

**HISTORY OF THE MISHNAIC LAW AND AGRICULTURE**

**HISTORY**



## CHAPTER TWELVE

### BEFORE 70: THE MISHNAH'S DIVISION OF AGRICULTURE IN THE TIME OF THE TEMPLE

#### I. INTRODUCTION

Examination of sayings that, with some degree of reliability, may be said to derive from the period before 70 tells us little about the state of the agricultural law while the Temple stood or about the beginnings of a rabbinic theory of agriculture. These sayings, all of which appear in the mouths of the Houses of Hillel and Shammai, are episodic and fragmentary. Seen as a whole they do not mark the inception of the discussions that, in the periods of Yavneh and Usha, lead to the creation of a Mishnaic system of agriculture. Examined individually, moreover, none of the facts that they present constitutes the underlying proposition upon which a tractate of the Mishnah is based and which that tractate's later authorities worked fully to expose. In the Division of Agriculture, the role of authorities who flourished before 70 thus is in two different respects minor. First stands the simple fact that these individuals contribute very little to the law. In their names we find only a few, in all but one case, trivial statements. Second, and much more important, the few comments that these authorities do provide neither encapsulate the Mishnah's system as it develops in later periods nor even enter that system as important components.

Before turning to the implications of these facts, let us examine in detail the materials that have been shown to derive from the period before 70. This will show clearly the exact content and nature of the earliest stratum of Mishnaic law in the Division of Agriculture. This description, like the ones in the two chapters that follow, depends of course upon the analyses found in Chapters Two through Eleven. In those chapters I isolated within each tractate's several thematic units the materials that derived from before 70, Yavneh and Usha.<sup>1</sup> Now I

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<sup>1</sup> For reasons that should be clear by now, in setting out the strata in the formation of the law, we must be content to differentiate among the periods of before 70, Yavneh

go back and draw together in a single description the materials pertinent to each of these three strata. The result is a cogent picture of the state of legal thinking in each of the Mishnah's formative periods.<sup>2</sup> This picture provides an answer to the central questions of 1) when the law of agriculture emerged as a full and integral system and 2) of the character of that law as a systematic whole.

With the purpose of this and the two following chapters clear, I turn to the Mishnaic evidence for the long centuries in which the Temple stood and in which priests and Levites, the designated recipients of the Mishnah's agricultural gifts, had concrete authority. The evidence, as I already have stated, is disappointing. Examined as a whole, the materials assigned to the period before 70 do not represent a stratum of the Mishnah's law at all. They are too episodic to be held in themselves to comprise a system of agriculture. Even viewed simply as a corpus of facts they are negligible, for in all but one possible case they have no weight in the later development of the law.

## II. AGRICULTURE BEFORE 70

In the following, the materials from before 70 are arranged according to the five principal themes covered in the Division of Agriculture as a whole. Under two of these themes authorities from before 70 provide no contribution at all. In two other categories, the Houses argue matters of definition, left open by Scripture and for the most part rejected in later Mishnaic authorities' development of these topics. Only in one instance might a Houses' dispute presage an issue of importance later on. In this case, the position of the House of Hillel, that holiness pertains to a batch of second tithes as a whole but not to

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and Usha. A complete explanation of the reason for this and of the methodology that allows assignment of specific laws to the pertinent periods is found in the Introduction.

<sup>2</sup> As I indicate in the Introduction, the role of later formulators and redactors in choosing for transmission and giving linguistic form to antecedent materials means that we cannot claim to know all that the authorities discussed and believed, let alone how they would have formulated their ideas for transmission. On the basis of the preserved materials, however, we are able to evaluate the larger legal perspective of those who preceded the Mishnah's final redactions, insofar as that perspective is revealed in the rather consistent pattern of legal concerns and methods found in each generation's assigned statements.

specific coins within that batch, may stand behind the conception of holiness developed in Yavnean times.

