

The Fixing of the Oral Mishnah and the Displacement of Meaning

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This contribution is located at the intersection of orality studies and Rabbinic studies.¹ On one hand, I hope to be able to show how methodologies employed in the field of orality studies can further our understanding of Rabbinic materials. At the same time, I hope to introduce colleagues from orality studies to a noteworthy phenomenon in Rabbinic literature and suggest how attention to this phenomenon may be able to contribute to theories already current within the field.

As a student of Rabbinic literature, I have long been curious about the way that ancient students of the Mishnah, a third-century legal handbook, failed to note and respond to the Mishnah's *prima facie* straightforward meaning. The Amoraim, a generation of scholars who lived approximately 100-150 years after the Mishnah's consolidation,² often assessed the significance of Mishnaic rulings in ways that ignore prominent textual data in the Mishnah and contradict corroborating evidence of contemporary parallels to the Mishnah. It is clear that the latter-day

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² I prefer to allude to a process of textual consolidation rather than using the more common term *redaction*, which suggests a literary model of textual production. It is unclear precisely what process accounts for the consolidation of various textual traditions into the highly structured, well organized, and mnemonically encoded text of the Mishnah. There are reasons to doubt the text was fixed solely as a result of R. Judah's editorial work in 200 (Shanks 1996).

Amoraim understood the legal significance of Mishnaic materials differently than had the previous generation of scholars, the Tannaim, who collectively produced the Mishnah. Even more radical is the fact that Amoraic interpretations, rather than Tannaitic understandings that we can reconstruct from literary cues and parallel texts, were transmitted to future generations as the officially sanctioned interpretations of the materials. Though the Tannaitic understandings might be more deserving of communal sanction and widespread dissemination on account of the Tannaitic claim to Mishnaic composition, the canons of Rabbinic learning did not grant them this place. This paper tries to explain 1) how it happened that the Amoraim assessed the legal significance of Mishnaic materials differently than the Tannaim had and 2) why their understanding became the authoritative one. Attention to how Mishnaic materials were composed and transmitted in oral performative settings, and to how meaning is communicated and grasped in such settings, can clarify how this displacement of meaning occurred.

I aim at construing the displacement of meaning as a part of the natural course of events rather than as an exceptional or problematic occurrence. In Rabbinic scholarship, the difference in Tannaitic and Amoraic interpretation of Mishnaic materials has commonly been explained by an assertion that the original meanings associated with the materials were lost and/or corrupted in the course of transmission. David Weiss Halivni (1968, 1975, 1993) is the major proponent of this view. He represents the shift in meaning as an aberration in the transmissional process. By focusing on how meaning was constructed, I hope in the current discussion to open up the possibility of seeing the displacement of meaning as an inherent part of the transmissional process, rather than as a breakdown. One can find the Amoraim assigning curious meanings to Mishnaic materials throughout the Talmud. Though Halivni has tried to explain this phenomenon by assuming a high proportion of problematic and exceptional cases, a comprehensive theory has appeal. I examine a small sample of textual examples from the tractate on oaths (Shevu'ot) in the hope that the observed phenomena have relevance for other parts of the talmudic corpus as well.

Summary of the Argument

Common Recitational Strategies, Different Meanings

Throughout both the Tannaitic and Amoraic eras, oral recitation of Mishnaic materials was an important mode of legal study. As will be

demonstrated in the body of this paper, one aspect of oral recitation consisted of juxtaposing hypothetical scenarios, each with a corresponding ruling. Structural and linguistic parallels in the juxtaposed scenarios drew them into an implicit comparison. Broader principles underlying the individual rulings rose to the surface from the exercise of comparison. It was implicitly understood that these principles might have wider application in the legal system at large. Thus the repeated recitation of juxtaposed scenarios—and the written counterparts of such recitations—provided a method of recording within the communal consciousness the basic legal principles and general rules that undergirded the entire legal system.

In both the Tannaitic and Amoraic eras, this exercise was prominent. However, between the two eras the mechanics of generating comparison differed, in ways to be explored in detail below. My working hypothesis is that the evolving status of Mishnaic material—from a loosely configured set of traditions in the Tannaitic era to a more firmly consolidated text in the Amoraic era—caused different mechanics to be employed during the two eras.³ Between the two eras there is an appreciable difference in attention to detail when reproducing Mishnaic materials. While in the Tannaitic period Mishnaic materials are reproduced with a high degree of variability, in the Amoraic period far greater precision is found. I attribute this change in citational patterns to the consolidation of Mishnaic text. The Amoraim reproduce the text more consistently because it was available to them in a more fixed form.

The evolving status of Mishnaic materials has implications for the relationship between the materials and the legal principles that they were understood to represent. In the Tannaitic era, there was a dialectic between the general principles, a set of compositional building blocks, and the literal text that was produced in the process of oral recitation. The general principles were a foregone conclusion. They acted as a constraint on the oral recitation of scenarios. Compositional building blocks were worked into overarching structures to construct juxtaposed scenarios. The recitational exercises might produce variant literal text from recitation to recitation, but the relationships between scenarios remained consistent. Thus, in the Tannaitic era, stability was independent of the precise literal text that might be performed in any single compositional exercise.⁴ The

³ Elsewhere I have documented this transition in status (Alexander 1998:27-64).

⁴ This result corresponds to similar observations made about variability in oral and oral-derived texts in other cultures. See Ong 1982:16-30 and Foley 1988, 1990.

contrast to be highlighted through comparison was predetermined, while the precise text that might express the comparison was subject to change.

In the Amoraic era the locus of constraint and freedom in the recitational exercises shifted. The Amoraim inherited a fixed Mishnaic text. They were not free to work variant compositional building blocks into predetermined relationships. Instead, they manipulated fixed fragments of text, which themselves contained many structural and linguistic parallels because of the recitation process by which they were produced. The structural and linguistic parallels already fixed into the Mishnaic text became the basis for new comparisons. The relationships that emerged from the new juxtapositions were quite different from the ones that had constrained Tannaitic oral recitations. New paradigms of order were revealed to lie behind Mishnaic materials. New principles and rules emerged from the Amoraic exercises of oral recitation. The balance of what was fixed and what was fluid had shifted. In the Tannaitic era, the literal text produced by the recitational exercises had been variable, though it had been constrained by fixed extratextual legal principles. In the Amoraic era, the literal text of the Mishnah was fixed. The extratextual legal principles were more fluid. As a consequence, the legal principles highlighted in oral recitation shifted when Mishnaic materials became fixed.

By reconstructing the process of oral recitation from the written records that remain, we can see how legal principles were recorded in the Rabbinic collective consciousness. A major portion of the present article is concerned with this reconstruction. The Mishnah is an important place to begin the reconstructions, since it stood at the center of the Rabbinic study curriculum. The Tosefta, a supplementary compendium from the same period that records many parallel traditions using similar syntactical conventions, will also be used, along with other parallel texts from the Tannaitic era. Oral recitation and study techniques of the Amoraim will be reconstructed on the basis of the written records of the Amoraim as found in the Palestinian Talmud, the Yerushalmi.

Overlapping Registers in the Amoraic Period

Beyond causing a shift in the perception of their legal significance, the fixing of Mishnaic materials had an additional effect on how legal principles were correlated with individual Mishnaic pericopes. When the text of the materials was variable and fluid, the materials embodied their own meaning. The juxtaposed scenarios in and of themselves served as a textual record of broader legal principles. Mishnaic materials had no

significance other than the principles that they embodied through this method. However, when the materials became fixed, an inquiry began as to what they meant. In other words, fixing Mishnaic materials initiated the task of commentary. The endeavor of commentary, however, began in a study environment that was articulating new legal principles, rather than reflecting on those that were embodied by Tannaitic composition. The principles newly revealed in the course of Amoraic recitations carried greater weight and held more intrigue. The greatest irony in the transmission of Mishnaic materials is that the authoritative interpretations that were transmitted alongside them invariably disregarded the meanings that were embodied by the materials in their composition.

The shifting sands of Mishnaic meaning in the Amoraic era and the persistence of Amoraic interpretations over and against the implicit understanding exhibited in Tannaitic texts constitute a noteworthy phenomenon from the perspective of orality studies, as well as Rabbinic studies. The construction of Mishnaic meaning during the Amoraic era further exemplifies how a theory of overlapping oral and written registers may be more useful than the previous Great Divide theory of orality versus literacy (see also Finnegan 1988; Stock 1983). In our materials, the oral register can be identified in terms of an oral hermeneutic articulated by John Foley. In his book *Immanent Art* (1991), Foley argues that the meaning of oral texts and oral-derived texts should be evaluated against the backdrop of a network of associations (the “tradition”). He demonstrates that a broad tradition of themes, motifs, and storyline implicates itself in its every performed rendition of epic poetry. The broad tradition that lies beyond the strict boundaries of the text or performance always impinges. The broad tradition, however, consists of nothing more than the cumulative effect of many individual performances. For the Rabbis, this hermeneutic explains how the legal significance of Mishnaic materials is stabilized by an extratextual body of legal principles. Such principles, however, are nothing more than an accumulated storehouse of juxtapositions produced in oral recitation. This model of constructing Mishnaic meaning originates in the Tannaitic era, when the text is truly fluid. It persists, however, into the Amoraic period, even after the text is fixed.

