



PROJECT MUSE®

The Mishnah's Reader: Reconsidering Literary Meaning

Barry Scott Wimpfheimer

Jewish Quarterly Review, Volume 113, Number 3, Summer 2023, pp.
335-367 (Article)

Published by University of Pennsylvania Press

DOI: <https://doi.org/10.1353/jqr.2023.a904503>



➔ *For additional information about this article*

<https://muse.jhu.edu/article/904503>

The Mishnah's Reader: Reconsidering Literary Meaning

BARRY SCOTT WIMPFHEIMER

INTRODUCTION

THREE MAJOR TENSIONS MARK THE MISHNAH as an inconsistent work of literature.¹ First, the Mishnah's commitment to preserving prior inherited materials conflicts with its active redaction and editing of such materials.² Second, while much of the Mishnah is organized on multiple thematic levels, there are sections that were produced on the basis of organizations inherited from the Bible, on free association, or to facilitate local memorization.³ Third, the Mishnah generally suppresses dialogue and logic, two of the central practices of the scholastic context foundational to its production. Yaakov Elman notes that scholars have proposed four fundamentally different genre descriptions of the Mishnah: law code, anthology, textbook, and philosophical tract.⁴ Each of these descriptions has impossible questions to answer—and faces textual examples that don't fit the characterization.⁵

Ishay Rosen-Zvi opens his overview of the Mishnah with a careful description that substitutes for a genre appellation. The Mishnah, according to Rosen-Zvi, is a “comprehensive collection of halakhot arranged topically

1. Yaakov Elman, “Order, Sequence, and Selection: The Mishnah's Anthological Choices,” in *The Anthology in Jewish Literature*, ed. D. Stern (New York, 2004), 8–9; Ishay Rosen-Zvi, *Between Mishnah and Midrash: The Birth of Rabbinic Literature* (Hebrew; Ra'anana, 2020).

2. Ishay Rosen-Zvi, “Introduction to the Mishnah,” in *Rabbinic Literature Introduction and Studies*, ed. M. Kahana, V. Noam, M. Kister, and D. Rosenthal (Jerusalem, 2018): 51; Rosen-Zvi, *Between Mishnah and Midrash*, 86–90, 100.

3. Rosen-Zvi, “Introduction to the Mishnah,” 4–6; Rosen-Zvi, *Between Mishnah and Midrash*, 24–29.

4. Elman, “Order, Sequence, and Selection”; Rosen-Zvi, “Introduction to the Mishnah,” 105.

5. Rosen-Zvi, “Introduction to the Mishnah,” 51.

that summarizes the halakhah as it evolved in the tannaitic study halls from the end of the first to the beginning of the third centuries.”⁶ The term “collection” obscures questions of agency and purpose; a collection can be produced accidentally or intentionally by one or multiple persons. It is a descriptive term that provides no hint of the purposes of either writing or reading. In employing the Hebrew terms “halakhah” and “halakhot,” the description evades the complex question of halakhah’s definition; in the history of Mishnah scholarship, the specific character of halakhah as law has been at the heart of controversy.⁷ Even the passive temporal description “as it evolved in the tannaitic study halls from the end of the first to the beginning of the third centuries” leaves open the question of editing and its relationship to both preservation and modification. Rosen-Zvi has successfully defined the Mishnah by refusing to resolve the conflicts. We are left with an enigmatic document, imprecisely historicized and dependent on the nebulous meaning of “halakhah.”

Not long ago, the Mishnah was being celebrated by Jacob Neusner for its ideational coherence.⁸ Neusner was drawn to the Mishnah’s textual habit of communicating underlying meaning.⁹ Under the sway of structuralism, Neusner looked under the Mishnah’s hood and found a work of philosophy.¹⁰ The seeming absurdity of Neusner’s thesis (the Mishnah is a work of case law, not philosophy) detracts from the genuine insight he had into inherent mishnaic textual characteristics.¹¹ Inconsistencies aside, the Mishnah *is* a remarkably well-organized work with multiple levels of the-

6. Rosen-Zvi, “Introduction to the Mishnah,” 1. Translations from Hebrew or Aramaic mine.

7. This is not to cast aspersions on Rosen-Zvi’s comprehensiveness. He thoroughly treats all these matters in his works.

8. Jacob Neusner, “Form and Meaning in the Mishnah,” *Journal of the American Academy of Religion* 45.1 (1977): 27–54; Jacob Neusner, “The Mishnah as Literature,” in *Formative Judaism: Religious, Historical and Literary Studies*, ed. J. Neusner (Chico, Calif., 1982), 109–50; Jacob Neusner, “The Mishnah Viewed Whole,” in *The Mishnah in Contemporary Perspective*, ed. A. J. Avery-Peck and J. Neusner (Leiden, 2006), 1–38.

9. Neusner, “Form and Meaning.” Neusner, “The Mishnah as Literature,” 124: “Accordingly, what the memorizing student of a sage could and did hear was what lay far beneath the surface of the rule: the unstated principle, the unsounded pattern. This means that the prevalent mode of thought was attuned to what lay beneath the surface; minds and ears perceived what was not said behind what was said and how it was said. They besought that ineffable and metaphysical reality concealed within, but conveyed through spoken and palpable material reality.”

10. Jacob Neusner, *Judaism: The Evidence of the Mishnah* (Chicago, 1981), 44.

11. See, e.g., John C. Poirier, “Jacob Neusner, the Mishnah, and Ventriloquism,” *JQR* 87.1/2 (1996): 61–78.

matic organization. It is also remarkably consistent stylistically, especially for an ancient work. The scholarly refusal to assign the Mishnah a genre occludes the insights that come from attempting to hold the Mishnah together.

This article introduces a set of literary-critical tools to questions of the Mishnah's nature and meaning. The shift from philology to literary criticism can open space for new insights. Literary critics routinely allow specific sections or features of works of literature to metonymically stand in for their wholes. Metonymic reading, however, can be dangerous: readers may overvalue a specific text type or feature at the expense of others; significant marginal phenomena might be overlooked.¹² At the same time, there is much to be gained from the attempt, because identifying a work's primary literary modes helps to focus readings. The use of internal features to characterize a literary work holds forth the promise of teaching *how the work wants to be read*. This article is an attempt to establish the Mishnah's *genre* from its *poetics*. By reading the Mishnah closely and deeply, we may get closer to understanding how the text wants to be read.

Recent years have seen a veritable explosion of works that focus on the Mishnah in a post-Neusnerian vein. Three scholars—Avraham Walfish, Alexander Samely, and Elizabeth Shanks Alexander—have sought to update the field's sense of the Mishnah as a work of literature using different literary and rhetorical tools.

Walfish applies rhetorical and aesthetic analysis to close readings of the Mishnah.¹³ Finding hitherto unnoticed substructures and rhetorical signposts, Walfish takes these underlying signs as a license to produce a literary commentary that makes the Mishnah more philosophical, theological, and inspirational than its surface meaning suggests.¹⁴ Borrowing from Yonah Fraenkel's approach to rabbinic narrative, Walfish works explicitly within the limits of a New Critical understanding of literature.¹⁵ Like

12. One reader's overlooked exceptions have routinely been rediscovered and brought in from the margins by subsequent readers. This has been a central contribution of deconstruction, with its commitment to reading in from the margins.

13. Avraham Walfish, "Shitat ha-'arikhah ha-sifrutit ba-mishnah 'al-pi masekhet rosh ha-shanah" (Ph.D. diss., Hebrew University, 2001); Avraham Walfish, *Mishnaic Tapestries: Tractate Berakhot: A Literary-Conceptual Study of Mishnah Tractate Berakhot* (Alon Shevut, 2018).

14. Though Walfish is an excellent close reader, the project arguably follows on Neusner's because it often seems to read religious depth into a legalistic corpus that may not warrant such interpretation.

15. For Fraenkel, see Yonah Fraenkel, *Darkhe ha-agadah ve-ha-midrash*, 2 vols. (Masadah, 1991); Yonah Fraenkel, *Sipur ha-agadah, ahdut shel tokhen ve-tsurah: Kovets meḥkarim* (Tel Aviv, 2001).

Fraenkel, Walfish's work lobbies for the Mishnah to be considered high art (in New Critical terms), which then justifies the kinds of charitable interpretations that society licenses for high art. Though New Criticism was a framework in which critics produced brilliant insights, subsequent theorists challenged its privileging of the work of art as a stable and encapsulated site of meaning and questioned whether the framework gave the critic too much power to determine that meaning. Reader response theory, by contrast, acknowledges a variability of literary meaning.

Alexander Samely has spearheaded an ambitious project to produce a massive form-critical directory of ancient Jewish literature.¹⁶ In his individual scholarship and as a graduate advisor, Samely has specialized in form criticism of the Mishnah,¹⁷ and he works with mishnaic subforms rather than the Mishnah as a whole. In the context of these specific subforms, Samely has asserted that individual statements in the Mishnah are not hermeneutically self-sufficient, and that the full meaning of a mishnaic rule can be contingent upon both context *and the work of a reader*. In his most extreme articulation of this feature of mishnaic composition, Samely writes that the Mishnah involves the reader in producing a "virtual text" that differs from the one on the page and even varies from reader to reader.¹⁸ As a form critic and conservative reader, Samely is uncomfortable with the writerly implications of his own observations; a text that varies from reader to reader is harder to ground in a form-critical discourse that presupposes that the underlying structures and substructures of a text can be deciphered

16. Database for the Analysis of Anonymous and Pseudepigraphic Jewish Texts of Antiquity, University of Manchester, <http://literarydatabase.humanities.manchester.ac.uk/>.

