2:4	Unattributed
2:5	Dispute between unattributed source and R. Me'ir
2:6	Gloss to previous dispute in 2:5
3:1	Unattributed
3:2 A	Unattributed
3:2 B ( היר )	Dispute between unattributed (Sages/R. 'Akiba?) and R. Simeon (R. 'Akiba?)
3:2 C ( אם )	R. Simeon or unattributed gloss
3:3 A	Unattributed
3:3 B ( במחקה ... איני )	R. 'Akiba
3:3 C ( מערערים )	R. Eliezer (in context of R. 'Akiba's modification) <sup>2</sup>
3:4 A	R. Simeon
3:4 B ( אם יש )	R. Ishamel
3:4 C ( מכאן )	Ben 'Azzai, R. Eliezer debate. R. Eliezer may be disputed by R. Joshua or his comment may be independent. <sup>3</sup>

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1. On the dating of Tamid, see Louis Ginzberg, 'Al Halaka VeAgadah (Tel Aviv, 1960), pp. 41-65. However, neither Tamid nor Middot make reference to the "spot" referred to in this Mishnah.

2. See below, pp. 201-213

3. See below, pp. 247-255

<u>Mishnah</u>	<u>Source</u>
3:5	R. Simeon and compromise offered by Rabbi
3:6 A	Unattributed
3:6 B ( ראלר )	Unattributed
3:6 C ( וכל )	Rabbi's formulation according to R. Eleazar b. Simeon <sup>1</sup>
3:7	Unattributed
3:8 A <sup>2</sup>	Unattributed
3:8 B ( האיש מגלה )	Unattributed (Explanation of this statement subject of R. Yose/unattributed dispute in <u>Nazir</u> , 4:7)
3:8 C ( האיש מוכר )	Unattributed
3:8 D ( האיש בסקל )	Opinion of Sages <u>contra</u> R. Judah in <u>Sanhedrin</u> , 6:3
3:8 E ( האיש בחלה )	Position of Sages <u>contra</u> R. Eliezer in <u>Sanhedrin</u> , 6:4
3:8 F ( האיש בסכר )	Unattributed
4:1 A	R. Jonathan (by implication)
4:1 B ( אלמנה )	R. Eleazar b. Simeon
4:2 A	Unattributed
4:2 B ( פתו )	Dispute of the Houses <sup>3</sup> Dispute of Sages (=R. Eleazar) and R. Me'ir

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1. See the reference to T.P. above, p. 79, n. 1 .

2. This Mishnah involves a collection of distinctions, one of which may stem from a debate as early as R. Eliezer/Sages; another, as late as R. Judah. It is an open question as to whether the formulations in other Tractates may stem from this collection or this collection may be their source.

3. On the other dispute of the Houses in Sotah, see below, p. 203, n. 1 .

<u>Mishnah</u>	<u>Source</u>
4:3 B ( איילרובית )	Unattributed position <u>contra</u> R. Eliezer
4:3 C ( רשאר )	Unattributed
4:4	Unattributed
4:5 A	Unattributed
4:5 B ( לא להשקותה )	Unattributed position <u>contra</u> R. Yose, both interpreting 4:5A
5:1	R. 'Akiba; commented on by R. Joshua who indicates similar position of Zekariah b. HaKazab; R. 'Akiba's exegesis disputed or explained by Rabbi
5:2	R. 'Akiba; commented on by R. Joshua, who indicates problem of R. Yohanan b. Zakkai
5:3	Dispute of R. 'Akiba and R. Eliezer b. Yose HaGelili
5:4	Dispute of R. 'Akiba and R. Nehemiah
5:5	R. Joshua b. Hurkanos; commented on by R. Joshua in light of R. Yohanan b. Zakkai's position
6:1	Dispute of R. Eliezer and R. Joshua
6:2 A	Unattributed position ( <u>contra</u> R. Ishmael
6:2 B ( אף לפיטלה )	Position of either R. 'Akiba or R. Tarfon <sup>1</sup>
6:3	Unattributed
6:4	Unattributed

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1. See below, pp. 354 - 361



Simply put, the question highlighted in this summary chart centers about the dating of the unattributed material, particularly that of Chapters 1-3. Epstein assumes that much of this is early and may stem from about the year 70 C.E.<sup>1</sup> However, it is actually impossible to determine a significant strata of Mishnah preceding R. Eliezer. The evidence from 1:2 and 2:1A upon which R. Eliezer may comment is certainly most scanty. The position of the Houses in 4:2B is not related to a similar strata of material.<sup>2</sup> Thus, this Tractate shows the same general trend of development as others with the students of R. 'Akiba playing a most significant role in formulating its material. However, speculations about the source of the unattributed layers must remain in the form of unresolved questions. The style of the ceremonial descriptions cannot by itself prove an early formulation.

Thus, the cataloguing of the Mishnah's layers

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1. See below, pp. 292 - 304

2. However, the concern with an interruption in the process of the ritual may account for 4:2A which deals with such a problem and which may be transferred from 3:6B. See below, p. 272. The only material that may date (by attribution) from the Temple era is the homiletical interpretation of R. Gamaliel (the Elder?) in 2:1C and the exegesis of Zekariah b. Kaḳazab in 5:1.

does not support the position taken by Epstein. However, it does demonstrate the development of themes over successive generations of Tannaim. Some of these themes are spelled out in Mishnah; others in parallel sources; while some we can only hypothesize. The crucial consideration is that it is the interrelatedness of these layers and sources which forms the pattern of the magnificent structure of Mishnah. It is precisely the awareness of the magnificence of this structure and a sensitivity to the way it was shaped that can serve to account for the difficulties and inconsistencies that concern any serious student of Mishnah.

**Analyses\***

**\*Keys to variant readings and abbreviations are found  
in the Appendices.**

Sotah, 1:1DISPUTE OF R. ELIEZER AND R. JOSHUA

In the Mishnaic record of the dispute between R. Eliezer and R. Joshua, the point of contention revolves around the requirement for two witnesses to her act of seclusion:

Sotah, 1:1 (p. 1)

1 המקבא לאשתו רבי אליעזר אומר מקבא לה על פי שנים ומסקה על פי  
 2 עד אחד או ע"פ עצמו, רבי יהושע אומר מקבא לה על פי שנים ומסקה  
 3 ע"פ שנים.

2 עד אחד / נ ט ג א אחד.

However, another version of R. Eliezer's opinion, transmitted by R. Yose b. Judah and preserved in other Tannaitic sources,<sup>1</sup> totally reverses his view from that found in the Mishnah:

Tosefta Sotah, 1:1

1 ר' יוסה ב"ר יהודה אומר 'מסס ר' ליעזר מקבא על פי עד אחד,  
 2 או על פי עצמו, ומסקה על פי שנים. השיבו על דברי ר' יוסה ב"ר  
 3 ר' יהודה אין לדבר סוף.

1 מקבא / א המקבא לאשתו .

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1. Cf., T.B. Sotah, 2b, and T.P. Sotah, 16b (1:1). The Mishnah's report of R. Eliezer's opinion will be referred to as R.E. (1); that of other sources as R.E. (2).

Two distinct, yet related, questions suggest themselves on the basis of this material. On the one hand, what are the logic and sources underlying the respective opinions? On the other, what is the literary history behind the conflicting reports of R. Eliezer's statement?

#### Exegetical Sources of Debate

A later Mishnah states:

Sotah, 6:2-3 (pp. 68-70)

1 אמר עד אחד אני ראיתי שבטמאת לא היתה שותה ... שהיה בדיון, ומה אם  
 2 עדות ראשונה שאין אוסרתה איסור עולם איבה מתקיימת בפחות משנים,  
 3 עדות אחרונה שאוסרתה איסור עולם איבר דין שלא תתקיים בפחות משנים,  
 4 תלמוד לומר ועד אין בה, כל עדות שיש בה. קל וחומר לעדות הראשונה,  
 5 מעתה ומה אם עדות אחרונה שאוסרתה איסור עולם הרי היא מתקיימת בעד  
 6 אחד, עדות הראשונה שאין אוסרתה איסור עולם איבר שתתקיים בעד אחד,  
 7 תלמוד לומר כי מצא בה עדות דבר, ולהלן הוא אומר על פי שנים עדים  
 8 יקום דבר, מה להלן על פי שנים אף כאן פי שנים.

1 לא היתה שותה / ימ"ב איבה שותה. ( אגודה, מאירי ). שהיה בדיון /  
 ס. הטר.

Apparently, the case is one in which a single witness testifies to an act of intercourse. The testimony is considered valid despite the fact that for the warning and seclusion two witnesses are required. It is this anomaly which forms the basis for the subsequent discussion in which the testimony concerning seclusion is characterized as עדות ראשונה; that concerning sexual intercourse as

This explanation is confirmed in another source:<sup>1</sup>

Tosefta Sotah, 1:2

1 אי זו היא עדות הראשונה, זו עדות שנייה, זו עדות שלישית.

This interpretation must lead to the conclusion that this Mishnah accords either with the view of R. Joshua or that of R.E. (2), since it can in no wise be squared with R.E.(1). T.P., in fact, explicitly states:

T.P. Sotah, 21a (6:3)

1 מתנייהא דרבי יהושע דרבי יהושע אמר מקבא מתרה לה על פי שנים ומסקה לה  
2 על פי שנים. אמר רבי מנא ואפילו כאהן תנא אתייה היא. דתני רבי יוסי  
3 בי רבי יהודה אומר מסום רבי לעזר מקבא לה על פי עד אחר או על פי  
4 עצמו. ומסקה על פי שנים.  
1 מקבא / ר חסר. מתרה / ש חסר

The Mishnah then continues to spell out the basis for the requirement of two witnesses for the secretion by drawing an analogy between the phrase "כי מצא בה עדות דבר" <sup>2</sup> and " <sup>3</sup> Thus, it would appear obvious that the respective positions of R. Eliezer and R. Joshua are based on their differing approaches in the exposition of the import of this analogy.

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1. Cf. T.B. Sotah, 3b, and T.P. Sotah, 21a (6:3).
  2. Deuteronomy, 24:1.
  3. Deuteronomy, 19:15.

This is the conclusion drawn by T.P.:

T.P. Sotah, 16b (1:1)

- 1 ומה טעמא דרבי ליעזר כי מצא בה ערות דבר. ערוה זו סתירה. דבר זה  
 2 קיבוי. דבר דבר. מה דבר האסור להלן על פי שנים עדים אף דבר האסור  
 3 כאן על פי שנים עדים ... מה טעם 'דר' יהוש' כי מצא בה ערות דבר.  
 4 דבר זה הקיבוי. כי מצא אין מציא' אלא בעדי'.

Although the text is somewhat disordered, it is clear that all the varying opinions are interpreted in light of the דבר : דבר analogy. Thus, R.E.(1) stresses דבר in terms of the spoken word - the warning; R.E.(2) understands the term to be modified by כי מצא as indicating some form of established fact; and R. Joshua accepts both emphases.

T.B. suggests a different explanation:

T.B. Sotah, 2b (pp. 8-9)

- 1 מ"ם דרבי יהושע, אמר קרא בה, בה ולא בקיבוי, בה ולא בסתירה, ורבי  
 2 אליעזר אומר בה ולא בקיבוי ...מ"ם דר' יוסי ברבי יהודה, אמר קרא  
 3 בה, בה ולא בסתירה.

1 בה (1) / מ ועד אין בה. 2 אומר / ר אמ' לך, מ חסר

This explanation localizes their dispute to the force of the exclusion implied in "ועד אין בה".<sup>1</sup> Now,

1. Numbers, 5:13.

this approach is so much at odds with the simple meaning of the Mishnah that T.B. advances the following proposition:

T.B. Sotah, 3b<sup>1</sup> (pp. 24-25)

1 האי מכי מצא בה ערות דבר נפקא, מנה נפקא, בה ולא בקינוי בה ולא  
 2 בסתירה מיבעי ליה, הכי נמי קאמר תלמוד לומר בה, בה ולא בקינוי בה  
 3 ולא בסתירה, וטומאה בעלמא בלא קינוי ובלא סתירה דלא מהימן עד אחר  
 4 מבלן, נאמר כאן כי מצא בה ערות דבר ונאמר להלן על פי שני עדים או  
 5 על פי שלשה עדים יקום דבר, מה דבר האמור להלן עדים שנים אף כאן  
 6 עדים שנים.

This emendation<sup>2</sup> makes it clear that the motif is genuinely understood to be the basis of the dispute. T.B. is not merely differentiating the various cases but actually maintains the source of this differentiation as the basis for the requirement of two witnesses in kinui and/or setirah.

Analysis of Sifre

In the face of what it recognizes to be the simple meaning of Sotah 6:3, T.B.'s unattested derivation is a striking phenomenon. It may well be, however, that a tradition

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1. Cf., T.B. Sotah 31b, where the same pericope appears as a commentary to 6:3. See below, p.339, n. 1 for a discussion of its original locus.

2. On the nature of T.B.'s emendations of the Mishnah in Sotah, See Jacob N. Epstein, Amoraim, p. 92.



existed which rooted the controversy in this context.

It is possible that an indication of such an approach<sup>1</sup> may be found in Sifre:

Sifre: Deuteronomy, pp. 228-229 (#188)

1 (על פי שנים) מכאן אמרו המקנא לאשתו רבי אליעזר אומר מקנא על פי  
 2 שנים ומשקה על פי עד אחד שהיה בדיון מה אם עדות הראשונה שאינה אוסרתה  
 3 איסרה עולם אין מתקיימת פחות משנים עדות האחרונה שאוסרתה איסור עולם  
 4 אינו דיון שלא מתקיים בפחות משנים תלמוד ליומר ועו אין בה כל שיט בה לא  
 5 היתה שותה.

2 עדות הראשונה / עדות הראשונים ב, ד עדות הראשון

The appearance of R. Eliezer here must be deemed problematic. His requirement of two witnesses in kinui should not be termed a case of " שאינה אוסרתה איסור עולם " since it creates no status of prohibition whatsoever, whether temporary or permanent. Two solutions, based on textual emendations, have been proposed. R. Elijah of Vilna's<sup>2</sup> emendation continues the quote from Sotah, 1:1 to include

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1. On the nature of מכאן אמרו pericopae, see the references cited below, p. 241, n. 1. Even a late dating of such passages would not obviate the logical underpinnings of its possible accuracy in reproducing the actual literary source. This consideration applies as well to T.B.'s exegesis of נה to explain the controversy which as part of an introductory sugya, may be of late origin. Our analysis of the material found in Sotah 6:3 as it appears in Sifre can stand on its own.

2. SifGra, p. 168, n. 4.

R. Joshua's opinion and, therefore, the continuation

" טהיה בדין " refers to R. Joshua, rather than R. Eliezer. On the other hand, Lieberman<sup>1</sup> suggests that the reading should be " וְנִסְקָה עִיפֵי טַבִּיטִים " and, therefore the Sifre corresponds with T.P. which explains 6:3 as following R.E.(2).

A third approach to the Sifre might take the entire passage at face value and not as referring to the problem of the reliability of the single witness for the testimony of intercourse. Such an interpretation must necessarily omit the last words of the pericope and would have its conclusion to be " ת"ל ועד אין בה " or, at the most, " כל עדות טייט בה " <sup>2</sup>.

Two principal points now stand out as obvious. The passage is explaining R.E.(1) and in so doing refers

1. Lieberman, TK, p.610.

2. This reading is that of GRA, whose text concludes " ת"ל ועד אין בה ". While his deletion of " לא היתה שוחה " may be based on the Mishnah text, the omission of " כל עדות טייט בה " seems unnecessary. Assuming the deletion to have emanated from him rather than one of his students, the question of his method of text emendation becomes most pertinent.

to an unspecified case in which a lone witness is deemed credible. Now, according to R.E.(1), such a case is, in fact, that of one witness to the seclusion.

Therefore, the only question to be solved in reinterpreting the Sifre is that of the meaning of עדות ראשונה and עדות אחרונה. As long as we accept the characterization of the nature of the prohibition created by these testimonies in definite terms, we must interpret the passage as identical to the Mishnah and, consequently, remain puzzled about the R.E.(1) reference. However, the concept may just as well refer not to actual, permanent prohibition but, rather, to the potential for such definite prohibition. The testimony to seclusion carries such a potential while the initial warning does not.<sup>1</sup> Thus, the Sifre may well use the Mishnah's argument in an entirely different sense; one which would provide the basis for T.B.'s insistence on "הוא יודע אין בה" as the basis of the R. Eliezer/R. Joshua controversy.

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1. E.g., the woman who simply refuses to drink the bitter waters. In fact, there are many cases in which permanent prohibition is engendered by the witnesses to seclusion. See Sotah 4:1-4. The possibility of interpreting עדות ראשונה as referring to the warning is first suggested by Hillel b. Eliakim, Sifre 'im Perush Rabbenu Hillel, ed. Shachne Koledizky (Jerusalem, 1948), p. 117. Lieberman, TK, p. 610, notes the difficulty with this interpretation. However, if we assume the reference to be potential prohibition, the problem is somewhat mitigated.

In further examining the text, we note two readings:

(1) עדות ואחרונה

(2) עדות שנייה

Now, the meaning of these terms may be rather significant in extending this interpretation to encompass the R.E.(2) version as well. There are, of course, three possible points which might require the testimony of witnesses -the warning, the seclusion, and the sexual intercourse. If we assume that the passage considers all three cases in distinct terminology, then שנייה could refer only to the seclusion. On the other hand, by excluding the case of the warning the עדות ראשונה would refer to seclusion and either אחרונה or שנייה could apply to intercourse. Finally, if only the warning and seclusion are under discussion, the term אחרונה or שנייה would apply to seclusion.

If R. Eliezer's original statement was couched in terms used by Sifre, it might have taken the form

"עדות ראשונה ע"פ שנים, עדות שנייה (אחרונה) ע"פ עד אחד". How would such a formula be understood? Clearly, both possibilities actually extant in the R. Eliezer traditions can find their source within such a statement. R.E.(1) simply interprets עדות הראשונה as referring to the warning and

שבייה / אחרונה to the subsequent act of secretion, whereas R.E.(2) takes the source in a manner similar to the later Mishnah, which results in the requirement of two witnesses for the seclusion rather than for the warning.<sup>1</sup>

#### Structure of Tosefta

This explanation may serve to clarify a puzzling phenomenon in the Tosefta. Having recorded the position of R. Yose b. Judah and the rejoinder of the Sages to it, the Tosefta continues with the ערות ראשונה pericope. Now, this comment would seem to relate to Sotah 6:3 and its location in this context is problematic.<sup>2</sup> This difficulty led Epstein<sup>3</sup> to maintain that in the Mishna order employed by the Tosefta the sixth chapter of Sotah was, in fact, to be found as part and parcel of the first chapter to which it is logically related.

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1. If we would interpret ערות הראשונה as the initial matrix of suspicion in its entirety, i.e., both kinui and setirah, the formulation could encompass R. Joshua's position as well. In that case the basis for all three opinions might lie in conflicting interpretations of ערות ראשונה.

2. The continuation, "וכמה היא סומאה" would, likewise, relate to Sotah 1:2, which requires an unspecified length of time for defilement to have occurred.

3. Jacob N. Epstein, Tannaim, p. 406. For a further discussion of the relation between the two chapters, see below, pp. 336 - 342.

However, while its bearing on 6:3 is clear, it may well be that it has an equally direct relationship to 1:1. It is possible that this comment represents R. Yose b. Judah's explanation of his understanding of R. Eliezer's opinion. In other words, R. Yose b. Judah bases the variant he reports in an explanation of ערוה ראשונה as referring to seclusion. Thus, the question of the meaning of is most pertinent to the preceding Tosefta passage which contains the R. Yose b. Judah report of R.E. (2). Hence, conclusions concerning a different Mishnah order are unwarranted on the basis of this Tosefta.

#### A Putative Formulation as Source

Another approach to the problem of the two R. Eliezer traditions might lie within the meaning assigned to "השקאה" . In the narrow sense it is generally taken to mean the husband's warning<sup>1</sup> enjoining his wife from association with a specified man. On the other hand, it might well carry a more general meaning in which it would

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1. See T.B. Sotah, 3a and T.P. Sotah, 20d and 21a.

connote the entire situation.<sup>1</sup> In this latter connotation, the import of "המקנא על פי שנים" would be that the husband's suspicion must be validated in some fashion by witnesses. It is reasonable to maintain that this can be accomplished by testimony to a warning or to an act of seclusion. Thus, R. Eliezer's original statement may have been "המקנא על פי שנים" which was then interpreted in two different ways - yielding both R.E. (1) and R.E. (2).<sup>2</sup>

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1. The initial statement with which the Mishnah opens "המקנא לאשתו" should probably be understood in this more general sense of jealousy and suspicion. The controversy of R. Eliezer and R. Joshua may be a parenthetical insertion into an earlier layer which read "המקנא... כיצד". It is within this controversy as it is presently formulated that kinui may become a specific warning which is part of an overall process. This literary approach would, of course, obviate the implication drawn by T.B., 2a, "המקנא... דיעבד איו". Note that Maimonides disregards this conclusion in Mishneh Torah: Sotah (4:18). Particularly significant is Me'iri's similar approach in Bet Habehirah: Sotah, p. 6. This may be an independent rejection of an introductory, perhaps late, sugya.

2. A supplementary possibility might be that an original blank statement - המקנא לאשתו ע"פ שנים - served as the basis for both R. Eliezer's and R. Joshua's opinions with their debate centering around its full scope.

Whatever the basis for the two R. Eliezer reports, it is clear that R.E.(2) is rejected by the Mishnah. It is probable that the discussion recorded in Tosefta between R. Yose b. Judah and the anonymous Sages<sup>1</sup> is the basis for this rejection since the logic of R.E.(1) seems preferable to that of R.E.(2).

#### Rejection of Variant by Talmudim

It is interesting to note, however, that both T.B. and T.P. recognize that the problem of " אין לדרב סוף " applies to R.E.(1) as well. In fact, T.P. assumes that its relevance to R.E.(1) is even more patent than to R.E.(2):<sup>2</sup>

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1. It may even be possible that this discussion took place at the time of the actual formulation of the Mishnah. For sources on the role of Rabbi's circle in the determination of Mishnaic material, see Ezra Z. Melamed, Pirke Mabo, pp. 117-119. It is difficult to ascertain whether the response of the Sages was a critique made to R. Yose b. Judah directly or a statement about his version. Actually, this may in some degree depend on the punctuation of the beraita. Does the response begin immediately after " הסיבך " or after " יהודה " " ר' יוסי בר' יהודה " Relevant to this question is, of course, the reading of Tosefta and T.P. - " על דברי " - as opposed to that of T.B. - " לדרבי ".

2. T.B. initially makes the same assumption as T.P. based on the report of R. Yitzhak b. Joseph who quotes R. Yohanan. Apparently, T.B. finds no difficulty in emending his report which is assumed to be inaccurate. This instance should be added to the other examples cited by Aaron Hyman, Toledot Tannaim WeAmoraim (London, 1910), pp. 793-795. To some degree, the difference between T.B. and T.P. may be dependent on their understanding of the "punctuation" in the beraita.



T.B. Sotah, 2b (p. 10)

- 1 הסיבו הכמים לדברי ר' יוסי בר' יהודה אין לדבר סוף. מאי ביהוה,  
 2 דזמנין דלא קבי ואמר קבאי, דא למשנתיו יש לדבר סוף, זמנין דלא  
 3 איסתרי ואמר איסתרי, אמר רב יצחק בר יוסף א"ר יוחנן אף לדברי רבי  
 4 יוסי בר' יהודה אין לדבר סוף. אף לדברי רבי יוסי בר' יהודה ולא  
 5 מיבעיא למשנתיו, אדרבה למשנתיו איכא עיקר המס ליכא עיקר, אלא אי  
 6 איתמר הכי איתמר א"ר יצחק בר יוסף א"ר יוחנן לדברי ר' יוסי בר'  
 7 יהודה אף למשנתיו אין לדבר סוף.  
 8 א"ר יוחנן / מ חסר. 7 אף למשנתיו / ו ואף למשנתיו

T.P. Sotah, 16b (1:1)

- 1 הסיבו על דברי רבי יוסי בן יהודה אם כן אין לדבר סוף. הכל ממנו  
 2 לקבואת לה בשנים ולהביא עדים שנסתרה הלפוסלה מכתובה. אמר רבי יוסי  
 3 מה סיבה להיסתר אלא אחיא די לא על דמתניתין הכל ממנו לקבוח לה  
 4 מפיו ולומר שנסתרה ולפוסלה מכתובה. אמר רבי מנא אפילו כהדין תנייא  
 5 אחיא היא כמאן דמר מקנא לה מאביה ומבנה...

We must conclude, therefore, that the R.E. (1) version is not necessarily included only on the basis of its logical tenability but because it was the accepted tradition of R. Eliezer's opinion. It was the version which Rabbi drew on in formulating the Mishna.

This conclusion may serve to explain the extremely puzzling statement of R. Hanina of Sura:

T.B. Sotah, 2b (pp. 10-11)

- 1 א"ר חנינא מסורא לא לימא איבש לאיתתיה בזמן הזה לא תיסתרי בהדי  
 2 פלוני, דילמא קי"ל כרבי יוסי בר' יהודה דאמר קיבוי על פי עצמו  
 3 ומיסתתרא וליכא האידיא מי סנסה למיבדקה, וקאטר לה עילויה איסורא ולעולם.  
 1 א"ר חנינא / מ ד א"ר יוסי. לאיתתיה / מ ד ו לאינשי ביתיה.  
 1 בזמן הזה / ה חסר. ומיסתתרא / ימ"ב ודילמא מיקריא ומסתתרא ואתו עדי  
 2 תתירה (בה"ג)

There are two difficulties in this position.

First, why should we assume the law to be in accordance with the opinion of R. Eliezer and, second, why prefer the Tosefta version of R. Eliezer rather than that of the Mishnah?

Palestinian Influence Reflected in T.B.

Now, it may be that the solution to the second problem lies in R. Hanina of Sura's acceptance of the position maintained by T.P. that the problem of " אין לומר טרף " is more applicable to R.E.(1) than to R.E.(2). Hence, R.E.(2) plays the more significant role in R. Hanina's statement even though the latter appears in the Mishnah.

Having assumed the Palestinian influence on R. Hanina of Sura, we can, perhaps, partially explain the first difficulty as well. There are indications in T.P. that the law is in accord with R. Eliezer and not R. Joshua.<sup>1</sup> Why this should be so is of course, a problem in and of itself, nonetheless, the phenomenon is clear.

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1. See T.P. Sotah, 20d (1:1). It should be emphasized, however, that these indications do not accord with the R.E.(2) version apparently accepted by R. Hanina of Sura. Note also that T.B. Sotah, 2b assumes Resh Lakish to hold the law to follow R.E. (2) and that T.P. Sotah, 20d comprises a statement by and discussion concerning Resh Lakish. See below, pp. 317 - 336.

Talmudic Text Stemming from Halakot Gedolot

A second approach to this problem is based on the text of She'iltot<sup>1</sup> which omits the "דילמא קיי"ל ... שניים" pericope in its citation of this passage. Berlin suggests<sup>2</sup> that this passage is of a late date and derives from Halakot Gedolot. Lieberman<sup>3</sup> supports this contention by citing the text of the Hildesheimer edition<sup>4</sup> which reads "דילמא קיי"ל"<sup>5</sup> an expression commonly used by Halakot Gedolot in drawing conclusions.<sup>6</sup>

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1. She'iltot de-Rab Ahai Ga'on, 5 vols., ed. Samuel K. Mirsky (Jerusalem, 1959-1977), 9(#137).

2. She'iltot de-Rab Ahai Gaon, 3 vols., ed. Naftali Berlin (Vilna, 1867; reprint ed. Jerusalem, 1961) 3: 11 (#120).

3. Saul Lieberman, TK, p. 609, n. 1.

4. Halakot Gedolot, ed. Azriel Hildesheimer (Berlin, 1888-1892), p. 314.

5. Hildesheimer emends the text to read "דילמא" an emendation which would, if accepted, negate this argument. In that case its omission in She'iltot could simply be ascribed to a scribal error based on the repetition of the word "דילמא."

6. However, the expression "דילמא קיי"ל" appears in two other cases in Sotah, 2b, and a similar expression, "דילמא קטור" on Sotah, 2a. See above, p. 102, n. 1. Thus, the force of Lieberman's thesis is somewhat blunted when applied to this instance. On the other hand, it may well indicate a late origin for all these passages. Further investigation on the nature of this expression is warranted.

An interesting clue as to the manner in which R. Hanina of Sura's statement may be understood is to be gained from a suggestive juxtaposition in Halakot Gedolot. For, immediately following this passage there is found a quotation of a later sugya<sup>1</sup> in which R. Hanina of Sura maintains that a woman who behaves in an unseemly fashion - " עוברה על דת " may not be deprived of her ketubah unless she is warned to desist from such behavior. The beraita from which he supports this position is then employed to solve further questions concerning the same case. It is possible that Halakot Gedolot interpreted R. Hanina of Sura to consider a private warning followed by subsequent secretion as sufficient to create the status of which would then result in divorce.<sup>2</sup>

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1. T.B. Sotah, 25a.

2. The reading " מיקריא ומסתריא " would tend to support the consideration of this case within the rubric of " עוברה על דת ". The point is that such behavior is generally marked by defiance, whereas in this case it was purely accidental. However, the reference to the unavailability of the bitter waters invalidates this approach. Its inclusion in the explanation of R. Hanina of Sura presents great difficulty to many commentators and this analysis is tenable only should we assume that it is not part of R. Hanina of Sura's statement.

SUMMARY

This analysis was predicated on the questions of the interrelationship between the sources for the dispute of R. Eliezer and R. Joshua and their literary history. It has been demonstrated that these two elements are closely related and that Tannaitic materials must be analyzed both in context and as discrete units. Such a dual approach gained a clearer understanding of the process by which the editor stitched materials at his disposal into a single cloth. Taken out of its present context, Sotah 6:3 may actually contain the seeds for the debate recorded in Sotah 1:1, a hypothesis lent credence by the Sifre use of this passage. On the other hand, the citation in Tosefta 1:2 when taken in context suggests that assumptions about a different Mishnah order reflected in Toseftan structure may be unwarranted.

Sotah 1:1 - 'Al Pi

1 רבי אליעזר אומר מקבא לה על פי שנים ...

The phrase " על פי שנים " follows Biblical terminology in requiring the testimony of two witnesses in establishing the facts of a case<sup>1</sup> and has the meaning of "according to" or "on the basis of." If the parallel to the Biblical discussion of witnesses is an exact one, it would be unnecessary for the husband or wife to actually be aware of the presence of witnesses at the time of the warning. However, a strong counter-argument to such a position could be made. It might well be the appreciation of the warning's public nature which creates sufficient gravity for her subsequent suspicious acts to result in the ordeal ritual.

Indeed, the Mishnah itself implies this to be so in its subsequent illustration of the warning: אמר " לה בפני שנים ". The implication of this formulation

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1. Deuteronomy 19:15. The Mishnah employs Biblical terms deriving from Numbers 5:11-31 in which the sotah ritual is detailed. Thus, the terms, בית הסתר, מקבא, מטה, and טמאה are clearly based on their Biblical antecedents despite the fact that some of the concepts behind these terms could have been better expressed, e.g., מתרה in place of מקבא, אל חרובי which creates so much difficulty - see above, pp. 109-114 - is related to ערות זכר in Deuteronomy 24:1.) Rashi, Sotah, 2a, s.v. המקבא points out the reliance on Biblical terminology. A systematic comparative study of tractates analyzing types of Mishnaic material and their use of Biblical Hebrew would prove invaluable to our understanding of the nature of Mishnaic composition and its relationship to other sources.

is that the awareness of the witnesses is a real and present one at the time of the warning. Thus, the sense of the phrase must be expanded to mean "before" or "in the presence of."<sup>1</sup>

A striking similarity in usage of this phrase may be found in the following Mishnah:

Shabbat, 19:1

1 רבי אליעזר אומר אם לא הביא כלי מערב שבת מביאו בשבת מגולה  
 2 ובסכנה מנסהו על פי עדים.<sup>2</sup>  
 2 על פי/ קטע מהגביזה ( ע"פ א. גולדנברג ) בפני

It is clear that the parallel phrase in this Mishnah must carry the force of an act that takes place with an

1. See Sotah 2b " וכולי עלמא ידעי דקני לה " and Rashi, 2a, s.v. " מקנא : "אם בא להשקותה צריך להביא" : "שני עדים שאמר לה בפניהם" This explanation is equivocal since it may be read שאמר or שאומר, particularly since in the editio princeps (Venice, 1520) the reading in Rashi is "שא". A similar phenomenon in the text of the Mishnah is discussed by Haim Chavel, "Kuntres Me'ah He'arot 'al Masehet Sotah" in Sefer HaZikaron LeHagrai Weinberg ed., Azriel Hildesheimer and Kalman Kahane (Jerusalem, 1969) p. 194. In the commentary of R. Obadiah Bertinoro (Venice, 1548), Rashi is quoted in a manner that leaves no room for doubt: " צריך להביא שני עדים ולומר לה בפניהם" See also, R. Meir Arik, Minhat Kena'ot (Lwow, 1894), p. 1a and R. Haim Sofer, Kol Söfer in Ke buzat Mefarshe HaMishnah, 6 vols. (Jerusalem, 1960-1962) 3:74a.

2. On the nature and date of this danger, see Ben Zion Bokser, Pharisaic Judaism in Transition (New York, 1935) p. 33, n. 78. His proof from the beraita quoted by R. Judah (T.B. Shabbat 130a) is unconvincing. R. Judah would not necessarily give a first-hand account if he could quote R. Eliezer. Against Bokser's identification of sakanah

awareness that it is being witnessed by others. Interesting, also, is the fact that it is R. Eliezer who, in both instances, employs "על פי" in this sense.<sup>1</sup>

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stands that of Saul Lieberman, "The Martyrs of Caesarea," Annuaire de l'Institut de Philologie et d'Histoire Orientales et Slaves 7 (1944): 423-433. See, also, Alexander Guttman, Studies in Rabbinic Judaism (New York, 1976), pp. 147-148.

As to the beraita quoted, Abraham Goldberg, Mishnah Shabbat, pp. 327-328, suggests that it is the source of the Mishnaic "... ויבטחנה " which should be attributed to R. Judah. I am unsure if he attributes the report on the actual formulation itself to R. Judah. Note also a manuscript variant cited by Goldberg which reads .

1. It is, of course, impossible to determine whether this use of "'al pi" in Sotah originates with R. Eliezer or R. Joshua. The passage in Sanhedrin, 11:2, " זקן ממרא על פי בית דין " is based on Deuteronomy 17:10-11. However, in the context of the Mishnah this 'al pi must mean "against," "contrary to." It is entirely possible, however, that Matthew 18:16 should be interpreted in the same sense as the Sotah and Shabbat passages. The context is rather clear that the witnesses there required are not for purposes of testimony but, rather to lend a public nature to the complaint as a form of pressure on the recalcitrant. See Hermann L. Strack and Paul Billerbeck, Kommentar Zum Neuen Testament, 6 vols. (Munich, 1974), 1: pp. 790-791. Although they cite Sotah 1:1, their other parallels indicate that they fail to appreciate the special nature of the witnesses in this case.



### A Problematic Formulation

The Mishnah's formulation of the warning is certainly a most puzzling one:

#### Sotah, 1:2 (pp. 1-3)

- |   |   |
|---|---|
| 1 | כיצד טקנא לה, אומר לה בפני שנים אל מרגרי עם איש פלוני ודברה   |
| 2 | עמו עדיין היא מותרת לביתה ומותרת לאכול בתרומה, ובכנסה עמו     |
| 3 | לבית הסתר ושהתה עמו כדי טומאה אסורה לביתה ואסורה לאכול        |
| 4 | בתרומה, ואם מה חולצת ולא מתייבמת.                             |
| 2 | לביתה / י לבעלה. 3 לבית הסתר / א בסתר. לביתה / א לבעל ולבועל. |

The problem centers on the meaning assigned the verb dbr in this context. If dbr is herein employed as a euphemism<sup>1</sup> for seclusion, why does the Mishnah confound the issue by " ... מותרת ... דברה עמו " ?

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1. See T.B. Ketubot, 13a-b and T.P. Ketubot, 25c in which dbr is treated as a euphemism. However, whereas T.B. there assumes it to be euphemistic only if understood in the sense of sexual intercourse, T.P. Sotah, 17c takes it as such even when understood as seclusion. (In Ketubot, 7:6, " מדורת עם כל אדם " is clearly set in a context of public impropriety and must only be understood in its literal sense.) Of course, in the present context, there is no possibility of taking it as referring to sexual intercourse. The warning, perforce, is concerned with grounds for suspicion. Note, also, that the T.B. Ketubot pericope indicates both the Palestinian origin of the euphemistic interpretation and Abbaye's familiarity with this interpretation.

Directions for Critical Solutions

Faced with such internal inconsistency, we may posit two possible theoretical directions for its solution. On the one hand, we may adopt the approach of textual emendation in such a way as to obviate any difficulty. Such an approach would attempt to identify and supply the textual lacuna necessary for a satisfactory resolution. On the other hand, a literary-critical method might be employed by focusing on the totality of the text, attempting to parcel it into distinct literary units, and then analyzing the interrelation of these putative units.

T.P. appears to follow the latter approach, albeit in a somewhat oblique fashion:

T.P. Sotah, 16c (1:2)

- 1 כיצד הוא מקנא לה כו'. סוף דבר עד שתדבר עמו. הא אם בסתרה
- 2 עמו ולא דיברה אין סתירתה כלום. דיברה אמא מיסור לך אפילו
- 3 דיברה עמו ולא בסתרה. אדיין היא מותרת לבינה ומותרת לונל
- 4 במרומה. לשון בקי הוא מהניחא. אל תהייתרי עם אים פלוני.

T.P. recognizes the possibility that " אל תדברי " can be a confusing formula since it is of a euphemistic nature. Hence, it assumes that the Mishnah itself comments on this point by clearly spelling out that δbr understood as speech is not a valid warning. The inconsistency of

the Mishnah in its present form is removed by separating it into distinct units.<sup>1</sup> It is only the assumption of a single, integrated unit which creates the difficulty. The consideration of the latter statement as a clarification of the former leads to its resolution.<sup>2</sup>

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1. Epstein, Mabo, pp. 374-375. Epstein suggests that the pericope of " דיגרה עמו " is a later, explanatory unit which took dbr in its primary sense of speech and, therefore, introduced this qualification. I am unsure as to whether he imputes this explanation to T.P. or feels it to be a logical extension of its approach.

2. She'iltot: Numbers, #120, must also interpret the Mishnah like T.P. since it doesn't incorporate Abbaye's emendation and reads " שאילתא דאלו מן דקני לה לאתתיה ואמר לה " אל תדברי עם איש פלוני ונפקי סהדי דאיסתמרא בהדיה דהורא פלוני " . See also Berlin's note as far as manuscript texts, ad locum. Tanhuma:Naso #2 (cf. readings cited in Buber's edition p. 28, f. 40) may follow T.P. as well but is most problematic. It prefaces the husband's warning with a summary of the behavior spelled out in Ketubot 7:6 in which dbr must be taken as conversation. Furthermore, the form of the warning in Tanhuma - " מה לך לשחוק עם פלוני " points to the literal sense of dbr. Tanhuma maintains that the basic warning may be framed in terms of conversation, especially since public garrulousness is considered unseemly behavior. However, subjection to the ordeal is conditioned on this improper conduct being extended to include her secretion. Such an approach would yield a new explanation of the Mishnah. The husband enjoins her against conversation, however, since this is considered undue suspicion (see Tosefta Sotah, 5:9 and T.B. Gittin, 90a) his warning cannot be activated by conversation - only by actual seclusion. It might even be argued that in light of Ms. Munich, cited below, p. 113, this is actually the force of Abbaye's explanation. It may be possible that Tanhuma is based on T.P. but takes " לטון בקי " as referring to conversation leading to secretion. See also Midrash Rabbah: Numbers, 9:8 , and Epstein, Nusah, p. 375, n. 4.

T.B., however, seems to employ a form of textual emendation in presenting Abbaye's emendation of the Mishnah:

T.B. Sotah, 5b (pp. 52-53)

1	הא גופא קשיא, אמרת אמר לה בפני סנים אל תדברי עם איש פלוני
2	זה, אלמא דבור סתירה הוא, והדר תני דיברה עמו עדיין מותרת
3	לבייתה ומותרת לאכול בתרומה, אלמא דבור לא כלום הוא, אמר אביי
4	הכי קאמר אל תדברי ודברה, אל תדברי ונסתרה, (ולא כלום) אל
5	סתרי ודברה עמו עדיין מותרת לבייתה ומותרת לאכול בתרומה, ובנסה
6	עמו לביית הסתר וסתרה כזי סומאה אסורה לבייתה ואסורה לאכול
7	בתרומה.

2 זה / א מ ר חסר. 4 אל תדברי ודברה אל תדברי ונסתרה / א מ  
אל תדברי ודברה (בוסף בגליון), ר אל תדברי עם איש ונסתרה.

Abbaye's approach appears to be one that takes the text as a single unit, as distinct from T.P., which interprets the Mishnah in terms of specific units integrated so as to form a whole.<sup>1</sup>

The T.B. text cited leaves no possibility for squaring Abbaye's approach with that of T.P., since it clearly equates " אל תדברי ודברה " with " אל תדברי ונסתרה ". Yet, it is striking that in the formulation of the question T.B. is aware of the possibility of taking abr in a euphemistic

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1. Epstein, Nusah, pp. 595-673, summarizes the theories about and extensively treats instances of such Amoraic treatment of Tannaitic material. See above, pp. 34-35.

sense.<sup>1</sup> Thus, the essential element for a T.P. type solution is present, if unutilized.

However, the text of Ms. Munich<sup>2</sup> of T.B. opens the possibility for an equation of T.B. with T.P. It omits the crucial " אל תדברי ונסתרה ". Thus, Abbaye states only that " אל תדברי ודברה " is " לא כלום."<sup>3</sup> This

1. I believe that Abbaye is responding to the anonymous formulation of the question as presented in T.B. Certainly, there is reason to posit his awareness of dbr as a euphemism for seclusion of a suspicious nature. See above, p. 109 , n. 1.

2. The reading is also found in Ms. Vatican ( ך ) and Ms. Bodleian ( \* ). Both have apparently been added by a different hand.

3. The use of "לא כלום" in Abbaye's statement corresponds with its use in the introductory question. However, I am unsure of the direction of influence in terms of formulation. Obviously, its omission in Abbaye's statement coupled with Ms. Munich's text omitting " אל תדברי ונסתרה " would lend credence to the equation of his approach with that of T.P. However, the fact is that Ms. Munich does read " ולא כלום ". In addition, I have been unable to identify any manuscript support for its omission, despite the indication in the margin of T.B. (Vilna) that it is, indeed, absent in some texts.

may then be followed by the explanation that " אל חזירי ודברה " is equivalent to " אל חסתי ודברה ". However, a statement of אל חזירי followed by subsequent seclusion might, indeed, be sufficient grounds for the application of the ordeal.

#### Euphemisms in Mishnah

A final question raised by this analysis is that of the usage of euphemisms in Mishnah. Obviously, a euphemistic expression taken literally can lead to ludicrous conclusions and tortured interpretations. Thus, a study of the degree to which this phenomenon may be present in Mishnah is clearly a desideratum.

#### Summary

A text was analyzed which displayed obvious and serious internal inconsistency. Theoretical directions for its solution were those of emendation or division into literary units. It appears that these two approaches are to be found in T.B.'s and T.P.'s resolutions of the difficulty. T.P.'s approach clearly demonstrates the stitching together of units into an integrated literary whole.

Sotah, 1:2Time-Span of Seclusion

The woman becomes subject to the ordeal if she enters a private place with the specified man and remains there a time sufficient for cohabitation to have occurred. Rather than delimit this time span, the Mishnah relies on Biblical terminology<sup>1</sup> and records it as " כרי טומאה ". However, other Tannaitic sources<sup>2</sup> more closely define the time period under consideration:

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1. See above, p. 106. A parallel use of "סתר" is found in Yigael Yadin, ed., Megillat ha-Mikdash, 3 vols. (Jerusalem, 1977) 2:209.

2. In addition to the sources cited, there are more or less similar versions in T.B. Sotah, 4a; T.P. Sotah, 16c (1:2); Sifre, p. 12 (#7). The major difference between them is that some do not cite the opinions of Eleazar b. Jeremiah, Hanin b. Phineas, and Pelimo. These Tannaim appear but rarely in Tannaitic sources and there is difficulty in locating them in historical context. R. Sherira Ga'on Iggeret, p. 15 places them all in the generation of R. Simeon b. Gamliel II. However, a careful reading of this section leaves one with the impression that R. Sherira has herein lumped together many Tannaim whose exact era was unclear to him. In fact, the French version may indicate R. Sherira's uncertainty, since it reads "...והיה אית זמי חכמים גדולים כגון..." as opposed to the Spanish reading of " והיו זמי חכמים גדולים ".  
והיו זמי חכמים גדולים .

Tosefta Sotah, 1:2

- 1 וכמה היא טומאה, כדי ביאה, וכמה היא ביאה, כדי העראה, וכמה היא כדי  
 2 העראה, ר' לעזר אום' כדי חזרת דקל, ר' יהושע אום' כדי מזיגת הכוס,  
 3 בן עזרי אום' כדי מזיגת הכוס לשתותו, ר' עקיבא אום' כדי לצלות ביצה,  
 4 ר' יהודה בן פתירה אום' כדי לגמוע שלש ביצים זו אחר זו, ר' לעזר בן  
 5 ירמיה אום' כדי שיקסור גרדי בימה, חנן בן פנחס אום' כדי שתפסם  
 6 אצבעה לתוך פיה, פלימו אום' כדי שתפסום ידה ותסול ככר מתוך הסל,  
 7 אע"פ שאין ראייה לדבר זכר לדבר, שב' כי בעד אשה זונה עד ככר לתם. 1  
 6 אצבעה/ א אצבע ו אצבע. שתפסום/ א ג שתפסום. מתוך הסל/ א ג ח

Omission of Material

The omission of this controversy may be based on the fact that there are but shades of difference between the various opinions.<sup>2</sup> To have included this material would have severely bogged down the flow of the Mishnah with unnecessary detail.

1. Pelimo's citation of this verse in Proverbs 6:26 becomes clearer when Proverbs 6:26-29 are considered in context:

כי בעד אשה זונה עד ככר לתם ואשת איש נפט יקרה תצור.  
 היחמה איש אם נחיקו ונגריו לא תטרפנה.  
 אם יהלך איש על הגחלים ורגליו לא תכוויה.  
 כן הוא אל אשת רעהו לא יבקה כל הנגע בה.

The references to the certainty of injury in these allusions are clearly reminiscent of the ordeal. Furthermore, the expression "לא יבקה" echoes Numbers 5:11-31 in which the verb nkḥ is of frequent occurrence.

2. Indeed, in both T.B., 4b and T.P., 16c R. Yohanan states "כל אחד ואחד בעצמו שיער". The continuation of the sugyot is the same except that T.B. substitutes "ונתחם" for T.P.'s "מרגיה שמיע ליה". If R. Isaac b. Joseph is the source of this material as well as R. Yohanan's statement, this may be another instance of the phenomenon noted above, p. 100, n. 2.



### History of Sources

However, there is an interesting structural question suggested by this omission which may be highlighted by focusing on the Mishnah-Tosefta relationship. Is the Tosefta material an explanatory comment to the Mishnah itself or is it, rather, additional material appended to the Mishnah by the Tosefta<sup>1</sup> but, basically, of independent source and nature?