The written register shows itself in the impetus to record meaning. Only after Mishnaic materials were fixed did the work of commentary begin. Only then were the materials conceptualized as distinct texts whose meaning needed articulation. In the Tannaitic era the materials did not have a corresponding meaning that was transmittable, since they themselves embodied their meaning. Their legal significance amounted to the principles encoded by the juxtaposed scenarios. The materials themselves

transmitted the relationships necessary for communicating the legal system's important principles. The odd dynamic whereby Amoraic rather than Tannaitic meanings were transmitted to future generations results directly from the overlapping and competing effects of oral and written registers during the Amoraic era. Even though the text's fixity provided an impulse for commentary, meaning was still assessed as if the text were fluid. The fact that the text had become fixed was enough to provoke interest in recording its meaning. Yet the residual oral character of the materials led the Amoraim to grasp meaning through oral recitation exercises, a practice that invariably yielded meanings quite different from those implicitly communicated by the Tannaitic composers.

The insight to consider the distorting effect of mixing oral and written registers in a single interpretive act comes from the work of Walter Ong.⁵ In his well-known book, *Orality and Literacy* (1982: espec. 14-16), Ong makes the observation that we literates in print culture have a hard time imagining what it is to apprehend knowledge orally. Unless we work hard to train ourselves otherwise, we will apply a set of criteria to oral literature that fails to unlock its full meaning. We will apply literary categories to oral textual materials, and not surprisingly we will find the analysis falling short in its descriptions. That is, when the construction of meaning and the interpretation of meaning draw on conventions from both oral and written registers, the resulting statement of meaning is distorted. This raises a pertinent question: if we can misapply literary conventions to oral materials with odd results in today's world, why could the same misapplication not have happened in antiquity? Perhaps the Amoraim missed the significance of Mishnaic materials as it had been implicitly grasped by the Tannaim because they constructed meaning while functioning within both oral and written registers. In describing how the fixing of Mishnaic materials causes a displacement of meaning, then, I wish to add my observations about this interesting phenomenon to the growing body of material on the overlap between oral and written registers. The first section below establishes the patterns of oral recitation and strategies employed during the Tannaitic era. The second section traces the continued use of the same patterns and strategies in the Amoraic era, with their unusual results.

⁵ See also Stock 1983.

Tannaitic Oral Exercises: Mishnaic Meaning in Process

In order to address the question of how the legal significance is encoded in Mishnaic materials while the text is still fluid, it is important that we first understand what is meant by a “fluid text.” If the verbal content of Mishnaic materials varies from rendition to rendition, as can be seen in the relationship between the Mishnah and its contemporary parallels, how can we talk about meaning? At this stage in the transmissional history of Mishnaic materials, “meaning” is not a distinct body of teachings associated with a textual entity.⁶ At the fluid stage, the meaning of the “text” resides in the process whereby compositional elements are interchangeably combined and recombined into different formulations, rather than in the textual product that results at the end of the process. Herein lies the true methodological challenge of discussing meaning during the fluid stage. The only way to access the meaning that emerges in the course of the compositional, performative process is to reconstruct it ourselves. Oddly enough, we must deconstruct the text into its original composite parts, so that we may reconstruct them as they were originally arranged in the process of oral composition.⁷ Though the texts do preserve signs of the oral compositional process that produced them, the best we can hope for is a flawed approximation.

The process of oral composition was generated on the most basic level by plugging fixed textual elements (words or phrases) into overarching rhetorical structures in order to explore a number of conceptual concerns. Each arrangement of compositional building blocks constituted a

⁶ Here I distinguish myself from an earlier group of scholars who understood the earliest Mishnaic materials to be fixed, and consequently understood “meaning” to be equally fixed. According to this earlier school of thought, meaning was associatively linked with the otherwise cryptic materials. This meaning was taught in the academies, but not preserved in written form in the gemara until much later. See Gerhardsson 1961; Klein 1947, 1953, 1960; Kaplan 1933; and Halivni 1986. Halivni (1968, 1975, 1993) adds the caveat that these associative meanings could be corrupted or lost in the course of transmission.

⁷ Because Rabbinic texts so often engender a reading process, they require even the dispassionate scholar to implicate himself or herself in a reading process in order to conduct the secondary task of analysis. Steven D. Fraade (1991:20) discusses a similar methodological complexity in his analysis of Tannaitic midrash, which like the Mishnah calls upon the reader to synthesize patterns into meaning. Speaking more broadly about the study of oral-derived texts, John Miles Foley also discusses the scholarly responsibility to the original performative context (1991:53-56).

single formulation, but individual formulations did not stand alone by themselves. Essential to the process of oral composition was a relationship established between the different formulations. In the process of oral composition, one variable from among the different plug-in elements would change from formulation to formulation. This single shift established a relationship of easy comparability among the different formulations. From this relationship, the legal significance of any single formulation could readily be synthesized.

For the purposes of understanding how meaning exists during the fluid stage, this process of oral composition has two important implications. First, individual formulations were always contextualized in a matrix of other formulations, which we will call a *performative series*.⁸ Second, legal significance was never stated outright, but rather was implied in the contrast. The performer or listener would grasp meaning by synthesizing and rationalizing the differences between the juxtaposed formulations.

In many instances, the relationships from which meaning can be synthesized are preserved in the Mishnah. For example, in the following pericope, meaning flows from the relationship between the two formulations:

M Shev. 3:2

3:2a. [If a person took] an oath, [saying “I swear] I will not eat,” and then he ate wheat bread, barley bread, and spelt bread—he is only liable on one count.

3:2b. [If a person took] an oath, [saying “I swear] that I will not eat wheat bread, barley bread, and spelt bread,” and then he ate [them]—he is liable on each and every count.

The same elements are plugged into each formulation. The basic elements are: “an oath that I will not eat,” “and he ate” and “wheat bread, barley bread, and spelt bread.” The basic order of events is also stable between the two formulations: first an oath is articulated, then it is violated. The only variable that changes between the two formulations is *where* the plug-in element concerning bread (“wheat bread, barley bread, and spelt bread,”) appears. In the first formulation this plug-in element is included as a part

⁸ Elsewhere such groupings have been called “associative clusters” and “intermediate units.” For other work on the links between early groupings of Tannaitic materials and an oral performative context, see Elman 1994; Lapin 1995:59-82; and Neusner 1977:245-52.

of the violating actions (“and he ate wheat bread, barley bread, and spelt bread”), whereas in the second formulation it is included as part of the oath (“I swear I will not eat wheat bread, barley bread, and spelt bread”). In the second formulation, the plug-in element is actually implied in the violating action (“and then he ate [them]”), but it is *not* stated explicitly. This example demonstrates how the transition from one formulation to the next in the process of oral composition is propelled by shifting a single plug-in element.

Shifting the single textual element sets up a contrast between one scenario and the other. Whatever meaning is conveyed by these two formulations is located in the relationship between them. In the first instance, when the oath is stated generally, the oath taker is liable on only one count, irrespective of the number of times he actually ate. In the second instance, when the oath taker specifies certain foods he intends not to eat, he is held accountable for everything that he specified. The higher degree of culpability can be attributed to the degree of articulation in the oath. However, this meaning only emerges as a result of the contrast between the first scenario and the second scenario. This method of encoding meaning is intrinsically tied to the oral performative process of interchanging plug-in elements, and arranging them in differing configurations. The literary form of two contrasting cases appears in tractate Shevu’ot a total of 38 times, comprising a full third of the text. Where present, it preserves traces of the oral compositional process at work and provides access to the earliest meaning of Mishnaic pericopes.

The Mishnaic configuration of two contrasting cases is not the only “authentic” record of early meaning conveyed through a performative process. Other Tannaitic sources also record performative series that likewise preserve the compositional process of working plug-in elements into varied configurations. What is particularly interesting is that the same formulation can be worked into different performative series that are generated by changing different variables. Even when the same formulation is generated in a different context—with attention to the interchange of different plug-in elements—the formulation appears to have the same meaning. Consider the following passage from the Sifra, which includes a parallel to our Mishnaic pericope. Even though this passage is generated by interchanging altogether different variables than were used to generate the Mishnaic passage, the parallel seems to have the same (or at least a complementary) meaning (Sifra, d’Hova, Perek 16):

A. And from where do we [know] that he brings one [sacrifice] for multiple [transgressions]?

Scripture says, **One** (Lev. 5:5), **for his sin that he sinned** (Lev. 5:6).⁹

B. How so?

B.1. [If a person took] an oath, [saying I swear] I will not drink, and then he drank many drinks,

From where [do we know] that he is only liable on one count? Scripture says, **For his sin**.

B.2. **[If a person took] an oath, [saying I swear] I will not eat, and then he ate many foods**, [parallel to M Shev. 3:2a]

From where [do we know] that **he is only liable on one count**? Scripture says, **For his sin**.

C. Perhaps this leniency—that he is only liable on one count—applies because [these examples] are declarative oaths,¹⁰ where the intentional violation is treated differently than the unintentional violation [which is likewise lenient].

However, perhaps in the case of testimonial oaths,¹¹ where the unintentional violation is regarded just like the intentional violation [which is more stringent], he is liable on each and every count [for multiple transgressions, which is likewise more stringent]?

Scripture says, **One** (Lev. 5:5), **for his sin that he sinned** (Lev. 5:6).

D. How so?

If one man was suing another, and he said to [a potential witness]: Come and testify for me that Mr. So and So has my wheat that I left in his possession yesterday and the day before yesterday.

If [the potential witness] says, I swear I know no evidence on your behalf, from where [do we know] that he is only liable on one count [if it was a false oath]? Scripture says, **For his sin**.