17. Alexander Samely, "From Case to Case: Notes on the Discourse Logic of the Mishnah," in *Studies in Middle Eastern Texts and Traditions in Memory of Norman Calder*, ed. G. R. Hawting, J. Mojaddedi and A. Samely (Oxford, 2000), 233–70; Alexander Samely, *Forms of Rabbinic Literature and Thought: An Introduction* (Oxford, 2007). Samely has supervised Rocco Bernasconi, "Reasons for Norms in Mishnaic Discourse: Some Formal, Functional, and Conceptual Observations," *Melilab* 2 (2004): 1–61; Ruth Shasha, "Discourse Functions of Questions in the Mishnah" (Ph.D. diss., University of Manchester, 2004); Roy Shasha, "The Forms and Functions of Lists in the Mishnah" (Ph.D. diss., University of Manchester, 2006).

18. Samely, *Forms of Rabbinic Literature and Thought*, 61–62. One of Samely's strongest points is his assertion ad loc that "the true range of possible meanings for, say, an individual mishnaic statement, tends to be underplayed or simply not acknowledged in modern scholarship." I interpret Samely to mean that even modern critical readers, who are trained to resist the retrojection of later talmudic ideas into the meaning of the Mishnah, often downplay the ambiguity of mishnaic statements by choosing to understand them through a more historically responsible but still imperfect utilization of other rabbinic texts.

like a cryptogram. The literary-theoretical framework of reader response allows for a greater celebration of the features that render mishnaic text open to subjective interpretation and variance.

Elizabeth Shanks Alexander's *Transmitting Mishnah* argues for a dynamic discursive understanding of Mishnah because the work's origins in performance renders a search for a fixed original text false.¹⁹ The Mishnah, Alexander asserts, had multiple author-performers with subjective differences. Scholars should stop searching for the original (version of the) text and its original meaning, Alexander argues, because no such thing ever existed. Once the Talmuds objectified the Mishnah, a static meaning of the text emerged (at least within the respective hermeneutics of the two Talmuds). Reader-response theory allows for the possibility that the Mishnah's is a dynamic discourse on entirely different hermeneutic grounds. The dynamism is a function not of multiple authors but of multiple readers—or of a single reader understood multiply.²⁰

In an essay, "Literature in the Reader," which began to articulate a critique of the static nature of New Criticism, Stanley Fish focuses on the ways in which the reading experience is a sequential one, taking place in time.²¹ Drawing on examples in which the syntax of a sentence seems to lead the reader in one direction before forcing a change of course, Fish replaces the question "What does this sentence mean?" with "What does this sentence do?" Fish describes the methodology as follows:

Underlying these two analyses is a method, rather simple in concept, but complex (or at least complicated) in execution. The concept is simply the rigorous and disinterested asking of the question, what does this word, phrase, sentence, paragraph, chapter, novel, play, poem, do? And the execution involves an analysis of the developing responses of the reader in relation to the words as they succeed one another in time. The basis of the method is a consideration of the temporal flow of the reading experience, and it is assumed that the reader responds in terms of that flow and not to the whole utterance. That is, in an utterance of any length, there is a point at which the reader has taken in only the first word, and then the second,

19. Elizabeth Shanks Alexander, *Transmitting Mishnah: The Shaping Influence of Oral Tradition* (Cambridge, 2006), 1–34.

20. Alexander (*Transmitting Mishnah*, 41–76) exemplifies her argument for the lack of a stable textual center with a set of Mishnah-Tosefta comparisons. The entire set of comparisons is predicated on the idea that Mishnah-Tosefta relations capture the Mishnah's fluid discourse. This assumption gives short shrift to both Mishnah and Tosefta as autonomous works of literature.

21. Stanley Eugene Fish, *Is There a Text in This Class? The Authority of Interpretive Communities* (Cambridge, Mass., 1980), 21–67.

and then the third, and so on, and the report of what happens to the reader is always a report of what has happened to that point.²²

Fish argues in this essay against formalist New Critics for whom meaning is located within the text, and his method introduces time as a method of demonstrating the way in which meaning is not a static and fixed entity located within the text but a dynamic entity that happens when the reader encounters the text in sequence; each reader is effectively multiple readers over time. Fish observes that even though we experience literature as a kinetic art, its physical form (a fixed book) prevents us from seeing its essential dynamic nature. This general claim about the text is even truer with respect to the Mishnah. Casuistic laws seem static.²³ But a static description of the Mishnah belies the ways in which the Mishnah is, and has always been, read.

This essay employs three mishnaic examples to demonstrate varied ways that the Mishnah asks for and rewards an active critical reader by operating on multiple levels. These phenomena demonstrate the value of thinking of the Mishnah as a text and foregrounding the relationship between

22. Fish, *Is There a Text in This Class?*, 26–27.

23. Alexander (*Transmitting Mishnah*, 125–26) leans on an argument that there is a consistency to casuistic law from the ancient Near East through the Mishnah; her misreading of the scholarship on ancient Near Eastern law has important consequences. Drawing on the work of Jean Bottéro and Raymond Westbrook, Alexander claims that casuistic legal composition communicates both norms and underlying principles. But Bottéro, whose *Mesopotamia: Writing, Reasoning, and the Gods* (Chicago, 1992), 177–78, is the basis for this claim, says something quite different. In trying to figure out a genre for Hammurabi's Code, Bottéro draws on the prior work of F. R. Kraus ("Ein zentrales Problem des altmesopotamischen Rechtes: Was ist der Codex Hammu-rabi?," *Genava: Revue d'histoire de l'art et d'archéologie* 8 [1960]: 283–96) showing a stylistic similarity across a number of ancient Near Eastern text types. Labeling this style of composition a proto-science, Bottéro analogizes it both to a math table and to the mechanics of language acquisition. Hammurabi's Code is like a math table—a pedagogic tool designed to train students to solve problems. But there's a difference between solving a math problem and understanding an underlying principle that forms the basis for such a solution: Bottéro thinks the ancient Near Eastern student would *not* have come to an understanding of a principle. Using the metaphor of language acquisition Bottéro distinguishes between native fluency and a command of the grammar—the goal of Hammurabi's Code was to train to a native fluency without communicating a second-order level of organization. Alexander presumes all casuistic law to have highly developed conceptual features. In doing so, she underemphasizes the novelty inherent to tannaitic legal composition and, specifically, the Mishnah.

this text and its readers, implied and real. The Mishnah is a writerly text²⁴ that requires an active reader to produce its meaning, trains its reader to think conceptually, and produces meaning in time through the reader's sequential experience of reading.

During the theory wars, scholars battled for ultimate truth and dug in dogmatically in favor of one approach and against others. Drawing on larger frameworks of semiotics and hermeneutics, scholars debated the degree to which literary meaning should be considered synonymous with the author's intent, inherent to the text as an autonomous object, or determined by readerly subjectivity. This article employs the structures and arguments of those debates without resolving larger questions or committing dogmatically to a specific philosophy of interpretation. What follows brings reader-response theory—which asserts that textual meaning is produced dynamically through the interaction of text and reader—to bear on the Mishnah as a work of literature.

In *The Role of the Reader*, Italian novelist and semiotician Umberto Eco characterizes a feature he admires in modernist fiction—particularly in the work of James Joyce.²⁵ Using a dichotomy of “open” and “closed” works of literature to introduce a continuum of literary meaning, Eco expresses a preference for “open” works.²⁶ Open works are characterized by the ubiquity of ambiguities and other hermeneutic challenges that require the active interpretations of a reader. The quantity and density of such challenges in Joyce's works and the reader's response to the hermeneutic invitation they represent transform the interpretive project; a good reading doesn't rise and fall on the strength of an individual exegetical explanation but on the reader's resolution of a large set of intersecting exegetical challenges. Because Joyce's works (the epitome of Eco's open paradigm) demand this kind of reaction from their readers, they are, ironically, closed (or limited) to a certain type of reader.

An author can foresee an “ideal reader affected by an ideal insomnia” (as happens with *Finnegans Wake*), able to master different codes and eager to deal with the text as with a maze of many issues. But in the last analysis what matters is not the various issues in themselves but the maze-like structure of the text. You cannot use the text as you want, but only as the text wants you to use it. *An open text, however “open” it be, cannot*

24. Roland Barthes, *The Pleasure of the Text*, trans. R. Miller (New York, 1975).

25. Umberto Eco, *The Role of the Reader: Explorations in the Semiotics of Texts* (Bloomington, Ind., 1979), 318.

26. Eco, *The Role of the Reader*, 318, 8–9.

*afford whatever interpretation. An open text outlines a "closed" project of its Model Reader as a component of its structural strategy.*²⁷

James Joyce wrote his modernist fiction with an awareness of its cryptic nature, and his text beckons a reader who is able and willing to deal with its cryptic challenges. In this sense, the text communicates the criteria that comprise a strong reading. One of the challenges of applying a modernist generic appellation (and concomitant postmodernist hermeneutics) to the Mishnah is the concern that we are giving the reader too much power and not allowing the text to speak. Eco is grappling with the same issue when he speaks of an open text that "cannot afford whatever interpretation." The Mishnah, like *Finnegan's Wake*, has a maze-like quality that requires a reader willing to use the text "as the text wants you to use it." To solidify this concept, Eco writes, "When reading *Ulysses* one can extrapolate the profile of a "good *Ulysses* reader" from the text itself, because the pragmatic process of interpretation is not an empirical accident independent of the text *qua* text, but is a structural element of its generative process."²⁸ The practice of mishnaic interpretation is a structural element of the generative process of the Mishnah's own maze. The Mishnah is not a modernist work of fiction. But some of the characteristics of the relationship between author and text that Eco sees vividly in Joyce are also evident in the Mishnah. The Mishnah presents itself as a text that requires regular active reader interventions in the production of its meaning. And this characteristic of the Mishnah makes this seemingly simple law code a prescient literary work.

