HALACHAH OF THE BIZARRE

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I. Introduction

Overview

For months I have been telling friends and strangers about my thesis on absurdities of Jewish law. No one is surprised to hear that such absurdities exist. On the contrary, they are quick to supply examples, often of a dietary nature. There seems to be a real anxiety that I'll miss their favorites.

It is not my goal to ridicule the tradition, though at the lectern I am not above exploiting its stranger technicalities as punch lines. After the laugh I generally remark: "It's wild, it's wacky, it's Torah." And yet I cherish the rabbinic legal edifice, zany details and all, for what it says about faith. It makes me a little sad to realize that many liberal Jews are more or less contemptuous of halachah. Jewish law is perceived as not only silly, but *religiously unsatisfying*. Less-observant Jews say things like, "What's *spiritual* about not eating pork?" This is a fair question, which rabbis often fail to address convincingly. If it has an answer, what better way to find it than by reflecting on the weirdest rules in the book. If we can explain those, the rest should be easy!

Judaism is often identified as a legalistic religion. Usually this is meant as criticism, and of course a legalistic religion is not to everyone's taste. But I find something touching in the rabbis' certainty that everything in the universe, or in our most improbable fantasies, can be subjected to legal analysis and classification. If our sages believed that God's will can be known with microscopic precision, in even the most far-fetched situations, were they mad or brilliant? It depends on your point of view.

Scope

It is obviously impossible to list, let alone explain, all the peculiar features of halachah. Many colorful rules have come to my attention but did not make it into the present work. I have limitations of time and space. And on reflection I find that absurdity is a matter of degree. My choice is to define legal absurdities as statutes pertaining to the impossible or the uncontrollable. Things that would never happen in real life, or that couldn't be managed even if they did happen, are my focus, for it is in these cases that one is tempted to ask, Why would the rabbis provide law for this situation? Laws that can actually be fulfilled, in some plausible or historical context, are not absurd enough to make the cut, however exotic they may sound.

Selection

For further help in keeping things manageable, I have narrowed my gaze to a few discrete conceptual zones. Herein I concentrate on the following categories: (1) problems with animals; (2) problems with large numbers; (3) problems of differentiating one person from another; and (4) problems with what is done accidentally or inadvertently. These areas seem to be especially rich in unlikely legislation. They also seem viscerally related to our deepest instincts (loving fuzzy creatures, exaggerating) and our darkest fears (losing our individuality or our free will).

Animals

As I mentioned above, no one is surprised to learn that Jewish law frequently makes no sense. Making no sense comes easily: most of life makes no sense. Most of our words make no sense, to say nothing of our thoughts. Or rather, they make *emotional* sense as opposed to objective, logical, scientific sense.

Likewise the senseless material in the Talmud. My chapter on animals, for example, deals with beasts that behave like people, or like other beasts of different species. Animal trainers may induce a dog to jump through a hoop, or a cat to meow on cue; they will never get livestock to honor halachah, or make clean and unclean species exchange characteristics. But imagination does what science cannot.

> The pioneers [Jewish refugees en route to Palestine] were put up in a public bathhouse ... By the end of the third day, everyone had become lightheaded with hunger... Highway robbery was the answer... The unfortunate farmer was caught on a lonely section of back road ...
>
> Now came an ethical question of severe gravity. Namely; can a pig be made kosher? A sort of ad hoc rabbinical council was formed to debate the matter...
>
> "God often disguises His mysteries and works in riddles. When we captured this pig, it was a cow. Before our very eyes, it changed. Why is the Lord testing us? To see if we have the courage to get to Palestine, which might not happen if we don't eat this cow. We cannot let God down after coming this far." ... [I]t began to make a lot of sense, what Nathan was saying. The fact was, the animal was beginning to resemble a cow more by the minute.
>
> A vote was taken and, indeed, it was overwhelmingly agreed that this animal was truly a cow in disguise. All the pioneers asked silent forgiveness of their parents and their rabbis. The animal was respectfully named Nicholas, after the late Czar, and in a ritual unique in the annals of Vienna became the only hog ever butchered and roasted in a municipal bathhouse.[1]

And what is more basic to human daydreams and fantasies than the notion of animals as people? The point is proved by the names and personalities we invent for our pets, to say nothing of folkloric animals throughout history, corresponding to Disney characters and their ilk in our own cultural moment. We love to pretend that animals are just like us, though most of us manage to exploit and eat them with few compunctions. While Judaism does not have anything quite like Santa's reindeer or the Easter bunny, we do have mythic animals to represent some of the twelve tribes: lion = Judah, donkey = Issachar, snake = Dan, deer = Naphtali, wolf = Benjamin. And we have the animals of Noah's ark, a story that always features prominently in the Sunday school curriculum, though the menagerie fails to distract the sharper children from the horror of mass drowning.

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1. Leon Uris. *Mitla Pass.* New York: Doubleday, 1988. Pp. 176-7.

Big Numbers

By the same token, my chapter on arithmetic hyperbole reflects the discourse of the young and emotional, the tendency to amplify and inflate that afflicts most storytellers in their less inhibited moments, especially when the narrative turns discouraging. Who has not complained of a hundred things to do, a thousand obstacles to progress, a million excuses made by the unreliable? Classical Hebrew does not have a simple expression for *million* – it is called *a thousand thousands* – but Hebrew does boast a one-word term for *ten thousand*, as many languages do. In the Nishmat prayer on Shabbat morning we find this mathematical extravagance:

> אֵין אֲנַחְנוּ מַסְפִּיקִים לְהוֹדוֹת לְךָ, יְיָ אֱלֹהֵינוּ וֵאלֹהֵי אֲבוֹתֵינוּ, וּלְבָרֵךְ אֶת שְׁמֶךָ, עַל אַחַת מֵאָלֶף אֶלֶף אַלְפֵי אֲלָפִים וְרִבֵּי רְבָבוֹת פְּעָמִים, הַטּוֹבוֹת שֶׁעָשִׂיתָ עִם אֲבוֹתֵינוּ וְעִמָּנוּ.
>
> We cannot thank you or bless your name enough, Eternal our God and God of our ancestors, for one millionth of one millionth, or the ten thousand times ten thousand benefits you have done for our ancestors and for us.[2]

There may be something holy about the inconceivably large. *Heaven* or *sky* represents God mostly because it is infinite. And God's salient quality is immortality: that is, God has lived and will live for an unimaginably long time.

> כִּי אֶלֶף שָׁנִים בְּעֵינֶיךָ כְּיוֹם אֶתְמוֹל כִּי יַעֲבֹר וְאַשְׁמוּרָה בַלָּיְלָה.
>
> For a thousand years in Your sight are like yesterday when it is past, and like a watch in the night. – Ps. 90:4

Thus, to some extent, the Talmud's recurring references to large numbers may be a way of attributing sanctity to various subjects. But in other instances the Talmud may be exaggerating as we all do, for rhetorical effect; or it may be imagining the extreme case of this or that legal

2. The prayerbook also contains Biblical quotes featuring large numbers: mercy to thousands (Ex. 34:7), the ten million of Israel (Num. 10:36), a thousand generations (1 Chron 16:15).

situation, when a status normally fulfilled by one or two individuals is exceptionally occupied by a multitude.

Anonymity

If some of the Talmud's strangeness resonates with our spirit of play, another category of rabbinic oddity speaks to our recurring nightmares, particularly the sense that life is meaningless or unfair. Much of the baffling halachah that we will explore in this paper contains a whiff of theodicy. For example, the rabbis agonize extensively about people who cannot be distinguished from other people, a reminder of the fear that our lives are without significance: that no one needs *me*, because I am no different from anyone else; or that no one (perhaps not even God) *notices* how I am different from others.

Anonymity is full of paradox. We relish anonymity when doing something society might disapprove of, like erotic adventure or denting a parked car. But we chafe at anonymity in case our contribution to a large organization goes unrecognized, or when our wit and wisdom seem invisible to others. Short-story writer David Sedaris quipped: "All of us take pride and pleasure in the fact that we are unique, but I'm afraid that when all is said and done the police are right: it all comes down to fingerprints."

Service personnel are typically anonymous in our eyes, and we like it that way. One often hears sarcastic remarks about waiters who say, "I'm Michael, and I'll be your server tonight." By now it is a stale joke to respond, "I'm Joe, and I'll be your customer tonight": but the temptation persists.

While anonymity in society's eyes is a fact of life, especially in our atomized modern culture, anonymity in *God's* eyes is more problematic. If God doesn't know one person from

another, we're in trouble. Anyone attempting to promote religion must of course confront the question of why bad things happen to good people, and vice versa.

> רַבִּי יַנַּאי אוֹמֵר, אֵין בְּיָדֵינוּ לֹא מִשַּׁלְוַת הָרְשָׁעִים וְאַף לֹא מִיִּסּוּרֵי הַצַּדִּיקִים.
> Rabbi Yannai says, We can account neither for the tranquility of the wicked nor for the suffering of the righteous. – M. Avot 4:15

Rabbi Yannai says openly what most of us would hardly dare to whisper: often it seems that God cannot discern one person from another, the righteous from the wicked. The Talmudic material on confusion of individuals seems to hint at the same insight.

Inadvertence

Finally there is our fear of being blamed for what is not our fault. Is God likely to punish us for our accidents? Doesn't God respect our *intentions* more than our results? No one *else* does: that's exactly why we need God! Wouldn't it be unfair to be held accountable for the inadvertent? After all, the Torah dwells on the centrality of free will:

> הַחַיִּים וְהַמָּוֶת נָתַתִּי לְפָנֶיךָ הַבְּרָכָה וְהַקְּלָלָה וּבָחַרְתָּ בַּחַיִּים ...
> I have set before you life and death, the blessing and the curse: choose life ... – Deut. 30:19

But then, the rabbis hedge their bets:

> הַכֹּל צָפוּי, וְהָרְשׁוּת נְתוּנָה, וּבְטוֹב הָעוֹלָם נִדּוֹן...
> *Everything is foreseen,* and free choice is given: and the world is rightly judged... –M. Avot 3:15

In the end, who are we to demand that the universe should be just? This is, of course, a bizarre question, perhaps *the* bizarre question.