⁹ The biblical text upon which this midrashic passage comments is indicated by the use of bold.

¹⁰ The category of declarative oaths includes all oaths that declare the intent to refrain from or perform a certain action. The classic example of a declarative oath is “I swear I will not eat.”

¹¹ A testimonial oath is imposed upon a potential witness. Though the litigant in a certain case believes that the potential witness knows some evidence that will support his case, the potential witness denies that he does. In this case, the court asks that the potential witness swear that he knows no testimony on behalf of the litigant. The classic form of the testimonial oath is “I swear I know no evidence on your behalf.”

E. Perhaps [the lenient ruling of “only liable on one count” is offered above] because the oath was made about a single species [of grain].

From where [do we know that the lenient ruling applies] even if he said: Come and testify on my behalf that Mr. So and So has my wheat, barley, and spelt in his possession.

If [the potential witness] says, I swear I know no evidence on your behalf, from where [do we know] that he is only liable on one count [if it was a false oath]?¹² Scripture says, **For his sin.**

F. Perhaps [the lenient ruling of “only liable on one count” is offered above] because this was only a single kind of claim being waged.

From where [do we know that the lenient ruling applies] even if he said: Come and testify on my behalf that Mr. So and So has a deposit of mine in his possession, and he stuck his hands in my property, and it was stolen while in his possession and he lost my property.¹³

If [the potential witness] says, I swear I know no evidence on your behalf, from where [do we know] that he is only liable on one count [if it was a false oath]?¹⁴ Scripture says, **For his sin.**

G. Perhaps [the lenient ruling of “only liable on one count” is offered above] because this was only a single man waging the claim.

From where [do we know that the lenient ruling applies] even if five people said to [a potential witness]: Come and testify on our behalf that Mr. So and So has a deposit of ours in his possession, and he stuck his hands in our property, and our property was stolen while in his possession and he lost our property.

If [the potential witness] says, I swear I know no evidence on your collective behalf,

¹² Much of para. E is parallel to M Shev. 4:5c:

[If a man said to two potential witnesses:] I adjure you to testify on my behalf that Mr. So and So has my wheat, barley, and spelt in his possession.

[And they replied:] We know no testimony on your behalf—
They are only liable on one count.

¹³ Each of these is considered a different kind of claim.

¹⁴ Much of para. F is parallel to M Shev. 4:5a:

[If a man said to two potential witnesses:] “I adjure you to swear that you know no testimony about the fact that Mr. So and So has a deposit of mine in his possession, and he stuck his hands in my property, and my property was stolen while in his possession, and he lost my property.”

[And the potential witnesses said:] “We swear we know no testimony on your behalf.”

They are only liable on one count.

from where [do we know] that he is only liable on one count, [if it was a false oath]?¹⁵

Scripture says, **For his sin.**

In spite of its wordiness and length, the midrashic passage represents legal significance in much the same manner that the Mishnah does. In many other respects, of course, the two sources are quite different. Most importantly, they represent different kinds of intellectual exercises with different kinds of pedagogical goals.

They resemble each other specifically in the mechanics of representing meaning. As in the Mishnaic passage discussed above, this midrashic passage contains several scenarios with similar elements and structural parallels. The repeated elements are: 1) a multifaceted transgression (“he drank many drinks,” “he ate many foods,” “he falsely swore that he knew no evidence for multiple species, claims, or litigants”); 2) a generally stated oath (“I swear I will not drink,” “I swear I will not eat,” “I swear I know no testimony”); and 3) the invocation of Lev. 5:5-6 to support the general rule that he should only be liable on one count. In each paragraph the reciter expresses surprise that the multifaceted transgression yields only a single count of culpability. The exercise proceeds as the reciter explains away the single count of culpability in the preceding example, and then brings an additional example that he imagines will fittingly yield multiple counts of culpability for the multifaceted transgression. As in the Mishnaic passage, the exercise proceeds as a single variable shifts from one scenario to the next. The shifting variable is the condition under which the multifaceted transgression is committed. In para. B it is committed as a declarative oath. In para. D it is committed as a testimonial oath, about something that happened over the course of several

¹⁵ A partial parallel to para. G exists in M Shev. 5:3, where the same compositional building blocks are used: five litigants and many kinds of claims. In M Shev. 5:3, however, the kind of oath being discussed is the “oath of deposit,” rather than the testimonial oath found here.

M Shev 5:3:

If there were five people suing him, and they said to him: “. . . Give us the deposit of ours that is in your possession, and the property in which you stuck your hands, and [the money that is due from] our property that was stolen while in your possession, and [the money that is due from] our property that you lost.”

[If the accused man said:] “I swear that you had no property in my possession—”
He is only liable on one count [if he swore falsely].

days. In para. E it is committed as a testimonial oath over several varieties of grain. In para. F it is committed as a testimonial oath over several types of claims. Finally, in para. G it is committed as a testimonial oath over types of claims made by several litigants.

The extent to which the interchange of compositional elements produces this series is more obscure than in the Mishnaic passage because the consistent element—a multifaceted transgression—is presented in a variety of contexts. Therefore the transgression keeps changing its form and is consequently expressed in different linguistic terms. Though there is no reiteration of literal text from one scenario to the next, the structural parallels between the paragraphs are strong. At each stage in the exercise (B, C-D, E, F, and G) a feature of the previously cited multifaceted transgression is identified in order to account for the unanticipated single count of culpability. A new example, which lacks this feature, is then brought forward. Nonetheless, the invocation of Scripture reveals that, in this new case as well, only a single count of culpability is conferred. The cumulative effect is to affirm the truth behind the scriptural proof-text, namely, that only one count of culpability should be conferred regardless of the domain of the example. Though the compositional process is slightly more obscure in the midrashic passage, the series here (just like the Mishnaic series) is generated by changing one variable in each formulation and establishing a set of relationships between the formulations from which meaning can be synthesized. Up to this point, the two sources share a means of constructing and communicating meaning.

But here the similarity ends. While in the Mishnaic passage each new variable brings a corresponding difference in the degree of culpability, in the midrashic passage the same degree of culpability is maintained throughout the series (“liable on only one count”). Thus, the relationships from which meaning is constructed are of a different nature than they are in the Mishnaic passage. In the Mishnah meaning is experienced on the basis of a *contrast*; in the midrashic passage, however, it is experienced on the basis of *consistency*. The relationship between the different scenarios in the Sifra demonstrates that despite the degree of multiplicity latent in the situation in which an oath is made, as long as the oath is stated in general terms the midrashic oath-taker is liable on only one count. We deduce this rule from the fact that in each case the oath was stated in general terms (“I swear I will not eat, I swear I will not drink, I swear I know no evidence”). The continued invocation of Biblical Scripture stabilizes this principle. As with the Mishnaic case, however, the rule is deduced by the relationship between the different scenarios—and, also as with the Mishnaic passage, meaning is *latent* in the juxtapositions rather than explicitly stated.

In examining the relationship between these two sources (the Sifra and the Mishnah), I am most interested in what we can learn from the parallel (M Shev. 3:2a and Sifra, d'Hova, Perek 16, B.2) that appears in the two different performative series. In the performative context the literal text of the formulations is not stable. (This is reflected by the fact that the text of our parallels is not the same on a strictly literal level).¹⁶ The text of each formulation is propelled by an unstable element within the performative series—the shifting variable. In the Sifra, the shifting variable is conceptual (the situation in which the multifaceted transgression is committed). In the Mishnah the shifting variable is the position of the phrase: “wheat bread, barley bread, and spelt bread.” So how is it that the same scenario emerges in different performative series, with attention to different shifting variables? This comparison seems to suggest that the performative process was not necessarily an open-ended one in which a speaker might produce any number of unknown, previously unformulated configurations of the compositional building blocks. Rather, there was an extent to which the performative process was circumscribed. On a purely theoretical level, one might even speculate as to what configurations of compositional elements would be likely to emerge.

Let us pursue this path further. I would like to suggest that even though the performative process produced *fluid* text, the process had underlying features that conferred stability.¹⁷ The stable features were a set of preordained relationships between the compositional elements. The performative process drew upon these relationships in its movement from one formulation to the next. The variables that shifted between the different formulations were not at all random. If anything, they represent a more stable aspect of the performative tradition than the literal text found in any single performative series. Returning to our passage from the Sifra, we can see the established relationships behind the shifting variables (Sifra, d'Hova, Perek 16):

¹⁶ Literal inconsistency lies in the use of the phrase “many foods” in the Tosefta versus “wheat bread, barley bread, and spelt bread” in the Mishnah.

¹⁷ The notion of a stable broad tradition, against which the meaning of individual performative renditions is manifest, can be found in various studies of traditional literature. John Miles Foley discusses the ancient Homeric performative context, modern Christian and Moslem oral epic poets in the former Yugoslavia, and medieval English epic tradition (1991). Brian Stock discusses related phenomena in medieval Christian Europe (1983), and Werner Kelber treats ancient Christian performative renditions of the gospels (1990, 1995).

B.1. [If a person took] an oath, [saying I swear] I will not **drink**, and then he **drank** many **drinks**,
 From where [do we know] that he is only liable on one count? Scripture says, **For his sin** (Lev. 5:6).

B.2. [If a person took] an oath, [saying I swear] I will not **eat**, and then he **ate** many **foods**,
 From where [do we know] that he is only liable on one count? Scripture says, **For his sin** (Lev. 5:6).

