

IV.

THE STRUCTURE AND SYSTEM OF BABYLONIAN TALMUD HORAYOT

Whether or not the Talmud of Babylonia is carefully organized in large-scale, recurrent structures and guided by a program that we may call systematic forms the principal question addressed by an academic commentary. The preceding chapters therefore have pointed toward the presentation set forth here.

By “structure” I mean, a clearly-articulated pattern that governs the location of fully-spelled out statements. By “system,” I mean, a well-crafted and coherent set of ideas that explain the social order of the community addressed by the writers of a document, a social philosophy, a theory of the way of life, world view, and character of the social entity formed by a given social group. I see a collective, anonymous, and political document, such as the one before us, as a statement to, and about, the way in which people should organize their lives and govern their actions. At issue then in any document such as the remarkable one before us is simple: does this piece of writing present information or a program, facts to whom it may concern, or a philosophically and aesthetically cogent statement about how things should be?

The connection between structure and system is plain to see. From the way in which people consistently frame their thoughts, we move to the world that, in saying things one way rather than in some other, they wish to imagine the world in which they wish to live, to which they address these thoughts. For if the document exhibits structure and sets forth a system, then it is accessible to questions of rationality. We may ask about the statement that its framers or compilers wished to make by putting the document together as they did. But if we discern no structure and perceive no systematic inquiry or governing points of analysis, then all we find here is inert and miscellaneous information, facts but no propositions, arguments, viewpoints.

Now the Talmud commonly finds itself represented as lacking organization and exhibiting a certain episodic and notional character. That view moreover characterizes the reading and representation of the document by learned and experienced scholars, who have devoted their entire lives to Talmud study and exegesis. It must follow that upon the advocate of the contrary view — the one implicit in the representation of the document for academic analysis — rests the burden of proof. I set forth the allegation that the Talmud exhibits a structure and follows a system and therefore exhibits a commonly-intelligible rationality. The claim to write an academic commentary explicitly states that proposition. For the tractate before us, I have therefore to adduce evidence and argument.

I maintain that through the normal procedures of reasoned analysis we may discern in the tractate a well-crafted structure. I hold that the structure made manifest, we may further identify the purpose and perspective, the governing system of thought and argument, of those who collected and arranged the tractate's composites and put them together in the way in which we now have them. By "structure" I mean, how is a document organized? and by "system," what do the compilers of the document propose to accomplish in producing this complete, organized piece of writing? The answers to both questions derive from a simple outline of the tractate as a whole, underscoring the types of compositions and composites of which it is comprised. Such an outline tells us what is principal and what subordinate, and how each unit — composition formed into composites, composites formed into a complete statement — holds together and also fits with other units, fore and aft. The purpose of the outline then is to identify the character of each component of the whole, and to specify its purpose or statement. The former information permits us to describe the document's structure, the latter, its system.

‘While the idea of simply outlining a Talmud-tractate beginning to end may seem obvious, I have never made such an outline before, nor has anyone else.* Yet, as we shall now see, the character of the outline dictates all further analytical initiatives. Specifically, when we follow the layout of the whole, we readily see the principles of organization that govern. These same guidelines on organizing discourse point also to the character of what is organized: complete units of thought, with a beginning, middle, and end, often made up of smaller, equally complete units of thought. The former we know as composites, the latter as compositions.

I have provided complete outlines for the Mishnah and for the Tosefta in relationship to the Mishnah, and, not always in outline form, for the Midrash-compilations of late antiquity as well.

Identifying and classifying the components of the tractate — the composites, the compositions of which they are made up — we see clearly how the document coheres: the plan and program worked out from beginning to end. When we define that plan and program, we identify the facts of a pattern that permit us to say in a specific and concrete way precisely what the compilers of the tractate intended to accomplish. The structure realizes the system, the program of analysis and thought that takes the form of the presentation we have before us. From what people do, meaning, the way in which they formulate their ideas and organized them into cogent statements, we discern what they proposed to do, meaning, the intellectual goals that they set for themselves.

These goals — the received document they wished to examine, the questions that they brought to that document — realized in the layout and construction of their writing, dictate the points of uniformity and persistence that throughout come to the surface. How people lay out their ideas guides us into what they wished to find out and set forth in their writing, and that constitutes the system that defined the work they set out to accomplish. We move from how people speak to the system that the mode of discourse means to express, in the theory that modes of speech or writing convey modes of thought and inquiry.

We move from the act of thought and its written result backward to the theory of thinking, which is, by definition, an act of social consequence. We therefore turn to the matter of intention that provokes reflection and produces a system of inquiry. That statement does not mean to imply I begin with the premise of order, which sustains the thesis of a prior

system that defines the order. To the contrary, the possibility of forming a coherent outline out of the data we have examined defines the first test of whether or not the document exhibits a structure and realizes a system. So everything depends upon the possibility of outlining the writing, from which all else flows. If we can see the order and demonstrate that the allegation of order rests on ample evidence, then we may proceed to describe the structure that gives expression to the order, and the system that the structure sustains.

The present work undertakes the exegesis of exegesis, for the Talmud of Babylonia, like its counterpart in the Land of Israel, is laid out as a commentary to the Mishnah. That obvious fact defined the character of my academic commentary, since we have already faced the reality that our Bavli-tractate is something other than a commentary, though it surely encompasses one. The problems that captured my attention derived from the deeper question of how people make connections and draw conclusions. To ask about how people make connections means that we identify a problem — otherwise we should not have to ask — and what precipitated the problem here has been how a composition or a composite fits into its context, when the context is defined by the tasks of Mishnah-commentary, and the composition or composite clearly does not comment on the Mishnah-passage that is subjected to comment.

The experience of analyzing the document with the question of cogency and coherence in mind therefore yields a simple recognition. Viewed whole, the tractate contains no gibberish but only completed units of thought, sentences formed into intelligible thought and self-contained in that we require no further information to understand those sentences, beginning to end. The tractate organizes these statements as commentary to the Mishnah. But large tracts of the writing do not comment on the Mishnah in the way in which other, still larger tracts do. Then how the former fit together with the latter frames the single most urgent question of structure and system that I can identify.

Since we have already examined enormous composites that find their cogency in an other than exegetical program, alongside composites that hold together by appeal to a common, prior, coherent statement — the Mishnah-sentences at hand — what justifies my insistence that an outline of the document, resting on the premise that we deal with a Mishnah-commentary, govern all further description? To begin with, the very possibility of outlining Babylonian Talmud tractate Horayot derives from the simple fact that the framers have given to their document the form of a commentary to the Mishnah. It is in the structure of the Mishnah-tractate that they locate everything together that they wished to compile. We know that is the fact because the Mishnah-tractate defines the order of topics and the sequence of problems.

Relationships to the Mishnah are readily discerned; a paragraph stands at the head of a unit of thought; even without the full citation of the paragraph, we should find our way back to the Mishnah because at the head of numerous compositions, laid out in sequence one to the next, clauses of the Mishnah-paragraph are cited in so many words or alluded to in an unmistakable way. So without printing the entire Mishnah-paragraph at the head, we should know that the received code formed the fundamental structure because so many compositions cite and gloss sentences of the Mishnah-paragraph and are set forth in sequence dictated by the order of sentences of said Mishnah-paragraph. Internal evidence alone suffices, then, to demonstrate that the structure of the tractate rests upon the Mishnah-tractate cited and discussed here. Not only so, but the sentences of the Mishnah-

paragraphs of our tractate are discussed in no other place in the entire Talmud of Babylonia in the sequence and systematic exegetical framework in which they are set forth here; elsewhere we may find bits or pieces, but only here, the entirety of the tractate.

That statement requires one qualification, and that further leads us to the analytical task of our outline. While the entire Mishnah-tractate of Horayot is cited in the Talmud, the framers of the Talmud by no means find themselves required to say something about every word, every sentence, every paragraph. On the contrary, they discuss only what they choose to discuss, and glide without comment by large stretches of the tractate. A process of selectivity, which requires description and analysis, has told the compilers of the Talmud's composites and the authors of its compositions what demands attention, and what does not. Our outline has therefore to signal not only what passage of the Mishnah-tractate is discussed, but also what is not discussed, and we require a general theory to explain the principles of selection ("making connections, drawing conclusions" meaning, to begin with, making selections). For that purpose, in the outline, I reproduce the entirety of a Mishnah-paragraph that stands at the head of a Talmudic composite, and I underscore those sentences that are addressed, so highlighting also those that are not.

