

PREFACE

This book is the first of a four part presentation of Mishnah's division of Damages, to be followed by a study of the history and structure of the law. The work will be complete in five parts, as follows:

- I. *Baba Qamma. Translation and Explanation.*
- II. *Baba Mesia. Translation and Explanation*
- III. *Baba Batra, Sanhedrin, Makkot. Translation and Explanation.*
- IV. *Shebuot, Eduyot, Abodah Zarah, Abot, Horayot. Translation and Explanation.*
- V. *The Mishnaic System of Damages.*

The purpose and plan of the work follow those of *A History of the Mishnaic Law of Women*, and *A History of the Mishnaic Law of Appointed Times*. There are no changes in the established procedures or purposes.

Surely the most familiar and the most accessible of all of Mishnah's tractates, *Baba Qamma* deserves its good name. It presents fairly simple ideas in a clear way. The tractate supplies a still larger proportion of exegesis, effected through both formal means and straightforward declarations of meaning or of generalization, than do most of the other tractates. Its *Tosefta* is of formidable proportions as well, serving to enrich the meaning of the Mishnah's laws through introducing secondary considerations, on the one side, and supplying its own propositions, complete with their secondary and tertiary expansions and augmentations, on the other. My commentary serves a single, clearly limited and carefully defined, purpose, taking its place in a sequence of other, equivalent commentaries to the several tractates of Mishnah. The character of this translation and explanation in detail expresses the purpose of the larger work of which it is part: to present *a history of the Mishnaic law*.

I have to give an account of the document itself, first of all to state what I believe Mishnah says, in a rendition, in English, as close to the formal and syntactical character of the Hebrew as English permits. This I do in the translation, which itself is a commentary in its word-choices and patterns and its version of the division of sentences into stichs, of paragraphs into sentences, and of chapters into paragraphs.

(But this last depends, for the convenience of the reader, on the printed text of Ḥanokh Albeck.) The translation makes no important contribution to the explanation of realia or the identification of various places, persons, and things, mentioned in the document. What it does contribute is the first translation of a rabbinic document to take full and faithful account of the rigidly formalized, public and anonymous character of Mishnaic language. I provide complete form-analytical translation of Mishnah and of Tosefta. The *explanation* is rather different from any of its predecessors, so different that it must be called “explanation.” For if what have been done in the past are called commentaries, this cannot be represented as a commentary at all.

What I do not say invariably is more important than what I choose to discuss. By radically revising and abbreviating the established exegetical agendum, I believe I have made my richest contribution to the interpretation of Mishnah. This is in two aspects.

First, I have tried to force Mishnah to serve as its own commentary. I do so by relying heavily upon those formal and even substantive traits of the document which serve to provide a clear account of Mishnah’s meaning and message. I pay careful attention to matters of form and formulation. We shall see time and again that principally through setting up a contrast, placing of a phrase for emphasis, or other obvious linguistic and syntactical modes of highlighting its meaning, Mishnah serves as its own first, and therefore best, commentary.

Second, I have revised what I believe to be the definition of those issues appropriate to, and even acceptable for, exegesis of Mishnah in particular, as a singular document of its period. This last point requires some amplification. There are two sides to the problem of explaining what Mishnah means. Both of them are generated by one absolutely false conception, or, more accurately, misleading analogy.

The first problem is the bringing to Mishnah of issues clearly extraneous to its original meaning. This set of comments plainly is needless because the issues are generated by later problems and questions. They are quite naturally addressed to Mishnah, however, by people who assume Mishnah speaks to them and therefore must address issues of importance to them. This ahistorical approach is possibly valid for the generating and unfolding of law. But it is not correct for the interpretation of what Mishnah as a concrete document meant to the particular people who made it up.

The second problem is corollary, namely, the placing of Mishnah's materials into the context of a whole legal system. When Mishnah is read in a larger framework than Mishnah, we are prevented from seeing Mishnah's materials as a coherent corpus on their own. This latter approach to Mishnah is absolutely opposite to our purpose. For I propose to state, and, later, historically to account for the unfolding of, the law of Mishnah *in particular*. If we assume that Mishnah constitutes a single document—and the internally harmonious formal and intellectual traits of Mishnah require that we make that assumption—then we have no choice but to honor the limits of the document when attempting to describe and interpret it.