In our modern legal universe we certainly recognize the concept of *partial* culpability. In an industrial mishap or a highway crash, one party may be judged 80% responsible and the other party 20%. In cases of slander or libel, guilt is less if there is absence of malice, but greater if

there is reckless disregard for the truth. Offense to community standards of decency is mitigated by redeeming social importance. There is even a sliding scale of culpability for killing another person: first- and second-degree murder, manslaughter, killing through error or in self-defense, killing in warfare. These in turn have their subcategories: killing in warfare includes (unauthorized) war crimes and (accidental) friendly fire. Distinctions of the same kind are recognized in the Bible:

> וְאִם־בְּפֶתַע בְּלֹא־אֵיבָה הֲדָפוֹ אוֹ־הִשְׁלִיךְ עָלָיו כָּל־כְּלִי בְּלֹא צְדִיָּה. אוֹ בְכָל־אֶבֶן אֲשֶׁר־יָמוּת בָּהּ בְּלֹא רְאוֹת וַיִּפֶּל עָלָיו וַיָּמֹת וְהוּא לֹא־אוֹיֵב לוֹ וְלֹא מְבַקֵּשׁ רָעָתוֹ. וְשָׁפְטוּ הָעֵדָה בֵּין הַמַּכֶּה וּבֵין גֹּאֵל הַדָּם עַל הַמִּשְׁפָּטִים הָאֵלֶּה.
>
> And if one suddenly stabbed another without hostility, or threw any article at them without malice, or dropped a deadly stone on them without seeing, and they died; but the one was not the other's enemy and did not seek to harm them: then the community shall judge between the assailant and the avenger of blood according to these laws. – Num. 35:22-4

This text describes a manslaughter, where there might be culpable carelessness but no evil intent; or an accidental death, where there is no guilt at all. It is the same point made by the great American cynic, Ambrose Bierce, who offered the following definition of *homicide*:

> **Homicide,** *n.* The slaying of one human being by another. There are four kinds of homicide: felonious, excusable, justifiable and praiseworthy, but it makes no great difference to the person slain whether he fell by one kind or another – the classification is for advantage of the lawyers.[3]

What It All Means

It is my position that absurd legislation is not in the Talmud by mistake, that the rabbis knew it was absurd, but there is not merely one reason for why it's there. Sometimes the improbable legislation is not to be taken seriously; it is a test case, a hypothetical example, a *reductio ad absurdum*, or occasionally just a witticism. Other times it is meant seriously, though perhaps not literally. Let us remember that we are speaking of religion, which has a high

3. Ambrose Bierce. *The Devil's Dictionary*. New York: Dover Publications, Inc., 1958. P. 57.

tolerance for paradox: a religion like Zen Buddhism positively delights in the irrational, emphasizing the teachings called *koan*, defined as "questions and answers of an enigmatic or paradoxical nature"[4] or as "a problem or dilemma ... [whose] solution was beyond the reach of ordinary logical processes."[5] If absurdity is spiritually moving to the Zen Buddhist, why not to the rabbinic Jew?

Let me also suggest that we might be open to the possibility of reading the text our own way, even if our understanding cannot plausibly have been in the mind of the author or redactor. Our tradition teaches:

יֵשׁ שִׁבְעִים פָּנִים בַּתּוֹרָה.

There are seventy faces to the Torah. – Num. Rabba 13:15

"Torah" of course includes the rabbinic corpus, known as תּוֹרָה שֶׁבְּעַל פֶּה, the Oral Torah. And among its seventy faces is דְּרָשׁ, interpretation out of context. If I take the liberty of comparing Talmudic absurdism to the irrational in modern literature or modern philosophy, I do not mean to imply that ancient rabbis anticipated modern cultural trends. I mean rather that the timeless human condition contains an element of the absurd; the rabbis expressed this absurdity in their way, and we moderns express this absurdity in *our* way. But I do not think it is far-fetched to seek a few parallels.

What's Left Out

Limitations of space prevent my including much of the bizarre material I've found in the Mishnah and Talmud: festival huts in improbable locations (tractate Sukkah), ambiguous death

4. William Theodore De Bary, ed. *The Buddhist Tradition in India, China and Japan.* New York: Vintage Books, 1969. P. 208.
5. De Bary, p. 360.

of a spouse (tractate Y'vamot), ambiguous divorces (tractate Gittin), absurd oaths (tractate Sh'vu'ot), implausible Temple rituals (tractate Tamid), irrational rules around women's fertility (tractate Niddah), etc., etc. It is my judgment that this material would not substantially change the conclusions I draw in the thesis. For example, being doubtfully widowed or doubtfully divorced is in the same conceptual category as being indistinguishable from other persons; absurd oaths are in the same conceptual category as inadvertent transgressions. The weirdest *sukkah* is one whose floor or wall is a living animal (M. Sukkah 2:3 / BT Sukkah 23a), which would have fit nicely in the animal chapter. But I can't cover everything.

Why I Chose This Topic

I decided to write about halachah of the bizarre in order to illuminate the ways in which religion conjures up a nonexistent world and invites us to live in it. There must be a sense in which this meets our needs. One could explore this question even without bizarre laws, but bizarre laws make the point clearer.

In Judaism, bizarre laws do not begin or end with the Talmud. For example, the Torah lists forbidden foods that no one ever wanted to eat anyway.

> וְאֶת־אֵלֶּה תְּשַׁקְּצוּ מִן־הָעוֹף לֹא יֵאָכְלוּ שֶׁקֶץ הֵם אֶת־הַנֶּשֶׁר וְאֶת־הַפֶּרֶס וְאֵת הָעָזְנִיָּה. וְאֶת־הַדָּאָה
> וְאֶת־הָאַיָּה לְמִינָהּ. אֵת כָּל־עֹרֵב לְמִינוֹ. וְאֵת בַּת הַיַּעֲנָה וְאֶת־הַתַּחְמָס וְאֶת־הַשָּׁחַף וְאֶת־הַנֵּץ לְמִינֵהוּ.
> וְאֶת־הַכּוֹס וְאֶת־הַשָּׁלָךְ וְאֶת־הַיַּנְשׁוּף. וְאֶת־הַתִּנְשֶׁמֶת וְאֶת־הַקָּאָת וְאֶת־הָרָחָם. וְאֵת הַחֲסִידָה
> הָאֲנָפָה לְמִינָהּ וְאֶת־הַדּוּכִיפַת וְאֶת־הָעֲטַלֵּף.
>
> And these you shall abominate among the fowls; they shall not be eaten, they are an abomination: the eagle, and the vulture, and the black vulture, and the kite, and the falcon of any kind; all kinds of raven; and the ostrich, and the nighthawk, and the sea gull, and the hawk of any kind, and the little owl, and the cormorant, and the great owl, and the white owl, and the pelican, and the bustard, and the stork, the heron of any kind, and the hoopoe, and the bat. – Lev. 11:13-19

Scholars have pointed out that this list has very little to do with anyone's actual diet, whether they are Jewish or not:

> To the extent that abstract theological principles result in flamboyant lists of interdicted species, the results are trivial if not beneficial from a nutritional and ecological viewpoint. Among birds, for example, Leviticus bans the flesh of the eagle, ossifrage, osprey, ostrich, kite, falcon, raven nighthawk, sea gull, hawk, cormorant, ibis, waterhen, pelican, vulture, stork, hoopoe, and bat (not a bird of course)... Perhaps the list was generated from this principle applied first to common local "birds" and then extended to the exotic sea birds as a validation of the codifiers' claim to special knowledge of the natural and supernatural worlds. But in any event, the list renders no disservice. Unless they were close to starvation and nothing else was available, the Israelites were well advised not to waste their time trying to catch eagles, ospreys, sea gulls, and the like, supposing they were inclined to dine on creatures that consist of little more than skin, feathers, and well-nigh indestructible gizzards in the first place.[6]

But rabbis have spent millennia pondering this list, analyzing the various reasons why God might wish to ban eagle meat, and who's to say it's an idle question? For all we know, it's the key to the mysteries of the universe.

All the more with the Talmud, which is closer to our time and our way of thinking than the Bible is. If the rabbis ban something we were never going to do anyway, we score an easy point in the holiness game, and perhaps we learn something too. Exactly what we learn is the issue this thesis will try to unravel.

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6. Marvin Harris. *The Sacred Cow and the Abominable Pig.* New York: Simon & Schuster, 1985. P. 82.

II. Borderline Animals

Overview

Animals play an ambiguous role in the drama of civilization. From one point of view they are objects, incapable of education or responsibility in the human sense, eligible for exploitation as a natural resource. On the other hand they are living beings much like us: they have likes and dislikes, they get sick and get injured, they reproduce and die, they are trainable in many ways. Our ancestors had more everyday contact with animals than we do, and were probably less sentimental about them, but even the ancients occasionally loved their pets. For example, in the apocryphal book of Tobit, a dog accompanies the young hero on his journey from Nineveh to Ectabana and back.[7]

The Talmud treats animals in a bewildering variety of ways, sometimes affirming their needs,[8] sometimes relegating them to the status of utensils.[9] My focus is on Talmudic animals that seem to defy the laws of nature. I will divide these into three groups: (1) nonexistent or unclassifiable species; (2) creatures that blur the distinction between animals and humans; and (3) normal species in abnormal situations. I will argue that the fictional types of animals are *pedagogical tools* illustrating legal categories, while the manlike beasts are a lesson in *appreciating our privileges as humans* (the *chosen species*, so to speak).[10]

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7. Tobit 5:16 and 11:4. Herbert G. May and Bruce M. Metzger, eds. *The New Oxford Annotated Bible with the Apocrypha.* New York: Oxford University Press, 1977. Apocrypha pp. 68, 72. The editors comment: "*The dog* appears again ... perhaps his presence in the story is a survival from an older folk tale, in which he had a real function."
8. For example, BT B'rachot 40a requires you to feed your livestock before eating your own meal.
9. For example, M. Eruvin 1:7 permits you to use living animals as boundary markers or as media to write on; BT Sukkah 23a imagines festival huts constructed partly of living animals.
10. The same point made in Job 39, where God juxtaposes Job's unhappy lot with the lives of various animals. If Job is so miserable as a man, would he rather be an ostrich?

But real animals in unreal circumstances will be the largest category, and I will make the case that these beasts symbolize kinds of *people*, or aspects of human personality. In our own day we may label an acquaintance a sly *fox*, a treacherous *snake*, a dirty *pig*; and Rabbi Dan Cohn-Sherbok distinguishes between "dog rabbis" and "cat rabbis," neither of whom are quadrupeds. Animal metaphors differ with language and culture: in French it is an insult to call someone *chameau* (camel), in English it would be meaningless; in German, says one authority, "the word *Ratte* is not so unlovely as 'rat', witness *Landratte* 'landlubber', *Leseratte* 'bookworm'."[11] So it could take some ingenuity to discover the implications of the rabbis' bestiary.