This statement requires refinement. I do not know that all available compositions have been reproduced, and that the work of authors of compositions of Mishnah-exegesis intended for a talmud is fully exposed in the document as we have it. That is not only something we cannot demonstrate — we do not have compositions that were not used, only the ones that were — but something that we must regard as unlikely on the face of matters. All we may say is positive: the character of the compositions that address Mishnah-exegesis tells us about the concerns of the writers of those compositions, but we cannot claim to outline all of their concerns, on the one side, or to explain why they chose not to work on other Mishnah-sentences besides the ones treated here. But as to the program of the compositors, that is another matter: from the choices that they made (out of a corpus we cannot begin to imagine or invent for ourselves) we may describe with great accuracy the kinds of materials they wished to include and the shape and structure they set forth out of those materials. We know what they did, and that permits us to investigate why they did what they did. What we cannot know is what they did not do, or why they chose not to do what they did not do. People familiar with the character of speculation and criticism in Talmudic studies will understand why I have to spell out these rather commonplace observations. I lay out an argument based on evidence, not on the silences of evidence, or on the absence of evidence — that alone.

It follows that the same evidence that justifies identifying the Mishnah-tractate as the structure (therefore also the foundation of the system) of the Talmud-tractate before us also presents puzzles for considerable reflection. The exegesis of Mishnah-exegesis is only one of these. Another concerns the purpose of introducing into the document enormous compositions and composites that clearly hold together around a shared topic or proposition, e.g., my appendix on one theme or another, my elaborate footnote providing information that is not required but merely useful, and the like. My earlier characterization of composites as appendices and footnotes signalled the fact that the framers of the document chose a not-entirely satisfactory way of setting out the materials they wished to include here, for large components of the tractate do not contribute to Mishnah-exegesis in any way at all. If these intrusions of other-than-exegetical compositions were proportionately modest, or of topical composites negligible in size, we might dismiss them as appendages, not structural components that bear much of the weight of the edifice as a whole. Indeed, the language that I chose for identifying and defining these composites —

footnotes, appendices, and the like — bore the implication that what is not Mishnah-commentary also is extrinsic to the Talmud's structure and system.

But that language served only for the occasion. In fact, the outline before us will show that the compositions are large and ambitious, the composites formidable and defining. Any description of the tractate's structure that dismisses as mere accretions or intrusions so large a proportion of the whole misleads. Any notion that "footnotes" and "appendices" impede exposition and disrupt thought, contribute extraneous information or form tacked-on appendages — any such notion begs the question: then why fill up so much space with such purposeless information? The right way is to ask whether the document's topical composites play a role in the re-presentation of the Mishnah-tractate by the compilers of the Talmud. We have therefore to test two hypotheses:

[1] the topical composites ("appendices," "footnotes") do belong and serve the compilers' purpose, or

[2] the topical composites do not participate in the re-presentation of the Mishnah-tractate by the Talmud and do not belong because they add nothing and change nothing.

The two hypotheses may be tested against the evidence framed in response to a single question: is this topical composite necessary? The answer to that question lies in our asking, what happens to the reading of the Mishnah-tractate in light of the topical composites that would not happen were we to read the same tractate without them? The outline that follows systematically raises that question, with results specified in due course. It suffices here to state the simple result of our reading of the tractate, start to finish: the question of structure, therefore also that of system, rests upon the position we identify for that massive component of the tractate that comprises not Mishnah-commentary but free-standing compositions and composites of compositions formed for a purpose other than Mishnah-commentary.

The principal rubrics are given in small caps. The outline takes as its principal rubrics two large-scale organizing principles.

The first is the divisions of the Mishnah-tractate to which the Talmud-tractate serves as a commentary. That simple fact validates the claim that the tractate exhibits a fully-articulated structure. But the outline must also underscore that the Mishnah-tractate provides both more and less than the paramount outline of the Talmud-tractate. It is more because sentences in the Mishnah-tractate are not analyzed at all. These untreated Mishnah-sentences are given in bold face lower case caps, like the rest of the Mishnah, but then are specified by underlining and enclosure in square brackets.

Second, it is less because the structure of the tractate accommodates large composites that address topics not defined by the Mishnah-tractate. That brings us to the second of the two large-scale modes of holding together both sustained analytical exercises and also large sets of compositions formed into cogent composites. These are treated also as major units and are indicated by Roman numerals, alongside the Mishnah-paragraphs themselves; they are also signified in small caps. But the principal rubrics that do not focus on Mishnah-commentary but on free-standing topics or propositions or problems are not given in boldface type. Consequently, for the purposes of a coherent outline we have to identify as autonomous entries in our outline those important composites that treat themes or topics not contributed by the Mishnah-tractate.

I. Mishnah-Tractate Horayot 1:1

A. [IF] THE COURT GAVE A DECISION TO TRANSGRESS ANY OR ALL OF THE COMMANDMENTS WHICH ARE STATED IN THE TORAH:

1. I:1: The Talmud raises the question omitted by the Mishnah, which is, the liability of the court in such a situation.

2. I:2: Reprise of the foregoing.

B. AND AN INDIVIDUAL WENT AND ACTED IN ACCORD WITH THEIR INSTRUCTIONS, [SO TRANSGRESSING] INADVERTENTLY:

1. II:1: Why not formulate the Tannaite rule as, and an individual went and acted in accord with their instructions? What need do I have for the emphatic addition, inadvertently?

C. WHETHER THEY CARRIED OUT WHAT THEY SAID AND HE CARRIED OUT WHAT THEY SAID RIGHT ALONG WITH THEM, (2) OR WHETHER THEY CARRIED OUT WHAT THEY SAID AND HE CARRIED OUT WHAT THEY SAID AFTER THEY DID, (3) WHETHER THEY DID NOT CARRY OUT WHAT THEY SAID, BUT HE CARRIED OUT WHAT THEY SAID — HE IS EXEMPT, SINCE HE RELIED ON THE COURT:

1. III:1: What need is there to cover in the Tannaite formulation all of these several cases?

D. [IF] THE COURT GAVE A DECISION, AND ONE OF THEM KNEW THAT THEY HAD ERRED, OR A DISCIPLE WHO IS WORTHY TO GIVE INSTRUCTION:

1. IV:1: What need do I have for both categories?

E. OR A DISCIPLE WHO IS WORTHY TO GIVE INSTRUCTION:

AND HE [WHO KNEW OF THE ERROR] WENT AND CARRIED OUT WHAT THEY SAID, WHETHER THEY CARRIED OUT WHAT THEY SAID AND HE CARRIED OUT WHAT THEY SAID RIGHT ALONG WITH THEM, WHETHER THEY CARRIED OUT WHAT THEY SAID AND HE CARRIED OUT WHAT THEY SAID AFTER THEY DID, WHETHER THEY DID NOT CARRY OUT WHAT THEY SAID, BUT HE CARRIED OUT WHAT THEY SAID — LO, THIS ONE IS LIABLE, SINCE HE [WHO KNEW THE LAW] DID NOT IN POINT OF FACT RELY UPON THE COURT:

1. V:1: Like whom? Simeon b. Azzai and Simeon b. Zoma.

F. THIS IS THE GOVERNING PRINCIPLE: HE WHO RELIES ON HIMSELF IS LIABLE:

1. VI:1: What case is encompassed by the governing principle beyond those already specified?

G. AND HE WHO RELIES ON THE COURT IS EXEMPT:

1. VII:1: What case is encompassed by the governing principle beyond those already specified?

2. VII:2: The governing principle represents the position of R. Judah, but sages say, "A private party who acted in accord with the instructions of a court [and inadvertently violated the law] is liable to present an offering."

3. VII:3: The governing principle represents the position of R. Meir, but sages said, “An individual who committed a transgression by following the instructions of the court is liable.”

a. VII:4: When reckoning what forms a majority, in the case of an erroneous decision by a court, the operative criterion is the greater part of the population of the entire land of Israel.

4. VII:5: With reference **THE GOVERNING PRINCIPLE: HE WHO RELIES ON HIMSELF IS LIABLE, AND HE WHO RELIES ON THE COURT IS EXEMPT**, we now turn to the dispute concerning the kind of offering required in various situations of public inadvertent sin involving court instruction, at M. 1:5, so that, when a majority violates the law by reason of the court’s ruling, they make atonement through a communal offering of a bull, but if a minority does so, it is exempt since it relied upon the court, but what about a case in which before the offering is presented, the community’s numbers diminish so that the ratio of transgressors to non-transgressors has changed? If the number of transgressors was a minority but through deaths in the interim became a majority of the community, what is the law?