LEGAL COUPLETS

Fish is strongly associated with the notion of interpretive communities that he eventually propounded to balance the tension between subjective and objective meaning in literature.²⁹ In earlier work, though, Fish employed a different analytic method he termed "affective stylistics" that locates meaning within the interaction of text and reader.³⁰ In this context and in response to formalist New Critics who asserted that meaning inheres in the text itself, Fish mulls as a paradigm the simple utterance "there is a chair." The ambiguity of meaning in the unpacking of the statement, Fish says, emerges from the context in which such a statement is uttered: either the speaker is reporting on the existence of a chair or they are describing their perception of the chair. Beyond those two possible understandings,

27. Eco, *The Role of the Reader*, 318, 9, emphasis mine.

28. Eco, *The Role of the Reader*, 318, 9.

29. Fish, *Is There a Text in This Class?*, 303–71.

30. Fish, *Is There a Text in This Class?*, 21–67.

there is another layer of meaning for the statement that Fish considers possibly more important:

To my mind what is interesting about the utterance is the *sub rosa* message, it puts out by virtue of its easy comprehensibility [. . .] [B]y making easy sense it tells us that sense can be easily made and that we are capable of easily making it. A whole document consisting of such utterances—a chemistry text or a telephone book—will be telling us that all the time; and that, rather than any reportable “content,” will be its meaning.³¹

Fish posits here that any text can be understood to communicate on two levels. There is a level of the message and a level communicated through its commitment to a form of speech.³² In some cases, unpacking Fish, the surface level is so basic that the form of speech overtakes the surface message as the textual purpose. The Mishnah may not be a telephone book, but it is a work that has been overlooked as a literary object because of the seeming simplicity of its surface of legal scenarios and rulings. Fish understands this neglect as a function of formalist poetics:

This concentration on the verbal object as a thing in itself, and as a repository of meaning [. . .] creates a whole class of utterances, which because of their alleged transparency, are declared to be uninteresting as objects of analysis. Sentences or fragments of sentences that immediately “make sense” (a deeply revealing phrase if one thinks about it) are examples of ordinary language; they are neutral and styleless statements, “simply” referring, or “simply” reporting.³³

On its surface, the Mishnah primarily communicates scenarios with associated legal rulings. Taken simply (“a collection of halakhot”), they convey immediate sense. Fish would caution us against taking the Mishnah simply. Through its persistent seeming simplicity, the Mishnah communicates loudly that it is trying to structure the world in this simple way. And that message may be its profoundest meaning. The Mishnah signals to the reader that it is but a simple articulation of rabbinic culture and discourages analysis. Fish suggests that such texts might need a different type of analysis.

31. Fish, *Is There a Text in This Class?*, 29.

32. Compare Neusner, “Form and Meaning in the Mishnah,” 43: “Mishnah demands commentary. It takes for granted that the audience is capable of exegesis and proposes to undertake the work.”

33. Fish, *Is There a Text in This Class?*, 29.

Against his formalist rivals, Fish introduced a reading method that slows down and even freezes the literary tempo to capture not only the meaning of the words of the text but also the impact of those words on a reader. This slow-motion, or freeze-frame, approach thickens the meaning of the text and allows an understanding of how the text works dynamically on or with the reader. Below I will employ this approach in three examples.

mBava Kama 2.2: The Legal Couplet

The opening chapters of Mishnah *Bava Kama* address tort law, drawing specifically on scenarios that detail an owner's liability for their animal. mBK 1.4 asserts that an animal can establish a higher-liability repeat-offender's reputation when it consumes "what is worthy of it." Less than a chapter later, mBK 2.2 revisits and elucidates the meaning of "what is worthy of it."

כיצד השן מועדת. לאכל את הראוי לה. הבהמה מועדת לאכל פירות וירקות. אכלה כסות או כלים, משלם חצי נזק.	How can "the consumption [lit. 'tooth']" [establish] a reputation for eating what is worthy of it? Livestock can be reputed as eating fruits or vegetables; if it ate clothing or objects, [the owner] pays half liability.
במה דברים אמורים. ברשות הנזק, אבל ברשות הרבים, פטור.	In respect to what case were these [words] said? In the domain of the injured party, but in the public domain [there is] no liability.
אם נהנית, משלם מה שנהנית. כיצד משלם מה שנהנית. אכלה מתוך הרחבה, משלם מה שנהנית. מצדי הרחבה, משלם מה שהזיקה. מפתח החנות, משלם מה שנהנית. מתוך החנות, משלם מה שהזיקה³⁴	If it was nourished, [the owner] pays what was nourished. How does [the owner] pay what was nourished? If it ate from the street, [the owner] pays what was nourished; from the side of the street, [the owner] pays what it damaged. If it ate from the door of the store, [the owner] pays what was nourished; from inside the store [the owner] pays what it damaged.

34. Mishnah text is taken from MS Kaufman (MS A50 at the Library of the Hungarian Academy of Sciences). Translations are mine.

This mishnah's opening statement exegetically defines "worthiness." The Mishnah employs a distinction between cases to define the category: fruits and vegetables are appropriate (full liability) while clothing and nonfood objects are not appropriate (half liability). Liability is not determined by animal diet (either the specific animal or the animal species) but by a sharp distinction between food and nonfood. The Mishnah never names the concept "nonfood" or articulates a distinction between a subjective (animal-based) and an objective (consumed object-based) basis for determining appropriateness. Employing this passage as a paradigm to explain the hermeneutic complexity of the Mishnah, Stephen Wald coined the term "halakhic couplet" (henceforth "legal couplet") for contrasting legal statements that are designed to encourage the reader to work out the conceptual basis of the contrast.³⁵

By expressing its notions in the form of concrete distinctions, and not by means of finished and formal abstractions, the Mishnah invites the student to refine its unstated principles by means of further distinctions. These principles are implicitly conceptual, and so lead the student beyond their immediate context. Yet they are expressed in an external form which is both concrete and limited in scope. The resulting tension between these two aspects of tannaitic halakhah gives rise to an open-ended process of interpretation and analysis, reinterpretation, and renewed analysis.³⁶

Wald articulates two related points. First, concrete distinctions that stand in for abstractions model a process of producing distinctions that the student (reader) picks up on. Second, there are implicitly conceptual principles that pull the reader out of the local context though they are expressed using the grounded form of real cases. The Mishnah's practice of using concrete distinctions to stand for concepts births the analytic discourse of the Mishnah's reception in the Talmuds. And the use of both concrete cases and implied concepts embeds a tension within the text that has enabled nearly two millennia of mishnaic readers to return to the text to work out the relationship between these two vectors.³⁷

The legal couplet is the fundamental rhyme scheme of tannaitic legal composition. Biblical poetry produces its "rhyme" through a juxtaposition

35. Stephen G. Wald, "Mishnah," in *Encyclopaedia Judaica*, ed. F. Skolnick (Detroit, 2007), 14: 319–31.

36. Wald, "Mishnah," 324.

37. Alexander (*Transmitting Mishnah*, 127–28) makes similar claims about both the Mishnah's rhetorical practices and their relationship to mishnaic reception.

based not on sound or time but on meaning; a poetic line in the Hebrew bible “rhymes” with its adjacent line by echoing, contrasting, or slightly altering its meaning. Tannaitic law similarly juxtaposes contrasting scenarios in adjacent lines. This textual effect draws the reader’s attention to small differences in the scenarios and their respective legal outcomes, subtly communicating a third piece of information to the reader: the reader knows to absorb the legal rules of the two respective scenarios and to work the contrast and determine the basis for the distinction between the two cases.

While Wald derives what he needs from the Mishnah’s first contrasting cases (food and nonfood objects), the passage’s continuation exemplifies the density and ubiquity of the couplets by providing several more instances of the phenomenon. The Mishnah follows its initial clause defining the type of food around which an animal can establish a pattern with a new and unrelated liability limitation. Using the common rhetorical device of ס”ל: “In respect to what case were these [words] said?” the mishnah restricts liability by location: an animal’s owner is liable only for consumption that transpired in the private domain of the injured party. If the animal consumed the victim’s goods in the public domain, in contrast, there is no owner liability. The “in respect to what case” device is an undercover legal couplet. Like the couplet, the “in respect to what case” splits two cases with two different legal outcomes. The split encourages the reader to understand that tannaitic law balances owner negligence against victim responsibility; while in the public domain, the owner of an object is *as responsible* for ensuring that it is not eaten by an animal as the animal’s owner is for preventing the animal’s consumption.