In the transition from B.1 to B.2 a single variable changes. The most basic version of the plug-in elements shifts from drinking to eating. This shift indicates that in the broad scope of tradition, the opposition between drinking and eating was an established relationship. In fact, this opposition is central to the composition of many other Tannaitic sources.¹⁸ Likewise, para. C of the Sifra—which explains the rationale for the transition between para. B about declarative oaths to para. D about testimonial oaths—attests to the fact that within the broad scope of tradition the opposition between declarative oaths and testimonial oaths was an established relationship. This relationship is also attested elsewhere in Tannaitic literature.¹⁹ In addition, the two contrasting cases in the Mishnah (M Shev. 3:2) portray a relationship that is well documented in other performative series. There the contrast is between a generally stated oath and an oath articulated with a higher degree of specificity. This contrast is also found in a number of other constructions.²⁰

Having pointed to an element of underlying stability in the performative tradition, let us now return to the question of how the same formulation can appear in these two very different performative series. Each performative series provides a different refraction of the meaning that might be said to belong to the broader performative tradition because it focuses on a different aspect of the tradition. Each performative series focuses on a different set of relationships as the basis for establishing meaning. However, the two refractions of the broader tradition (in the Sifra and in the Mishnah) are complementary, rather than contradictory. Ironically, even though meaning must be constructed in each source—

¹⁸ See, for example, M Yoma 8:3, M Ma'aser Sheni 2:1, M Shev. 3:1c, and T Shev. 2:1-2 discussed below.

¹⁹ See M Shev. 3:10, 3:11, 4:1, 5:1 and T Shev. 4:2.

²⁰ See M Shev. 3:1c (discussed below), M Shev. 3:3, M Shev. 4:5, M Shev. 5:3 and Sifra d'Hova, Perek 16-17.

leading us to think that meaning might not be stable—the complementarity of the two sources teaches us that indeterminacy does not negate meaning. The fact that different performative series could produce the same formulations shows the extent to which meaning was stable, even if it consisted more of a process than a product.

Knowing that different performative events were mutually complementary, even if they provided varying emphases, helps us to assess the early meaning of certain isolated Mishnaic pericopes. Many consist of two contrasting cases that encode a set of relationships intrinsic to their meaning. However, other Mishnaic pericopes stand alone in the fixed Mishnah before us today, stripped of the resonances with related configurations of compositional elements that could establish their early meaning. In these cases, Tannaitic parallels can be very helpful, since they often do preserve a matrix of formulations. From this matrix one can deduce the relationships within which early Mishnaic meaning was experienced. Partially because the other Tannaitic collections were located on the periphery of the Rabbinic curriculum, they were not subject to as much literary editing and polishing as the Mishnah.²¹ Thus, the other Tannaitic collections often preserve longer fragments of text that record the oral performative and compositional process of interchanging plug-in elements, even where the Mishnah does not.²²

The following Mishnaic selection does not provide any clues regarding the oral recitation exercise of which it might have been a part. Without seeing its context in a performative series, it is difficult to evaluate its full legal significance. Even though the current context does communicate something of the Mishnah's early meaning, it does not reveal the basis for the dispute between the anonymous sages and R. Shimon:

M Shev 3:4

²¹ Elman (1994) dates the Toseftan materials in their early groupings as Tannaitic in origin, even though he finds the redacted collection as a whole to be quite late, that is, post-talmudic.

²² The literary superstructure of M Shev. chapter 3 shows the extent to which the redacted Mishnaic text has been reworked. The overall structure of the chapter downplays the oral compositional resonances between pericopes. By way of contrast, the entire tractate of T Shev. consists of segments of text, anywhere from 4 to 10 lines long, that preserve the resonances within the oral performative process.

3:4a. [If a person took] an oath [saying I swear] I will not eat, and then he ate substances not generally eaten, or he drank substances not generally drunk—such a one is exempt.

3:4b. [If a person took] an oath [saying I swear] I will not eat, and then he ate carrion or torn flesh, crawling vermin or creeping things—such a one is liable. R. Shimon exempts [him].

Disregarding for a moment the final phrase that records R. Shimon's contrary view, this selection does reveal an established relationship upon which the oral composer drew. Both formulations begin with the common oath not to eat. Both contain a violation of the oath that defies the conventional understanding of eating. The contrast between the two formulations concerns the character of this unconventional act of eating: is it unconventional in an absolutely categorical sense (3:4a) or is it unconventional in a strictly Jewish sense (3:4b)? In the first formulation, the violating action involves eating something no human would consider edible.²³ In the second formulation, the oathbreaker violates his oath by eating something generally considered edible, but prohibited by Jewish law. From the contrast between the two rulings (exempt versus liable) we learn that the anonymous sages distinguished between substances generally not eaten, but theoretically edible (i.e., the prohibited foods), and those that even theoretically were inedible (i.e., dust). The contrast between the two cases teaches us something concerning the opinion of the sages but fails to provide sufficient information about the opinion of R. Shimon or about the dispute between him and the sages. While the sages felt that "eating" prohibited foods had enough in common with the general concept of "eating" to be considered a true violation of the oath, "eating" nonedibles did not.

Central to this short performative series is the contrast between Jewishly unconventional and those absolutely unconventional. Interestingly enough, this selection also employs another established relationship in its composition, though it has little bearing on meaning. The first half (M Shev. 3:4a) offers two illustrative examples of violating actions: eating substances not generally eaten and drinking substances not generally drunk. The oral composer spun out two examples even though one might have sufficed. Presumably, the established relationship between eating and drinking led him from the first example to the second. Had the final phrase of the Mishnaic pericope presenting the ruling been stated as "counts of culpability," the multiplication of violating actions might have had some

²³ The Amoraim give the example of dust; see b. Shev. 22b, 24a.

bearing for meaning. However, since the final phrase is concerned only with establishing liability versus exemption, the multiplication of examples appears to stem from the oral compositional process, instigated by the associative link between eating and drinking. Even though the established relationship between eating and drinking has little relevance for meaning, it points to the exercise of oral recitation that lies behind the text. It also confirms a link with the exercise of oral recitation that lies behind a related passage in the Tosefta.

Turning to the Toseftan passage, it is important to clarify the ways in which the Mishnaic and Toseftan sources grow out of a common performative tradition. Having established the common basis, we can then explore the value of the Toseftan passage in establishing early Mishnaic meaning:

T Shev. 2:1-2

A. **[If a person took] an oath, [saying, I swear] I will not eat, and then he ate prohibited foods—sacrificial meat disqualified by improper intention, for not having been eaten in the proper time, or by impurity,**

B. [If a person took] an oath [saying, I swear] I will not drink, and then he drank prohibited liquids—wine from a newly planted vineyard in its first three years or from a vineyard containing diverse species—
such a one is liable.

R. Shimon exempts [him] [parallel to M Shev. 3:4b].

C. [If a person took] an oath, [saying, I swear] I will eat, and then he ate prohibited foods—sacrificial meat disqualified by improper intention, disqualified for not having been eaten in the proper time, or disqualified by impurity,

D. [If a person took] an oath, [saying, I swear] I will drink, and then he drank prohibited liquids—wine from a newly planted vineyard in its first three years or from a vineyard containing diverse species—
such a one is exempt.

R. Shimon considers [him] culpable.

This Tannaitic parallel to the Mishnah, like the last one discussed, is longer than the Mishnaic passage. As with the other pair of sources we discussed, each is produced by shifting *different* variables. Though each source preserves a different refraction of the larger performative tradition, they are complementary.

The Toseftan passage draws on some of the same oppositions that were in evidence in the Mishnaic passage: eating versus drinking, and sages versus R. Shimon. Each scenario played out with respect to “eating” is likewise played out with respect to “drinking” (A is followed by B; C is followed by D). This is presumably because of the associative link within the tradition between eating and drinking noted in our discussion of the Mishnah above. Also, in every instance where the anonymous sages rule, R. Shimon presents an opposing ruling.²⁴ In addition to the common oppositions, each source also draws upon *different* oppositions. The Mishnah cites the opposition between absolutely versus Jewishly inedible food. This opposition has no place in the Toseftan passage. On the other hand, the Toseftan passage draws upon the opposition between positively stated oaths and negatively stated oaths—which played no role in the Mishnaic composition. Changing the oath from negative to positive means that the act of “eating” has different implications for the oath. When the oath is negative (“I swear I will not eat”), eating indicates failure to observe the oath. Conversely, when the oath is positive (“I swear I will eat”), eating indicates that the oath has been fulfilled! In presenting these two different scenarios (positively and negatively framed), the Tosefta provides additional perspective on the ways in which eating forbidden foods might relate to oaths.

The two sources also use a common set of compositional building blocks: an oath not to eat and eating prohibited foods. (As we found above, the common building block can be as much conceptual as literal: “he ate prohibited foods—sacrificial meat disqualified by improper intention, for not having been eaten in the proper time, or by impurity” in the Tosefta versus “he ate carrion or torn flesh, crawling vermin or creeping things” in the Mishnah). However, in each source, the use of these building blocks is occasioned by changing the different variables. It seems to matter little for the Tosefta whether or not the illustrative example is stated using an “oath not to eat” or an “oath not to drink.” Thus, one element that was stable for the Mishnah (the sphere of the example) fluctuates in the Tosefta. The most instructive interchange of compositional elements in the Tosefta comes when the two oaths turn positive by simply excluding the term “not” (“I swear **I will eat** and then he ate prohibited foods”). Lines C and D offer a clear contrast to lines A and B, from which meaning can be synthesized.