5. VII:6: If the court gave the decision that suet is permitted, and a minority of the community went and acted in accord with that decision, and then the court retracted and gave correct instructions, and the court once more gave the decision that suet is permitted, but now a different minority of the community acted, what is the law?

6. VII:7: If the court gave instructions that suet is permitted, and a minority of the community went and acted in accord with that instruction, and then that court died, but another court was appointed and they retracted, but then they issued a new instruction to the same effect, and another minority acted in accord with the new instruction of this new court, what is the law?

7. VII:8: In a case in which a hundred went into session to give instruction, liability for judicial error is incurred only if all of them will give that instruction, as it is said, “And if all of the assembly shall err” (Lev. 4:13) — the court is exempt unless everyone of them errs, meaning, unless their instruction has permeated throughout the community of Israel.

a. VII:9: When ten sit in judgment, the chain of responsibility is suspended on the necks of all of them.

I. VII:10: R. Huna: when he would go to court, he would bring with him from the school house ten Tannaite-tradition-memorizers, “so that each one of us may carry a chip of the beam.

II. VII:11: R. Ashi: same saying based on a different story.

II. Mishnah-Tractate Horayot 1:2-3

A. [IF] THE COURT GAVE A DECISION AND REALIZED THAT IT HAD ERRED AND RETRACTED, WHETHER THEY BROUGHT THEIR ATONEMENT OFFERING OR DID NOT BRING THEIR ATONEMENT OFFERING, AND AN INDIVIDUAL DID IN ACCORD WITH

THEIR INSTRUCTION — R. SIMEON DECLARES HIM EXEMPT. AND R. ELIEZER SAYS, “IT IS SUBJECT TO DOUBT.”

1. I:1: What is the operative consideration behind the ruling of R. Simeon?
2. I:2: Tannaite version of the dispute and various opinions on the same matter as is treated in the Mishnah.

B. WHAT IS THE DOUBT? [IF] THE PERSON HAD STAYED HOME, HE IS LIABLE. [IF] HE HAD GONE OVERSEAS, HE IS EXEMPT. SAID R. AQIBA, “I CONCEDE IN THIS CASE THAT HE IS NIGH UNTO BEING EXEMPT FROM LIABILITY” SAID TO HIM BEN AZZAI, “WHAT IS THE DIFFERENCE BETWEEN THIS ONE AND ONE WHO STAYS HOME?” FOR THE ONE WHO STAYS HOME HAD THE POSSIBILITY OF HEARING [THAT THE COURT HAD ERRED AND RETRACTED], BUT THIS ONE DID NOT HAVE THE POSSIBILITY OF HEARING [WHAT HAD HAPPENED]:”

1. II:1: Did R. Aqiba make a valid statement to Ben Azzai?

C. [IF] A COURT GAVE A DECISION TO UPROOT THE WHOLE PRINCIPLE [OF THE TORAH],

(1) [IF] THEY SAID, “[THE PROHIBITION AGAINST HAVING INTERCOURSE WITH] A MENSTRUATING WOMAN IS NOT IN THE TORAH [LEV. 15:19].” (2) “[THE PROHIBITION OF LABOR ON] THE SABBATH IS NOT IN THE TORAH.” (3) “[THE PROHIBITION AGAINST] IDOLATRY IS NOT IN THE TORAH.” LO, THESE ARE EXEMPT [FROM THE REQUIREMENT OF LEV. 4:14].

1. III:1: Tannaite proof of the proposition on the basis of Scripture.

a. III:2: development of foregoing.

i. III:3: as above.

D. [IF] THEY GAVE INSTRUCTION TO NULLIFY PART AND TO CARRY OUT PART [OF A RULE OF THE TORAH], LO, THEY ARE LIABLE. HOW SO? [IF] THEY SAID, ‘THE PRINCIPLE OF PROHIBITION OF SEXUAL RELATIONSHIPS WITH A MENSTRUATING WOMAN INDEED IS IN THE TORAH, BUT HE WHO HAS SEXUAL RELATIONS WITH A WOMAN AWAITING DAY AGAINST DAY IS EXEMPT.’ (2) “THE PRINCIPLE OF NOT WORKING ON THE SABBATH IS IN THE TORAH, BUT HE WHO TAKES OUT SOMETHING FROM PRIVATE DOMAIN TO PUBLIC DOMAIN IS EXEMPT.” (3) “THE PRINCIPLE OF NOT WORSHIPPING IDOLS IS IN THE TORAH BUT HE WHO BOWS DOWN [TO AN IDOL] IS EXEMPT.” — LO, THESE ARE LIABLE, SINCE IT IS SAID, “IF SOMETHING BE HIDDEN” (LEV. 4:13) — SOMETHING, AND NOT EVERYTHING:

1. IV:1: The court is liable only if it gives wrong instruction in a matter that the Sadducees do not accept as a matter of revelation [that is, the oral Torah]. But in a matter that the Sadducees too concede, the court is exempt.
2. IV:2: If the court announced that there is no prohibition against ploughing on the Sabbath [vs. Exo. 34:21], what is the law?
3. IV:3: If the court announced that there is no prohibition in the Torah against working on the Sabbath during the Sabbatical Year, what is the law?

III. Mishnah-Tractate Horayot 1:4A-G

A. (1) [IF] THE COURT GAVE A DECISION, AND ONE OF THE MEMBERS OF THE COURT REALIZED THAT THEY HAD ERRED AND SAID TO THEM, “YOU ARE IN ERROR,” OR (2) IF THE HEAD OF THE COURT WAS NOT THERE, OR (3) IF ONE OF THEM WAS A PROSELYTE, A MAMZER, A NETIN, OR AN ELDER WHO DID NOT HAVE CHILDREN — LO, THESE ARE EXEMPT [FROM A PUBLIC OFFERING UNDER THE PROVISIONS OF LEV. 4:14].

1. I:1: how on the basis of Scripture do we know this fact?

B. SINCE “CONGREGATION” IS SAID HERE [LEV. 4:13], AND “CONGREGATION” IS SAID LATER ON [NUM. 15:24]. JUST AS “CONGREGATION” LATER ON APPLIES ONLY IN THE CASE IN WHICH ALL OF THEM ARE SUITABLE FOR MAKING A DECISION, SO “CONGREGATION” STATED HERE REFERS TO A CASE IN WHICH ALL OF THEM ARE SUITABLE FOR MAKING A DECISION:

1. II:1: As to the locus classicus of the proof, how do we know that fact to begin with?

IV. Mishnah-Tractate Horayot 1:4H-L

A. [IF] THE COURT GAVE AN INCORRECT DECISION INADVERTENTLY, AND THE ENTIRE COMMUNITY FOLLOWED THEIR INSTRUCTION [AND DID THE THING IN ERROR] INADVERTENTLY, THEY BRING A BULLOCK. [IF THE COURT GAVE AN INCORRECT DECISION] DELIBERATELY, BUT THE COMMUNITY, FOLLOWING THEIR INSTRUCTION, DID THE THING IN ERROR] INADVERTENTLY, THEY BRING A LAMB OR A GOAT (LEV. 4:32, 27).

[IF THE COURT GAVE INCORRECT INSTRUCTION] INADVERTENTLY, AND [THE COMMUNITY FOLLOWED THEIR INSTRUCTION AND DID THE THING IN ERROR] DELIBERATELY, LO, THESE ARE EXEMPT [UNDER THE PROVISIONS OF LEV. 4:4].

1. I:1: the one who inadvertently violated the law who is liable is equivalent to the one who intentionally violated the law in that both know the court to be in error yet only the latter does not present an atonement offering.

V. Mishnah-Tractate Horayot 1:4

A. “[IF] THE COURT MADE AN [ERRONEOUS] DECISION, AND THE ENTIRE COMMUNITY, OR THE GREATER PART OF THE COMMUNITY, CARRIED OUT THEIR DECISION, THEY BRING A BULLOCK. IN THE CASE OF IDOLATRY, THEY BRING A BULLOCK AND A GOAT,” THE WORDS OF R. MEIR. R. JUDAH SAYS, “TWELVE TRIBES BRING TWELVE BULLOCKS. AND IN THE CASE OF IDOLATRY, THEY BRING TWELVE BULLOCKS AND TWELVE GOATS.” R. SIMEON SAYS, “THIRTEEN BULLOCKS, AND IN THE CASE OF IDOLATRY, THIRTEEN BULLOCKS AND THIRTEEN GOATS: A BULLOCK AND A GOAT FOR EACH AND EVERY TRIBE, AND [IN ADDITION] A BULLOCK AND A GOAT FOR THE COURT.” “[IF] THE COURT GAVE AN [ERRONEOUS] DECISION, AND SEVEN TRIBES, OR THE GREATER PART OF SEVEN TRIBES, CARRIED OUT THEIR DECISION, THEY BRING A BULLOCK. IN THE CASE OF

IDOLATRY, THEY BRING A BULLOCK AND A GOAT,” THE WORDS OF R. MEIR. R. JUDAH SAYS, “SEVEN TRIBES WHICH COMMITTED A SIN BRING SEVEN BULLOCKS. AND THE OTHER TRIBES, WHO COMMITTED NO SIN, BRING A BULLOCK IN THEIR BEHALF, FOR EVEN THOSE WHO DID NOT SIN BRING AN OFFERING ON ACCOUNT OF THE SINNERS.” R. SIMEON SAYS, “EIGHT BULLOCKS, AND IN THE CASE OF IDOLATRY, EIGHT BULLOCKS AND EIGHT GOATS: A BULLOCK AND A GOAT FOR EACH AND EVERY TRIBE, AND A BULLOCK AND A GOAT FOR THE COURT.”