The history of this material may take two possible courses. It might be that Tosefta is essentially a comment on a cryptic formulation of " כרי טומאה " exactly as it appears in Mishnah. As such, the Mishnaic formulation may be deemed to precede the various explanatory opinions.

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1. Note the reading in Tosefta: Erfurt " וכמה היא " according to which the reference is to the immediately preceding pericope, " שנייה זו ערות טומאה ". However, it would seem most unlikely that this is a valid reading since the " ערות טומאה " referred to above does not mean a time span in which intercourse might have taken place but, rather, an actual witness to the act. Under these circumstances, the following discussion would be irrelevant. It would seem that the contiguity of these sources rather than their continuity is the source of this reading.

On the other hand, it may be that this material was not originally a commentary to a Mishnah-type formulation. Rather, it may have served as an exposition to the Biblical verse in a midrash halakah form. Indeed, an examination of Sifre Zuta may reveal the precise nature of such a source:

Sifre Zuta, p. 233 (5:13)<sup>1</sup>

- 1 ונסתרה והיא בטמאה, איני יודע כמה אמרם שכבת זרע כדי שכבת זרע
- 2 הוי אומר כמה היא סתירה כדי טומאה כמה היא טומאה כדי ביאה כמה
- 3 היא ביאה כדי הערייה כמה היא הערייה כדי חזרת דקל דברי ר' ישמעאל.
- 4 ר' אליעזר אומר כדי מציגת כוס. ר' יהושע אומר כדי לשתות. בן
- 5 עזאי אומר כדי לצלות ביצה. ר' עקיבא אומר כדי לגמעה. ר' יהודה
- 6 בן בתירה אומר כדי לגמות שלש ביצים מגולגלות זו אחר זו. ר'
- 7 אלעזר בן פנחס אומר כדי שיקשרו גרדי את הבימה. פלומו אומר כדי
- 8 שתושים ידה ותסול ככר מן הטל אף על פי שאין דאיה לדבר זכר לדבר
- 9 כי בעד אשה זובה עד ככר לחם.

1 - 9 ונסתרה ... לחם/ דק ג

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1. Horowitz, Sifre Zuta, p. 233, l. 16, opines that " כמה היא סתירה " until " איני יודע כמה " is based on R. Jonah's comment in T.P., 16c. This does not affect our discussion since R. Jonah correctly identifies the basic concern underlying this pericope. The need to establish a minimum time-span is obvious. Indeed, R. Yohanan's comment, quoted above, p. 116, n. 2, may actually explain why the editor omitted this controversy from the Mishnah. There is no hard and fast rule; each court must make a reasonable assessment.

The assumption that this source was originally rooted in just such a context serves to explain the opening series of questions. Why does the commentary not simply state " כַּמָּה הִיא טוּמְאָה " and then proceed to record the various opinions? In anchoring its origin in the framework of an exegesis of Numbers, 5:13, this problem admits to a simple solution. This verse is taken as defining the parameters within which her behavior can lead to the necessity for the ordeal. As such there is deemed to be a requirement of seclusion (" וְנִסְתְּרָה ") sufficient to result in her defilement (" וְנִטְמְאָה "). The Mishnaic formulation summarizes the necessary condition by " נִכְבַּס עִמּוֹ לְבֵית הַסֹּתֵר " וכִּבּוּס עִמּוֹ כְּדֵי טוּמְאָה ". The Midrash, however, continues its focus on this verse in order to more closely define the nature of defilement herein specified. It discovers in the unfolding of the verse the definition of defilement. In other words, the behavior referred to is one of sexual intercourse resulting in " שִׁכְבַת זָרַע ". This, of course, implies coitus (" נִיאוּהָ "), which is minimally effected by penetration (" הִעֲרָאָה "). Hence, the progression from " טְהִירוּהָ " to " הִעֲרָאָה " appearing in Tosefta may be but an echo of an halakic exegesis of Numbers 5:13.

### Mishnah-Tosefta Relationship

Thus, it is likely that the Tosefta preserves material which may be seen as appended to and parallel with Mishnah. However, Tosefta probably should not be taken as a simple commentary to Mishnah. Mishnah, for its part, has excised all this material and has merely recorded the formal definitions of the time-span required for seclusion. Hence, it is not possible to definitively determine whether Mishnah itself is formulated on the basis of this exegesis or whether the usage of a blank " כרי טומאה " was integrated into a subsequent midrash.<sup>1</sup>

### Summary

This treatment of the sources, while not reaching definite conclusions, should serve as an indicator of two important features of Mishnah analysis. First, Mishnah omits material which may bog down the flow of its presentation. This factor should be strongly considered when the

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1. The Mishnah's use of " כרי טומאה " rather than " העראה " may merely reflect its attempt to employ the opposite Biblical term. On the other hand, assuming the relation of Mishnah to such a Midrash, it might have been linked to a variant which did not include the " העראה " /  
 " ביאה " progression. Indeed, Sifre does not incorporate such a progression but concludes with " טומאה " itself.

omitted material does not substantially add to the proper grasp of the subject at hand. Second, in such cases it is extremely difficult to determine whether the additional material is a comment on Mishnah or whether both have a common source. In other words, each such instance raises the question of the editorial policy followed in Mishnah's redaction as well as the sources utilized in this process.

Sotah, 1:3The Journey to Jerusalem

The Mishnah states that the couple must be accompanied to Jerusalem by two scholars appointed by the local court:

Sotah 1:3 (pp. 61-62)

- 1 כיצד עושה לה מוליכה לבית דין שבאותו מקום, ומוטרין לו שני  
 2 תלמידי חכמים שמא יבא עליה בדרך, רבי יהודה אוסר בעלה באמן  
 3 עליה.
- 1 עושה / ימ"ב עושין (אגודה). מוליכה / י מוליכין אותה. שבאותו  
 המקום / מ שבאותה העיר. לו / א מ פ א ת ג י ב ד לה. 2 יבא /  
 ד יבואו.

Dispute of R. Judah and Sages

The need for such accompaniment is disputed by R. Judah who maintains that it is unnecessary. The husband is to be trusted not to have relations with the suspected adulteress.

Tosefta details the bases for this dispute:

Tosefta 1:2-3<sup>1</sup>

- 1 ר' יהודה אומר בעלה באמן עליה מקל וחומר, ומה נדה שחייבין על  
 2 ביאתה כרת בעלה באמן עליה, סוטה שאין חייבין על ביאתה כרת איבר דין  
 3 שיהא בעלה באמן עליה. אמרו לו וכל שכן, הואיל ואין חייבין על  
 4 ביאתה כרת לא יהא בעלה באמן עליה. דבר אחר, לא אם אמרת בנדה שיש  
 5 לזה התר אחר איסורה, תאמר בסוטה שאין לה היתר לאחר איסורה, וכן  
 6 הוא אומ' מים גרובים ימתקו וגו'. ר' יוסה אומ' הכת' האמינו  
 7 עליה, דכתיב והביא האיש את אשתו אל הכהן.  
 4 דבר אחר / א אמרו לו, ג חסר.

Mishnah's Omission of Details

The Mišnah presents an abbreviated form of R. Judah's opinion. Reproducing only his basic statement - " בעלה באמן עליה " - Mishnah omits the aspect of the inference which serves as its underpinning. It would appear that the editor was concerned with presenting the bare outline of the dispute; to have included its underlying rationale would have unduly interrupted the almost narrative-like quality of the material. Hence, R. Judah's formulation is even stripped of the allusion to the inference from minor to major.

History of Debate

Tosefta presents two arguments for obviating the

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1. Cf. T.B., 7a; T.P., 16d (1:3); and Sifre, p. 13 (#8).

necessity for accompaniment, one by R. Judah; another by R. Yose, while other sources present both arguments as stemming from R. Judah. However, a close reading of Tosefta suggests that the statement ascribed to R. Yose is actually a counter to the negation of the logical argument. Indeed, T.B. ascribes both statements to R. Judah, investigates the reason for these two forms of proof, and bases it on the dialectic of the debate.<sup>1</sup> The negation of the initial argument generated a new line of attack.

A further examination of the sources reveals that in some citations R. Yose is completely absent;<sup>2</sup> in another he presents the Biblical proof;<sup>3</sup> and in yet another he is taken as the source of the inference.<sup>4</sup> The fact that R.

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1. T.B., 7a.

2. Such is the case in the reports in Sifre, T.P., and the first beraita quoted in T.B.

3. See Tosefta, 1:2-3, quoted above, p. 123 .

4. See the second beraita quoted in T.B.



Yose appears to be so much a part of the flow of the argument in some texts while absent in others might suggest that the R. Yose herein referred to is not R. Yose b. Halafta, but rather R. Yose b. Judah, who is representing and defending his father's position.<sup>1</sup>

Thus, there may exist additional cogent reasons for the terse presentation of R. Judah's opinion in the Mishnah. To have indicated his reliance on the inference from minor to major might have misconstrued the situation, since R. Judah himself may not have been its author, or may have discarded it. In addition, it is possible that he may have presented two arguments, which would have been blurred by the reference to only one.

The response to R. Judah's contention takes two forms, which are both represented in Tosefta. In other reports the order is either reversed or one response is completely omitted. This phenomenon might suggest the existence of a basic statement of response which was then interpreted in two parallel, but differing, fashions.

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1. See Epstein, Tannaim, pp. 172-3, for other instances in which R. Yose b. Judah is quoted as R. Yose. This would explain his absence in other sources which might have been expected to record his comment if, in fact, it derives from R. Yose b. Halafta.

Such a putative ur-response may be preserved in Sifre, which first reports the two answers recorded in To-sefta and then adds " דבר אחר נחשדו ישראל על הטעות ולא  
 " . As Horovitz notes,<sup>1</sup> this response adds nothing to the previous ones. Furthermore, examined on its own, it is a poor rejoinder to R. Judah's argument. The presentation of a logical brief for the husband's credibility and trustworthiness can hardly be countered by such a bald, unsupported response. However, if this response is taken as the basic formulation, the development of the two arguments is now obvious. Their roots lie precisely in the need to explain the unequivocal denial of R. Judah's logical argument in equally logical terms. Hence, this statement itself gave rise to two interpretations.

Finally, if our hypothesis about the identity of the R. Yose of this matter is granted, then we may better appreciate the literary history of this subject. The material was hammered out over two generations. The first saw the debate stated in terms of קל וחומר vs. נחשדו . The second involved R. Yose b. Judah and his colleagues, and saw the latter variously interpret the נחשדו pericope.

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1. Sifre, p. 13, n. 14.

The former then countered with the Biblical text which indicates that the husband is the sole escort.<sup>1</sup>

Following this reconstruction one step further, we may surmise that the report in Sifre and T.B., which states " ... מן התורה האים מביא את אשתו אל הכהן אבל אמרו " represents the counter to the Biblical proof-text. True, Biblical law would not require such procedure, but the realities of human behavior necessitate it.

#### Summary

This attempt to sketch the history of the material is, of course, hypothetical. However, from a methodological

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1. According to T.B., the first position was that of the inference; only when it was successfully countered was the literal meaning of the Biblical verse invoked. The same process emerges from the beraita as cited in T.P. In Tosefta, this fall-back position is ascribed to R. Yose (while in the second beraita quoted in T.B., R. Yose and R. Judah are reversed). On the possibility that the basic argument of T.B. might be reversed and the inference seen as the fall-back position, see Tosafot, ad locum, s.v. אמר and the commentary of R. Samuel 'Edels, ad locum. Note, also, the order in Sifre, which might support such an interpretation.

standpoint it demonstrates how the editor remained true to his sources while maintaining the nature of his presentation. Rather than being caught up in the details behind the broad picture, he simply makes no reference to them whatsoever, and cites the original sources only to the point of their introduction.

Furthermore, it suggests that a seemingly superfluous but ambiguous phrase should be carefully examined in order to see whether it may be the source, rather than the product, of other material. The underlying assumption is that a later statement, designed as a summary, would be more explicit than its source. Lack of clarity may well indicate its precedence to other sources.

Finally, the role of R. Yose b. Judah, a member of Rabbi's close circle, needs further investigation. What is his role in the transmission, formulation and explanation of his father's opinions?

Sotah, 1:4Role of the High Court

The Mishnah describes her appearance before the High Court:

Sotah 1:4 (pp. 66-68)

היו מעלין אותה לבית דין הגדול שבירושלים ומאיימין עליה כדרך	1
שמאיימין על עזי בפשות, ואומר לה בני הרבה יין עושה, הרבה שחוק	2
עושה, הרבה ילדות עושה, הרבה שכנים הרעים עושין, עשי לשמו	3
הגדול שבכתב בקדושה שלא ימחה על המים, ואומר לפני דברים שאינם	4
כדי לשומען היא וכל משפחת בית אביה.	5
ואומר / ג 8 ג 12 ד ט ואומרים, א ד ק פ 1 ל כ ואדם <sup>1</sup> .	2
ואומר / י פ 1 ואמ', א 2 ק ת ב ו ואומרין.	4

The role assigned the High Court in Jerusalem<sup>1</sup> appears to be extremely limited. No mention is made of an investigation of the accusation's circumstances, nor of the accused's fitness to undergo the ordeal. Indeed, the court's functions seem to be of a non-juridic, almost

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1. The Mishnah's description of the High Court as being in Jerusalem is, in and of itself, entirely superfluous. However, from a literary standpoint it serves as the counterpoint to " שנאותו מקוט (העיר) ".

paternal,<sup>1</sup> nature, limited to a search for a life saving solution to her dilemma.

However, it hardly seems likely that the High Court would simply rely on the recommendation of the local court without further investigation. In fact, it may be that one of the functions of the local court officers who accompany the couple to Jerusalem was to report on the deliberations and proceedings of the lower court. These might then be continued by the highest tribunal.

Thus, the Mishnah should not be understood as a comprehensive description of the High Court's role but, rather, as a specification of a particular aspect of the pre-ordeal proceedings. In fact, no mention is made of a legal hearing before either court!<sup>2</sup>

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1. Note the use of the term "בתי". An interesting parallel is Joshua's exhortation to Achan to admit his guilt (Joshua 7:19), which opens with "בני". Note, also, that in both cases the sin is described as ma'al (Numbers 5:12; Joshua 4:2).

2. See above, pp. 33-34 for a discussion of the court's role.

Nature of Parallel to Capital Punishment

The Mishnah compares the High Court's role in this instance to that of cases involving capital punishment.<sup>1</sup> It would be most far-fetched to maintain that the same formula recited to the witnesses in such cases is applied to the suspected adulteress as well.<sup>2</sup> Much of that warning is clearly out of place in the case of sotah. The comparison is made in formal and thematic terms since within these contexts there are strong parallels between the two.<sup>3</sup>

1. See Sanhedrin, 4:5.

2. This explanation is actually advanced by Joel Hasid, Hidushe Mahariah, (MV), ad locum. The force of "ואמר" is taken to imply a prior statement. However, this "waw" should be understood as introducing an explanatory passage, rather than in a simple, conjunctive sense. This was recognized by Yom Tob Heller, Tosafot Yom Tob, (MV), ad locum. As such, it appears quite frequently in this Mishnah and related sources, e.g., "ולשערי בקור" and "כלי זהב וקסליא" and "ומעשים שארע". The misunderstanding of this function of "waw" led to problems for commentators on this Mishnah. See Epstein, Nusah, p. 1086, for further instances of this phenomenon.

3. In both cases, there is an appeal to Biblical precedent and an ethical exhortation rather than a threat. In fact, the woman's admission of guilt is elevated to a noble motive - the prevention of the erasure of the "Holy Name." Her admission of her crime is sought by the court in order to obviate the necessity for the ordeal.

Omission of Material in Mishnah

Another puzzling problem may admit of solution by taking the formal analogy to capital punishment to its full extent. The Mishnah omits any formula to be recited by the court to the woman who continues to insist on her innocence. However, a beraita states:

T.B. Sotah, 7b<sup>1</sup> (pp. 74-75)

- |   |   |
|---|---|
| 1 | כורך שמאיימין עליה שלא תשטה כן מאיימין עליה שתשטה, אומרים |
| 2 | לה בתי אם ברור לך הדבר שטהורה את עמדי על בוריין ושתי, לפי |
| 3 | שאינ המיט המרים דומין אלא למט יבש שמונח על בשר חי, אם יש  |
| 4 | <u>שם מכה מחלחל ויורד, אין שם מכה אינו מועיל כלום,</u>    |

Lieberman<sup>2</sup> points out that in capital cases there actually is encouragement given the witnesses to testify

1. See also T.P. 16d (1:4) and Tosefta, 1:6. Whereas T.P. sees no contradiction between this beraita and the Mishnah, T.B. sees a definite problem and solves it by maintaining "כאן קודם שנמחקה מגילה כאן לאחר". T.B. deals with the question of drinking (שתשטה - שלא תשטה), while T.P. considers that of retraction of her claim of innocence (שלא תחזור - שתחזור). T.P. views the entire matter in terms of a life-saving attempt; even the question of erasing God's name is but a face-saving gesture. T.B., as Lieberman, TK, pp. 614-615, notes, takes the problem for the erasure much more seriously and, therefore, posits a contradiction. The readings of the beraitot reflect this difference. Halivni, Mekorot, p. 437, questions T.B.'s solution by pointing out that this should have been included in Sotah, 3:3. This problem, however, can in no wise obviate the possibility suggested by T.B.

2. TK, p. 615.



and that this is clearly indicated in the Mishnah in Sanhedrin. Thus, it may be that the opening statement comparing sotah to capital cases is inclusive of both pressure to proceed as well as to desist.

Brilliant as this suggestion may be, the question remains as to why the important details of this exhortation are entirely omitted from the Mishnah. The problem is seemingly sharpened by the close literary relation between the beraita and the Mishnah evidenced by the stylistic symmetry between " וּמֵאִימִין " and " . וְכִשֶׁם שֶׁמֵאִימִין ". However, this continuity may point in the opposite direction. The repetition of the phrase might indicate that this beraita is an addition based on the Mishnah rather than an omitted portion of the original text. In fact, an examination of the Sifre may help to determine the literary history of this problem.

Sifre, p. 18 (#12)

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|----|--|
| 1  | אם לא שכנ איש אותך, זלמד שפוטח לה בזכות אומר לה הרבה יין עושה  |
| 2  | הרבה שחוק עושה הרבה ילדות עושה הרבה קידמון ונטספרד אל תגרמי ל- |
| 3  | שם הגדול הנכתב בקדושה שימחה על המים אומר לפניו דברי הגדה       |
| 4  | מעשים שאידעו בכתובים הראשונים כגון אשר חכמים יגידו ולא כהור    |
| 5  | סאבוטם ואומר לפניו דברים שאינן כדי לשומען היא וכל משפחות       |
| 6  | בית אביה כדי בהם רבי ישמעאל אומר בתחילה מודיעה כותן של מים     |
| 7  | המרים אומר לה בתי אומר לך הדיב המרים האלו למה הם דומים לסם     |
| 8  | יש הביתן על גבי בטר חי ואין מזיקו כשהוא מוצא מכה מתחיל         |
| 9  | לחלחל אף את אם שהורה את שתי ואל תמנעי ואם טמאה את הנקי ממי     |
| 10 | המרים המאודים האלה.  |

The question that is central to an understanding of this pericope revolves about the relationship between the opening comment - "מלמד שפּוֹתַח לֵה בּוֹכֵרָה" - and the remainder of the passage. All commentators seem to take it as a separate statement, perhaps a variant form of the general rule of Rabbi - "מִיֵּכֵן שֶׁפּוֹתַחֵין בְּדִינֵי נַפְשׁוֹת" - "תחילה לזכרה".<sup>1</sup> Therefore, it follows that neither the anonymous statement nor that of R. Ishmael is in disagreement with this point. It is unrelated to the subsequent discussion. Thus, the Sifre preserves two independent points.

#### A Reinterpretation of Sifre as Basis of Omission

However, it may be possible to interpret this passage as an integrated whole.<sup>2</sup> The statement "מלמד שפּוֹתַח לֵה בּוֹכֵרָה" should be taken as the initial com-

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1. T.B. Sanhedrin, 33a. The argument developed herein does not stand in contradiction to Rabbi's use of zekut. Note that the Mishnah makes the analogy to the court's exhortation to the witnesses while Sifre considers its treatment of the accused.

2. Certain elements of our interpretation are to be found in Halivni, Mekorot, pp. 437-438. However, our thesis, which takes the Sifre as an integrated whole in which the discussion centers about the meaning of zekut, is therein lacking. Halivni's major point follows Malbim in relating the beraita of "כֹּהֵם שְׂמַאיִמִין" to Sifre.

ment on this verse in which " אַם לֹא שָׁכַב אִישׁ אֶרְוֶךָ " points to a favorable outcome for her. However, the concept of zekut is open to two different interpretations. First, it can be taken as innocence, pure and simple.<sup>1</sup> Secondly, it could imply the court's effort to save her life. Such an effort would be predicated on the paradox through which admission of guilt results in her life being spared.<sup>2</sup>

The first opinion follows the latter sense of the phrase in which admission of guilt results in zekut. R. Ishmael, however, disagrees and takes it in its literal sense of genuine innocence.<sup>3</sup> He maintains that the court must assume the woman to be innocent and its responsibility

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1. The simple sense of the verse on which the Sifre comments - " אַם לֹא שָׁכַב " - would tend to support this position.

2. The term zekut could then refer to the mitigating factors which are introduced to explain her behavior. A further possibility may be the "merit" of preventing the erasure of God's name or, indeed, of saving her own life.

3. Note R. Ishmael's use of the term " תְּחִילָה ", which may simply be synonymous with " פִּיחָה ", thus confirming this interpretation.

is to assuage her fear of the impending ordeal. Only subsequent to that is the converse to be spelled out. Hence, in R. Ishmael's formulation, "אם טהורה את" precedes "וְאִם טְמֵאָה אַתְּ". Thus, the opinions in Sifre actually represent conflicting interpretations of the opening rule "פְּרֻחָה לָהּ בְּזִכְרוֹת".

The Mishnah incorporates the first opinion found in Sifre rather than that of R. Ishmael. Zekut implies the sparing of her life through her admission of guilt. The beraita, on the other hand, formulates R. Ishmael's statement in the context of the Mishnah. R. Ishmael himself would most certainly not agree to such a sequence. He maintains that it is her innocence which must first be stressed.

#### Summary

This analysis suggests that the beraita does not, in fact, reproduce part of the original source which, for some unexplained reason, was omitted by Rabbi in formulating the Mishnah. Rather, it attempts to use the Mishnah's literary framework in incorporating R. Ishmael's requirement that her actual innocence be considered.

Furthermore, it attempts to deal with the case of omitted material, which cannot be dismissed as irrelevant or unnecessary. Such omissions should be approached initially with the theory that they are purposeful. Indeed, a study of parallel literature may confirm such a hypothesis by clarifying the exact nature of the omitted material.

Sotah, 1:6The Woman's Humiliation

The Mishnah indicates that spectators were allowed to witness the humiliation visited on the suspected adulteress:

Sotah, 1:6 (pp. 70-73)

- 1 וכהן אחדז בנגדיה אם נקרעו בקרעו דאם נפרמו נפרמו, עד
- 2 שהיא מגלה את לבה וסותר את שערה, רבי יהודה אומר אם היה
- 3 לבה נאה לא היה מגלהו ואם היה שערה נאה לא היה סותר.
- 4 היתה מתכסה בלבנים מכסה בשחורים. היה עליה כלי זהב
- 5 וקטליאות בזמים וטבעות מעבירין ממנה כדי לבוולה. ואחר
- 6 כך מניא חבל מצרי וקושרו למעלה מדויה, וכל הרוצה לראות
- 7 בא לראות הוץ מעבדיה ושפחותיה מפני שבה גס בהן, וכל
- 8 הבשים מותרות לראותה, שנאמר וגושרו כל הנשים ולא
- 9 תעשינה כזמתכנה.

- 2 רבי יהודה / פ' 1' יהשע. 4 כלי זהב / ר בגדי זהב
- 5 כדי לבוולה / א כדי לבנישה ( ובגליון : נ"א לבוולה ).
- 7 - 8 וכל הנשים / ר ק פ ל ושאר כל הנשים. 8 מותרות / ב חייבות

An Inconsistent Formulation

The Mishnah formulation is most puzzling.<sup>1</sup> It opens with a general statement allowing anyone to watch and closes with one singling out women. T.B.<sup>2</sup> attempts to deal with this difficulty:

1. T.P. does not raise this problem. See TK, p. 637.

2. See R. Solomon Adani, "Meleket Shelomoh," (MV), ad locum, who cites a reading of "חיינות." This is undoubtedly based on T.B.'s emendation as Halivni, Mekorot, p. 438, n.4, points out. Halivni, n. 5, quotes *sourcês* in which "mutar" is used in the sense of obligation, but careful examination indicates that none of them is apposite.

T.B. Sotah, 8b (pp. 87-88)

- 1 הא גופא קשיא, אמרת כל הרוצה לראות בה רואה, אלמא לא שבא  
2 גברי ולא שבא נשי, והדר תני כל הנשים מותרות לראותה, נשים  
3 אין אנשים לא, אמר אביי תרגמה אנשים. אמר ליה רבא והא כל הרוצה  
4 לראות בה רואה קתני, אלא אמר רבא כל הרוצה לראות בה רואה לא  
5 שבא גברי ולא שבא נשי, ונשים חייבות לראותה, שנאמר ובוטרו כל  
6 הנשים ולא תעטינה בזמתכנה.

- 3 תרגמה אנשים / א תרגמה זעירי כל הרוצה לראות אנשים. אמר ליה  
רבא / מ' א' אביי. 5 גברי - נשי / אנשים - נשים מדקתני חוץ מעבדיה  
וספחותיה

Emendation Based on Sifre

Epstein<sup>1</sup> cites the Sifre in an attempt to resolve this internal contradiction. The text reads:

Sifre, p. 17 (#11)

- 1 ... ר' יהודה אומר אם היה בית חליצתה באה לא היה מגלהו ואם היה  
2 שערה באה לא היה סותרו היתה מכוסה לבנים מכסה שחורים היו  
3 שחורים באים לה מפשיטין ומלבישים אותה כעורים היו עליה כלי זהב  
4 קטלאות וזמסים וטבעות מסלקם הימנה כדי לבוולה ר' יוחנן בן  
5 ברוקה אומר אין מבוולים בנות ישראל יותר ממה שכתוב בתורה אלא  
6 לפני ה' ופרע את ראש האשה סדין של בוץ היה פורס בינו לבין העם  
7 כהן פובה לאחוריה ופורעה כדי לקיים בה מצוה פריעה אמרו לו כסם  
8 שלא חסת על כבוד המקום כך אין חסין על כבודה אלא כל הגיוול הזה  
9 מבוולה כל הרוצה לראות בא ורואה חוץ מעבדיה ושפחותיה מפגי שלבה  
10 גם בהן אחר האנשים ואחד הנשים אחד קרובים ואחד רחוקים מותרים  
11 לראותה שנאמר ובוטרו כל הנשים ולא תעטינה בזמתכנה.

- 1-4 ר' יהודה - לבוולה / מ' חסר. 5 אלא / ר' חסר. 6 לפני ה' /  
מ' חסר. 8 אלא / ד' חסר. כל / - זימתכנה / מ' חסר.

1. Epstein, Nusah, pp. 725-726.

On the basis of this evidence, Epstein concludes that the Biblical proof-text of " וְנוֹסְרוּ כָל הַנְּשִׂיִם <sup>1</sup>" refers not only to women but to men as well. He argues that if we accept the reading " וְשָׂאֵר כָּל הַנְּשִׂיִם " we gain nothing since the reference to her male servants already proves that men are included in "... כָּל הַרְוָה ". However, if we combine the evidence of the Sifre with the variant " וְשָׂאֵר כָּל הַנְּשִׂיִם " but read " וְשָׂאֵר כָּל אָדָם " then the text presents no difficulty.

Ingenious as this solution may be, the fact remains that the comments of Abbaye and Raba as well as all extant readings militate against it.<sup>2</sup> In addition, the Mishnah would still be unnecessarily repetitious. Once

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1. Ezekiel, 23:48.

2. Halivni also voices this criticism. His additional contention that the Ezekiel passage indicates that women are the subject under discussion is irrelevant to Epstein's emendation. " וְשָׂאֵר כָּל אָדָם " is an all-inclusive phrase that includes women; the function of the Biblical verse is to demonstrate that the ceremony is not a purely private affair.



having stated " why is it " כל הרוצה לראות בה רואה  
 necessary to repeat " ?" ושאר כל אדם " A much smoother  
 reading would have been ... ונוסרנו שנאמר ונוסרנו...  
 "וכל אדם מותרים לראותה שנאמר ונוסרנו... חוץ" "חוץ...  
 1. " וכל הרוצה לראות... שנאמר ונוסרנו... חוץ" "חוץ..."

### Literary-Historical Approach

Halivni correctly points out that the difficulties in the Mishnah are based on the fact that the Mishnah is a paraphrase of the Sifre. The key factor revolves around the meaning " . ונוסרו כל הנשים " It is taken by all commentators to refer to the women spectators who are chastised by seeing this punishment of adultery. Halivni, however, maintains that it refers to the sotah herself who suffers both psychologically and physiologically in the ritual. Just as she suffers more psychological pain when her humiliation takes place before acquaintances than before strangers, so, too, does she suffer more painfully in the presence of women than of men. Therefore, Rabbi, in transferring the material found in the Sifre to the Mishnah,

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1. This is actually the force of the reading in Pesikta Zutrata, (Jerusalem, 1960), p. 174:

וכל הרוצה לראות רואה חוץ מעבדיה וטפחותיה מפני שלבה  
 סמוך בהן שנאמר ונוסרו כל הנשים ולא תעשינה כזמתכנה.

notes only the presence of women. By virtue of its being the most painful, it is the most all-inclusive one as well. Yet, it is certainly true that men as well as women are allowed to witness the ritual.

In effect, Halivni arrives at the same conclusion as Epstein in maintaining that the statement " וְכָל הַנְּשִׂימ " does not exclude men; however, whereas Epstein finds it necessary to emend " כָּל הַנְּשִׂימ " to " כָּל אָדָם ", Halivni relies on an interpretation of the Mishnah's original source to preclude the necessity for emendation.

A careful analysis of the Sifre finds Halivni's reasoning rather tenuous. It is difficult to imagine that the Sifre maintained that this ceremony would cause her more shame in front of women than of men. Actually, the opposite position is more reasonable, since the humiliation consists in stripping bare the usually covered parts of her body. The parallelism of the statement " אַחַר קְרוּבִים " would further support this contention, since her greater embarrassment in front of קְרוּבִים as opposed to רְחוּקִים<sup>1</sup> is structurally paralleled

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1. Halivni quotes a later Sifre passage to prove the point. The intended analogy is most strained.

by the case of נשים rather than אנשים. Finally, the application of " ונוסרו כל הנשים " to the sotah herself is totally unwarranted and flies in the face of its obvious reference to the spectators.<sup>1</sup>

#### The Dialogic Nature of Sifre Source

A more accurate picture of the history of this material may be gained by examining the controversy of R. Yohanan b. Berokah and the Sages reported in the Sifre. The passage begins with a list of various indignities to which the woman is subjected in order to humiliate her.<sup>2</sup> Now, although no mention had been made in this text as to the public or private nature of these ceremonies, R. Yohanan b. Berokah is recorded as objecting on two grounds which are based on the Biblical verse itself.<sup>3</sup> In the first

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1. Halivni notes the supporting commentary of R. David Kimhi to this passage. In fact, Kimhi's interpretation is diametrically opposed to that of Halivni.

2. Their function is not merely to humiliate her but, more importantly, to force her confession. This is proved by the exception of her servants based upon " מפני שליבה גם בהן ."

3. See the Sifre version of GRA, p. 9, which even more closely emphasizes the dual nature of this objection.

instance, the woman is to be only " <sup>1</sup>לפני ה' and not before a human audience; hence, a screen should be utilized to shield her from onlookers. Secondly, the extent of her humiliation should be limited to " ופרע את ראש האשה " and not extended to other parts of her body.

Clearly, his first objection must be rooted in the, as yet, unstated position of the Sages that the ceremony must be a public spectacle. The question therefore arises as to the nature of the formulation in which the Sages made this statement. Is it to be found in the formula "אחד האנשים ואחר ... שנאמר ... כל הרוצה לראות ...?" A contextual examination of these two statements suggests that the latter statement is the original formulation, while the " כל הרוצה " pericope represents the response of the Sages to R. Yohanan b. Berokah's challenge. As such, there is a structural parallelism in that "אלא כל הניווול הזה מנולה"

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1. See Sifre Zuta, p. 234 - "יפנה עליה" - which Horowitz, *ad locum*, identifies with this opinion. See, also, R. Isaac Soloveichik, *Hidushe haGeriz 'al Sotah*, (Jerusalem, 1960), p. 15. R. Naftali Berlin, *'Emek ha Neziḇ*, 3 vols. (Jerusalem, 1959) 2:54b, suggests that R. Ishmael's comment at the beginning of this passage - "כהן נפנה לאחוריה" - also reflects this position.

is the response to the extent of her humiliation challenged by R. Yohanan b. Berokah rather than its original formulation.<sup>1</sup> This is neatly paralleled by the rejoinder to the question of its public nature, " כל הירוצה לראות ...". The stress of the word " כל " in both cases indicates that these are responses to the challenge. Furthermore, the more forceful tone of permission to observe the humiliation implied by " כל הירוצה " suggests that it is a stronger restatement of the challenged " מתקריים " point. Seen in this dialogic context, the difference between the two modes of expression may be seen as a function of statement-challenge-response, rather than of inconsistent legal positions.

The qualification which excludes both her male and female servants is not made to protect the woman from embarrassment, but for other reasons. Hence, this exception

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1. R. Yohanan b. Berokah formulates his opinion following the order of the Biblical verse on which it is based, " ... לפני ה' ופרע " - and, therefore, he discusses privacy before the extent of humiliation. The Sages, however, present the conditions of humiliation before their public nature, which is the logical order given the fact that this position is not based on any Biblical passage.

is spelled out at the point that the strong, all inclusive rejoinder is made.

The Sifre then continues to report the original statement concerning the public nature of the humiliation to which R. Yohanan b. Berokah had taken strong exception. The fact that the more positive, polemical statement כל " "הרובה לראות" precedes the original statement, which it actually defends, creates the apparent contradiction.<sup>1</sup>

The problem for the Mishnah's editor was that in his selective use of material the rejoinder to R. Yohanan b. Berokah necessarily appears as a non-dialogic statement since he did not wish to cite R. Yohanan b. Berokah. Yet, he did not omit it because of the important point concerning her servants. Therefore, he chose to emphasize the nature of the original statement as found in Sifre in terms of its role as a source for the public nature of the ceremony. Since the verse in Ezekiel specifically refers to the presence of women, the Mishnah mentioned only women in order to emphasize the parallel of "ונוסרו כל הנשים" ". "וכל הנשים" ". Of course, while the statement "... ואחר ... ואחר" does

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1. Thus, the reading "... ושארי כל" would not fit into this understanding of the Sifre.

not contradict " , וכל הנשים " , the formulation " , וכל הרוצה " , although based on the Ezekiel text may create a problem when placed in juxtaposition with " . וכל הרוצה " .

Another solution to the problem of the emphasis on "אחר ואנשים..." in the Mishnah as opposed to "כל הנשים" in Sifre is to take the Mishnaic formulation as representing the original statement with which R. Yoḥanan b. Berokah took issue. His objection led to the " כל הרוצה " response which, in effect, emphasized the completely public nature of the humiliation beyond the mere presence of women alone. The literary formulation of the initial statement in Sifre is colored by the later response of " כל הרוצה " and, therefore, appears to be all-inclusive.

#### Summary

The Mishnah text appears to be internally inconsistent. This phenomenon suggests the necessity of a literary analysis aimed at the sources behind the Mishnaic text. While somewhat blurred in Sifre, it nonetheless appears that the problems of Mishnaic formulation are related to the dialogic nature of the original source.

Whether the Mishnah or Sifre versions more accurately reflect the initial formulation is but a minor point. The major result of the analysis is the discovery of this literary history, a history which points to the literary loom upon which Mishnah text was woven.

Sotah, 1:7Order and Relation of Mishnah and Tosefta

The description of the ritual is interrupted by a lengthy tangent which develops the concept that man's actions are matched measure for measure by God.<sup>1</sup> The case of sotah serves as a prototypical model for the principle that man's reward or punishment is but a mirror-image of his behavior:

Sotah, 1:7--9 (pp. 88-89; 106-111)

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|----|--|
| 1  | במה שאדם מודר בה מודדיו לו, היא קטטה את עצמה לעבירה המקום          |
| 2  | בודהלה, היא גלתה את עצמה לעבירה המקום גלה עליה, בדרך התחילה בעבירה |
| 3  | תחילה ואחר כך הבטן ושאר כל הגוף לא פלט.                            |
| 4  | שמסון הלך אחר עיביו לפיכך בקרו פלשתים את עיביו ... אבטלום          |
| 5  | בתגאה בשערה לפיכך בתלה בשער, ולפי סנא על עטר פלגשי                 |
| 6  | אביו לפיכך נחזר בו עטר לובביות...                                  |
| 7  | וכן לעבין הטובה. מרים המתיבה למשה שעה אחת... לפיכך                 |
| 8  | בתעכבו ישראל ז' ימים במדבר... יוסף זכה לקבור את אביו ואין          |
| 9  | באחיו גדול ממנו... מי לנו גדול מיוסף שלא בתעסק בו אלא משה.         |
| 10 | משה זכה בעצמות יוסף ואין בישראל גדול ממנו... מי גדול               |
| 11 | ממשה שלא בתעסק בו אלא המקום... לא על משה בלבו אמרו אלא             |
| 12 | על כל הצדיקים...   |
- 
- |    |  |
|----|--|
| 1  | את עצמה / ה' עצמה בסתר. 5 בתגאה / ו 2 את התגאה.                        |
| 12 | על כל הצדיקים / ח ו ד 2 א על כל הצדיקים שמקום אוספו<br>( ו 2 א אוספו ) |

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1. For a treatment of the philosophical meaning and development of this concept, see Arthur Marmorstein, Doctrine of Merits in Old Rabbinic Literature (London, 1927). See, also, Efraim Urbach, Hazal (Jerusalem, 1969), p. 387, n. 63, for parallel literature.



A similar collection, though of much greater length, is found in Tosefta.<sup>1</sup> The rule is there presented as deriving from R. Me'ir and the ensuing examples are an independent, self-contained unit rather than a commentary on the Mishnah.

This contention concerning Mishnah-Tosefta relationship may find support in the position of the material in Tosefta. Unlike the Mishnah, the Tosefta concludes its description of the entire sotah ritual<sup>2</sup> before introducing any of this material.<sup>3</sup> It is not juxtaposed to the Mishnah

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1. See Tosefta, chapters 3-4. All the cases in the Mishnah, with the exception of Miriam, are included therein.

2. Although additional material vis-a-vis sotah subsequently appears, nothing is added in connection with the ritual itself. It is of interest that this collection of R. Me'ir concludes the Tosefta treatment of the ritual per se, while another, smaller digest of apposite comments of aggadic nature by R. Me'ir are appended to the Toseftan conclusion of all material related to the case of sotah (Tosefta 5:9, 11).

3. Epstein, Tannaim, p. 407, notes this difference between the Tosefta and Mishnah. He maintains that the Tosefta is based on a different Mishnah order. See above, pp. . However, our structural interpretation suggests a different approach, for even if the Tosefta is based on our Mishnah order it may have reserved this great amount of material until the main subject was completed.

which located this brief digest of the collection almost at the very inception of the ordeal's description. In fact, Rabbi's selection of material may be related to this very point of difference. He did not want to introduce any middah analogies dependent on unmentioned laws.<sup>1</sup> The two recorded features, " היא קטטה " and " היא גלגלה , " are actually restatements of the laws discussed in the preceding Mishnah and parallel the central themes of both her physical humiliation and its public nature.<sup>2</sup>

#### Structure of Tosefta

A further examination of the Tosefta indicates that there are actually three distinct, though related,

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1. See below, p. 153. .

2. This double motif represents the Sages as opposed to R. Yohanan b. Berokah. See above, pp. 138-147. This may further explain its placement at this juncture. The position of the Sages, after all, finds no Biblical support and R. Yohanan b. Berokah's contention is a compelling one. Hence, the middah principle serves to justify the treatment meted out to her.

applications of "measure for measure." Chapters 3 and 4:1-9 provide examples focusing on the symmetry between the form of human action and the Divine response thereto. The first example cited is that of sotah ("... וכן אתה וכן אתה שומרה").<sup>1</sup> Chapter 4:10-15 contains an enumeration in which the underlying theme is one of process. In these cases, importance is attached to the fact that the initiator of an act must likewise be the first to face the consequences.<sup>2</sup> Here, too, the enumeration opens with a reference to sotah ("... וכן הוא אומר בסוטה").<sup>3</sup> The final section, Chapter 4:16-19, is composed of a demonstration of the principle's operational effects in foiling the

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1. Tosefta, 3:2.

2. Note that in all instances cited by Tosefta there appears the phrase "והשאר לא פליט" followed by Biblical proof except in the case of sotah, since there are no "others" to whom it could refer. However, the phrase does appear in the Mishnah as "ושאר כל הגוף לא פליט" although here too it is not, in fact, cannot be, scripturally supported since the Bible does not spell out any effects of the ordeal beyond that of Numbers 5:27 ( "ויצנתה בטובה"). See below, p. 224.

3. Tosefta, 4:10.

ultimate intention of the perpetrators and also begins with a reference to sotah ("... כּשֶׁם שֶׁאִסוּרָה לִבְעַל ").<sup>1</sup> Thus, the case of sotah is taken throughout as the paradigm of all facets of this principle.

The Mishnah first presents the examples of "measure for measure" deriving from sotah. The first example represents the most all-inclusive and obvious sense of the principle and corresponds to Tosefta 3:2. The second example, corresponding to Tosefta 4:10, follows. When the basic case of sotah is fully reported, further examples relevant to the fundamental nature of the concept are advanced. The Mishnah cites only cases which illustrate the first, most basic, force of "measure for measure." They correspond to the material found in the first section of Tosefta. Two cases of punishment and two of reward are presented. However, no parallel cases from other areas are offered. The third application, in which the perpetrator's intent is doubly confounded, is not even considered by the Mishnah even as far as sotah itself. Perhaps this case is but a distant cousin of the first and stretches the limits of the principle too far. In addition, this

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1. Tosefta, 4:16.

application is based on the fact that her status becomes one of prohibition to both the husband and her paramour as well. However, this point had neither been introduced in the Mishnah<sup>1</sup> nor could it be expected to be as obvious as the example derived from the nature of the ordeal's effects. The consequences of the ritual for the guilty woman are clearly and unequivocally spelled out in the Bible; the question of her status is not. Hence, the editor could assume familiarity with the one while such an assumption for the other would be unwarranted.

#### Selection of Mishnaic Material

The Mishnah develops the theme by drawing on the sins and punishments of Samson and Absalom. The larger collection preserved in Tosefta lists nine such Biblical instances. Four examples deal with a collectivity: the behavior of the Flood generation, Babel, Sodom, and Egypt; the others deal with individuals and include Sisera, Samson, Absalom, Sennacherib, and Nebuchadnezzar.

Rabbi's choice of examples may be explained by reducing them to the lowest common denominators. It then

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1. See below, p. 292.

becomes clear that they are distinguished by two elements. First, both Mishnaic cases involve individual Jewish protagonists. Secondly, the basic nature of the sinful acts are sexual in nature<sup>1</sup> and, therefore, most apposite in the present context.<sup>2</sup>

1. Absalom's revolt against his father includes his actions with David's concubines. (Of course, even the revolt itself could be interpreted in Oedipal terms.) The sexual symbolism of both Samson's and Absalom's punishment is patent.

2. It is also interesting to note that Tosefta, 3:15, 16 records Rabbi himself as commenting on these two cases.

Note the formulations in the Mishnah "שמשו...הלך" and "אבשלום... נהגא" (see, however, variant readings). In Tosefta, both are couched in "מרד" terms; the fact of their rebellion is emphasized. The distinction between מרד and נהגא may relate to their context within other Midrashic collections. In Mekilta de-R. Ishmael (Shirah: 2), pp. 121-125, much of the Tosefta material, including the cases of Samson and Absalom, appears in the framework of a commentary to Exodus 15:1. Appended as it is to "אסירה" in "לה' כי גאה גאה" all examples are necessarily couched in "נהגא" terms. On the other hand, several of these cases are found in Sifre: Deuteronomy, p. 12 (#43) as explications of "... ואכלת ושבעת ... השמר לכם פן יפתה" in which the opening comment deals with rebellion, "שאיין אדם מורד במקום" Although the Sifre quotes only a few of the cases and does not mention either Samson or Absalom, it is reasonable to assume the existence of a larger Midrash in which all or most of the cases were formulated in terms. The Tosefta's interruption of the נהגא theme with that of מרד and its subsequent return to נהגא may indicate that two sources are herein fused. The chronological structure of the historical cases in the collection did not allow contiguity of sources but required integration.

The Mishnah then concludes with cases of beneficent application of the principle. The Tosefta parallel contains a lengthy treatment based on rewards granted Abraham's descendants that mirror his saintly actions. Rabbi's omission of all these examples may be attributed to the fact that Abraham himself is not involved in the reward.<sup>1</sup> Therefore, they are less than exact representations of the principle, particularly in the context of the subject under consideration.

The omission of examples corresponding to the second form of the principle may be simply due to the fact

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1. Another consideration might be the way in which these cases of reward dovetail with those of punishment. Samson "goes after his eyes," they lead him on an ongoing quest from one assignation to another. Miriam, on the other hand, stands and waits. Samson casts himself into the arms of pagan women as Miriam must cast away her brother. Yet, Miriam stays and attempts to mitigate the effects of this action. The relationship between Absalom and Joseph is even more clear cut. Absalom demonstrates disrespect for his father; Joseph accords him honor.

that it is secondary. The basic principle is amply illustrated by the examples cited.

#### Summary

It appears that the Mishnah operated with clear design in arranging and selecting material. This feature of Mishnah composition should not be blurred by the tangential nature of the material.

Tosefta, for its part, contains an extensive collection of material related to Mishnah. It appears that Rabbi selected cases from this collection to include in his presentation. The fact that its location in Tosefta does not follow Mishnah's sequence does not necessarily indicate that Tosefta material is formulated on the basis of a Mishnah order different from our Mishnah. The sheer length of the material and its reference to matters not yet introduced in Mishnah may account for the Toseftan arrangement. On the other hand, the Mishnah text evidences the literary craft of careful selection and contextual integration in the citation of cases.



Sotah, 2:1Order of Ritual

The Mishnah returns to a discussion of the ritual proper with the details concerning the nature of the meal offering, the minhat kena'ot:

Sotah, 2:1 (pp. 217-219)

- 1 היה מביא את מנחתה בתוך כפיפה מצרית ובוטחה על ידיה כדי ליגעה.
  - 2 כל המנחות תחילתן הטופן בכלי שרת וזו תחלתה בכפיפה מצרית וסופה
  - 3 בכלי שרת. כל המנחות טעורות שמן ולבושה וזו אינה טעובה לא
  - 4 שמן ולא לבושה. כל המנחות באות מן החסין וזו באה מן השעורין.
  - 5 מנחת העומר אע"פ שבאה מן השעורין היא היטה באה גרש וזו באה
  - 6 קמח. ר"ג אומר כסס שמעסיה מעסה בדמה כך קרבנה מאכל בהמה.
- 6 ר"ג / א רטב"ג, מ ור"ג, ג13 ר"י, ימ"ב רבן יוחנן בן זכאי  
( מדרש ל"ב מידות ), ימ"ב רבן גמליאל הזקן ( פסק"ז נשא פז, א ).