²⁴ Hayim Lapin discusses the extent to which the stated words in a given sage’s opinion correspond to his actual words. Lapin concludes that the mill of the performative tradition reworks the original sage’s expressions (1995:101-15, espec. 115). I am inclined to agree with him.

Whereas lines A and B test the extent to which eating prohibited foods bears upon oaths *not* to eat, lines C and D test the extent to which eating prohibited foods bears upon oaths *to* eat. The contrast between the two makes it clear that the sages consistently consider “eating prohibited foods” to count as “eating.” (This corresponds to the information we gleaned about the sages in our discussion of the Mishnah above). R. Shimon, on the other hand, consistently does not consider “eating prohibited foods” to count as “eating.” We might summarize this difference by saying that the sages and R. Shimon each see the act of forbidden eating through a different theoretical prism.²⁵ Whereas the sages view the act from a pragmatic perspective (in a physical sense: one is eating, after all!), R. Shimon views the act from the ideal, legal perspective of Jewish law. The rationale for the both the sages’ and R. Shimon’s opinions lies at the intersection between these two contrasting formulations. The Tosefta can play an important role in helping us to reconstruct the stakes in the Mishnaic debate, since it preserves a different refraction of the larger tradition.

In a final example, the Mishnah in its current redacted context gives us little information about the set of established relationships that underlie and compel its composition:

M Shev. 3:7

[If a person took an oath saying,] “I swear I will not eat this loaf,” “I swear I will not eat it,” “I swear I will not eat it,” and he ate it—
He is only liable on one count.

Outside of a matrix of different formulations (each generated by changing a different variable), one has no access to the backdrop of the broader tradition or the established relationships against which this single formulation resonated. The significance of this single formulation is elusive when viewed in isolation.

²⁵ The mode of inquiry that compels this Mishnaic example and its Toseftan parallel is quite typical in Tannaitic performative series. The exercise brings into conflict competing categories: in this case, pragmatic versus ideal. It is not surprising that more than one resolution to the conundrum is preserved. I have casually observed that the more theoretically complex the inquiry behind the performative exercise, the more different answers are preserved. See, for example, M Shev. 3:9 and T Shev. 2:4 that provide different answers to the same question; see also the conflict between M Shev. 3:8 and T Ned. 2:1.

A Toseftan parallel will give us a better view of the backdrop of tradition—and of the relevant fixed relationships that might have conferred meaning upon our Mishnaic passage. I have numbered the three elements of the overarching structure to help the reader follow the interchange of elements integral to this performative series. The overarching structure includes: 1) an initial clause that introduces the parameters of the oaths; 2) a clause that complicates the issue of culpability; and 3) a clause that resolves the matter of culpability.

T Shev. 2:3-4

A. (1) [If a person took an oath saying] “I swear I will not eat” and (2) then he came back and said, “I swear I will eat.” And then he ate—

(3) For the latter ones—[he is liable immediately, so] they administer stripes immediately.

For the former ones—if he ate, he is liable; if he did not eat, he is exempt.

B. (1) [If a person took an oath saying] “I swear I will eat” and (2) then he came back and said, “I swear I will not eat,” and “I swear I will not eat,” and “I swear I will not eat.”

(3) For the latter ones—[he is liable immediately, so] they administer stripes immediately.

For the former ones—if he ate, he is exempt; if he did not eat, he is liable.

C. (1) [**If a person took an oath saying] “I swear I will not eat” and (2) “[I swear] I will not eat” and “[I swear] I will not eat.” And he ate—**

(3) He is only liable on one count [parallel to M Shev. 3:7], since he only stated the latter ones to reinforce the former ones.

D. (1) [If a person took an oath saying] “I swear I did not eat,” and (2) “[I swear] I did not eat” and “[I swear] I did not eat.” [And it turns out he did, in fact, eat]—

(3) He is liable on each and every count.

This is more severe concerning the past than the future.

Perhaps more than any other performative series that we have looked at, this Toseftan passage shows how the interchange of compositional elements leads from one formulation to the next. An abstract of the different compositional elements clarifies the process to an even greater extent:

| | |
|---|---|
| A. Future: Negative/positive contradictory oaths | (plug-in elements) (composite issue) |
| B. Future: Positive/Negative/Negative 1st two oaths, contradictory | (plug-in elements) (composite issue) |

| | | |
|------------------------------|-----------------------------------|---|
| | latter oaths, mutually confirming | |
| C. Future: Negative/Negative | mutually confirming oaths | (plug-in elements) (composite issue) |
| D. Past: Negative/Negative | mutually confirming oaths | (plug-in elements) (composite issue) |

As in other instances of performative series discussed, the process of oral composition draws on a set of fixed relationships. The performative series contains a number of contrasts: positive versus negative, past versus future, and confirming versus contradictory oaths. Some of these contrasts are fixed oppositions between compositional elements (positive versus negative, past versus future). In other cases, the contrasts emerge only from the composite configuration of elements (mutually confirming versus contradictory).

As with fixed relationships we have seen in other passages, these relationships are preserved elsewhere. This is particularly true for the established contrasts between compositional elements. See, for example, the first pericope of the tractate:

M Shev. 1:1 (= 3:1)

There are two kinds of oaths, which are actually four:
[I swear] I will eat and I will not eat,
I ate and I did not eat.

Even though this Mishnaic pericope uses a completely different rhetorical framework, the same basic relationships between past and future and between negative and positive provide an overarching structure.

The additional opposition in the Toseftan passage between contradictory oaths (sections A and B) and mutually confirming oaths (sections C and D) is not the product of a fixed relationship between the compositional elements themselves. Rather it emerges from the patterns used to arrange the compositional elements. Repeating the same element leads to mutually confirming oaths. Juxtaposing negative and positive elements in the same formulation leads to contradictory oaths. Thus, the interchange of compositional elements not only highlights fixed relationships between compositional elements but also creates contrasts at the composite level (that is, mutually confirming versus contradictory or positive first versus negative first).

As in the other performative series, a single variable shifts from formulation to formulation. While the shifting variable is integrally connected with the interchange of compositional elements, the contrast that

results can occur on the composite level or it can draw on an established contrast between compositional elements. In the transition from lines A and B the *order* of the negatively framed and positively framed oaths is reversed by shifting the position of the term “not.” Line B also contains an element of repetition, as the second plug-in element (“I swear I will not eat”) is appended several times to the end of the formulation. Here, adding—and presumably subtracting—plug-in elements is also a means of shifting a variable from formulation to formulation. In this case, the repetition should probably be seen as a flourish in the compositional process, since the repetition does not deepen the contrast with line A. However, the flourish does appear to occasion (or stimulate) the transition to the next line. The next formulation is configured by *dropping* the initial oath (“I swear I will eat”). The resulting formulation contains the thrice-repeated element “I swear I will not eat.” The new configuration thus changes the underlying concern from the question of how contradiction affects culpability to how repetition affects culpability. Finally, the last formulation draws on a fixed opposition between past and future. A contrast is established in how repetition affects oaths concerning the past versus oaths concerning the future. There is a higher degree of culpability for oaths concerning the past (see line D3).

The legal significance of our Mishnaic passage (which is parallel to line C) comes to light against the backdrop of the Tosefta. The relationships that the Tosefta preserves show us that the ruling in the Mishnaic passage most likely can be ascribed to the fact that the oaths are *future*-oriented (as opposed to past, as in Toseftan scenario D) and mutually confirming (as opposed to contradictory, as in Toseftan scenarios A and B). The Mishnah in its present redactional format has separated this pericope (M Shev. 3:7) from others that highlight these relationships. The independence of M Shev. 3:7 from its original performative series is particularly noteworthy since M Shev. chapter three contains another passage that could be seen as a part of that original performative series. The following Mishnaic pericope corresponds in its arrangement of compositional elements to scenario A of the Toseftan performative series:

M Shev. 3:9

(1) [If a person took] an oath [saying, I swear] I will not eat this loaf, (2) I swear I will eat it, and he ate it—

(3) The first one is a declarative oath,
 And the second one is a false oath.²⁶
 If he ate it, he violated the false oath,
 If he didn't eat, he violated the declarative oath.

Like scenario A of the Tosefta, this pericope is composed by configuring positive and negative elements in a contradictory arrangement. I would like to suggest that M Shev. 3:7 and M Shev. 3:9 were originally products of the same performative series. In addition to the evidence presented thus far, one additional commonality between the two Mishnaic pericopes supports this claim. The basic compositional elements are strikingly similar. In both M Shev. 3:7 and 3:9, the basic version of the compositional element is “I swear I will not eat **this loaf.**” In the Toseftan performative series a more basic version is used: “I swear I will not eat.” Additionally, in M Shev. 3:7 and 3:9, the repeated oath is invoked by a full restatement of the oath (“**I swear** I will not eat this loaf, **I swear** I will not eat it”). In the Toseftan version, the repeated element is abbreviated and does not include a full restatement of the oath. Only the content of the oath is repeated in the Tosefta text. There is an implicit assumption that the formulaic aspect of the oath is also repeated (“I swear that I will not eat, . . . that I will not eat”).