1. I:1: Tannaite formulation of the matter.

a. I:2: Who is the Tannaite authority who holds the position, Scripture says, “when the sin through which they incurred guilt becomes known, — not that the sinners should be made known?”

b. I:3: What is the scriptural basis for the positions of Judah, Simeon, and Meir of I:1?

B. “[IF] THE COURT OF ONE OF THE TRIBES GAVE AN [ERRONEOUS] DECISION, AND THAT TRIBE [ONLY] CARRIED OUT THEIR DECISION, THAT TRIBE IS LIABLE, AND ALL THE OTHER TRIBES ARE EXEMPT,” THE WORDS OF R. JUDAH. AND SAGES SAY, “THEY ARE LIABLE ONLY BY REASON OF AN [ERRONEOUS] DECISION MADE BY THE HIGH COURT ALONE, AS IT IS SAID, ‘AND IF THE WHOLE CONGREGATION OF ISRAEL SHALL ERR (LEV. 4:13) — AND NOT THE CONGREGATION OF THAT TRIBE [ALONE].’”

1. II:1: The question was raised: in R. Judah’s opinion, if a single tribe commits a transgression on account of the instruction of the high court, do the rest of the tribes have to present offerings as well, or do they not have to do so?

2. II:2: The question was raised: in R. Simeon’s opinion, if the law violation is done on the instructions of the high court, do they present an offering or not?

3. II:3: As to R. Judah and R. Simeon, who maintain that a single tribe may be classified as “the community,” where in Scripture do they find proof for their position?

4. II:4: “They that had come from the captives of the exile offered up whole-offerings to the God of Israel, twelve bullocks for all Israel, ninety-nine rams, seventy-seven lambs, and, as a purification-offering, twelve he goats, all this as a burnt-offering for the Lord” (Ezra 8:35). In line with the Judah’s, Simeon’s, and Meir’s positions at hand, how would we explain the requirement of these twelve bullocks?

5. II:5: If the court gave instructions in error but the members knew that they had erred and they retracted the ruling after the community had transgressed, but if one of the public has died before the offering was made, they are required to present it in any event. If one of the court died, they are exempt. Who is the Tannaite authority behind this ruling?

VI. Mishnah-Tractate Horayot 2:1

A. [IF] AN ANOINTED [HIGH] PRIEST MADE A DECISION FOR HIMSELF [IN VIOLATION OF ANY OF THE COMMANDMENTS OF THE TORAH], DOING SO INADVERTENTLY,

AND CARRYING OUT [HIS DECISION] INADVERTENTLY, HE BRINGS A BULLOCK (LEV. 4: 3).

1. I:1: With what case do we deal? It is a case in which he gave instruction and forgot on what grounds he had given the instruction, and at the moment at which he erred, he said, 'Lo, I act on the basis of my instruction.' Now what might you have supposed? Since, if he realized the facts of the situation, he might have retracted, he is in the situation of one who acts deliberately and should not therefore be obligated under the present count. So we are informed that that is not the case.

B. [IF] HE [MADE AN ERRONEOUS DECISION] INADVERTENTLY, AND DELIBERATELY CARRIED IT OUT, DELIBERATELY [MADE AN ERRONEOUS DECISION] AND INADVERTENTLY CARRIED IT OUT, HE IS EXEMPT. FOR AN [ERRONEOUS] DECISION OF AN ANOINTED [HIGH] PRIEST FOR HIMSELF IS TANTAMOUNT TO AN [ERRONEOUS] DECISION OF A COURT FOR THE ENTIRE COMMUNITY.

1. II:1: What is the source in Scripture for this ruling?

a. II:2: Amplification of the foregoing.

VII. Mishnah-Tractate Horayot 2:2

A. [IF] HE MADE AN [ERRONEOUS] DECISION BY HIMSELF AND CARRIED IT OUT BY HIMSELF, HE EFFECTS ATONEMENT FOR HIMSELF BY HIMSELF.

1. I:1: What is the source of this ruling [that the anointed priest's atonement procedure is determined by the context of his error]?

2. I:2: How can we imagine a case of his doing so?

3. I:3: theoretical problem based on foregoing.

B. [IF] HE MADE [AN ERRONEOUS] DECISION WITH THE COMMUNITY AND CARRIED IT OUT WITH THE COMMUNITY, HE EFFECTS ATONEMENT FOR HIMSELF WITH THE COMMUNITY. FOR A COURT IS NOT LIABLE UNTIL IT WILL GIVE AN ERRONEOUS DECISION TO NULLIFY PART AND TO CARRY OUT PART [OF THE TEACHINGS OF THE TORAH]:

1. II:1: How on the basis of Scripture do we know it is the fact that a court is not liable until it will give an erroneous decision to nullify part and to carry out part [of the teachings of the Torah],

C. AND SO IS THE RULE FOR AN ANOINTED [HIGH PRIEST]:

1. III:1: How on the basis of Scripture do we know this fact?

D. AND [THEY] ARE NOT [LIABLE] IN THE CASE OF IDOLATRY [SUBJECT TO AN ERRONEOUS DECISION] UNLESS THEY GIVE A DECISION TO NULLIFY IN PART AND TO SUSTAIN IN PART [THE REQUIREMENTS OF THE TORAH] [M. 1:3].

1. IV:1: How on the basis of Scripture do we know this fact?

VIII. Mishnah-Tractate Horayot 2:3A-C

A. THEY ARE LIABLE ONLY ON ACCOUNT OF SOMETHING'S BEING HIDDEN (LEV. 4:13) ALONG WITH AN ACT [OF TRANSGRESSION] WHICH IS PERFORMED INADVERTENTLY:

1. I:1: What is the scriptural source of this rule?

B. AND SO IN THE CASE OF THE ANOINTED [HIGH PRIEST]

1. II:1: as above.

C. AND [THEY ARE] NOT [LIABLE] IN THE CASE OF IDOLATRY EXCEPT IN THE CASE OF SOMETHING'S BEING HIDDEN ALONG WITH AN ACT [OF TRANSGRESSION] WHICH IS PERFORMED INADVERTENTLY:

1. III:1: as above.

2. III:2: But the Tannaite formulation of the Mishnah-rule has omitted reference to the rule governing the anointed priest when it comes to idolatry. Who is the authority behind the Mishnah-rule? It is Rabbi.

a. III:3: What is the scriptural basis for the position of Rabbi?

b. III:4: continuation of foregoing.

c. III:5: as above.

IX. Mishnah-Tractate Horayot 2:3D-F

A. THE COURT IS LIABLE ONLY IF THEY WILL GIVE AN ERRONEOUS DECISION IN A MATTER, THE DELIBERATE COMMISSION OF WHICH IS PUNISHABLE BY EXTIRPATION, AND THE INADVERTENT COMMISSION OF WHICH IS PUNISHABLE BY A SIN OFFERING, AND SO IN THE CASE OF THE ANOINTED [HIGH PRIEST],

1. I:1: how on the basis of Scripture do we know this fact?

B. AND [THEY ARE] NOT [LIABLE] IN THE CASE OF IDOLATRY, EXCEPT IN THE CASE IN WHICH THEY GAVE INSTRUCTION IN A MATTER THE DELIBERATE COMMISSION OF WHICH IS PUNISHABLE BY EXTIRPATION, AND THE INADVERTENT COMMISSION OF WHICH IS PUNISHABLE BY A SIN OFFERING.