#### A. *Producing Crops under Conditions of Holiness*

In order to produce crops under conditions of holiness, the Israelite must be careful not to sow together within a single field or vineyard different species of produce or plants. This much is known from Lev. 19:19 and Dt. 22:9–11. In the period before 70, the Houses clarify Scripture's rule. They define exactly what constitutes a vineyard subject to the biblical restrictions, delineate the area surrounding the vines that is deemed integral to the vineyard, and determine the conditions under which, because of the great amount of empty space found within the vineyard, a second kind may be planted there (*Kilaim*, iii.A.4:1–3, 5, 6:1). To the extent that Yavneans continue along this same line of questioning, the Houses materials do engender continued discussion concerning the growing of crops under conditions of holiness. Yet, as we shall see in our review of the Yavnean materials themselves, even their repertoire of definitions does not provide the notions, distinctive to the Mishnah, that account for the principal rulings on this theme and that lead to the development of Tractate Kilaim as a whole. Only in the Ushan period does a distinctive rabbinic theory of how Israelites assure that they produce their crops under conditions of holiness emerge.

The Houses dispute whether or not an individual may, in the Sabbatical year, sell tools that might be used in forbidden field work (*Shebiit*, ii.A.4:2A–H, I–K, 5:8). While not leading to important developments within Tractate Shebiit, this ethical issue of importance in the deliberations, in Tractate Demai, of the question of how Israelites are to assure that they eat their food under proper conditions of sanctity (see below).

#### B. *Conditions under which Produce Becomes Subject to Sanctification*

This theme receives no attention in the period before 70.

#### C. *Designating Produce to Be an Agricultural Offering*

The period before 70 produces no ideas that, in the times of Yavneh and Usha, are formed into a theory of how Israelite farmers designate

produce to have the holy status of an agricultural offering. The only pertinent dispute, at *Terumat*, ii.A.4:3, concerns the quantity of produce that the individual must separate as heave-offering. As we have seen, this notion, that the householder should measure out a specific quantity of produce to be heave-offering, is explicitly rejected by later authorities.

#### D. *The Care and Handling of Holy Produce*

The House of Hillel (*Maaser Sheni*, ii.A.2:7, 8A–C, 9F–H) holds that a status of holiness pertains to a batch of coins as a whole but not to the individual coins in that batch. Therefore, should second tithe-coins be mixed with unconsecrated ones, the householder need simply separate out the correct value in money, paying no attention to which coins originally were sanctified and which were unconsecrated. This opinion may stand at the root of the theory of the care and handling of holy produce first worked out in the Yavnean stratum and greatly expanded in Ushan times. This view holds that by separating a portion of a batch to be an offering, the householder designates that portion to be holy and leaves the rest of the batch totally unconsecrated. In the present case, in choosing certain coins to replace the lost offering, the householder effectively transfers to the money he sets aside the status of consecration previously spread throughout the batch. The Hillelite view, that is, holds that the Israelite may designate as holy whatever coins he desires, such that which coins previously were sanctified is irrelevant. The Hillelite view thus presents a basic proposition that could allow for the development of later authorities' transactional understanding of holiness.

#### E. *Eating Food under Conditions of Holiness*

The one verifiable Houses' dispute on this theme (*Demai*, ii.A. 3:1C–H) does not stand behind developments of the Yavnean and Ushan periods. The Shammaites' claim, that each person is responsible to prevent another from transgressing, does however provide an ethical consideration important in a general way to the law of Tractate *Demai*. The main point of the tractate is that people must tithe all food that they give away, lest the recipient transgress by eating it untithed. This is a concern only in light of the Shammaite view, that by allowing the other's actions, the produce's original owner also is culpable. This con-

sideration does not however generate any of the tractate's specific laws. In fact, both of the Houses hold opinions that contradict the Ushan theory that accounts for the tractate as a whole, that one must tithe all that leaves his possession. By contrast, both the Shammaites and the Hillelites believe that, if it is known that the recipient will tithe, the produce's original owner need not do so. Continued acceptance of that view would have precluded the creation of Tractate Demai.<sup>3</sup>

The other item on this theme assigned to the Houses does not appear to be authentic to the period before 70. The Shammaites (*Demai*, v.A.6:6) hold that olives may be sold only to individuals trusted to process them in cleanness. This reflects the much later, Ushan, definition of the *haber*, a person who does not sell food to anyone not trusted as regards tithes and the laws of cleanness. The Hillelite position, which holds that the individual may give away or sell olives without tithing them, is out of phase with the law of the tractate as a whole, for it demands that one tithe all produce that leaves his possession. If it is old, then it represents a notion of the tithing laws rejected by Yavnean times (see Sarason, *Demai*, p. 226).