The Mystery Beast

Let us begin with the inherently marginal case of an unidentified species. The *tachash* is the animal whose skin covered the Tabernacle (Ex. 26:14, etc.), but no one knows what it is. In the Talmud we read:

> אָמַר רַב אָדָא בַּר אַהֲבָה, תַּחַשׁ שֶׁהָיָה בִּימֵי מֹשֶׁה קָמִיבַּעְיָא לֵיהּ, טָמֵא הָיָה אוֹ טָהוֹר הָיָה?
> Said Rav Ada bar Ahavah: (Rav Eleazar) was asked about the *tachash* that existed in the days of Moses, was it unclean or was it clean? – BT Shabbat 28a

> אָמַר רַבִּי אֶלְעָא אָמַר רַבִּי שִׁמְעוֹן בֶּן לָקִישׁ, אוֹמֵר הָיָה רַבִּי מֵאִיר, תַּחַשׁ שֶׁהָיָה בִּימֵי מֹשֶׁה בְּרִיָּה בִּפְנֵי עַצְמָהּ הָיָה, וְלֹא הִכְרִיעוּ בָּהּ חֲכָמִים אִם מִין חַיָּה הוּא אִם מִין בְּהֵמָה הוּא...
> Rabbi El'a said Rabbi Simeon ben Lakish said, Rabbi Me'ir used to say: The *tachash* that existed in the days of Moses was a creature unique unto itself, and the sages could not determine if it was a wild species or a domestic species... – BT Shabbat 28b

> אָמַר רַב יְהוּדָה אָמַר רַב, סַנְדָּל הַתְּפוּר בְּפִשְׁתָּן, אֵין חוֹלְצִין בּוֹ, שֶׁנֶּאֱמַר, וָאֶנְעֲלֵךְ תָּחַשׁ. וְאֵימָה, תַּחַשׁ אִין, מִידֵי אַחֲרִינָא לָא? נַעַל נַעַל, רִיבָּה.
> Rav Judah said Rav said: They do not perform *chalitzah* (a shoe-removing ritual, see Deut. 25:9-10) with a shoe sewn of linen, for it is said, I gave you shoes of *tachash* (Ezek. 16:10; i.e., real shoes are leather). And if I should say: *Tachash* yes, something else no (i.e., real shoes are only *tachash* leather)? *Shoe shoe* expands the meaning (i.e., the word *shoe* occurs in both Deut. 25:9 and 25:10, broadening the interpretation: any kind of leather is permitted). – BT Y'vamot 102b

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11. W. B. Lockwood. *German Today: The Advanced Learner's Guide.* Oxford: Clarendon Press, 1987. P. 135.

The modern mind would say: if the animal is unidentified then it is unidentified; there is no use trying to classify it. At most, a zoologist might propose identifying the unknown animal with a known species. But the rabbis boldly speculate about the mysterious creature's legal category and cannot resist making it the archetypal source of shoe leather. In this way they uphold the centrality and relevance of the Torah even though they are unable to clarify its ambiguities.

Straddling the Border

If the *tachash* subverts the clean / unclean and wild / domestic demarcations, M. P'sachim 7:12 discusses an animal that quite literally crosses a boundary. This is the Passover sacrifice located *partly* in Jerusalem.

> אֵבֶר שֶׁיָּצָא מִקְצָתוֹ, חוֹתֵךְ עַד שֶׁמַּגִּיעַ לָעֶצֶם, וְקוֹלֵף עַד שֶׁמַּגִּיעַ לַפֶּרֶק, וְחוֹתֵךְ.
> A limb that extended outside (the gates of Jerusalem), you cut until you reach the bone, and peel until you reach the joint, and cut. – M. P'sachim 7:12

The associated g'mara helpfully explains:

> דַּאֲמַר רַבִּי שְׁמוּאֵל בַּר רַב יִצְחָק, מִפְּנֵי מָה לֹא נִתְקַדְּשׁוּ שַׁעֲרֵי יְרוּשָׁלַיִם? מִפְּנֵי שֶׁמְּצוֹרָעִין מַגִּינִין תַּחְתֵּיהֶן בְּחַמָּה מִפְּנֵי הַחַמָּה, וּבְגִשָּׁמִים מִפְּנֵי הַגְּשָׁמִים.
> As Rabbi Samuel bar Rav Isaac said, Why were the gates of Jerusalem not sanctified? Because lepers were shielded beneath them, from sun in the sunny season, from rain in the rainy season. – BT P'sachim 85b

The meaning of an animal *partly* in Jerusalem is very difficult to unravel. Presumably the animal is somehow immobilized astride the city limits[12]: perhaps in the manner of Balaam's donkey, which was blocked from proceeding by an angel visible only to itself (Num. 22:27). But what blocks the movement of the *sugya*'s Paschal lamb?

It seems to me that the sacrificial animal located *partly* in Jerusalem probably symbolizes the convert, who is located *partly* within Jewry (and whose non-Jewish associations must be

12. M. P'sachim 7:12 is in dialogue with M. P'sachim 8:3, which concerns a *person* partly in Jerusalem: the one text is no more absurd than the other.

painfully *cut off*). The erasure of the proselyte's original family ties is complete in *halachah*. The Talmud specifies:

> אִיתְּמַר, הָיוּ לוֹ בָּנִים בְּהִיוֹתוֹ עוֹבֵד כּוֹכָבִים וְנִתְגַּיֵּיר, ר' יוֹחָנָן אָמַר, קַיָּים פְּרִיָּה וּרְבִיָּה, וְרֵישׁ לָקִישׁ אָמַר, לֹא קַיָּים פְּרִיָּה וּרְבִיָּה. רַבִּי יוֹחָנָן אָמַר, קַיָּים פְּרִיָּה וּרְבִיָּה דְּהָא הֲווּ לֵיהּ. וְרֵישׁ לָקִישׁ אָמַר, לֹא קַיָּים פְּרִיָּה וּרְבִיָּה, גֵּר שֶׁנִּתְגַּיֵּיר כְּקָטָן שֶׁנּוֹלַד דָּמֵי... א"ל, בְּהִיוֹתָן עוֹבְדֵי כּוֹכָבִים אֵית לְהוֹ חַיִּיס, נִתְגַּיְּירוּ לֵית לְהוֹ חַיִּיס.
>
> It was said, A gentile who had children and converted, R. Johanan said, he has fulfilled (the commandment of) procreation, but Resh Lakish said, He has not fulfilled (the commandment of) procreation. Rabbi Johanan said, He has fulfilled (the commandment of) procreation because of (the children) he has. But Resh Lakish said, He has not fulfilled (the commandment of) procreation, because a foreigner who has converted is like a newborn child... (Resh Lakish) said to (Johanan), As gentiles they have kin; when they convert they have no kin. – BT Y'vamot 62a (BT B'chorot 47a is similar)

> דִּתְנַן, לֹוֶה מֵעוֹת מִן הַגֵּר שֶׁנִּתְגַּיְּירוּ בָּנָיו עִמּוֹ, לֹא יַחֲזִיר לְבָנָיו, וְאִם הֶחֱזִיר, אֵין רוּחַ חֲכָמִים נוֹחָה הֵימֶנּוּ. וְהָתַנְיָא, רוּחַ חֲכָמִים נוֹחָה הֵימֶנּוּ. לָא קַשְׁיָא, כָּאן שֶׁהוֹרָתוֹ וְלֵידָתוֹ שֶׁלֹּא בִּקְדוּשָּׁה, וְכָאן שֶׁהוֹרָתוֹ שֶׁלֹּא בִּקְדוּשָּׁה וְלֵידָתוֹ בִּקְדוּשָּׁה.
>
> As we have learned, One who borrows money from the convert whose children converted too, does not return (the money) to the children. And if one did, the sages would not approve of them. But wasn't it taught, the sages *would* approve of them? No problem: In the first case (the children's) conception and birth was not in holiness (= preceded the parents' conversion), and in the second case (the children's) conception was not in holiness but their birth was in holiness (= followed the parents' conversion). – BT Kiddushin 17b-18a

> אָמְרִי, הָכִי הַשְׁתָּא, גֵּר נְהֵי דְּאֵין לוֹ חַיִּיס לְמַעְלָה, לְמַטָּה יֵשׁ לוֹ חַיִּיס...
>
> They say: So now, granted that a proselyte has no (legal) kin before (= family of origin, or children preceding conversion); they *do* have (legal) kin after (= children following conversion)... – BT Bava Kamma 88a

In other words, proselytes get no credit for, and leave nothing to, the relatives they had before conversion. Even some incest taboos are voided, on the ground that a Jew's gentile relatives are not really relatives at all. Who wouldn't experience this as an awkward feeling of being stuck on a border: even having one's limbs flayed on a border!

Animals Breaking Ritual Law

My favorite Talmudic beast is the mouse that dares to evade the Passover restrictions.

אֵין חוֹשְׁשִׁין שֶׁמָּא גֵּרְרָה חֻלְדָּה מִבַּיִת לְבַיִת וּמִמָּקוֹם לְמָקוֹם, דְּאִם כֵּן, מֵחָצֵר לְחָצֵר וּמֵעִיר לְעִיר, אֵין לַדָּבָר סוֹף.

They do not worry in case a mouse drags (leaven on Passover) from house to house and from place to place: for if they did, (next it would be a mouse dragging leaven) from courtyard to courtyard and from city to city; the thing would have no end. – M. P'sachim 1:2

The g'mara spends nearly four pages on the implications of this statement. I am especially fond of the following.

בִּשְׁלֹשָׁה עָשָׂר דְּשָׁכֵיחַ רִיפְתָּא בְּכוּלְּהוּ בָּתֵּי, לָא מַצְנְעָא. בְּאַרְבָּעָה עָשָׂר דְּלָא שְׁכִיחָא רִפְתָּא בְּכוּלְּהוּ בָּתֵּי, מַצְנְעָא. אֲמַר רָבָא, וְכִי חוּלְדָּה נְבִיאָה הִיא, דְּיָדְעָא דְּהָאִידְּנָא אַרְבֵּיסַר וְלָא אָפֵי עַד לְאוּרְתָּא, וּמְשַׁיְּירָא וּמְטַמְּרָא?

On the thirteenth (of Nisan, two days before Passover), as bread is found in all houses, (the mouse) does not hide (the leaven). On the fourteenth (of Nisan, the eve of Passover), as bread is *not* found in all houses, (the mouse) *does* hide (the leaven). Said Rava, Is a mouse a prophet, to know that it is now the fourteenth and one does not bake until the evening, and that it should leave some and hide it? – BT P'sachim 9b

Rava exaggerates. The mouse need not be a prophet to know when Passover begins: it must only be human. But how could the sages have thought this possible?

The Talmud is not the only ancient document with wise rodents. Aesop's fables feature a number of insightful mice: the mouse who exchanged favors with a lion, the city mouse who compared notes with a country cousin, and so forth. Aesop was a Greek storyteller of the 6th century BCE: I assume the Tanna'im, whose world was steeped in Greco-Roman culture, were acquainted with him. Saul Lieberman presents evidence that the rabbis were familiar with the famous authors of classical Greece, tracking down characters and quotations from Greek literature in various midrashim.[13] Note particularly the following text, which expounds the surprising doctrine that touching the sacred books conveys ritual impurity (a doctrine doubtless motivated by the need to keep people from eating while studying the Scriptures).