The passage’s continuation produces more couplets. The Mishnah acknowledges that even in the absence of tort liability, the animal’s owner may owe compensation for the consumed food. To clarify this concept, the Mishnah invokes two separate legal couplets—one distinguishing between the food’s location on the street or sidewalk and the other distinguishing between the food’s location at the storefront or inside the store. Food that is consumed on the street or in front of the store falls under the restitution standard of nutritional consumption (the owner pays for the destroyed item as if it were the meal the animal would have eaten), while food consumed on the sidewalk or inside the store falls under the tort standard.

Wald introduced the term “halakhic couplet” on the basis of the opening dichotomy. But in this paradigmatic mishnah *four* legal couplets are employed. Each signals the existence of underlying conceptual depth that the reader is tasked with unearthing. The reader discerns a bias toward an objective approach to appropriateness, understands that liability must bal-

ance the plaintiff's negligence with the victim's own responsibility, and learns that restitution sometimes transcends the bounds of torts. The final two couplets (the ones that distinguish respectively between sidewalk/street and storefront/store) challenge the reader because their underlying conceptual message overlaps so much that a second couplet feels redundant. One way of making a metacouplet out of the two cases would be to note that the storefront/store couplet is a scenario in which individuals are invited into private property and one might have presupposed that the onus of responsibility shifts onto the store's owner.³⁸

This single mishnah exemplifies three attributes that are central to understanding the Mishnah as a work of literature. First, the Mishnah's special literary quality is its ability to speak in two voices; while using concrete casuistic language, the Mishnah simultaneously communicates an underlying conceptual layer that ontologically undergirds the concrete cases.³⁹ Second, the Mishnah often works by accretion, superimposing distinctive cases on top of distinctive cases and communicating an expanding and richer set of conceptual understandings.⁴⁰ Third, a mishnaic reader learns that more precise conceptual understandings may lie ahead and anticipates multiple possibilities until those understandings are foreclosed. What follows are two longer examples that further instantiate and develop these phenomena.

38. A talmudist would likely suggest that the second case should have been the only couplet employed. But the Mishnah's rules of composition might not be that rigid. Since the second couplet adds information to the first, an author would be justified in teaching the concepts incrementally by using two separate contrasts.

39. Jacob Neusner often noted the intriguing relationship between the Mishnah's surface level of cases and rules and a deeper underlying meaning. See, e.g., Neusner, "The Mishnah as Literature"; Neusner, "The Mishnah Viewed Whole." While the present article follows Neusner's core textual insight, it does not adopt Neusner's conclusion that the meaning of the Mishnah is a philosophical/theological reckoning with the temple's destruction. This has rightly been criticized by others (Poirier, "Jacob Neusner, the Mishnah, and Ventriloquism") as a form of ventriloquizing. Neusner concedes Poirier's critique "So when I say that a large part of work is to describe world-view of the sages of the Mishnah, at best I acquire a license to hunt for insight" ("The Mishnah as Literature," 148).

40. Moshe Halbertal has argued that halakhah as we know it begins with the Mishnah because the depth and breadth of the articulation of law in this work far exceeds prior legal collections and sets the tone for all subsequent halakhah (Halbertal, "Toladot ha-halakhah vehofa'at hahalakhah," *Dine Israel* 29 [2013]: 1–23). The present article draws on Halbertal's insight but shifts from his focus on the Mishnah as the origination point of halakhah to the Mishnah as a work of literature.

DISTINCTION AND ACCRETION

While the legal couplet is the basic stitch of mishnaic legal composition, it is not the limit of mishnaic composition. The Mishnah uses couplets as building blocks to produce a larger structure of conceptualized law. Both traditional talmudic discourse and the modern critical discourse that emerged (and somewhat diverged) from it routinely employ parallel sources to help unpack the meaning of a Mishnah. These habits stand in the way of reading the Mishnah on its own and appreciating its own prototalmudic self-interpretive and discursive features. The Mishnah's practice of building conceptually from the simple to the complex places the later pieces of a mishnaic passage or chapter in an interpretive relationship with earlier pieces.

mBetsab (Yom Tov) 5.5–7

Tannaitic law both prohibits carrying objects on the Sabbath and circumscribes the distance that an individual can travel on that day.⁴¹ During festivals, in contrast, the rabbis permit the carrying of objects but maintain a circumscribed radius of individual locomotion. This disparity in the extension of Sabbath laws creates an interesting dilemma with respect to festivals: since objects *may* be carried on festivals, are they *limited* to a circumscribed area? This implicit question is the subject matter for six consecutive mishnayot that complete the fifth chapter of mBets and conclude the tractate.⁴²

These six mishnayot employ nine couplets to articulate their lessons. The Mishnah varies the styles of these nine couplets. Six of the couplets involve the default presentation of scenarios with slight variations and diametrically opposing results (standard legal couplets). One of the distinctions presents a scenario with three possibilities rather than two (a legal triplet). Another case presents a distinction in the form of a debate between a named minority rabbi and the anonymous (and oft-presumed unanimous) narrator. The final mishnah employs an “unless” statement that subtly communicates a difference between two scenarios; like the rhetorical device of “in

41. Carrying of goods is the topic of most of mShab while exceeding the circumscribed distance is discussed in m'Eruv 3–5 and 8.

42. The topic of this tractate is practices related to the festivals. *Yom Tov* would be a topical title. Most of the reception history refers to the tractate by the name *Betsab* (lit. “Egg”) because of the opening word of the tractate. Some of the reception history refers to it as tractate *Yom Tov*. For examples, see Jacob Nahum Epstein, *Introduction to the Text of the Mishnah*, 2 vols. (Hebrew; Jerusalem, 1964), II:991. Epstein asserts that the name *Yom Tov*, like the name *Betsab*, derives from the opening clause of the tractate.

respect to what case" discussed above in the context of mBK 2.2, this also produces a normative distinction between cases.

MBETS 5.5: FIRST TWO DISTINCTIONS

[ג] הבהמה והפלים כרגלי הבעלים. המוסר בהמתו לבנו או לרועה, הרי אלו כרגליו.⁴³ כלים מיוחדים לאחד מן האחים שבבית הרי אלו כרגליו, ושאינן מיוחדים, למקום שכלם הולכין.⁴⁴	[3] Animals and chattel are like the legs of their owners [i.e., they can travel as far as their owners can on holidays]. One who transfers their animal to their son or a shepherd these are like [the son's or shepherd's] legs. Chattel designated for one of the brothers in the household are like his legs but nondesignated [chattel] to the place where all of them are walking.
--	--

The opening line establishes that an object or animal may move on the festival within the radius determined by its associated person. This legal rule is not obvious. One could easily imagine treating objects or animals as autonomous and producing their own respective 2,000-cubit radii.⁴⁵ The mishnah opens with a two-scenario presentation: animals follow the radius of their owners, but if the owner puts the animal under the control of an agent (an adult child or shepherd), the animal's locomotion is restricted by that individual rather than its owner. Though the syntax does not connect the two scenarios in this opening clause, they are effectively a distinction between two scenarios—a legal couplet. The conceptual implication of the distinction is clear: the radius follows the owner unless there is another person whose relationship supersedes the connection between animal and owner. Ownership matters, but so does proximity and care.

43. The major Italian manuscripts of the Mishnah (Kaufman, Parma, and Cambridge) concur on the word כרגליו. I presume on this basis that this is the original version; some indirect medieval witnesses of the Mishnah cite it this way. See Saul Lieberman, *Tosefta ki-fshutab: A Comprehensive Commentary on the Tosefta* (Hebrew; New York, 1955), 5:1004. Most other print editions of Mishnah and Talmud have the words הבעלים—“like the legs of the owner.” This completely transforms the meaning of the clause, and the couplet and can be explained by examining bBets 37b.

44. Mishnah text is taken from MS Kaufman (MS A50 at the Library of the Hungarian Academy of Sciences).

45. See below in mishnah 7 and 8 where this idea appears.

This opening mishnah has a second two-scenario distinction that follows on the first (“chattel designated for one of the brothers [. . .]”) and builds on it. Within a household, these cases say, there are objects that have relationships with specific people and should attach, for purposes of the radius, to those people. There are other objects that don’t have a designated relationship with a specific person and must have a relationship with the entire household. These scenarios build on the preceding in a few ways:

- They extend the notion of a householder’s special relationship with an animal from animals to chattel and establish that objects can also have such a relationship.
- They change the model of ownership from individual (“legs of *their owner*”) to corporate (brothers in the household).
- The transition to a corporate model creates the possibility for a corporate radius. If an object is not specifically related to one person, it develops a radius determined by the overlap among the radii of multiple people.

mBets 5.4: Distinctions Three and Four

The subsequent mishnah further interrogates notions of shared ownership by considering cases of borrowed objects:

[ד] השואל פלים מחברו מערב יום טוב, כרגלי השואל; כיום טוב, כרגלי המשאיל.	[4] [When] one borrows chattel from a friend on the eve of the holiday [they] are like the legs of the borrower; on the holiday [itself] like the legs of the lender.
האשה ששאלה מחברתה תבלין לקדרתה, ומים ומלח לעסתה, הרי אלו כרגלי שתייהם.	A woman who borrowed from her [female] friend spices for her pot or water or salt for her dough these are like the legs of both of them.
רבי יהודה פוטר במים ובמלח, מפני שאין בהם ממש.	R. Judah exonerates in the case of water and salt because they are insubstantial.