Until now all commentators to Mishnah have taken only a limited interest in the shape and structure of Mishnah itself. It goes without saying, none to begin with has asked a genuinely historical-exegetical question (“What does this mean to the person who originally said it *and* who did not know what his successors would want to say about it?”). For their problem was a different one. It was dictated by a social and intellectual task quite separate from ours. They addressed themselves not to the exegesis and expression (let alone the worldview) of a given document. Nor could they imagine the notion that the laws in their hands formed discrete units of information. Quite the contrary, they began with the conception of a completely unitary legal system, expressed in discrete documents originating in diverse places and time, but nonetheless all together forming a timeless, seamless conceptual structure. Their task was defined by this rather platonic metaphor, namely, to relate each of the parts to the transcendent whole, and to force the whole to encompass all of the parts. It is not, as I originally thought, the ahistorical (or, anti-historical) and harmonistic purpose of the earlier exegetes which made their Mishnah-commentaries so intellectually prolix, indeed, indifferent and irrelevant to the text under discussion. That is a misunderstanding which it has taken me many years to recognize. It is, rather, that the earlier exegetes presuppose something much more profound, much less susceptible to articulation.

This is the construct, “*Jewish law*,” or “the *halakhab*.” Of this construct Mishnah constitutes an important component. In their mind the correct approach to Mishnah's interpretation is to relate its *halakhab* to other *halakhab*, that is, to “*the law*.” This harmonistic, atomistic and yet encompassing, approach is natural for people who keep the law and who take for granted their audience wants to know

the law, even though everyone knows that not all of the law of a given document is practical and practiced. But the point of interest is clear, and it explains to them what is relevant and what is not. Since social context and intellectual framework define what is relevant, their essays—to us, total chaos—to them are orderly and reliable. But the fact remains that in a different world, their language of exegesis is gibberish, just as is ours to them.

When we realize this fact, we understand why it is that the distinctive, documentary character of Mishnah itself has attracted so little interest. The reason is that Mishnah as such failed to define the boundaries of an appropriate exegesis. For the halakhist, the definitive canon awaiting explanation and extension is other. That is to say, Mishnah is part of that other canon, *the halakbab*. The canon awaiting interpretation is shaped by Mishnah, only in so far as Mishnah presents its share of legal statements—*the law*. Consequently by earlier exegetes Mishnah is read not from whole to part, as a sequence of divisions, tractates, and chapters. This I am the first to do, as the formal character of my work makes clear. And this is the right way—and the *only* right way—to approach the document. But by others Mishnah has been, and is read essentially as a mass of individual sentences, tens of thousands of bits of legal information, all of them part of, and arrayed against, a larger construct, *the law*; each of them to be placed into juxtaposition with other bits and pieces of *the law*. So, as I said, the notion of “the *halakbab*” obliterates the character of Mishnah as an autonomous document and at best allows Mishnah the status of an authoritative *source* of law.

The same treatment, of course, is accorded to Tosefta, the two Talmuds, the diverse legal exegetical compilations, Sifra and Sifré, for example, and to much else. The result is that at each point exegetes tend to tell us “everything about everything,” so to speak. It is not because they are confused, even though the results are confusing. For despite the fact that their commentaries appear to be not merely allusive, but irrelevant to the text at hand, and even though they are rich in unprovoked questions, artificial dilemmas, and invented solutions, the reason is that the fundamental theory of the document requires precisely those procedures which are followed. If, to take a current and choice example, Saul Lieberman’s *Tosefta Ki-Fshutab* (“a comprehensive commentary to the Tosefta”) treats Tosefta as an excuse for long disquisitions on diverse philological and legal questions, the reason is that that is precisely how Lieberman thinks

the work should be done. And the reason, I believe, is not merely the ahistorical character of the mind-set of the traditionalist, but, as indicated, because of the more profound conviction as to the character of the law and its diverse documentary expressions.

The result to date has been an exegetical account of immense philological and legal value. We are able to explain a great deal about the meaning and intention of the sentences of the law, as found (as it happens) in Mishnah and Tosefta (and the rest of rabbinical literature). We can link together diverse conceptions and rules appearing here, there, everywhere; they are formed into a single fabric, even (in the monumental codes of the law) a seamless one. We have what is besought, which is the power to draw upon, and apply to specific circumstances, the whole wisdom and weight of the law. That is to say, the established exegetical program has succeeded in doing precisely what it set out to do. The tasks originally defined by the conception of “*the law*” have been carried out.

The one thing we cannot say on the basis of the available commentaries, both “traditional” and “scientific” (both are wildly inappropriate terms!) is to state clearly what it is that Mishnah (to take our example) wishes to say, in *its* own setting, within the limits of *its* own redactional framework, upon the subjects chosen by *it*, and for purposes defined within the mind of those specific people, its authors, who flourished in one concrete social setting. Reading the document by itself, in its historical context and therefore outside of its atemporal, *halakbic* context, requires a different approach. That approach is represented, I firmly believe, in the pages of this book. It is given by this “explanation.”