1. II:1: How on the basis of Scripture do we know this fact concerning a case of idolatry?

2. II:2: Continuation of foregoing.

3. II:3: Continuation of foregoing.

X. Mishnah-Tractate Horayot 2:4

A. THEY ARE NOT LIABLE ON ACCOUNT OF [A DECISION INADVERTENTLY VIOLATING] A POSITIVE COMMANDMENT OR A NEGATIVE COMMANDMENT CONCERNING THE SANCTUARY, AND THEY DO NOT BRING A SUSPENSIVE GUILT OFFERING ON ACCOUNT OF [VIOLATION OF] A POSITIVE COMMANDMENT OR A NEGATIVE COMMANDMENT CONCERNING THE SANCTUARY.

BUT THEY ARE LIABLE FOR [VIOLATING] A POSITIVE COMMANDMENT OR A NEGATIVE COMMANDMENT INVOLVING A MENSTRUATING WOMAN. AND THEY DO BRING A SUSPENSIVE GUILT OFFERING ON ACCOUNT OF [VIOLATION OF] A POSITIVE COMMANDMENT OR A NEGATIVE COMMANDMENT CONCERNING A MENSTRUATING WOMAN. WHAT IS A POSITIVE COMMANDMENT CONCERNING A MENSTRUATING WOMAN? TO KEEP SEPARATE FROM A MENSTRUATING WOMAN. AND WHAT IS A NEGATIVE COMMANDMENT? NOT TO HAVE SEXUAL RELATIONS WITH A MENSTRUATING WOMAN.

1. I:1: how on the basis of Scripture do we know that fact, that the community is not obligated to an offering in general, nor is the individual liable to a suspended built offering when it comes to imparting uncleanness to the Temple?

XI. Mishnah-Tractate Horayot 2:5

A. THEY ARE NOT LIABLE [BECAUSE OF INADVERTENT VIOLATION OF THE LAW] (1) CONCERNING HEARING THE VOICE OF ADJURATION [LEV. 5:11, (2) A RASH OATH [LEV. 5:4], (3) OR IMPARTING UNCLEANNESS TO THE SANCTUARY AND TO ITS HOLY THINGS [LEV. 5:3] —

“AND THE RULER FOLLOWS SUIT,” THE WORDS OF R. YOSÉ THE GALILEAN.

1. I:1: What is the Scripture basis for the position of R. Yosé the Galilean?

a. I:2: theoretical problem flowing from the facts of the foregoing. A ruler who was afflicted with the skin-ailment — what is the law that applies to him? The purification offering involves an offering of variable value, so Lev. 14:10, 21, but as we see, he is not liable to present such an offering.

B. R. AQIBA SAYS, “THE RULER IS LIABLE IN THE CASE OF ALL OF THEM, EXCEPT IN THE CASE OF HEARING THE VOICE OF ADJURATION. FOR THE KING DOES NOT JUDGE AND OTHERS DO NOT JUDGE HIM, DOES NOT GIVE TESTIMONY, AND OTHERS DO NOT GIVE TESTIMONY CONCERNING HIM:”

1. I:1: What is the Scriptural foundation for the ruling of R. Aqiba?

XII. Mishnah-Tractate Horayot 2:6-7

A. IN THE CASE OF ALL THE COMMANDMENTS IN THE TORAH, ON ACCOUNT OF WHICH THEY ARE LIABLE FOR DELIBERATE VIOLATION TO EXTIRPATION, AND ON ACCOUNT OF INADVERTENT VIOLATION TO A SIN OFFERING, AN INDIVIDUAL BRINGS A FEMALE LAMB OR A FEMALE GOAT [LEV. 4:28, 32]. A RULER BRINGS A MALE GOAT [LEV. 4:23], AND AN ANOINTED [HIGH PRIEST] AND A COURT BRING A BULLOCK [M. 1:5, 2:1]. BUT IN THE CASE OF IDOLATRY, THE INDIVIDUAL, RULER, AND ANOINTED [HIGH PRIEST] BRING A FEMALE GOAT [NUM. 15:27]. AND THE COURT BRINGS A BULLOCK AND A GOAT [M. 1:5], A BULLOCK FOR A WHOLE OFFERING AND A GOAT FOR A SIN OFFERING. AS TO A SUSPENSIVE GUILT OFFERING, AN INDIVIDUAL AND A RULER MAY BECOME LIABLE. BUT THE ANOINTED [HIGH PRIEST] AND COURT DO NOT BECOME LIABLE. AS TO AN UNCONDITIONAL GUILT OFFERING, AN INDIVIDUAL, A RULER, AND AN ANOINTED [HIGH PRIEST] MAY BECOME LIABLE, BUT A COURT IS EXEMPT. ON ACCOUNT OF

HEARING THE VOICE OF ADJURATION, A RASH OATH, AND IMPARTING UNCLEANNESS TO THE SANCTUARY AND ITS HOLY THINGS, A COURT IS EXEMPT, BUT AN INDIVIDUAL, A RULER, AND AN ANOINTED [HIGH PRIEST] ARE LIABLE.

1. I:1: In any case in which the individual is liable for a suspensive guilt offering, the ruler is in the same category, the anointed priest and the court are exempt. And in any case in which he is subject to an unconditional guilt offering, the ruler and the anointed priest are in the same category, and the court is exempt. As for violations involving not heeding the call to testify, uttering a vain oath, and contamination of the Temple and its Holy Things, the members of the court are exempt from the offering of variable value, but the ruler and the anointed priest are liable. Nonetheless, the ruler is not liable for failure to heed the call nor is the anointed priest for imparting uncleanness to the Temple and its Holy Things. Whenever the individual presents an offering of variable value, the rule is in his category, and the anointed priest and the court are exempt.

B. “BUT A HIGH PRIEST IS NOT LIABLE FOR IMPARTING UNCLEANNESS TO THE SANCTUARY AND ITS HOLY THINGS,” THE WORDS OF R. SIMEON.

1. II:1: What are the scriptural grounds for the position of R. Simeon?

C. AND WHAT DO THEY BRING? AN OFFERING OF VARIABLE VALUE. R. ELIEZER SAYS, “THE RULER BRINGS A GOAT OFFERING.”

1. III:1: R. Eliezer made this statement only in connection with imparting uncleanness to the sanctuary and its Holy Things, since reference is made in that regard to extirpation at Num. 19:20 just as is the case for violations that require an offering of fixed value.

2. III:2: R. Eliezer concurs that the ruler need not present a suspended guilt offering if he only suspects he has violated the prohibition against imparting uncleanness to the Temple.

XIII. Mishnah-Tractate Horayot 3:1-2

A. AN ANOINTED [HIGH] PRIEST WHO SINNED AND AFTERWARD PASSED FROM HIS OFFICE AS ANOINTED HIGH PRIEST, AND SO A RULER WHO SINNED AND AFTERWARD PASSED FROM HIS POSITION OF GREATNESS — THE ANOINTED [HIGH] PRIEST BRINGS A BULLOCK, AND THE PATRIARCH BRINGS A GOAT [M. 2:6].

1. I:1: Now there is good reason to specify An anointed [high] priest who sinned and afterward passed from his office as anointed high priest and sinned...brings a bullock, for it is necessary to make explicit that the prior status governs his liability for transgression after he leaves office. But why does the Mishnah have to specify the case of an anointed high priest who passed from his office as anointed high priest and then sinned?

B. AN ANOINTED [HIGH] PRIEST WHO PASSED FROM HIS OFFICE AS ANOINTED HIGH PRIEST AND THEN SINNED, AND SO A RULER WHO PASSED FROM HIS POSITION OF GREATNESS AND THEN SINNED — A HIGH PRIEST BRINGS A BULLOCK. BUT A RULER IS LIKE ANY ORDINARY PERSON.

1. II:1: What is the source in Scripture for this distinction?

XIV. Mishnah-Tractate Horayot 3:3

A. [IF] THEY SINNED BEFORE THEY WERE APPOINTED, AND THEN THEY WERE APPOINTED, LO, THEY ARE IN THE STATUS OF ANY ORDINARY PERSON.

1. I:1: How on the basis of Scripture do we know that if the anointed priest sinned prior to appointment to office, he presents the offering of an ordinary person?

2. I:2: Further exegesis of the same verses.

a. I:3: Amplification of foregoing.

B. TO BE A RULER IS TO BE A SLAVE. THE RULER WHO SINS. “IN CASE IT IS A CHIEFTAIN WHO INCURS GUILT BY DOING UNWITTINGLY ANY OF THE THINGS WHICH BY THE COMMANDMENT OF THE LORD HIS GOD OUGHT NOT TO BE DONE” (LEV. 4:22)

1. I:4: “In case it is a chieftain who incurs guilt by doing unwittingly any of the things which by the commandment of the Lord his God ought not to be done” (Lev. 4:22) — excluding the one who is ill.