The Tosefta, on the other hand, first formulates material related to the following Mishnah which deals with the bitter waters. Only then does it return to the subject of the meal offering :

Tosefta 1:8-10

- 1 שלשה צריכין שייראו על המים, אפר פרה, ועפר סוטה, ודם צפור...  
 2 רטאין הבהנים ליתן בשירי מבנות יין, ושמן, ודבש, ואסורין לחמץ.  
 3 כל המבנות שבתורה טעובות שמן ולבונה, חוץ ממבנת חטא ומבנת  
 4 קנאות שב' לא יצק עליה שמן ולא יתן עליה לבונה. ר' שמעון אומ'  
 5 כל חטאות שבתורה אין טעובות בטכיס, חוץ מחטאתו ואשמו של  
 6 מצורע, שלא יוא קרבן חטא מהוור. ר' טרפון אומ' כל זכרון שבתור'  
 7 באפרו לטובה חוץ מזו, שב' מבנת זכרון מזכרת עון. ר' עקיבא  
 8 אומ' אף זו לטובה, שב' ואם לא בטמאה האשה וטהורה היא ונקתה  
 9 ובזרעה זרע.

- 
- 1 שלשה ... צפור / א חסר. 5 כל חטאות / א כל המבנות.  
 6 זכרון שבתור' / א ד זכרונות שבתורה.

Now, both orders have possible roots in the Biblical description of the ceremony which takes note of the minhah before mentioning the bitter waters.<sup>1</sup> However, in terms of the actual ceremony the Biblical order considers the preparation of the water before any actions involving the meal offering.<sup>2</sup>

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1. Numbers, 5:15.

2. Numbers, 5:17.

Mishnaic Structure

Taken in context, we may note the structural logic which lies behind the Mishnaic order. The preceding material was arranged in the following sequence:

- (A) Husband warns wife
- (B) Husband brings her to local court
- (C) Husband and court officers bring her to the High Court
- (D) High Court attempts to gain admission of guilt
- (E) Priest subjects her to public indignities in order to gain admission of guilt<sup>1</sup>
- (F) Illustration of the principle of measure for measure

As Tosafot<sup>2</sup> note, E is completely misplaced if we compare it to the Biblical order. It would seem that

1. That this is the function of the humiliation may be proved by the exclusion of her servants from observing it. See above, p. 138.

2. Fol. 14a, s.ד. היה מביא . See, also, both T.P. Sotah (1:5), which raises the question and maintains that the Mishnah is actually faithful to the Biblical sequence and the comments of Naftali Berlin, 'Emek haNezib', pp. 50-51 on this passage.

the Mishnah order is constructed so as to lump together those actions which have the common purpose of eliciting her confession. F serves as an appendix to the previous material by demonstrating the operation of the middah principle in these indignities. However, none of the basic elements of the ritual - the meal offering, the water, the parchment, etc. - is considered in this framework.

When the Mishnah turns to these matters, it continues the same theme and, therefore, begins with the meal offering. On the one hand, it is to be brought by the husband and, as such, is a development of his role in A, B, and C.<sup>1</sup> In addition, the fact that she is to hold the basket<sup>2</sup>

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1. The interruption occasioned by D and the material which follows in its wake is based on the need to explain the role of the High Court. Furthermore, if the woman is persuaded to admit her guilt, the meal offering becomes superfluous and is subject to the laws spelled out below, Sotah 3:3. As far as the identity of the male referred to in Sotah 3:1 see Rashi, 19a, s.v. היה נוטל, who maintains that this refers to the husband. However, see T.P., 18c (3:1), which takes it as referring to the priest and Tosafot's discussion, 19a, s.v. היה נוטל.

2. The basket itself is of a degrading nature and is undoubtedly designed to emphasize the theme of humiliation. See T.B., 14b, and Tosafot Yom Tob, Sotah 1:6, s.v. תכל מצרי. Similarly, the פיילי associated with the bitter waters may be of a similar symbolic nature. See Joshua Brand, Kele haHeret BeSifrut haTalmud (Jerusalem, 1953), pp. 322-325 and 423-428.

with the offering in order to tire and confound her<sup>1</sup> and thereby gain her admission is a neat parallel to D and E. Finally, the composition of the meal offering and its singular distinction in terms of its constitution set the stage for R. Gamaliel's comment which dovetails with the middah principle of F.

#### Tosefta Structure

Having examined the structure of the Mishnaic arrangement of material, let us return to the Tosefta.

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1. See the beraita quoted in T.B., 14a, in which this explanation is quoted by Abba Hanin in the name of R. Eliezer. It is unclear whether the statement "כרי ליגותי" is part of R. Eliezer's statement itself or the point on which his comment is based. The reading "וכל כר למי" would indicate the likelihood of the former possibility. A similar interpretation focusing on the attempt to frighten her may be advanced by T.P., 17d (3:1), to explain why the priest holds the water throughout the ceremony. See Korban ha'Edah, ad locum, s.v. מעתה. Of course, even should we grant both the degrading character of the and the fact of the priest's holding it as an exact parallel to the case of minhah, the precedence of the minhah material is based on the husband's involvement.

The key question is whether the Tosefta's order is a reflection of a Mishnah order which reversed the record of these laws.<sup>1</sup> In other words, does Tosefta indicate the precedence of Sotah 2:2 before that of 2:1? In addition, the order of Tosefta is itself problematic, since the law permitting the admixture of wine, oil, or honey found in 1:9 should follow 1:10, which discusses a prior stage in the treatment of the meal offering.

The Biblical account provides no clue as far as the question of the general order of the ritual. Indeed, the description is so equivocal that it could be interpreted in either way: " והעמיד הכהן את האטה לפני ה' ופרע את "

ראש האטה ונתן על כפיה את מנחת הזכרון מנחת קבואת היא וביד הכהן יהיו מי המרים המאדרים. " <sup>2</sup>

On the assumption that the Tosefta does, in fact, reflect a different order of presentation, two possibilities

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1. Note that both subjects are introduced with the same formula ( "היה מביא" ).

2. Numbers, 5:18.

may be advanced in explanation. One approach is micro-cosmic in nature and focuses on the immediate context in which these laws are formulated. The converse, macrocosmic analysis, provides a second line of investigation by focusing on the wider nature of Tosefta's arrangement of material.

On the first level it will be noted that Tosefta is concerned with the role of the priest in the ritual.<sup>1</sup> As such, it first presents his role and only then returns to add material concerning the nature of the minhah. The priest is not concerned with the bringing of the offering or its composition. His role concerns itself with preparing the water for the ordeal. Thus, Tosefta first presents 1:8 and only then provides material concerning the minhah which she now holds. In fact, it may well be this focus on the priest's actions which accounts for the precedence of Tosefta 1:9 over 1:10. The latter is concerned solely with the composition of the minhah and the fashion in which it differs from other such offerings. Thus, it is in no

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1. See Tosefta 1:7. If Tosefta 1:6 refers to the priest, then the discussion focusing on his actions begins in Tosefta 1:5. See above, pp. 33-34.

wise related to the actions of the priest. Tosefta 1:9, however, while chronologically following 1:10, describes the actions of the priest. Hence, it is joined together with the unit of such description and takes precedence over the material in 1:10.

The macroscopic level requires an analysis of the general Mishnah and Tosefta orders. The prior analysis of Mishnah order suggests that the double theme of the extraction of a confession ( "כדי ליגעה" ) and the symbolic representation of the nature of "measure for measure" ( ... כשם שמעשיה ) are further developed in this Mishnah. Indeed, it may be argued that the structure of the Mishnah is designed as an introduction to R. Gamaliel's comment.<sup>1</sup>

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1. If the basic thrust of the Mishnah is aimed at building up to R. Gamaliel's characterization of the minhah, it may account for the necessity to distinguish the 'omer minhah from that of the sotah minhah, since both are of grain generally given to animals. From this perspective, there would be no pressing need to include the differentiation between the minhah of the sinner and that of the sotah. The emendation of the Mishnah found in T.B., 15a, would not be required. However, with different concerns, the Tosefta does include this distinction.



This observation explains the fact that this Mishnah is joined with the middah material. It is a continuation and development of this theme. Tosefta, on the other hand, reserves the development of this theme until all the material regarding the ritual is presented. As such, the material concerning the nature of the minhah does not have to be thematically connected with any prior material and may be placed following that concerned with the nature of the waters used in the ritual.<sup>1</sup>

#### Summary

The analysis of this material has sought to demonstrate the logic of the Mishnaic and Toseftan order. The

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1. See Tosefta 3:3-4, in which the mention of her minhah precedes that of the drinking. However, an analysis of this material reveals that the instances of the middah application are formulated to reflect the order of her behavior with her paramour. There appear to be several groupings of material related to "measure for measure" and although the general order of the groups is, perhaps, not chronological, the internal order of each group is. Hence, the "food" unit in 3:4 follows the pattern of her actions in this respect.

Tosefta appears guided by a basic concern with a presentation of the material as a narrative of the actual ritual order. The Mishnah, on the other hand, is a balance between this concern and that of defining the rationale for the ceremony. The focus on the latter element may have its effects in terms of the chronological sequence of the ordeal. This is particularly true in the case under question in which the Biblical narrative is itself open to two possible chronological interpretations. Nonetheless, it appears that the Toseftan order indicates a sequence of material different from that of the Mishnah order.

Sotah, 2:2Toseftan Enumeration of Cases

The Mishnah describes the actions of the priest as he mixes water and dirt together to serve as the potion to be employed in the ordeal:

Sotah, 2:2 (pp. 232-233)

- 1 היה מביא פילי של חרס ונותן לחוכה חצי לוג מיט מן הכיור,  
 2 ר' יהודה אומר רביעית, כסס סממטט בכחו כך סממטט במיט. 1  
 3 בכנס להיכל רפבה לימינך ומקום היה שם אמה על אמה וטבלא של  
 4 שיש וטבעת היתה קבועה בה כשהוא סגויה ונוטל עפר מתחתיה  
 5 ונותן כדי שיראה על המים, שנאמר ומן העפר אשר יהיה בקרקע  
 6 המטכן יקה הכהן ונתן אל המים. 2

1 של חרס / ב ד ל פ ת א 2 שלחש חדשה. וטבעת היתה קבועה /  
 ר וטבעת היו קבועי'.

1. This explanatory gloss to R. Judah is based on his opinion recorded in *Sotah*, 2:3. He requires the scroll to contain a sum total of ninety-five letters as compared to the Sages, who require two hundred and one. Hence, he reduces the necessary quantity of water by fifty percent. It may well be that T.P.'s text of the Mishnah lacked this explanatory gloss:

T.P., 18a (2:3)

מי יכול מראה מיט תלמוד לומר ארז, או ארז יכול מראה דין תלמוד  
 לומר מי. הא כיצד מראה מיט ומראה ארז. שיערו חכמים חצי לוג  
 מיט מן הכיור. ווא תבי רבי יודה אומר רביעית. רבי יודה  
 כדעתיה דתניבון כסס שהיא סממטט בכחו כך הוא סממטט במיט.

T.P.'s question is most strange if the gloss were contained in its Mishnah. The answer of T.P. may be the citation of the gloss which became incorporated in the Mishnah.

2. The citation of this verse may perform a dual exegetical role. On the surface, it serves to provide a

The phrase " כדי שיראה על פני המים " plays an important structural role in the following beraita:

Tosefta, 1,8

1 שלשה צריכין שייראו על המים, אפר פרה, ועפר סוטה, ודם צפור.  
 2 אפר פרה, כדי שיראה על פני המים, עפר סוטה, כדי שיראה על  
 3 פני המי, דם צפור של מצורע, כדי שיראה על פני המים, רוק  
 יבמה כדי שיראה לעיבי הזקנים.

1 - 3 צפור / א חסר. פני / א חסר.

source for the requirement of visibility. In addition, it may function as an indication of the necessity for a designated spot from which the dirt was to be taken. Sifre Zuta states:

Sifre Zuta, p. 234 (5:17)

ומן העפר אשר יהיה בקרקע המטכן, יוא לו מקום מתוקן שם  
 כיצד נכנס להיכל ופנה לימינו ומקום היה שם אשה על אמה  
 וטבלה שלטיש וטבעת היתה קבועה בה כשהוא מגביה בוסל  
 עפר מתחתיה.

Solomon Fisch, in his edition of Midrash HaGadol (London, 1957) p. 95, n. 144, explains this passage as based on the use of the definite article ועפר - which indicates that specific dirt must be allotted for this purpose. However, if this interpretation were valid, the passage should have read "יהא לא עפר מתוקן". Actually, it seems to focus on a special place from which the earth must be taken.

It may be that Sifre Zuta assumes the existence of the spot described in the Mishnah to be a necessity rather than a convenience. Indeed, the exegetical basis for this approach may be found in the word asher, taken either as a relative pronoun or in the sense of "place." Thus, the exegesis of the Biblical passage is that there is to be a set place in the ground of the Tabernacle. Additional examples of asher used in this sense are recorded in A.M. Silverman, ed., Pentateuch with Rashi's Commentary: Leviticus (London, 1932), p. 152, n. 2, and Abraham b. Elijah, Tirgem Abraham (Jerusalem, 1896), p. 1, #9. R. Michael Bernstein has noted the possible relationship of asher as "place" to the Aramaic atar.

T.B., 16b<sup>1</sup> (pp. 242-243)

1 שלשה צריכין שירא, עפר סוטה ואפר פרה נרוק יבמה, משום  
2 דבי ישמעאל אמרו אף דם צפור.

1 עפר סוטה / א ואלו הן עפר סוטה.

### An Anomalous Case

The addition of the case of רוק יבמה in Tosefta is in and of itself somewhat puzzling, since it meets neither the criterion of על פני המים<sup>2</sup> nor fits within the statement

1. With but minor variations, the citations in Sifre, p. 16 and T.P., 18a (2:2), are akin to the T.B. version.

2. The case of רוק יבמה is found in Tosefta Yebamot, 12:15. See the extensive discussion by Saul Lieberman, TK, ad locum, pp. 147-150. Lieberman quotes sources which require that the spittle must be observed on the ground. He also notes the comment of R. Ishmael found in some versions of Sifre, Deuteronomy (p. 310) - "חליצה בשכיבה ורקיקה כדי שכבת זרע" and cites the explanation found in Mordekai, "שהרקיקה דומה לשכבת

זרע וסימן לדבר הוא כמו שהרוק בשחת כך הוא משחית זרעו של אחיו. If these two laws are related, they may function as a sum-bolic dramatization of Genesis 38:9, "ושתח ארצה לבלתי נתן". I believe it would be too farfetched to suggest that R. Ishmael's case of dam zipor was added to a list that specified three cases in order to meet the enumeration while excluding rok yebamah. It is tempting to argue that R. Ishmael might so exclude it because its measure is not כדי שיראה but rather כדי שכבת זרע. However, the attribution of such a position to R. Ishmael is scanty, the two positions are not necessarily mutually exclusive, and the reading of "אף דם צפור" militates against such a theory.

that there are three such cases. In light of the T.B. citation the sense of the Tosefta becomes clear. T.B. includes only the criterion of כּי שיראה and this unqualified condition is met by דוק יבמה . To these three cases R. Ishmael added a fourth.

The Tosefta seems to be aware of the original source<sup>1</sup> in which דוק יבמה was one of the three cases.

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1. The reading " אף דם צפור ", supported in all texts of T.B., would indicate the initial formulation in terms of a version upon which R. Ishmael was commenting. Note, also, the lack of a כּי שיראה formulation in Nega'im 14:1. See T.B., 16b and T.P., 18a (2:2). An examination of T.B. indicates that it understands the requirement of visibility in the case of דם צפור to be limited to R. Ishmael; however, the other sages would disagree with him. This is based on the fact that it is not included in the list of כּי שיראה, but must be added by R. Ishmael. T.P., on the other hand, seems to imply that all would require כּי שיראה. Furthermore, this very position of T.B. which finds expression in an anonymous statement is against the simple sense of the quoted discussion of R. Jeremiah and R. Ze'ira as Tosafot, *ad locum*, s.v., קטנה point out. Compare this discussion with the statement of R. Ze'ira in T.P.. See, also, the commentary of R. Samson of Sens to Nega'im, 14:1 in which he maintains that the sages also require some minimal amount of blood to be visible. Finally, see Maimonides, *Mishneh Torah: Tum'at Zara'at*, 11:1, who disregards T.B.'s position and requires דם ביכר .

However, by extending the common denominator to include  
 על פני המים , the case of רוק יבמה is eliminated.  
 Thus, the inclusion of רוק יבמה is based on the other  
 formulation and should, perhaps, be understood not so much  
 as an additional case, but as an explanation of why it is  
 not one of the three, since it does not meet the criterion  
 of על פני המים .

A further possibility is that the Tosefta passage  
 should be understood as composed of two distinct units rather  
 than as an integrated whole. As such, Tosefta actually  
 preserves both formulations of a כדי שיראה pericope -  
 one in which an introductory enumeration is indicated; the  
 other in which it is not. In fact, MS Erfurt completely  
 omits the first enumerated unit and records only the list-  
 ing of all cases of כדי שיראה.<sup>1</sup> Thus, in this version  
 the cases are not initially defined by number or their vis-  
 ibility in water. If this history of the text is adopted

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1. Cf. Sifre Zuta, pp. 234-235 (5:17), which  
 is an even further extension of this form in that even the  
 subsequent individual cases are not defined in terms of  
 visibility in the water.

it would explain the repetition in each case of the parameters of כְּרִי שִׁירָאָה as well as the inclusion of with its own definition.

In any case, the relation of these sources to the Mishnah is unclear. Is the Mishnaic term "כְּרִי שִׁירָאָה" based on this list of cases or vice versa? Of course, if this pericope is of an early period, it is possible that a gloss listed other cases of כְּרִי שִׁירָאָה . On the other hand, such an early stratum of the Mishnah may have ended with "וְנוֹחַן עַל פְּנֵי הַמֵּיִם" אִם "וְנוֹחַן"

#### Summary

The enumeration of cases falling within the same population is marked by the lack of exact congruence among all the cases as well as the textual variants on the numerical introduction of the material. While it is difficult to assess the relationship of these lists to the Mishnaic formulation, nonetheless, there does appear to be a distinct literary history to the different list patterns.



Sotah, 2:3-5

Order of Ritual in Mishnah

The Biblical description of the ordeal is fairly clear-cut as far as the sequence of events following the obtaining of the water. The priest is enjoined to administer an oath to the suspected woman in which she swears her innocence and acknowledges awareness of the consequences of the ordeal. The priest then inscribes the oath and erases it into the water.<sup>1</sup>

The order of the Mishnah,<sup>2</sup> however, would seem to indicate that the writing of the scroll precedes the taking of the oath. The description of the scroll's contents and its technical execution appears before a discussion of the scope of the oath.

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1. Numbers, 5:19-23.

2. Sotah, 2:3-5.

Ritual Order in Tosefta: Internal Contradiction

The order of the Tosefta on this point requires careful examination:

Tosefta, 2:1-2

- 1 היה נוטל את מגלתה ובכנס לו לאולט. סבלה של זהב היתה קבועה
- 2 בכותלן של היכל, והיא בראית מבאולט. סמנה רואה וכותב, לא
- 3 חסר ולא יתר, יוצא ועומד בצד סוטה, קורא ודורש ומדקדק כל
- 4 דקדקי פרשה, ומשמיעה בכל לשון ששומעת... ואום' לה משביע
- 5 אני עליך, ויבא עליך... ובכנס וכותב יוצא ומחזק.

1 מגלתה / א מנחתה. 5 ויבא עליך / ב ב חסר

The simple meaning of "סמנה רואה וכותב" is that at the time time the priest enters the Porch, he copies from the tabula. Following this, he reads from and explains the completed scroll to her and only then does she swear to her innocence.

Indeed, if he enters the Porch only to read and/or study the tabula, it would be unnecessary for him to take the scroll in with him.

וכנס - " However, the Tosefta then continues - "וכותב יוצא ומחזק". This terse passage presents the writing of the scroll as following the oath.

There are two cogent reasons for considering the latter implication in which the writing follows the oath as representing the actual order. In the first instance, it follows the sequence spelled out in the Biblical description. Secondly, it allows more time for her admission of guilt before writing the scroll.<sup>1</sup>

#### Tosefta as Conflation of Sources

An examination of two beraitot further indicates the nature of this ambiguity:

#### T.B., Gittin, 60a<sup>2</sup>

1 כשהוא כותב רואה בסבלא וכחתם מה שכתוב בסבלא מה הוא כותב  
2 בסבלא אם שכב אם לא שכב.

#### T.P., 18a (2:2)<sup>3</sup>

1 חני רבי הרשעיה כל פרשת טומה היתה כתובה עליה שממנה היה  
2 קורא ומתרגם כל דיקדוקי הפרשה.

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1. This is based on the assumption that some of the reluctance to erase the scroll would apply as well to its writing. This would be especially true if a scroll written for one woman could not be used for another.

2. Cf. T.B. Yoma, 37b.

3. Cf. T.P. Yoma, 41a (3:10).

The T.B. formulation of "כשהוא כותב" indicates that the "ממנה רואה וכותב" pericope should properly be read as a parenthetical statement in the context of the description of Helena's tabula.

In T.P. this passage appears to be a description of the function of the tabula rather than a sequential description of the ordeal. The introduction of "ממנה היה קורא" appears to stand in the same relation to the statement of the tabula's existence as "ממנה רואה וכותב".

Thus, the question of the order in Tosefta may be simply stated. Reduced to its constituent elements, Tosefta may be but a conflation of sources describing the tabula's function and the arrangement of these sources is irrelevant to the question under consideration. On the other hand, this conflation may represent an order of the ritual that should be taken seriously.<sup>1</sup>

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1. See R. David Pardo, Hasde David (Livorno, 1776), p. 157c, who suggests that the conflation of sources represents both possibilities vis-a-vis the sequence of writing/oath.

Amoraic Consideration of Order

This problem is considered by Amoraim and is the subject of a debate:

T.P., 18a (2:3)

- |   |  |
|---|--|
| 1 | דני קריסטא אמר איתפלגון רבי יוחנן וריש לקיש. חד אמר משביע    |
| 2 | ואחר כך כותב. וחריבה אמר כותב ואחר כך משביע. הוון בעיי       |
| 3 | מימר מאן דמר משביע ואחר כך כותב היך מה דהוא קרייא והשביע וכ- |
| 4 | תב. דמאן דמר כותב ואחר כך משביע כדי לסמון שנועה להשקיייה.    |

In T.B. Raba is quoted as maintaining that a scroll written prior to the administration of the oath is unfit for use:

T.B., 17b<sup>1</sup> (pp. 257-259)

- |   |  |
|---|--|
| 1 | אמר רבא מגילת סוטה שכתבה בלילה פסולה ... כתבה למפרע פסולה... |
| 2 | כתבה קודם שתקבל עליה שנועה פסולה... כתבה איגרת פסולה...      |
| 3 | כתבה על שני דפין פסולה... כתב אות אחת ומחק אות אחת וכתב אות  |
| 4 | אחת ומחק אות אחת פסולה...                                    |

It is interesting that neither in T.B. nor in T.P. is proof adduced from the Mishnaic order vis-a-vis

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1. Cf. T.B., 19b, where the formulation is "ר' ר' יודן בעי כתב מפיו ומחק בעפר הייה כותב ראשון ראשון ומחק". See, also, T.P., 18a (2:4), "לא עסה ולא כלום". Is there any relation between Raba's list in T.B., 17b-18a and the unanswered questions of R. Judan. See, also, below, p. 203, n. 1.

this question. Apparently, their position is that the Mishnah is not guided by the time sequence of the ritual but by other considerations.<sup>1</sup>

#### Topical Arrangement of Mishnah

Actually, the Mishnaic arrangement may be based on a previously noted editorial principle. The Mishnah groups laws of topical relation together even at the expense of the sequential order actually followed in the ceremony. Therefore, the cup of water, the earth, and the parchment are joined together as a single unit since they are topically related. Another basis for this linkage may rest in the common denominator which motivates R. Judah's position as far as the quantity of water to be used.

Now, it might have been more apposite to have discussed the writing of the scroll in connection with a description of its erasure. However, the Mishnah does not

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1. See the conclusion reached by Tosafot, 17b, s.v., קורט .

really treat of the scroll's erasure other than by taking it for granted while dealing with other details of law.<sup>1</sup> Hence, the only possible topical link for the writing of the scroll is to be found in its present context.

#### Summary

The Mishnah presents a ritual order differing from that of the Bible. Tosefta's order appears ambiguous. An examination of parallel material suggests that the Toseftan ambiguity is related to a conflation of sources. For its part, the order in Mishnah may not necessarily indicate a set position on the ritual order but, rather, may be related to the topical structure of Mishnaic material.

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1. See Sotah, 3:3 - "עד שלא במחקה... במחקה."

Sotah 2:5-6Extension of Oath

The Mishnah records the multifaceted nature of the oath administered to the woman:

Sotah, 2:5-6 (pp. 262-264)

A	1	על מה היא אומרת אמן אמן,	1
B	2	אמן על האלה אמן על השבועה,	2
C	3	אמן מאיש זה אמן מאיש אחר,	3
D	4	אמן שלא שטימי ארוסה ונשואה ושומרת יבם וכנוסה,	4
E	5	אמן שלא בטמאתי יבואר בי, ר"מ אומר אמן שלא בטמאתי	5
	6	אמן שלא אטמא.	6
F	7	הכל שרין שאין מתבה עמה לא על קודם שתתארס ולא על אחר שתתגרש,	7
G	8	בטתרה לאחר ובטמאת ראה"ב החזירה לא היה מתבה עמה.	8
H	9	זה הכלל כל שתבעל ולא היתה אסורה לו לא היה מתבה עמה.	9

1. The introductory statement would appear to be in the form of a rhetorical question which attempts to define the meaning of Numbers, 5:22. However, an examination of Tosefta, 2:1 suggests that this phrase may be similar in style to the recurring "על מה" found therein which indicates only that the priest was required to explain the details and meaning of the ceremony to her. If this be the case, it may well be that the extension of the scope of the oath (gilgul) is automatically included in the oath and is, hence, administered by the priest rather than the husband. See Ritba, Kiddushin, 27b, s.v. אמר עולא. This does not appear to be the position of Maimonides in Mishneh Torah: Sotah, 4:17, who maintains that the extension is dependent on the wishes of the husband. Note also the conclusion of the Tosefta, which may be the source of the introduction of שבועה / אלה in the Mishnah.

2. Both Targum Pseudo-Jonathan and Neofiti to Numbers 5:22 reproduce the view of R. Me'ir.



Both R. Me'ir and the Sages agree on the basic principle that the oath necessitated for her immediate behavior can be expanded in terms of time and person. Their dispute centers on the possibility of an oath against future infidelity.

R. Me'ir's opinion is explained in a beraita which attempts to deal with the relation between the ritual and her future adulterous behavior:

Tosefta 2:2<sup>1</sup>

1 ר' מאיר אומ' אמר, שלא בטמאתי, אמר, שאיני עתידה ליטמא. לא  
2 שהמים בורקין אותה מיד, אלא אפ' תקלקל לאחר עשרים שנה, המים  
3 מתעריין עליה, שנ' מנחה זכרון מזכרת עון.

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1. Cf. the beraita as cited in T.B., 18b, and T.P., 18b (2:5). Lieberman, TK, p. 621, maintains there to be a significant difference between the versions. However, it may be that "מעכשיו" should be understood as "immediately," while "למפרע" has the force of "from long ago" and refers to the fact that the water was imbibed in the past rather than to sins of the past. In any case, the differences, if real, are irrelevant to the present discussion.

2. On the meaning of this term, see Lieberman, TK, pp. 621, 624 and the sources cited therein. The parallel between the phrase "המים בורקין אותה מיד" and "המים מתעריין עליה" may be significant in treating the latter term as identical to the former.

The force of this explanation of R. Me'ir's opinion is to obviate the notion of present punishment for future actions.<sup>1</sup>

This qualification entered, R. Me'ir's opinion still poses difficulty. What prompted the notion of an oath on future behavior? Surely there must be some cogent reason which motivated R. Me'ir's introduction of this strange oath.

#### Mishnah Structure

However, before attempting to solve this conceptual problem, a careful examination of the Mishnah's structure is in order. E follows the examples of gilgul which detail the expansion of the oath. Yet it does not appear to be within the conceptual rubric of this expansion. Rashi<sup>2</sup>

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1. An alternative explanation, not found in the sources, might be that the oath on future actions is simply meant to frighten the woman and insure continued chastity. There might be less objection to R. Me'ir's oath, since it is applied to cases in which the woman had to undergo the ordeal in any case. However, the Tosefta quoted certainly rejects such an interpretation. See below, p. .

2. T.B., 18b, s.v. יזק .

assumes that it is an explanation of B. However, there are several problems associated with this interpretation. First, as a commentary to B, it is superfluous, since it really adds nothing to the meaning of אלה and שנועה. Second, it should have been placed after the אלה / שנועה statement without the interruption created by the laws of gilgul<sup>1</sup>. It does not demonstrate sequential symmetry with שנועה / אלה since it explains the שנועה before explaining the אלה.<sup>2</sup>

In addition, R. Me'ir appears to dispute only the time-span covered by gilgul. It would not be reasonable to assume that he disagrees with her affirmation of acceptance for both the oath and its consequences. This is particularly unreasonable in light of the plethora of evidence as to the general prevalence of a "double" oath, which consisted of the oath itself and an affirmation of

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1. Note the variants which do, in fact, place them together to form an uninterrupted statement.

8. In Tosefta 2:1 the explanation of אלה precedes that of שנועה in some readings. It should be noted that in Numbers, 5:21 the order is "לאלה ולשנועה". The prior "שנועה ואלה" is in the construct state.

its consequences.<sup>1</sup> Yet, this is precisely the implication of Rashi's explanation.

#### Redundancy in Mishnah

The material following E is also problematic. F states the limit of the controversy; however, R. Me'ir had indicated disagreement only with the question of limits vis-a-vis future action. Thus, F(1) appears superfluous and in no need of the sweeping formulation encompassed in the scope of F. Furthermore, having presented F, the summary found in H appears redundant and adds nothing to F.<sup>2</sup>

#### Relation of Sifre to Mishnah Structure

An examination of Sifre may serve to solve these problems by elucidating the literary development of Mishnah structure:

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1. See Saul Lieberman, Greek in Jewish Palestine (New York, 1942), pp. 121-124.

2. It should be stressed that this question is not of the "הכל לאחיי מאי" variety, but, rather, of the inclusion of two apparently similar points. See Tosafot Yom Tob, ad locum, s.v., זה הכלל .

Sifre, p. 20 (#15)

1 דאמרה דאשה אמן אמן, אמן שלא בטמתי אמן שלא אטמא דבריך  
 2 מאיר ואין חכמים סודים בדבר אלא אמן שלא בטמתי ואם בטמתי  
 3 יבאו לה אמן עם איש זה אמן עם איש אחר אמן אם ארוסה אמן  
 4 אם בשואה אמן אם שוכרת יבם אמן אם מטמתי במתי זה הכלל  
 5 כל שתיבעל ותהא אסורה לו על אותה שעה הוא מתנה עמה.

5 השעה / ל שנועה

This passage differs from that of the Mishnah in two fundamental respects. First, R. Me'ir's statement stands before the parallel to Mishnah's E. Second, there is no record of the area of agreement ("הכל שוין") between R. Me'ir and the Sages.

In this formulation R. Me'ir appears as the initiator of the polemic. The statement of the Sages is recorded as a rejoinder to his position. It is not an explanation to "...אמן על האלה" which, in fact is not included in the Sifre, since it represents the simple meaning of the double amen, while the Sifre is concerned only with the scope of gilgul.

The Mishnah first presents gilgul as it applies to past action which is, of course, the primary example of gilgul, and with which there is universal agreement.

It then indicates that this is the extent of gilgul in contradistinction to R. Meir, who expands its boundaries to include future actions as well.

R. Me'ir originated the idea of a future gilgul, while the response of those who disagreed with him was

" אמן שלא נסמאחי ואם נסמאחי יבואר נ"י " The stress here is that the oath and its derivatives (gilgul) only cover past action and, hence, E foreshadows disagreement with R. Me'ir's position. Were it not for the following citation of R. Me'ir's opinion, this comment would indeed be superfluous. E is not a commentary to B but, rather, to the subsequent position of R. Me'ir.

In assuming that R. Me'ir's statement is not originally framed in terms of the previous points in the Mishnah, we can gain an understanding of F as well. R. Me'ir states that she must swear to past actions. The simple explanation of this would refer it to the specific behavior under question. However, R. Me'ir's contention that unspecified future actions are included might suggest that he includes all past actions as well. In other words, the possibility of an unlimited future is symmetrically matched by an unlimited past. Thus, F is designed to define limits in both

aspects of R. Me'ir's statement. The necessity for such definition, clear in Sifre's formulation, is obscured to some extent by the arrangement of material in the Mishnah in which the parameters of the past actions are seemingly defined without possibility of opposition. It is to the ambiguity in R. Me'ir's statement taken out of its present locus that the definitional gloss of F is directed.

H is found in Sifre as summarizing the nature of the extensions tacked on to the oath. Its presence in Mishnah may be attributed to its presence in Sifre. In Sifre it serves as a conceptual summary of the parameters of gilgul as to past behavior. It assumes, therefore, that the extension of the oath is limited only to the past. In its transference to the Mishnah framework this pericope is made to accord with both the positions of R. Me'ir and the Sages. Hence, it cannot follow the position of the Sages alone but must await the introduction of R. Me'ir.

It is true that the clarification provided by F makes H appear redundant. However, while F assumes H to be true, the reverse does not follow since H is part of the original structure of the material as reflected in the Sifre formulation, it appears in the Mishnah formulation

even though its location in Mishnah makes it appear redundant. Indeed, in its Mishnaic context it may well be colored by F-G which led to the interpretation of H as encompassing both past and future behavior. In sum, then, the Mishnah represents a rearrangement of material from which none of the original source was excised.

#### Background of "Future" Oath

This analysis has been confined to literary concerns and has sought, through a comparison of sources, to suggest a possible literary history which might account for the Mishnah's structure. But what of the basic idea of an oath about future behavior?

Now, it could be argued that this oath is made in the context of the ordeal in order to lend it weight and significance. As such its effect is that of a check on future wanton behavior. However, its formulation as part and parcel of her basic response suggests that this oath is seen as intrinsically related to the ordeal. Furthermore, Tosefta's explanation of R. Me'ir's opinion implicitly rejects this possibility.



A beraita recorded in both T.B. and T.P. may provide the rationale for this oath:

T.B., 18b (p. 267)

1 זאת תורת הקבאות, מלמד שהאשה שותה ושרונה, רבי יהודה אומר  
2 זאת, שאין האשה שותה ושרונה. אמר ר' יהודה מעשה והעיד לפנינו  
3 בחוביא חופר שיחין שהאשה שותה ושרונה וקיבלנו עדותו בשני אנשים  
4 אבל לא באיש אחד, וחכ"א אין האשה שותה ושרונה בין באיש אחד  
5 בין בשני אנשים.

3 בחוביא / ר' ר' בחוביא. חופר שיחין / א חופר בורות שיחין  
ומערות ( "חופר" בה"ש, ועל "בורות ומערות" סימן מחיקה )

T.P., 18b (2:5)<sup>1</sup>

1 תורת הקבאות. תורת העולמים גו. אין האשה שותה ושרונה. אמר רבי  
2 יודה העיד בחמיה איש שיחין <sup>2</sup> את רבי עקיבה ואשה שותה ושרונה.  
3 אמר ר' עקיבה אני אפרש מאיש אחד אין האשה שותה ושרונה. מסני  
4 אבשים האשה שותה ושרונה וחכמים אומ' בין מאיש אחד בין מסני  
5 אבשים שותה ושרונה. כורכמית תרכיה ששתת ושנת וסילשה לפני  
6 שמעיה ואבסליון מאיש אחד.

1. This citation follows the second explanation of Pene Moshe, *ad locum*, s.v. תורת. The emendations of the Korban 'Edah throughout this pericope are to be rejected. Note that both Sifre (p. 24, l. 4) and Sifre Zuta (p. 238, l. 4) refer this exegesis only to the question of whether the sotah ritual is applicable in different locales, "תורת העולמים", not to the one under consideration herein.

2. T.P. has the report delivered by Nehemiah.

A careful examination of both versions leads to a number of conclusions. The testimony of Nehemiah concerned either a report of an actual case or of a legal position and was delivered to R. 'Akiba in the presence of his students. R. 'Akiba was willing to accept this report insofar as the case concerned another man, but not if it involved a repetition with the same paramour.

However, there were those who disagreed with R.

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of Sihin while T.B.'s reading is Nehunia Hofer Sihin. The latter is one of the Temple officials mentioned in Shekalim 5:1 and, therefore, if T.B.'s reading is accurate, this beraita is relevant to the dating of the mishnah in Shekalim. See also the sources quoted by Albeck (Shekalim 5:1), which fail to note this beraita. Aaron Hyman, Tóledot Tannaim WeAmmoraim (London, 1910), p. 924a, emends both the texts of T.B. and T.P. While his emendation of T.B. to read Nehemiah is an open question, his reading of "העיר נחמיה" is without any foundation and is based on the apparently incorrect commentary of Korban 'Edah. Another reference to Nehunia is found in the story recounted in T.B. Yebamot, 121b; in which he appears together with R. Hanina b. Dosa. Finally, it is entirely possible that Nehemiah Ish Sihin is one and the same as Nehunia. Hyman, 926b, so lists a distinct individual and even identifies his residence as Kefar Sihin, although the reading of Kefar Sihin is not found. However, it is possible that the "Ish" refers to his status in the Temple hierarchy and should be understood as "the officer in charge of (the digging of) ditches." As such, it would be equivalent to the "איש הר הבית" in Middot 1:2. Is it possible that other uses of this term for Temple functionaries are to be found in Pe'ah 2:6 (R. Simeon 'Ish Ha-Mizpeh) and 'Orlah 2:12 (Yo'ezer 'Ish Ha-Birah). It is used in a similar sense in connection with the high priest - "Ishi Kohen Gadol" in Yoma, 1:3; 5, 5; Tamid, 6:3; and Parah, 3:8.

'Akiba and maintained that there was no such limitation on the number of times that a woman could be subjected to the ordeal. In T.B. this opinion is presented as based on an exegesis of Numbers, 5:29 ( "זאת תורה הקבוצות" ). In T.P. it is related to a specific case in which such repetition is said to have occurred. In T.B. this opinion is part of the beginning of the beraita and is unattributed, while in T.P. it represents the end of the beraita and is attributed to the Sages. In addition, the T.B. version closes with an attribution to the Sages of a position even more restrictive than that of R. 'Akiba, to wit - a woman may never be made to undergo the ordeal more than once.

Thus, three strands of evidence are herein considered: the report of Nehemiah, an actual case of repetition, and Biblical exegesis. The first two points are rather straightforward; the third is somewhat problematic. This is particularly true in T.P.'s report, in which it is unclear as to the exact nature of the exegesis.

The ambiguity surrounding the nature of the exegesis may, in fact, be explained by the ambiguity of the Biblical text. The key to the understanding of the T.P.

version is that it represents an exegesis of two sections of the Biblical verse. The function of this exegesis is to demonstrate the difficulty of drawing conclusions from the text per se. On the one hand, "תורת הקבארות" is taken as implying unlimited application of the ordeal. On the other, "זאת" is seen as limiting it to a single occasion. Thus, the function of the Biblical citations in T.P. is to introduce and highlight the nature of the problem as rooted in this ambiguity. Indeed, the report in T.B. may similarly be so taken if we assume that the citation of R. Judah in connection with the exegesis of "זאת" is not indicative of dispute with the initial exegesis but, rather, of the ambiguity arising from an exegetical analysis of the entire verse.<sup>1</sup>

Such an interpretation gains a deeper appreciation of R. 'Akiba's interpretation of Nehemiah's report. On what basis did R. 'Akiba arrive at this understanding

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1. This approach would negate T.B.'s analysis of the opinion of the putative tanna kamma.

of a rather straightforward statement? It would be most reasonable to assume that it is the previously stated Biblical ambiguity which sets the stage for this compromise position. In R. 'Akiba's interpretation room is made for the implications of both exegeses.<sup>1</sup>

Having delineated the structure of the material and its relation to its proper comprehension, it is now possible to return to the original question as to the source for R. Me'ir's extension of the oath to cover future occurrences. Commentators have raised the question as to the rationale behind the discussion of whether a woman can be subjected to the ordeal more than once.<sup>2</sup> If R. Me'ir's position is accepted and the ordeal is effective against future infidelity, the whole discussion is superfluous. What possible need could there be for a second ordeal?

The question may actually highlight the basic derivation of R. Me'ir's opinion. His position actually

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1. See, however, the explanation of Raba in T.B., 18b-19a.

2. See R. Pinchas Epstein, Minhat Jerusalem (Jerusalem, 1924), p. 85d.

follows from the time limit placed on the subjection of the woman to the ordeal. Such a limit could create a serious problem should the woman once again engage in suspicious behavior. Is there no other option open to the husband other than divorce? It was this consideration which motivated R. Me'ir's position vis-a-vis an oath on future behavior. Since the effect of the ordeal can extend for the woman's married life, such a dilemma is thereby averted.<sup>1</sup>

#### Summary

This investigation traced both the literary history of Mishnah structure and the conceptual history of R. Me'ir's opinion. In the first instance, a link to Sifre was posited and the Mishnah text explained as a rearrangement of the Sifre material. The editorial process involved both foreshadowing and complete citation of the source, albeit in a different structure. As far as the history of the concept, the analysis of other Tannaitic sources indicates the nature of the problem to which R. Me'ir might be responding.

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1. Perhaps the basis for the gilgul on past actions is based on an attempt to assuage the husband's doubts as to her chastity in general and, thereby, remove friction from the marriage. Thus, the rationale for gilgul on past action is of the same cloth as that for future action.

Sotah, 3:2

The Mishnah records a dispute vis a-vis the sequence of the ritual:

Sotah, 3:1-2<sup>1</sup> (p. 270)

- 1 היה משקה ואחר כך מקריב את מנחתה. רבי שמעון אומר מקריב את מנ-  
 2 חתה ואח"כ היה משקה, שנאמר ואחר ישקה את האשה את המים ,  
 3 אם השקה ואחר כך הקריב את מנחתה כשרה.

Nature of Material Related to Ritual Order

The Mishnah cites a disagreement that is straight-forward and uncomplicated. There are, however, a number of interesting phenomena in its presentation. First, this is the only instance in which Mishnah is explicitly concerned with the ritual order. Second, the Mishnah explains only

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1. The passage reads like a guide to actual practice. Cf., T.P., 18d (3:2), "משקה ומקריב ור"ש אומר כותב ומקריב ומחוק ומשקה". Can this T.P. passage be of Tannaitic origin? It also parallels the style of Tosefta, 2:2, "וכנס וכותב יוצא ומחוק". Beraitot cited in T.P. do not follow standard introductory formulae. Hence, the phrase "דרבנן אמרי" should not be taken as an indication of an Amoraic source.

the position advanced by R. Simeon. Yet, having offered the source for this position, it then proceeds to state, with no explanation whatsoever, that the reverse order is acceptable to R. Simeon. Even this information appears as somewhat extraneous inasmuch as the Mishnah's account of the ordeal is nowhere else concerned with such details.<sup>1</sup>

In any case, it seems that R. Simeon would allow the offering of the minhah as the final step only in a case in which a mistake in the ritual order had occurred.<sup>2</sup> Thus, the Mishnah presents R. Simeon as essentially concerned with the ordeal's sequence in this matter. Sifre Zuta, on the other hand, records R. Simeon as being specifically unconcerned with the order of these rituals.

Sifre Zuta, p. 237 (5:26)

1 ואחר ישקה ... ר' שמעון אומר באמר השקאה קודם למנחה  
 2 ובאמר השקאה לאחר המנחה ומה ת"ל ואחר אלא אם קדמה מנחה  
 3 כשרה ואם קדמה והשקאה כשרה.

2 ומה ת"ל ואחר / רק ג

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1. See above, pp. 115-121.

2. This would appear to be the force of "אם הסקה". Of course, it should be borne in mind that this formulation may be that of the editor rather than R. Simeon himself.



Thus, the Mishnah requires clarification both for its inclusion of material and for its relation to another Tannaitic account of this subject.

### Ambiguity of Biblical Account

An analysis of the underlying sources of this dispute will help to clarify this matter. The following beraita highlights its fundamental background:

#### T.B., 19b (pp. 272-273)

- |   |   |
|---|---|
| תנו רבנן והשקה מה ת"ל והלא כבר נאמר והשקה, שאם במחקה מגילה  | 1 |
| ואומרת איבי שותה מערפרין אותה ומשקיין אותה בעל כרחיה, דברי  | 2 |
| רבי עקיבא, ר"ש אומר ואחר ישקה מה ת"ל והלא כבר נאמר והשקה,   | 3 |
| אלא לאחר כל מעשים כולין ואמורים למעלה, מגיד ג' דברים מעכבין | 4 |
| בה עד שלא קרב הקומץ ועד שלא במחקה מגילה ועד שלא תקבל עליה   | 5 |
| שבועה.  | 6 |

- |   |   |
|---|---|
| 1 והשקה / א מ והשקה בתרא. והשקה 2 / א ( בה"ש בוסף : קמא ) | 1 |
| 4 לאחר - מגיד / א ו ס ר חסר. 5 קרב הקומץ - במחקה מגילה /  | 4 |
| א במחקה מגילה - קרב הקומץ.                                |   |

The ambiguity of the Biblical account, which speaks of drinking both prior and subsequent to the offering of the minhah is seen as the crux of the dispute:

#### Numbers, 5:24-27

- |  |    |
|--|----|
| 24 והשקה את האשה את מי המרים המאדרים ובאו בה המים המאדרים למרים.   | 24 |
| 25 וילקח הכהן סיד האשה את סבתה הקנאות והניף את המנחה לפני ה' והקריב אותה אל המזבח.   | 25 |
| 26 וקמץ הכהן מן המנחה את אזכרתה והקטיר המזבחה ואחר ישקה את האשה את המים.   | 26 |
| 27 והשקה את המים והיתה אם בסמאה ותסעל מעל באישה ובאו בה המים המאדרים למרים וצנתה בטגה וצפלה ירכה והיתה ואשה לאלה בקרב עמה. | 27 |

Ambiguity in Parallel Tannaitic Text

Ironically, a similar ambiguity exists in the formulation of the beraita which yields two different interpretations in R. 'Akiba. Is R. 'Akiba's first reference to the " וְהִשְׁקָה " of Numbers 5:24 or to that of 5:27?

Rashi interprets R. 'Akiba to be in agreement with R. Simeon in accepting the primacy of the latter verse.<sup>1</sup> Hence, the drinking of the water follows the sacrifice of the meal offering. Why R. 'Akiba chooses to view the later verse as reflecting the actual order is left unstated, but is probably rooted in the fact that 5:26 seems to indicate such an order<sup>2</sup> since it explicitly states

" וְאַחַר יִשְׁקָה " immediately subsequent to the sacrifice of the minhah.<sup>3</sup>

1. Rashi, 19b, s.v. ה"ג ח"ר. The use of kbr in reference to a later, rather than prior, instance is duplicated in R. Simeon's statement where it can brook no other interpretation. Other Tannaitic sources also employ the term in such a fashion.

2. Rashi might have been influenced in his commentary by the Sifre quote below, p. 202. In fact, Tosafot Evreuk, ad locum, s.v. ה"ג ח"ר quotes him as specifically referring to the Sifre. See also Tosafot Rosh ad locum, s.v. ח"ר.