13. Saul Lieberman. *Hellenism in Jewish Palestine.* New York: The Jewish Theological Seminary of America, 1962. Pp. 105-114.

כְּתְבֵי הַקֹּדֶשׁ מְטַמְּאִין אֶת הַיָּדַיִם, וְסִפְרֵי הַמִּירָס אֵינָם מְטַמְּאִין אֶת הַיָּדַיִם... עַצְמוֹת חֲמוֹר טְהוֹרִים, וְעַצְמוֹת יוֹחָנָן כֹּהֵן גָּדוֹל טְמֵאִים,... לְפִי חִבָּתָן הִיא טֻמְאָתָן... אַף כְּתְבֵי הַקֹּדֶשׁ לְפִי חִבָּתָן הִיא טֻמְאָתָן, וְסִפְרֵי הַמִּירָס שֶׁאֵינָן חֲבִיבִין אֵינָן מְטַמְּאִין אֶת הַיָּדַיִם.

The holy books soil the hands, but the books of Homer do not soil the hands... (Just as) donkey bones are clean, but the bones of Johanan the high priest are unclean:... they are unclean because they are beloved... So also the holy books, as they are beloved, convey impurity: but the books of Homer, as they are not beloved, do not soil the hands. – M. Yadayim 4:6

Not everyone agrees that הַמִּירָס (variously spelled in the manuscripts) is Homer, but Lieberman argues persuasively for the identification. And why the reference to donkey bones? Because flutes were made of donkey bones – *as mentioned by Aesop.*[14]

Each of Aesop's fables ends with an edifying moral, such as "Little friends may prove great friends" in the mouse-and-lion vignette. I doubt any adult ever imagined that this story was truly about animals. Such stories make sense only as allegories of *human* experience. Transparently the lion represents a powerful person, the mouse a seemingly insignificant person who may be very useful in unexpected circumstances. It is the same with the Talmud's *chametz* mouse: *the mouse is actually a person.* The story of the *chametz* mouse is unlike a fable of Aesop only in that the rabbis do not make the moral explicit. Allow me to supply it: *We only hide things when we aren't supposed to have them.*

The Animal as Model Citizen

A marvelous pair of *mishnayot* is Sotah 6:1, in which a bird speaks like a human, and K'tubbot 13:7, in which a human flies like a bird.

מִי שֶׁקִּנֵּא לְאִשְׁתּוֹ וְנִסְתְּרָה, אֲפִלּוּ שָׁמַע מֵעוֹף הַפּוֹרֵחַ, יוֹצִיא וְיִתֵּן כְּתֻבָּה, דִּבְרֵי רַבִּי אֱלִיעֶזֶר.

If a man suspected his wife and she went astray, even (if) he heard it from a bird flying by, he shall put her out and give her the divorce settlement: so says Rabbi Eliezer. – M. Sotah 6:1

14. Lieberman, p. 107, footnote 48.

מִי שֶׁהָלַךְ לִמְדִינַת הַיָּם וְאָבְדָה דֶּרֶךְ שָׂדֵהוּ, אַדְמוֹן אוֹמֵר, יֵלֵךְ בַּקְּצָרָה. וַחֲכָמִים אוֹמְרִים, יִקְנֶה לוֹ דֶּרֶךְ בְּמֵאָה מָנֶה, אוֹ יִפְרַח בָּאֲוִיר.

If someone went overseas and the way to their field was lost, Admon says, Let them take a shortcut. And the sages say, Let them buy access for a million dollars (lit. "100 minas"), or let them fly through the air. – M. K'tubbot 13:7

Neither of these *mishnayot* can be taken at face value. But if the flying farmer is only a rhetorical flourish, the testifying bird seems to mean more than that. The bird reporting an act of adultery is a role model: refusal to bear witness is a serious sin in Judaism. Maimonides assumes the reference is to some sort of bird that actually speaks, like a parrot[15]: though of course the parrot imitates human speech without understanding it.

Is that what Rabbi Eliezer meant? Or are these birds, like the lamb and mouse above, actually people?[16] Or was Rabbi Eliezer thinking of sacred texts where animals speak with great cleverness? We do find the occasional articulate animal in the Bible:

וְהַנָּחָשׁ הָיָה עָרוּם מִכֹּל חַיַּת הַשָּׂדֶה אֲשֶׁר עָשָׂה יְהוָה אֱלֹהִים וַיֹּאמֶר אֶל־הָאִשָּׁה אַף כִּי־אָמַר אֱלֹהִים לֹא תֹאכְלוּ מִכֹּל עֵץ הַגָּן.

And the snake was the wiliest beast of the field which the Eternal God had made. And it said to the woman, What if God has said, You shall not eat from every tree of the garden. – Gen. 3:1

And the Talmud:

יוֹמָא חַד הֲוָה יָתִיב גַּבֵּיהּ הַהוּא גַּבְרָא דַּהֲוָה יָדֵע בְּלִישָׁנָא דְּצִיפּוֹרֵי. אֲתָא עוֹרְבָּא וְקָא קָרֵי לֵיהּ. אֲמַר לֵיהּ, מַאי קָאָמֵר? אֲמַר לֵיהּ, עִילַּאי בְּרַח עִילַּאי בְּרַח. אֲמַר, עוֹרְבָּא שַׁקְרָא הוּא וְלָא סָמֵיכְנָא עֲלֵיהּ. אַדְּהָכִי אֲתָא יוֹנָה וְקָא קָרְיָא. אֲמַר לֵיהּ, מַאי קָאָמְרָה? א"ל, עִילַּאי בְּרַח עִילַּאי בְּרַח. אֲמַר, כְּנֶסֶת יִשְׂרָאֵל כְּיוֹנָה מְתִילָא, ש"מ מִתְרַחִישׁ לִי נִיסָּא.

One day there was sitting next to (R. Ilish) a man who knew the language of birds. A raven came and called to (R. Ilish). He said to (the translator), What is it saying? (The translator) said to him, "Ilish, run away; Ilish, run away." He said, The raven is a liar and I do not rely on it. Just then a dove came and called. He said to (the translator), What is it saying? He told him, "Ilish, run away; Ilish, run away." He said, The community of Israel is compared to a dove: from this you can deduce that a miracle is happening for me. – BT Gittin 45a

15. David Kantrowitz. *Judaic Classics* (online). Brooklyn: Judaica Press, 2004. Note 14 on BT Sotah 31a.
16. The American expression, *a little bird told me*, pertains to a human source as quick and inconspicuous as our feathered friends.

Eve's snake and Ilish's dove seem to read the minds of their human interlocutors, and disappear before the humans take action. Perhaps the animals' discourse is Eve's and Ilish's fantasy, or a pretext for Eve and Ilish to do what they would have done anyway.

In the commentary of R. Isaac ben Yedaiah, an obscure 13th-century rabbi rediscovered by Marc Saperstein, aggadic animals are unmasked as components of the human personality. For example, in texts like the following.

> אָמְרוּ עָלָיו עַל יוֹנָתָן בֶּן עוּזִּיאֵל, בְּשָׁעָה שֶׁיּוֹשֵׁב וְעוֹסֵק בַּתּוֹרָה כָּל עוֹף שֶׁפּוֹרֵחַ עָלָיו מִיָּד נִשְׂרָף.
> They said of Jonathen ben Uzziel, When he sits studying Torah, every bird that flies over him is immediately burned up. – BT Sukkah 28a

> א"ר בֶּרֶכְיָה, יֵשׁ מַזִּיק שֶׁהוּא פּוֹרֵחַ בָּאֲוִיר כְּעוֹף וְקוֹשֵׁט כְּחֵץ.
> Rabbi Berechiah said, There is a demon that flies in the air like a bird and zooms like an arrow. – Num. Rabba 12:3

According to R. Isaac ben Yedaiah, the bird in such passages represents "every internal human impulse that is perverse and askew ... every physical faculty that harmed him."[17] Another example:

> שֶׁאִלְמָלֵא נִתְקַלֵּל נָחָשׁ כָּל אֶחָד וְאֶחָד מִיִּשְׂרָאֵל הָיוּ מְזַדְּמְנִין לוֹ שְׁנֵי נְחָשִׁים טוֹבִים, אֶחָד מְשַׁגְּרוֹ לְצָפוֹן וְאֶחָד מְשַׁגְּרוֹ לְדָרוֹם לְהָבִיא לוֹ סַנְדַּלְבּוֹנִים טוֹבִים וַאֲבָנִים טוֹבוֹת וּמַרְגָּלִיּוֹת.
> For if the serpent had not been cursed (see Gen. 3:14-15), each and every Israelite would be supplied with two fine serpents, sending one off to the north and one to the south to bring back precious gems and precious stones and pearls. – BT Sanhedrin 59b

For R. Isaac, "The 'serpents' are the human impulses toward good and toward evil".[18]

I would apply R. Isaac ben Yedaiah's logic to Rabbi Eliezer's flying eyewitness. This character is not literally a fowl, nor is it a figurative reference to a human being. The bird is like Eve's snake and Ilish's dove: a component of the human mind, an internal voice, a pivotal intuition.

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17. Marc Saperstein. *Decoding the Rabbis: A Thirteenth-Century Commentary on the Aggadah.* Cambridge, MA: Harvard University Press, 1980. P. 66.
18. Saperstein, pp. 70-71.

The Animal as Felon

We turn now to a more disturbing class of improbable animals: those who commit nefarious crimes. It turns out, for example, that an ox may be a very discerning murderer.

שׁוֹר שֶׁהָיָה מִתְחַכֵּךְ בַּכֹּתֶל, וְנָפַל עַל הָאָדָם. נִתְכַּוֵּן לַהֲרֹג אֶת הַבְּהֵמָה וְהָרַג אֶת הָאָדָם, לַנָּכְרִי, וְהָרַג אֶת יִשְׂרָאֵל, לְנֵפָלִים, וְהָרַג בֶּן קַיָּמָא, פָּטוּר.

An ox was scratching itself on a wall, and the wall fell on someone. If the ox meant to kill an animal and killed a person, or meant to kill a gentile and killed a Jew, or meant to kill a miscarriage and killed a healthy child, it is exempt. – M. Bava Kamma 4:6

The g'mara admits:

הָכָא נַמִּי, בְּמִתְחַכֵּךְ בַּכּוֹתֶל לְהַנְאָתוֹ. וּמְנָא יָדְעִינַן? דְּבָתַר דִּנְפַל קָא מִתְחַכֵּךְ בֵּיהּ.

Here too, (the ox) scratched itself for its own enjoyment. And how do we know? For after (the wall) fell, (the ox) continued to scratch on it. – BT Bava Kamma 44a

This is a commendably rational insight. But the next moment the text declares:

הָא נִתְכַּוֵּין לַהֲרוֹג אֶת זֶה וְהָרַג אֶת זֶה, חַיָּיב.

If it meant to kill one person and killed another (of the same category, presumably), it is liable. – Ibid.