As in the previous mishnah, this one is built on two couplets. The first introduces time as a factor while also introducing the notion that object-person relationships can include a borrower (someone who is neither in the owner’s household nor employed, like a shepherd, by the owner). One who borrows an object has the radius-determining relationship with that

object, but that relationship must *preexist* the holiday. An object cannot change its relationship on the holiday itself. The second scenario builds on this notion of competing owner-object relations through the example of a *shared* object. A woman borrows ingredients for cooking or baking from her friend and makes them into a stew or cake. This case complicates the question of timing by forcing a consideration of two additional conceptual matters: is an object transformed by processing, and are default notions of ownership that pervade social life relevant for determining the radius relationship? Today, neighbors who borrow ingredients are not usually expected to return them. The materials are effectively gifted. Perhaps surprisingly, then, the mishnah tells us that the ingredient's prior relationship *cannot* be changed on the holiday (building on the notion of the first half of the mishnah) and instead produces the kind of corporate radius established in mBets 5.3.

The second scenario of mBets 5.4 is the first in the passage to employ debate. The distinction in this scenario is produced through the juxtaposition of an initially articulated view and a competing minority voice. The minority voice—R. Judah—is the first in the passage to offer an explicit abstract conceptual rationale. R. Judah exonerates in the case of borrowed water and salt because “they are insubstantial.” R. Judah agrees that a woman who borrows spices creates a corporate radius for her stew; he disagrees only in the case of the dough (presumably bread) because water and salt are *insubstantial*. R. Judah does not think the transformative experience of cooking or baking undermines the prior relationship between ownership and object. Had that been his opinion, he would have equally challenged the initial position on spices in the stew. Similarly, he does not apply a mathematical model in which the finished final cooked object statistically overwhelms the relatively miniscule, shared ingredient. Rather, the issue for R. Judah is that water and salt are insubstantial (presumably because they do not contribute much flavor).

The Mishnah's tendency to report statutory law in debate format has long intrigued scholars.⁴⁶ The relationship between minority and majority views has often been the arena in which the Mishnah's nature has been contested.⁴⁷ But these scholarly conversations have generally approached the question with the assumption that the Mishnah is a practical law code.⁴⁸

46. The initial consideration of the question is found in m'Ed 1.5–6.

47. I refer here to the debate between J. N. Epstein (*Mevo'ot le-sifrut ha-tana'im* [Jerusalem, 1957], 203–40) and H. Albeck (*Mavo la-mishnah* [Jerusalem, 1959], 197–99) about the Mishnah's nature.

48. See Menachem Elon, *Jewish Law: History, Sources, Principles* (Philadelphia, 1994), 1057–78.

Scholars debate whether the Mishnah is a decisive law code or an indecisive one. Perhaps its regular use of debate is not an expression of ideological pluralism or a value-neutral form of preservation. Perhaps mishnaic debates are legal couplets in disguise! Competing voices on a single case play the same role as competing outcomes on adjacent cases: both encourage the reader to determine the conceptual basis for the discrepancy. At its arguably most legal point (deciding the law by indicating a majority position), the Mishnah might best be understood in literary terms as providing yet another way for a reader to engage in contrast analysis.⁴⁹

mBet 5.5: Distinction 5

Having introduced the notion of substantial versus insubstantial, the Mishnah builds on it more concretely:

[ה] הַגְחָלִית, כְּרַגְלֵי הַבַּעֲלִים, וְהַשְׁלֵקָה בְּכֹל מְקוֹם גְּחָלִית שְׁלֵקָהּ, מוֹעֵלִין בָּהּ, וְהַשְׁלֵקָה, לֹא נֶהְנִיחַ וְלֹא מוֹעֵלִים.⁵⁰	[5] A coal is like the legs of its owner while the flame can go everywhere. Sanctified coal is abusing the sacred [i.e., its use constitutes abuse], while the flame is not benefitting or abusing the sacred [i.e., its use does not constitute benefit or abuse].
---	--

This mishnah uses two scenarios to communicate a single distinction between coal and flame. Since the distinction between coal and flame is fundamentally a difference between something concrete and something ephemeral, it is easy to understand the mishnah's organizational development. After R. Judah introduces the notion of the insubstantial object that does not persist in its relationship, the Mishnah introduces a similar universally held concept—flames are not considered objects for purposes of the holiday movement radius.

This reading has suppressed the noise of parallel texts in midrash, Tosefta, and the Talmuds. This is a deliberate choice designed to demon-

49. This literary claim overlaps with Alexander's suggestion that the dispute form might have a primarily pedagogical purpose. See Alexander, *Transmitting Mishnah*, 158.

50. The three Italian manuscripts (Kaufman, Cambridge, and Parma) have only two cases in the Mishnah; this was the original text. Other tradents add a third case: הַמּוֹצִיא גְחָלִית לְרֵשׁוֹת הָרִבִּים, חֵיב, וְשֵׁלֶקֶת, פְּטוּר. "One who transports a coal to the public domain is obligated while [if one transports] a flame one is exonerated." This example is one of five cases (including one of the two found in the Mishnah) that the parallel Tosefta uses to demonstrate the difference between flame and coal. At some point the ideational proximity of carrying on the Sabbath encouraged a tradent to insert it into the Mishnah.

strate the possibility of reading the Mishnah sequentially. Even without drawing on parallels, though, this mishnah's form in the couplet of coal and fire forces us to think compositionally; this section of the Mishnah was clearly not formulated in the context of the conversation around the mobility of objects on festivals. The mishnah employs two cases: one about the use of sanctified objects and the other about festival locomotion. Because these cases are organized differently than the materials we've already encountered in the chapter (i.e., based on the materials rather than the question of festival locomotion), one can assume that the Mishnah's redactor has pasted this mishnah into the chapter from a prior document (orally if not in writing). Let us bracket the implications of this point for those readers interested in compositional history while considering the impact it has on the larger subset of readers. The implicit message of such a mishnah is that the status of coal and flame as respectively substantial/insubstantial ontologically precedes the application of this status to the scenario of festival object locomotion.⁵¹ Furthermore, the presence of a mishnah that shares conceptual designations across remote areas of law like festival observance and sacred property use testifies to the unity of mishnaic law.

mBets 5.6: Distinction Six—a Triplet

This brief diversion into the general question of coal versus flame doesn't prevent the next mishnah from returning to its prior conversation about shared objects and their relationships.

[ו] בְּאֵר שְׁלִיחִיד, כְּרָגְלֵי הַיְחִיד, וְשֶׁלְּאַנְשֵׁי הָעִיר, כְּרָגְלֵי אָנָּשֵׁי אֹתָהּ הָעִיר, וְשֶׁלְּעוֹלֵי בָבֶל, כְּרָגְלֵי הַמְּמֵלָא.	[6] The cistern of an individual follows the legs of the individual. Of the people of a city follows the legs of the people of that city. Of those who visit from Babylonia like the legs of the filler.
--	---

From the shared baking water debate of R. Judah and the initial narrator, the mishnah moves to another kind of shared water—a cistern. What is novel about this example is that while the cistern qua container is owned, the water drawn from the cistern may not be considered owned. This revisits already established concepts: the ability to change the relationship between object and human on the holiday and the substantiality of water.

51. Halbertal, "Toladot ha-halakhah," 11: "Conceptualization enables, among other things, the creation of a comprehensive system that includes different legal contexts." Neusner, "Form and Meaning in the Mishnah," 47: "Implicit in the rhetoric of our document is the notion, now alluded to many times, of deep regularities which in principle unite cases, just as regularities in rhetoric unite cases."

Complicating the example is the presumption (evident from the contrast within the triplet) that cisterns routinely license different user communities to draw their water. This is a shared entity that is not designated to a specific human user, though its users come from a specific community subset. At the outset of the holiday, the water might have no relationship with any specific human and, therefore, no radius. This raises the question of whether an object that enters the holiday with no relationship and radius can constitute both on the holiday. The mishnah differentiates three types of wells:

1. The water of an individually owned well has the radius of its owner.
2. Water from a corporate-owned municipal well has the radius of the corporate entity; like the women with the shared dough or the householders with the shared object, the water's radius is determined by the overlapping radii of the people in the city.
3. Water from a public well intended for tourists has a radius determined by the person who draws the water from the well.