3. The force of this proof is so strong that T.P., 18d does not rely merely on the first mention of drinking which precedes the offering as the source of the anonymous opinion. Hence, it introduces the latter half of 5:24, " מִן הַשֶּׁמֶן וְהִשְׁקָה " which indicates the drinking to have actually occurred at the time. This consideration solves the problem raised by Horovitz, Sifre, p. 21, n. 14

R. Hanan'el,<sup>1</sup> on the other hand, assumes that the beraita's first reference to " והטקה " concerns 5:27. Therefore, R. 'Akiba's opinion accords with the anonymous position which places the sacrifice before the drinking.

R. Simeon's opinion is derived in a fashion slightly different from its representation in the Mishnah

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1. Quoted in Tosafot, ad locum, s.v. "בלי" ר"ה. Tosafot make clear that the reading which explicitly indicates the first reference to be that of v. 27 and the second that of v. 24 is not part and parcel of the beraita. Nonetheless, it is of Talmudic origin. Rashi would not even grant it such status. In editio princeps of T.B. the explanation " שאין זה לסון הברייתא " does not appear in Rashi's text. R. Samuel Edels in his commentary ad locum, s.v. "ה"ג", supplies this on the basis of an "ancient commentary." Indeed, Tosafot Evreuk have such a reading in their quotation of Rashi. " שאין זה לסון הברייתא ועוד נספרי תבי " (How- ever, it is doubtful that this is the commentary to which Edels refers since he omits the very important reference contained in Tosafot Evreuk's citation of Rashi to the Sifre.) On additions to the texts of beraitot cited in the Talmud, see R. Solomon b. Abraham ibn Adret, Torat haBayit He'Aruk (Jerusalem, 1963) p. 45a (Bayit 7: Sha'ar 4). He states that " ובלישוא התוספתא לא מצאתי שמסוה הדם שותה, דרך הגמ' בכמה מקומות להוסיף בלסון התוספתא דרך פירושו בעלמא ושבוין כאלו " In Bet Joseph: Yoreh De'ah (Ch. 187), the source is quoted as " בכל מקום " Obviously, this difference could have resulted from an abbreviation of "בכ"ם".

in which the determinant source was "ואחר ישקה". In the beraita, it is 5:27 which is seen as the basic source, while the sense of "ואחר ישקה" is to stress that all parts of the ritual are indispensable. This is understood by T.B. to mean that the woman may not drink until all three steps of the ritual have transpired. However, this explanation is not without its difficulties, since R. Simeon's position as stated in the Mishnah is that drinking before the offering of the minhah does not invalidate the ceremony.<sup>1</sup> In addition, T.B. raises the problem as to the superfluity of two of these cases.<sup>2</sup>

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1. R. David Pardo, Sifre De-be Rab (Salonika, 1799) p. 27a raises this objection. However, his explanation of "מכנין" as limited to a preferred rather than necessary condition is also difficult since 'kb seems to carry greater force than he assigns to it here. Halivni, Mekorot, p. 445, n. 1 cites Horovitz's explanation in Sifre, p. 24, n. 1, which takes it to mean that the water will not examine her until after the minhah is offered. Halivni rejects this as fraught with difficulty but does not explain the problem. Actually, Horovitz never advanced this explanation as far as the beraita in T.B., but only vis-a-vis the Sifre. If we accept Horovitz's identification of the Sages in Sifre with the anonymous opinion of the Mishnah, this explanation is, in fact, the only one possible. It is supported by T.P., 18d, which likewise maintains that the waters are activated only after the sacrifice of the minhah. See, however, below, pp.

2. The sugya actually concludes that the statement "עד שלא תקבל עליה טרועה" is superfluous.

Relationship of Ritual Order to Instance of Coercion

T.B. then cites the following beraita:

T.B., 19b (pp. 274-275)

רבי יהודה אומר כלבוס של ברזל מטילין לתוך פיה, שאם	1
במחקה מגילה דאמרה איני שותה מערערין אותה ומסקין אותה	2
בע"כ, אמר רבי עקיבא כלום אבו צריכין אלא לבדוקה והלא	3
בדוקה ועומדת, אלא עד שלא קרב הקומץ יכולה לחזור בה, מ-	4
שקרב הקומץ אינה יכולה לחזור בה.	5

3 אמר / א אמ' לו , ר דא"ר.

Two difficulties are noted by T.B. First, if R. 'Aqiba maintains that her refusal to drink is tantamount to an admission of guilt, on what basis does he posit a distinction based on the time at which such a refusal is made? Second, this critical time is said to be dependent on the sacrifice of the meal offering, whereas it had previously been linked to the erasure of the scroll.<sup>1</sup>

Sifre also records the dispute:

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1. This follows both Rashi's and R. Hanan'el's explanation, since they disagree only as far as the respective meaning of the sources. In any case, however, a contradiction exists.

Sifre, p. 21 (#17)

1 והשקה את האשה, למה נאמר והלא כבר נאמר ואחר ישקה את  
 2 האשה מה ת"ל והשקה את האשה שאם במחקה המגילה ואמרה איני  
 3 שותה מערערים אותה ומסקים אותה בעל כוחה דברי ר' עקיבא  
 4 והכמים אומרים ואחר ישקה את האשה למה נאמר והלא כבר נאמר  
 5 והשקה את האשה ומה ת"ל ואחר ישקה את האשה שלטה דברים  
 6 מעכבים בסוטה עד שלא במחקה המגילה ועד שלא קרב הקומץ  
 7 ועד שלא קיבלה עליה את הטבועה במחקה המגילה ואמרה סמאה אבי  
 8 המים נשפכים והמנחה מתפזרת אנית הדין ואין מגילתה כשרה  
 9 להשקות בה סוטה אחרת ר' אחי בר' יאשיה אומר מסקים בה סוטה  
 10 אחרת.

4 והלא כבר נאמר / ד הסר. 5 ומה ת"ל ואחר ישקה את האשה /  
 מ הסר.

In this version, R. 'Akiba is clearly identical with R. Simeon<sup>1</sup> as quoted in T.B, since he cites not 5:24 and 5:27 but, rather, 5:24 and 5:26, and indicates the primacy of 5:26 ( "ואחר ישקה" ). In order to determine the position of the Sages we must first analyze a number of other sources.

It is important to note that there seems to be a link between the sources concerned with the ceremony's order and the topic of the following Mishnah which states the distinction between a refusal to drink both before and after the erasure of the scroll:

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1. Note, however, the reading of GRA, " והשקה את ... האשה למה נאמר שוב והשקה את האשה שאם ... (In fact, 5:27 states " והשקה את המים [1] ) He further emends the Sages to R. Simeon and arranges the subsequent text to reflect this position more clearly. See above, p. 94, n.2.

Sotah, 3:3 (p. 277)

1 עד שלא במחקה המגילה אמרה איבי שותה מגילתה בגנות  
 2 ומנחתה מתפזרת על הרסן, ואין מגילתה פשוה להשקות בה  
 3 שוטה אחת. במחקה המגילה ואמרה סמאה אבי ראם בשפכין  
 4 ומנחתה מתפזרת על בית הרסן. במחקה המגילה ואמרה איבי שותה  
 5 ספרעין אותה בעל כרחיה.

4 בית / כל ב ג פ ק ת 13 א חסר

Therefore, an analysis of this law may serve to shed light on our subject. Crucial to its understanding is a discussion<sup>1</sup> between R. 'Akiba and R. Eliezer recorded in Sifre Zuta:

Sifre Zuta, p. 236-7 (#24)

1 והסקה את האפה על כרחיה, ר' אליעזר אומר מכין אותה ברחבו של  
 2 סייף ומפערין אותה ומסקין אותה על כרחיה. אמר לו ר' עקיבא  
 3 לא בודע אם טהורה היא אם אמרה סמאה אבי ראם אמרה טהורה אני  
 4 אימתי מסקין אותה על כרחיה משהם במחק. 2

1 האשה / מדרש רבה - האשה למה באמר לומר לך שאם במחקה מגילה  
 ואמרה איבי שותה היה ר' אליעזר וכו'. 3 בודע / ג בודע

1. The Sifre Zuta explicitly states "אמר לו ר' עקיבא" This reading is preserved in T.P., 18d, and in variant readings of Tosefta (quoted below, p. 207) and T.B. (quoted above, p. 201). Its absence in many readings may be based on an emendation resulting from the substitution of R. Judah for R. Eliezer.

2. Note the focus on the erasure of God's name rather than on the general erasure of the scroll (משהם as opposed to במחק). This might reflect the opinion of the House of Hillel as explained in T.P., 18d, "כמה ימחקו חבין רבי חבין בית שמאי אומרים אחת ונית הלל"

"אומרים שתיים אמר ר' אילי טעמון דבית הלל כרי לכתוב ייה-  
 Note that the explanatory comment is framed in terms of writing. It might appear that this is transferred from T.P., 18a (2:4) where it would fit as a response to the question of "כמה אותיות כתוב בה ויהא שלא לצורך ויהא חייב". See, however, Epstein, Tannaim, p. 396, who points out that this pericope was transferred to T.P., 18a (2:4) as a response to the question of "כמה אותיות כתוב בה ויהא שלא לצורך ויהא חייב". The transfer may be based on the "כרי לכתוב" phrase. Epstein's contention is most persuasive and can perhaps be supported by the preceding passage in T.P., 18d which

What is the import of R. 'Akiba's rejoinder to R. Eliezer? Lieberman<sup>1</sup> interprets it in a most limited sense. R. 'Akiba explains that the refusal to drink may either signify an admission of guilt or may merely be indicative of unwillingness to drink despite her innocence. The continuation of "אימתי ... במחק" is not to be attributed to R. 'Akiba, nor should R. Eliezer be understood to maintain that she may be forced to drink even before the scroll's erasure.

Horovitz,<sup>2</sup> however, attributes the continuation of "אימתי ... במחק" to R. 'Akiba, and thus the distinction between a refusal to drink and an admission of guilt is

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reads: " במחקה ומגילה ואמרה איני שותה מערערין אותה ומשקיין ... אותה על כרחיה למה שגרמה לשם שימחק כמה ימחוק ... ". The entire pericope may be of Tannaitic origin and the citation in T.P., 18a may represent an application of the beraita to another problem. Furthermore, it may be that the "unanswered" questions of R. Judah in that passage which follow it should be placed before "כמה אותיות" which serves as the explanatory conclusion to his list of questions. In the transfer it was not fitted into the body of the text in its proper place.

Of course, if the dispute between the Houses refers to the point beyond which she is coerced into drinking, then at least part of the distinction between her rights before and after the scroll's erasure is not to be attributed solely to R. 'Akiba. It is interesting that T.P., which is the only source of this dispute, maintains that R. 'Akiba opines coercion to take place only once she has already begun to drink! See below, p. 204, n. 3.

1. TK, p. 625.
2. Sifre Zuta, p. 237, n. 1.



part of R. 'Akiba's response. Lieberman challenges this explanation on two grounds. First, the passage should have read " . אימתי משקיין אותה על כרחה משהשם במחק אם אמרה טהורה אני ." In addition, the words " משהשם במחק " are superfluous, since that is the very basis of the discussion, and in no wise a matter of dispute.

However, in examining the entire pericope in light of Horovitz's interpretation, these problems do not appear serious. R. Eliezer made a blank statement<sup>1</sup> based on the force of the word "והשקה" which implies that the woman may be coerced to drink. R. 'Akiba accepts the basic premise but seeks to limit its application. The function of the ordeal is to resolve the question of her guilt or innocence. Therefore, a woman who openly admits guilt should be considered as having committed adultery and been rendered unclean to her husband ( " לא נדע אם טהורה אם אמרה טמאה אני " ). However, what of the woman who doesn't admit guilt but is unwilling to drink? In such a situation, R. 'Akiba would force her to drink, provided the erasure had already occurred.

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1. This differs from Halivni, Mekorot, p. 446 , who maintains that R. Eliezer requires coercion even should she specifically admit her guilt. Halivni does not credit Horovitz with his explanation of this passage. On the other hand, he raises a contradiction between Horovitz's understanding of Sifre Zuta and Sifre. I fail to see the nature of this contradiction.

Thus, the distinction between a refusal to drink before and after the erasure is, in fact, introduced by R. 'Akiba. It is not, as Lieberman claims, the very subject of the discussion. Rather, the discussion centers on R. Eliezer's blank statement that the woman can be forced to drink. In addition, the placing of the phrase "אם אמרה" before the "ומחק... אימתי" passage is entirely in order, since it defines the basic case in which force is applied.<sup>1</sup>

#### Structure of Tosefta and Sifre

This explanation<sup>2</sup> will shed light on the structure of the Tosefta:

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1. Lieberman does admit that his explanation, too, involves clumsy syntax.

2. R. 'Akiba's position may be understood in simple psychological terms. Once the name is erased, a refusal to drink may well be attributed to a fear of the effect of the water, which then assumes a real and immediate threat in the woman's mind. Previously, the whole matter could be seen in a somewhat more detached and theoretical perspective. This psychological dimension is, of course, crucial to this distinction and is so stressed in T.B. Granting T.B.'s version of this beraita, its solution to the problem is most logical. Halivni, however, contends that the absence of a specific reference in this beraita to T.B.'s distinction makes it unlikely that it is the basis of the dispute. This argument is not persuasive.

## Tosefta, 2:3

- A במחקה המגילה ואמרה שמאה אני המים בספכין, ומנחתה מתפזרת אנית הרשן 1  
 2 ואין מגילתה כסירה להשקות בה פוסה אחרת. במחקה המגלה ואמרה  
 B איבי שותה, מרעעין אותה ומשקין אותה על כרחיה. ר' יהודה 3  
 4 אומ' בצבת של ברזל פותחין את פיה, ומרעעין אותה ומשקין  
 C אותה על כרחיה. אמ' ר' עקיבא וכי למה בודקין את זו לא לבדוקה, 5  
 6 הרי היא בדוקה ומבדולת, אלא לעולם יכולה היא שתחזור בה עד  
 7 שתקרב מנחתה. קרבה מנחתה ואמרה איבי שותה, מרעעין אותה  
 8 ומשקין אותה על כרחיה.

2 ואין... אחרת / א חסר. 5 אמ' / א א' / לו / , ד אמר / לו /

R. 'Akiba's comment is a parallel to his comment in Sifre Zuta.<sup>1</sup>

The Tosefta should be understood as composed of two units. "A" corresponds to the basic Mishnah text with but a minor addition. "B" is composed of additional material which parallels the Sifre Zuta. R. Judah presents another variant of R. Eliezer's method of forcing the woman to drink.<sup>2</sup> This is followed by the statement of R. 'Akiba,

1. Note the reading of " אמר לו ." The reference should be taken to R. Eliezer.

2. R. Judah may be presenting additional information to explain the nature of the coercion in terms of the actual drinking. In other words, this step follows that of " מכין אותה ברהבו של סייף ". On the other hand, this may be a variant of R. Eliezer's statement. On R. Judah's role in the transmission of R. Eliezer traditions see above, p. 107, n. 1.

"C," which is identical in content, if not form, to that recorded in Sifre Zuta. R. 'Akiba's comment refers not to the parallel to the Mishnah in "A" but rather to the parallel of the Sifre Zuta in "B." The conflation of these sources creates the difficulty in interpreting R. 'Akiba.

Now, the only significant difference is the change of the terminal point from the erasure to the sacrifice of the meal offering. Although the psychological principle involved may be basically the same, T.B. indicates that this represents two traditions in R. 'Akiba's order of the ceremony.<sup>1</sup>

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1. R. Hanan'el interprets T.B.'s statement (20a) "חרי תנאי ואליבא דרבי עקיבא" to mean that there are two variants on R. 'Akiba's position vis-a-vis the ritual's order. Rashi takes it in the more limited sense of a simple distinction between two points of time: one immediately prior, the other subsequent, to the erasure. It would be tempting to argue that the "קרוב הקומץ" distinction is not part of R. 'Akiba's statement. It is the opening "אלא" that seems to identify it as such. However, see T.P., 18d, which cites this source without "אלא" and ascribes it to R. Simeon. Furthermore, T.P. maintains that R. 'Akiba admits coercion only when she had begun to drink and then attempted to halt the ordeal. T.P. cites R. 'Akiba's comment only as far as "ברוקה ומנווילת" and draws the conclusion that he does not distinguish between a refusal to drink and an admission of guilt. Perhaps the lack of clarity concerning R. 'Akiba's position is to be attributed to the ambiguity of the Sifre Zuta formulation which can be understood as of a rhetorical nature. As such, R. 'Akiba is maintaining that her refusal to drink indicates guilt even though she proclaims her innocence. This is the framework of T.P. On the other hand, it can be read as a declarative statement to the effect that refusal to drink tells us nothing of guilt and, hence, is insufficient once a particular point in the ordeal has been reached. That point became the subject of two interpretations - the one placing it with the minhah; the other at the erasure of the scroll.

T.B.<sup>1</sup> quotes the exchange between R. Judah and R. 'Akiba with the significant difference that R. Judah himself seems to draw the distinction as far as the point of time at which she refuses to drink. Halivni<sup>2</sup> points out that T.B.'s problem would be obviated if we did not read " שאם נמחקה המגילה ואסרה אינן שוחה " in the statement of R. Judah. He maintains that this section entered R. Judah's statement from the following Mishnah or from the previous beraita cited in T.B. In fact, however, it may be based on an understanding of the Tosefta which does not divide it into the above-specified sections but, rather, sees the entire pericope as a unified whole. From this perspective, R. Judah is actually commenting on the basic distinction between pre- and post-erasure refusals to drink.<sup>3</sup>

It is reasonable to suggest, therefore, that both the Sifre and the beraita of R. 'Akiba/R. Simeon in T.B.

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1. T.B., 18b. (Quoted above, p. 201.) .
  2. Halivni, Mekorot, p. 446 . Horovitz, Sifre Zuta, p. 237, n. 1, may also make this point, albeit in a somewhat oblique fashion.
  3. For the possible implications of this approach vis-a-vis the subsequent sugya, see Halivni, Mekorot, p. 446 .

are not primarily concerned with the order of the ceremony, but rather the point until which a simple refusal to drink will be honored. The dispute centers around the term which is the basis for coercion.

Let us now return to the opinion of the Sages in Sifre. Horovitz<sup>1</sup> identifies their opinion with the anonymous position in the Mishnah which places the drinking before the sacrifice of the meal offering. He further claims that the order of the acts in Sifre should not be taken seriously since the erasure, which is the last step, is mentioned first.<sup>2</sup>

However, this position actually tallies neatly with that of R. Simeon. Essentially, neither the Sifre nor the beraita quoted in T.B. are concerned with the order. Rather, they center on the question of the terminus ad quem the woman can refuse to drink. R. 'Akiba identifies this point with the erasure of the scroll, but fails to indicate when this occurs.<sup>3</sup> The Sages agree with R. 'Akiba but add

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1. Horovitz, Sifre, p. 21, n. 14.

2. Note this order also in the Oxford Ms. of T.B.

3. The assumption, however, is generally made that the drinking should immediately follow the erasure and, hence, an order of erasure, sacrifice, drinking would be rejected out of hand. There is no explicit proof for this assumption in Tannaitic sources. See Halivni, p. 146, n. 5, and below, p. 211, n. 3.

the crucial piece of information as to when coercion can be effected. The meaning of " מעכביס " is that these three steps must have been completed before the woman can be forced into drinking. T.B. may itself use 'kb in the sense of prevention of coercion.<sup>1</sup> Furthermore, the consistent repetition " עד שלא " in the listing of the three cases should be seen as equivalent to the " עד שבמחק " or " עד שלא קרב " of those Tannaitic sources explicitly dealing with coercion. Thus, the Sages of the Sifre are identical with R. Simeon, who takes the superfluous " ואחר יטקה " as a delineation of the limits of coercion implied in " והטקה ".<sup>2</sup> In addition, the order of the three cases detailed in Sifre is exact if taken in the framework of coercion. Force may be applied only when these three elements have been completed. Locked at in past order the action immediately completed was erasure; before that, the sacrifice; and then, the oath.<sup>3</sup> This order is most relevant to the psychological

1. T.B., 20a. See Rashi ad locum s.v. קשיא .

2. The specific order is required only to effect coercion, but not for the validity of the ceremony itself. See Rashi, 19b, s.v. והטקה בתרא .

3. Perhaps the assumed position of the relation of erasure to drinking without interruption stems from here. If, on the other hand, we take the majority reading in the beraita in T.B. and do not assume that drinking must immediately follow erasure, then the order may very well have the offering before the drinking.

factors underlying refusal as we try to understand its motives. However, the ceremony is valid even if this order is not followed. In sum, then, there may be two versions of the preferred order, both according to R. 'Akiba and R. Simeon and, in any case, R. Simeon does not require a specific order for the ceremony to be valid. This, of course, is precisely the position reflected in Sifre Zuta's presentation of R. Simeon.<sup>1</sup>

#### Mishnah in Light of Other Sources

The Mishnah, for its part, would seem to indicate that R. Simeon has a definite preference for the ritual's sequence.<sup>2</sup> Nonetheless, the editor emphasizes his acceptance of both orders. As such, R. Simeon's position can be squared with the next Mishnah which clearly implies the precedence of the drinking. This is particularly significant since the question of coercion may be at the root of the sequence

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1. T.P., 18d (2:3), takes the case one step further when it maintains that the order is not of a binding character, neither for R. Simeon nor for the Sages.

2. A study of the possible use of the conditional even in a priori cases would be necessary for the confirmation or rejection of this hypothesis.



question. In addition, the subsequent Mishnah<sup>1</sup> is clearly a R. Simeon formulation.<sup>2</sup>

Why is the proof-text cited only for R. Simeon? It could reasonably be argued that the editor merely wished to indicate the basis of the dispute. The clearest allusion is the one that seemingly speaks of order. Hence, the function of the proof-text is to highlight the nature of the controversy as far as sequence. However, it may also be possible that this proof-text is specifically cited to counter the report of R. Simeon that maintained that either order is equally valid; that there is no preferred sequence.<sup>3</sup> The force of "ואחר ישקה" is to demonstrate that such is not the case.

#### Summary

This analysis reveals how material that does not appear to be internally problematic can take on new hue

1. Sotah, 3:4 ("אינה מספקת..").
2. Epstein, Tannaim, p. 407 cites the sources proving this attribution.
3. This tradition also maintained that "ואחר ישקה" defines "והטקא"; however, this definition focuses on the coercive aspect of the matter. "ואחר" does not detail sequence but, rather, sets conditions as to the nature of the act.

and color when placed in the context of other related sources. More important, however, is the demonstration of the necessity for careful attention to the intangible element of style. Deviations from the norm, no matter how slight, should be carefully analyzed. They may well be directed at some unspecified variant source or problem. In the present case, it appears that the extant sources do indicate the nature of the editor's unstated, yet evident, concern.

Sotah, 3:4,5The Immediacy of Effect

It would appear logical that a woman who is unaffected by the ordeal is considered innocent of the proffered charges. This assumption is, of course, crucial to the very essence of the ordeal. A divine source for the determination of guilt or innocence can in no wise make the mistakes to which a human tribunal might be subject. However, in describing the dramatic effects of the ordeal on a guilty woman, the Mishnah states:

Sotah, 3:4,5 (pp. 278-280; 315-316)

- 1 איבה מספקת לשנות עד שפניה מוריקות ועיניה בולטות והיא  
 2 מתמלאת גידין, והם אומרים הוציאה שלא תסמא העזרה. אם יש  
 3' לה זכות הייתה תולה לה, יש זכות תולה שנה אחת, יש זכות  
 4 תולה ב' שנים, יש זכות תולה ג' שנים. מכאן אומר בן עזאי  
 5 חייב אדם ללמד את בתו תורה, שאם חטאה תודע שהזכות תולה לה...  
 6"ר"ט אומר אין זכות תולה במים המרים, ואם אתה אומר הזכות תולה  
 7 במים המאודין מדהה אתה את המים בפני כל הנשיים השונות ומוציא  
 8 אתה שם רע על הסהורות שפתו, שאומרים טמאת הן אלא שתלתה  
 9 להן זכות. רבי אומר הזכות תולה במים המאודים ואיבה יולדת  
 10 ואיבה טמאתה אלא מתנוובה והולכת לסוף היא טמאת באותה מיתה.

- 1 מספקת / ת מספקת. שפניה / ר שיהו פניה. 2 הוציאה /  
 א א 2 ב ז ס ל ב ו ע פ פ ק ר ת הוציאה הוציאה. 7 מדה  
 / אתה / אתה מודה. הטורות / י ג 65 פ ו וטותה. 8 ואיבה /  
 אבל איבה.

1. This declaration is probably made by those assembled to observe the ordeal. See Sotah 1:6 and Sifre quoted below, p. 218.

R. Simeon actually maintains that the dire consequences of the ordeal are of immediate effect. However, an anonymous opinion is recorded which suggests that the effects may be held in abeyance.<sup>1</sup> The mitigating factor is taken to be the ameliorating role of her merits which serve to suspend the immediacy of punishment.

This possibility is roundly condemned by R. Simeon who maintains that the fear of the ordeal would be minimized for other women who realize that a guilty woman apparently went unpunished.<sup>2</sup> Furthermore, the ordeal would never truly

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1. The debate is theoretical in the sense that no actual cases are offered as proof.

2. The presence of other women is assumed. See above, p. 143, n. 2. See, however, the formulation in Sifre Zuta (p. 239; 5:31) quoted below, p. 229 :  
 " כיון שהיתה יורדת מן המקדש היתה אומרת לחברותיה אל תמנעו מלחטוא ."  
 The point here stressed might be that without her admission the bystanders would not really know that the waters had no apparent efficacy; they would assume her innocence. This passage also makes clear that the problem is not simply that women will not fear the ordeal and will blithely drink rather than admit the truth, but that they will not be inhibited from adultery by the possibility of the ordeal. See, however, Rashi to Sotah, 6a, s.v. מרחת אתה . Perhaps this point is related to the variant readings " [ השותות ] גשים [ ושותות ] ."

confirm innocence since the claim could always be advanced that the supposedly innocent woman is, in fact, guilty, and is spared only as the result of extraneous factors.

Nonetheless, the concept of zekut tolah finds apparent support in the dictum of Ben 'Azzai, whose position seems to be based on it. Rabbi himself supports it and attempts to counter the cogent objections raised by R. Simeon.

#### Exegetical Source of Zekut Tolah

An analysis of this controversy necessitates the examination of its sources in Midrash Halaka. The Sifre<sup>1</sup> records its exegetical basis:

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1. Tosafot, 20b, s.v. וא מבי quote this Sifre as a corroboration of R. Hisda's position, T.B., 20b: "אמר רב חסדא דא מבי ר"ע היא דאמר מקריב לזוהתה ואח"כ משקה וזוכות סבר לה כרבון." However, the argument to be developed herein supports the opposite conclusion.

## Sifre, pp. 14-15 (#8)

- 1 מנחת זכרון, שמע אני זכות וחובה ת"ל מזכרת עון כל הזכרונות
- 2 שכתורה לטובה וזו לפורענות דברי ר' טרפון ר"ע אומר אף זו לטובה
- 3 שנאמר ואם לא בסמאה האשה אין לי אלא מזכרת עון מזכרת זכות סבין
- 4 ת"ל מנחת זכרון מכל מקום ר' ישמעאל אומר מנחת זכרון כלל מזכרת
- 5 עון פרט כלל ופרט אין בכלל אלא מה שפרט / אם אומר את כן לא
- 6 במצאת מדת הדין מקופחת / שהיה בדין לבעל הדין להלוק וכי איזה
- 7 מדה מרובה מדת טובה או מדת פורענות הרי אומר מדת הטוב אם מדת
- 8 פורענות שמעטת הרי היא מזכרת עון מדה טובה מרובה דין הוא שמהא
- 9 מזכרת זכות זאת היא מדה בתורה כל כלל ופרט שדרך הדין לוקה בו נתקיימר
- 10 זה וזה אל תלקה דרך הדין כיצד בתקיימו זה זהה אל תלקה דרך הדין אם היתה
- 11 סמאה פורענות פוקדתה מיד ואם יש לה זכות תולה לה / שלשה חדשים
- 12 כרי הכרת העובר / דברי אבא יוסי בן חנן ר' אליעזר בן יצחק איש
- 13 הדרוס אומר תשעה חדשים שנאמר ובקעה ובזרעה זרע מה זרע בן
- 14 תשעה חדשים אף זכות תשעה חדשים ר' ישמעאל אומר שנים עשר
- 15 חודש ואע"פ שאין ראיה לדבר זכו לדבר להו' מלא מלכי ישפך
- 16 עלך וגו' כולא מטא על בנוכבצר מלא לקצת ירחין תרי עשר ר'
- 17 שמעון בן יוחי אומר אין זכות תולה במים המרים אם אומר אתה
- 18 שהזכות תולה במים המרים המאירים מדהא אתה את המים בפני כל
- 19 הבשמים השותות ומוציא אתה שם רע על המהורות ששתו ויאמר סמאת
- 20 היו אלא שתלתה להם להם זכות רבי אומר אני אכריע אם היתה
- 21 שהורה סרפה למות כדרך בני אדם ואם היתה סמאה סרפה למות וצבתה
- 22 בטנה ובפלה ירכה רבי שמעון בן יוחי אומר וכי מי מודיע לכל
- 23 העומרים סוף זו למות וצבתה בטנה ובפלה ירכה אלא כיון שהיתה
- 24 פניה מוריקות ועיביה בולטות וכמין טרביסין היו מזרקין בה
- 25 והן אומרים מהרו והוציאה טלא תטמא העזרה.

- 2 שנחורה / ס חסר. ר' ישמעאל אומר וכו' / ס חסר. 5 - 6 אמ - מקופחת / כן הוא בירושלמי סוטה יח ע"ד ובמדרש רבה. 9 מדה בתורה / ר מדה טובה שכתורה. 11 פוקדתה / ס ל בודקתה. 12 יוסי / ל חסר ר בן יוסי. 13 הדרוס / הדרתי. 19 השותות / דר דשותות. 22 רבי / ד ורבי.

The question under consideration is the meaning of the remembrance implied in minhat zikkaron. Is it completely modified by mazkeret 'avon or does it signify a blanket remembrance of her actions, one that would include positive aspects as well? In other words, is the broader

implication of zikkaron nullified by the qualification of 'avon?

R. Tarfon maintains that it is, indeed, so negated, as opposed to R. 'Akiba, who holds that this is not the case.

The exact structure of R. 'Akiba's position is crucial to the history of the zekut tolak dispute. R. Naftali Berlin<sup>1</sup> raises the problem of the superfluity of the second half of R. 'Akiba's statement. Why is it necessary to again note minhat zikkaron as indicating the positive function of the remembrance if the reward spelled out in Numbers, 5:28 had already been cited?

Berlin attempts to resolve this difficulty by suggesting that R. 'Akiba is concerned with all possible results of the ordeal. In the case of innocence, she is assured that she will conceive. In the event of guilt, she will not be punished immediately by virtue of her merits. Hence, R. 'Akiba agrees with the position of zekut tolak clearly articulated by R. Ishmael.

Berlin cites a beraita in T.P. as proof that R. 'Akiba is responding to two concerns: the one the case

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1. Naftali Berlin, 'Emek, p. 49a.

of innocence, the other that of guilt. The beraita reads:

T.P., 18d (3:4)

1 תני רבי טרפון אומר כל הזכרונות שנאמרו בתורה לטובה חוץ מזו  
2 שהיא של פועלות. אמר לו רבי עקיבא אילו נאמר מזכרת עון ושחמ  
3 הייתי אומר כדבריו. והא איברו אומר מנחת זכרון אלא לטובה.

The fact that the beraita records only the second half of R. 'Akiba's response found in Sifre indicates that it stands alone as a self-contained answer. Hence, it must be interpreted in terms of zekut tolah.<sup>1</sup>

This interpretation of R. 'Akiba is not persuasive. In T.P. he is cited as responding directly to R. Tarfon and admitting basic agreement were only the sense of negative remembrance present in the verse. However, the corresponding

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1. 1. Note that Tosafot, 20b, s.v. הא מבי, quotes T.P. and identifies it with the Sifre. What is missing in T.P. is precisely the fact that R. 'Akiba defines the positive aspect in terms of an innocent woman. However, T.P. continues by citing another beraita in which this reward is spelled out. The juxtaposition is, at the least, suggestive. Horovitz, Sifre, p. 14, n. 17, maintains that the supposedly superfluous section ("אין לי... מכל מקום") is not part of R. 'Akiba's position but is actually an introduction to R. Ishamael's exegesis. This T.P. passage militates against such an interpretation.



minhat zikkaron must be taken as indicative of beneficent effect ( "אלא לטובה" ). The concept of zekut tolah cannot be read into this response. Indeed, in Sifre R. Ishmael's position of zekut tolah is presented after R. 'Akiba's response and it appears that R. 'Akiba is in no wise alluding to such a position.

Now, if we combine the Sifre and T.P. versions, it appears that R. 'Akiba is referring only to the case of innocence. T.P.'s "אלא לטובה" equals Sifre's "אך אזו לטובה" and is explained as referring to the case of genuine innocence.<sup>1</sup> In other words, "מזכרת עון" alone refers to guilt; there are no mitigating factors in the case of guilt. However, "מנחת זכרון" indicates that there is a possibility of positive memory. This occurs in the case of innocence.

In any case, the nature of the zekut is not understood by R. 'Akiba as good deeds partially offsetting the act of adultery. Rather, it refers to the case in which the woman is found innocent.

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1. The opening statement "סומע אני... עון" may stand in the same relation to R. Tarfon as the closing statement to R. 'Akiba. See also, Tosefta 1:10 in which R. 'Akiba refers only to such a case.

The Sifre then introduces R. Ishmael's approach which is rooted in his exegetical method of kelal uferat.<sup>1</sup> However, this approach raises a philosophical problem. How is it that her good deeds are ignored ( " מדת הדין מקיפות " )? It is in answer to this problem that the concept of zekut tolah is introduced. The concept of zekut tolah is developed only within the context of R. Ishmael's exegetical method.<sup>2</sup> The school of R. 'Akiba which did not employ this method has no need, indeed, in the person of R. Simeon, violently rejects the concept. R. 'Akiba himself does not incorporate it into his understanding of the verse.

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1. This method is, of course, rejected by R. 'Akiba. Sources may be found in Epstein, Tannaim, p. 527 . See, however, below, p. 296.

2. Aside from R. Ishmael, the Sifre indicates that R. Yose b. Hanin and R. Eliezer Ish HaDarom subscribe to zekut tolah. If the former reading is correct, the idea of zekut tolah precedes R. Ishmael. On the other hand, there are other readings. Note particularly Abba b. Yose. According to one variant we find such a person in Sifre: Numbers, pp. 47-48 (#42) who is concerned with a problem couched in " כיצד יתקיימו " terms. However, there are textual variants in that source. On R. Eliezer Ish HaDarom there is no other information and we may only speculate on the relation between his geographical appellation and the school of R. Ishmael, since many of R. Ishmael's students were from the South, as opposed to those of R. 'Akiba, who were from the North. In Sifre Zuta, p. 239 (5:31], quoted below, p. 229, we find R. Halaffa or R. Hilfi as well subscribing to this position: As to Ben 'Azzai, see below, p. 242.

R. 'Akiba's solution seems to have fairly good grounding in the description of the ordeal's effect ( "ונקמה" ( ונזרעה זרה" ), while the notion of zekut tolah is apparently ungrounded in the Biblical text. Why, then, does R. Ishmael not utilize R. 'Akiba's approach to solve the apparent paradox created by the varied implications of remembrance?

In fact, R. Simeon disparages this notion on the two grounds previously indicated. Rabbi then suggests a compromise that is based on the proposition that her manner of death would signal her guilt or innocence. R. Simeon would object to this as well. What of those who are present at the ceremony? How are they to know of her eventual fate? Hence, R. Simeon maintains that the effect is immediately visible if the woman is guilty, regardless of any merit she may have otherwise accrued.

Now, while the course of this disputation makes good logical sense, it presents a serious structural problem. It is extremely unlikely that R. Simeon would respond to a compromise position worked out by Rabbi.<sup>1</sup> To what, then, might his final remark be directed?

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1. In addition to the historical question of such a dialogue, the presentation of material does not seem to indicate a direct conversation. Note, also, that both Rabbi and R. Simeon share a common expression - " סוף זר למות ונזרעה זרה ונפלה לרבה ."

The Fate of the Woman

It may be that it should be understood in the context of the general question of the woman's fate. The Biblical verses do not, after all, spell out when the punishment takes effect. Furthermore, the nature of the malady with which she is afflicted would not be visible to others since it affects covered areas of the body. Finally, the Bible does not indicate that this malady will result in death.

Another Sifre passage states:

Sifre, pp. 24-25 (#21)

- |   |   |             |
|---|---|-------------|
| A | 1 וּבִקְהָהּ הָאִישׁ מֵעוֹן, שְׁלֵא יֵאמֵר אֱהִי לִי שֶׁהִרְגַתִּי בֵּת יִשְׂרָאֵל אֲוִי לִי<br>2 שְׁבִהוּלְתִּי בֵּת יִשְׂרָאֵל אֲוִי לִי שֶׁהִיִּיתִי מִשְׁמֵשׁ עִם הַטְּמֵאָה לִכְךָ בְּאִמֵּר   | 1<br>2      |
| B | 3 וּבִקְהָהּ. שִׁמְעוּן בֶּן עֲזָאִי אָמַר בְּשִׁהוּרָה הַכְּתוּב מְדַבֵּר הוּאִיל וְהַבְּיָאָה<br>4 עֲצָמָה לִיְדֵי דְבָרִים הִלְכוּ אִף הִיא לֹא תֵצֵא מִיְדֵי פִּוְרְעוֹת לִכְךָ   | 3<br>4      |
| C | 5 בְּאִמֵּר וּבִקְהָהּ הָאִישׁ מֵעוֹן / וְהֵאֵסָה הִיא תֵטֵא אֵת עֲוֹנָהּ / ר' עֲקִיבָא<br>6 אָמַר בֵּא הַכְּתוּב לְלַמְדֵּךְ שֶׁסּוּף זֶה לְטוֹת וְצַנְתָּה בְּטַבְּנָה וּבְפִלְהָ יִרְכֵה<br>7 לְמָה בְּאִמֵּר וּבִקְהָהּ הָאִישׁ מֵעוֹן כִּסְהֵאִים מְנוּקָה מֵעוֹן הָאֵסָה הִיא | 5<br>6<br>7 |
|   | 8 תֵטֵא אֵת עֲוֹנָהּ וְלֹא כְעֵבִין שְׁבִאֵמֵר לֹא אִפְקֵד עַל בְּנוֹתֵיכֶם כִּי<br>9 תִצְבִּינָה וְעַל כְּלוֹתֵיכֶם כִּי תִנְאֲפְנָה כִּי הֵם עִם הַזֹּנוֹת יִפְרִדוּ  | 8<br>9      |
|   | 10 וְעִם הַקְּדוּשָׁתַת יִזְבְּחוּ וְעִם לֹא יִבִּין יִלְבַּשׁ אִמֵּר לֵהֵם הוּאִיל וְאַתֶּם  | 10          |
|   | 11 רִוּדְפִים אַחֵר הַזֹּנוֹת אִף הַמִּים לֹא יִבְדְּקוּ אֵת בְּשִׁיכֶם לִכְךָ בְּאִמֵּר  | 11          |
|   | 12 וּבִקְהָהּ הָאִישׁ מֵעוֹן אֵת עוֹן הַהוּא.   | 12          |

1 אֲוִי - יִשְׂרָאֵל / מ חֶסֶר. 5 וְהֵאֵסָה - עֲוֹנָהּ / ד ל מ חֶסֶר.  
 12 אֵת עוֹן הַהוּא / ס מ חֶסֶר

It is clear that two opinions are herein expressed. The pericope opens with the view (A) that the verse discusses the case of a woman who is found to be guilty of adultery.

The likely reactions of the husband are noted and are laid to rest by the fact that the Bible absolves him of any sin. Ben 'Azzai<sup>1</sup> (B) disagrees with the interpretation of this verse as referring to an adulterous woman. He maintains that even a woman who was proved innocent will be subjected to punishment since her unseemly behavior is itself culpable. The conclusion of the pericope (C) is likewise based on the assumption that we are dealing with a guilty woman. The phrase "תשא את עוונה" is interpreted to mean that the end result of the malady is death ( "סוף זר למות וצנתה" ). "בטנה ונפלה ירכה" ).

Thus, it appears that the source for the woman's death relates to the Biblical statement " ונקמה האיש מעון" . Furthermore, we note that this position is formulated by R. 'Akiba, who states it as " סוף זר למות וצנתה בטנה ונפלה ירכה" . Finally, no mention is made here of the concept of zekut tolah and

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1. I will follow the standard reading and refer to Ben 'Azzai throughout. (In the Midrashim of R. Ishmael's school he is referred to by his full name. See E.Z. Melamed, Pirke Mabo, p. 172.) However, Lieberman, TK, pp. 627-628, presents extremely convincing evidence for a reading of R. Simeon b. Eleazar. See also below, p. 226, n.1.

even Ben 'Azzai does not refer to such a case but, rather, to one in which the woman is genuinely innocent.<sup>1</sup>

1. T.P., 19a (3:5) maintains that there is no difference between the concept of פורעניות and that of מחנורה. Both imply gradual deterioration. Hence, even a woman who appears to be slowly suffering is permitted to her husband. The comment in T.P. "ונקה האישה מעון אינו" חוטם שמא תלה לה זכות אף היא לא תחוש תלמוד לומר ודאסה הדיא תשא את עונה" may be a Tannaitic interpretation of this verse in the light of the zekut tolah position.

The Tosefta and beraita in T.P. require intensive analysis:

Tosefta, 2:3

1 ד' שמעון בן לעזר אמ' מסרם ר' מאיר סה ת"ל דאמרה האסה אמן / 2  
 2 / אמן, דאריה היתה זו לבוא עליה פורעניות גדולות מאילר,  
 3 שהביאה עצמה לירי ספק, אלא שניקל ביוולה סב' ונקתה, ונקתה  
 4 מכל פורעניות הראויות לבוא עליה.

1 מסרם ר' מאיר / א חסר. 2 אמן / הוסלם ע"פ א ד

T.P., 19a (3:5)

1 רבי שמעון בן אלעזר אומר אפילו סהרה ששמה סרפה סהיא סמה  
 2 בתחלואים רעים ספני סהכניסה עצמה למספק הזה סמרובה.

Lieberman, TK, p. 626, interprets ספק on the basis of the reading מספק in T.P. and adduces a number of examples in explaining מספק as danger. However, the reading of ספק makes perfect sense and appears to be correct. Indeed, one may wonder why a woman who places herself in "danger" should thereby be worthy of punishment. It is not the danger, but the actions which lead to it, that is the crucial factor, and it is her doubtful status created by these actions which is referred to as ספק. See, for example, Sifre, p. 10, l. 16; Tosefta, 2:5.

According to Lieberman, R. Simeon b. Eleazar as cited in Sifre and T.P. is expressing his own view that even the innocent woman will be subject to further punishments. However, in Tosefta he quotes the opposing view of R. Me'ir.

An examination of the Tosefta makes it clear that R. Me'ir's comment is based on Numbers 5:28, "ויום לא נסמאה"

It is, therefore, possible, that R. Simeon's response of "וכי מי מודיע" refers to R. 'Akiba's statement

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"ונקמה" . What is the meaning of "ונקמה" and why should the verse not have omitted it entirely? (Note that the next pericope in Tosefta is the exegesis of "ונודרעה זרע".)

The answer advanced by R. Me'ir is that it refers to the humiliation which she had to endure which now absolves her of further suffering. The phrase "פורענות" proves that it is the humiliations which are properly understood as the basic "פורענות". (Can this be a word-play on " ופרע את ראש האשה" which is the source for the humiliations?)

Therefore, despite the lack of any supporting variant, it may be that the Tosefta should be emended. Instead of quoting 5:22, "אמן אמן" the quote should be "ואם לא נכסמה". Perhaps the present text resulted from the previous citation of R. Me'ir (2:2) dealing with "אמן" of v. 22. (Note that the word ואם contains the same letters as ואמרה and אמן. Note also the reading which has only one אמן in 2:3 and the fact that in 2:2 these words are not joined together.) Even if the present reading is correct, the basic point of this exegesis is most properly relevant to Mishnah 3:4 as a comment on the fate of the innocent woman and should not be considered as a misplaced addition to Mishnah 2:5. See, however, Lieberman's explanation which may further explain Sifre 23, l. 17 (#19). See also Horovitz, ibid., n. 17.

If we do not assume these to be separate statements by R. Simeon b. Eleazar in the name of R. Me'ir, we may be dealing with an ambiguous comment that was further formulated in two opposing fashions. The original statement was along the lines of that found in Sifre. If the verse is discussing a guilty woman the husband's response might involve a number of regrets, including the fact of her humiliation ("אוי לי שנולתי בה ישראל"). However, if she were found innocent, only the fact of her humiliation would remain to trouble him. Hence, the Sifre states that her unseemly behavior made her deserving of this punishment (פורענות) and that the husband is innocent of blame. This interpretation of the Sifre limits the extent of the punishment to the humiliation already incurred.

that the malady results in death. R. Simeon actually reproduces the phrase "טסוף זר למות וצנתה בטובה.." in his response. He is concerned that the bystanders be immediately aware of the determination of guilt or innocence. The demonstration observable in her face yields such an awareness and is a portent of her imminent death.<sup>1</sup>

A variation of this approach would set his response as directed against the notion of zekut tolah, as this concept might be applied to the meaning of "תשא את עוונה". Hence, the phraseology is influenced by the context, but the target of R. Simeon's attack is specifically the notion of zekut tolah.<sup>2</sup> Indeed, the Sifre Zuta presents R. Simeon's

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However, this passage can also be understood as implying that future suffering is in store for the woman. "אף היא לא תצא מידי פורעניות" is of sufficient ambiguity to lead to two interpretations. Note also Horovitz's reference (p. 24, n. 20) to citations of this Sifre which refer it to "תשא את עוונה" (future suffering?) rather than to "ונקה האישים מעון" (past suffering?)

1. See above, p. 215.

2. This is the approach of GRA, who emends the text to read: "רבי אומר בא הכתוב ללמדך טסופה של זר למות באותה". Obviously, GRA has reinterpreted R. 'Akiba's position to square with that of Rabbi's and as reflective of zekut tolah.



response to just such an approach:

Sifre Zuta, p. 239 (5:31)

1 ר' יהודה אומר הרי ששתת ובמצאה סמאה אין בעלה חוטטת סמא  
 2 נסתרה פעם אחרת ובסמאה ולא היה יודע נה שנאמר ונקה האיש  
 3 מעון. - ר' חלפתא אומר הרי אשה ססתת.מים והיו בידיה זכיות י-  
 4 תלו לה לסעה ומביין שטרפן לבדקה אחר זמן אמרת והאשה היא  
 5 תשא את עונה. ר' שמעון אומר חלול השם היה בדבר שאילו לא  
 6 היו המים בודקין אותה על אתר כיוון שהיתה יורדת מן המקדש  
 7 היתה אומרת לחברותיה אל תמבעו מלחטוא כבר שתיתי ולא פגעו  
 8 בי המים דומה שאין בהן צורך כלל לכך נאמר והאשה היא  
 9 תשא את עונה מיד.

1 - 3 ר' יהודה - מעון / רק ג. 3 ר' חלפתא עד סה"ד / רק ט ג  
 9 מיד / ג מיד

R. Judah's opinion obviously corresponds with (A) in the previous Sifre. However, R. Halafta's<sup>1</sup> position is definitely not to be equated with that of Ben 'Azzai, since this position is obviously that "תשא את עונה" does not refer to an innocent woman. The extension (תשא?) of her punishment is based on the fact that zekut tolach.