### III. CONCLUSION

Authorities from the period before 70 contribute little to the Division of Agriculture. The smattering of facts they provide does not in itself present an identifiable ideology regarding the character or meaning of the agricultural laws. These facts are not even sufficient to allow practical implementation of Scripture's tithing restrictions. Nor do these facts, when viewed individually, provide the starting point for later deliberations on any of the Division of Agriculture's particular themes. Only a single opinion from the period before 70 even enters the system of agriculture in an important way, the Hillelite statement that coins in the status of second tithe are not deemed individually to be sanctified with the status of that offering. Yet even in this case, the

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<sup>3</sup> The basic premise that led to the creation of Tractate Demai—that one must tithe all that leaves his possession—is Ushan. In the view of earlier authorities, that one normally tithes when he is about to eat produce himself, the problem of doubtfully tithed food does not arise at all. On the Ushan origin of Tractate Demai, see the introduction to Chapter Three.

relatively minor character of the Hillelite view must be stressed. Its importance is a function of the peculiar way Yavneans interpreted it and of the notions of sanctification that appear to have been created from it. Standing alone, the Hillelite opinion does not constitute even a basic datum of its own period, for it is under dispute by the Shammaites. In all, if we had the materials from the period before 70 alone, we could in no way predict the character of the system of agricultural laws as it develops at Yavneh and Usha. Nor could we even imagine how, during the years when the Temple stood, the Scriptural requirements to separate agricultural offerings were carried out.

This is not to claim that, prior to the completion of the Mishnaic Division of Agriculture, Scripture's tithing laws were not implemented. Historical sources from the time of Scripture itself and through the Second Temple period make it clear that Jews tithed. The point, rather, is that, whatever tithing practices did exist in the earlier periods, so far as the evidence of the Mishnah indicates, these were not taken up by the rabbis and made components of their own legislation. As we have seen in detail, the Division of Agriculture is almost totally the creation of Yavneh and Usha and contains little material that can be shown to derive from before the destruction of the Temple. Out of the division's 569 entries, only 40 (7%) are even attributed to authorities who lived before 70. The vast majority of these assignments, we have seen, are pseudepigraphic.

These facts, provided by close scrutiny of the specific materials preserved in the Mishnah, are striking. For contrary to what these materials would lead us to believe, other evidence makes clear that, during the time of the Temple, agricultural tithes were a central topic of concern. In this regard I need only refer to the Pharisees, whom later rabbinism claims as its forbears. They comprised a table fellowship, distinguished from the rest of the people of Israel by their observance of restrictions concerning cultic cleanness and separation of tithes.

The importance, in the period before 70, of agricultural law further is shown by facts internal to the Division of Agriculture. For a wide gulf distinguishes the agricultural laws available in Scripture from the set of restrictions and practices assumed within all strata of the Mishnah's law. This corpus of assumed facts contains the very identification and definition of the distinctive set of agricultural gifts upon which this division focuses. These gifts are not defined clearly in Scripture, but depend upon a rather elaborate interpretation and reconciliation of the Hebrew

Bible's several tithing passages.<sup>4</sup> This means that, at some point prior to the inception of the discussions later redacted in the Mishnah, unidentified individuals carefully read Scripture and, on its basis, delineated a set of agricultural tithes. While clearly dependent upon Scripture's relevant rules, their work in laying out specific offerings represents a synthesis of passages that, in Scripture, derive from distinct and in part contradictory sources. This work of synthesis therefore should not be taken for granted.