The passage seems to inquire into the animal's unknowable motives, and for reasons that make no moral sense anyway. George Horowitz notes that laws pertaining to livestock take no account of human litigants' faith or nationality.[19]

וְכִי יִגּוֹל ... שׁוֹר אִישׁ, לְהָבִיא שׁוֹר שֶׁל אֲחֵרִים.

"And if someone's ox injures ..." (Ex. 21:35), including the ox of foreigners. – M'chilta N'zikin 12

Why, then, even if an ox somehow knew Jews from gentiles, should the religion of its intended vs. actual victim make any difference to the situation? It is as if the rabbis were deliberately constructing an absurd case.[20]

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19. George Horowitz. *The Spirit of Jewish Law.* New York: Central Book Company, 1963. P. 31.
20. In piling one absurdity onto another, this instance resembles M. Makkot 3:9 and M. K'ritot 3:4-6, where the rabbis envision composite sins violating many different commandments.

Like the Passover-defiant mouse, the ox whose carelessness costs someone their life symbolizes a certain kind of unappealing *person*. Again, it is not hard to find analogues in other ancient literatures. In the New Testament, for example, we read:

> It is easier for a camel to go through the eye of a needle, than for a rich person to enter into the dominion of God. – Mat. 19:24 / Mark 10:25 / Luke 18:25

The aphorism follows a vignette about a seeker who is turned away because he is unwilling to part with his material possessions: "the barrier to his total commitment is evidently his wealth... illustrated by the hyperbolic (and perhaps partly humorous) image of the camel and the eye of the needle."[21] In other words, *camel = person bulging with wealth*; *eye of a needle = spiritual transformation entailing loss of wealth*. The rich "camel" presumably *chooses* to hold onto its property; but the clumsy "ox" who kills someone unintentionally does not make a meaningful choice and incurs no legal or moral responsibility. The ox is a metaphor for the manslayer, who as we know from the Torah is not liable (Num. 35:15-23).

Even worse than the regular murderous ox is the ox that is specifically murderous on the Sabbath.

> שׁוֹר שֶׁהוּא מוּעָד... אָמְרוּ לִפְנֵי רַבִּי יְהוּדָה, הֲרֵי שֶׁהָיָה מוּעָד לַשַּׁבָּתוֹת וְאֵינוֹ מוּעָד לַחֹל. אָמַר לָהֶם, לַשַּׁבָּתוֹת מְשַׁלֵּם נֵזֶק שָׁלֵם, לִימוֹת הַחֹל מְשַׁלֵּם חֲצִי נֵזֶק.
>
> An ox that was known to be dangerous... They asked Rabbi Judah, What if it were known to be dangerous on Sabbaths but not known to be dangerous on weekdays? He told them, (If it attacks) on Sabbaths, (the owner) pays full damages; on weekdays, (the owner) pays half damages. – M. Bava Kamma 4:2

21. John Barton and John Muddiman, eds. *The Oxford Bible Commentary*. Oxford: Oxford University Press, 2001. P. 907.

שַׁבָּת, שַׁבָּת, וְשַׁבָּת, אֶחָד בְּשַׁבָּת וְשֵׁנִי בְּשַׁבָּת, מָהוּ? מָא שַׁבָּת בַּתְרֵייתָא בַּתַר שַׁבָּת הוּא דְּשָׁדִינַן לֵיהּ, וְאַבַּתְּי לְשַׁבָּת הוּא דְּאַיְיעֵד, לִימוֹת הַחוֹל לָא אַיְיעֵד? אוֹ דִילְמָא בַּתַר אֶחָד בְּשַׁבָּת וְשֵׁנִי בְּשַׁבָּת שָׁדִינַן לֵיהּ, וְאַיְיעֵד לֵיהּ לְכוּלֵי יוֹמָא? ה' בְּשַׁבָּת וְעֶרֶב שַׁבָּת וְשַׁבָּת, שַׁבָּת, וְשַׁבָּת, מָהוּ? הָא שַׁבָּת קַמַּייתָא בַּתַר ה' בְּשַׁבָּת וְע"ש שָׁדִינַן לֵיהּ, וְאַיְיעֵד לְכוּלְּהוּ יוֹמֵי? אוֹ דִילְמָא הָא שַׁבָּת קַמַּייתָא בַּתַר שַׁבָּתוֹת הוּא דְּשָׁדִינַן לֵיהּ, וּלְשַׁבָּתוֹת הוּא דְּאַיְיעֵד? תֵּיקוּ.

(An ox that attacks) on a Sabbath, (another) Sabbath, (a third) Sabbath, and Sunday and Monday, then what? Is it that we throw the last Sabbath in with the other Sabbaths, and one has still declared it dangerous on the Sabbath, but one has not declared it dangerous on weekdays? Or perhaps we throw it in with Sunday and Monday, and one has declared it dangerous on all days? (What if an ox attacked) Thursday, Friday, and the Sabbath, (another) Sabbath, and (a third) Sabbath, then what? Do we throw the first Sabbath in with Thursday and Friday, and one has declared it dangerous for all days? Or is it perhaps that we throw the first Sabbath in with the (other) Sabbaths, and one has declared it dangerous on Sabbaths? It must stand (unresolved). – BT Bava Kamma 37b

Elizabeth Alexander posits that the unsolvable problem – any argument ending with the word *teiku* – is academic in nature and was used pedagogically to teach rabbinic thinking: in the words of Louis Jacobs, "as a semi-humourous intellectual exercise." The point is not really to answer the question, nor even to establish that the question lacks an answer, but rather to stimulate creative thinking and analysis.[22] That is not a bad theory for the present case.

Then there are sexually inappropriate animals, and wild beasts guilty of capital crimes.

הָרוֹבֵעַ וְהַנִּרְבָּע, בְּעֶשְׂרִים וּשְׁלֹשָׁה... שׁוֹר הַנִּסְקָל, בְּעֶשְׂרִים וּשְׁלֹשָׁה... הַזְּאֵב וְהָאֲרִי, הַדֹּב וְהַנָּמֵר וְהַבַּרְדְּלָס וְהַנָּחָשׁ, מִיתָתָן בְּעֶשְׂרִים וּשְׁלֹשָׁה. רַבִּי אֱלִיעֶזֶר אוֹמֵר, כָּל הַקּוֹדֵם לְהָרְגָן, זָכָה. רַבִּי עֲקִיבָא אוֹמֵר, מִיתָתָן בְּעֶשְׂרִים וּשְׁלֹשָׁה.

The animal performing or receiving a forbidden sexual act (is judged by) twenty-three... The ox to be stoned (is judged by) twenty-three... The wolf and the lion, the bear and the tiger and the leopard and the snake, their capital case (is judged by) twenty-three. Rabbi Eliezer says, Whoever kills them first is justified. Rabbi Akiva says, Their capital case (is judged by) twenty-three. – M. Sanhedrin 1:4

In this instance we have vicious animals behaving viciously, no surprise. The problem is not that the species don't exist, but that the recommended human response does not exist: no one can cross-examine an animal. This case, then, is another test of halachic categories, but a deliberately silly one. I think what we are dealing with here is a bit of rabbinic self-parody.

22. Elizabeth Shanks Alexander. *Transmitting Mishnah: The Shaping Influence of Oral Tradition.* New York: Cambridge University Press, 2006. Pp. 186-8. The Jacobs quote appears on p. 187.

Overlapping Species

A couple of *mishnayot* raise the science-fiction-like prospect of animals spawning other kinds of animals.

> פָּרָה שֶׁיָּלְדָה כְּמִין חֲמוֹר, וַחֲמוֹר שֶׁיָּלְדָה כְּמִין סוּס... בְּהֵמָה טְהוֹרָה שֶׁיָּלְדָה כְּמִין בְּהֵמָה טְמֵאָה, מֻתָּר בַּאֲכִילָה. וּטְמֵאָה שֶׁיָּלְדָה כְּמִין בְּהֵמָה טְהוֹרָה, אָסוּר בַּאֲכִילָה.
>
> A cow that gave birth to a kind of donkey, or a donkey that gave birth to a kind of horse, is exempt from the law of the firstling... Clean livestock that gave birth to an unclean kind of livestock, (the offspring) may be eaten; but unclean livestock that gave birth to a clean kind of livestock, (the offspring) must not be eaten. – M. B'chorot 1:2

The g'mara adds another layer of complexity:

> פָּרָה שֶׁיָּלְדָה מִין סוּס, מָהוּ? הָכָא וַדַּאי הָא טְהוֹרָה וְהָא טְמֵאָה, הָא בַּת מִיקְּדָּשׁ בִּבְכוֹרָה וְהָא לֹא בַּת מִיקְּדָּשׁ בִּבְכוֹרָה. אוֹ דִלְמָא סִימָנִין מִילְּתָא הִיא? תָּא שְׁמַע: בְּהֵמָה טְהוֹרָה שֶׁיָּלְדָה מִין בְּהֵמָה טְמֵאָה פְּטוּרָה מִן הַבְּכוֹרָה, אִם יֵשׁ בּוֹ מִקְצָת סִימָנִין חַייֶבֶת בִּבְכוֹרָה. מַאי לַאו, אֲפִי' פָּרָה שֶׁיָּלְדָה מִין סוּס? לֹא, פָּרָה שֶׁיָּלְדָה מִין חֲמוֹר.
>
> What about a cow that gave birth to a kind of horse? Surely this is a clean animal and that is an unclean animal, this is an animal subject to the law of the firstling and that is an animal not subject to the law of the firstling. Or perhaps it is a matter of resemblances? Come and hear: clean livestock that gave birth to a kind of unclean livestock is exempt from the law of the firstling: but if it has any resemblances, it is obligated by the law of the firstling. What, not a cow that gave birth to a kind of horse? No, a cow that gave birth to a kind of donkey. – BT B'chorot 6a

Where sheep are concerned, there is a more pressing halachic problem: *sha'atnez*, prohibited mixing of fabrics.

> רָחֵל שֶׁיָּלְדָה כְּמִין עֵז, וְעֵז שֶׁיָּלְדָה כְּמִין רָחֵל, פָּטוּר מִן הַבְּכוֹרָה.
>
> A sheep that gave birth to a kind of goat, or a goat that gave birth to a kind of sheep, is exempt from the law of the firstling. – M. B'chorot 2:5

> אָמַר רַבִּי אָחָא בַּר יַעֲקֹב, הַכֹּל מוֹדִים דְּאֵין לוֹקִין עַל צַמְרוֹ מִשּׁוּם כִּלְאַיִם. שֶׁנֶּאֱמַר, לֹא תִלְבַּשׁ שַׁעַטְנֵז. מַה פִּשְׁתָּן שֶׁלֹּא נִשְׁתַּנָּה, אַף צֶמֶר שֶׁלֹּא נִשְׁתַּנָּה.
>
> Said Rabbi Acha bar Jacob, Everyone admits that we do not punish for mingling fabrics with the wool (of a sheep born of a goat). As it is said, "You shall not wear mixed fabric, (wool and linen together," Deut. 22:11). As it means linen with no irregularity, so it means wool with no irregularity. – BT B'chorot 17a

Still more alarming is the possibility of *people* spawning animals.