2. I:5: Happy is the generation, the ruler of which brings an offering for sinning inadvertently. If the ruler brings an offering, do you have to ask about ordinary folk? And if he brings an offering for an inadvertent sin, do you have to ask what he will do in the case of one that he does deliberately?

C. REWARD AND PUNISHMENT IN THIS WORLD AND IN THE NEXT. THE RIGHTEOUS AND THE WICKED

1. I:6: Happy are the righteous, for in this world they undergo what in the world to come is assigned as recompense for the deeds of the wicked, and woe is the wicked, for in this world they enjoy the fruits of what is assigned in the world to come to the deeds of the righteous.

D. THE CASE OF LOT AND ABRAHAM

1. I:7: What is the meaning of the verse of Scripture, “For the paths of the Lord are straight, that the righteous shall pass along them, but the transgressors will stumble in them” (Hos. 14:10)? The matter may be compared to the case of two men who roasted their Passover offerings. One of them ate it for the sake of performing the religious duty, and the other one ate it to stuff himself with a big meal. Lot becomes the focus.

2. I:8: “‘A brother offended the mighty city:’ this refers to Lot, who took his leave from Abraham in order to sin with his daughters. ‘and contention is like the bars of a castle:’ by siring Moab and Ben Ammi with his daughters, Lot made contention between Israel and Amon, ‘Neither an Amonite nor a Moabite shall come into the community of the Lord’ (Deu. 23: 4).”

3. I:9: “‘To lust is a separatist drawn, and of any wisdom will be contemptuous’ (Pro. 18: 1): ‘To lust is a separatist drawn:’ this refers to Lot, who took his leave from Abraham.”

E. THE CASE OF TAMAR AND ZIMRI

1. I:10: Tamar committed an act of prostitution, and Zimri committed an act of prostitution. Tamar committed an act of prostitution, and there went forth from

her kings and prophets. Zimri committed an act of prostitution, and how many myriads of Israel fell in consequence.

F. THE IMPORTANCE OF THE RIGHT ATTITUDE

1. I:11: A transgression committed for its own sake, in a sincere spirit, is greater in value than a religious duty carried out not for its own sake, but in a spirit of insincerity.

2. I:12: A person should always be occupied in study of the Torah and in practice of the commandments, even if this is not for its own sake [but in a spirit of insincerity], for out of doing these things not for their own sake, a proper spirit of doing them for their own sake will emerge.

G. R. SIMEON SAYS, “IF THEIR SIN BECAME KNOWN TO THEM BEFORE THEY WERE APPOINTED, THEY ARE LIABLE. BUT IF IT WAS AFTER THEY WERE APPOINTED, THEY ARE EXEMPT:”

1. II:1: “...from among the populace:” excluding the chieftain. “...from among the populace:” excluding the anointed priest.

2. II:2: What is the law on the office of ruler’s interrupting one’s continuity of status, so that when he rises to office, he is no longer culpable for transgression?

3. II:3: If when he was an ordinary person, he ate something that may or may not have been suet, and then he was appointed, and then the matter in doubt was discovered, what is the law?

4. II:4: What is the sense of the clause of Scripture, ‘unwittingly incurs guilt by doing any of the things which by the Lord’s commandments ought not to be done’? This refers to one who were he informed would simply refrain from carrying out the transgression, thus excluding an apostate, who were he informed would not refrain from carrying out the transgression. There can be no issue that such a one violating the law does not do so either unwittingly or by reason of the inappropriate instruction of the court.

a. II:5: What is the definition of an apostate.

i. II:6: Clarification of foregoing.

ii. II:7: Clarification of foregoing.

iii. II:8: Clarification of foregoing.

H. AND WHO IS A RULER? THIS IS THE KING, AS IT IS SAID, “AND DOES ANY ONE OF ALL THE THINGS WHICH THE LORD HIS GOD HAS COMMANDED NOT TO BE DONE” (LEV. 4:22) — A RULER WHO HAS NONE ABOVE HIM EXCEPT THE LORD HIS GOD:

1. III:1: Scriptural proof for the proposition of the Mishnah: “Let it remain with him and let him read in it all his life, so that he may learn to revere the Lord his God, to observe faithfully every word of this Torah as well as these laws” (Deu. 17:19). Just as ‘his God’ stated in that passage refers to a chieftain above whom is the authority only of the Lord his God, so ‘his God’ stated here refers to a chieftain above whom is the authority only of the Lord his God

2. III:2: Rabbi asked R. Hiyya, “What about me? Do I present a he-goat [as undisputed ruler]?”

XV. Mishnah-Tractate Horayot 3:4

A. WHO IS THE ANOINTED [HIGH PRIEST]? IT IS THE ONE WHO IS ANOINTED WITH THE ANOINTING OIL, NOT THE ONE WHO IS DEDICATED BY MANY GARMENTS:

1. I:1: In the anointing oil that Moses made in the wilderness they would boil aromatic roots.
 - a. I:2: secondary expansion of the foregoing.
 - b. I:3: secondary expansion of the foregoing.
 - c. I:4: secondary expansion of the foregoing.
 - d. I:5: secondary expansion of the foregoing.
 - e. I:6: secondary expansion of the foregoing.
 - I. I:7: secondary expansion of the foregoing.
 - f. I:8: secondary expansion of the foregoing.
 - I. I:9: amplification of the foregoing.
 - II. I:10: as above.
 - g. I:11: secondary amplification of foregoing.

B. ANOINTING KINGS

1. I:12: The way in which the oil is applied to a king for the purpose of anointment.
 - a. I:13: gloss on foregoing.
2. I:14: Further Tannaite statements on the same topic.
 - a. I:15: gloss of foregoing.
3. I:16: Further Tannaite statements on the same topic.
 - a. I:17: gloss of foregoing.
 - I. I:18: More good advice in line with the foregoing.
4. I:19: Conclusion of I:17.

C. IT IS THE ONE WHO IS ANOINTED WITH THE ANOINTING OIL, NOT THE ONE WHO IS DEDICATED BY MANY GARMENTS:

1. II:1: Tannaite proof from Scripture of the Mishnah's allegation.
 - a. II:2: Secondary amplification of the foregoing.

D. THERE IS NO DIFFERENCE BETWEEN THE HIGH PRIEST WHO IS ANOINTED WITH ANOINTING OIL, AND THE ONE WHO IS DEDICATED WITH MANY GARMENTS, EXCEPT FOR [THE LATTER'S OBLIGATION TO BRING] THE BULLOCK WHICH IS BROUGHT BECAUSE OF THE [VIOLATION] OF ANY OF THE COMMANDMENTS.

THERE IS NO DIFFERENCE BETWEEN A [HIGH] PRIEST PRESENTLY IN SERVICE AND A PRIEST [WHO SERVED] IN THE PAST EXCEPT FOR THE [BRINGING OF] THE BULLOCK OF THE DAY OF ATONEMENT AND THE TENTH OF AN EPHAH. (1) THIS ONE AND THAT ONE ARE EQUIVALENT IN REGARD TO THE SERVICE ON THE DAY OF

ATONEMENT. (2) AND THEY ARE COMMANDED CONCERNING [MARRYING] A VIRGIN. AND THEY ARE FORBIDDEN TO [MARRY] A WIDOW. (3) AND THEY ARE NOT TO CONTRACT CORPSE UNCLEANNESS ON ACCOUNT OF THE DEATH OF THEIR CLOSE RELATIVES. (4) NOR DO THEY MESS UP THEIR HAIR. (5) NOR DO THEY TEAR THEIR CLOTHES [ON THE OCCASION OF A DEATH IN THE FAMILY]. (6) AND [ON ACCOUNT OF THEIR DEATH] THEY BRING BACK A MANSLAYER.

1. III:1: Identifying the named authority behind the anonymous statement of the Mishnah.

2. III:2: What is the Scriptural basis for the position of R. Meir?

a. III:3: Secondary analysis of the key citation of the foregoing passage.

i. III:4: Gloss of the foregoing.

XVI. Mishnah-Tractate Horayot 3:5

A. A HIGH PRIEST [ON THE DEATH OF A CLOSE RELATIVE] TEARS HIS GARMENT BELOW, AND AN ORDINARY ONE, ABOVE.

A HIGH PRIEST MAKES AN OFFERING WHILE HE IS IN THE STATUS OF ONE WHO HAS YET TO BURY HIS DEAD, BUT HE MAY NOT EAT [THE PRIESTLY PORTION]. AND AN ORDINARY PRIEST NEITHER MAKES THE OFFERING NOR EATS [THE PRIESTLY PORTION].