On the one hand it thus appears that, in the time of the Temple, certain individuals were concerned with agricultural restrictions and indeed carried out important work in developing Scripture's injunctions. Even so, except for definitions of the offerings themselves, the Mishnah's later authorities neither preserved nor, so far as we can tell, availed themselves of any significant laws they may have inherited concerning the separation and disposition of heave-offering and tithes. These matters were worked out in full by Yavnean and Ushan authorities. Both in its component parts and as a whole, the Division of Agriculture is the creation only of the time after the destruction of the Temple.

Short of denying that the Pharisees followed tithing taboos, or of assuming that, after, the destruction of the Temple in 70, all knowledge of past ritual practice was lost, only one explanation appears reasonably to account for the facts before us. This explanation is that the rabbinic movement itself chose not to take up the extant legislation of Pharisees or Temple-priests and, in the first centuries, made little claim to continue their traditions. The reason for this choice may have been the early rabbinic movement's own lack of power and concomitant inability to speak in the name of others who actually held authority in the Israelite community. Or it could have been the simple desire of the early rabbis themselves to develop the agricultural law along lines dictated by their particular social and religious perspectives. Only later, based upon their own growing strength, did rabbinic authorities dare to rewrite their own history and to claim as their ancestors the Pharisaic group, remembered for its power and piety.

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<sup>4</sup> The Scriptural foundations for the Mishnah's set of agricultural offerings are detailed by Sarason, *Demai*, pp. 2-10. Sarason shows how two "broad theories of tithing" found in Scripture yield Mishnah's unitary set of agricultural tithes and restrictions.

These suggested reasons for the lack of firm foundations of the Division of Agriculture in the period before 70 are, of course, only guesses. We have imperfect knowledge of what the Pharisees represented, of the ideals they held and of the rituals they actually performed.<sup>5</sup> Our understanding of the goal—political or religious—of early rabbinism likewise is imperfect. The significance of the absence of a Pharisaic legacy in the Division of Agriculture—the context within which we should most expect to find exactly that legacy—must therefore be narrowly defined. This absence means that later rabbinic claims of a continuity between rabbinic legislation and the traditions of Temple times and before are in fact a rewriting of rabbinic legal history. This revisionist history reflects, we must assume, the desire of a maturing rabbinic movement to legitimate its own rather recent origins. This was accomplished by tying them in with the group most remembered for piety and, as Josephus tells us, political control. The facts of the matter, however, appear clear. The evidence of the Division of Agriculture indicates that the Mishnah's tithing laws are a creation of rabbis living at Yavneh and primarily at Usha. Contributions to the law from individuals living while the Temple stood are few and far between. Those that are found, moreover, have no important implications for the law as it develops in the document before us.

The implication of the late origins of the Division of Agriculture is that its notions of the meaning of the agricultural laws, the nature of sanctification and, through these topics, the meaning of Israelite existence after the destruction of the Temple and the failed Bar Kokhba revolt, comprise a distinctively rabbinic statement. These ideas reflect the human situation of individuals who attempted to start a new Jewish life after the destruction of the Temple. These rabbis chose to turn directly to Scripture as an independent source of authority, and not to those priests or other individuals who might have preserved the actual rules and practices of the time of the Temple.<sup>6</sup> Unlike what later rabbinic literature would like us to believe, then, the evidence internal to

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<sup>5</sup> See Neusner, *From Politics to Piety: The Emergence of Pharisaic Judaism*. After careful evaluation of the early Christian and Jewish sources concerning the Pharisees, Neusner, p. 143, concludes in part that: "The historical Pharisees of the period before 70 A.D. have eluded us. Our inquiry time and again brings us to the problems of the history of ancient Judaism after the destruction of Jerusalem."

<sup>6</sup> See Neusner, *Holy Things*, Part VI, p. 225.

the Division of Agriculture proves that this division is a *creation* of Yavneh and Usha, not the final development of an unbroken and ongoing chain of tradition the character of which was conceived and set while the Temple stood.