Given the consistency between the two Mishnaic pericopes on the level of oral compositional elements, I argue that they were originally part of the same performative series, even though the current redaction does not highlight this fact. I want to suggest additionally that the performative series from which these two Mishnaic pericopes derived must have closely resembled the one preserved in the Tosefta, even if it was not the same in all of its particulars.²⁷ As we have found, it is often inevitable that different performative renditions will provide different emphases, and refract the larger tradition through a slightly different lens. The differing emphases, however, do not negate the usefulness of the Tosefta in establishing early Mishnaic meaning.

²⁶ It is false because it contradicts “what is known to be the case,” namely that there is already an earlier oath in place forbidding the act. See M Shev. 3:8 for a fuller definition of the false oath with multiple examples.

²⁷ I feel no need to establish a priority between the Toseftan passage and the reconstructed Mishnaic performative series, that is, to determine which came first. As products of the same performative tradition, the question of priority is not within our ability to establish. My analysis puts the emphasis on the shared historical context of the two sets of materials.

Summary

Understanding how meaning was constructed when Mishnaic materials were still fluid requires a sensitivity to relationships developed between formulations in the compositional process. These relationships and oppositions were perhaps the most stable element of the broad performative tradition. Sometimes these relationships are preserved in the Mishnah itself through the rhetorical structure of two contrasting cases. In addition, such relationships can be seen in the Tannaitic parallels that use them to generate their own performative series. Whether we see the broader spectrum of concerns that make up the performative tradition through the relationships preserved in the Mishnah or elsewhere, it is important to realize that the earliest sets of Mishnaic meanings were produced against the backdrop of the larger performative tradition. Though we cannot recreate the full richness of the larger performative tradition, we can see glimpses of it. Early Mishnaic meanings were not subject to transmission because they were not a coherent body of teachings associated with a fixed and stable textual product. Rather, they were grasped in the exercise of oral recitation, an exercise that invoked established relationships from the broad tradition. Even so, the broader tradition itself was nothing more than the sum total of relationships that emerged as compositional elements were continually combined and recombined in different performative settings.²⁸

Amoraic Imitation: Resonances between Fragments of Fixed Text

Though the Mishnaic text of the Amoraic period was fixed, the Amoraic rabbis continued to relate to it according to sensibilities developed when the text was still fluid. This behavior can be discerned in the Yerushalmi, or Palestinian Talmud, which cryptically records the Amoraic discussions about the Mishnah. There one can find the legal significance of Mishnaic materials established through juxtapositions that imitate the same kinds of juxtapositions found in Tannaitic sources. However, the Amoraim manipulate fragments of fixed text—rather than compositional building

²⁸ A fluid relationship between the broad tradition that gives meaning to individual performative renditions and the myriad of performative events that make up the broad tradition is characteristic of various oral performative traditions. See further Foley 1991:6-10, espec. 10.

blocks. This subtle shift has important implications. The Amoraim establish new relationships from which meaning is to be synthesized and ignore the relationships at work in the broad performative tradition that produced the materials. New meanings are inevitably produced. The displacement of what might be called “original” meaning arises from the fact that the Amoraim treat fixed fragments of text *as if* they were compositional building blocks. Amoraic oral recitation is modeled after what I called the Tannaitic performative series, that is, a series of juxtaposed formulations produced by shifting a single variable from one formulation to the next. In the Tannaitic era, oral recitation leads to text production, and the performative series discussed in the previous section is produced in the course of an oral exercise. In the Amoraic era, however, the oral exercise of juxtaposing scenarios is not intrinsically linked with text production. By way of contrast, the Amoraim manipulate pre-existing textual fragments. Their oral performative practices exercise the performer’s grasp of diverse topics through the medium of the known text. In order to highlight the derivative character of the Amoraic recitations, I refer to them as **performative exercises**. I intend this term to differentiate them from the **performative series** of the Tannaim on which they are modeled, where text production is integrated with oral performance.

As with the construction of meaning at the fluid stage, juxtapositions are central to Amoraic construction of meaning. Juxtapositions might build on either *consistencies* or *contrasts* between scenarios. The following performative exercise in the Yerushalmi highlights consistency. As we will see, the focus on the fragments of text (rather on than the compositional building blocks) obscures the role that the established relationships from the broad Tannaitic tradition played in structuring meaning.

First, turning to the Mishnaic pericope upon which the performative exercise is based, we can see how the composer who worked compositional elements into this formulation did indeed draw upon an established relationship in the broad performative tradition:²⁹

M Shev. 3:1c

[If a person took] an oath, [saying I swear] I will not eat, and then he ate and drank—he is only liable on one count.

[If a person took] an oath, [saying I swear] I will not eat and drink, and then he ate and drank—he is liable on two counts.

²⁹ The numbering is drawn from the popular edition of the Mishnah, following the Babylonian tradition. In the Palestinian manuscript tradition, the cited text constitutes an entire pericope (M Shev. 3:2).

This performative series is generated by arranging the terms **eating** and **drinking** into different configurations. The consistent elements between the two formulations are: 1) the order of events (the statement of an oath, followed by a violation of the oath); 2) the inclusion of the term “eating” in the oath; and 3) a violating action consisting of *both* eating and drinking (“and then he ate and drank”). The shifting variable between the two formulations is the inclusion or exclusion of the term “drinking” in the statement of the oath. In the first formulation, the term “drinking” is excluded from the oath, and in the second formulation it is included. The relationship established between these two formulations fits into a pattern found in the broad performative tradition. The relationship turns on an opposition between broadly stated oaths and oaths articulated with a higher degree of specificity.³⁰ As with the Mishnaic example of two contrasting cases discussed in the previous section, this performative unit encodes its meaning in the contrast between the two scenarios. From the contrast, we learn that highly articulated oaths carry a higher degree of culpability.

The Yerushalmi atomizes the text and disregards the relationship between the two formulations as a basis for meaning. The Yerushalmi inquires into the meaning of the first half of the Mishnaic pericope, irrespective of its relationship with the second half. The first half reads:

M Shev. 3:1c

[If a person took] an oath, [saying I swear] I will not eat, and then he **ate and drank—he is only liable on one** count.

When viewed in isolation from its partner formulation, *different* elements in the formulation come to the fore as fodder for interpretation. The Yerushalmi focuses on particular features of the text—1) the violation involving eating and drinking and 2) the single count of culpability—and identifies resonances with another fixed fragment of Mishnaic text:

³⁰ See M Shev. 3:2 (discussed above), M Shev. 3:3, M Shev. 4:5, M Shev. 5:3 and Sifra d’Hova, Perek 16-17.

M Yoma 8:3

[If a person] **ate and drank** [on Yom Kippur, when these acts are prohibited,] in a single moment of forgetting [the law]—**he is only liable** for **one** sin offering.³¹

The common elements between these two fixed fragments are 1) a transgression that includes both eating and drinking (even the same literal text is used, “ate and drank”) and 2) a lenient ruling of only one count of culpability. The variable between the two is the sphere of law from which the example is drawn (fasting on Yom Kippur versus declarative oaths).

The Yerushalmi synthesizes meaning on the basis of a *consistency* between the two scenarios. When these two scenarios are juxtaposed, their commonalities are highlighted. In both cases eating and drinking function as a unity for the purposes of conferring counts of culpability. They are not treated as separate actions. The Yerushalmi offers a linguistic explanation for this phenomenon:

PT Shev. 34b, line 59

Drinking is implied by the term eating, but eating is not implied by the term drinking.

³¹ In juxtaposing the above pericope to this one from Yoma, the Yerushalmi again only partially cites the pericope. The full text—which preserves traces of its compositional process—reads:

M Yoma 8:3

[If a person] ate and **drank** [on Yom Kippur, when these acts are prohibited] in a single moment of forgetting [the law]—he is only liable one sin offering.

[If a person] ate and did work [on Yom Kippur, when these acts are prohibited] in a single moment of forgetting [the law]—he is liable two sin offerings.

Here the key variable is a shift from “drinking” to “did work.” This textual version is attested in all Palestinian mss., as well as by Maimonides. The interpretive tradition that emphasizes the unified character of eating and drinking (see discussion below) is incorporated into the later Babylonian recension of the text:

[If a person] **ate and drank** [on Yom Kippur, when these acts are prohibited] in a single moment of forgetting [the law]—he is only liable one sin offering.

[If a person] **ate, drank, and did work** [on Yom Kippur, when these acts are prohibited] in a single moment of forgetting [the law]—he liable on two counts.

That is, when the term “eating” appears, its proper referent is *both* eating and drinking. Having established the relationship between these two fragmented Mishnaic pericopes, and having identified the principle governing the relationship, we can point to yet another fragment of Mishnaic text, M Ma’aser Sheni 2:1, that is worked into the Yerushalmi’s performative exercise. In this case, the relationship between this passage and our base text, M Shev. 3:1c, is not structurally apparent, as was the case above. However, this ruling can be understood to fuse eating and drinking into a single entity, which was the conceptual feature highlighted by M Shev. 3:1c in its fragmented form. Thus the resonances with this mishnah, M Ma’aser Sheni 2:1, are conceptual rather than structural. M Ma’aser Sheni 2:1 reads:

M Ma’aser Sheni 2:1

The second tith³² is set aside for [subsequent] **eating, drinking,** and anointing.

“For eating”—that which is usually eaten.