1. I:1: “The word ‘below’ is meant literally, and the word ‘above’ is meant literally.”

XVII. Mishnah-Tractate Horayot 3:6

A. [WHEN THE PRIEST FACES A CHOICE ON TENDING TO TWO OR MORE ANIMALS THAT HAVE BEEN DESIGNATED AS OFFERINGS, THEN:] WHATEVER IS OFFERED MORE REGULARLY THAN ITS FELLOW TAKES PRECEDENCE OVER ITS FELLOW:

1. I:1: What is the source in Scripture for this rule?

B. AND WHATEVER IS MORE HOLY THAN ITS FELLOW TAKES PRECEDENCE OVER ITS FELLOW.

1. II:1: How do we know this?

C. [IF] A BULLOCK OF AN ANOINTED PRIEST AND A BULLOCK OF THE CONGREGATION [M. 1:5] ARE STANDING [AWAITING SACRIFICE] — THE BULLOCK OF THE ANOINTED [HIGH PRIEST] TAKES PRECEDENCE OVER THE BULLOCK OF THE CONGREGATION IN ALL RITES PERTAINING TO IT.

1. III:1: How do we know this?

2. III:2: Tannaite formulation of the same rule on the strength of scriptural support.

3. III:3: Continuation of foregoing.

XVIII. Mishnah-Tractate Horayot 3:7

A. THE MAN TAKES PRECEDENCE OVER THE WOMAN IN THE MATTER OF THE SAVING OF LIFE AND IN THE MATTER OF RETURNING LOST PROPERTY BUT A WOMAN TAKES PRECEDENCE OVER A MAN IN THE MATTER OF [PROVIDING] CLOTHING AND REDEMPTION FROM CAPTIVITY. WHEN BOTH OF THEM ARE STANDING IN DANGER OF DEFILEMENT, THE MAN TAKES PRECEDENCE OVER THE WOMAN.

1. I:1: Tannaite statement of the same matter.

2. I:2: In matters of uncleanness, with respect to the prefect of the priests and the priest anointed for battle, which takes precedence?

XIX. Mishnah-Tractate Horayot 3:8

A. A PRIEST TAKES PRECEDENCE OVER A LEVITE”

1. I:1: Scriptural proof for that proposition.

B. A LEVITE OVER AN ISRAELITE:

1. II:1: Scriptural proof for that proposition.

C. AN ISRAELITE OVER A MAMZER:

1. III:1: The reason for that proposition.

D. A MAMZER OVER A NETIN:

1. IV:1: The reason for that proposition.

E. A NETIN OVER A PROSELYTE:

1. V:1: The reason for that proposition.

F. A PROSELYTE OVER A FREED SLAVE”

1. VI:1: The reason for that proposition.

G. UNDER WHAT CIRCUMSTANCES? WHEN ALL OF THEM ARE EQUIVALENT. BUT IF THE MAMZER WAS A DISCIPLE OF A SAGE AND A HIGH PRIEST WAS AN AM HAARES, THE MAMZER WHO IS A DISCIPLE OF A SAGE TAKES PRECEDENCE OVER A HIGH PRIEST WHO IS AN AM HAARES:

1. VII:1: What is the source in Scripture for the proposition that learning in the Torah takes precedence over all else?

2. VII:2: Secondary consideration of the proposition that a proselyte takes precedence over a freed slave.

3. VII:3: Continuation of foregoing. Tangential reference to forgetfulness accounts for the continuation at No. 4.

a. VII:4: Secondary expansion on a topic of the foregoing: forgetfulness. Five things cause what one has learned to be forgotten.

H. THE HONOR THAT IS PAID TO A SAGE; THE TRAITS OF THE SAGE

1. VII:5: Correct conduct when a sage enters the room.

a. VII:6: Gloss of foregoing.

b. VII:7: as above.

c. VII:8: as above.

l. VII:9: gloss of the foregoing.

2. VII:10: The intellectual gifts. Erudition versus analytical skills.

3. VII:11: Continuation of foregoing: story.

4. VII:12: As above.

5. VII:13: As above.

Points of Structure

1. DOES BABYLONIAN TALMUD-TRACTATE HORAYOT FOLLOW A COHERENT OUTLINE GOVERNED BY A CONSISTENT RULES?

We find ourselves able to outline most of the tractate by referring to the Mishnah-tractate's principal statements. The larger composites that do not define their purpose within Mishnah-commentary take up themes called for by the contents of the Mishnah. I find nothing in the tractate that cannot be situated in relationship to the program of the Mishnah.

2. WHAT ARE THE SALIENT TRAITS OF ITS STRUCTURE?

As we review the outline of the tractate, we note that one way or the other every principal allegation of Mishnah-tractate Horayot is subjected to discussion, though at many points a process of selection has guided the framers of this tractate to one set of problems rather than to some other. The main traits of mind that defined the choices are readily inferred from the pattern of results consistently attained. In general three sets of issues predominate: [1] the wording and sense of sentences in the Mishnah; [2] the foundations in the written part of the Torah, or Scripture, and [3] implications of the Mishnah's rule, which may lead to investigating questions provoked but not addressed by the Mishnah, secondary theoretical issues, and other modes of extension and augmentation. The intellectual quest therefore finds its definition in Mishnah-exegesis.

The greater part of the Talmud's system comes to expression in the questions the framers of the Talmud's Mishnah-exegesis address to the Mishnah; what they wished to say, they stated, for the most part, through the questions they brought to a prior document. Since so much of their commentary appears to adhere closely to the main lines of the Mishnah's own statements, it is easy to conclude that the Talmud's system replicated the Mishnah's. But that is deceiving. Not only do the questions of the Talmud — clarify what the Mishnah's authors must have assumed was already clear, identify authority for the Mishnah that the Mishnah's authors did not find need to expose, say more than the Mishnah's authors found sufficient — subvert the Mishnah. Other than Mishnah-exegetical compositions and composites impart to the topic treated by the Mishnah a very different character altogether. The notion that, in the Talmud, we find pretty much what the Mishnah's statements mean but little else — the "plain meaning" in modern parlance, or the historically-determinate meaning initially intended by the Mishnah's writers — proves not only anachronistic but naive, even bordering on the disingenuous. Nothing in the writings before us compels us to imagine that the Talmud's compositions' and composites' writers conceived any meaning to inhere in the words before them except for the meaning they brought to those words — whatever it was.

3. WHAT IS THE RATIONALITY OF THE STRUCTURE?

The upshot is simply put: to the framers of the Talmud, a reasoned reading of the Mishnah defended the logical coherence of the document they proposed to compile. But then, the rationality proves formal, not substantive. But even at the level at which we work — large-scale aggregates and their formal testimonies — we may identify points of violence

to the rationality of order and form, and, violating the structure established for the whole, these plunge us into issues of system.

4. WHERE ARE THE POINTS OF IRRATIONALITY IN THE STRUCTURE?

When large-scale composites take shape around topics or propositions not formed in response to statements in the Mishnah, the structure defined by the character of the document overall bears the weight of anomalies. I find these at XIV.B, C, D, E, F; XV.B, and XIX.H.

Points of System

1. DOES THE BABYLONIAN TALMUD-TRACTATE HORAYOT SERVE ONLY AS A REPRESENTATION OF THE MISHNAH-TRACTATE OF THE SAME NAME?

Most of the paragraphs of the Mishnah are taken up in one way or another. I noted only a few that were not fully analyzed, and most of these turn out to be secondary expansions of the Mishnah's own generalizations. But we should not fail to note that even when the Talmud devotes itself to an analysis of the Mishnah's statements, it may well go its own way, beyond the limits of what Mishnah-exegesis requires, though still well within the limits of the Mishnah's topical program. This observation directs our attention to a gray area, between Mishnah-exegesis and the presentation of essentially autonomous discourse, such as is taken up in the next rubric. Here, where Mishnah-commentary spells over into free-ranging exploration of problems precipitated by the Mishnah's concerns but far transcending the Mishnah's own program, we enter the framework of independent thought given the form of subordinated commentary. A survey of the entirety of the document will allow a clearer focus upon this gray area. For the moment it suffices to note that in the Bavli's Mishnah-commentary are embedded the marks of much independent reflection, the intellects of the Talmud

2. HOW DO THE TOPICAL COMPOSITES FIT INTO THE TALMUD-TRACTATE HORAYOT AND WHAT DO THEY CONTRIBUTE THAT THE MISHNAH-TRACTATE OF THE SAME NAME WOULD LACK WITHOUT THEM?