אֵיזֶהוּ בְּכוֹר לְנַחֲלָה וְאֵינוֹ בְכוֹר לַכְּהֻנָּה, הַבָּא אַחַר הַנְּפָלִים שֶׁיָּצָא רֹאשׁוֹ חַי, וּבֵן תִּשְׁעָה שֶׁיָּצָא רֹאשׁוֹ מֵת, וְהַמַּפֶּלֶת כְּמִין בְּהֵמָה חַיָּה וָעוֹף, דִּבְרֵי רַבִּי מֵאִיר. וַחֲכָמִים אוֹמְרִים, עַד שֶׁיִּהְיֶה בּוֹ מִצּוּרַת הָאָדָם.
Which is a firstborn for inheritance but not a firstborn for the priesthood? One born after a miscarriage that came out alive, or (after) a stillbirth, or (even after) a miscarriage that is a kind of livestock, beast, or bird: so says Rabbi Me'ir. But the sages say, only if it has a human form. – M. B'chorot 8:1

The corresponding g'mara (BT B'chorot 46b) strengthens the connection between people and animals, drawing an analogy between two *mishnayot*, one dealing with the birth of animals and the other dealing with the birth of humans.

בְּהֵמָה הַמַּקְשָׁה לִילֵד... הוֹצִיא אֶת רֹאשׁוֹ, אַף עַל פִּי שֶׁהֶחֱזִירוֹ, הֲרֵי זֶה כְּיָלוּד.
Livestock giving birth with difficulty... *Once (the young) puts its head out*, even if it pulls back, it is considered born. – M. Chullin 4:1

הַמַּפֶּלֶת... יָצָא מְחֻתָּךְ אוֹ מְסֹרָס, מִשֶּׁיָּצָא רֻבּוֹ, הֲרֵי הוּא כַּיָּלוּד. יָצָא כְּדַרְכּוֹ, עַד שֶׁיֵּצֵא רֹב רֹאשׁוֹ. וְאֵיזֶהוּ רֹב רֹאשׁוֹ, מִשֶּׁתֵּצֵא פַּדַּחְתּוֹ.
The woman giving birth... If (the baby) comes out in pieces or abnormal, it is considered born when most of it has come out. If it comes out normal, it is considered born *when it puts out most of its head*. What is "most of its head"? When it puts out its forehead. – M. Niddah 3:5

Similar issues come up in M. Kritot 1:3 and 1:5, with the focus on postpartum sacrifices. On the other hand, tractate Niddah raises theological implications.

הַמַּפֶּלֶת כְּמִין דָּגִים, חֲגָבִים, שְׁקָצִים, וּרְמָשִׂים, אִם יֵשׁ עִמָּהֶם דָּם, טְמֵאָה. וְאִם לָאו, טְהוֹרָה. הַמַּפֶּלֶת מִין בְּהֵמָה, חַיָּה וָעוֹף, בֵּין טְמֵאִין בֵּין טְהוֹרִים, אִם זָכָר, תֵּשֵׁב לְזָכָר. וְאִם נְקֵבָה, תֵּשֵׁב לִנְקֵבָה. וְאִם אֵין יָדוּעַ, תֵּשֵׁב לְזָכָר וְלִנְקֵבָה, דִּבְרֵי רַבִּי מֵאִיר. וַחֲכָמִים אוֹמְרִים, כֹּל שֶׁאֵין בּוֹ מִצּוּרַת אָדָם, אֵינוֹ וָלָד.
One who miscarries a kind of fish, locusts, reptiles, or insects, if there is blood with it, she is unclean. And if not, she is clean. One who miscarries a kind of livestock, beast or bird, whether unclean or clean, if male, she sits for (purification after bearing) a male. And if female, she sits for a female. And if (the sex) is unknown, she sits for a male *and* for a female: so says Rabbi Me'ir. But the sages say, What does not have a human form is not a baby. – M. Niddah 3:2

אֶלָּא מֵעַתָּה, הַמַּפֶּלֶת דְּמוּת תַּנִּין תְּהֵא אִמּוֹ טְמֵאָה לֵידָה הוֹאִיל וְנֶאֱמַר בּוֹ יְצִירָה כְּאָדָם, שֶׁנֶּאֱמַר וַיִּבְרָא אֱלֹהִים אֶת הַתַּנִּינִם הַגְּדֹלִים.
But now, a woman who miscarries a kind of sea monster, let its mother be impure for childbirth (as for a human baby), because its formation was phrased like that of humanity: as it is said, "And God *created* the great sea monsters" (Gen. 1:21; the verb "created" is used only for the sea monsters and for humanity: other animals are "made" or "brought forth"). – BT Niddah 22b

People have a special affinity with sea monsters! Who knew? But the bird/human analogy resurfaces later in the *sugya*.

בְּעָא מִינֵּיהּ רַב אָדָא בַּר אַהֲבָה מֵאַבַּיֵי, לְרַבִּי מֵאִיר דַּאֲמַר בְּהֵמָה בְּמֵעֵי אִשָּׁה, וְלַד מַעֲלֶה הוּא, אָדָם בְּמֵעֵי בְּהֵמָה מַאי? לְמַאי נָפְקָא מִינֵּיהּ? לְאִשְׁתָּרוֹיֵי בַּאֲכִילָה. וְתִפְשׁוֹט לֵיהּ מֵהָא דְּרַ' יוֹחָנָן, דְּאָ"ר יוֹחָנָן, הַשּׁוֹחֵט אֶת הַבְּהֵמָה וּמָצָא בָּהּ דְּמוּת יוֹנָה, אֲסוּרָה בַּאֲכִילָה.

Rav Ada bar Ahavah asked Abbaye, For Rabbi Me'ir who said livestock in the belly of a woman is a valid baby, what about a human in the belly of livestock? What difference does it make? That one may eat it (the livestock, presumably). But you can deduce it from R. Johanan: for R. Johanan said, One who slaughters livestock and finds in it the semblance of a dove, it may not be eaten. – BT Niddah 23b

אָמַר רַב יְהוּדָה אָמַר שְׁמוּאֵל, הַמַּפֶּלֶת דְּמוּת לִילִית, אִמּוֹ טְמֵאָה לֵידָה. וָלָד הוּא, אֶלָּא שֶׁיֵּשׁ לוֹ כְּנָפַיִם. תנ"ה, א"ר יוֹסֵי, מַעֲשֶׂה דְּסִימוֹנִי בְּאַחַת שֶׁהִפִּילָה דְּמוּת לִילִית, וּבָא מַעֲשֶׂה לִפְנֵי חֲכָמִים, וְאָמְרוּ וָלָד הוּא אֶלָּא שֶׁיֵּשׁ לוֹ כְּנָפַיִם.

Rav Judah said Samuel said, The woman who miscarries the semblance of an owl, its mother is impure for childbirth. It is a baby, but it has wings. It was also taught thus: Rabbi Yosei said, Once in Simoni a woman miscarried the semblance of an owl, and the matter came before the sages: and they said it was a baby, but it had wings. – BT Niddah 24b

No doubt there are mutations and gestational anomalies that might cause offspring or a human fetus to resemble a different species, but they are hardly common, and the cases discussed by the rabbis must be vanishingly rare. I think the sages' agenda here is to hint that the boundaries between species are porous. It is the kind of thing that could not be stated openly, as it has the potential to destabilize *halachah* on many different points. But the rabbis could hardly fail to notice that every familiar animal has a mouth, two eyes, two ears, four limbs, a brain, a heart, blood. How different is a goat, really, from a sheep – or a human?

Summary

Why do the sages dwell on animals that blur legal categories? How can they imagine animals dutifully obeying or brazenly violating *halachah*? And what of people giving birth to animals or vice versa?

Jewish law undermined by ambiguous species identification – is the *tachash* clean or unclean, do constraints on wool apply to the hair of a sheeplike goat – is best understood as a test of halachic categories, an effort to understand (in an obviously unlikely case) just how far this or

that rule extends. It also seems a tacit acknowledgment by the rabbis that the ritual law is irrational. By probing its extremities, the sages spotlight its built-in absurdity: and if Louis Jacobs is correct, they do so at least partly with tongue in cheek. Adin Steinsaltz quotes the Talmudic maxim דָּנִים אֶפְשָׁר מִשֶּׁאִי אֶפְשָׁר, *they judge the possible from the impossible*[23]: the fantastic is invoked to shed light on the ordinary. Steinsaltz adds that the sages did not trouble to distinguish the important from the unimportant, or the practical from the impractical. In the last analysis, it's all Torah.[24]

As discussed earlier, the Talmud's animals with attitude – bad or good – are surely metaphors for human beings. I refer to animals whose existence is normal, but whose circumstances or behavior are wildly abnormal: *why speak of them unless they represent something else*. There are, of course, Biblical and rabbinic texts in which animals are rather clearly figures of people.

> וְגָר זְאֵב עִם־כֶּבֶשׂ וְנָמֵר עִם־גְּדִי יִרְבָּץ ... וְאַרְיֵה כַּבָּקָר יֹאכַל־תֶּבֶן.
> The wolf (= cruel person) shall dwell with the lamb (= vulnerable person), and the leopard (= cruel person) shall lie down with the kid (= vulnerable person) ... and the lion (= cruel person) shall eat straw like cattle (= vulnerable persons). – Isa. 11:6-7

> וֱהֵוִי זָנָב לָאֲרָיוֹת, וְאַל תְּהִי רֹאשׁ לַשּׁוּעָלִים.
> Be a tail to lions (= humble among great persons), and do not be a head to foxes (= exalted among lowly persons).[25] – M. Avot 4:15

And certainly:

> אָמַר רַבִּי יוֹחָנָן, אִלְמָלֵא לֹא נִיתְּנָה תּוֹרָה הָיִינוּ לְמֵידִין צְנִיעוּת מֵחָתוּל, וְגָזֵל מִנְּמָלָה, וַעֲרָיוֹת מִיּוֹנָה.
> דֶּרֶךְ אֶרֶץ מִתַּרְנְגוֹל, שֶׁמְּפַיֵּיס וְאַחַר כָּךְ בּוֹעֵל.
> Rabbi Johanan said: If the Torah had not been given, we would learn modesty from the cat, (avoidance of) robbery from the ant, and (avoidance of) adultery from the dove. (We would learn) politeness from the rooster, who woos and (only) afterward mates. – BT Eruvin 100b

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23. BT Sukkah 50b, Z'vachim 98a, M'nachot 83a, Niddah 37b.
24. Adin Steinsaltz. *The Essential Talmud*, transl. Chaya Galai. New York: Basic Books, 1976. Pp. 228, 230.
25. The equivalent American expression, *a little fish in a big pond*, typically makes the opposite point: better to be exalted among the lowly.