“For anointing”—that which is usually anointed.³³

The Yerushalmi astutely notices that in this text eating and drinking are also treated as a unity. Though the first line of the Mishnah states that the second tith³² applies to products that can be eaten, drunk, or anointed, the explanatory portion of the pericope specifies only eating and anointing. The Yerushalmi presumes that the Mishnah does not elaborate on drinking, since eating and drinking function as a unity. The elaboration of “eating” alone suffices to draw out the rules for drinking as well. This Mishnaic fragment easily finds its place in this performative exercise, which invokes fragments that cumulatively reinforce the notion that eating and drinking function as a unity.

The initial fragment of Mishnaic text (M Shev. 3:1c) with which we began this exercise has an altogether different meaning when examined in relationship to these other Mishnaic fragments than when viewed in its original performative context. The meaning shifts from the arena of oaths (and the relationship between the degrees of articulation and culpability) to

³² The basis for the Rabbinic institution of the second tith³² is found in Dt. 14:22-26. After the first tith³² has been set aside for the priests, an additional tith³² is separated out from one’s produce and herds, and set aside to be consumed or used in Jerusalem.

³³ I.e., oils and salves.

the arena of linguistics (the term “eating” accounts for instances of “eating” and “drinking”).

It is important to notice several typical behaviors on the part of the Yerushalmi that force this shift in meaning from the original performative context. First, the local textual relationships that preserved traces of the oral compositional process are abandoned as a point of reference in the reconstruction of meaning. If anything, meaning that follows from the Yerushalmi’s performative exercise violates the earliest meaning of the pericope. As noted in the previous section, the opposition between drinking and eating was an established relationship in the broad performative tradition. Against that original backdrop, eating and drinking were distinctly not viewed as a unity.³⁴ The performative exercise in the Yerushalmi is able to ignore the resonances with the original performative tradition because it treats *disembodied* fragments of text. Since the oral compositional process is no longer being practiced, the fixed oppositions that were a central part of this process may no longer have been an integral part of the transmitted tradition. As attention turns from practicing a performative tradition of oral composition to transmitting fixed fragments of text, the tools that played a central role in the compositional process were not transmitted. It appears that the fixed relationships between compositional elements were readily replaced by other relationships established in new performative exercises.

Second, the atomized character of the textual fragments necessarily severs the resonances with other configurations of the compositional elements. The relationships from the original performative tradition are even further obscured as new relationships come to the fore, relating our Mishnaic fragment to others with a similar theme. Notably, the common theme between the Mishnaic fragments—the linguistic unity of eating and drinking—is recognized not only in structural parallels between the Mishnaic fragments but also in more abstract parallels (as in the case of the third fragment, M Ma’aser Sheni 2:1). The fact that legal significance can be drawn from this more abstract kind of parallel demonstrates the extent to which the Yerushalmi is mimicking the earlier performative tradition rather than participating in it. The process of relating fixed fragments to each other is not governed by the same strict patterns that regulated the interchange of compositional elements in a Tannaitic performative series. In the Tannaitic series, strict structural parallels govern the relationship between scenarios in a given performative series.

³⁴ This opposition can be found in M Shev. 3:2-3:4, Sifra, d’Hova, Perek 16-17, T Shev. 2:1-2.

The Yerushalmi does not record the performative exercise in the manner that I have reconstructed here. It begins by stating the general principle about the relationship between the terms “eating” and “drinking,”³⁵ and then cites various rabbis who all say that they learned the principle from a different one of our sources:

PT Shev. 34b, lines 59-69

Drinking is implied by the term eating, but eating is not implied by the term drinking. . . .

. . . .

R. Yona tried again, and learned it from the following:

[Should the distance be too great for you, should you be unable to transport them³⁶. . . , you may convert them into money. . . .]

Spend the money on anything you want—cattle, sheep [i.e., **edibles**], wine or other intoxicants [i.e., **drinkables**]

[And you shall **eat** them before the Lord.] (Dt. 14:24-26).³⁷ (parallel to M Ma’aser Sheni 2:1)

. . . .

R. Yose learned them all³⁸ from here:

[If a person took] an oath, [saying I swear] I will not eat, and then **he ate and drank**—he is **only liable on one count**. (M Shev. 3:1c)

. . . .

³⁵ It is noteworthy that the Yerushalmi begins its sugya (a coherent unit of argumentation) by citing the newly derived principle. It is as if the Yerushalmi replaces the backdrop of the early performative tradition with a new backdrop comprising a different set of general principles. It appears that the Yerushalmi wants to reinforce the primary position of its articulated principles over and against the earlier Tannaitic tradition of legal principles, against which these mishnayot resonated in their earlier Tannaitic performative contexts.

³⁶ That is, the products set aside for the second tithe.

³⁷ Though the Yerushalmi does not cite the Mishnaic pericope from tractate Ma’aser Sheni in the sugya, the citation of these Biblical verses relates the exercise to the laws of the second tithe in a similar manner. The verses cited here outline the rules for converting one’s second tithe into money, with the purpose of buying similar goods in Jerusalem to be consumed there. Like M Ma’aser Sheni 2:1, this Biblical verse has one phrase that enumerates both drinkables and edibles and another verse that only specifies eating. This verse performs the same function in the performative exercise as M Ma’aser Sheni 2:1 might have, since it makes the same point in the same manner.

³⁸ “All” refers to *all of the examples* that instantiate the general rule: drinking is implied by the term eating, but eating is not implied by the term drinking.

R. Ba learned them all from here:

[If a person] **ate and drank** [on Yom Kippur, when these acts are prohibited] in a single moment of forgetting [the law]—he is **only liable on one count**. (M Yoma 8:3)

The sugya gives the impression that the principle exists independently of the relationship among these three different spheres of law (second tithes, oaths, and Yom Kippur). However, the fact that the sugya appears in its full form in each of these three tractates (PT Shev. 34b-c, PT Ma'aser Sheni 53b, and PT Yoma 45a) indicates that the sugya was formulated at the study or performative intersection of these three Mishnaic texts. Each version of the sugya has its own significant text-critical idiosyncrasies, indicating that each version has its own transmissional history independent of the others. The presence of the same sugya in all three locations cannot be explained by saying that it was composed in one context and then transferred to the others. Were that to be the case, one would expect to find greater textual congruency among the parallel versions. The sugya was apparently performed independently in each of these three study settings, each of which was an equally authentic milieu. I submit that each setting was equally authentic because the Amoraim who produced this sugya studied the sources by juxtaposing them. I further submit that the general principle, here presented as an *a priori* element of the tradition, emerged in light of the juxtaposition between the three mishnayot.

The practice of juxtaposing cases from different spheres of law to discover the consistencies that lie at their intersection is well documented in our Tannaitic sources. This practice was central to the oral exercises that produced Mishnaic materials themselves (Alexander 1998:71-76). That this practice appears here confirms the extent to which the Amoraim whose work lies behind this sugya were still using many of the same study practices used by the Tannaim. The Amoraic understanding of the materials was shaped by an inherited mode of intellectual inquiry. While the Tannaim had probed the intersection of different spheres of law in the process of oral composition, the Amoraim did so in an *ersatz* process of oral composition, that is, when they were manipulating fixed fragments of text.

We may presume that the new meaning that was produced in this exercise initially existed only insofar as the relationship between these three Mishnaic texts was affirmed—just as Tannaitic meaning was ephemeral in the context of oral composition. However, it is striking that the Yerushalmi presents the results of its performative exercise such that meaning is subject to transmission. By way of contrast, our Tannaitic sources preserve only the relationships that were a part of the process. Legal significance is rarely

objectified and stated outright in Tannaitic sources, and certainly not in the sources presented in the previous section. I attribute this phenomenon to the materials themselves not being perceived as a consolidated entity when the Tannaitic performative series were produced. However, by the time the Amoraim of the Yerushalmi were doing their exegetical work, Mishnaic materials were fixed. Fixed materials could be understood to have “Meaning” with a capital “M”—that is, an interpretive tradition that was itself a concrete body of teachings. Such a body of teachings is infinitely more transmittable than the ephemeral legal significance encoded in the relationship between juxtaposed scenarios. The great irony is that the meaning that was subject to transmission (because there was a concrete text to which the meaning corresponded) almost invariably disregarded the meaning conveyed in the original compositional process.³⁹

In our next example, the Yerushalmi again adopts a pattern of interrelating formulations. Here contrast is the operative relationship from which meaning is synthesized. The passage under analysis reads as follows:

M Shev. 3:7

[If a person took] an oath [saying, I swear] I will not eat this loaf, I swear I will not eat it, I swear I will not eat it, and then he ate it—he is only liable on one count.

As we noted in the previous section, this Mishnaic pericope stands alone in the Mishnah’s redacted chapter. It is stripped of any resonances with other formulations from the same elements that might alert readers to the compositional process that produced this particular configuration of elements. The isolated textual context affords the Yerushalmi great liberty in choosing which details to relate to as central. When a pericope is preserved in a performative series, or even an abbreviated performative series like two contrasting cases, the features of the text that are juxtaposed in a relationship—and that are the basis for synthesis of meaning—are already determined. However, when the text is fixed independent of a performative series, the interpreter may use his or her own discretion in

³⁹ Halivni (1968:7-19) has noted that many of the meanings transmitted alongside Mishnaic materials violate “literal” or “original” meaning. I would like to suggest a possible explanation for the fact that the non-literal meanings (rather than meanings more faithful to the original) enter the stream of transmitted teachings. Meaning was subject to transmission only after the materials were already fixed. However, the meanings that were produced in the performative exercises of fixed fragments of texts often violated the sense of the materials established in the context of oral composition.

focusing on particular features of the text. Features that might have been arbitrary in the process of oral composition can be highlighted as new juxtapositions become the basis for new meaning.