So the need for these volumes of translation and explanation is dictated not solely by the concluding, systemic description and interpretation. That was my conception for *Holy Things* and *Women*, and, in retrospect, I think I was too apologetic. Nor is the issue of the work solely the *historical*—primary, original—meaning of the text in the minds of the people who so phrased their ideas and arranged their sentences as to give us these, and not some other, expressions of their ideas.

The decisive and determinative issues are simply, What is the Mishnah? What is its shape and structure? What is the agendum of its law? How is that agendum to be delineated and interpreted as a complete and exhaustive account of what Mishnah wishes to say? These questions are answered in this book and its fellows.

The answers I give here are to these questions, not to those many others already dealt with, with greater or less measure of success, in the established and received exegetical tradition. People who want to know what "the tradition" has to say are not apt to open these books and stay on to study them in any event. Other sorts of readers will find their way to these pages. I do not think they will find the methods and suppositions alien or the results unsatisfying. I began this project weighed down by humility before the intellectual achievements of others who have studied these same problems. I conclude it with greater understanding, and not less appreciation, of their work. But at the same time I see much more clearly that, so far as they claim to speak about Mishnah, they have not done what they promised. So far as I claim to present and briefly to explain what it is that Mishnah, in *its* limits, for *its* purposes, to *its* chosen audience, wishes to say, I do what I claim to do.

That fact accounts for the traits of the translation and the character of the explanation—its brevity, severe limitation of the exegetical agenda, and above all, its insistence upon Mishnah's form and formulaic expression as definitive of Mishnah's meaning. This is not meant to excuse or apologize. I have worked on Mishnah since 1972, and the last of these books is apt to appear not much before 1984. Twelve years are a long time to devote to a single document, however complex, when one's interest is in only a limited aspect of said document. For, when all is said and done, my real interest remains focused upon the history and structure of nascent rabbinic Judaism. That means the main work is yet before me, not behind. These twelve years and forty-three books of mine, not to mention many more years of work and many more books of my several doctoral students, all are meant only to prepare the way for a different sort of analysis entirely. This is an approach to Mishnah which is at once more historical, more religious-philosophical, and more religious-historical than has even been attempted. I do not know whether it will succeed.

It remains to thank a few among the many to whom much is owed. First of all, I owe thanks to the John Simon Guggenheim Memorial Foundation for awarding to me yet a second Guggenheim Fellowship for 1979-1980 to facilitate the completion of my *History of the Mishnaic Law of Appointed Times* and *History of the Mishnaic Law of Damages*. This recognition of the interest of the scholarly world in the results of my work is much appreciated. It also is important to me.

At the same time I owe thanks to Brown University for an extraordinary research leave, awarded in the same connection.

Second, I wish to thank Brown University for paying the costs of typing these manuscripts. Provost Maurice Glicksman and Associate Dean Frank Durand without complaint received a shower of typists' bills. In an age of exceedingly painful budgetary choices, they loyally and generously paid my typists and did so promptly and courteously. This everyday and humble expression of their belief in the worth of my project is just as precious to me as those research fellowships and honorary doctorates which have come my way.

Third, I should be remiss if I did not mention by name the junior colleagues who in my graduate seminar read their work and heard about mine, the graduate students of the period in which this part of the project was coming to completion: Leonard Gordon, Peter Haas, Martin Jaffee, and Alan Peck; and my former colleague, Richard Samuel Sarason, now at Hebrew Union Collega-Jewish Institute of Religion, Cincinnati. Since the work of all of these as well as of some of my former students is an integral part of this project, they in due course will make their own contributions as well.

Fourth, my colleagues in the Department of Religious Studies have provided a constructive and helpful framework for my teaching and scholarship. I must single out Professors Wendell S. Dietrich and Ernest S. Frerichs with thanks not only for exemplary collegiality but for friendship and love.

Finally, after all these years, I have to mention and take note of the enthusiastic support of my children, Samuel Aaron, Eli Ephraim, Noam Mordecai Menahem, and Margalit Leah Berakhah, who were infants when the work began, and who approach maturity as it ends. I never hoped they would read these books, but I should want them to be proud of knowing that, when I was doing the work, they charmed and cheered my life. I could not have done this work without them—nor should I have wanted to. Let a veil of silence be drawn before the next, the best, for only silence can contain all that is felt, all that words cannot say, in homage to Suzanne Richter Neusner.

So far as Mishnah presents a code of civil law and serves as a legal code, it is contained in the present and two following tractates, the three great gates to the law, first, middle, and last. It is appropriate to offer these books in the honor of three lawyers who have meant a great deal to my family and me. The first is for William Green, the best lawyer in New Hampshire, and to his wife, Joan, in thanks for all their love has done for us.

J. N.

Providence, Rhode Island