The most interesting new legal information is in the third case. This final type of well suggests that in certain ownerless circumstances objects can establish initial relationships and radii on the festival. In this chapter, conceptual understandings are established and then challenged by subsequent cases. The final type of well is so public and its water so insubstantial that the water creates a relationship with the person who draws it *on the holiday*. This cuts against the prior position staked out in the Mishnah that freezes the object in the relationship it had at the holiday's onset. The Mishnah doesn't consider other ownerless objects; one is left to speculate whether a more substantial object could be acquired on a holiday. From this limit case of ownerless water, the Mishnah transitions to a fascinating case in which owner and object are not spending the holiday in the same locale.

mBets 5.7: Distinction Seven

[ז] מִי שֶׁהָיוּ פְּרוּתָיו בְּעִיר אַחֶרֶת, וְעָרְבוּ בְּנֵי אוֹתָהּ הָעִיר לְבֹא אֶצְלוֹ, לֹא יָבִיאוּ לוֹ מִפְּרוּתָיו, וְאִם עָרַב הוּא, פְּרוּתָיו כְּמוֹהוּ.	[7] If one had their fruits in another city and the residents of that city had made an eruv to come near him, [the residents of that city] should not bring to him from his own fruits. If he had made the eruv, his fruits are like him.
---	--

The simplicity with which this mishnah presents its legal couplet belies the case's conceptual complexity. 'Eruv *tehumin* is a legal fiction that facilitates the extension of a radius of movement in a specific direction. An 'eruv *tehumin* attaches to a person, their household, or both. mBets 5.7 deals with the possibility that a person's objects might not begin the holiday in the person's household or even within the person's locomotion radius. Contrasting cases illustrate how this works. If people from the locale of the objects (specifically fruits) make an eruv to travel to their owner on the festival, they may not bring the owner's objects. If the owner makes the eruv, though, the out-of-towners *may* bring him the fruits.⁵² This hypothetical revisits the Mishnah's foundational rule and upends it; it had opened with the grounding concept that ownership determines the locomotion relationship for objects. This set of cases finds a limit to the notion that object movement is determined by ownership. If owner and object are physically in different places, one cannot employ the concept of "legs" to reunite the two. In this sense, at least, *the object is considered to have its own radius*. Remarkably, even though this mishnah can produce an example in which the transportation would seemingly be permissible (the people bringing it are allowed to travel between the two cities), the object's own radius prevents the transport.

mBets 5.8: Distinctions Eight and Nine

The production of a couplet in which there is tension between ownership and the ability to transport the object within the owner's radius leads to the final mishnah in this section:

[ח] מִי שִׁזְמַן אֶצְלוֹ אוֹרְחִים, לֹא יוֹלִיכּוּ בִּידָן מְנוֹת, אֶלָּא אִם כ�ּן זָכָה לָהֶם אַחֵר בְּמִנּוּתֵיהֶם מִעֶרֶב יוֹם טוֹב.	[8] If one invited guests over at his [home], they should not transport their portions in their hands unless another had transferred ownership of their portions to them from the holiday eve.
אִין מְשָׁקִים וְשׁוֹחֲטִים אֵת הַמִּדְבָּרִיּוֹת, אֲבָל מְשָׁקִים וְשׁוֹחֲטִים אֵת הַבִּיתוֹת. אֵלּוּ הֵן בֵּיתוֹת? הֵלָנּוּת בְּעִיר, וְהַמִּדְבָּרִיּוֹת? הֵלָנּוּת בְּאַפֵּר.	One doesn't feed or slaughter the desert ones, but one feeds or slaughters the homey ones. What are the homey ones? The ones that sleep in the city. And the desert ones? The ones that sleep in ash.

52. Presumably the people also make their own eruv in this case.

Though this mishnah's opening case has some ambiguity, the best explanation of its circumstance involves a host, guests, and leftovers.⁵³ If a host serves food to guests and some of their individual portions are unfinished at the end of the meal, the guests may not take their leftovers home. This case is a less explicit example of teaching via distinction. It is similar to the earlier example from mBK of "in respect to what case" in which a single case gets divided into two. There is only one legal scenario, but the "unless" clause implies a different outcome in an unexplicated second version of the scenario. The distinction between the cases highlights the conceptual point: the guests' relationship with their portions was established on the holiday and cannot replace the relationship those portions had with the host at the holiday's outset. In a sense, this mishnah reiterates conceptual information from prior in the chapter: mBets 5.4 had already established the notion of timing and the need for the relationship between person and object/animal to predate the holiday; mBets 5.7 said that people from outside a radius couldn't bring goods to their owner even with an eruv. This mishnah adds the notion of delegating ownership to another without their agency.⁵⁴ In one of the couplet's cases, the host anticipates the needs of the guests to take home their leftovers and transfers ownership of the objects in their absence prior to the holiday.⁵⁵

53. Taken literally, the case could be a potluck in which people bring their own portions.

54. The notion of ownership without consent and even knowledge is found elsewhere in tannaitic literature (see, e.g., tBB 10.1) and represents a high degree of conceptual abstraction about the nature of ownership.

55. Both Talmuds introduce the possibility that the owner/host is a bailee. The Mishnah can be read to imply that a bailee-supervised object has a radius determined by its owner and not its bailee. While a borrower (the most owner-like of bailees) can establish a relationship with an object provided that that relationship predates the holiday, a bailee (like the host who pretransfers food to guests) does not establish such a relationship. A skeptical reader might wonder whether transforming the host/guest scenario into a bailee is not too much of a generalization. After all, the context of the holiday meal and its preparation changes the overall relationship between hosts, guests, and food objects. This skepticism is the best explanation for the debate between the first-generation Babylonian amoraim Rav and Samuel that is recorded in both Talmuds (yBets 5.5 63b; bBets 40a). In a case in which someone leaves an object with a bailee, Rav says that locomotion follows the bailee and Samuel says it follows the owner (the Jerusalem Talmud keeps the argument general and does not assign a specific viewpoint to one scholar or the other). While the Babylonian Talmud transforms this quickly into a categorical debate about bailee acquisition generally, a simpler way of understanding the debate is that Samuel infers the bailee rule from the final case of the host and guests and Rav presumes that the case is not a paradigm for all bailees.

The chapter's final couplet distinguishes between animals that have a relationship with the local radius (homey animals) and those that do not (desert animals).⁵⁶ This scenario builds on the earlier concepts by taking animal mobility into account. Unowned animals, who do not have a prior relationship with a person or persons, are like the shared water of the cistern. This law is different, though, because the ownerless animal constitutes its own radius. Despite its lack of a relationship with a specific person, the distinction teaches, the animal's residential habits produce a sense of whether the animal is local. The rule requires no acquisition of the animal before the holiday. The determining factor is the animal's domestic habit.

There is an almost chiasmic aspect to the final case's return to the topic of animals.⁵⁷ The passage had opened with a consideration of owned animals. The final case discusses unowned animals. Building on earlier notions of both ownerlessness and corporate ownership, the final couplet says that city animals have a relationship to the city. Either this is granting agency to the animal to produce its own radius, or it is invoking the abstract concept of the city-as-corporation to connect the animal to the city's radius. Desert animals, by contrast, must remain ownerless and unutilized on the holiday.

The second half of the fifth chapter of *mBets* communicates its messages to the reader via couplets whose poetics invite comparisons that produce conceptual understandings of the legal cases. While the Mishnah can be accurately described as a listing of cases and its content summarized through a report of scenarios and applicable norms, the Mishnah's habit of articulating cases in couplets communicates the existence of a universe of justificatory concepts that undergird the specific cases. Put another way, the cases are secondary to the realm of conceptual thought that lies beneath. The Mishnah's ideal reader is tasked with deciphering that subterranean discourse and producing its meanings.

The radius of locomotion passage from *mBets* demonstrates the way that the Mishnah employs the legal couplet to encourage the reader to produce a rich conceptual understanding of a topic through an interrogation of contrasts. The conceptualizations of object festival locomotion build inductively one on top of another. A reader doing the comparative work concludes

56. Epstein, *Introduction to the Text of the Mishnah*, 961; Lieberman, "Tosefta ki-fshutah," 5:1014.

57. Avraham Walfish, in "Literary Factors in the Redaction of the Mishnah and Their Implications" (Hebrew), *Netu'in* 1 (1994): 33–60, notes the Mishnah's regular practice of mirroring the content of the beginning of a text in its ending.

the chapter with a comprehensive conceptual understanding of the ways that objects establish a radius and can be transported on festival days. This is one way in which the Mishnah asks its reader to produce understandings dynamically.⁵⁸

ANTICIPATION

The Mishnah employs legal couplets and encourages its reader to mine respective couplets for their underlying conceptual principles. It groups couplets together to encourage the reader to develop a more holistic conceptual treatment of the larger topic. A reader experienced in reading the Mishnah approaches the text with an expectation of necessary work. The Mishnah's reader attacks the text looking for answers to a variety of questions. As the Mishnah leads the reader through a topic, the reader experiences the text as dynamic insofar as it is constantly unfolding with new cases that foreclose prior thinking and push in new directions. Following Fish and drawing on the work of Menakhem Perry and Meir Sternberg, I argue that the meaning of the Mishnah includes (a) the surface-level cases, (b) the implied conceptual material that justifies couplets and larger emergent structures, and (c) the *experience of reading* that includes both moments of opacity and moments of clarity. Acknowledging and celebrating those temporal moments of irresolution—expressed as a set of questions in my example—renders the Mishnah a protomodern work.

The experienced reader knows how to read for categories and rationales that lie beneath the Mishnah's textual surface. In "Literature in the Reader," Fish concretizes his more abstract characterization of the reader by presuming one who is mature, informed, and trained in the expectations of his discipline. We can similarly modify the Mishnah's abstract reader. Historically, readers of the Mishnah have been scholastic and familiar with biblical and parallel rabbinic literatures. Such readers have also had the experience of reading other parts of the Mishnah, an experience that has involved a different kind of in-text training: as one reads in sequence, one learns to narrow one's interests.