The composite in Unit XIV is provoked by the allusion XIV.A to the transformation of a common person into a ruler or high priest. The change in status is marked — it is, after all, the critical focus of our tractate as a whole! — and it is at that point that the condition of the ruler enters in.

XIV.B: the first point remarks upon the enviable society, the ruler of which acknowledges even inadvertent transgression. That is the mark of good government, accounting also for how rare good government is.

XIV.C: At the head of the next sequence is the contrast between the righteous and the wicked, with the certainty of reward and punishment in the world to come underscoring the justice of God in all things.

XIV.D: The first contrast between the good ruler and the bad one is Lot and Abraham, and the point is, the attitude of the ruler makes all the difference. People may do the same thing, but only if the motive is honorable is that deed consequential; if the motive is dishonorable, then the good that one does turns out to yield nothing. The same actions, e.g., Lot and his daughters, can be both good and bad, and the point of differentiation is the attitude of the ones who do said actions.

XIV.E: The same point, contrasting the good and the evil, emerges in the next example. Tamar and Zimri did the same thing, with very different results.

XIV.F: The key point of differentiation therefore is not the action but the attitude that infuses the action. And the right attitude is one of sincerity; this is stated in an extreme way, better the transgression done sincerely (“for its own sake”) than the religious duty done insincerely (“not for its own sake”). But this same point is

forthwith modulated: doing commandments and study of Torah in an insincere spirit (e.g., for personal gain) gives way to doing them in a sincere spirit.

XV.B: The composite on anointing kings does not vastly change the face of the unit in which it occurs; the Mishnah has dealt with anointing priests, and what the Talmud here contributes is simply a complement to the Mishnah's topic.

XIX.H: The point of the Mishnah, that the sagacity takes priority over hierarchical status, is not vastly transformed by the Talmud. The composite itself appears somewhat unfocused and diffuse; the unit on correct conduct when a sage enters the room and the secondary expansions and glosses thereof bears no proposition I can identify. The contrast between analytical skills and erudition, while interesting, really does not affect the main point, which is the hierarchical point that the Mishnah has stated in so many words. And yet, a second look suggests otherwise. Now we find ourselves deep within the concerns of the Talmud's sages with analytical capacities, not merely knowledge but the power to use knowledge to form fresh knowledge, and that lies beyond the imagination of the hierarchical program of the Mishnah's framers. By introducing the considerations of hierarchization where they do not pertain — learning vs. analytical abilities indeed! — the framers of the Talmud's concluding units place in a different light the very allegations about the status accorded to the sage; that status, while a given, proves only instrumental. It is what one can do with what one learns that makes the difference, and that is not a matter of status at all. In that same context the stories about Simeon b. Gamaliel and Judah the Patriarch and their invocation of their political status in the setting of the superior learning of the sages (also portrayed in an unflattering light, to be sure), form a wry comment on the sages' hierarchical superiority. That sages take precedence in the Talmud proves less weighty than that, among sages, competition for power takes the diverse form of politics, personalities, and preferment.

3. CAN WE STATE WHAT THE COMPILERS OF THIS DOCUMENT PROPOSE TO ACCOMPLISH IN PRODUCING THIS COMPLETE, ORGANIZED PIECE OF WRITING?

The key to Mishnah-tractate Horayot lies in its location, which is in the Division of Damages, rather than in the Division of Holy Things. Since the bulk of the problems finds resolution in whether a given party is obligated to present an offering, and, if so, which offering said party is required to present, the surface of the tractate is studded with issues typical of the fifth division, but rare in the fourth. But the organizer of the Mishnah, laying out the divisions and assigning to them the tractates and therefore the topical expositions they were to receive, had his reasons. The fourth division concerns itself in significant part with the civil administration of the Jews in the Land of Israel. Tractate Sanhedrin, with its account of the tripartite regime of high priest and Temple, king and army, sages and court, set alongside the great pinnacle of the Mishnah, the thirty chapters of Baba Qamma, Baba Mesia, and Baba Batra, with their movement from the abnormal to the normal, form a sustained account of the life of government and secular relationships within the politics of holy Israel. What we learn in Horayot concerns the errors of the civil authorities, apportioning responsibility for the consequences of error, underscoring the obligation of the individual to face the results of his own actions. The real problem of the tractate as the Mishnah presents matters of government proves remarkably contemporary: what does the private person do when the community's officials err.

Faced with an error on the part of the government, what can a person do? If he knows the government errs, he may not find exculpation in the plea that he has merely carried out orders. If the government errs and the individual does not know better and therefore inadvertently has violated the law, then, but only then, the possibility of atoning is raised. So we require, for the process of remission to get underway, both political error and personal inadvertence. Since the issues derive from the right reading of the Torah, right instruction and right action are contrasted with wrong instruction and inadvertent error. That is why the key language throughout invokes the twin criteria, [1] They are liable only on account of something's being hidden (Lev. 4:13) along with [2] an act [of transgression] which is performed inadvertently. The former, in Jaffee's fine translation, concerns a misinterpretation or exegetical error in the law, and the latter involves the mitigating circumstance of a deed in violation of the law done without intent to break the law.

So the principal point of concern of the tractate is that the law be properly known and intentionally observed; if the law is set forth in error by the responsible authorities, the remissive provisions of the law take over. No wonder the tractate reaches its conclusion where it does, with its meditation on the hierarchical inversion accomplished by the sage. For everything in the end depends upon informed government over responsible, critical citizens (to use an anachronistic term). Israel may have its high priest and king, its castes from times of old. But Israel in the end depends upon the sage, whatever his caste, he who can be relied upon not to commit an error of misinterpretation, and who provides the model for those who would avoid inadvertent sin. That explains the order of the exposition of the topic.

The Mishnah's version of Horayot reaches its conclusion when it emerges from the complexities of responsibility for the public interest, the public's stake in the correct administration of law, and the subtle transformation that takes a private person and endows him with the status of embodiment of the community (what happens when one sins and then becomes high priest or ruler being one formulation of matters). Then, laying down the fundamental conviction that hierarchy in this world contrasts with the hierarchy established by the Torah, the Mishnah-tractate makes its final statement on issues of status and responsibility. That is specifically where we confront the Talmud's two striking additional points. Together they accomplish a surprise no less remarkable than the Mishnah-tractate's meditation on hierarchy.

The first treats as altogether null all questions of hierarchy, beginning to end, making the point that it is not the position one holds that matters, or even the acts that one performs in office, but the attitude that characterizes the office holder. This point is hammered home in the contrasts between Lot and Abraham, the two daughters of Noah, Zimri and Tamar, and in the elaborate essay on the centrality of right attitude. When all is said and done, then, we step aside from the Mishnah-tractate altogether, with its concern for error committed inadvertently, with oversight and misinterpretation of the law, by stating that what matters in the end is not what one does but the attitude that one brings to one's action. True, the Mishnah has invited that very point, by its insistence upon the criterion of inadvertence (inadvertently committing an act that is based upon an erroneous reading of the Torah). But inadvertence forms an invitation to the profound thinking on intentionality that the sizable composite the Talmud introduces places on display. The main point of the Mishnah concerns the consequences of inadvertent action, based upon

the wrong decision of public authorities. The main point of the Talmud, where it speaks for itself and not in exegesis of the Mishnah, differentiates not actions at all, whether based upon improper government or uninformed sagacity, but rather attitudes by which one and the same action is carried out.

The second treats as null the datum of the tractate, that the sage forms a single and undifferentiated caste in the hierarchy of ruler and ruled, priests, Levites, Israelites, and on down. The sage stands at the apex by reason of learning; the caste of the sages requires no more sustained a process of differentiation than any other, than the priests (but for the high priest), than the Levites, than the Israelites. The main point of the Mishnah is that the sage disrupts all other established modes of hierarchization. The Talmud's treatment of that point subverts that celebration of the sage within the caste system by introducing those tensions of learning versus intellect, mastery of traditions versus power of logic and reason, that impose upon the status of sagacity those variables that the life of intellect generates. The status of "being a sage" no longer carries weight; various modes of sagacity impart complexity and subtlety to the simplicities of the Mishnah's uncomplicated conception of hierarchization. Since no one can ultimately determine whether Sinai takes precedence over the one who can pierce mountains, the indeterminacy of intellect upsets all conceptions of hierarchization, and the sages move on into an altogether new and unpredictable plane of being. It would be difficult to point to a more complete, if subtle, subversion of a Mishnah-tractate than the one accomplished by the framers of the Bavli, who here present us with one of their (very many) intellectual masterpieces.