R. Simeon reacts to this in extremely strong terms (חלול השם) and maintains that some aspect of the malady

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1. If the reading Halafta is accurate, then the concept of zekut tolach - although accepted in the main by R. Ishmael and his school - antedates R. Ishmael. However, note the reading of R. Hilfi.

must occur immediately. The objection is limited to the problem of the manner in which other women will relate to the ceremony.

### Implications of R. Ishmael's Position

This basic debate about the possibility of zekut tolah may be found in another connection:

#### Sifre, p. 23 (#19)

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|----|---|
| 1  | ואם לא בטמאה האשה וטהורה היא, ר' ישמעאל אומר וכי מי     |
| 2  | טמאה שהכתוב מסהרה ומה תלמוד לומר ואם לא בטמאה האשה      |
| 3  | וטהורה היא אלא מגיד הכתוב כיון שיבא עליה שם רע אסורה    |
| 4  | לבעלה רשב"י אומר לא תעלה על דעתך שהזכות תולה במים המרים |
| 5  | אלא אם לא בטמאה ואשה וטהורה היא למה נאמר לפי שהוא אומר  |
| 6  | ואיש אשר יבאף את אשת איש לא שטענו אלא בזמן שיש לה עדים  |
| 7  | והתרו בה שהיא במיתה יש לה עדים ולא התרו בה פטורה מן     |
| 8  | המיתה הראיל ופטורה מן חמיתה תהיה מותרת לבעלה אמרת ספק   |
| 9  | בבעלה ספק לא בבעלה אסורה לבעלה ק"ו לשבנבעלה ודאי אלא    |
| 10 | הרי היא בכלל שנאמר כי יקח איש אשה ובעלה.                |

Horovitz<sup>1</sup> notes two serious difficulties in this

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1. Horovitz, *Sifre*, p. 23, n. 9. Horovitz also notes the difficulty engendered by R. Simeon's explanation. Note the corresponding exegesis in *Sifre Zuta*, p. 237, which relates "טהורה" to the subsequent for the innocent woman. *Sifre Zuta* takes no note of the concept of zekut tolah but, rather, maintains that the reward is predicated on her innocence prior to the warning (לשעבר) and subsequent to the ordeal (לעחר). The other exegesis refers it to the offspring. The juxtaposition of R. Gamliel's position that a pregnant woman does not partake of the ordeal indicates that the case under discussion is one in which the suspected adulteress is pregnant. The question would then arise as to whether the unborn child should be accorded the status of mamzer.

pericope. On the one hand, R. Ishmael's statement appears, at best, superfluous. Surely, the exegetical point cannot be that a suspected adulteress is enjoined from relations with her husband until she undergoes the ordeal. This point had already been well established.<sup>1</sup> In addition, to what is R. Simeon objecting in raising his voice against the zekut tolah concept? This notion is apparently absent from the prior remark of R. Ishmael.

To solve the second problem, Horovitz emends the text to include a beraita which states: " וטהורה היא זר טהורה לא שתלת לה זכות". This beraita, which would be introduced by a " דבר אחר " opening, is purported to precede R. Simeon's objections. Thus, according to Horovitz, R. Ishmael's opening comment is unrelated to that of R. Simeon.

It may be possible to interpret this passage without resorting to an emendation. Crucial to its proper understanding is the context of the entire verse which concludes

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1. See Sifre, p. 12 (#7). R. Ishmael obviously agrees there with the proposition concerning her forbidden status. In addition, why would he express this concept in terms of " יצא עליה טט רע " rather than the simpler " כיון שבטתיה " ?

" This is interpreted in . וטהורה היא ונקתה וזרעה " Sifre and Sifre Zuta:

Sifre, p. 23 (#19)

1 ובזרעה זרע, שאם היתה עקרה בפקדת דברי ר' עקיבא אמר לו ר'  
2 ישמעאל אם כן ילכו כל העקרות ויקלקלו בשביל שיפקדו וזו שיש-  
3 בה לה הפסידה אלא מה תלמוד לומר ונקתה ובזרעה זרע שאם היתה  
4 יולדת בצער יולדת בריוח בנקות יולדת זכרים אחד יולדת שנים  
5 שחורים יולדת לבנים קצרים יולדת ארוכים ד"א ונקתה ובזרעה  
6 זרע להוציא את איילובית וטאיבה ראוייה לילד ד"א ונקתה  
7 ובזרעה זרע מפני שהיתה בכלל ויצתה לידון בדבר החדש  
8 החזירה הכתוב לכללה.

1 ויקלקלו / מ ל ויטמרו. 6 ד"א / ס רני אומר. 7 בכלל /  
מ בכלל כי מצא בה ערות דבר ושלחה. 8 לכללה / לכללה  
בפירוש שאם נקתה מותרת לבעלה

Sifre Zuta, pp. 237-238 (5:28)

1 ובזרעה זרע, ר"א אומר כדאי הוא הצער שינתן לה שכרה בניס  
2 שאם היתה עקרה בפקדת. ר' יהודה אומר היתה יולדת כעורים  
3 תלד באים, שחורים תלד לבנים, קצרים תלד ארוכים, בקבות  
4 תלד זכרים, היתה יולדת לטמי קבים יולדת בכל שנה, יולדת  
5 אחד תלד שנים שנים. ר' שמעון אומר אין בנותנים לעבירה  
6 שכי אלא לפי שהיתה אטורה לזרע לטעבד יוכל תוא כן  
7 לעתיד ת"ל ובזרעה זרע מותרת היא לזרע מעתה.

5 - 7 ר' שמעון - מעתה / רק ס ומדרס רבה.

1. I take this to be R. Ishmael as in Sifre. The two names frequently interchange, but my assumption is based on the analysis herein presented. The reading of this source found in T.B. Berakot, 31b, would shatter our argument, since it reverses R. 'Akiba and R. Ishmael, but the evidence appears against such'a reading. See the sources on this quoted by R. Naftali Berlin, 'Emek, p. 78a, s.v. דברי .

We have seen that R. 'Akiba maintains that there is a positive reward for the woman proved innocent.<sup>1</sup> R. Ishmael, on the other hand, finds the positive aspect to be the stay of punishment for the guilty woman. These positions are reflected in this passage.

R. 'Akiba states the reward to be that the barren woman shall become fecund. R. Ishmael objects that this will lead to an incongruous result - the woman who behaves chastely remains barren, while other women who act in an unseemly fashion undergo the ordeal and obtain the blessing of fertility. This challenge is stated in Sifre Zuta in more blunt terms, but it is nonetheless clear that the kilkul of Sifre is equivalent to the 'aberah of Sifre Zuta.

The Sifre then has R. Ishmael maintaining that the topic is a woman who had previously given birth who in the future will bear children in a more satisfactory condition and of a higher quality. However, it is obvious that something is amiss in the Sifre text, as this position would, of course, be open to the same challenge levelled

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1. The concept that posits a reward for the innocent woman above and beyond the lack of a deleterious effect from the ordeal is reflected in Sifre Zuta, p. 234 (#15): " נאמר כאן זכרון ונאמר להלן זכרון מה זכרון אמור למטן הושעה והטבה אף זכרון האמור כאן הושעה והטבה."

against R. 'Akiba. In Sifre Zuta, however, the problem is actually raised against both versions.

The Sifre presents two solutions which should now be seen as attempts to understand this verse from R. Ishmael's perspective. The first takes the verse to exclude those women who are incapable of bearing children. Since they do not meet the definition of כל דבר שהיה בכלל ויצא לידון, they may not participate in the ordeal. This is, in fact, the obverse of R. Ishmael's objection to R. 'Akiba, since many barren women are actually excluded from participation in the ordeal. The other possibility is that this verse functions to permit her once again to her husband. Hence, it is an instance of "

בדבר חרם אי אמה יכול להחזירו לכלל עד שיחזירנו  
הכתוב לכללו בפירוט<sup>1</sup> ."

The application of this principle indicates this to have been R. Ishmael's explanation of the verse, since this rule is endemic to his method of Biblical exegesis.

Now, if there is indeed a situation in which the

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1. Sifra, p. 2d. See Epstein, Tannaim, pp. 531-532.

fact of her actual guilt can be reasonably established and the lack of ill effects attributed to zekut tolah, then the woman may remain in her forbidden status. This is precisely what R. Ishmael attempts to delineate in his exegesis of " וטהורה היא ." He posits a case in which the woman emerged unscathed from the ordeal, but there yet remains a public conviction of her guilt. In these circumstances, R. Ishmael calls on the concept of zekut tolah to explain her present condition and stipulates that she is not to be considered pure but, rather, remains unclean to her husband.<sup>1</sup> R. Simeon, for his part, objects to zekut tolah and offers a different interpretation of the verse.

It should be stressed, however, that Horovitz's emendation is conceptually correct. The beraita is, in fact, a parallel formulation of R. Ishmael's point and so clarifies it by introducing the phrase zekut tolah.<sup>2</sup>

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1. Horovitz, ibid., quotes the Pesikta Zutra, whose understanding of R. Ishmael appears identical with the interpretation developed herein.

2. The beraita in T.B., 6b, may represent a conflation of two elements. On the one hand both the opinions of R. Simeon and R. Ishmael may be combined if we take the reference to witnesses to be identical with R. Simeon's view in Sifre. (R. Simeon's view may be further explained on the basis of the previous sugya, hence, the introduction of medinat hayam.) On the other hand, the meaning of zekut appears independent of the case of a woman subject to ongoing gossip. However, it might be that the case of gossip defines

From an exegetical standpoint, R. Ishmael is concerned with the disjunction created by the negative ( "ואם  
 לא בטמאה" ) and positive ( "וטהורה" ) statements, either one of which would seem to imply her total innocence of any wrongdoing. Therefore, he maintains that it is possible that the woman will appear to be innocent but will continue to be the subject of ongoing gossip as to her actions, which originally led to the ordeal. It is likely that she is actually guilty and hence, although undamaged by the water because of zekut tolah, should not be considered as טהורה.<sup>1</sup>

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the parameters of zekut tolah vis-a-vis a prohibited status even after the ordeal. Note that the question of gossip is somewhat tenuously linked to " טהורה היא ", giving it the appearance of a separate exegesis. In Ms. Oxford, it is linked directly to zekut tolah through the absence of " היא ". In T.P., 19a, (3:5) the case of gossip is missing from the beraita.

1. Our identification of " משיטתו ויתבו " with a post-ordeal time frame is shared by no other commentators. The general interpretation may be influenced by the use of this term in Sotah, 6:1, where it refers to a pre-ordeal situation.



R. Simeon objects to the very concept of zekut tolah. The concern here is focused on the fact that a woman who appears innocent may, in fact, be guilty. If that were the case, then every woman would remain suspect. Hence, R. Simeon argues, the very concept of zekut tolah is indefensible.

One problem still remains to be solved. Why does R. Ishmael prefer to introduce the notion of zekut tolah to explain the minhat zikkaron/mazkeret 'avon problem? Of course, it could be argued that R. Ishmael sought the application of the beneficent effect for the particular woman even though she is guilty. To speak, as R. 'Akiba does, of the positive effect of the ordeal only insofar as the innocent woman, is to fail to address the all-encompassing demands of justice, which require that even guilty parties be rewarded for their merits.

While this approach is convincing, we may now go one step further. R. Ishmael cannot limit the beneficent effects to the innocent woman for the simple reason that he does not admit of their existence. On the contrary, he strongly objects to such an interpretation of the ordeal's

effect.<sup>1</sup>

Rabbi incorporated R. Simeon's description of the immediate effect on a guilty woman in the Mishnah. However, he limits this to a case in which zekut tolah would not apply. To defend the principle of zekut tolah, he attempts to work out a middle ground which would not be subject to the penetrating objections raised by R. Simeon. The concept of her gradual deterioration is one which serves to preserve the concept of zekut tolah while solving R. Simeon's objections.<sup>2</sup>

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1. Of course, the reverse direction of influence may also be reasonably posited. To wit, it is specifically because he maintains the concept of zekut tolah that he requires a verse to return the case to the general category. It is not possible to release her from her prohibited status on the basis of having undergone the ordeal successfully. She may really be guilty, but is saved from immediate consequences only by zekut.

2. Why is Rabbi so concerned to defend this notion? Since no historical precedents of zekut tolah are cited, we may only speculate on his motivations. Perhaps the prevalent understanding of the ordeal as reflected in the lengthy "measure for measure" material of Chapter 1 is relevant. The notion of zekut tolah as developed in Sifre demonstrates a conceptual affinity to that of "measure for measure." Divine, unlike human, justice, must be perfectly matched to both the nature of the act and the qualities of the actor.

Summary

An analysis of the sources reveals the exegetical basis for the concept of zekhut toleh. Such an investigation suggests that this notion may have been the subject of intense debate stemming from serious exegetical differences between the schools of R. 'Akiba and R. Ishmael. The assumption of such a basic conflict serves to clarify a number of other sources as well as explain Rabbi's need to blunt the conceptual strength of R. Simeon's objections.

Sotah, 3:4Women and Torah Study

The principle of zekut tolah serves as the apparent springboard for a controversy<sup>1</sup> concerning the advisability of teaching Torah to women:<sup>2</sup>

Sotah, 3:4 (pp. 280-281)

- 1 מכאן אומר בן עזאי חייב אדם ללמד את בתו תורה, שאם תשתה  
 2 תדע שהזכות תולה לה. ר"א אומר כל המלמד בתו תורה ( כאילו )  
 3 לומדה תפלות. ר' יהושע אומר רוצה אשה בקב ותפלות מס'  
 4 קבין ופרישתה. הוא היה אומר חסיד סוטה ורשע ערום ואשה  
 5 פרושה ומכרת פרושין הרי אלו מבלי עולם.

- 1 טאם תשתה / ס חסיד, ת תססה. כאילו / א א 2 ו ד ז י כ ל ו  
 פ פ ק ר ת חסר. 2 ר"א / ס:ור'. 3 אומר / ר או'  
 מלמות, ( "מלמת" בסימן מחיקה ). 5 מבלי / א ב ג 45 ו  
 י כ ל מ נ ע פ פ ר ת מכלי.  
 1 תורה / ר תלמי' תורה

Logical and Literary Problems

This source is attended by a number of logical and literary problems. Primary among the former is the

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1. The notion of a punishment held in abeyance because of other merits is cited in Tosefta Sotah, 7:2, "כל עבירה שבהרה תולין לו שנים ושלישה דורות וזו לאחר". Nonetheless, its application to the ordeal is striking since the efficacy of the ordeal would seem to be logically related to the subsequent, immediate suffering of the guilty party. I can find no parallel to the concept of zekut tolah in the ordeal rituals of other societies. See above, p. 15, n. 1.

2. This topic has become most current in the twentieth century. The most recent summary of the debate and its sources is found in Mordecai HaCohen, Halakot VeHalikot (Jerusalem, 1975) pp. 235-260.

far-fetched reasoning employed to require the teaching of Torah to one's daughter. Ben 'Azzai's contention that such study is necessary in order that she be aware of zekut tolah seems like an attempt to swat a fly with an elephant. Indeed, the broad formulation " ללמד את בתו תורה " implies far more than the limited detail of zekut tolah.

In addition there are several weighty literary problems. First, is Ben 'Azzai himself the source of the requirement that women be taught Torah or is he merely providing the explanation for an earlier formulation? In other words, what is the nature of " <sup>1</sup>מכאן אמרו " What is the force of R. Eliezer's harsh term tifelut in this context? What is the relation between the statements of Ben 'Azzai and R. Eliezer? Is it to be taken as a dialogue or merely an editorial juxtaposition? A similar problem exists vis-a-vis the comments of R. Joshua concerning women. Is his remark independent of R. Eliezer's or is it related? If related, is it a further negative comment about women's interests and desires or does it somehow touch directly on the subject of Torah study? What is the relationship

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1. On " מכאן אמרו " see Louis Ginzberg, "'Al haYahas SheBen haMishnah VeHaMekilta" in Abraham Weiss and Louis Ginzberg, eds., Kobez Mada'i (New York, 1944) p. 70.

between the final quotation of R. Joshua and the prior material?

Clearly, the crucial question centers around the source for the requirement that women be taught Torah. Is it to be attributed to a statement of Ben 'Azzai? This hardly seems historically likely, as R. Eliezer would not respond to Ben 'Azzai.<sup>1</sup> It may well be that Ben 'Azzai merely sought to provide a source for an existing law that required the father to teach his daughter Torah. The import of " מכאן אומר בן עזאי " is but his specification of the case of sotah as a source for an older law.

Most readings in the Mishnah define Ben 'Azzai's contention as rooted in the principle of zekut tolah.<sup>2</sup>

1. Ben 'Azzai was a student of R. Joshua and, more importantly, R. 'Akiba. There is no indication that he studied with R. Eliezer or was involved in debate with him.

2. If this is true, note should be taken that the controversy is framed in terms of a universal obligation to teach all women Torah ( ללמד את בתן ). Thus, even should one accept R. Eliezer's opinion it is still possible to maintain that an individual woman who may wish to study Torah is allowed to do so. Indeed, this is the opinion of Maimonides in Mishneh Torah: Talmud Torah, 1:13, who distinguishes between the majority of women, who are incapable of Torah study, and those few who have the talent for such study. Maimonides' logic is explained by R. Moses Isserles in Perisha: Tur Yoreh De'ah (Jerusalem, 1966), v. 11, p. 180 (Ch. 246, n. 15). See, also, Haim Brovender, "Notes on the First Chapter of the Laws of Torah Education" Petach, v. 1, no. 1, pp. 18-21. See, however, below, pp. 248, n. 3. The expression " כל המלמד את בתו ..." is reminiscent of the ban against the study of Greek wisdom. Saul Lieberman, Hellenism in Jewish Palestine (New York: Jewish Theological Seminary, 1950) pp. 100-102 focuses on the formulation as indicative of its limitation to the teaching of children. A similar formulary phenomenon may exist in this case as well.

Now, as previously indicated, it would seem most far-fetched to require women to be taught Torah merely in order that she be aware of zekut tolah.<sup>1</sup> On the other hand, the broad formulation " ללמד את בתו תורה " implies far more than teaching the simple fact of zekut tolah.<sup>2</sup>

#### Ben 'Azzai's Source

The question has been raised as to whether the explanation of " טאם תסתה תוע טהזכות תולה לה " derives from Ben 'Azzai himself or is a later explanation of his statement. Perhaps Ben 'Azzai is pointing to the general fate of the guilty adulteress as reason for the necessity to teach one's daughter Torah. He may have felt that such study is the best safeguard against licentious behavior.

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1. Ironically, the major merit seen as protecting one from danger is the study of Torah. See the discussion in T.B., 21a. It would be most unlikely that Ben 'Azzai means to require Torah study only in order that it should protect the guilty woman who partakes of the bitter waters.

2. Rashi, ad locum, s.v. תוע appears to offer this interpretation. However, Rashi may be stating that her study of the laws of sotah is but part of a more general course of instruction.

Indeed, some Mishnah texts omit this explanation entirely. In addition, the very concept of zekut tolah appears to be rooted in a controversy between R. 'Akiba and R. Ishmael. As a student of R. 'Akiba, Ben 'Azzai may not have subscribed to its validity. Hence, it may well be that Ben 'Azzai's statement was not originally based on the notion of zekut tolah.<sup>1</sup>

Mark Angel<sup>1</sup> seeks to explain the Mishnah with the assumption that the term "torah" includes only the laws of soṭah. She should be made aware that zekut tolah is a temporary phenomenon and not imagine total escape from punishment to be possible. R. Eliezer maintains that if she is taught the laws of soṭah, including the principle of zekut tolah, she would take this as license for adultery. Aware of the possibility of evading immediate punishment, she may well imagine that total escape is also possible.

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1. Thus, the statement " טאם תשתה ... תולה לה " is essentially a gloss to Ben 'Azzai's statement. Of course, this gloss may itself be of Tannaitic origin.

2. Mark Angel, "Understanding and Misunderstanding Talmudic Sources," Judaism (Fall, 1977):439-441. See the bibliographic reference to Felix Kanter (p. 439, n. 8), for a fuller treatment along the same lines.



Angel's explanation, though admirable in its attempt to place this subject in context, must be rejected. First, it assumes that R. Eliezer maintains that the concept of the possibility of delayed punishment will lead to the notion of no punishment whatsoever. This assumption is most tenuous. Second, it fails to integrate or explain R. Joshua's position within this framework. Third, the term "torah" implies far more than merely the laws of sotah.<sup>1</sup> Fourth, it is historically unreasonable to assume that R. Eliezer is responding to Ben 'Azzai. Fifth, there is reason to doubt whether the concept of zekut tolah pre-dates R. Ishmael. Hence, the possibility that R. Eliezer's position is motivated by zekut tolah is most remote.

However, if we posit a putative ur-source which required that one's daughter be taught Torah, then it is to such a source that R. Eliezer's remark may be directed.

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1. T.P., 19a (3:3) maintains that Ben 'Azzai's opinion cannot be squared with that of R. Eleazar b. 'Azariah ("האנשים באין ללמוד ולהשיב באות לשמור"). However, a limited scope of the meaning of "torah" in Ben 'Azzai's statement would obviate T.P.'s position. Women are required to learn only the laws of sotah. As far as other topics are concerned, it is sufficient if they are but auditors.

Ben 'Azzai's source attribution should then be seen in light of both this hypothetical source and R. Eliezer's response.

Perhaps such a source existed within the context of the " מצוות האב על הבן " pericope in Tosefta Kiddushin which details parental obligations to one's son. The sources lack a similar formulation vis-a-vis obligations to one's daughter. Yet, there is a pronounced stylistic affinity between the statement " הריב אדם ללמד את בתו תורה " and the list of obligations to one's son. Hence, it may be that R. Eliezer's statement, preserved in Mishnah Sotah, is actually a reaction to a general requirement that women be taught Torah.

Support for this hypothesis of stylistic affinity may be adduced by a comparison of R. Eliezer's formulation with the following statement of R. Judah:<sup>1</sup>

Tosefta Kiddushin 1:11

1 ר' יהודה אר' כל שאינו שלמד את בנו אומנות שלמדו  
2 ליטעות.

His comment must be understood in terms of the two teaching roles assigned to the father: Torah and liveli-

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1. Tosefta Kiddushin, 1:11. This pericope may be a relatively early Tannaitic source since the reading in T.P. Kiddushin, 61a (1:7) has Rabbi 'Akiba adding the requirement of teaching the child to swim:

אר' ללמדו לטום במים  
On the relationship of R. Judah to R. Eliezer, see above, p. 207, n. 2. R. Judah's remark may well be based on R. Eliezer's formulation.

hood. A father who would neglect the latter to concentrate only on the former is leaving only the option of lisetut open to the lad.

Whatever the exact interpretation of R. Judah's remark, there seems to be a strong symmetry between it and R. Eliezer's statement. On the one hand, anyone who does not teach his son a trade actually teaches him lisetut, while one who does teach his daughter Torah teaches her (by commission) tifelut. Furthermore, the parallel formulations even to the rhyme of tifelut : lisetut<sup>1</sup> may further signify a relation between the two formulations.<sup>2</sup>

#### R. Eliezer's Position

What is the meaning of R. Eliezer's statement? The critical term tifelut is open to two interpretations.

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1. It would be a desideratum to establish the utilization of rhyme, particularly as a mnemonic device, in Tannaitic texts. See the commentary of R. Samuel b. Me'ir to Baba Kamma, 1:1, quoted in Tosafot Rabbenu Perez (Livorno, 1619), ad locum, s.v. הסור. This pattern would solve the problem in T.B. Nedarim, 2b, about the order of Nedarim, 1:1.

2. Jacob N. Epstein, Nusah, pp. 536-537, notes the parallel that in both Sotah and Kiddushin, T.B. emends the texts with the addition of "...[ה'] מלמד/מלמד".

It might simply mean that a woman does not have the intellectual capacity for serious study and, hence, any attempt to teach her is a fruitless enterprise. For her, Torah is ultimately incomprehensible.<sup>1</sup> On the other hand, it could be interpreted as licentiousness.<sup>2</sup> In other words, the primary question is not one of intellectual capacity or ability but, rather of the uses to which Torah might be put.<sup>3</sup>

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1. This is the interpretation offered by Maimonides in Perush HaMishnah, ad locum, and Mishnah Torah: Talmud Torah, 1:13. However, whereas Maimonides admits that this is not true of all women, Me'iri, Bet HaBehira: So'ah, ad locum, p. 46a, seems to accept no such limitation. The well-known statement " נָסִיחַ דַּעְתּוֹ קִלְרוֹ " (T.B. Kiddushin, 80b; Shabbat, 33b) is often taken as a similar affirmation of the intellectual inferiority of women. However, when examined in context, it actually implies only that women are less capable of controlling and/or hiding their true feelings and emotions. It has nothing to do with the innate intellectual ability of women. In fact, even as far as the emotional dimension is concerned, it does not indicate whether this is a result of nature or nurture. See A. Epstein-Halevy, 'Olamah Shel haAgadah (Tel Aviv, 1972), p. 249.

2. See the commentary of R. Obadiah Bertinoro ad locum, s.v. כָּאֵלּוּ מִלְמֶדָה . See, also, the commentary of Rashi as quoted by R. Abraham di-Butan, Lehem Mishneh: Talmud Torah, 1:13.

3. It should be stressed that R. Eliezer himself probably thought little of women's intellectual powers. See below, p. 250. There are some interesting biographical points in this debate. Ben 'Azzai may have never married at all. R. Eliezer, on the other hand, had two wives. (He married his niece late in his life, probably at the urging of his first wife, Imma Shalom. The assumption that this marriage occurred after her death may be based on a faulty text of T.P. Yebamot 13c (13:2), " אָמַר רַבִּי אֶבְרָהָם מִעֵשָׂה בְּאִמְרוֹ שֶׁל רַבִּי לִיעֲזָר שֶׁהִיחָה דְּוֹחָקָהּ בֵּן לְשֵׁאת אִתּוֹ " . The correct reading may be gauged from Leiden Ms. " . מִעֵשָׂה בְּאִמְרוֹ שֶׁל רַבִּי אִלְיָעָזָר " . The Venice reading may be a corruption of ...שֶׁל ( אִשְׁתּוֹ ) בְּאִמְרוֹ שֶׁל .

In the context of the Mishnah there is strong reason to adopt the latter explanation. R. Joshua's statement, whether or not it be directed to R. Eliezer, is clearly so framed in its distinction between tifelut and perishut. In addition, if R. Eliezer is responding to a putative source the relation of R. Judah's lissetut to tifelut would indicate that what is here involved is somewhat more reprehensible than a sterile educational experience.

This interpretation seems to meet the sense of R. Abbahu's <sup>1</sup> explanation of R. Eliezer:

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1. It is interesting that R. Abbahu provided his daughters with a Greek education. See T.P. Peah, 15c (1:1). We do not know what type of Jewish education they received. (Note the other reading attributing this to Raba.) The exposition here would seem to apply to men as well as women. See R. Joseph Karo, Kesef Mishneh: Talmud Torah, 1:13. Thus, it may be that this comment was not originally formulated in terms of an explanation of R. Eliezer.

T.B., 21b (pp. 300-301)

1 א"ר אבהו מ"ט דר"א, דכתיב אבי חכמה טקנתי ערמה, כיון  
2 שנכנסה חכמה באדם בנכנסה עמו ערמומית.

Clearly, R. Abbahu admits that women are capable of obtaining wisdom - the problem is the use to which such knowledge is applied.

On the other hand, it is likely that R. Eliezer himself believed women to be lacking in the intellectual capacity for Torah study. The evidence, though circumstantial, is significant:

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1. The force of this exegesis may consist of a word play on 'rm - craftiness: nakedness. Also significant is the conclusion of the verse in Proverbs 8 : 12,  
" ודעה מזמרת אפא."

T.P. Sotah, 19a (3:3)<sup>1</sup>

1 מטרונה שאלה את רבי לעזר מפני מה חס אחת נמעשה העגל והן  
 2 סתים בה שלש מיתות. אמר לה אין חכמה של אשה אלא בפילכה.  
 3 דכתיב וכל אשה חכמת לב בידיה טור. אמ' לו הורקנסו בנו  
 4 בשביל לא להטיבה דבר אחד מן התורה איבדת ממני שלש  
 5 מאות כור<sup>2</sup> מעשר נכל שבה. אמר ליה יטרפו דברי תורה ואל  
 6 ימסרו לבושים. וכשיצתה אמרו לו תלמידיו רבי לזו דחיתה.  
 7 לבו מה תשיב.

3 דכתיב / ר שרי"ר חסר. 4 ממני / שרי"ר ממנו.  
 6 דחיתה / ר שרי"ר דחיתה בקנה.

Taken at face value, his refusal to answer the woman's question is based on his low opinion of women's intelligence. But it is not that alone. Surely, R. Eliezer's strong statement condemning Torah to the flames rather than

1. T.B. Yoma, 66b, includes this story within its presentation of "שאלו את ר' אליעזר" passages. The woman is therein referred to as an ishah hakamah; a remarkable characterization in light of R. Eliezer's reaction. Of course, as the events following her departure indicate, the question raised was a good one.

2. This would amount to a fantastic amount of produce. On the use of "three hundred" in Tannaitic literature as an exaggeration designed to convey the sense of a staggering amount, see Tamid, 2:2, and Middot, 3:8. In T.B. Tamid, 29a, they are explicitly designated as exaggerations. (Note that Tamid, 2:2, actually speaks of "three hundred kor.") R. Eliezer's characterization of the outer limits of parental honor in T.B. Kiddushin, 32a, (note the "שאלו" form there and also in T.B. Kiddushin, 31a) takes on added significance in light of this exchange with his son.

allowing it to be transmitted to women<sup>1</sup> must mean that there is more at stake here than a mere inability to understand Torah.

#### R. Joshua's Position

The Mishnah continues with R. Joshua's comment to the effect that a woman is more desirous of tifelut than of perishut. Of course, this remark can be interpreted as meaning that women are more interested in regular sexual

1. Me'iri, Beit haBehira: Sotah, p. 46a, characterizes this statement as an exaggeration. Maimonides, Mishneh Torah: Talmud Torah, 1:3, draws a distinction in which he permits the teaching of the written but not the oral Torah to woman. This is probably based on the force of R. Abbahu's comment which is more directly aimed at the mental ingenuity employed in the study of the oral law. See Nedarim, 4:3, where it appears that mikra may be taught to woman. (However, see Tosafot Yom Tob, ad locum, s.v. ראת בנותי. A cursory analysis of this Mishnah would actually indicate that all subjects may be taught to the boy and girl; mikra is not the limit but, rather, the extension.) It may also be related to the interpretation of "בשים באות לסמוך" in the exposition of R. Eleazar b. 'Azariah in T.P. Sotah, 18b-19a, (3:4). Finally, the variant reading, "כל המלמד... תלמוד תורה" may be relevant and deserves further study. In the Mishnaic context it is possible to interpret R. Eliezer as concerned only with the oral law (zekut tolah). However, this expression by R. Eliezer is centered on a question about the written law and, more importantly, seems to refer directly to the written law.



relationships than in a higher standard of living.<sup>1</sup> However, such an interpretation fails to disclose a link between R. Joshua's and R. Eliezer's remarks other than the common word tifelut.<sup>2</sup> Furthermore, perishut simply means separation from her husband and has no relationship with the ishah perushah in R. Joshua's next remark, other than, once again, the common word.<sup>3</sup>

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1. Thus, this remark would carry no negative connotations as far as the question of intellectual capability. See Abbaye's utilization of it in T.B. Ketubot, 62b.

2. See Rashi, 21a, s.v. ירצה אשה, who tries to establish a relationship between the two.

3. See Epstein, Nusah, p. 1162, who doubts the attribution to R. Joshua since the " הוא היה אומר " introduction is found only in Tractate Abot. In fact, Ms. Munich lacks this phrase. While our argument is based on the relation between these statements, it may still stand even should Epstein be correct. Furthermore, even if the phrase is dropped it may well be a statement of R. Joshua. We know his attitude to the ultra-pietistic practices of the perushim of his day to have been negative. See Tosefta Sotah, 15:11. His remarks there are not without the same touch of ironic humor we may see in his response to R. Eliezer.

However, in such case there is an apparent disjunction in the use of the concept of perishut. R. Joshua's first comment seems to imply that this would be an admirable situation for women but that they have no interest in it. The notion of ishah perushah, on the other hand, seems to paint it in negative colors. The impression is gained that R. Joshua did not approve of perishut behavior. R. Joshua's usage of perishut as a negative phenomenon is further confirmed by his comment concerning makkot perushim.

It is possible to interpret R. Joshua as responding to R. Eliezer by admitting a touch of irony in his rejoinder. R. Joshua has a low opinion of the ishah perushah who may be an exceedingly pious but ignorant woman.<sup>1</sup> Her very lack of knowledge leads to foolish excesses in her religious behavior.<sup>2</sup>

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1. Essentially, this case would be the female counterpart to hasid shoteh. This appears to be the characterization of ishah perushah taken by T.B. in 22a, in its citation of betulah zalyanit in apparent explanation of ishah perushah.

2. T.P., 19a (3:3), characterizes her as one who makes cynical and demeaning remarks about the Torah. Albeck assumes that this refers to a learned woman who misuses her knowledge and cites as proof the parallel T.P. interpretation of makkot perushim. It could also refer to people who have insufficient understanding of their knowledge and, therefore, misuse it. For example, T.B., 22a, cites a beraita which places the reciters of Tannaitic material (tannaim) within this category.

Taken in this negative sense, R. Joshua's remark may be an ironic counter to R. Eliezer. A woman would rather have one measure of that kind of knowledge which R. Eliezer terms tifelut than nine-fold of super-piety rooted in ignorance. Therefore, R. Joshua may, in fact, favor the study of Torah by women.<sup>1</sup>

#### Ben 'Azzai's Statement as Response to R. Eliezer

Let us now return to Ben 'Azzai. Aware of a blank statement that women be taught Torah and R. Eliezer's objection thereto, he sought a source for the former that at the same time would counter the latter. What better response to R. Eliezer's contention than to point to the case of sotah? For it is the woman who studies Torah who will thereby become cognizant of the dangerous consequences of unseemly behavior. Thus, the attribution of the source

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1. See, also, T.P., 19a (3:3), which cites R. Joshua's approval of R. Eleazar b. 'Azariah's teaching which included " נשיים באות ליסמוע " as proof that he disagrees with Ben 'Azzai. Nonetheless, this position may entail far more than R. Eliezer's. In addition, a comparison of all versions of this story shows that R. Joshua was really giving his approval to the latter part of R. Eleazar b. 'Azariah's teaching which is concerned with the role of children. Parallel sources are cited by Tzvee Zahavy, The Traditions of Eleazar Ben 'Azariah (Missoula, 1977), pp. 135-143. Note also the variant " ... ירושע אומר מלמד דרצה אסה " ר " which is most interesting in its implication of disagreement with R. Eliezer. However, it is gramatically incorrect and crossed out in the manuscript (R). In addition, T.B.'s (22b) question which follows R. Abbahu's explanation of R. Eliezer begins "... ירבון " rather than " יבן עזאי " .

that women should be taught Torah as rooted in a case of tifelut itself, i.e., sotah, creates an apt response to R. Eliezer's strident opposition.

Finally, the Sifre quotes Ben 'Azzai as maintaining that even the innocent woman who partakes of the ordeal will be punished because of her unseemly behavior.<sup>1</sup> Inasmuch as tifelut may be taken as unseemly behavior and not as actual intercourse, Ben 'Azzai's position that even such behavior will not escape punishment is important to bear in mind. In any case, it is the knowledge of Torah alone which most effectively discourages this type of behavior.

Thus, " מִכַּאן אוֹמֵר בֶּן עֲזַאִי " may refer to the fate of the sotah in a broader perspective than that of zekut tolah.

#### Summary

This analysis, proceeding from a literary-logical approach to the text, has raised questions concerning the

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1. Sifre, p. 24, l. 20 (#21). Quoted above, p. . This point is somewhat tenuous, since there is good reason to attribute the statement to R. Simeon b. Eleazar rather than Ben 'Azzai. See above, p. 226, n. 1.

history of the development of the law concerning women's study of Torah. The proposed solution differs radically from the common approach in that it suggests the existence of a source requiring that women be so taught; the probability that such a source ante-dated both R. Eliezer and Ben 'Azzai; and the possibility that R. Joshua's remarks may actually run counter to the position espoused by R. Eliezer.

The total lack of parallel material which might shed light on these problems results in a failure to arrive at firm solutions. Thus, the analysis of this source must perforce be in the nature of hypothesis and any conclusions seen in such terms. This hypothesis is itself based on the assumption that the editorial process underlying Mishnah composition is one in which sources are woven together to comprise a unified whole.

Sotah, 4:1-4Order of Mishnah

The fourth chapter is primarily concerned with a listing of those cases in which the woman neither partakes of the ordeal nor is entitled to her marriage settlement. A cursory study initially suggests that the various cases have been culled from different sources and have been juxtaposed to form a single unit:

Sotah 4:1-4 (pp. 1-5)

- 1 ארוסה וטומרת יבם לא שותת ולא נוטלות כתובה, שנאמר אשר
- 2 תטסה אשה תחת אישה פרט לארוסה ושומרת יבם. אלמנה לכהן גדול,
- 3 גרוסה וחלוצה לכהן הדיוט, סמזרת ובתיבה לישראל, ובת
- 4 ישראל לסמזר ולבמהדן לא שותת ולא נוטלות כתובה. ואלו
- 5 לא שותת ולא נוטלות כתובה האומרת סמאה אני, ושבאו לה
- 6 עדים שהיא סמאה, והאומרת איבי שותה. אמר בעלה איבי מסקה, וש-
- 7 בעלה בא עליה בדרך, נוטלות כתובה ולא שותת. מתו
- 8 בעליהן עד שלא שמו בש"א נוטלות כתובה ולא שותת, ובה"א
- 9 או שותת או לא נוטלות כתובתו. מעוברת חבירו ומניקת
- 10 חבירו לא שותת ולא נוטלות כתובה, דברי ר"ם. וחכ"א יכול
- 11 הוא להפריסה, ולהחזירה לאחר זמן. איילובית וזקיבה
- 12 ושאיבה ראויה לילד לא נוטלות כתובה ולא שותת, ר"א אומר
- 13 יכול הוא ליטא אשה אחרת ולפרות ולרבות הימנה. ושאר כל
- 14 הבסיס, או שותת, או לא נוטלות כתובה. אשת כהן שותה
- 15 ומותרת לבעלה. אשת סריס שותה. ע"י כל עריות מקביו, חוץ מן
- 16 הקסן, וממי שאיבר איס.

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- 3 גרוסה וחלוצה לכהן הדיוט / מ חסר. גואלו / א כ ק פ ת ב ז
  - אלו. 5 לא שותת / א שלא שותת. 6 אמר בעלה איבי
  - מסקה / מ וא' בעל' אני מסק' ושבעל' איבו רוב' להשקות'.
  - 7 ושבעלה / ז מפבי שבעלה. 9 או שותת או לא נוטלות / ו שותת
  - או לא נוטלות, ש לא שותת ולא נוטלות. 15 עריות / א מ ר ק
  - ז פ ת ב ז א י ב ס כ העריות, מקביו / ק פ ומקבים. 16
  - וממי / ז ממי:

Indeed, Tosafot<sup>1</sup> have raised the question as to why the Mishnah's cases are arranged in their present order instead of in a rational fashion in which cases of a similar nature are integrated into a single unit. Furthermore, all the cases should be introduced with a general statement of " לא שרתות ולא בןטלרת כתרובה .".

An analysis of Mishnah's order reveals that, with one major exception, there is, in fact, a logical order to the presentation of the material. The editor has herein juxtaposed separate units and, hence, the consistent repetition of the phrase " ... לא שרתות ולא בןטלרת .". However, the arrangement of material does seem to follow a logical order.

The Mishnah (4:1) opens with the proposition that only full-fledged marital bonds can result in the ordeal. Thus, the betrothed woman or the one awaiting the levirate are excluded. This is followed by the proposition that even a full marital bond which involves a transgression of law is also excluded from such participation.

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1. T.B., 23b, s.v. אלתנה and 24a, s.v. ושאר .

The Mishnah (4:2) then points to cases in which exclusion from the ordeal is dependent on external factors rather than her personal status. Thus, her refusal to drink or witnesses to her defilement automatically cancel the possibility of the ordeal and cost her the marriage settlement. However, external factors attributable to the husband's actions do not result in loss of the settlement. The question of whether the action on his part must be deliberate is the subject of a debate between the Houses.

The Mishnah (4:3) then records cases in which the marriage was illegal but binding. However, this illegal status is of a lesser degree than in the case of 4:1, since it is of rabbinical enactment<sup>1</sup> and is of a passing nature. In this case there is a debate as to whether she may participate in the ordeal. The next category in the Mishnah is one in which there is no transgression whatsoever in the marriage itself; however, there is a problem in terms of her status as far as the ordeal, since her infertility may render her unfit for the ordeal. Here, too, there is a debate as to this point. Finally, the Mishnah specifically singles out instances in which there might have been grounds

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1. Although haluzah is also of rabbinical prohibition, it is often grouped with gerushah. Cf. Makkot 1:1.



to obviate the possibility or effects of the ceremony and dispels any such notion.<sup>1</sup>

This presentation makes it obvious that the primary offense against the order is engendered by 4:2. Indeed, as Epstein notes,<sup>2</sup> its introduction with the phrase "ואלו לא פורתא" makes it appear as if this unit is completely independent of and does not reckon with the first unit.

Epstein appears to suggest two solutions to the problem.<sup>3</sup> First, he notes that the question of whether those of unfit marital status partake of the ordeal is a matter of dispute between R. Eleazar b. Simeon and others.<sup>4</sup>

1. The final cases of the Mishnah (4:4-5) fit neatly into this scheme as well. Having spelled out the scope of the ordeal vis-a-vis the suspected adulteress, the Mishnah indicates its scope as far as possible paramours to be singled out for kinnui. It then turns from the suspected couple to the hūsbānd, who must enjoin their seclusion. Is the power of kinnui limited to him alone or may the court act in loco uxoris?

2. Epstein, Tannaim, pp. 409-410.

3. I am unsure as to whether Epstein really suggests the first solution as the text is unclear in its terseness. As to the second solution, Epstein himself indicated his doubts with a question mark.

4. See Sifre Zuta, p. 238 (5:29).

The pericope beginning "וְאֵלֶיךָ" (4:2) must reflect the opinion of those who oppose R. Eleazar b. Simeon and maintain that the former cases recorded in 4:1 do partake of the ordeal.

Such a solution is most unsound. The opening pericope of the betrothed woman is not a subject of dispute, yet would be apparently so considered by the "וְאֵלֶיךָ" pericope.<sup>1</sup> Hence, the implication of an unintegrated structure would still prevail.

#### Emendations in Mishnah

Epstein attempts another solution - one which involves a major emendation of the text. He cites T.P.:

#### T.P., 19c (4:1)

אִדוּסָה וְשׁוֹמֵרֶת יָבֵם כֹּרֵ.	1
הָאִישׁ אֶת אִשְׁתּוֹ אֶל הַכֹּהֵן. וְלֹא יִקְבָּא לָהּ. הַתּוֹרָה אָמְרָה וְקָבָא	2
אֶת אִשְׁתּוֹ. וְקָבָא אֶת אִשְׁתּוֹ אֶפְיָלוּ מִקְצַת אִשְׁתּוֹ. מִחֻבִּיתָא דְבֵית	3
שְׁמַאי. דְּבֵית שְׁמַאי אֹמְרִי' בּוֹטְלֵת כְּחֻבֵּתָהּ וְלֹא שִׁרְתָּהּ. אִמְרַ	4
רַבִּי יוֹסֵי חֲמֵן טַעְמִיהוּ דְּבֵית שְׁמַאי אֹמְרִים הֵבִיא לִי בַעֲלִי	5
וְאֵבִי שִׁרְתָּהּ. בְּרַם הֵכָא יוֹדַעַת הֵייתָ שְׂאִין אִדוּסָה שִׁרְתָּהּ	6
לְמָה הַכְּבִיטָה עֲצָמָה לְמַסְפֵּק הַמְדוּבָה הַזֶּה בְּסָכִיל לְפִוְסָהּ	7
מִכְתוּבָתָהּ.	8

3 וְקָבָא אֶת אִשְׁתּוֹ / ר' חֲסֵר.

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1. The dispute of R. Josiah and R. Jonathan (T.B., 24a) concerns only the case of the woman awaiting the levirate.

Now, Bet Shammai's position is one that would grant her the marriage settlement even when she does not undergo the ordeal. How, then, is it possible to identify the Mishnah which explicitly denies her the settlement with the opinion of Bet Shammai? Epstein concludes, therefore, that the original reading in the Mishnah must have omitted " וְנוֹטְלוֹת כְּתוּבָה ".

Epstein takes this one step further and theorizes that in the case of a widow married to a high priest the reading of " לֹא נוֹטְלוֹת כְּתוּבָה " should also be deleted. Hence, the case of " וְיֵאלֶוּ לֹא שְׂוִתוֹת וְלֹא נוֹטְלוֹת כְּתוּבָה " in 4:2 is an apt continuation. The first Mishnah dealt with cases in which the ordeal is obviated but in which the woman is, nonetheless, entitled to the marriage settlement. The next pericope is introduced by "וְיֵאלֶוּ" to indicate its marked difference from the prior cases as far as the question of the marriage settlement.

Epstein supports this rather startling emendation by a citation from Ketubot, in which the Mishnah clearly states that a widow married to a high-priest is, in fact, entitled to the marriage settlement.<sup>1</sup> However, the proof is unconvincing, since Rashi has adequately explained the

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1. Ketubot, 11:6.

reason for the distinction between the Ketubot and Sotah cases.<sup>1</sup>

Epstein's proof from T.P. as far as the first case of the betrothed woman and the one awaiting the levirate is also most tenuous.

T.P. does not, in fact, state that the Mishnah accords with Bet Shammai, but actually raises the question as to whether it can be squared with Bet Shammai. In other words, is there any reason which would result in Bet Shammai's acceptance of "לא נורטלת כתיבה" in this case?<sup>2</sup>

Indeed, an analysis of T.P. is in order, since Halivni has also cited it in support of another emendation based on a series of putative difficulties with the Biblical source cited as a proof-text.<sup>3</sup>

Halivni quotes a number of sources which appear to indicate a different Mishnah text vis-a-vis the Biblical proof text. T.B. quotes the following beraita:

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1. T.B., 24a, s.v. ולא נורטלת כתיבה .
  2. See the commentary of Pene Moshe, ad locum, s.v. מתניתא . There is no need for the emendation "מתניתא" found in Korban 'Edah, s.v. ה"ג .
  3. Halivni, Mekorot, p. 450.

Sotah, 24a (p. 7)

- 1 תחת אישך, פרט לארוסה, יכול שאבי מוציא אף שומרת יבם,  
 2 ת"ל איש איש, דברי רבי יאסיה. ר' יובנן אומר תחת  
 3 אישך, פרט לשומרת יבם, אוציא שומרת יבם ולא אוציא את  
 4 ארוסה, תלמוד לומר אשר תטטה אשה תחת אישה, פרט  
 5 לארוסה.

2 איש איש / ו איש.

Whereas the Mishnah had derived the law from the expression " תחת אשה " in Numbers, 5:29, the beraita requires both 5:29 and 5:19 (" תחת אישך ")<sup>1</sup> to exclude both instances.<sup>2</sup> However, the Talmud does not raise this obvious contradiction.