58. Commentaries sometimes prevent us from noticing the dynamics of reading because they routinely introduce information from later in the passage already at the beginning of the passage. For example, a commentary on the mBets material might introduce time as a factor in mBets 5.3 when that factor is articulated only in mBets 5.4. In this sense, commentary turns a temporally varied text into a simultaneous one.

mBava Metsi'a 1.1: Scenario 1

שְׁנַיִם אוֹחֲזִים בְּטֵלָת,	Two hold a cloak
זֶה אוֹמֵר אֲנִי מְצֵאתִיהָ	This one says, "I found it,"
וְזֶה אוֹמֵר אֲנִי מְצֵאתִיהָ	and this one says, "I found it."
זֶה אוֹמֵר כּוֹלָהּ שְׁלִי	This one says, "It is all mine,"
וְזֶה אוֹמֵר כּוֹלָהּ שְׁלִי	and this one says, "It is all mine."
זֶה יִשָּׁבַע שֶׁאֵין לוֹ כֶּה פָּחוֹת מִחֲצִיָּה,	This one swears that he has in it no
וְזֶה יִשָּׁבַע שֶׁאֵין לוֹ כֶּה פָּחוֹת מִחֲצִיָּה,	less than half, and this one swears that
וַיִּחְלְקוּ ⁵⁹	he has in it no less than half,
	and they split it

This mishnah describes a scene of civil legal conflict: two parties claim a single object. The two sides have equal physical control of the object and make parallel verbal claims to ownership. Neither has a longer historical relationship with the object. The mishnah states that both parties take an oath, and the garment is split evenly. The mishnah has four parts:

1. Presentation of scenario
2. Verbal claims
3. Mandatory oath remedy
4. Property division

As a method of study, midrash trained the rabbis in close reading prioritizing literary techniques that squeeze biblical texts to produce deeper meaning. Rabbinic readers assume the Bible to be ripe with meaning and presume that focusing on words or discrete clauses yields a great bounty. Trained in reading the Bible, a rabbinic reader of the above mishnah could produce at least twelve possible questions to generate depth in the text.

The "Presentation of Scenario" generates at least three possible questions:

1. The scenario describes strong simultaneous and equal physical control. What if they were only lightly grasping or if one controlled the object more strongly than the other?⁶⁰
2. The two fight over a cloak. Is there significance to the choice of object? Perhaps the object is chosen because of the shared physical

59. Mishnah text is taken from MS Kaufman (MS A50 at the Library of the Hungarian Academy of Sciences). Translations are mine.

60. This depth is the basis for the cases at tBM 1.1 and bBM 7a. Note how bBM 7a borrows its verb in its articulation of the case from a different baraita (cited ad loc).

control: a fabric garment is easy to envision as physically shared between two people.⁶¹

3. The present participle marks the scenario as temporally static—we have a snapshot of two parties arguing at a single point in time. What about cases in which there are two (or more) moments in time?⁶²

In the “Verbal Claims” section of the mishnah, the parties use identical language to describe both their finding of the object and their assertion that the object belongs entirely to them. This generates three potential depth questions:

4. Is the identical language significant? What would be the case if one claimed to have found it and the other claimed a longer history of ownership but without documentary proof?
5. What would happen if one claimed full ownership and the other partial ownership?
6. The verbal claims are articulated using past perfect verbs that describe concluded events while the present participle verbs employed to set the scene have progressive aspect and seem to describe ongoing realities. Is the contrast intentional or a linguistic accident?

The “Mandatory Oath Remedy” section describes two parties taking identical oaths that verbalize that each owns at least half of the object:

7. The remedy renders the action descriptively as if the remedy happens automatically. Who makes this happen? Is there a subjective agency (person or institution) that applies this remedy?
8. What if one party refuses to take an oath?
9. What if a party takes an oath to the full extent of their property claim (“I swear I own the entire garment”)?
10. What if a party changed the language of the oath in another way?⁶³
11. Could the parties come to an agreement without oaths?

The “Property Division” says that they split the item in half:

12. Is this split a physical dividing of the garment or a financial division of its value?

These twelve questions on the mishnah highlight a common feature of mishnaic poetics. The Mishnah uses contrasts to indicate particular interests to its readers. A reader is repeatedly trained by the Mishnah to *wait*

61. Consider the similar scenario involving a boat at bBB 34a.

62. Consider the question posed by R. Zeira at bBM 6a: “If one grabbed it in front of us, what’s the outcome?”

63. I thank Jeffrey Rubenstein for this suggested question.

for an indication of that interest. While a reader trained by tannaitic midrash and other mishnaic passages might squeeze this mishnah in twelve ways while looking for additional depth, the mishnah's second clause, juxtaposed to the first, points the reader in the direction of the text's *own* priorities. The juxtaposition triggers something like a textual self-interpretation. There is no such thing as a self-interpreting text, but in this case the Mishnah indicates a specific path for the reader to follow.

mBM 1.1: Scenario 2

The mishnah's second scenario maintains the opening context of two people feuding over a found garment but alters the details of their respective claims:

זֶה אוֹמֵר 'כּוֹלָהּ שְׁלִי וְזֶה אוֹמֵר 'חֲצִיָּהּ שְׁלִי הָאוֹמֵר כָּלָהּ שְׁלִי, יִשָּׁבַע שָׁאִין לוֹ בָּהּ פְּחוּת מִשְׁלֹשָׁה חֲלָקִים, וְהָאוֹמֵר חֲצִיָּהּ שְׁלִי יִשָּׁבַע שָׁאִין לוֹ בָּהּ פְּחוּת מִרְבִּיעַ, זֶה נוֹטֵל שְׁלֹשָׁה חֲלָקִים וְזֶה נוֹטֵל רְבִיעַ	This one says, "It is all mine," and this one says, "Half of it is mine." The one who says, "It is all mine" swears that he has in it no less than three portions [out of four] and the one who says, "Half of it is mine" swears that he has in it no less than a quarter; this one takes three portions [out of four] and this one takes a quarter.
---	--

In the second clause they again both swear and split the disputed object. The difference between the two nearly equal scenarios is that in the second scenario there are nonidentical claims: one party claims full ownership, and the other claims half ownership. The juxtaposition of the scenarios (a legal couplet) draws attention to their small distinction: the difference between a full-ownership claim and a half-ownership claim (this was raised as question 5 above). This minute contrast is telling for the reader's understanding of the law. Though the variance in case is slight, it has an impact on the eventual distribution of the distributed property. Couplets teach the reader *how* to read the Mishnah's laws. In the present example, the difference between the cases forces the reader to reexamine the initial case. The initial case presents a dispute that is registered both in concrete physical terms (as a tug of war over a physical garment) and in legal terms (with each side not only making a claim to full ownership but justifying this claim with a narrative statement of how the object came to be possessed). The juxtaposition of the second scenario teaches the reader to notice the combination of concrete and legal and to understand that the verbal legal claim is valued more highly than the concrete physical holding.

Even though the second scenario's concrete physical encounter is identical to the first, *the fact that that battle is accompanied by unequal verbal claims to ownership results in an unequal division*. The reader only fully understands the first case when the contrast reveals itself with the second.

The Mishnah trains its readers both ancient and modern to await clarification of the conceptual depth of the matter, as illustrated in the example of the two holding a garment. Once clarification arrives in the second scenario, the reader is forced to move backward and understand the first half of the couplet.⁶⁴ Experienced readers come to anticipate in their initial read.

The second scenario's uneven (three-quarters/one-quarter) split surprises because there is an argument for the split to be as equal as it is in the first scenario. While in the first scenario both parties are left with a resolution that belies their initial claim (each walks away with half of what they claimed to own), in the second scenario an equal division would not only be true to the concrete encounter; it would also honor the claimant whose verbal claim recognizes the object's shared ownership (the one who says "I own half"). The second scenario's compromise ruling demonstrates both that the concrete encounter has less probative value than the clash of verbal claims, and that there is relatively little value in having the final distribution of property cohere with the versions of reality produced by the claimants in their respective initial claims to property.

mBM 1.2: Scenario 5

The mishnah's third scenario continues the theme of the first two:

היו שנים רכובים על גבי בהמה, או שהיה אחד רכוב ואחד מהלך, זה אומר "כלה שלי," וזה אומר "כלה שלי," זה ישבע שאין לו בה פחות מחציה, וזה ישבע שאין לו בה פחות מחציה, ויחלקו. בזמן שהן מודין, או שיש להן עדים, חולקין שלא בשבועה	If two were riding on top of an animal or if one was riding and one leading, This one said, "It is all mine," and this one said, "It is all mine," This one swears that he has in it no less than half and this one swears that he has in it no less than half, and they split it. When they admit or there are witnesses, they divide without oath[s].
--	--

64. In *Forms of Rabbinic Literature and Thought*, Alexander Samely has noted some of the Mishnah's distinctive hermeneutic qualities and is sensitive to the dynamic relationship between reader and text. In his words, "The ideal reader of thematic rabbinic texts is attuned to read 'backwards,' so to speak, to a much greater degree than the ideal reader of modern scholarly texts; the latter, by contrast, is highly trained to read 'forwards' through evaluating systematic hints of

As in the previous scenario, we encounter here a mild variation of the opening scene. The third scenario maintains the progressive aspect of its present-tense verbs (plural and singular) though the action (riding) is now passive rather than active. In this case, the object of dispute is an animal rather than a garment. The nature of the object doubles the number of physical possibilities for relating to the object in dispute (riding and leading). Despite the difference in object and types of possession, the mishnaic rule remains the same: twin oaths and an equal division of the property.