The rabbis use animals to teach about people because it is traditional, because it is colorful, because it is natural in an agrarian society where one sees a variety of animals every day. Besides, the zoological dichotomies of the rabbis – wild and tame, clean and unclean – lend themselves to metaphorical use for the classification of human types. For the examples in this chapter, the lamb and the dove (clean species) symbolize good persons; the mouse and the wolf (unclean species) symbolize bad persons.[26]

Humans born of animals, or raised by animals, occur in Greco-Roman and other mythologies, and make memorable stories: but this material seems marginal in the Talmud. Most of the cases discussed above are the other way around: animals born of humans. Can we believe in the terms of the discussion? Modern readers might say: But for a couple of different turns on the evolutionary highway, we might be animals or they might be us. Obviously, the rabbis wouldn't have phrased it that way. But they could not miss the many commonalities between people and animals. I think the rabbis are playing with the notion that the distinction between people and animals is really quite tenuous. In other words, the rabbis are saying that people are animals. And of course they are right.

26. The wicked ox, a clean species, breaks the pattern (unless its sin is inadvertent).

III. I've Told You a Hundred Times

Overview

One of the Talmud's more peculiar features is the proliferation of numbers that are too big for the job. There are, of course, improbably large numbers in the Bible, such as:

וַיִּהְיוּ כָּל־יְמֵי מְתוּשֶׁלַח תְּשַׁע וְשִׁשִּׁים שָׁנָה וּתְשַׁע מֵאוֹת שָׁנָה וַיָּמֹת.
And all the days of Methuselah were nine hundred sixty-nine years: and he died. – Gen. 5:27

But the Bible's oversize numbers do not occur in *commandments*. When the Talmud imagines a hundred occurrences of some unusual event, or a thousand pieces of some rare commodity, what are the rabbis trying to say? Are they just exaggerating? Are they drawing attention to an especially important topic? Are they hinting at some distinctive legal category?

We would do well to consider the universal cultural context of the discussion. Numbers have never been a purely pragmatic concept. Humanity has always been fascinated with thematic numbers (e.g. 4 cups / questions / children at the Passover seder); with lucky numbers (e.g. Judaism's 18 = life); and with mythic numbers (e.g. Judaism's 613 as the count of commandments). We moderns have more use for giant quantities than the ancients did: the world now has billions of people; the nation is now trillions of dollars in debt. Yet we ourselves cannot resist inventing an utterly useless number: the googol, defined as 10 to the 100th power. There are not a googol of anything, even atoms in the universe, even seconds since time began. Why have we named what does not exist?

God's Glory

In the same way, rabbinic literature often embraces numbers too big for the job. Take *birkat ha-mazon*, the grace after meals. The Mishnah says:

> כֵּיצַד מְזַמְּנִין, בִּשְׁלֹשָׁה אוֹמֵר נְבָרֵךְ... בַּעֲשָׂרָה, אוֹמֵר נְבָרֵךְ לֵאלֹהֵינוּ... בְּמֵאָה אוֹמֵר, נְבָרֵךְ לַיְיָ אֱלֹהֵינוּ... בְּאֶלֶף, אוֹמֵר נְבָרֵךְ לַיְיָ אֱלֹהֵינוּ אֱלֹהֵי יִשְׂרָאֵל... בְּרִבּוֹא, אוֹמֵר, נְבָרֵךְ לַיְיָ אֱלֹהֵינוּ אֱלֹהֵי יִשְׂרָאֵל אֱלֹהֵי הַצְּבָאוֹת יוֹשֵׁב הַכְּרוּבִים עַל הַמָּזוֹן שֶׁאָכַלְנוּ.
>
> How do you invite (diners to bless the meal just eaten)? With three (diners) you say, Let us bless... With ten you say, Let us bless God... With a hundred you say, Let us bless the Eternal our God... With a thousand you say, Let us bless the Eternal our God, God of Israel... With ten thousand you say, Let us bless the Eternal our God, God of Israel, God of legions sitting among the cherubim, for the food that we have eaten. – M. B'rachot 7:3

Standard prayerbooks explain the verbiage required with three and with ten, but never bother with the higher numbers.[27] How often do we have 10,000 dinner guests? Who will count to make sure there are not just 9,999?

We find a less flamboyant abundance with regard to the sifting of flour.

> הָעֹמֶר הָיָה מֻנָּפָה בִּשְׁלֹשׁ עֶשְׂרֵה נָפָה.
>
> The *omer* (the daily springtime grain offering) was sifted in thirteen sieves. – M. M'nachot 6:7

> נְתָנוּהוּ בָּרֵחַיִם שֶׁל גָּרוֹסוֹת, וְהוֹצִיאוּ מִמֶּנּוּ עִשָּׂרוֹן שֶׁהוּא מֻנָּפָה מִשְּׁלֹשׁ עֶשְׂרֵה נָפָה.
>
> And they put it in a gristmill, and they took out a half gallon (lit. "a tenth [of an ephah]") of it which was sifted from thirteen sieves. – M. M'nachot 10:4

> תָּנוּ רַבָּנָן, בְּדַקָּה בְּגַסָּה, בְּדַקָּה בְּגַסָּה. ר' שִׁמְעוֹן בֶּן אֶלְעָזָר אוֹמֵר, שְׁלֹשׁ עֶשְׂרֵה נָפוֹת הָיוּ בַּמִּקְדָּשׁ, זוֹ לְמַעְלָה מִזּוֹ וְזוֹ לְמַעְלָה מִזּוֹ, עֶלְיוֹנָה קוֹלֶטֶת סוּבִין, תַּחְתּוֹנָה קוֹלֶטֶת סוֹלֶת.
>
> Our rabbis taught: In a fine one, in a coarse one, in a fine one, in a coarse one. R. Simeon ben Eleazar says: There were thirteen sieves in the sanctuary, one above another and one above another; the highest contained bran, the lowest contained fine flour. – BT M'nachot 76b

I seriously doubt that the real-life Temple featured a tower of thirteen sieves, although thirteen is not an enormous number in other contexts. At least the Talmud doesn't claim there were 100 or 1000 sieves!

I might add that thirteen is by no means an unlucky number in Judaism. Just the

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27. Rava, citing Akiva, argues that the formula for ten is acceptable for the higher numbers too (BT B'rachot 50a).

opposite. There are plenty of auspicious references to the number thirteen in rabbinic literature, such as the following.

> בֶּן שְׁלֹשׁ עֶשְׂרֵה לַמִּצְוֹת...
> Thirteen years old is (when you become responsible) for the commandments (*bar mitzvah*)... – M. Avot 5:21

> רַבִּי יִשְׁמָעֵאל אוֹמֵר, בִּשְׁלֹשׁ עֶשְׂרֵה מִדּוֹת הַתּוֹרָה נִדְרֶשֶׁת בָּהֶן.
> Rabbi Ishmael says, There are thirteen rules by which the Torah is interpreted. – Sifra, introduction

> אָמַר רַב יְהוּדָה, בְּרִית כְּרוּתָה לִשְׁלֹשׁ עֶשְׂרֵה מִדּוֹת שֶׁאֵינָן חוֹזְרוֹת רֵיקָם, שֶׁנֶּאֱמַר, הִנֵּה אָנֹכִי כֹּרֵת בְּרִית.
> Rav Judah said, A covenant was made with the Thirteen Attributes (the extended description of God in Ex. 34:6-7), that they would not return in vain (i.e. their recitation would not fail to effect atonement), as it is said, "Here I make a covenant" (Ex. 34:10). – BT Rosh ha-Shanah 17b

In the Middle Ages, Maimonides' Thirteen Articles of Faith continues the pattern.

The esoteric Judaism called *kabbalah* shows a distinct fondness for large numbers: God's secret name has 216 letters,[28] God's astral body is 2,360,000 leagues tall.[29] Even in the Bible we read:

> רֶכֶב אֱלֹהִים רִבֹּתַיִם אַלְפֵי שִׁנְאָן...
> God's chariots are twenty thousand, thousands of thousands... – Ps. 68:18

Sums of money may similarly exceed bounds of reason. The first time we hear of David buying the land for the future Temple, the price is moderate:

> וַיֹּאמֶר הַמֶּלֶךְ אֶל־אַרַוְנָה לֹא כִי־קָנֹה אֶקְנֶה מֵאוֹתְךָ בִּמְחִיר וְלֹא אַעֲלֶה לַיהוָה אֱלֹהַי עֹלוֹת חִנָּם וַיִּקֶן דָּוִד אֶת־הַגֹּרֶן וְאֶת־הַבָּקָר בְּכֶסֶף שְׁקָלִים חֲמִשִּׁים.
> And the king said to Araunah, No, for I will surely buy it from you for a price, and I will not make burnt offerings to the Eternal my God without payment: and David bought the threshing floor and the cattle for fifty shekels of silver. – II Sam. 24:24

But when the same story is retold centuries later, the cost has increased astronomically:

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28. Gershom Scholem. *Kabbalah.* Jerusalem: Keter Publishing House, 1974. P. 34.
29. Scholem, p. 16.

וַיֹּאמֶר הַמֶּלֶךְ דָּוִיד לְאָרְנָן לֹא כִּי־קָנֹה אֶקְנֶה בְּכֶסֶף מָלֵא כִּי לֹא־אֶשָּׂא אֲשֶׁר־לְךָ לַיהוָה וְהַעֲלוֹת עוֹלָה חִנָּם. וַיִּתֵּן דָּוִיד לְאָרְנָן בַּמָּקוֹם שִׁקְלֵי זָהָב מִשְׁקַל שֵׁשׁ מֵאוֹת.

And King David said to Ornan, No, for I will surely buy it for full money: for I will not take what is yours for the Eternal, nor make burnt offerings without payment. And David gave Ornan for the place six hundred shekels' weight of gold. – I Chron. 21:24-5

God's house deserves to be the most expensive real estate in Judah.

Somewhat similar is the Talmudic story of Rabbi Akiva's legions of students.