Building on our analysis in the previous section, we can observe that certain features of this Mishnaic pericope can be said to be incidental and others more essential to the process of oral composition. In the previous section we concluded that this passage and M Shev. 3:9 were originally part of a performative series that resembled T Shev. 2:3-4. In our discussion we noted that each of the sources used slightly different basic elements, though the pattern by which they were interchanged was similar. In the Mishnaic sources, the basic compositional element included both a statement of the oath and a reference to a particular loaf:

M Shev. 3:7

I swear I will not eat **this loaf**, **I swear** I will not eat **it**, **I swear** I will not eat **it**.

M Shev. 3:9

I swear I will not eat **this loaf**, **I swear** I will eat **it**.

By way of contrast, in the Toseftan passage the basic compositional elements did not include a restatement of the oath, nor did they include a reference to any particular object as the subject of the oath. The Toseftan passage included an additional element (“and he came back”) not present in the Mishnaic sources.

T Shev. 2:3-4

I swear I will not eat, and **then he came back** and said [I swear] I will eat.

I swear I will eat, and **then he came back** and said [I swear] I will not eat, and [I swear] I will not eat, and [I swear] I will not eat

I swear I will not eat, and [I swear] I will not eat, and [I swear] I will not eat.

The Toseftan version does not explicitly renarrate the statement of the oath, though it is implied in each restatement of the oath’s content. Though I have included the restatement of the words “I swear” in brackets for clarity’s sake, in the original Hebrew these words do not appear. In spite of the fact that the two sources use slightly different versions of the basic

compositional elements, the pattern by which the basic elements are interchanged is consistent. Though proceeding in a different order, both sources move from one formulation to the next by switching the order of the oaths, by including or excluding a positively stated oath, and by repeating the negatively stated oath. Essential, then, to the compositional process is the order between the oaths, the relation between positive and negative oaths, and the repetition of oaths. The exact words by which these relationships are encoded are incidental. There may even be a degree of randomness in the fact that the oral performer did or did not restate the oath (“I swear”), did or did not include a linking phrase (“then he came back”), and did or did not expand the content of the oath (“this loaf”).

The Yerushalmi, however, encounters this pericope as a fixed fragment, devoid of the resonances that differentiate between essential and arbitrary textual features. Consequently, the Yerushalmi adduces the Mishnaic text’s legal significance by highlighting features that we have identified as incidental. When the single Mishnaic formulation is viewed outside of the matrix of related formulations, every detail of the text is equally weighted with respect to its potential for meaning. Only the newly established contrast will determine which details of the text will be meaningful. The performative exercise that the Yerushalmi records reads as follows:

PT Shev. 34d, lines 13-16

- A. R. Yose asked: [If a person said] “I swear, I swear, I swear I will not eat,” what is the ruling?
- B. R. Yose b. R. Bun said: We learn the answer from this:
- C. **[If a person took an oath saying] “I swear I will not eat this loaf,” “I swear I will not eat it,” “I swear I will not eat it,” and he ate it—he is liable on one count.** (M Shev. 3:7)
- D. [The reason here is] because he mentioned [the content of the oath] in each instance.
- E. Therefore, if he did not mention the content of the oath—he should be liable on each and every count. [And this is the ruling in the question case brought by R. Yose above].

R. Yose’s question case (line A: “I swear, I swear, I swear I will not eat”) stands in contrast to our mishnah, and becomes the basis for determining its legal significance. In many ways, the process of synthesizing meaning from the contrast between these two cases is very similar to the process we reconstructed in many of the Tannaitic sources. The two scenarios have common features (the thrice repeated “I swear,” and the basic oath not to

eat). A single point of difference establishes the comparability between them. In R. Yose's question scenario the content of the oath is not repeated ("I swear, I swear, I swear I will not eat"), whereas in the Mishnaic scenario the content of the oath *is* repeated ("I swear I will not eat this loaf, I swear I will not eat it, I swear I will not eat it"). The Amoraic interpreter, R. Yose b. R. Bun, presumes that the Mishnaic case rules "a single count of culpability" on the basis of its distinctiveness from the other case. The compare and contrast exercise with R. Yose's question case reveals its distinction: in M Shev. 3:7, the content of the oath was repeated each time the intent to swear was repeated. The Yerushalmi's interpretation emphasizes this fact to the exclusion of other features of the Mishnaic formulation. The Amoraic interpreter understands the legal significance of M Shev. 3:7 as follows: in the Mishnaic case, the oathtaker was liable to a limited extent (only one count of culpability) because of the fact that he repeated the content of the oath. Thus, in other potential cases where the content of the oath is not repeated (like R. Yose's question case, line A), multiple counts of culpability should be conferred.

As in the Tannaitic sources, the two contrasting cases seem to be composed from the same compositional building blocks. The same words appear ("I swear I will not eat") and are arranged in the same thrice-repeated pattern. The single variable between the two cases might easily be the product of an oral composer interchanging compositional elements. In one scenario, the content of the oath is repeated while in the other it is not. From an oral compositional perspective, this variable turns on the inclusion or exclusion of the words "I will not eat it." This kind of variable is characteristic of what oral composition can produce. Furthermore, the distinction between the two scenarios taps into an established relationship in the broader tradition: generally stated oaths versus oaths stated with a high degree of specificity. However, in the broad tradition of the Tannaitic era, generally stated oaths carry a lower degree of culpability than oaths stated with a high degree of specificity.⁴⁰ Here the opposite has happened! R. Yose's scenario of a generally stated oath carries a *higher* degree of culpability ("Therefore, if he did not mention the content of the oath—he should be liable on each and every count"). The Mishnaic scenario—which presumably contains oaths stated with a higher degree of specificity—carries only one count of culpability. By working the Mishnah into this interpretive structure, the Yerushalmi has ignored an established relationship from the Tannaitic tradition. Even though the Yerushalmi shares

⁴⁰For example M Shev. 3:2 (discussed above) and M Shev. 3:3.

meaning-conferring paradigms and strategies with its Tannaitic antecedents, it violates the conditions under which the Tannaim employed them.

How did it happen that the Yerushalmi essentially reversed an established relationship of the broad Tannaitic tradition in its interpretation of this Mishnah? This reversal (which is followed by a requisite reversal in meaning) comes about because the Yerushalmi manipulates fixed fragments of text as if they were configurations of compositional elements. However, fixed fragments of text are far less yielding in the context of the performative exercises than compositional elements are in the context of a performative series. In the Tannaitic sources, the resulting formulations were really the product of two equal forces: 1) the shifting variable and 2) an established relationship that suggested how the elements might be interchanged. In the Yerushalmi, however, the variable that distinguishes the two scenarios has no connection to an established relationship in the broader Tannaitic tradition. As we suggested above, once the usefulness of these relationships in the act of oral composition subsided, it appears they were not transmitted as a part of the tradition. The contrast that emerges between the two scenarios in the Yerushalmi is actually a false one from the perspective of the broad Tannaitic tradition within which Mishnaic materials were composed.

I want to argue that the Yerushalmi displaced the earlier Mishnaic meaning in this case because it emphasized a different feature of the text than the oral composer did. The Yerushalmi drew attention to a feature of the text that was not pivotal in the oral exercise that produced it. This feature only stood out as fodder for interpretation when the fixed linear text was pulled out of matrix of relationships central to oral composition. As a fixed fragment of text, any detail of the text is equally relevant to the interpreter. Earlier I suggested that use of particular compositional building blocks rather than others (“I swear I will not eat this loaf” in the Mishnah versus “I will not eat” in the Tosefta) was to a certain extent an arbitrary accident of circumstance. In the Tannaitic context, the repetition of the content of the oath would have had no import. However, the Yerushalmi built its interpretation of this pericope upon the inclusion of the words “I swear I **will not eat it**” in each repetition of the oath. The Yerushalmi located significance in fixed literal text, and not just in the established relationships of the broad tradition. Even though the Yerushalmi found meaning in a contrast between scenarios, particular words in fixed fragments of text were the fodder for its exercises. Because it manipulated fixed fragments of text—rather than compositional building blocks—in its performative exercises, the Yerushalmi was not able to accommodate the established relationships so central to early Mishnaic meaning. The

Yerushalmi located points of contrast and continuity between fixed fragments of text, but these inevitably obscured the earlier ones, offering new meanings in place of the old.

Conclusion

During both the Tannaitic and Amoraic periods the meaning of Mishnaic materials was established in the context of oral performance. The performative practice juxtaposed different formulations, highlighting larger patterns from which meaning could be synthesized. The technology for producing meaning remained essentially consistent. All that changed by the end of the Amoraic period was the status of the materials. Remarkably, the familiar techniques that had been used all along had radically different results once the materials became fixed. When the materials were still fluid, fixity within the tradition constrained what might otherwise be an open-ended process of oral composition. However, the fixed features of the fluid tradition were hidden from the eye and scope of the Yerushalmi, since they lay outside of the text proper. The Yerushalmi was able to highlight arbitrary features of the textual fragments when they appeared relevant in relationship to other fixed fragments or other parallel formulations. Through a strange fluke of history, the meanings articulated during the Amoraic period were transmitted to later generations. Ironically, only after the materials were fixed was it possible to transmit a parallel body of teachings that were considered to be “their meaning.” Yet, as we have noted, the meanings that were articulated once the materials were fixed invariably disregarded the earliest set of Mishnaic meanings.

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