The talmudic treatment of this Mishnah in T.B.

Kiddushin is also puzzling:

Kiddushin, 27b

- 1 והתבן ארוסה וסומרת יבם לא שותרת ולא נוסלות  
 2 כתובה מאי טעמא תחת אישך אמר רחמנא וליכא.

1. The expression "תחת אישך" actually occurs in Numbers, 5:19 and 5:20. It is impossible to determine which usage is the anchor of this exposition. Its dual appearance is, in fact, the basis of the T.P. passage quoted below, p.

2. Cf. Sifre, #20, p. 24, in which the dispute centers around 5:12, " איש איש כי תטטה אשתו "; to wit, is the verse to be seen as inclusive (so R. Josiah who focuses on "איש איש") or as exclusive (so R. Jonathan who focuses on "אשתו"). R. Jonathan does not introduce another " תחת " passage in order to exclude yebamah but, rather, addresses himself directly to R. Josiah's proof-text.

The Talmud asks " מאי טעמא " despite the fact that the Mishnah itself explains the scriptural derivation. Furthermore, the source actually cited is Numbers, 5:19 rather than 5:29, which the Mishnah presents.

Finally, T.P.'s discussion is also seen as relevant since it raises the question "וישקינה" despite the Mishnah's explanation. It then cites Numbers, 5:15 (" והביא האיש ויהביא אתו ") rather than 5:29.

On the basis of these sources, Halivni suggests that the original Mishnah formulation was lacking in a proof text and that such entered the Mishnah subsequent to the Talmudic discussions.<sup>1</sup> In support of this argument, he notes that the citation of this Mishnah in another context is totally lacking the proof text:

T.B. Yebamot, 58a

1 רהא תנן ארוסה ושורפת יבם לא סתמות ולא בוסלות  
2 כתרובה אלא דקמי לה ...

However, this hypothesis is rather weak. In the Yebamot pericope the Mishnah is quoted in order to make a specific point that is unrelated to the Biblical source.

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1. Of course, the question still remains - why were both texts cited by the Talmud not utilized?

Hence, there is no need to present the entire Mishnah; the relevant section, the basic law itself, being sufficient.

The question " מאי טעמא " in Kiddushin may well be an insertion in the Mishnah.<sup>1</sup> It functions to bolster the question therein raised and is merely part of the sugya flow.<sup>2</sup>

The beraita in T.B. which has both verses as the source of exclusion rather than Numbers, 5:29 alone is also not problematic. Although R. Jonathan requires two separate exclusions, the fact remains that they are formally identical - "תחת אישך" and "תחת אשה" are indistinguishable.<sup>3</sup> It may be surmised that the context of this discussion was based on R. Josiah's comment on Numbers, 5:29 and R. Jonathan's rejoinder thereto.<sup>4</sup> R. Jonathan accepts "תחת אישך" as

1. See above, p. 199, n. 1.

2. The pericope in Kiddushin continues, " אלא דקני לה כשהיא ארוסה ובסתרה כשהיא ארוסה וקא משקי לה כשהיא בטוהא . מי ברקי לה מיה רוקה האים מעון אמר רחמנא בזמן שהאים מוקה אמר רחמנא " Here, too, the " אמר רחמנא " is probably an insertion into the beraita serving much the same function.

3. E.g., in T.B. Kiddushin, 27b, the question concerns the betrothed woman and the Talmudic citation is "תחת אישך" rather than "תחת אישה" cited by both the Mishnah and R. Jonathan as relevant to this case.

4. See the previous debate between them on the beginning of this verse in Sifre, p. 24, and see below, p. 298.

indicating exclusion; however, by the same reasoning, "תחת אשה" must be similarly understood. Thus, both cases are based on an exclusion which is repeated twice although it represents a single logical concept. The Mishnaic quotation of "תחת אשה" is not a different source, but actually indicates the nature of the exegesis. However, the Mishnah could have quoted "תחת איסור" as well. The key point is that their conceptual congruence and formal parallelism obviates the necessity to quote both sources.

#### Transfer of Material in T.P.

Finally, the T.P. passage which seems to confirm Halivni's position is in and of itself most problematic. It utilizes "אשתו" in contradictory fashions. On the one hand, the term is taken to exclude a woman not bound in complete marriage ties while, at the same time, it is taken in the opposing sense as including such a one. Furthermore, what is the meaning of "רקבא את אשתו וקבא את" R. David Fraenkel takes it as referring to the two times the phrase is found.<sup>1</sup> R. Moses Margoliot<sup>2</sup> interprets it as an exegesis on "את" which is

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1. Numbers, 5:14 and 5:30. It is found twice in the first verse alone and it is probably to this verse that the reference is made. This is, of course, the position of the Korban 'Edah, ad locum, s.v. וַתִּשְׁבַּע וְקָבָא .

2. Pene Moshe, ad locum, s.v. וְקָבָא אֶת אִשְׁתּוֹ . This explanation is most difficult inasmuch as the key word "את" appears as well in "וְהָיָה אִתּוֹ אִשְׁתּוֹ" .



utilized to encompass an inclusion of partial marriage bonds. In a subsequent passage, T.P. raises the following question:

T.P., 19c (4:1)

1 רבי יודה בעי כמה דתימר תמן וקנא את אשתו. וקנא  
 2 את אשתו אפילו מקצת את אשתו. ודכורתה תחת אישך  
 3 אפילו מקצת אישך.

2 מקצת את אשתו / ר מקצת אשתו.

Of course, this question militates against the latter explanation, since "את" is not to be found in this verse.

It is more significant, however, that R. Judah's query indicates that "תחת אישך" is, in fact, the source for the exclusion of the betrothed woman and that R. Judah had such a Mishnaic text. T.P. is not suggesting a totally new derivation of "והביא האיש את אשתו". What then are we to make of the "ויסקיבה ... והביא" pericope?

The Mishnah<sup>1</sup> states that under certain circumstances, the court may act as a surrogate in enjoining the woman from questionable conduct. However, there is no possibility of her undergoing the ordeal should she fail to heed the warning. T.P. raises the following question in this connection:

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1. Sotah, 4:5.

suggestion would solve the implication of "ויסקיגור" which, attached to 4:1, led Halivni to his conclusion vis-a-vis the proof-text in the Mishnah. Similarly, the subsequent passage which indicates the relationship of the Mishnah to a "תחת איסור" framework would no longer pose a contradiction.

Further analysis of the formal structure of T.P. suggests the possibility of another transfer as well. The pericope dealing with the Mishnah's relation to Bet Shammai appears to interrupt the obvious connection of R. Judah's question with the exegeses of "אשתו". Now, the fact that it is so clearly misplaced might well indicate that it entered the T.P. text on the basis of a marginal reference to its original locus. Indeed, an almost identical sugya appears in another context:

T.P. Ketubot, 33b (9:7)

- |   |  |
|---|--|
| 1 | תני יורם שפגם אביו שטר חורבו הבן גובה שלא בשנועה...  |
| 2 | ר' הוסיעיה בעא מתגייתא דבית שמאי דב"ס אומרים         |
| 3 | בוסלת כתובתה ולא שותה אהר רבי יוסי תמן טעמא דבית שמ- |
| 4 | אי הניאד בעלי ואבי שותה ברם הכא בדין היה אפילו אביו  |
| 5 | לא יטבע תקנ' תיקנו בו שיטבע ...                      |

Except for the reworking of the final point, the pericopae are identical. In addition, the Ketubot parallel is most

T.P., 19d (4:5)

1 אילן שבית דין מקבין להן כו'. בני ישראל ויקנא ויסקינה.  
 2 גזירת הכתוב היה והביא האיט את אשתו אל הכהן. ולא  
 3 יקנא לה. התורה אמרה ויקנא את אשתו. וקנא את אשתו  
 4 אפילו מקצת אשתו.

1 בני ישראל ויקנא ויסקינה / ר ת"ל בני ישראל ויסקינה.  
 2 ויקנא את אשתו (2) / ר חסר.

In this context, it is the " ולא יקנא לה ... מקצת אשתו " pericope which is problematic, whereas the basis of kinnui is derived from " <sup>1</sup> The question " לא " does not follow from the prior point which makes reference only to the ordeal. Even more problematic is the answer to this question. First, " וקנא את אשתו " can in no wise be construed as the source for the efficacy of the court's kinnui. Secondly, the reference to partial marriage bonds (" מקצת אשתו ") is irrelevant since we are not dealing with such a case. Thirdly, T.P. had already cited " בני ישראל ויקנא " as the source for this law.

It would, therefore, appear that the texts under consideration may evidence transfer of material between the pericopae. Actually, only the question " ולא יקנא " is relevant to Mishnah 4:1 and only " ויסקינה " to 4:4.<sup>2</sup> This

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1. Numbers, 5:11, 14. Cf. Sifre Zuta p. 233, ll. 3-6, which utilizes this same source. Sifre, p. 24, ll. 6-8, bases the law on "אשה תחת אשה" of Numbers, 5:29. Perhaps the logic behind the Sifre is that 5:29 makes no mention of the husband's role, hence should be taken as a case separate and distinct from 5:30 which spells out his own act of kinnui.

2. In fact the question of " ויסקינה " as applied to the case of the court's kinnui is paralleled by the beraita cited in T.B. 27a, א יכול אף להטקתו ת"ל והביא kinnui "האיט את אשתו". Cf. also, Sifre, #20, p. 24.

important since it identifies the interlocutor to whom R. Yose is responding and clearly indicates that the phrase "מתניחא דב"ש" should be taken not as a definitive statement but, rather, as a question ("ר' הוסיפיה בעא"). Thus, it provides further proof against the use of the Sotah pericope as a support for Epstein's emendation.

#### Mishnah Order and Dispute of Houses

Let us return to the basic question. In such a well-organized presentation, why is the flow interrupted with the material of 4:2? It may be that the clue is to be found in the conclusion of 4:2 which presents the argument of the Houses in the case of the husband's death before the application of the ordeal.

Now, this case is a conceptual extension of the previous ones in which the husband purposely abrogated the ordeal. Thus, it may be that the basic flow of the Mishnah was to move from the cases in 4:1 to that of the husband's death. Of course, its placement here follows a logical development from partial marital bonds; complete, but illegal bonds; to, finally, complete bonds interrupted before the ordeal. However, this scheme breaks down in light of the subsequent cases which return to the theme of illegal bonds.

However, viewed formally its position is logical. The Mishnah first records cases in which there is no record of dispute.<sup>1</sup> The case of the husband's death is the first of a series of disputed cases. Its precedence is attributable to the fact that the dispute of the Houses is of earlier origin than the other disputes recorded.

Our argument that all the cases introduced by are quoted because of the logical relationship between the last two instances and the dispute of the Houses must still deal with two problems. First, the introduction of "גאלי" still implies a lack of integration with the prior cases. Second, the argument of the Houses would necessitate only the cases in which the husband negated the possibility of the ordeal and in which she receives the marriage settlement. Yet, the pericope is introduced with a formula and a series of cases in which the ordeal's abrogation is due to her actions and in which she does not, in fact, obtain the marriage settlement.

#### Transfer of Material in Mishnah

The solution to this problem may lie in positing

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1. Of course, as indicated above, pp. 261-262, there are disputes in these cases. However, the point herein is that the Mishnah does not record these disputes.

yet another transfer. This list of cases appears in two other contexts in Sotah:

Sotah, 1:3 (p. 55)

- 1 ואלו אסורות מלאכול בתרומה והאומרת טמאה אני לך  
 2 ושואר עדים שהיא טמאה והאומרת איני שותה  
 3 ושבעלה אינו רוצה להשקתה ושבעלה בא עליה בדרך.

- 1 ואלו / א מ פ ד ת נ ט א ב ן אלו. 3 ושבעלה  
 אינו רוצה להשקתה / מ או טאי' בעל' רוצ'  
 להשקתה.

Sotah, 3:6 (p. 317)

- 1 ואלו שמנחותיהן נשרפות, האומרת טמאה אני לך, ושואר  
 2 לה עדים שהיא טמאה, והאומרת איני שותה, ושבעלה  
 3 אינו רוצה להשקתה, ושבעלה בא עליה בדרך.

- 1 ואלו / ג ז י ל פ אילו. 3 ושבעלה (2) / ז  
 מפני שבעלה.

The first (1:3) and last (4:2) instances of this list each appear to be somewhat out of place in that they interrupt the general flow of Mishnah material.<sup>1</sup> In addition, the first case presents some conceptual difficulty.

1. An analysis of Maimonides' presentation of the law in Mishneh Torah: Terumot is most instructive. He states:

אשת איש שבאו עליה עידי קיבוי ועידי חטירה הרי  
 זו אסורה לאכול בתרומה עד שתסתה מי המרים מפני  
 שהיא טפק זובה. מה בעלה קודם שישקנה. או שהיתה  
 מן הנשים שאיבן שותות ולא נוסלות כתובה ה"ז  
 אסורה לאכול בתרומה לעולם. (תרומות ח:טו)

Note that Maimonides has defined permanent exclusion from the heave-offering in the context of the loss of the marriage settlement. However, in the case of the husband's action she does receive her marriage settlement!

Why should she be forever denied rights to the heave-offering in the case in which the husband prevents her from partaking of the ordeal?<sup>1</sup> The last instance (4:2) differs from the other two in that it is not a simple list of cases related to the introductory formula since the last two cases do not, in fact, fit that formula.

The only case which seems to present none of these general stylistic or specific logical problems is that of 3:6. Thus, it is possible to hypothesize a transfer from that original source to the other locations. As such, the transfer involved a complete unit of cases - three of which represent the woman's actions; two the husband's - introduced by the formula of "ואלין". The editor in transferring

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1. Indeed, the disruption in the first chapter is so marked that it requires comment. I believe its insertion was designed to cover the very probable result of a warning and its subsequent disregard: the refusal by or impossibility for the woman to undergo the ordeal. Such an event is neatly summed up by the list presented. Note that the last case ( "בעלה בא עליה בדרך" ) anticipates the following Mishnah (1:4) in which this possibility first appears. (I do not know why this point was made specifically in the context of terumah but this is problematic regardless of the accuracy of our argument that the case is transferred from 3:6. Could the reference there to minhah have motivated its formulation here in terms of terumah?)

material did not reshape it to fit neatly in its new setting but remained faithful to its original form.<sup>1</sup>

It is interesting to note that the only reference in Tosefta to this material is to that of 3:6, which we have posited as its original locale.<sup>2</sup> Its absence in the Toseftan equivalent to Mishnah's Chapter 4 is particularly striking since the Tosefta therein preserves a complete collection paralleling all the material in the Mishnah except for that of 4:2, which is completely lacking in Tosefta.<sup>3</sup>

#### Summary

An attempt has herein been made to demonstrate the method behind the arrangement of material not originally formulated as a single unit. The editor juxtaposed the material in a most logical development. It is the search

1. He retained both the entire list and the introductory "ואלו".

2. Tosefta, 2:4-5.

3. Tosefta, 5:1-6. The Tosefta can stand as a separate self-contained unit, presenting a parallel formulation and some variations from the Mishnah. However, once the Mishnah moves away from the specific concern of those women who are unfit for the ceremony (... אמת טריים), the Tosefta displays gaps and can no longer be considered as a self-contained unit.



for that order which serves to solve textual problems and obviate the necessity for emendations.

A number of emendations are shown to be unnecessary if we posit the transfer of material. In such a process of cross-weaving ragged edges appear which must be accounted for by the editorial principles of the phenomenon itself.

Sotah, 4:4Scope of the Warning

The Mishnah moves from a discussion of the woman's status to one of the scope of the husband's warning. The problem which the Mishnah addresses is an obvious one. May the husband enjoin his wife from relationships with anyone whom he suspects? Are there fixed parameters beyond which his suspicion is considered to be unfounded and, hence, his warning of no binding force vis-a-vis a later ordeal? The Mishnah states:

Sotah, 4:4 (p. 5)

1 ע"י כל העריות מקבין, חוץ מן הקסו, ומסי טאינו איש.

1 מקבין / ק פ ומקבים. ומסי / ז מטי.

1 עריות / א ס ר ק ז פ ת ב ג א 2 י נ ס כ העריות

Ambiguity in Mishnah

However, while the Mishnah is definitely stating such boundaries for kinnui, it is most unclear as to precisely what those boundaries are. While 'arayot generally

refers to those relationships specified by the Torah as being of incestuous nature, it may mean any case of illicit sexual relations. Thus, the Mishnah might be taken in the wide sense as maintaining that all males are fit subjects for kinnui.<sup>1</sup> On the other hand, it might be construed more narrowly as referring to specifically incestuous relationships.

The difference between these interpretations is whether the inclusive statement ("ע"י כלי") is limited to a particular legal category or whether it is essentially a general and unlimited statement serving as an introduction to the subsequent exclusions.

Thus, the problem of ambiguity engendered by the inclusive statement casts its shadow on that of the exclusive one ("חורץ מן...") as well. If 'arayot refers to incestuous relationships, does the qualifying huz refer to exceptions only within the same population?

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1. Since the case is of a married woman, any extra-marital relation could fall into the category of 'arayot. (Note the variant readings of 'arayot/ha'arayot. The first reading may imply a wider population than the latter.)

Furthermore, the exclusions of "the minor and the one who is not a man" are problematic. Irrespective of their dependence on the sense of the general paradigm of " ע"י כל עריות מקבין ", their simple sense is quite puzzling. A minor generally refers to one below the age of thirteen. However, there is persuasive evidence that in this case it could well refer to those only below the age of nine.<sup>1</sup> Yet, the Mishnah fails to elaborate. As to טאינו איט - this is the only instance in Tannaitic literature in which this phrase is used. Hence, it can be only interpreted in context. To what or whom does this refer?

#### T.B.'s Explanation of 'Arayot

T.B. explains 'arayot as follows:

#### T.B. 26, a-b (p. 23)

- 1 על ידי כל עריות מקבין. פשיטא, סהו דתימא בטמאה בטמאה סני.  
 2 פעמים אחד לבועל ואחד לבועל היכא דקא מיתסרא בנהא זנות, אבל  
 3 הא הואיל ואסורה וקיימא אימא לא, קא משמע לן.

1 עריות / א ר העריות

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1. See the sources quoted by Lieberman, TK, pp. 655-657.

This anonymous passage restricts the sense of 'arayot to those considered to be incestuous partners.<sup>1</sup> T.B. is puzzled because this is a self-evident point and suggests that the fact that she fails to acquire a newly forbidden status as far as her paramour might obviate the possibility of kinnui!

This solution is itself most difficult. The fact that she fails to acquire newly forbidden status should not negate the husband's right to kinnui.

#### T.P.'s Explanation of 'Arayot

Perhaps it was this conceptual difficulty that led Me'iri<sup>2</sup> to quote T.P. in explaining this case as referring to a situation in which the husband enjoined her

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1. Taken in this limited sense, the logic of the pericope would demand that the qualifying huz refers to exceptions within the same population, i.e., incestuous partners. Yet, T.B. makes no such assumption in its following discussion (26b) of מי שאינו איים. Are two approaches to the Mishnah herein reflected? At the least, further inquiry into the force of exceptions and the possibility that they go beyond the universe of the original case is warranted.

2. Me'iri, Bet haBehirah, p. 57a.

against seclusion with those forbidden relatives with whom such seclusion is generally permitted and probable. In other words, the import of 'arayot' may be taken in the same vein as in T.B.<sup>1</sup> but the underlying rationale is now much more plausible. There would certainly be reasonable considerations to reject the efficacy of a kinnui which was aimed at restricting her right to privacy with a father or son.

Now, in fact, T.P. is actually silent on this Mishnah. Me'iri must refer to the following passage:

T.P. Sotah, 16b (1:1)

אמר רבי שמואל אפילו כהרין תנייא אחייה היא כמאן דמר מקנא 1  
 2 לה מאניה דמבנה...

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1. Of course, T.P.'s silence both on this point and on the force of huz means that it is impossible to state its interpretation of 'arayot' definitively. Me'iri may utilize T.P. as a basis for a further logical explanation of T.B. Note Rashi, 24a, s.v. "אניה" who gives אניה as the first example. Rashi cites "אניה ואתיה" as examples. Cf. Maimonides, Mishneh Torah, 1:1, who also formulates it in terms of "אניה או אחיה". Did they have a different reading in T.P.? See Hirsh Revel, Ozar haSotah (New York, 194 ), p. 22, who incorrectly cites this question as raised by R. Judah Rosenes in Mishneh Lemelekh, ad locum, 1:3.

The implication of this passage<sup>1</sup> is that a disagreement existed concerning this point. Perhaps this disagreement is rooted in the basic question of the meaning of the bald statement concerning 'arayot. One position takes it as referring to incestuous relationships and, thus, including father and son as primary examples; the other, as a general statement serving as an introduction to the exclusion.

It may be argued that granting 'arayot the widest possible latitude does not yet lead to the possibility of the exclusion of father and son from the scope of kinnui. True, the statement no longer centers on such cases, but it nonetheless includes them as well. The solution to this is actually indicated in the discussion of T.P. If 'arayot includes all males, then the basis for such a general statement is the fact that she has no business; indeed, is enjoined, from entering into private places with any male. Thus, any male is a fit subject for kinnui. However, this consideration does not apply to specific instances in which such seclusion is normal and permissible. Yet, these cases

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1. See, also, R. David Fraenkel, Shevare Korban, 4:4, s.v. כל and 1:1, s.v. אחיא, who correctly remarks that the implication of both this passage and a subsequent one (16c, 1:2): " רבי ירון אמר במתלוקת פאן דמר מקנא " ... " is that disagreement exists on this point. Lieberman, TK, p. 656, maintains that T.P. probably explains פאינר איס as one who is impotent in the same fashion as Bereshit Rabbah, 87:7 (Theodor-Albeck, p. 1072) in its exegesis of Genesis, 39:11 ("ראין איש"). Although the suggestion is ingenious, the assumption that T.P. follows such a reasoning is totally unsupported. Furthermore, it is difficult to understand why such a one should be excluded from kinnui.

are not part of the huz pericope, since it is concerned with a limit on those types of males included in the general statement. It is formulated to define males in a specific physical sense rather than in legal terms of status.

#### Tosefta's Formulation

Support for a wider interpretation may be found in Tosefta. The Tosefta formulates the law as follows:

#### Tosefta, 5:6

1 עם הכל האשה מטמאת, הרוץ סך הקטן, ומפי שאינו איט.  
 1 עם הכל / ע סך הכל.

This pericope does not elucidate the Mishnah text directly but, rather, presents a close variant of it.<sup>1</sup>

Most significant is the fact that the Tosefta records the statement as referring to the possibility that a woman can become unclean through relations with anyone. Hence, the obvious implication would be that in the husband's kinnui anyone can be named as the co-respondent and that 'arayot is all-inclusive. Furthermore, in the broader

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1. Lieberman's interpretation would have the Tosefta appear more sharply as an explanation to the Mishnah. See below, p. 288.



sense, the exclusion of "אינו איש" may be better taken as referring to an animal. Not only does "מן הכלל" not imply a specific list of individuals, but it could be taken as including non-humans as well.

This is precisely the interpretation suggested by R. Papa in T.B.:

T.B., 26b (p. 26)

- 1 וטאינו איש למעוטי מאי... א"ר פפא למעוטי בהמה, דאין זנות
- 2 בבהמה. אמר ליה רבא מפרזקיא לרב אשי, מנא הא מילתא דאמר
- 3 רבון אין זנות בבהמה, דכתיב לא תביא אתבן זונה ומחיר כלב
- 4 וגו', ותביא אתבן כלב ומחיר זונה מותרין, שנאמר גם שביט,
- 5 שנים ולא ארבעה.

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- 2 - 3 אמר ליה - אין זנות בבהמה / א חסר (והושלם בגליון )
  - 3 דכתיב לא תביא אתבן זונה ומחיר כלב וגו' / במק"א א"ל
  - לא בישמוט קרא לכתוב אתבן זונה וכלב (תמורה ל. )

The exclusion of an animal is made explicit in

Sifre Zuta:

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1. The continuation of "דאין זנות בבהמה" may not be part of R. Papa's statement but a juxtaposition made by the sugya which then quotes further support derived from a source initially formulated in another context. See Epstein, Amoraim, p. 86. This would solve the question of Tosafot, 26b, s.v. למעוטי. The impossibility of dealing rationally with an animal (and with a minor as well?) in enjoining it from entering private places with the woman may be sufficient grounds for obviating the possibility of kinnui. It is obvious that the force of kinnui is not merely to establish grounds for suspicion vis-a-vis the woman but in regard to the suspected paramour as well. Hence, he will exercise caution. See above, p. 106 and T.B., 2b-3a, s.v. אמר ריש לקיש.

Sifre Zuta, 5:13 (p. 233)<sup>1</sup>

1 ושכב איש , ע"י איש הרא מקבא ארחה אינו מקבא אותה ע"י  
2 בהמה.

1 - 2 ע"י בהמה / ג לא ע"י קטן ולא ע"י בהמה

Lieberman<sup>2</sup> cites the reading in Vatican Ms. of T.P.<sup>3</sup> " מי שאינו איש (פ=כ) קרף " which would accord with R. Papa's explanation. However, he notes that the reading

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1. Of course, Sifre Zuta can only prove the exclusion of בהמה; it cannot testify as to the meaning of שאינו איש. The probability of its equivalence with the שאינו איש of the Mishnah would increase were we to accept the reading in Midrash HaGadol ( "לא ע"י קטן ולא ע"י בהמה" ). Lieberman, TK, p. 656, n. 3, attributes this reading to the author of Midrash HaGadol inasmuch as Sifre Zuta (p. 235) maintains that a minor above the age of nine is not to be excluded. This argument is by no means totally convincing, since the one statement might be clarified by the other. In any case, if שאינו איש does mean בהמה the use of this term may well be an example of the utilization of euphemism in Mishnaic formulation. See T.B. Pesahim, 3a-b, which maintains the existence of such a phenomenon. However, this case would fail to meet the further requirement spelled out in the anonymous Pesahim sugya, "... כל היא דנפישי מילי לא ".

2. TK, p. 655-656.

3. Equals T.P., 19b (4:5).

is found only in this manuscript and is probably a gloss based on R. Papa's comment in T.B.<sup>1</sup>

### Relation of Sifre

An examination of Sifre yields two possible explanations of מי שאינר איש :

#### Sifre, p. 11 (#7)<sup>2</sup>

1 וטכנ איש, להוציא את הקטן שאינר איש.

1 הקטן שאינר איש / תבחרמא הקטן ולמי שאינר איש

Sifre uses the term "אינר איש" as part of its exegetical apparatus. The exclusion of the minor is based on the fact that he doesn't meet the Biblical stipulation of "איש." The status of מי שאינר איש makes him unfit as a subject for kinnui. Perhaps this pericope was transferred as an entity

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1. Nonetheless, it is a refinement of R. Papa that may have been motivated by an attempt to explain the use of the term "מי שאינר איש" in reference to נהמה. This may be based on the close physical resemblance between humans and other primate animals.

2. Lieberman does not himself suggest this as an explanation for the Mishnah. The various readings "ומי" "מי" "מי" "מי" "מי" present no insoluble challenge to this approach as they may represent the way of explanation. In any case, the development of variants leading to the appearance of a separate case would not be surprising. Also, the direction of transfer may well be from Mishnah source to Sifre source. This would account for the somewhat redundant "מי שאינר איש". (As Lieberman notes, the form of exclusion is generally "מי שאינר איש".)

into the Mishnah. Severed from its initial locus in the Midrash Halaka "שאינו איש" was viewed as a separate case rather than the apparent exegetical device it is in Sifre, wherein it refers to the formulation of the verse " וְשָׂכַח אִישׁ אֶת אִשְׁתּוֹ " .

However, a further possibility arises on the basis of the Sifre text. Many commentators assume that the exclusion of a minor from kinnui can only refer to a minor of less than nine years, who is considered incapable of effecting intercourse. However, above the age of nine this exclusion would not be operative.

On this basis, Lieberman interprets the Sifre passage of "קטן שאינו איש" as emphasizing the distinct characteristic of the minor under discussion, i.e., one who is not an איש as far as the creation of forbidden status through sexual intercourse. Furthermore, insists Lieberman, the Tosefta formulation lends credence to this interpretation. It actually stresses the crucial role of tum'ah as the determinant factor by stating "מן הכל האשה

מטמאת." The measure of kinnui is the resultant status of tum'ah. Since this may be engendered through sexual relations with a minor of sufficient age, the minor under discussion must be below that age. Finally, notes Lieberman, this explanation gains support from the Sifre Zuta, which states:

Sifre Zuta 5:20 (p. 235)

- 1 כי שטית תחת אישך וכי בטמאת , לרבות בן תשע שנים ויום אחד  
 2 שיקבר לה וישקו אותה מתחת ידו.
- 2 וישקו - ידו / מדרש רבה חסר.

If we take Lieberman's explanation one step further, it may be possible to explain the Mishnah as utilizing "איבן איים" as a modification of katan. In this sense, the phrase does not explain the basis for the minor's exclusion but, rather, defines the parameters of this exclusion.

A Reinterpretation of Tosefta

The above possibilities are operative regardless of the interpretation accepted for 'arayot. However, in reexamining the Tosefta in light of the possibility of 'arayot as referring to close relatives and thus concerned with incestuous relationships an interesting possibility suggests itself.

If we are to assume that close relatives may be apt subjects of kinnui, one of the more obvious targets would be a woman enjoined from seclusion with her son. Obviously, in the case of young children this would create a most difficult situation. Indeed, this concern with the relationship (even of a sexual nature) between mother and child may be evidenced in Tosefta.

The Tosefta basically parallels the Mishnah in presenting the statement "עם הכל האשה טמאתה". This is then followed by a further parallel to the Mishnah, i.e., an expanded version of R. Yose's opinion. Subsequently, the Tosefta returns<sup>1</sup> to present additional material which is undoubtedly related to the "עם הכל ... טמאתה" pericope:

Tosefta, 5:7

המסלעת בבנה קטן, והערה בה, בית שמאי פוסלין מן הכהונה, ובית  
הלל מכשירין. 1  
2

1 מן הכהונה / ע חסר

The force of this passage is one that would indicate the wide latitude a mother may take in relation to her son. Witness Bet Hillel's position which maintains that even under circumstances in which the woman is engaged in questionable behavior that results in an actual sexual relationship with her minor son, she is still fit for marriage to a priest. The Tosefta's introduction of this pericope may well indicate that the minor referred to in the Mishnah is one with whom a woman is most likely to secret herself,

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1. This order would indicate that this Tosefta unit was not redacted as a commentary to the Mishnah. Otherwise, this pericope should have been placed before the discussion of R. Yose. However, even should one wish to view it in such terms, the delay in the presentation of this material may be based on its largely extraneous nature when compared to the other material in Tosefta 5:1-6.

i.e., her son. This would shed light both on the meaning of 'arayot and the definition of katan.<sup>1</sup>

### Summary

The text under consideration is particularly ambiguous. It is unclear whether part of this ambiguity is attributable to a euphemistic expression. An analysis of parallel sources is suggestive of the true meaning of the text. However, definite conclusions as to its exact references must be held in abeyance.

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1. In light of Tosefta it would be more reasonable to take the reference to the minor as one below nine. Note " " which might be best understood in context as referring to a woman playing with a young child. and cf. T.P. Gittin, 49c (8:10), in which this qualification is absent: " המסלדת בבגה בית שמאי פוסלין רביה הלל מכשירין שתי נשים שהיו מסלדות זו את זו ב"ש פוסלין רביה הלל מכשירין" If the locus of the pericope was as a comment to our subject matter, might it be elucidating by raising the subject of lesbianism?

Sotah, 5:1Effects of the Ordeal

The Mishnah details two effects of the ordeal:

Sotah, 5:1 (pp. 33-34)

- |   |   |
|---|---|
| 1 | כסם שהמים בודקין אותה, כך המים בודקין אותו, שנאמר |
| 2 | ובאז ונאו. כסם שאסורה לבעל, כך אסורה לבעל, שנאמר  |
| 3 | בטמאה ובטמאה, דבלי ר' עקיבא. א"ר יהושע כך היה     |
| 4 | דורש זכריה בן הקצב. רבי אומר שני פעמים האמורים    |
| 5 | בפרשה בטמאה ובטמאה, אחד לבעל ואחד לבעל.           |

2 דבאז(2) / ב חסר ( ונדסף בה"ש). 3 בטמאה / פ אם  
בטמאה. א"ר / ז אמ' לו ר'. 4 רבי אומר / א חסר.

On the one hand, the waters affect the putative adulterer as well as the woman. In addition, the forbidden status engendered vis-a-vis her husband applies to the suspected adulterer as well.<sup>1</sup> In both cases, the Mishnah presents exegetical evidence to establish the point. Following the second case, the Mishnah attributes the statement to R. 'Akiba. At this point the details of this material's history are still unclear as to whether: (a) both the

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1. Both T.B., 28a, and T.P., 20a (5:1), take "כך המים בודקין אותו" as referring to the adulterer, rather than to the husband, and rely on the implications of beraitot for this position.



exegesis and the original concepts are R. 'Akiba's; (b) the exegeses alone; (c) only the exegesis of " נסמאה ונסמאה".

### Nature of Exegeses

R. Joshua then points out that R. 'Akiba's exegesis was anticipated by Zekariah b. Hakazab. Now, it would appear that Zekariah's statement was restricted to the exegesis upon which the statement of כָּמֵם was based. Zekariah and R. 'Akiba probably did not discover the same law through this exegesis. Support for this contention may be adduced by the nature of R. Joshua's statement in the next Mishnah. There, R. 'Akiba is commended for the discovery of Biblical support for a pre-existing halaka and not as the source of the halaka itself.<sup>1</sup> In addition, the expression כִּךְ הִיָּה "כִּךְ הִיָּה" would seem to indicate that Zekariah focused on the exegesis.<sup>2</sup>

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1. This may be true for 5:3 as well, in which R. 'Akiba may be understood as attempting to find Biblical reference for the concept of תְּהוּמָה שֶׁבָּהּ. See T.B., 30a.

2. In any case, Zekariah's awareness of this notion indicates that it was current about 70 C.E. though its source may have been unknown. Isaac HaLevi's dating of Zekariah in Dorot haRishonim (Frankfort, 1918), Vol. 5, p. 22. It is interesting that all attributions to Zekariah found in Mishnah are concerned with the permissibility of a woman suspected of illicit sexual relations. (Cf. Ketubot, 2:9 and 'Eduyot, 8:2, which are closely related. I am unsure as to whether the "אמרן להם" in 'Eduyot does not, in fact, refer to R. Yose and R. Zekariah. [Note the readings of "ואמרן" and "אמרן".]) In addition, he is quoted but two times in other Tannaitic literature.

Finally, there is support from other Tannaitic literature to indicate that at least the concept of "... כשם שהמים " might have originated independently of the ascribed source of " ונאמר... ונאמר ". A beraita quoted anonymously in T.B., ascribed to R. Yose HaGelili in Sifre;<sup>1</sup> and attributed to R. Gamaliel in Sifre Zuta<sup>2</sup> derive this halaka from Numbers, 5:22 (" לזבח בטן ולבפיל ירך "). T.P. quotes a beraita which utilizes hoplography to deduce this law.<sup>3</sup> Hence, there are ample grounds for assuming the primacy of the law to its scriptural basis.

However, the question still remains open as to whether the attribution to R. 'Aqiba refers to both statements in the Mishnah and whether Zekariah's exegesis should be similarly understood.

The final question to be considered is that of the function of Rabbi's comments.<sup>4</sup> What is the point of

1. Sifre, p.20 (#15).

2. Sifre Zuta, p. 236 (5:22).

3. T.P., 20a (5:1). This hoplographic derivation utilizes " ונאמר נה "; however, it does not appear to be a variant of the Mishnah but, rather, another form of derivation. R. Tanhuma's application of gematria to the word "המאורית", then quoted by T.P., should also not be construed as a source for the law itself.

4. The reading in Ms. Oxford, which omits " ורי אומר " is most intriguing in that it would have R. Joshua recording Zekariah's formulation. Rabbi would not appear in the Mishnah. However, the fact remains that other Tannaitic sources as well as the T.B. sugya clearly had Rabbi somehow involved in the question of the tum'ah repetition.

reiterating the exegesis of "בַּטְמָאָה" which had already been noted by the Mishnah?

T.B.<sup>1</sup> takes the key to Rabbi's comment to be his insistence on the fact that the word "בַּטְמָאָה" is repeated. Now, were R. 'Akiba to be relying on this repetition as the exegetical source, Rabbi would, in fact, be adding nothing to R. 'Akiba's position and hence this pericope would be superfluous. Hence, T.B. concludes that R. 'Akiba's exegesis must be based not on the repetition but, rather, on an exegetical treatment of the "waw." T.B. also equates the cases of "וְגֵאָר וְגֵאָר" and "בַּטְמָאָה וְגֵאָר" which would indicate that it ascribed both exegeses to R. 'Akiba.<sup>2</sup>

Therefore, according to T.B., it would appear that both exegeses stem from R. 'Akiba; that Zekariah also utilized the "waw" for the same purpose; and that Rabbi disagrees with the nature of the exegesis, preferring to locate it in the repetition of בַּטְמָאָה rather than in the superfluous "waw."

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1. T.B., 28a.

2. However, the question of the scope of Zekariah's exegesis remains untreated.

The discussion in T.P. may yield a different perspective on the question:

T.P., 20a (5:l)

כַּשֵּׁם שֶׁהָמִים בּוֹדְקִין אֶתְהָ כו'.	אֲנִן תְּנִינִן בָּאֵר בָּאֵר.	1
אֵית תְּנִי תְּנִי וְבָאֵר וְבָאֵר. מֵאֵן דְּמֵר בָּאֵר בָּאֵר רַבִּי עֶקֶ-		2
יְבֵה. וְמֵאֵן דְּמֵר וְבָאֵר וְבָאֵר ר' יִשְׁמַעֵאל. אֲנִן תְּנִינִן		3
בְּטַמְאָה בְּטַמְאָה. אֵית תְּנִי תְּנִי וְנִטְמְאָה וְנִטְמְאָה. מֵאֵן		4
דְּמֵר בְּטַמְאָה בְּטַמְאָה רַבִּי עֶקִיבָה. וְמֵאֵן דְּמֵר וְנִטְמְאָה		5
וְנִטְמְאָה רַבִּי יִשְׁמַעֵאל.		6

1 באר באר / ר באר ובאר

According to the text<sup>1</sup> of T.P., R. 'Akiba bases his exegesis on the repetition of the words while R. Ishmael bases it on the "waw".<sup>2</sup> What is most interesting is that T.P. alludes to different formulations in the Mishnah and attributes them to the two schools - the one to R. 'Akiba, the other to R. Ishmael. This is certainly most puzzling since the Mishnah specifically indicates that (at least)

1. There has been much discussion and emendation of the text. See the sources cited by Albeck in Nashim, p. 384, 5:l. (Albeck's citation of Ms. Vatican betrays a printing error and should read "באר ובאר" as the manuscript text actually stands and as his remarks indicate.) The incisive discussion of R. Joshua Isaac in Noam Yerushalmi: Nashim (Vilna, 1868), p. 130a should be added to these sources. Basically, the common denominator of these emendations is that R. 'Akiba is seen to base himself on the "waw" while R. Ishmael derives the same law from the word's repetition.

2. Note that T.P. attributes both exegeses to R. 'Akiba.

the exegesis of וּבְמִשְׁנֵהוּ : וּבְמִשְׁנֵהוּ is that of R. 'Akiba. As a result, Albeck maintains that the text under discussion is one which would not preclude R. 'Akiba, rather, it is merely one of citing the exegesis in the Mishnah with the "waw" which would thereby include R. Ishmael<sup>1</sup> as well as R. 'Akiba.<sup>2</sup>

Based on T.P., we may see Rabbi's comment in a new light. It should not be understood, as T.B., to indi-

1. The motivation to "include" R. Ishmael may well stem from the Sifre passage (quoted below, p. 304), which demonstrates his agreement with the law presented in the Mishnah.

2. See the bibliographical citation in Albeck, *Nashim*, p. 384. It should be noted that the emendation of the text (see above, p. 296, n. 1) resulting in R. 'Akiba's derivation of the law from the superfluous "waw" does not fit too neatly with this explanation. In this case the citation sufficient for R. 'Akiba would be only וּבְמִשְׁנֵהוּ or וּבְמִשְׁנֵהוּ and the addition of the second instance would be totally unnecessary and misleading in terms of the unequivocal attribution to R. 'Akiba. Of course, if R. 'Akiba utilizes the repetition and R. Ishmael the "waw" the citation of one of the instances containing a "waw" presents no such glaring problem. It must be emphasized that the exegesis of the "waw" is not based on the repetition of the "waw" since the "waw" appears but once (Numbers, 5:29). It is based on the implication of the word plus the "waw" which are taken together to yield both implications. (See T.B., 29a, which recognizes that the exegesis of the "waw" results in two distinct exegetical possibilities.) Thus, the "וּבְמִשְׁנֵהוּ" reading must be seen as a literary style designed to emphasize the "waw". Cf. T.B. *Sanhedrin*, 51(b) ("בַּת רוּת אֵינִי דוֹרֵשׁ").

cate his disagreement with a fixed formulation of R. 'Akiba but, rather, in light of the different nuances of the exegesis, as an attempt to delineate the exact nature of R. 'Akiba's statement.<sup>1</sup> In other words, Rabbi is here acting in an expository, rather than argumentative, role.<sup>2</sup>

Indeed, an examination of a beraita quoted in T.B. indicates that it is the repetition of the term that is significant to R. 'Akiba.

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1. T.P. assumes that the different versions represent R. 'Akiba and R. Ishmael. I fail to see why either exegesis could not be squared with R. 'Akiba. (I am less convinced in the case of R. Ishmael.) If the sources cited in the works above, p. 297, n. 2 demonstrate nothing else, they indicate that this possibility is not at all to be excluded on the basis of R. 'Akiba's exegetical approach.

2. See Albeck, Nashim, p. 384, who also notes this possibility. This putative difference between the anonymous sugyot in T.B. and T.P. is striking in terms of a theory of Mishnaic composition. According to T.B., Rabbi's role is that of an independent opinion in which he takes a position opposing R. 'Akiba. T.P., on the other hand, sees his purpose as clarifying the exact nature of the text which he is editing; a confusing text which had a history of slight but significant variants. In connection with this it should be noted that T.P., 16c (1:2) records a statement by Rabbi of the "ג' טמארת" pericope which corresponds to that of R. 'Akiba in Sifre (quoted below, p. 304).

## T.B., 28a (pp. 45-47)

- 1 שלט פעמים האמורין בפרשה אם בטמאה, בטמאה, ובטמאה, למה,  
 2 אחר לבטל, ואחר לבועל, ואחר לתרומה, דברי רבי עקיבא.  
 3 אמר רבי ישמעאל קל וחומר, ומה גרושה שמתרת לתרימה,  
 4 אסורה לכהונה, זו שאסורה בתרומה, אינו דין שאסורה לכהונה.  
 5 מה ת"ל והיא בטמאה, והיא לא בטמאה, אם בטמאה למה שרתה, אם  
 6 לא בטמאה למה משה, מגיד לך הכתוב שהספק אסורה. מכאן אתה  
 7 דן לשרץ, ומה סוטה שלא עשה בה שרגג כמזיד ואורס כרצון,  
 8 עשה בה ספק כוראי, שרץ פסטה בו שרגג כמזיד ואורס כרצון,  
 9 אינו דין שיעשה בו ספק כוראי...

- 3 אמר רבי ישמעאל / ג' 44א' ל' ר' ישמע'. קל וחומר /  
 א אינו צריך. 4 אסורה / א אסורה (ובגליון: ג"ד פסולה)  
 4 לכהונה / ר חסר. 5 מה / א א"כ מה. 6 שהספק / א שעל  
 הספק.

This pericope makes it clear that R. 'Akiba is concerned not with the "waw" which attaches itself to one "בטמאה" but, rather, with the threefold repetition of the term. Of course, as Rashi points out,<sup>1</sup> the specification of the double rather than triple repetition is based on the fact that we are herein unconcerned with the third point

1. Rashi, 27b, s.v. שתי פעמים. The exegesis is restricted to the term "בטמאה" alone and apparently does not include reference to "בטמאת" or even to בטמא when in the negative context ("לא בטמאה"). This approach resolves the question raised by R. David Fraenkel in Sheyare Korban, p. 4a (1:2), s.v. שלט. Rashi also attempts to deal with the fourth instance of בטמאה. (The emendation of Rashi by R. Solomon Luria found in the margin can only be justified on the basis of the editio princeps of the Talmud. In later editions, Luria's emendation has already been incorporated into the text of Rashi. This may be confirmed by an examination of the editio princeps of Hokmat Shelomoh: Sotah (Cracow, 1661 or 1667; repr. ed. Jerusalem, 1972, p. 12b). Horovitz, Sifre, p. 12, n. 20, suggests that the "בטמאה" of Numbers, 5:14 is omitted since that is in the context of "לא בטמאה", i.e., the concern there is with the very doubt of her actions. However, although not as definite, a similar type of argument might be developed for 5:27 as well.

but only with those concerning her husband and paramour.

Furthermore, the significance of this beraita in terms of Rabbi's role in the Mishnah is sharpened by the fact that it is quoted in T.P. in the name of Rabbi:

T.P., 16c (1:2)<sup>1</sup>

1	רבי אומר שלש סמאות אמורת בפקס' אחת לבעל ואחת לבעל ואחת
2	לתרומה... (אמר רבי אבין אימאמת אחת לבעל ואחת לבעל ואחת
3	ליבס. אמר רבי ירסי בי רבי גון סתניתא אמרה כן ואם מת
4	חולצת ולא סתבת.

Thus, this Mishnah is composed of several strata. First, there are the statements of "כשם שאסורה" and "כשם שהמים". Appended to this are the exegeses through which these laws are derived and R. Joshua's comment that R. 'Akiba's derivation corresponds with that of Zekariah's. The nature of the exegesis was, however, open to question and it is Rabbi who attempts to formulate it by spelling out its dependence on the repetition of the word.

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1. Rabbi's exegesis of the threefold in this passage is attested by all T.P. manuscripts. Tosafot, 29a, s.v. quote this as " ... מאיך אמר .. ". If this reading is accurate, the contention by Horowitz, Sifre, p. 13, n. 1 that Rabbi himself only deals with the double, rather than the triple, "בסמאות" can stand. However, an examination of the editio princeps of the Talmud reveals the reading " ... והכי אימא דתם הכי אמר .. ". The source for the reading of "מאיך" is the emendation suggested by R. Solomon Luria in Hohmat Shelomoh, p. 13b (718). It is unclear on what basis he emends the text to R. Me'ir. Did he possess other manuscripts of T.P. or Tosafot which have such a reading?



Pre- and Post-Ordeal Status of Woman

What is the meaning of the prohibition derived from נטמאה? Taken simply, it means that the woman is considered to be unclean to her husband because of the doubt attached to her actions. However, the Mishnah had clearly spelled out this status at the beginning of the Tractate.<sup>1</sup> Its repetition here is somewhat redundant and misplaced. In addition, since it refers to a pre-ordeal situation, why is it preceded by the " ... כשם שהמים בורקים " pericope which refers to the ordeal's result. Its inclusion, therefore, must be based on the parallelism of exegesis, and the further possibility that R. 'Aḳiba, preceded by Zekariah, may have been the author of this exegesis.<sup>2</sup>

However, in reexamining the pericope, the possibility arises that the Mishnah refers to a case in which

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1. It could be argued that the function of the pericope is to indicate her status vis-a-vis her suspected paramour. This is not indicated in Chapter I.