The mishnah's opening three-scenario set concludes with the following line: "When they admit or there are witnesses, they divide without oath[s]." As with the disguised couplets ("in what context were they spoken" and "unless") discussed above, we again have a text that produces a masked contrast. This line (anticipated in question 11 above) forces the reader to directly confront the oath's purpose and function in the opening scenario. This final line says that the oaths are unnecessary in the presence either of agreement or witnesses. One may infer that the function of the oath is like the function of witnesses or an admission. Or, alternately, the function of an oath is unnecessary in the presence of witnesses or admission.

Witnesses and admission both establish *ownership facts* that determine how the property is divided. Oaths, the comparison of the final line indicates, produce a *narrative of reality* that allows the property to be divided. Oaths are not deterrents against charlatanism.⁶⁵ The taking of mutual opposing oaths speaks to the capacity of oaths to establish facts against which the property will be divided. These oath-established facts are more valued than physical possession. In scenario 2, there is no inclination to an equal division because the oaths can rewrite the property's factual history. This equation of admission and witnesses with oaths is surprising because the latter are compulsory, self-serving, and patently contradict the two litigants' respective claims; any empirical reconstruction of the scenario would likely not overlap with these oaths.

Two of the twelve potential questions identified in the original mishnah (questions 5 and 10) are addressed by the content of contrasting cases 2 and 3. This is a typical aspect of mishnaic construction. The Mishnah effectively points the reader toward its interests by opening certain potential avenues of depth and closing (or ignoring) others.

what is still to come, and through checking anticipations against their fulfilment later in the text" (55). My model of a critical reader who poses questions imagines that a trained Mishnah reader also reads forward.

65. As assumed by bBM 2b.

Menakhem Perry employed sequential dynamics to interrupt a long-standing debate among critics of William Faulkner's "A Rose for Emily."⁶⁶ Perry's intervention demonstrates the extent to which the reader's experience (including the reader's perpetual production of coherence) in time can be included in the meaning of a literary text. Even as Perry's initial work on Faulkner identifies this literary feature with modernist authors like Faulkner and Henry James, Perry's collaboration with Meir Sternberg identifies some of the constitutive phenomena within biblical narratives like the David-and-Bathsheba or Joseph-and-his-brothers' stories.⁶⁷ Perry's method fundamentally reorients the relationship between ambiguity and literary meaning. For the critic who presumes a text to have static meaning, ambiguity is a barrier to be overcome—one is initially unsure and then finds clarity through interpretation. For dynamic critics like Perry, ambiguity represents the possibility of multiplicity that can lend texture to the work. The temporal component of a reader's coming-to-knowledge replaces simplicity with complexity. Rather than considering a reader in the early stage of a work to be ignorant of its true meaning, Perry embraces readers in all stages and considers the early-stage reader one whose experiences are also part of the literary work. In the mBM example, one can consider the reader who asked all twelve questions at the outset of the first mishnah to be an inherently valuable reader whose experience (the questions) is part of the work itself. The point at which one has posed questions that are yet unanswered is as valued as the point at which the Mishnah has manifested its preferences.

IMPLICIT CONCEPTUALIZATION

David Weiss Halivni has argued that the special contribution of the Talmud's anonymous layer lies in its commitment to transmitting the discursive reasoning that lies behind rabbinic casuistic law.⁶⁸ As Halivni understands it, all rabbinic law originated in reasoned discourse. The stam-maitic revolution inhered in the decision to transmit the warp and woof of

66. Menakhem Perry, "Literary Dynamics: How the Order of a Text Creates Its Meanings with an Analysis of Faulkner's 'A Rose for Emily,'" *Poetics Today* 1.1/2 (1979): 35–64, 311–61. I thank Daniel Boyarin for bringing this to my attention.

67. Menakhem Perry and Meir Sternberg, "The King through Ironic Eyes: Biblical Narrative and the Literary Reading Process," *Poetics Today* 7.2 (1986): 275–322; Meir Sternberg, *The Poetics of Biblical Narrative: Ideological Literature and the Drama of Reading* (Bloomington, Ind., 1987), 285–320.

68. David Halivni, *Midrash, Mishnah, and Gemara: The Jewish Predilection for Justified Law* (Cambridge, Mass., 1986), 70–73; David Weiss Halivni, *The Formation of the Babylonian Talmud* (Oxford, 2013), 117–54.

the reasoning in addition to the finished statutory product. Halivni's argument is seemingly anachronistic—there is little evidence of the kind of late dialectical stammaitic reasoning in the earlier materials. And yet, to a talmudist of Halivni's experience, the loud noise of implicit conceptualization in the Mishnah is hard to suppress. One of the benefits of applying reader response tools to the Mishnah is the advantages it offers within the robust conversation about its implicit conceptualization.

Leib Moscovitz has written about the evolution of rabbinic legal thinking from case-based formulations to the robust and precisely articulated abstract formulations that typify the final layer of the Babylonian Talmud.⁶⁹ While building his case for the uniqueness of late Babylonian conceptualization, Moscovitz considers the question of implicit conceptualization in tannaitic sources—of whether the legal couplets of the Mishnah, for example, communicate underlying conceptual content.⁷⁰ In this analysis, Moscovitz uses the Babylonian Talmud's abstract conceptualization as a test for examining the tannaitic sources. Moscovitz tests whether the Mishnah can be demonstrated to possess the kinds of conceptualization later foisted upon the Mishnah by the Babylonian Talmud. Thus, Moscovitz examines whether the Mishnah can be demonstrated to have been generated from coherent ideas that underlie cases in different tractates discussing different areas of law. Moscovitz concludes that the Mishnah cannot be so demonstrated, in effect disproving Halivni's maximal thesis that such formulations must have existed but were not transmitted. At the end of his treatment, though, Moscovitz concedes a limited notion of implicit conceptualization ranging from classificatory principles like *זה הכלל* to more complex and abstract notions but not addressing "the ontological status of metaphysical entities" such as a distinction between intention and action.⁷¹ In other words, while Moscovitz proves that the Mishnah does not possess the sort of abstract conceptualization attributed to it by the latest layer of the Talmud, he notes that the Mishnah often demonstrably communicates a layer of implicit conceptualization. The three examples in this article demonstrate the presence of a fundamentally conceptual underlying layer of the Mishnah. The couplets by themselves communicate categorical concepts that are then honed through the accretion of multiple couplets. This whole is compounded by interaction with a reader who attacks the text with questions and waits for the text to provide answers. At its most abstract, the text and reader produce subtle understandings of the nature

69. Leib Moscovitz, *Talmudic Reasoning: From Casuistics to Conceptualization* (Tübingen, 2002).

70. Moscovitz, *Talmudic Reasoning*, 63–68.

71. Moscovitz, *Talmudic Reasoning*, 90.

of ownership, possession, and determination of responsibility. These are not the labeled abstractions of the *stam*, but they are developed conceptualizations.⁷²

One may accurately characterize the modern study of Mishnah as an attempt to flee the robust receptions of the Talmuds and commentaries and return to a prelapsarian text. The celebration of reader response and its more maximal reading of mishnaic meaning may generate the hair-trigger worry that the field will return to the anachronistic habits of reading commentary into the primary text. This is not entirely without basis. But fear of a reversion to earlier rejected approaches should not prevent one from recognizing the ways in which talmudic reception, rather than distorting the Mishnah, may respond accurately to invitations from the primary text itself; though a given talmudic interpretation of a line of Mishnah may be ahistorical and rarely in keeping with the original intent of the passage, such an interpretation often takes up the analytic work the Mishnah invites.

Modern critical reading of rabbinic texts hews closely to syntax and uses philology as a grounding force that resists creative interpretations that introduce foreign ideas or unusual scenarios into an inherited text. This resistive grounding may blind us to the possibility that our rabbinic texts want to have multiple levels of interpretation and invite the reader to build outward from basic syntax to further implications. Epistemologically, the philological approach employs language as the key to unlocking the original and singular (static) meaning of a text. We are in a post-theory moment in which there is a shared assumption that all texts are unstable and find their place in a chain of signification with no signified. To our delight and surprise, this is as true of the seemingly simple Mishnah as it is of all texts. The Mishnah's seeming simplicity masks a ubiquitous and impressive conceptual depth that is only maximally produced through an interaction with its reader.

The Mishnah is not simply the explicated details of a set of hidden conceptual axioms. But its form, and the way it teaches its readers to read by serving sequentially ordered juxtapositions suggests that there is a coherent logic underlying these discrete cases and that the reader is tasked with discerning that logic.

The Mishnah is a work rife with legal couplets (pairs of casuistic sentences designed to exist in tandem as contrasts) that command its reader to think through the abstract conceptualizations that stand behind its con-

72. Rosen-Zvi, *Between Mishnah and Midrash*, 118n226, offers another basis for critique of Moscovitz. See also Daniel Reifman, "Semiotics and the Nature of Rabbinic Legal Discourse," *JQR* 110.1 (2020): 1–29.

crete cases. These couplets stack on each other and function as building blocks for conceptual interrogation and presentation. The reader, experienced in their encounter with such texts, learns to anticipate potential comparisons and contrasts and their associated conceptual understandings—to read forward. As texts unfold successively (both within a couplet and building on top of existing couplets), the reader comes to understand the conceptual direction the Mishnah wants them to take. There is ambiguity in this process and different subjectivities will produce different understandings. None of these understandings can assert exclusive status as the Mishnah's meaning. And that pluralism embedded in the Mishnah's composition marks the Mishnah as ahead of its time.

BARRY SCOTT WIMPFHEIMER is an associate professor in the Department of Religious Studies at Northwestern University.