2. As such it would stand in the same basic relationship to the opening, " כשם שהמים בורקים " as does the subsequent material in Chapter 5. Of course, its precedence would be based on the fact that it does refer directly to sotah.

definite proof of her infidelity has been ascertained.<sup>1</sup> In the present context, such knowledge can be established by observing the dire consequences of the ordeal. Hence, the Mishnah first states that the waters affect both her and her paramour in case of guilt. Such guilt established through the ordeal creates a status of tum'ah for her husband (who must divorce her). In other words, the focus of this Mishnah is not the immediate pre-ordeal relationship of husband and wife but, rather, the post-ordeal consequences for this relationship.<sup>2</sup>

Now, by tying the cases together we would arrive at the conclusion that if both she and her paramour are

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1. See Tosefta 4:16 in which the "כִּסּוּם טְמוּנָה" pericope is used to refer specifically to a case of definite guilt. See, also, Tosefta 2:4 which may refer to a case of definite guilt and, as such, is the conclusion of the Tosefta's limited consideration of her fate (Tosefta 2:3, ll. 20-27). See, however, the comments of Lieberman in TK, ad locum, as to its reference. Of course, if it refers to a case of definite guilt this Tosefta passage must assume that death is not immediate.

2. Thus, the material preserved in this chapter conceptually precedes that in the first chapter. The fact of her post-ordeal status sets the stage for the pre-ordeal situation. If our interpretation is correct, this would confirm the impression that R. 'Akiba is not of the opinion that death is immediate in the case of guilt. See above, p. 228.

afflicted then she is forbidden to her husband as well as her paramour. However, what would happen as far as the applicability of forbidden status in a case in which either one of them (she or her suspected paramour) emerged completely unscathed? Such a question would indicate the relationship between the pericope of "כִּשְׁם שְׁהַמִּיט" and that of "כִּשְׁם שְׁאִסְרָה". Perhaps it is precisely for this reason that T.P. raises the problem of "בִּדְקוּ אֹתוֹ וְלֹא בִדְקוּ אֹתָהּ" and vice versa.<sup>1</sup> It is not merely a question of explaining such a phenomenon or even of her permissibility to her husband or the supposed paramour's brother<sup>2</sup> but primarily of her future relationship to the paramour himself. Hence, the accuracy of sequence in the formulation of forbidden status subsequent to the effect of the ordeal is maintained.

That the original force of the exegesis may have been related to a definite case of guilt may be reasonably argued from the beraita in which the point of "מְגִיד לְךָ הַכְּתוּב" "שֶׁהִסְפֵּק אִסְרָה" is introduced subsequent to the enumeration of the prohibitions created through נִסְמָאָה. In other words,

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1. T.P., 20a (5:1).

2. These are the interpretations rendered by R. Moses Margalioth, Pene Moshe and R. David Frankel, Korban 'Edah, ad locum.

the basic sense of the threefold repetition is fundamentally seen in terms of a definite, rather than doubtful, case of adultery.

### Analysis of Beraita and Sifre

This approach may gain circumstantial support from the Sifre formulation:

#### Sifre, pp. 12-13 (#7)

- 1 או עבר עליו רוח קבאה וקבא את אשתו והיא לא בטמאה, ר'
- 2 עקיבא אומר מה ת"ל בטמאה בטמאה שלש פעמים אלא טמאה לבועל
- 3 וטמאה לבועל וטמאה לתרומה ר' ישמעאל אומר אינו צריך ומה
- 4 אם גרושה קלה שמונת לחזור למגרשה בישראל פטולה מן
- 5 הכהונה סוטה חמורה דין הוא שתהא פטולה מן הכהונה מה ת"ל
- 6 והיא בטמאה והיא לא בטמאה אם היא טמאה למה אינו משקה ואם
- 7 טהורה היא למה הוא משקה אלא בא הכתוב ללמדך שלעולם אין
- 8 משקים אלא על הספק ומיכן אתה דן לטרף... מיכן אמרו
- 9 ספק טומאה ברשות היחיד ספקו טמא ספק טומאה ברשות הרבים
- 10 ספיקו טהור ...

2 אלא / מ חסר. 5 מה / לר חסר. 9 ספק טומאה ברשות הרבים /  
ל ספק רשות הרבים.

There are three significant differences between the Sifre and T.B. versions of this source:

	<u>T.B.</u>	<u>Sifre</u>
(1)	שמותרת בחירומה	שמותרת לחזור למגרשה בישראל
(2)	אם בטמאה למה שותה אם לא בטמאה למה משקה	אם היא טמאה למה אינו משקה ואם טהורה היא למה הוא משקה
(3)	מגיד לך הכתוב שהספק אסורה	אלא בא הכתוב ללמדך שלעולם אין מסקים אלא על הספק

The first difference<sup>1</sup> may be explained if we posit an ur-formulation of R. Ishamel's statement which originally simply stated "מה גרושה שמותרת אסורה לכהונה סוטה שאסורה...". The reference to איסור and היתר admitted of two interpretations. The beraita in T.B. understood it as referring to תרומה ; the Sifre to remarriage.

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1. See Horovitz, Sifre, p. 12, n. 21 for a discussion of this problem. I believe the literary history of these variants as ultimately traceable to a single source to be a reasonable solution. However, its rejection would not affect the basic point that the force of the " בטמאה " exegesis may be primarily related to a definite case of guilt.

The second and third differences are clearly related and are most germane to our concern. According to the beraita in T.B., the question under consideration is the intent of v. 14. If she knows herself to be unclean, why should she drink, and if he knows to be innocent, why would the husband make her drink.

Therefore, the beraita is taken as centering about their knowledge of the situation. Taken as definitive statements "בטמאה לא בטמאה" cannot represent a situation in which the ordeal can be effected. Hence, the conclusion is that this dichotomy is unconnected with the context of the application of the ordeal. Rather it is to be taken as a reference to the status of the woman herself.<sup>1</sup>

It is especially important to note that the beraita assumes a connection between the pericope concerning the threefold repetition of "בטמאה" and that of "שהטפק אסוריה". Even though Rashi rejects the reading of "א"כ מה ת"ל", he does so only in order to dispel the notion that this

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1. See Halivni, Mekorot, pp. 435 - 436, who analyzes the context of Numbers, 5:13 ("ועד אין בה") in similar terms, i.e., whether it is set in the framework of the ordeal or of the act itself.

is the conclusion of R. Ishmael's counter.<sup>1</sup> Rashi's rejection of its relationship to the first pericope seems to be based on the assumption that the first was also discussing a doubt situation and took the findings of the second pericope for granted. Hence, claims Rashi, the second pericope should not be taken as a part of R. Ishmael's rejoinder ("אם כן מה תלמוד לומר") since R. 'Akiba would agree with this point. Indeed, as noted, R. 'Akiba's exegesis pre-supposes it. However, if we assume that it was concerned with a case of definite guilt we succeed in both removing the redundancy and in establishing the connection between the two.

The third important point is the absence of "לעולם אין מטקין אלא על הטפק" in the T.B. beraita. Rashi was clearly aware of this reading in his explanation although he doesn't explicitly cite it. He views it as the backdrop for "הטפק אסורה". Since the case of sotah is essentially concerned with a doubtful case, the uncleanness under discussion must be similarly attached to doubt.<sup>2</sup>

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1. Rashi, 28a, s.v. מה .

2. See R. Pinchas Epstein, Minhat Jerusalem, p. 133b, s.v. "גויי ד"ה מגיד", who attempts a conceptual, rather than formal link. Note Rashi's reading "מגיד לך" which may evidence a conflation of readings. Tosafot, 28a, s.v. "הכתוב טעל הטפק אסורה" which is clearly operating with a combination of both readings and, in fact, Tosafot were aware that the Sifre reading was "...טעולם". Tosafot, 28a, s.v. "זו" actually cite the Sifre and this quotation follows into Tosafot, s.v. מה. This is confirmed by the fact that in editio princeps these two units of Tosafot appear as one. Their separation stems from R. Solomon Luria in Hokmat Shelomoh, p. 13a (7:7).

Thus, what Rashi has not admitted through a direct attribution to R. Ishmael linking the two pericopae does not truly result in establishing that the passages are unrelated. True, the second pericope may not be locked to the first through dialogic continuity, but the two are conceptually joined by the dependence of the first passage on the second.

Now, in Sifre, both the reading and conclusion actually point in a different direction. As Tosafot point out,<sup>1</sup> the Sifre seems to treat of the two pericopae as separate units. They are not joined by "א"כ" nor even by the conjunctive "waw". This point is even clearer in the Vatican Ms. of the Sifre which omits "מה" entirely.

However, the meaning of "אם היה נשוא למת אינו" is most unclear. Furthermore, Sifre omits the conclusion "והספק אסורה" and in its place reads "איין משקים אלא על הספק". Clearly, as commentators have noted, the first case indicates the need for an emendation. The simplest and most obvious direction of such an emendation would be to drop the negative "איין" and to read "למה משקה". Sifre focuses not on their knowledge but rather on that of the husband alone. If "לא נשואה / לא נשואה" is taken

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1. T.B., 28a, s.v. מה.



as a condition of definite knowledge on his part, then the ceremony would be superfluous.<sup>1</sup> Why would the husband cause her to partake of the ordeal? Nothing is to be gained from such a venture. Hence, the Sifre concludes that the duality is intended to set the parameters for the ordeal. It is to be applied only in the case of doubt; never in the case of certain knowledge.

As such, Sifre differs markedly from the beraita. The latter's conclusion - "סהפספ אסוריה" - takes the context of the verse as referring to the status of the woman; the former as referring to the conditions for the ordeal.

Thus, it may well be that Sifre is unconcerned with the question of pre-ordeal status. Indeed, the first passage may refer to the case of definite guilt and its consequences. The second passage continues the discussion

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1. There is no clear statement as to the procedure in a case where the husband himself was aware of her infidelity. Maimonides, Mishneh Torah: Sotah, 1:8 states: קיבא לה בפני שנים וראה אותה שבטתרה עם זה שקבא לה עליו ושהתה כדי טומאה הרי זו אסורה עליו ויוציא ויתן כתובה שאינו יכול להשקתה . על פי עצמר . A possible source in Sifre, p. 12 (#7)- ובעלם מעיבי אישה, ולא שיהא בעל רואה ומעמעם הא אם ידע בה בעלה אין רשאי להערים עליה ולהשקתה is quoted by Hirschel Revel in Ozar haSotah, p. 33.

of a definite situation by stipulating that under such conditions the ordeal is not enacted.

Of course, the continuation of "ומכאן אתה דן..." would indicate that this Sifre passage is concerned with her forbidden status at the time of the pre-ordeal doubt. It certainly indicates that the subject under discussion is that of ספק. However, although it is indisputable that this is the force of the passage, its relation to the prior source is unclear.

This pericope appears to be a reworking of an independent source found in Tosefta:

Tosefta, Tohorot 6:17<sup>1</sup>

שאלו את בן זומא מפני מה ספק ושהת היחיד סמא אמר להם סוטה 1  
 מה היא לבעלה ודאי או ספק אמרו לו ספק אמר להן מצינו שהיא אסורה 2  
 לבעלה ומכאן אתה דן לשרץ מה כאן רשות היחיד אף להלן 3  
 רשות היחיד מה כאן שיש בו דעת לשאול אף להלן דבר שיש 4  
 בו דעת לשאול מכאן אמרו דבר שיש בו דעת לשאול ברשות 5  
 היחיד ספיקו סמא ברשות הרבים ספקו סהור ומפני מה ספק 6  
 רשות הרבים סהור אמר להן מצינו שהצנור עושה את הפסח 7  
 בטומאה בזמן שדרבו סמאין ואם טומאה ודאית התרוה לצנור 8  
 קל ותומר לספק סמא רבן שמעון בן גמליאל אומר מפני מה ספק 9  
 רשות היחיד סמא וספק רשות הרבים סהור מפני שאיפשר 10  
 לשאול ליחיד ואי אפשר לשאול לרבים. 11

1. Cf., T.P. Sotah, 16c (1:2). I am undecided as to the relationship between the Ben Zoma passage and our sources. The key difference centers about the derivation of the law in the public domain. There is a significant difference between the T.P. and Tosefta versions as well. In the former, the response to Ben Zoma's question of "רשות היחיד" is "סוטה מה היא", while in the latter, the question itself is expanded to refer specifically to the persona of doubt rather than the locus, hence the answer ספק.

In this passage, Ben Zoma locates the source of ספק טומאה in the laws of Sotah. However, he merely takes it for granted that a doubtful case is forbidden. He does not spell out his source as being based on Biblical exegesis. The beraita in T.B. in appending Ben Zoma to a statement "סיהטפק אסורה" demonstrates an exact source for Scriptural exegesis for his statement. However, the connection to the Sifre passage as it now stands is somewhat less clear. It is possible that its appearance in Sifre is itself a transfer from the beraita in T.B. It may be significant that this "מיכן אמרין" pericope is totally lacking in the Midrash Hakamim.<sup>1</sup>

The upshot of this approach is that there appears room for the contention that the basic force of the exegesis of the repetition of "בטומאה" is couched in the case of definite guilt. The application of this status to the pre-ordeal condition of doubt is an entirely separate matter.

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1. Quoted by Horowitz in Sifre, op. cit. Tosafot's (28a, s.v. מה) conclusion, "וכך טומאה דכילתא" is equivocal in this regard. It must be emphasized that we are not questioning the fact of ספק אסורה or even of its literary relationship to the passage of ג' טומאה. These points are clearly established by Sotah, 1:2. (As to יבט, see T.P., ad locum.) The question centers about the primary force of the exegesis.

Summary

This analysis has focused on the nature of the Mishnah's presentation of the underlying exegesis. According to one approach its exact method may have been recognized as unclear by the Mishnah's editor who found it necessary to supply clarification with an explanatory gloss. In addition, an analysis of the full source alluded to in the Mishnah yields a new possibility as to the basic reference of the Mishnah itself.

Sotah, 6:1Order of Material

The sixth chapter of Sotah closes the Mishnaic treatment of the ordeal.<sup>1</sup> It is composed of material relevant to the credibility and efficacy of testimony concerning her behavior. The first Mishnah states:

Sotah, 6:1 (p. 67)

1 מי שקינא לאשתו ונסתרה אפילה שמע מעוף הפורח יוציא  
 2 דיתן כתובה, דברי רבי אליעזר, רבי יהושע אומר עד  
 3 שיטאו ויתנו מזורות בלבנה.

1 מי שקינא / י מ ר מ שקינא. ונסתרה / ז י נ ק ג  
 חסר. הפורח / ת הפורח באייר. 2 - 3 עד שיטאו/  
 ז אף משיטאו. 3, מזורה / ק. 2א טוברה.

Tosafot raise two questions related to the context of this Mishnah:

Tosafot, p. 31a, s.v. קי

פרק זה היה הגון שיהא שבוי ומעורב בפרק ראשון לאחר  
 אותה בנא דאלו אטורות לאכול בתרומה ואח"כ היה לו ל-  
 שבות כיצד עושה לה וכל הסדר אבל תימה דלאחר ששנה  
 שבוקיה המים הוא חוזר לקיבוי...

Tosafot's first concern is that the material of Chapter VI would have been more appropriately incorporated

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1. The relationship of Chapter VII to the ordeal is both formal and insignificant. Similarly Mishnah IX:9 is to be seen in context and not as specifically related to the ordeal matters.

into that of Chapter I. The statement requiring witnesses which stands at the beginning of that chapter should have been elaborated upon by utilizing the material of Chapter VI.

#### Toseftan Order

Indeed, Epstein<sup>1</sup> has argued that the Tosefta order of the material did integrate the Mishnaic equivalent of these chapters into one unit. He derives this proposition from the fact that the opening pericope of Tosefta, 1:2 ( "אי זו היא עזרת הראשונה..." ) is found in Mishnah, 6:3 and seems to be unconnected to Tosefta, 1:1 or to any statement in Mishnah, 1:1-1:3. Hence, argues Epstein, the Tosefta must be based on a prior arrangement which linked these chapters into a single unit.

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1. See J.N. Epstein, Tannaim, p. 406 and Nusah, p. 657. In the former source he notes the correspondencé of Mishnah, 6:4 to Tosefta, 5:8 but fails to explain this anomaly. In fact, his statement that "וכך היה שנוי באמ"עיקרו של פרק זה (מ"א ומ"ג) במשנת התוספתא שסידרה אחרי התוס' is unwarranted in attributing any reference to Mishnah, 6:1 as contained in Tosefta. Epstein speaks of משנת התוספתא as if there were another Mishnah formulation which served as the basis for Toseftan order. I believe that, even granting his point, such a conclusion would be unwarranted. Tosefta may be rearranging order rather than reflecting it.

However, we have attempted to demonstrate<sup>1</sup> that there may be a strong conceptual link between the exegetical concerns of Mishnah, 6:3 and the controversy recorded in Tosefta, 1:1 and it is precisely the apparently unattached statement of Tosefta, 1:2 which highlights this connection. Furthermore, internal Toseftan evidence indicates that these chapters were not integrated. Mishnah, 6:4 discusses the credibility of one witness in the event of conflicting testimony and, as such, is clearly dependent on the information supplied previously in Chapter VI. Yet, the Toseftan formulation is found in 5:8 following the equivalent of Mishnah's Chapter IV rather than in Tosefta, 1:2.<sup>2</sup> Thus, Epstein's basic contention is unfounded and, in any case, the logic of Mishnah structure remains problematic.

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1. See above, pp. 88-100.

2. Of course, its position before the equivalent of Mishnah's Chapter V indicates a different order but, at least, that more accurately would place it at the last possible point before the effects of the ordeal are introduced (=Tosefta, 5:13 as continuation of material in Mishnah, 5:1). Furthermore, Tosefta offers no parallels to Mishnah, 5:1; hence, one might argue that the subsequent material in Tosefta, 5:13 is no proof of where the equivalent of Mishnah, 5:1 stood, particularly since this material is genuinely extraneous to the ordeal. Compare the placement of such type of material in Tosefta, Chs. 3-4. There, too, the question is whether Tosefta itself rearranges the order to better accommodate a lengthy extraneous unit or whether it actually reflects another prior order, differing from our Mishnah.

This Toseftan order highlights the force of Tosafot's second question. Stipulating an unspecified, cogent reason for the lack of integration, Tosafot note that Chapter VI is still misplaced. Why is it relegated to following material that is concerned with the effects of the ordeal?

Inherent in this second question may be the unstated reason for not incorporating this material in Chapter I. The general flow of that chapter (and subsequent chapters) is to indicate as tightly as possible the order of the ceremony. As such, a discussion of the reliability of the lone witness who would obviate the continuation of the ordeal would disturb the basic presentation of material.<sup>1</sup> However, maintain Tosafot, if the basic structure of the Mishnah is to follow the ceremonial procedure, then the point of the witness' credibility should be introduced before the discussion of the ordeal's effect and the material of Chapter V should form the conclusion of the sotah material.

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1. Note that Tosafot would have it placed after Mishnah, 1:3 ("לאחר אותה בנא דאלו אסורות"). This may be an indication that Tosafot were sensitive to the argument herein developed. The reference to 1:3 is designed to weaken such an argument since that pericope apparently does violate the descriptive flow of the process. For a discussion of this problem, see above, pp. 45-47.



Yet, in reexamining the first Mishnah of Chapter VI, we may note that Tosafot's first question may yet carry some force. Tosafot had questioned the relation of the sixth chapter to the first. The proposed solution assumes that 6:1 is of the same cloth as the rest of Chapter VI in its concern with the credibility of the lone witness to her adultery.

#### Internal Order of Chapter VI

In other words, the linkage between 6:1 and 6:2-4 is established by interpreting the case under discussion as referring to a report about her defilement. As such, it would break the flow of Chapter I. Indeed, R. Hanan'el interprets 6:1 in just that fashion.<sup>1</sup> However, Rashi refers it to a report concerning her act of seclusion and directly connects the views of R. Eliezer and R. Joshua in 6:1 with their views in 1:1. Now, if the subject under discussion is the nature of the testimony that suffices for seclusion, then surely the place of 6:1 is together with that of 1:1.

Nonetheless, the weight of the evidence leads to the conclusion that this Mishnah is discussing testimony

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1. Quoted in Tosafot Rosh, ad locum, s.v. יהוסי. 'ר' and Tosafot Evereuk, ad locum, s.v., 'ר' יהוסי .

or reports to defilement and, therefore, its position in Chapter VI is entirely in order.

Rashi states:

Rashi, p. 31a, s.v. קי

מי שקיבא לה ונסתרה. אם לאחר שקיבא לה נסתרה: אפי' שמע מעוף הפורח. שבסתרה יוציא ויתן כתובה ורבי אליעזר לטעמיה דאמר בפ"ק סתירה לא בעיא עדות ואפילו ענד ואפילו שפחה באמבין דהיינו גמי כעוף הפורח דאיתקט לטומאה דכולהו מהימני בה הלכך באסרה עליו דאם אינו רוצה להשקותה יוציא ויתן כתובה: רבי יהושע אומר עד שישאן ויתנו בה מוזרות בלבנה. כלומר משום סתירה שאין בה ב' עדים אינה באסרת עליו רק יהושע לטעמיה דאמר משקה על פי שנים מיהו כשישאן ויתנו מוזרות בלבנה בפריצותה מכוער הדבר ותצא דהא אפי' היא תו לא בדקי לה כדתביא בפ"ק וטהורה היא ולא שישאן ויתנו בה מוזרות בלבנה:

The difficulties inhering in this explanation are manifold. First, Rashi maintains that עוף הפורח equals one witness for seclusion according to R. Eliezer. Why, then, can't the husband insist that she undergo the ordeal? Indeed, he can, maintains Rashi, but this Mishnah refers to a case in which he didn't want to do so and, therefore, he is left with only the option of divorce. However, since it is his decision not to proceed with the ordeal, she is entitled to the marriage-settlement. But, surely, the Mishnah should not have made the blank statement "יוציא"

"אם אינו רוצה להשקותה" without prefacing it with "ויתן כתובה". Secondly, Rashi identifies עוף הפורח with the case of ענד וטפחה. However, the case of עוף הפורח precedes that of ענד וטפחה on which it is presumably based. Furthermore, it would seem reasonable to ground the reliability of ענד וטפחה

on the credibility of עוף הפורח . However, the opposite derivation cannot be defended. The fact that ענן are adjudged sufficient testimony is no logical warrant to grant such credibility to עוף הפורח . Rashi's statement "והיינו נמי כעוף הפורח דאי תקש לטומאה דכולהו מהימני בה" is on extremely shaky ground.<sup>1</sup> The third major problem is that of the role of R. Joshua. Whereas R. Eliezer had maintained "מסקה ע"פ ע"א או ע"פ עצמו" in Mishnah, 1:1, R. Joshua there required two witnesses for seclusion. Hence, as Rashi admits, he cannot be integrated into the framework within which R. Eliezer operates. Therefore, Rashi explains that once the stage of מוזרות בלבנה is reached he must divorce her because the ordeal will no longer prove effective.<sup>2</sup>

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1. This is particularly valid if we accept the reasoning of Tanna d'be R. Ishmael (T.B. Soṭah, 3a):

מפני מה האמינה תורה עד אחד בסוטה שרגלים לדבר שהרי קינא לה  
ובסתרה ועד אחד מעידה שהיא טמאה.

2. As proof, Rashi cites the beraita quoted in T.B., 6b, "וטורה היא ולא סיטאו ויתנו בה מוזרות בלבנה". Rashi takes the import of the beraita to be that wide-spread public knowledge of wanton behavior creates a status of kinnu'i and setirah, Rashi's interpretation allows its application even before setirah had taken place. This analysis solves the problem raised by Y. Lifshitz, ed., Tosafot Rosh, p. 62, n. 84a.

However, the Mishnah structure does not easily yield to this interpretation; it seems to assume that R. Eliezer and R. Joshua operate within the same framework, to wit, the viability of specific forms of testimony as far as seclusion.<sup>1</sup>

According to Tosafot Rosh, the commentarial dispute between R. Hanan'el and Rashi is to be found in T.P.<sup>2</sup> He states:

ור' יהושע, s.v. Tosafot Rosh, p. 31a,

עוד גרסין בירושלמי בריש פירקין מי שקבא לה בעלה אפילו שמע מעוף הפורח וכו', ר' יוחנן בשם ר' יבאי כל הדין פרקא כשקבא לה ובסתרה, ר"ל אמר אפילו לא ובסתרה אמר ר' זעירא קמיה ר' יסא ר"ל מה דין חבי דהוא מיקל בעידי סתירה. וב"ל דבהא פליגי, דר' יוחנן מוקי מתגיתין כשקבא לה ובסתרה ושמע מעוף הפורח שבטמאת, והיינו כפר"ח, ודייק ר' יוחנן דכל הדין פירקין איירי בענין אחר, כי היכי דאמר עד אחד לאיתיה/ שבטמאת היינו אחר סתירה הכא נמי שמע מעוף הפורח מיירי לאחר סתירה, ור"ל מוקי רישא אפילו לא ובסתרה ושמע מעוף הפורח שבטמאה.

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1. The first two questions on Rashi's explanation are raised in Tosafot Evereuk, ad locum, s.v., ור' יהושע ; all three in Tosafot Rosh, ad locum, s.v., ור' יהושע .

2. It should be noted that just as the word does not prove that defilement is the subject of discussion, so, too, would its absence in some readings not prove that seclusion is the subject. "מי שקיבא לאסתרי" could be taken as including both the formal warning and her subsequent disregard of same. In any case, Rashi, who espouses the cause of seclusion as the subject, clearly has the reading of "ונסתרה". See, also, below, p. 329, n. 1.

Analysis of T.P.

An examination of T.P., however, suggests that this is not the case, while shedding light on the general structure of Chapter VI:

T.P., 20d (6:1)

A	מי שקיבא לה ובסתרה וכו';	1
B	רבי יוחנן בשם רבי יבאי כל ההן פירקא משהתרה	2
	בה ואמר לה אל תיסחרי עם איש פלו'.	3
C	מסקיבא לה ובסתרה.	4
D	רבי שמעון בן לקיש אמר אפילו לא בסתרה.	5
E	אמר ר' זעירא קומי רבי יסא לא דרשב"ל פליג אלא	6
	סבר כההן תנייה והוא מיקל בעידי סתירה	7
F	אבן חגיבון סחלוקת. אית תניי תני סתם.	8
G	אמר רבי זעירא קומי רבי מבא לא על מה	9
	דרבי אליעזר א"ר יושוע פליג.	10
H	אלא בגין דתניבין רבי יהושע אד' עד עד	11
	סיסאו ויתבו בה מצדות בלבנה.	12
I	רבי אבא מרי בעי תמן אמר רבי חזקיה ר' אבהו בשם ר'	13
	אלעזר כל מקום ששנה ר' מהלוקת וחזר ושנה סתם	14
	הלכה כסתם. וכא וזא אמ' הכין.	15

The text is a nightmare of difficulties and to facilitate grasp of the problem it will be useful to reproduce the standard commentaries of R. Moses Margoliot and R. David Fraenkel:



In addition, the text of T.P. as found in  
should be noted:

- 1 ד' יוחנן בשם ר' יבוי כל ההין פרקה מסקינה לה
- 2 ובסתרה ר' שמעון בן לקיש אמ' ואפילו לא ביסתרה
- 3 א' ר' זעירה קומי ר' יסא אלא דר' שמעון בן
- 4 לקיש אלא הו' הוא סבור כהדן תנדייה והוא מיקל
- 5 בעידי סתירה אבן תביגן מחלוקת אית תנדייה תבי
- 6 סתם...קומי ר' מנא לא על מה דר' ליעזר א' ר'
- 7 יהושע פליגא... ר' יהושע א.. עד שיטאר
- 8 ויתבו בה מוצרות בלבנה ר' אבה מרי בעי תבלי
- 9 חמן א. חזקיהו ר' אבהו ר' ליעזר כל מקום ששנה רבי
- 10 מחלוקת וחזר ושנה סתם הלכה כסתם והכה הוא
- 11 אמ' הכן.

R. Yohanan appears to make a statement concerning the frame of reference governing the entire chapter. Pericope B would have the chapter predicated on the assumption that a warning has taken place. C, however, has R. Yohanan citing the opening phrase of 6:1 and applying it to the entire chapter. Now, B and C do not fit neatly together and if they form a single statement of R. Yohanan, then

B is superfluous.<sup>1</sup> Korban ha'Edah (K.E.) drops the "מי טקינא" from C since he apparently recognizes the difficulty. However, he leaves "ונסתרה" as completing the thought of B. He then proceeds to interpret R. Yoḥanan in the same fashion as R. Hanan'el interprets the Mishnah, in which the ערך הפורה relates to defilement. As to D, he maintains that Resh Lakish disagrees with R. Yoḥanan and restricts the report of the ערך הפורה to the question of seclusion.<sup>2</sup> This interpretation focuses on R. Yoḥanan's comment vis-a-vis 6:1 and blurs the force of it as far as the rest of the chapter. K.E. was, therefore, apparently sensitive to the problem spelled out above.

Pene Moshe (P.M.) is also sensitive to this problem. Note how he emphasizes that the force of R. Yoḥanan's comment

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1. The assumption that it is B which is superfluous is based on the fact that C imparts the additional information of "ונסתרה".

2. K.E., s.v., ה"ג should end with the word "שנסמאה". The subsequent "לא נסתרה" is a new heading to a comment which ends with the word "כתורה". The punctuation lacuna is found in editio princeps of K.E. (Berlin, 1757). The additional period in the Romm edition is an unsuccessful attempt to solve the problem. Thus, K.E.'s explanation approximates that of Tosafot Rosh.



is to indicate that the entire chapter is premised on "משקיבא לה" . Of seclusion he says nothing<sup>1</sup> and he seems to relegate " משקיבא לה ונסתרה " as a comment localized to the concerns of 6:1. In fact, he may not even assign this to R. Yohanan at all but may take it as a quote from the Mishnah upon which Resh Lakish comments.

E suffers from the ambiguity of whom or what the "פליגי" refers to<sup>2</sup> as well as the reference intended by "כההו תנייא" and "והוא" Both P.M. and K.E. refer "כההו תנייא" to R. Eliezer of 1:1 who doesn't require two witnesses for seclusion.<sup>3</sup> However, there is no explanation offered as

1. It may be, however, that P.M. takes seclusion for granted. In s.v. כל הוון פירקא he quotes Tanna d'be R. Ishmael. Could the hedge on seclusion be attributed to the presence of R. Eliezer for whom every witness to defilement is automatically a witness for seclusion? Note, also, that P.M. focuses his comment on precisely those words which K.E. elides.

2. Note that P.M. injects the possibility that the controversy concerns the reading of "ונסתרה". It may be of interest to note that "ונסתרה" is absent in manuscripts reflecting the Palestinian tradition (e.g., Kaufmann and Lowe. In Ms. Parma, "ונסתרה" appears as a marginal gloss.) Hence, it is not unreasonable that in addition to the other literary/structural concerns of this pericope, there is to be included that of the proper reading.

3. Both commentators take "והוא" as referring to R. Eliezer.

to why Resh Lakish should either adopt the view of R. Eliezer or assume that the Mishnah unequivocally does so. Nor is the ambiguous reference to R. Eliezer ("כההו תבייא") explained; why is his identity not spelled out?

The sense of F is variously interpreted by P.M. and K.E. The term "סתם" could mean the omission of any names and/or the omission of one of the opinions. K.E. interprets it as referring to the omission of "דברי ר' אליעזר" from the Mishnah and the anonymous reporting of his opinion. R. Ze'ira's comment in G refers not to the "סתם" but rather is a question related to "אנן תיבון מחלוקת" and H attempts to demonstrate by virtue of the phrase "עד שיטארו" that R. Joshua does, indeed, disagree with R. Eliezer.<sup>1</sup> The continuation of I introduces, for K.E., a question that joins the "אית תבי סתם" with the opinion of

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1. K.E.'s focus on "עד" is somewhat forced. Regardless of whether one reads "עד שיטארו", "אף מטיטארו", "מטיטארו", it is impossible to determine whether R. Joshua is disagreeing with or explaining R. Eliezer's opinion. The assumption made by J.N. Epstein, Nusah p. 85, that the reading "אף" would certainly indicate R. Joshua's agreement with R. Eliezer is as unwarranted as that which would have "עד" as indicating disagreement. "אף" could stand in R. Joshua's statement in the same way that "אפילו" does in R. Eliezer's. Both may be related to 6:2 - "אפילו עבר". See below, p. n. On the other hand, "עד" could well be a definition of the ambiguous "עך הפורה". An examination of the beraita in T.B. Gittin, 89a, reveals readings of "מטיטארו" and "עד שיטארו". Yet, it is clear from the context and from R. Yohanan b. Nuri's rejoinder there that R. 'Akiba's position goes beyond that of R. Me'ir. Thus, too much emphasis can and should not be placed on this aspect of R. Joshua's formulation.

Resh Lakish and the implications of such a fusion. The question is left unanswered but certainly seems strange - why should one assume the necessity to join these elements to produce the problem.

P.M., on the other hand, sees G not as a question on the assumption of "אגון תנינן מחלוקת" but, rather, as a commentary to the blank "איית תני...סתם". Its sense is to discount the possibility that the implies that only the opinion of R. Joshua is reported in the Mishnah and, that too, in an anonymous manner. Actually, the exact opposite is the case for, according to H, the Mishnah contains only the statement of R. Eliezer in an anonymous formulation. Now, P.M. seems to offer this interpretation because I is now better explained as relating to the immediately preceding F-I. R. Abba Mari counters this interpretation of "סתם ... איית" directly and the tortured logic of K.E. in referring I to E is unnecessary.

However, three questions remain. What is the basis for R. Ze'ira's statement which assumed the סתם to follow R. Eliezer? What is the answer to R. Abba Mari's question? Finally, the pericope closely examined is most clumsily constructed and should have read "לא על מה דרבי  
 תו " רבי יוסוע " . What is the sense of " רבי יוסוע אמר פליג  
 this statement?

Now, the implication of R. Abba Mari's question takes us full-circle to our own starting point. If the Mishnah is discussing the degree of sufficiency for effective testimony as to seclusion then the question is certainly in order. However, if the Mishnah means to indicate that עוף הפורה is sufficient for testimony as to defilement following seclusion then there is no basis for this question. Thus, it might be reasonably argued that R. Eliezer himself would not rely on עוף הפורה as far as seclusion is concerned.<sup>1</sup>

The key to an understanding of T.P. may lie in two literary questions:

(1) The Mishnaic statement "מי שקיבא לה ונטתרה..." can be read as an introduction to all subsequent material. In that case "אפילו שמע... ובלבד" may be taken as an illustration of the lone witness to defilement paradigm. Of course, its position preceding the basic law of 6:2 is awkward but

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1. עוף הפורה is taken by Tif'eret Israel, ad locum, to be a parrot! Tosafot Rosh more plausibly takes it as a rumor - basing the phrase on Ecclesiastes 10:20, "כי עוף השמים יוליד את הקול" T.P., 20d, also seems to take it as a rumor. In any case, one cannot equate the credibility of עוף הפורה with that of "ע"פ עד אחד או ע"פ" (Nor do I think it reasonable to argue that "עצמו" defines the limits of "מן העוף הפורה".)

this can be explained as due to a parenthetical insertion.<sup>1</sup>

However, it may also be taken in a more limited sense as referring to 6:1 only. In that case, its meaning would be open to several possibilities. If the Mishnah is ascribed to R. Eliezer alone and R. Joshua's opinion is deleted, the "וינסתרה" could be understood as part of R. Eliezer's statement. This would then be seen as consistent with his general views of seclusion. It is important to stress that this implication would hold true regardless of whether וינסתרה is defined by ... אפילו שמע or stands on its own. However, if the Mishnah contains a controversy of R. Eliezer and R. Joshua, then this introductory statement would have to be interpreted in accord with their respective positions vis-a-vis the testimony required for seclusion. In such case, too, it would be unlikely that אפילו שמע defines the nature of וינסתרה. Rather, it should more properly be seen as what happens after a sufficient seclusion takes place; the nature of that seclusion itself the subject of a different dispute.

(2) R. Ze'ira makes two comments in T.P. Are

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1. Note the parallelism both to Sotah, 1:1, "השקנא לאשתו ר' אליעזר...", in which the debate is probably parenthetical to the opening statement, and to 6:2, in which "אפילו שמע" would be paralleled by "וינסתרה". See above, p. 320, n. 2.

they in any way interrelated and if so what is the nature of that relationship?<sup>1</sup>

Let us now proceed to analyze T.P. in light of these two questions and their ramifications while bearing in mind the numerous problems associated with the traditional commentaries.

R. Yohanan makes a statement which appears internally difficult. Furthermore, the statement will stand on its own whether we read B alone or C alone. If we read B then Resh Lakish's comment refers to the Mishnah. If C alone it refers to R. Yohanan or the Mishnah.

There would seem to be some evidence to suggest that R. Yohanan's statement read C alone: "ר' יוחנן אמר כל" . First, T.P. does not generally speak of התראה but rather of מקנא . There is but one other instance in which התראה is used as equivalent to לניא' :

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1. See Z.W. Rabinovitz, Sha'are Torat Erez Israel (Jerusalem, 1940), p. 369, who reads "א"ר עזרא קומי ר' מנא" and p. 68, where he disputes HaLevi's contention that there was an elder R. Mana who was questioned by R. Ze'ira. Epstein, Nusah, p. 85, accepts Rabinovitz's emendation. Of course, the argument developed herein would be more elegant if Rabinovitz is rejected; nonetheless, the logical relationship can stand on its own.

T.P., 21a (6:3)

מתניתא דרבי יהושע דרבי יהושע אמר מקבא מתרה לה על	1
פי טנים ומשקה לה על פי טנים.	2
מקבא / ך חסר. מתרה / טרי"ר חסר	1

The usage of "מתרה" here is most interesting.

First, it is found in Chapter VI in close proximity to our text. Second, it is clearly an interpolation designed to explain "מקבא". Third, and most striking, is the fact that it is absent in manuscript. <sup>1</sup> This tallies neatly with the corresponding absence of B in the same manuscript. The usage of התראה is a clear indication that the intention of B is merely to explain "משקיבא לה".

Thus, the thrust of R. Yohanan's statement is that the entire chapter assumes a prior "משקיבא לה ובמתרה". In other words, R. Yohanan interprets this statement as a general introductory formula which is not dependent on the particular concerns of the first Mishnah and cannot be localized to R. Eliezer alone or to the R. Eliezer/R. Joshua debate. R. Yohanan maintains that subsequent to

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1. Ibid., p. 211, l. 9. Note also the expression אל תדברי instead of אל תתרי. Both expressions may show the influence of T.B., 3a and 5b in the motivation behind a marginal gloss which then entered the text.

this introduction all material dealt with in this chapter assumes a prior warning and seclusion. What then would be the subject of the R. Eliezer/R. Joshua discussion? Clearly, the only possibility is as R. Hanan'el would have it - the question of defilement.

Striking support for this interpretation of R. Yohanan may be adduced from a subsequent citation of R. Yohanan:

T.P., 21d (6:4)

- |   |  |
|---|--|
| 1 | אמרון בשם רבי שמואל בפסולי עדות היא מתביתא.  |
| 2 | אמרין בשם רבי שמואל בפסולי עדות היא מתביתא.  |
| 3 | רבי זעירא בעא קומי רבי מנא מהו בסתירה אחרת   |
| 4 | היא מתביתא. אמר ליה כן אמר רבי יוחנן בשם רבי |
| 5 | ינאי כל ההון פירקא כשקינא לה ונסתרה.         |

The first, and most obvious, point is that all readings lack the "מסתרה בה ... פלוגי" pericope. This, of course, helps nail down the textual case.<sup>1</sup> Equally important is that it demonstrates that R. Ze'ira was made aware by R.

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1. See the commentary of Ridbaz, ad locum (6:1), who attempts a literary analysis of the possible meanings of מי / מני שקינא and arrives at a similar interpretation of R. Yohanan. He cites the commentary of GRA to Eben Ha'Ezer, Ch. 178, n. 19. Note that in quoting the statement of R. Yohanan, GRA cites ינאי בשם ר' "י" יוחנן בשם ר' ינאי and omits "מסתרה בה ... פלוגי" and "כל ההון פירקא כשקינא לה ונסתרה".



Mana that R. Yohanan's statement required two witnesses to the seclusion in accord with R. Joshua's position in 1:1.

Now, bearing in mind that R. Ze'ira first learned of R. Yohanan's comment from R. Mana and that the implication of R. Yohanan's statement was that two witnesses would be required for the seclusion, we can appreciate his explanation of Resh Lakish. He maintains that Resh Lakish does not argue with R. Yohanan's literary point which refers "מי שקינא לה ונסתרה" to the entire chapter. Rather, he is to be understood in the more limited sense as disagreeing with the second possible aspect of R. Yohanan's statement that required two witnesses to the act of seclusion.<sup>1</sup>

In other words, Resh Lakish agrees that "מי שקינא לה ונסתרה" introduces the whole chapter, but he is more lenient as far as the number of witnesses required. The reason for this qualification is given in H-I as being "אלא סנר כההן תנייא." Actually, the basis for Resh Lakish's

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1. It should be emphasized that R. Yohanan himself does not explicitly make such a claim. On the other hand, the same interpretation would hold if it is taken as but a qualification of R. Yohanan's blank statement.

position may well be that he accepted the version of K, which omitted R. Joshua's opinion completely. Hence, the opening phrase is taken as part and parcel of R. Eliezer's position and, as such, assumes a more lenient position on seclusion.<sup>1</sup> Thus, "התן תבייא" refers to the "אית תבי" of K and "והוא" to Resh Lakish himself.

The force of this argument is that Resh Lakish accepted the reading which omitted R. Joshua from the Mishnah. Once R. Joshua's opinion is excised, it is certainly reasonable to maintain that the "מי שקיבץ לה נוסתרה" is part of R. Eliezer's statement and, as such, can be understood only in light of R. Eliezer's understanding of the necessary witnesses for seclusion.

R. Ze'ira interpreted "אית תבי" as maintaining that R. Joshua was completely omitted from the Mishnah. The meaning of סתם is the absence of dispute and in its absence R. Eliezer's name is omitted. The formulation of "לא על מה דר' אליעזר אמר ר' יוסף פליג" should be understood

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1. It is unclear whether Resh Lakish is making a literary or halakic point. Would he agree that the law follows R. Eliezer of 1:1 or is it merely that this material follows his opinion? Note that the anonymous sugya in T.B., 2b assumes that Resh Lakish agrees with R. Yose b. Judah's tradition of R. Eliezer:

as a question. " (How can we maintain that there is no מחלוקת in the Mishnah - does not R. Joshua disagree (פליג) with what R. Eliezer says." Therefore, the conclusion is that סתם must mean the excision of R. Joshua's statement from the Mishnah. He cannot be understood as of the same opinion as R. Eliezer.<sup>1</sup>

The reason that Resh Lakish is comfortable in being "אפילו לא באתרה" which leads to his position is his acceptance of the סתם. R. Abba Mari is, therefore, challenging Resh Lakish for accepting the סתם as implying that the general statement of "ומתרה" represents an halakic position in accord with R. Eliezer. Perhaps R. Abba Mari would even attribute this statement to R. Eliezer if the Mishnah is read סתם. However, he would certainly agree that the intent of the סתם is not to imply anything about the nature of ומתרה but only insofar as the requirement of עוף הפורה as opposed to that of מוזרות בלבנה.

Although R. Abba Mari's question remains unanswered, it is now more understandable why R. Ze'ira chose to see

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1. Note the continuation of T.P., *ibid.*, "מה" "בן קייסין אינו בהו ושמע ולא ידע מן מאן שמע כעוף הפורה הוא" which would indicate that T.P. is unwilling to accept the possibility that R. Joshua merely defines עוף הפורה.

the *וְהוּא* as something representing the opinion of R. Eliezer. This interpretation provided a reasonable basis for Resh Lakish's opinion. Furthermore, this opinion was itself indicative of the nature of the *וְהוּא*.

Hence, it would appear that while according to Resh Lakish, conclusions could be drawn about the question of seclusion, they are only incidental. All agree that the Mishnah is concerned with the nature of testimony as to defilement sufficient to obviate the ceremony from occurring.

This lengthy analysis leads once again to the thesis that neither this chapter nor, more importantly, this Mishnah is concerned with the subject of seclusion. Its incorporation into Chapter I would have broken the flow of that material had it been inserted there.

#### Chapter VI as Appendix: Editorial Concerns

However, Tosafot's second question must still be dealt with. Why is this subject relegated to a position at the end of the material dealing with the ordeal. At the very least, it should have preceded Chapter V.

Albeck<sup>1</sup> discusses the problem of similarly misplaced material, but fails to analyze the sources to determine if there is any consistent editorial principle guiding this phenomenon. His interest is to demonstrate that the Mishnah is not arranged in a totally logical and systematic fashion. Concerning Sotah, he states:<sup>2</sup>

Der Traktat Sota behandelt nur in dem ersten sechs Kapiteln die des Ehebruches verdächtige Frau. Kap. VII-IX ist nur lose an diesen Traktat angeknüpft. Der ganze Vorgang wird wie folgt behandelt: I. Die Eifersucht des Mannes bis kurz vor dem Akt des Wassertrinkens. II. Bringen des Opfers und Schreiben des Zettels. III. Das Opfer selbst, das Trinken und das Schicksal der als unrein Befundenen. Daran schliesen sich allgemeine Bemerkungen bis V. Kap. VI behandelt aber von neuem Falle, die sich vor dem Trinken ereignen und somit zum ersten Kapitel gehören. Schon den Tosafisten (31a s.v. ״מ״) fiel diese scheinbare Systemlosigkeit auf, und sie konnten dafür auch keine Erklärung finden. Tatsächlich ist aber das ganze sechste Kapitel ein Nachtrag zum eigentlichen Gegenstand des Traktates, zur Sota, deren Behandlung hier ihr Ende findet. Ähnliches haben wir oben in 'Erubin X (und vielleicht auch in Challa IV) konstatiert.

The solution to this problem may involve a general technical question concerning the editing of the Mishnah.

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1. Chanoch Albeck, Untersuchungen über die Redaktion der Mischna (Berlin, 1923), pp. 125-150.

2. Ibid., p. 131.

Our previous attempt to solve the first question was based on the assumption that the literary character of Mishnah should be understood as bearing a tight conceptual order. However, there may be cases in which the conceptual order is seriously violated because of problems in the technical work of editing itself.

The material in Chapter VI might serve as a case in point. It may well be that this material never received a full and complete editing. Textual problems abounded for which no firm editorial formulation took place.<sup>1</sup> As such, the material was not relegated to the role of beraita - it could not be so dealt with because it was simply too important - however, it was not integrated into the conceptual structure of the fully edited Mishnah. This fundamental consideration accounts for its appendix-like position at the end of the sotah material.<sup>2</sup>

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1. I am unable to suggest a cogent reason for why this might have happened in this case.

2. Indeed, in a completely edited text, the entire pericope of 6:3 may have been omitted. It is the only such type of lengthy exegesis in these six chapters and, furthermore, seems to add little to the basic understanding of the material.

The material found in T.P.<sup>1</sup> in this chapter pro-

1. It may be of some importance that T.B. contains little discussion of this chapter and that all Amoraim quoted by name are Palestinian rather than Babylonian. There are three distinct subjects dealt with in T.B.:

- (1) האי הלמוד לימוד... בפני עדים
- (2) טעמא דקא מכחיש... ונהיא לא בחפשה
- (3) רבין דמדאורייתא... קמ"ל

Now, the first anonymous pericope probably represents a transfer of material from T.B. Sotah, 3b. (Add this to J.N. Epstein's list of such phenomena in Amoraim, pp. 89-90.) In the context of 3b the reference to ... וילא בקינוי is fully warranted and understandable. The unexplained introduction of this material is due to the emendation of the Mishnah therein. Furthermore, if this anonymous material is assigned to the "introductory sugya" variety then it may well be post-Amoraic. Note how the sugya attempts to introduce material from various sections of Sotah and compare this phenomenon with other such sugyot. On the nature of the introductory sugya, see the bibliography cited above, p. 40, n. 1. The second pericope (which should likewise be added to Epstein's list) finds its equivalent in T.B. Sotah, 47b. It, too, is a transfer with its original locus in that context. An appreciation of this will solve the basic problem of the question introduced herein. As Rashi, s.v. לא רא לא, was well aware, this formulation is most awkward, since Mishnah, 6:2 had explicitly recognized the credibility granted the lone witness. Why rely on an implication when an unequivocal statement exists? However, by identifying this pericope as originating in T.B. Sotah, 47b, and assuming the transfer, this problem is resolved. An examination of Mishnah, 9:8 on which this question is raised, reveals that there is no antecedent formulation which had clearly spelled out that one witness was to be granted credibility vis-a-vis the case of 'eglah 'arufah. Hence, the inference of "טעמא דקא מכחיש" is there entirely in order. The third pericope also finds its equivalent in T.B., 47b (correct Epstein's citation of 40b). Epstein maintains that it originates here and is transferred to the later context. The fact that T.P., 21a quotes R. Yohanan as saying "כאן לא היתה שורתה ונעגלה ערופה היו עורפין" means that R. Yohanan's statement originally concerned sotah and, hence, R. Yizhak's report of this must have been originally appended to 6:4. Now, even if we grant Epstein's contention that R. Yizhak is the source of this sugya (see Nusah, p. 153). Epstein's certainty appears unwarranted. T.B.

vides ample illustration of the manifold textual problems:

- (1) T.P. 20d (6:1) - אנו תבינו מחלוקת  
 (2) T.P. 20d (6:1) - אית תביי תבי מוזרת

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does not cite R. Yohanan's "וכאן ... ובעגלה" as T.P. has it. Second, Epstein fails to distinguish between the anonymous sugya and the Amoraic element in it. It is the former which will give the clue as to the context in which this material was formulated. Although the question is an open one there is some internal evidence to suggest that this material, too, originated in 47b. First, it is joined to "מעמא דקא מחייס" which seems to be a product of 47b. In addition, the conclusion of the sugya, "מהו דתימא כי" fits better in 47b. In our context it is problematic, for why should her inability to undergo the ordeal be considered a kula. In any case, she cannot be forced to do so, while, under the present circumstances, she cannot prove her innocence. The nature of kula and humra is more reasonable in 47b than in 32a. Even if we are to assume with Epstein that the material originates here - of course, an analysis of T.B. Yebamot, 38b and 117b would be required - it is worth reiterating that no Babylonian Amoraim are herein referred to. See, however, T.P., 6:4, which does refer to several. Thus, even the Amoraic material appears as a "transfer" of Palestinian material (this should be added to Epstein's list of such Sotah material in Amoraim, p. 91) and there may well exist no Babylonian material whatsoever formulated to this chapter.



- (3) T.P. 21a (6:2) - מתביתא משהרדה ר' עקיבא  
 (4) T.P. 21a (6:4) - בני דבית  
 רבי כן  
 (5) T.P. 21a (6:4) - רב רבא לא הוה שותף שותף - רב  
 אמר הוה שותף שותף

Except for one instance,<sup>1</sup> these cases all represent major problems in establishing the very meaning and intent of the text and lead to the theory that no final decision on editorial process was taken. Perhaps it is this lack of finalization that generated the present placement of this unit as a form of appendix to the specific sotah material.<sup>2</sup>

Thus, while the question of why this material did not receive a final and full editing remains open, the fact that it did not appear established. The implications of this approach, of course, warrant further research into the other examples cited by Albeck.

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1. That represented in #2.

2. Note the placement of Sotah, 9:8 at the end of the 'eqlah 'arufah material. Considerations of the general flow of material and/or that technical redaction may be similarly applied to its location there as a form of appendix.

Summary

The problem of the Mishnaic order is most sharply defined by the material of this chapter. An analysis of sources tends to support the interpretation of 6:1 as referring to the question of her defilement. This mitigates the problem to some extent. In addition, a tentative suggestion is made that the entire chapter's placement at the end of the sotah material is related to its rather unedited status. However, the question as to the root cause of such a condition remains unsolved.

Sotah, 6:2, 6:4Credibility of Lone Witness

The major theme of Chapter VI is that the testimony of a lone witness to her defilement is sufficient grounds for the abrogation of the ordeal.<sup>1</sup> This credibility extends not only to witnesses who are generally disqualified in tandem but even to those who are not. Furthermore, such

1. The exception to the general requirement of two witnesses is explained by Tanna D'bei R. Ishmael in T.B., 3a, מפני מה האמינה תורה עד אחד בטומה שרגלים לדבר שהרי קינא

T.P., "לה ונתתה ועד אחד מעידה שהיא טמאה 21a (6:4), quotes R. Hisda מה טעם אמרו עד אחד נאמן לטמאתה "מפני שרגלים לדבר" Note the difference between the formulations of "אמריו" and "אמריו". However, it appears that Sifre, p. 12 (#7) does not accept this rule. This may be the source quoted in T.P. 20d-21a (6:2):

אין לי אלא עד מביין אפילו עבד אפילו שפחה ת"ל ועד איזן בה מכל מקום וזכרני ישמעאל דרבי ישמעאל אמר כל מקום שנאמר בתורה עד שנים הרי אילו בכלל שני עדים עד שיפרש הכתוב שהוא עד אחד אטבח תני ר' T.P. raises the question as to how R. Ishmael could be squared with the Mishnah. (ישראל ישמעאל) is a question. See Halivni, Mekorot, p. 436, n.6, who emends the text to read ישמעאל ודלא כר' ישמעאל and maintains that the "positive" ישמעאל וזכר' is a transfer from T.P. Sanhedrin, 21c (3:9) and Shebuot, 35b (4:1). This emendation is unnecessary and, furthermore, the appearance of "אטבח תני ר' in these parallel sources might well indicate that the transfer of material had the Sotah source as the point of origin. Halivni, ibid., n. 8, refers to Horowitz and Epstein as having noted the relationship between T.P. and Sifre on this point. To this list should be added R. Naftali Berlin, 'Emek, p. 42, s.v. אין עדים and p. 43, s.v. בשני עדים. Sifre Zuta, pp. 233-234 (5:13), on the other hand, represents the opposing ('Akiban?) view formulated in our Mishnah:

ועד שהוא כשר להועיד ומבין אף שאינו כשר להועיד ת"ל עד ועד מיכן אמרו אמר עד אחד אני ראיתיה שטמאת לא היתה שותה ולא עוד אלא אפילו אפילו (This is implicit in Sifre Zuta even before מיכן אמרו and is not dependent on the explicit, but possibly late, מיכן אמרו). Note that Berlin focusses on the plural עדים of Sifre p. 12,

testimony generally leads to a loss of the marriage settlement. The Mishnah states:

Sotah, 6:2 (p. 68)

- |   |  |
|---|--|
| 1 | אמר עד אחד אני ראיתי שנשמת לא היתה שותה, ולא עוד אלא אפילו עבד |
| 2 | אפילו שפחה הרי אלו באמנין אף לפוסלה מכתובתה. חמורה רבה         |
| 3 | חמורה וצרתה ויבמתה רבה בעלה הרי אלו באמנות, ולא לפוסלה         |
| 4 | מכתובתה אלא שלא תשתה.  |
- 
- 4 מכתובתה / ל ב פ מכתובתה אמרו.

However, an important qualification is introduced in the case of conflicting testimony:

Sotah, 6:4 (p. 70-71)

- |   |  |
|---|--|
| 1 | עד אומר נשמת ועד אומר לא נשמת, אשה אומרת נשמת ואשה   |
| 2 | אומרת לא נשמת, היתה שותה. אחד אומר נשמת ושנים אומרים |
| 3 | לא נשמת היתה שותה. שנים אומרים נשמת ואחד אומר        |
| 4 | לא נשמת לא היתה שותה.                                |
- 
- 2 היתה / י לא היתה, מ לא היתה. 3 היתה / ב מ ק לא היתה

11. 4-6 (§7) as well as Sifre p. 12, 11. 11-13. Epstein, in Nusah, p. 656, also makes note of the plural עדים in Sotah 11:3, 3:6 and 4:2 as an indication that these reflect R. Ishmael's position. However, these sources (in reality, perhaps only one - see above, p. 273 ) may have been adjusted to accommodate both R. 'Akiba and R. Ishmael and, in any case, the use of the plural may simply reflect a standard usage.

Source Complications

The sense of these rather straightforward formulations is confounded by an examination of other Tannaitic sources as well as early Amoraic comments.

The first difficulty arises from the following passage in T.P.:

T.P. 21a (6:2)

סתמיאת משהודה רבי עקיבה לרבי טרפון דתני רבי טרפון אומר עד	1
אחד באמן לטמאותה ואין עד אחד באמן להפסידה סכתובתה. רבי	2
עקיבה אומר כשם שעד אחד באמן לטמאותה. כן עד אחד באמן להפסידה	3
מכתובתה. אמר לו ר' טרפון איכּן מצינו עד אחד בממון כלום.	4
אמר לו רבי עקיבה ואיכּן מצינו עד אחד באסת איס כלום. אלא	5
כשם שעד אחד באמן לטמאותה. כך עד אחד באמן להפסידה	6
מכתובתה. חזר רבי עקיבה להיות טובה כרבי טרפון.	7

The reading in T.P. of " סתמיאת משהודה " clearly suggests that the testimony of the lone witness is insufficient to deny her the marriage settlement. This is at odds with the unequivocal statement which grants the testimony such validity and restricts it only in the case of "the five women" ( "אף הנשים").

A further difficulty emerges from an examination of Tosefta:

Tosefta, 5:8

- 1 " עד אר' ביטמית, ועד אומ' לא ביטמית, אשה אומרת בטמאת,  
 2 ואשה אומרת לא בטמאת, או שרתה, או לא נוטלת כתובה. ר'  
 3 יהודה אומ' לא כל הימנר להפסידה מכתובתה. אלא עד  
 4 אומ' בטמאת, ושבים אומ' לא בטמאת, שנים אומ' בטמאת  
 5 ואחר אומ' לא בטמאת, בטל יחיד במיעוט.

- 1 - 2 אשה - לא בטמאת / א חסר. 2 או שרתה / ד לא שרתה.  
 2 או - כתובה / א לא שרתה ולא נוטלת כתובה. 3 הימנר  
 להפסידה מכתובתה / ד הימנר / מעד אח' / להפסיד' מכתובת'.

The phrase " או שרתה או לא נוטלת כתובתה" is found in Sotah, 4:3, where it carries the negative sense of לא  
 שרתה.<sup>1</sup> In other words, its force is that she loses rights to the marriage contract since she does not (=cannot) partake of the ordeal. This interpretation of או ... או is borne out by Ms. Erfurt of Tosefta which reads "לא שרתה" . ולא נוטלת כתובה

In fact, the problems as to the disposition of the case of conflicting witnesses evident in the Tosefta formulations is echoed in the reading of early Amoraim.

T.P. states:

T.P., 21a (6:4)

- 1 שפעון בר בא בשם רבי יוחנן כאן לא היתה שרתה ובעגלה  
 2 ערופה היו עורפיו. רב אמר היה שרתה.

1 כאן / ר חסר.

1. See T.B. Yebamot, 38b. See however, Lieberman, TK, p. 658, n. 13.

T.B. also deals with this problem:

T.B., 31b (pp. 72-73)

1 וכיון דמדאורייתא עד אחד מהימן, אידך היכי מצוי  
 2 מכחיס ליה, והא אמר עולא כל מקום שהאמינה תורה עד  
 3 אחד הרי כאן שנים ואין דבריו של אחד במקום שנים,  
 4 אלא אמר עולא תבי לא היתה שותפה, וכן אמר רבי יצחק  
 5 לא היתה שותפה. ורבי היא אמר היתה שותפה.

4 אלא / ר חסר. וכן - ורבי היא אמר היתה שותפה / ט חסר.

As Epstein notes, R. Yohanan and his students read "לא היתה שותפה", whereas R. Hiyya and his student Rab read "היתה שותפה".<sup>1</sup>

Thus, the Mishnah text is clouded by controversy which obscures the sense of the two laws. While unequivocally granting the efficacy of the lone witness, a confused picture emerges both as to his power vis-a-vis the marriage settlement and the disposition of contradictory testimony.

The Tosefta suffers from the same problem, and is, in addition, in need of further elucidation. The statement of R. Judah appears subsequent to the case of conflicting testimony. Does he refer to the general credibility

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1. J.N. Epstein, *Nusah*, p. 152. Epstein seems to be attempting to develop a Babylonian/Palestinian basis for the variant readings. However, this breaks down in an examination of the Babylonian R. Ada b. Ahvah quoted in T.P. (below, p. 353), who does not follow Rab.

of the lone witness or is he commenting only on the case of conflicting testimony? Is the continuation of the pericope "אלא עדי" to be attributed to R. Judah or is it linked with the opening statement to which R. Judah's comment was but parenthetical? What is the meaning of the peculiar formulation "בשל יחיר במעוטו?" Is the Tosefta text dependent on or independent of the Mishnah?

#### Emendation of T.P. Text

Let us return to the T.P. passage which attributed 6:2 to R. 'Akiba after his capitulation to R. Tarfon. Clearly, this cannot be squared with the Mishnah which expresses R. 'Akiba's unreconstructed opinion. Thus, we are faced with the inescapable conclusion that an emendation is in order.

There are four possibilities for the direction which such an emendation might take:

(1) R. David Fraenkel<sup>1</sup> suggests that the emendation should concern itself with the introductory statement of T.P. It should read "מתבייתין עד שלא הודה, "ע לר"ם". The implication of this approach would, of course, be that

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1. See, also, R. Isaac of Slonim, Noam Yerushalmi, ad locum.



Rabbi as editor was either ignorant of R. 'Akiba's admission or chose to ignore it. Since the former possibility is highly unlikely, the reasonable assumption is the latter. But why should he ignore it? Did Rabbi himself agree with R. 'Akiba's initial position or was he merely incorporating into the Mishnah a source formulated in light of the initial position?<sup>1</sup> Finally, as is evident in other parts of this chapter, we may well be faced with a chapter that for some reason was only partially edited, at best.<sup>2</sup> Hence, any conclusions about Rabbi's editorial policy would be unwarranted.

(2) Rabinovitz<sup>3</sup> suggests the reading to be "מתניתא חזר ר"ט להיות טונה" and concommitantly "משהודו ר"ט לר"ט כרבי עקיבא". In support of this, he cites other cases in which R. Tarfon changes his opinion to concur with that

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- p. 79.
1. On the role of Rabbi as editor, see above,
  2. See above, pp. 336-342.
  3. Zev Rabinovitz, Sha'are Torat Erez Israel,
- p. 369.

of R. 'Akiba.<sup>1</sup> However, this approach is most problematic. How does T.P. know that the Mishnah represents the point at which R. Tarfon had capitulated to R. 'Akiba's opinion?<sup>2</sup> Surely the Mishnah may simply represent R. 'Akiba's opinion, completely omitting R. Tarfon.

(3) Epstein accepts the T.P. text without emendation, and on its basis chooses to emend the Mishnah. In other words, he sees the Mishnah as maintaining that the lone witness cannot prevent her from collecting the marriage settlement. He recognizes that this reading allows for no distinction between the cases of the "five women" and the other cases in the Mishnah and that, therefore, the conclusion "ליא לפוטילה מכתובתה אלא שלא תשתה" must refer to all cases in the Mishnah. Why then single out the "five women" as a separate case instead of including it with the others in one unified whole? Epstein attempts to solve this by citing Yebamot, 15:4 and Gittin, 2:7 wherein the "five women" are treated as a separate unit because of the

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1. Of the cases cited, only that of Terumot, 8:1 is directly relevant. The other cases represent explanations offered by R. 'Akiba to R. Tarfon rather than true controversies.

2. This is especially so since it is R. 'Akiba who presents the final, unanswered argument.

distinction accorded their special status in the general rubric of women's testimony.

A criticism of this emendation may be adduced on the basis of the continuation of T.P.:

T.P., 21a (6:2)

רבי בון בר חייה בעי חמותה שאמרה אני ראיתיה שביטמאת	1
מה נא להעיד אם להפקותה ככר נראית שלא לשתות. אלא לא	2
בא להפסידה מכתובתה שאין מפסידין ממון על פי עד אחד.	3
רבי יוסי בעי ... שאין מפסידין ממון על פי עד אחד.	4

שבטמאת / שרי"ר את אמר לא היתה שותה רבא אחד ואמר אני	1
ראיתיה שבטמאת . 3 בא להפסידה / בא אלא להפסידה.	

Now, however the resolution of these related questions is taken,<sup>1</sup> it is most interesting that there seems to be the assumption that had the second unit of testimony by the lone witness been offered by itself, it would have resulted in the loss of the marriage settlement. This is, of course, in consonance with a text which granted the lone witness credibility extending to loss of the marriage settlement as well. Furthermore, if the Mishnah had considered the lone witness as equivalent to the "five women" as far as the marriage settlement, why does T.P. propose questions only as far as חמותה and עוף הפורה.<sup>2</sup>

1. The commentaries, ad locum, arrive at widely differing interpretations of T.P.'s solution to this question.

2. We may grant that the case of the single witness is not raised because in the event of another single witness' testimony we could join them to make a perfectly legal pair. However, what of עוף הפורה and עוף הפורה? The query concerning עוף הפורה would tend to prove our contention that 6:1 is concerned with a report of defilement. See on this Tosafot Rosh, p. 63.

(4) A final possibility suggested by R. Ezekiel Landau,<sup>1</sup> consists of the reversal of the opinions ascribed to R. 'Akiba and R. Tarfon. Originally, it was R. 'Akiba who maintained the position that "אין פ"א נאמן להפסידה כתרובתה" while R. Tarfon maintained that the lone witness' credibility extended to the marriage settlement as well. This position, reflected in the Mishnah, was eventually adopted by R. 'Akiba as well.

Such an emendation gains a number of points. First, it solves the problem posed by "משהויה". Second, the concern of T.P. that this Mishnah accord with R. 'Akiba's position is reasonable in light of the fact that T.P. may have credited R. 'Akiba or his school with the notion that one witness is sufficient to establish the fact of her defilement.<sup>2</sup> Finally, the structure of the beraita now appears more finely organized. As it now reads, we have the phenomenon of R. 'Akiba presenting a cogent counter to R. Tarfon's position followed by his (R. 'Akiba's) reversal of position! Why does he change positions and wherein lies the flaw in his argument or, conversely, the strength of R. Tarfon's? This emendation obviates these difficulties by having R. Tarfon delivering this final, persuasive argument, followed by R. 'Akiba's capitulation.

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1. Quoted in the commentary of R. Samuel Strashun (TBR).

2. See above, p. 343, n. 1.

Amoraic Repetition of Tannaitic Statement

Now, the opinion that "עד אחד באמן לשמאותה אין" is reproduced verbatim by R. Ada b. Ahva:

T.P. 21a (6:4)

1 רב אדא בר אחוה אמר עד אחד באמן לשמאותה. אין עד אחד באמן  
 2 להפסידה מכתובתה. אמר רב חסדא טה טעם אמרו עד אחד באמן לשמאותה  
 3 מפני שרגלים לדבר.           

The context of his remark creates some difficulty. If he refers to the general scope of credibility of the lone witness this remark should have been attached to 6:2. Furthermore, T.P. itself has indicated that "מתניתא משהורדה" and quoted R. Tarfon. What does R. Ada add and why does T.P. not raise the question?

R. Joseph Rosen<sup>1</sup> suggests that R. Ada's comment should be seen as linked to the question of conflicting witnesses in 6:4. R. Ada maintains that the lone witness' credibility holds up in the face of another lone witness and prevents the ritual from taking place ("לא היתה טותה").

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1. Quoted by Lieberman, TK, p. 659.

However, in such a case she is entitled to the marriage settlement. In other words, R. Ada may generally agree that the lone witness effects a loss of the marriage settlement as well; it is only in the case of conflict that his credibility is limited.

#### Analysis of Tosefta

With this distinction we can return to an analysis of Tosefta. Epstein<sup>1</sup> maintains that the opening law of

"אר שותה או לא נוסלת כתובה" should be understood as equivalent to the "לא שותה ולא נוסלת כתובה" found in Ms. Erfurt. In other words, the credibility of the lone witness is total; it extends to both the case of conflicting testimony and to that of the marriage settlement as well.

Lieberman<sup>2</sup> raises three objections to this interpretation. First, the Tosefta had not yet mentioned that one witness has credibility as far as her defilement. How, then could it simply make a statement, particularly in the

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1. J.N. Epstein, Tannaim, p. 412. According to Epstein, R. Judah maintains that one witness can never cause her to lose her marriage settlement. Thus, Epstein maintains that both 6:4 and 6:2 (as he emends it - see above, pp. 350-351) stem from R. Judah. The notion that R. Judah's remark refers to any case of a single witness is supported by the readings in editio princeps, "לא כל היסגור מער א" (Epstein incorrectly ascribes this reading to Ms. Vienna as well. Halivni, Mekorot, p. 456, follows him in this error.

2. TK, pp. 658-659.

case of conflicting testimony, to the effect of "או שותה" and intend this to have the force of "או לא נוטלת כתיבה" and "או לא נוטלת כתיבה" and intend this to have the force of "... מתוך שלא שותה".<sup>1</sup> Secondly, and perhaps related, is the fact that "או שותה" is used in other Mishnah and Tosefta contexts in which it has the import of an either/or statement.<sup>1</sup> Finally, the putative support from Ms. Erfurt (... לא שותה) may be dismissed because the editio princeps of Tosefta reads "או שותה" as well. T.B. also quotes R. Hiyya as maintaining "היתה שותה". Therefore, concludes Lieberman, the correct reading is "... או שותה" and must be taken as either/or rather than neither/nor.

Before turning to Lieberman's understanding of Tosefta, it should be remarked that none of his criticisms of Epstein appear substantial. The fact that Tosefta had not previously alluded to the credibility of the lone witness is not startling. Tosefta often omits primary points and supplies only secondary or tertiary details. Furthermore, it may be true that "או שותה" may, in other places, convey an either/or sense, but that does not mean that it must do so in this context, particularly with the Ms. Erfurt

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1. See, for example, Sotah, 4:3 "ושאר כל הנסים-או שותה" Lieberman notes that Epstein himself states that "או שותה" does not always imply "או לא נוטלת כתיבה".

reading of ... לא שוטה . This is, of course, linked to Lieberman's final criticism. However, the fact remains that the editio princeps of Tosefta and Ms. Vienna are generally closely related. Furthermore, R. Hiyya's statement is no guarantor of the Toseftan position. Surely it would be most simplistic to determine the Tosefta reading on the basis of the assumption that R. Hiyya is its editor, particularly in a case in which the early Amoraim demonstrate uncertainty as to the text. In fact, it is somewhat puzzling that both Lieberman and Epstein fail to align the question of the reading evidenced in both T.B. and T.P. with the two versions of אר and אב found in Tosefta.<sup>1</sup>

On the basis of the aforementioned explanation of R. Joseph Rosen, Lieberman explains R. Judah as differing only on the case of conflict. In such a case, R. Judah finds the testimony to her defilement to be of insufficient strength to engender the loss of the marriage settlement. Of course, such an interpretation would suggest that Epstein is correct in taking the opening statement as neither/nor. However, Lieberman fails to address this implication and prefers to see R. Judah's comment as parenthetical to the

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1. Perhaps אר was the original formulation and it was subsequently interpreted in two diametrically opposed directions.



main passage. Most significantly, this approach links the continuation of אלא with the opening passage as being of the same cloth. However, such a construction places an undue burden on the אלא passage, particularly if the initial pericope is interpreted in an either/or fashion. Furthermore, if linked with an opening pericope that denies the credibility of the lone witness in case of conflict, the conclusion of "בטל יחיד במעוטו" is problematic. In the first case he is not granted credibility despite the fact that he is not in the minority. Hence, the use of the appositive אלא is problematic.<sup>1</sup>

Taking R. Judah's remark as parenthetical, Lieberman is forced to admit that R. Judah must refer to a conception of לא שרתה. But, this being the case, his charge against Epstein that the Tosefta records a secondary case while omitting the basic, more primary one, can be applied to his position as well.

In analyzing T.B.'s discussion of the Mishnah, Halivni makes an interesting attempt to come to terms with

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1. R. Samuel Avigdor in Minhat Bikkurim (TBR), ad locum, deletes the word אלא .

the Tosefta. He writes:<sup>1</sup>

ר' יהודה אומר לא כל הימנר... ר' יהודה סובר כר' טרפון... עד אחד נאמן לטמאותה... ואין עד אחד נאמן להפסידה מכתובתה... בטל יחיד במעוסה (כלומר, רק אם שני עדים מעידים שבטמאת מפסידה כתובתה. זאת היא כוונת "אלא"). עפ"זי"ל, במקור, במסנת ר' יהודה בזכרה הסיפא: שנים אומרים בטמאת וכו' לא היתה שותה, אע"פ שכל שכן היא מרישא: עד אומר בטמאת וכו' לא היתה שותה-משום שבסיפא מפסידה גם את הכתובה, בעוד שברישא לא שותה, אבל "לא כל הימנר להפסידה מכתובתה" (ראה משנה טהרות ה,ט). מסדר המשנה הכריע כר' עקיבא, החולק על ר' טרפון... והטמים את עבין כתובה. אעפ"כ מסר את הלשון המקורי של ר' יהודה. כך היא דרכו של מסדר המשנה להשתמש בלשון המקורי אפילו כשהוא אינו מתאים כ"כ להכרעתו.

Halivni's understanding of the Tosefta is most persuasive and more fully spelled out than the cryptic reference made by Lieberman. However, there are a number of points that require further clarification.

First, it is unnecessary to maintain that R. Judah subscribes to R. Tarfon's position of ואין לטמאותה ואין

"R. Judah may well maintain that an uncontested lone witness can deprive her of the marriage settlement. It is only the case of conflict that generates R. Judah's opinion and, then, only in the case of one against one.

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1. Mekorot, pp. 456-457. Halivni's footnotes should be augmented with Lieberman's references, particularly that to R. Joseph Rosen. Halivni's identification of R. Judah's opinion as identical to R. Tarfon would represent a fairly common phenomenon. See Epstein, Tannaim, p. 106.

Secondly, this unitary concept of the Toseftan structure allows a simple explanation of the puzzling phrase

"בטל יחיד במעוטר" . R. Judah had maintained two points. On the one hand, a single witness is completely credible as far as both the ordeal and the marriage settlement. On the other hand, this credibility is partially reduced in the face of conflicting testimony. In such a case, partial credibility is granted each witness ( "לא כל הימנור" ): the one denies her the right to the ordeal; the other gains her the marriage settlement. It is only when the lone witness faces two others ( "במיעוטר" ) that his credibility is totally and fully negated ( "בטל" ).

#### Mishnah as Standard Form

While Halivni's interpretation of the Toseftan structure makes eminent sense, his attempt to relate it to the Mishnah is weak. Aside from the general problem of the lack of integration within the Mishnaic frame, a more serious problem exists. The evidence suggests that R. Judah would deny her the marriage settlement only in the case of conflict. Hence, the blanket statement that the Mishnah editor agreed with R. 'Aqiba as opposed to R. Tarfon and therefore omitted all reference to the ketubah is not in order. The question of conflict as far as ketubah

is a separate one and would not have been omitted if the editor were basing his formulation on that of R. Judah. Furthermore, let us grant that the editor formulated the Mishnah based on R. Judah. However, if the Mishnah formulation were "לא היתה סתוה", as Halivni maintains, why would the editor find it necessary to quote the second case of the אלא pericope. The argument that he simply incorporated the entire quote of R. Judah into the Mishnah would make sense if the first case of the אלא pericope were superfluous, while the second were not. However, as far as the reading of "לא היתה סתוה", the exact opposite is true. Hence, it would have been possible to follow R. Judah's formulation but to omit the final case which is superfluous. The argument by dint of editorial policy is very doubtful by virtue of the order of the Toseftan formulation of R. Judah. Finally, the fact remains that the editor did not simply follow R. Judah's formulation for he interposes "היתה סתוה" and "לא היתה סתוה" and omits " . נטל יחד במעוטו"

It may well be, however, that the apparent superfluity in the Mishnah is to be attributed to an editorial or stylistic source. There are a number of sources in which the credibility of conflicting witnesses is discussed and in which the various possibilities (one vs. one; two vs. one; one vs. two) are stated. For example, the Mishnah states:

Yebamot, 15:4<sup>1</sup>

1 הכל באמנים להעידה, חוץ מהמותה, רבה המותה, וצרתה,  
 2 ויבמתה, ובה בעלה. מה בין גט למיתה? שהכתב מוכיח.  
 3 עד אומר: מה ונשאת, ובה אחר ואמר: לא מת - הרי  
 4 זו לא תשא. עד אומר: מה, ושנים אומרים: לא מת - אף  
 5 על פי שנשאת, תשא. שנים אומרים: מה, ועד אומר: לא  
 6 מת - אף על פי שלא נשאת, תשא.

Now, it is apparent that the Mishnah there employs the same pattern as that of Sotah. Of course, the Yebamot formulation does not present the difficulties of the Sotah one, but it may be precisely the standard nature of this formulation that is the basis for the Sotah formulation. In other words, in a particular context, a standard literary formulation generates problematic implications.

Now, Halivni rejected an explanation of the Mishnah which would remove the force of T.B.'s question by explaining the Mishnah in a זו ואין צריך לומר זו fashion. He argued that this approach would be viable only if the reading "לא שותה" were adopted; however, if the reading of "לא שותה" were accepted there would be an unwarranted interruption of a לא שותה between the initial (זו) case of לא שותה and the final (זו ואין צריך לומר זו) case of לא שותה. However,

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1. Cf. Tohorot, 5:9. Note that the Mishnah in Yebamot opens with the list of "the five women" who are referred to in Sotah, 6:2.

in taking the formula as a standard one in which the progression is from the case of one vs. two to that of two vs. one, we are entitled to maintain the basic sense of

זו ואין צריך לומר זו since the intruding case is there only as a result of a standard formulation.

### Summary

The Mishnah (6:4) presents internal inconsistencies that are noted by both Talmudim. Attempts to solve this problem lead to an analysis of the structure of Tosefta and the legal position represented by Mishnah 6:2. Halivni correctly takes Tosefta as a concise, unitary whole. An extension of his approach would further yield a new interpretation of a puzzling phrase. However, whereas he posits the Tosefta pericope as the basis of the Mishnaic formulation, a more reasoned solution may lie in taking Mishnah as following a specific formulary pattern. Even though this pattern makes for internal problems, the editor chose it since it is the standard method of presentation.

## Appendix I

Abbreviations Utilized in Thesis

K.E.	=	Korban 'Edah
MV	=	Mishnah, Vilna edition
P.M.	=	Pene Moshe
T.B.	=	Babylonian Talmud
TBR	=	Babylonian Talmud, Romm edition
TK	=	Tosefta Kifeshutah
T.P.	=	Palestinian Talmud

**Appendix II**

**Critical Editions and Manuscripts: A Guide**



Variants and Abbreviations  
for Mishnah and T.B.

From Abraham Liss, ed., Tractate Sotah, 2 vols.  
(Jerusalem, 1977-1979)

Volume I includes material through Chapter III (=T.B., 23b); Volume II covers the remainder of the Tractate. References to page numbers in this thesis are based on this division.

## סימני כתב-היד

כולל קטעי ה"גיה" ודפוסים ראוניים של מסכת סוטה שהובאו במסגרת סימני הנספחות<sup>(\*)</sup>

- א — גמרא סוטה, כ"י אוקספורד 2675.2.  
 אי — מסנה סדר נשים, ע"פ הר"ם בערבית, כ"י אוקספורד 403.  
 ב — מסנה סדר נשים, ע"פ הר"ם בערבית, כ"י ברלין 567.  
 ג — קטעי "גניזה" (כולל קטעים שאינם מה-גניזה) — ראה להלן רשימה נפרדת.  
 ד — משנה, סוטה, ע"פ הר"ם בערבית, כ"י בריטיש מוזיאום 456.  
 ה' — הגדות התלמוד, דפוס קוטסא רע"א.  
 ה" — הגדות התלמוד, כ"י פאריז 3010.  
 ה" — הגדות התלמוד, כ"י בר"מ 406.  
 ה" — הגדות התלמוד ה"גל 1, 2, 3 כולן — דפוס וכתב-יד.  
 ה" — ספר מאמרים, כ"י מונטיפיורי 86 (ילקוט אגדות).  
 ה" — הגדות חז"ל, כ"י פאריס 307 (ילקוט מקוצר מאגדות סדר נשים וחולין).  
 ו — ש"ס בבלי, דפוס ויניציאה ר"פ רפ"ב.  
 ז — משנה, ששה סדרים, כ"י קמברידג' 470.1 (נדפס ע"י לו).  
 ח — משנה סדר זרעים, מדע ונשים, דפוס קוטסא (פירוז) רע"ו (ז').  
 י — גמרא ירושלמי, סדר זרעים ומס' סוטה, כ"י רומי 133, וקטעי ירושלמי.  
 יא — משנה, ששה סדרים, ע"פ הר"ם בהרוגס צכרי, כ"י פאריס 328/29.  
 יב — משנה וגמרא ירושלמי, כ"י לידן.  
 יג — ש"ס בבלי, כ"י מינכן 95 (מסנת ק"ב).  
 יד — משנה, ששה סדרים, ע"פ הר"ם, דפוס נאפולי רנ"ב.  
 יו — משנה הדב מדע ונשים, ע"פ הר"ם בערבית, כ"י שטון 72-73 (אוטוגרף).  
 יז — צ"ח יעקב, דפוס סאלוניקי רע"ו.  
 יח — משנה, ששה סדרים, כ"י פאריז 138.  
 יט — משנה סדר נשים ונויקין, ע"פ הר"ם בהרוגס צכרי, כ"י פאריז 3174.  
 ק — משנה, ששה סדרים, כ"י קופנהגן, בודפסט 50 A.  
 ר — גמרא סדר נשים וגדה, כ"י רומי 110-111 : 130.  
 ת — משנה, סדר נשים ועוד, כ"י מינכן, סמינר גרוינרן, צנצלאו 270.

(\*) הנספחות של כתב-היד ראה במסגרת התקשורתיות של מסנה זרעים בית ובבלי מסיבות בית היד בסוף התלמוד, וירושלים השליש-ליו, ולהלן בסוף זה. היאר במסגרת של הנספחות של הנספחות ראה במסגרת לסוף א' של 'מסנות הניל' ולהלן בסוף זה. היאר במסגרת של הנספחות ראה במסגרת של מסנה זרעים בית הניל, ולהלן בסוף זה.

(1) הדפוס הראשונים של מסנת סוטה עד כ"י מ"ג קופנהגן, ונסה ואל"ף עד סוף המסנת סוטה לסוף רפי הדפוס, הכל הושלם במסגרת היד, וראה היארן במסגרת להשגת זרעים ח"א סה. בהודעת צילום של דפוס זה להוד זרעים, מדע ונשים, הופיעה ע"י הוד קופנהגן, וירושלים תל"א.

(2) כולל קטעי ירושלמי סוטה פ"ח ח"ג — פ"ח ח"ג, כ"י מינכן, סיכונר י".

### סימני קטעי היגיונה של מסכת סוטה (ג)

טרדוס מלא על חולתן של הקטנים מופיע בחיבור קטני היגיונה להלן מספר 31 ואילך. האות בטורים מסמכת על הימיה כתיאורים גנילי.

הקטנים שהגיעו לידנו כאיזה, ומופיעים להלן בקונכוס הפקיסיליות, סוכנו כאן בכסארי השקיסיליות שלהן.

כל הקטנים דלהלן הם מה-מיתרי הקתיות, פרט לאורים שהם פנתולו במקומות אחרים, הם: 252, כספריית וינה, 34 ר44, כספריית פינקו, 451, כספריית רבנבורג, דאח פרשיהם בחיבורים לפר חיבוריהם הפאוסטת ברשימה דלהלן.

#### א. קטעי משנה

(על קטני מסנה שבמבוא דאח להלן)

פי"א מ"א — מ"ד.	ג"י — אוקספורד 2821.81 (ח)
פי"ה מ"ג — פ"ו מ"ה;	ג"י — קמברידג', פי"ש E 1.96 (יא)
המסך הקדום — פי"ח מ"ה.	" אוקספורד 2859.85 (יא)
פי"ה מ"ו — פי"ט מ"ז.	ג"י — אוקספורד 2850.51-52 (ב)
פי"ג מ"ה — פי"ד מ"ג;	ג"י — ניויורק, אדלר 1487.19 (ג)
פי"ה מ"ד — מ"ה; פי"ז מ"ג;	" קמברידג', פי"ש AS 80.136 (ד)
פי"ז מ"ב — פי"ט מ"ב;	" פי"ש E 1.97 (ג)
פי"ט מ"ה.	" ניויורק, אדלר 2084 A (א)
פי"א מ"א — פי"ג מ"ג;	ג"י — לנינגרד, אנטונין 267 (ט)
פי"ח מ"ד — סוף המסכת.	"
פי"א מ"א — מ"ד; פי"ו — פי"ג.	ג"י — קמברידג', וסטמינסטר 83 VOL. I (ה)
פי"א מ"א — פי"ט.	ג"י — קמברידג', פי"ש E 2.67 (ז)
פי"א מ"א — מ"ה;	ג"י — קמברידג', פי"ש E 1.95 (ז)
פי"ה מ"ב — פי"ט מ"ב.	" פי"ש NS 329.355 (י)
פי"ו מ"ו — פי"ח מ"א;	ג"י — קמברידג', פי"ש E 1.98 (ז)
המסך הקדום — מ"ו;	" פי"ש NS 329.396 (ז)
פי"ט מ"ט — מ"ט.	" OR 1080 BOX 4.55 (ז)
פי"א מ"א — מ"ט;	ג"י — קמברידג', פי"ש F 6.16 (א)
פי"ד מ"א — מ"ד;	" ניויורק, אדלר 3593.5 (א)
פי"ה מ"ד — פי"ז מ"ב;	"
פי"ה מ"ב — מ"ג;	" קמברידג', פי"ש E 1.154 (א)
פי"ז מ"ב — פי"ז מ"ב.	"

סימני קנין המזרחי של טובה

ג'י — ג'יריורק, אדלר 1487.55 (0)	פ"א מ"ט — ס"ג מ"ד
ג'י — קמברידג', ט"ט 49.168 ARAB (יג)	פ"ז מ"ב — מ"ח
ג'י — טארוט, מוצרי V 311 (ד)	פ"ט מ"ו — מ"א
ג'י — קמברידג', ט"ט 78.127 AS (יב)	פ"י מ"ז — מ"ח ; ס"ה מ"א

ב. קניני גמרא

(כולל משה סגנברג)

דף ט ב — י א ;	אוקספורד 2833.17 (כז)	ג'י —
דף ית ב — יט א	קמברידג', ט"ט 78.48 AS (כג)	"
(כולל מסנה, פ"ב מ"ד — מ"ק)		
דף כה א — בו א ;	פ"ט 2(2).30 F (כג)	"
דף לג ב — לד ב ;		"
דף מא ב — מב א	פ"ט 2(1).37 F (כג)	"
(כולל מסנה, פ"ח מ"א — מ"ב) ;		
דף נב א (כולל מסנה, פ"ח מ"ב — מ"ה) ;	פ"ט 1(1).5 F (כג)	"
דף נד ב — מה ב	אוקספורד 2833.18*19 (כג)	"
(כולל מסנה, פ"ט מ"ח — מ"ט) ;		
דף מז ב ;	קמברידג', ט"ט 78.80 AS (כג)	"
דף מה א — מה ב ;	פ"ט 2(1).16 F (כג)	"
המסך הקודם — סוף המסכת.	אוקספורד 2833.20*21 (כג)	"
דף פכ א — פכ א	ג'י — ג'יריורק, אדלר B 2084 (לג)	"
(כולל מסנה, פ"ח מ"א).		
דף פכ ב — פג ב	ג'י — ג'יריורק, אדלר B 2084 (לד)	"
(כולל מסנה, פ"ט מ"ז — מ"ז ; מס"ז).		
דף פ א ו א ;	ג'י — בודפשט (סמינר) T 12 (סה)	"
	תצלום בספריה הלאומית	"
דף פ ג א — פ ג ב ;	ירושלים 577.4/33 (יט)	"
דף פ ה א — ה ב ;		"
דף פ ו ב — לו א.	בודפשט (סמינר) G 1 (סה)	"
דף פז א — מז א.	ג'י — וינה B 30 (לט)	"
דף יא ב — יב ב.	ג'י — טראר, הספריה העירונית 8 (כד)	"
דף יב א — יב ב ;	ג'י — פילדלפיה, דרופטי 89 (טז)	"
דף יג ב — יג א (פקט' 87) ;	פאריס, מוצרי VI 160.1 (סז)	"

\* קטע זה התקצץ שאזינו הם קרובים של דף אה. וראה מיוזם להלן בהאגרות ביהודה.

דף כ ב - ג א	ג"י — קמבריוג, ט"ס AS 77.114 (טו)
דף ג א — ג ב (פקט' 10'9):	" ט"ס AS 76.100 (טז)
דף ג ב - ד א	" סילולגיה, דרוספי 89 (טז)
דף ד א — ד ב (פקט' 12'11):	" קמבריוג, ט"ס F 8.108 (טז)
דף ד ב (פקט' 14'13):	" מנכסטהר, ריילנדט V 6119 (טז)
דף ה א — ה ב (פקט' 18'17):	" קמבריוג, ט"ס AS 79.20 (טז)
דף ו א (פקט' 16'15):	" מנכסטהר, ריילנדט V 6119 (טז)
דף ז א — ז ב	" קמבריוג, ט"ס F 8.108 (טז)
דף ח ב — ט ב	ג"י — קמבריוג, ט"ס F 2(2).48 (כ)
דף ט א — ל ב	" ומסמינספר VOL. 148 (כ)
דף לה ב — לו א	" ט"ס F 2(1).118 (כ)
דף ט א — ט ב	ג"י — קמבריוג, ט"ס F 1(1).35 (כא)
דף לה א — לה ב	ג"י — גיוריווק, אדלר 1487.20 (לב)
דף לר ב — לה ב	ג"י — תצלום בספריה הלאומית
דף מ ב — כא ב	" ירושלים 577.4/34 (ל)
דף לה ב — לו ב	ג"י — קמבריוג, ט"ס F 2(2).12 (לא)
דף לה ב — לו ב	" ט"ס C 2.23 (לא)
המסך הקודם — לו א	" ט"ס F 2(2).12 (לא)
המסך הקודם — לו א	" ט"ס F 2(2).9 (לא)
לה ב — לט ב	" ט"ס AS 76.300 (לא)
לה ב — לט ב	" ט"ס AS 78.301 (לא)
המסך הקודם — ט ב	" ט"ס F 9.122 (לא)
דף ז א — ז ב (פקט' 29):	ג"י — קמבריוג, ט"ס F 2(2).59 (יז)
דף ז ב — ז ב	ג"י — קמבריוג, ט"ס F 2(2).64 (לה)
דף ז ב — ז א (פקט' 19'20):	ג"י — קמבריוג, ט"ס F 9.56 (יז)
המסך הקודם — ז ב	" ט"ס F 4.86 (יח)
המסך הקודם — ד א (פקט' 22'21):	" ט"ס NS 329.771 (יז)
דף טו ב — יו א	ג"י — פאריס, פוזרי V 180.2 (כז)
דף ט א — י א	ג"י — אוקספורד 2551.39'40 (יט)
דף יא ב — יב ב	ג"י — מינכן HEBR. 436.13 (ל)
דף יט א — כא א	"
(כולל פהגה, ט"ב סוף פ"ה).	
דף כה א — ל א	ג"י — מינכן HEBR. 436-22'23 (לה)
(כולל פהגה, פיה סוף — פ"ה).	

(\*) קצת זה והקצת פארוז הם קרנים של דף אחר, וראו פירוט להלן בהערות, במיוחד.

דף י"ב ב — י"ב ב	ג"ג — קטבו"ג (ל)
דף י"א א — כ ב	"
(כולל משנה ס"ב ס"ב — סוף הפרק) :	"
דף מד ב — מו א	ג"ד — קטבו"ג, ט ש AS 78.41 (כב)
(כולל משנה ט"ט מ"ה — בט"ו).	ג"ה — קטבו"ג, ט"ש AS 78.192 (כו)
דף ט א — י א (פקס' 25-27).	ג"ו — קטבו"ג, ט"ש AS 75.64 (כז)
דף כ א — בא א.	ג"ז — ג"ר יורק, סמ"ג 6345 (כח)
דף כו ב.	ג"ח — קטבו"ג, ט"ש AS 75.126 (כט)
דף ל"א א ו לה א.	
דף סו א — סו ב (פקס' 24-23) :	
דף י"ט א — י"ט ב (פקס' 26-25).	

סימנים כלליים במדור שינויי הנוסחאות

- א"ה = אחר התיקון (בכתב־היד).  
 בה"ש = בין הסימן.  
 במק"א = במקום אחר (בשיט ומדרשים).  
 גל' = גליון.  
 חסר = לא מופיע בכתב־היד.  
 יג = יש גורסין.  
 ימ"ב = יש מכאיים (באונים וראשונים).  
 ישאמ"ב = יש שאין מכאיים (באונים וראשונים).  
 כ"ד = כל כתב־היד וכל הדפוסים הראשונים (של מסכת סוטה).  
 מכ"ד = כל המשניות כתב־היד ודפוסים ראשונים.  
 ס"א = ספרים אחרים (כתב־היד ודפוסים ראשונים).  
 סיס' = פיסקא מהמשנה.  
 ק"ה = קודם התיקון (בכתב־היד).  
 \* = סימן לדבור מתחיל.

Variants for Sifre and Sifre Zuta

From Horowitz, ed., Sifre and Sifre Zuta  
(Leipzig, 1917)

Sifre Variants

- ד = זפרס editio princeps, Venice 1545  
 ט = ילקוט  
 ל = London, Ms. British Museum  
 מ = מדרש חכמים  
 נ = Rome, Ms. Vatican

Sifre Zuta Variants

- פ"ז = פסיקתא זוטרתי  
 ט = ילקוט  
 ג = מדרש הגדול , Ms. der Koeniglichen  
 Bibliothek in Berlin No. 1207  
 ג = נוסף



Variants and Abbreviations for Tosefta

From Saul Lieberman, ed., Tosefta: Nashim  
(New York, 1973)

א	כ"י ערפורט
ב	כ"י ורינה
ג	קטעי הגביזה ממזרים
ד	תוספתא דפרס ראסון

ה' = חסר

Variants to T.P.,  
editio princeps, Venice, 1523

- ך = Ms. Rome (Vatican 133)  
ל = Ms. Leiden 74 (as per Epstein,  
Melamed in 'Amoraim)  
סרי"ך = Genizah fragments (as per Ginzberg  
in Seride HaYerushalmi)

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- חנ"ך עם פירוש מלבי"ם. ניו יורק, תשי"י.
- משניות עם כל המפרשים. ניו יורק, תשי"ג.
- ששה סדרי משנה ( מפורשים בידי חנוך אלבק ומנוקדים בידי חנוך ילוך ). ירושלים, תשי"ט.
- המשנה עם פירוש המשנה להרמב"ם (הרגום יוסף קאפה). ירושלים, תשכ"ה.
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### Concordances

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