ר"ע רָעְיָא דְּבֶן כַּלְבָּא שָׁבוּעַ הֲוָה. חַזְיַתֵּיהּ בְּרַתֵּיהּ דַּהֲוָה צְנִיעַ וּמַעֲלִי, אֲמַרָה לֵיהּ, אִי מְקַדַּשְׁנָא לָךְ אָזְלַתְּ לְבֵי רַבִּי? אֲמַר לָהּ, אִין... אָזֵיל יָתֵיב תְּרֵי סְרֵי שְׁנִין בְּבֵי רַב. כִּי אֲתָא, אַיְיתֵי בַּהֲדֵיהּ תְּרֵי סְרֵי אַלְפֵי תַּלְמִידֵי. שַׁמְעֵיהּ לְהַהוּא סָבָא דְּקָאֲמַר לַהּ, עַד כַּמָּה קָא מְדַבְּרַתְּ אַלְמָנוּת חַיִּים? אֲמַרָה לֵיהּ, אִי לְדִידִי צַיְיתַ, יָתֵיב תְּרֵי סְרֵי שְׁנֵי אַחְרִינֵי. אֲמַר, בִּרְשׁוּת קָא עָבֵידְנָא. הֲדַר אָזֵיל וִיתֵיב תְּרֵי סְרֵי שְׁנֵי אַחְרִינֵי בְּבֵי רַב. כִּי אֲתָא, אַיְיתֵי בַּהֲדֵיהּ עֶשְׂרִין וְאַרְבְּעָה אַלְפֵי תַּלְמִידֵי.

Rabbi Akiva was a shepherd of Ben Kalba Savua. (The boss)'s daughter saw that (Akiva) was modest and righteous, and asked him, If I am married to you, will you go to school? He told her, Yes... He went and studied for twelve years in school. When he came (home), he brought with him 12,000 students. He heard an old man ask her, How long will you lead a life of widowhood? She told (the old man), If (Akiva) listened to me, he would study another twelve years. (Akiva) said, I am doing it with permission. He went back and studied for another twelve years in school. When he came (home), he brought with him 24,000 students. – BT K'tubbot 62b-63a

Other religions also deploy large numbers in a manner calculated to amaze the listener: Buddha, for example, is supposed to have billions of disciples and his throne is to last trillions of years.[30] A version of grace after meals for a party of 10,000 is like Akiva's 24,000 students or Buddha's billions of attendants: a number meant to express our religious awe.

By the same token, thirteen sieves in the Temple suggest special holiness. The Temple also boasted thirteen curtains (BT Yoma 54a); thirteen offering boxes (BT T'murah 23b); and thirteen tables (BT Tamid 31b). As noted above, thirteen has favorable connotations in Judaism, and there is a suggestion of balance and perfection when each type of furnishing is present in the same quantity. As to why they didn't choose an even higher figure: in this case the rabbis probably thought it best not to strain credulity too far. This factoid is putatively historical, unlike the 10,000 dinner guests, which no one pretends ever existed.

30. Karl Menninger. *Number Words and Number Symbols: A Cultural History of Numbers*, transl. Paul Broneer. Cambridge, MA: M.I.T. Press, 1969. P. 136.

The Sanctity of the Sabbath

As large numbers are marshaled to magnify God, so too large numbers are invoked to exalt Judaism's most sacred day: the Sabbath. Take the dimensions of the *eruv*, the Sabbath boundary.[31] It is fascinating to learn that the *eruv* may be a considerable distance above or below street level.

> נִתָּנוֹ בַבּוֹר, אֲפִלּוּ עָמוֹק מֵאָה אַמָּה, עֵרוּבוֹ עֵרוּב. נִתָּנוֹ בְּרֹאשׁ הַקָּנֶה אוֹ בְּרֹאשׁ הַקֶּנְדָּס בִּזְמַן שֶׁהוּא תָלוּשׁ וְנָעוּץ, אֲפִלּוּ גָּבוֹהַּ מֵאָה אַמָּה, הֲרֵי זֶה עֵרוּב.
>
> If one put it in a cistern, even a hundred cubits deep, one's *eruv* would be an *eruv*. If one put it on top of a stick or on top of a pole when it was torn off (the tree) and stuck in (the ground), even a hundred cubits high, here, this is an *eruv*. – M. Eruvin 3:3

Perhaps this *eruv*'s improbable height or depth, rendering it even more inconspicuous than the usual kind, broadcasts that the *eruv* is a legal fiction. Four pages of g'mara identify a number of conditions and complications, but the bottom line is:

> רְשׁוּת הַיָּחִיד עוֹלָה עַד הָרָקִיעַ. וְכִי הֵיכִי דְּסָלְקָא לְעֵיל, הָכִי נַמִּי דְּנָחֲתָא לְתַחַת.
>
> Private property extends up to heaven. And just as it goes all the way up, so too it goes all the way down. – BT Eruvin 34b

This obviously wouldn't work nowadays. What if an airline needed your permission to fly over your house? Even within the Talmud's frame of reference, the modern reader is tempted to ask: What if the *eruv* passed beneath the continental shelf? What if it floated above the ozone layer? Presumably it wouldn't matter: it's the thought that counts. Here the mathematical excess clarifies that the *eruv*'s validity depends on intention, not visibility.[32]

Another surprising Sabbath numeral comes up in case of a fire on Saturday:

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31. The *eruv* or Sabbath boundary is a religious technicality that occasionally causes controversy. It is a marker of some kind, such as a piece of string, which surrounds a neighborhood, turning it into a nominal *private domain* within which one may carry personal articles on the Sabbath: otherwise it is forbidden to carry on the Sabbath. Though the *eruv* is generally unobtrusive, the idea of it rubs some people the wrong way.
32. Visiting New York one holiday weekend, I learned that the Upper West Side *eruv* had been breached for the Macy's Thanksgiving Day parade. Come Shabbat, an anxious congregant asked Orthodox Rabbi Ephraim Buchwald if the *eruv* had been reconnected. Buchwald said, Let's assume it has.

וְלוֹבֵשׁ כָּל מַה שֶּׁיָּכוֹל לִלְבּשׁ, וְעוֹטֶף כָּל מַה שֶּׁיָּכוֹל לַעֲטוֹף. רַבִּי יוֹסֵי אוֹמֵר, שְׁמוֹנָה עָשָׂר כֵּלִים.

And you wear as much as you can wear, and put on as much as you can put on (to save clothing without illicitly *carrying* it). Rabbi Yosei says, (Up to) eighteen articles. – M. Shabbat 16:4

וְאֵלּוּ הֵם שְׁמוֹנָה עָשָׂר כֵּלִים: מְקְטוֹרָן, אוּנְקְלִי, וּפוּנְדָּא, קַלְבּוֹס שֶׁל פִּשְׁתָּן, וְחָלוּק, וְאַפִּילְיוֹת, וּמַעֲפוֹרֶת, וּשְׁנֵי סְפַרְקִין, וּשְׁנֵי מִנְעָלִים, וּשְׁנֵי אִנְפִּילָאוֹת, וּשְׁנֵי פַּרְגָּד, וַחֲגוֹר שֶׁבְּמָתְנָיו, וְכוֹבַע שֶׁבְּרֹאשׁוֹ, וְסוּדָר שֶׁבְּצַוָּארוֹ.

And these are the eighteen articles: cloak, undershirt, and belt, linen tunic, shirt, and mantle, and apron, and a pair of trousers, and a pair of shoes, and a pair of socks, and a pair of breeches, and a girdle on one's loins, and a hat on one's head, and a scarf on one's neck. – BT Shabbat 120a

It is safe to say you would be seriously uncomfortable in eighteen garments, especially amid the heat of a conflagration. You might even be immobilized, at direct peril to your life. Is this just a bit of boasting, some foppish rabbis flaunting their sartorial variety?

My favorite Sabbath multitude is the crowd that brings a stranded child indoors on the day of rest:

הַמּוֹצֵא תְּפִלִּין, מַכְנִיסָן זוּג זוּג. רַבָּן גַּמְלִיאֵל אוֹמֵר, שְׁנַיִם שְׁנַיִם... רַבִּי שִׁמְעוֹן אוֹמֵר, נוֹתְנָן לַחֲבֵרוֹ, וְחֲבֵרוֹ לַחֲבֵרוֹ, עַד שֶׁמַּגִּיעַ לְחָצֵר הַחִיצוֹנָה. וְכֵן בְּנוֹ, נוֹתְנוֹ לַחֲבֵרוֹ, וְחֲבֵרוֹ לַחֲבֵרוֹ, אֲפִלּוּ מֵאָה.

(If) you find prayer boxes (outdoors on the Sabbath), you bring them in a pair at a time. Rabban Gamaliel says, two pairs at a time... Rabbi Simeon says, You give them to your friend, and your friend to another friend, until they arrive at the outer courtyard. And likewise your child (outdoors on the Sabbath), you give it to your friend, and your friend to another friend, even a hundred. – M. Eruvin 10:1-2

וְכֵן בְּנוֹ. בְּנוֹ מַאי בָּעֵי הָתָם? דְּבֵי מְנַשֶּׁה תְּנָא, בְּשֶׁיְּלָדַתּוּ אִמּוֹ בַּשָּׂדֶה. וּמַאי אֲפִילּוּ הֵן מֵאָה? דְּאַף עַל גַּב דְּקַשְׁיָא לֵיהּ יָדָא, אֲפִילּוּ הָכִי, הָא עָדִיפָא.

"And likewise your child." What is your child doing there? As the House of Menasseh taught, Because its mother gave birth to it in the field. And why "even a hundred"? For although it is difficult hand-to-hand, even so, this is (legally) preferable. – BT Eruvin 97b

I suppose a baby *could* be born outdoors: if, say, a pregnant woman suddenly went into labor while on a picnic. But is it likely that a hundred friends would be on hand to relay the child indoors? And who would favor the Sabbath rules over the infant's safety? The plain meaning of the passage is absurd; even an oblique reading ("Don't give birth outdoors on the Sabbath") does not make much sense.

The only plausible interpretation of all these texts is that they emphasize the holiness of

the Sabbath. In principle, the Sabbath merits an *eruv* in the most inaccessible places, the inconvenience of wearing eighteen garments at once, even an insane obstetric ordeal to safeguard its sanctity.

The Horror of Sin

Somewhat different is the use of large numbers in connection with transgression. For example, the composite sin violating many different commandments.

יֵשׁ חוֹרֵשׁ תֵּלֶם אֶחָד וְחַיָּב עָלָיו מִשּׁוּם שְׁמוֹנָה לָאוִין, הַחוֹרֵשׁ בְּשׁוֹר וַחֲמוֹר, וְהֵן מֻקְדָּשִׁים, בְּכִלְאַיִם בַּכֶּרֶם, וּבַשְּׁבִיעִית, וְיוֹם טוֹב, וְכֹהֵן וְנָזִיר בְּבֵית הַטֻּמְאָה. חֲנַנְיָא בֶּן חֲכִינַאי אוֹמֵר, אַף הַלּוֹבֵשׁ כִּלְאָיִם. אָמְרוּ לוֹ, אֵינוֹ הַשֵּׁם. אָמַר לָהֶם, אַף לֹא הַנָּזִיר הוּא הַשֵּׁם.

You can plow one furrow and be guilty of eight infractions:
1. (If) you plow with an ox and a donkey (see Deut. 22:10)
2. And they are sanctified (see Lev. 27, Num. 5:10)[33];
3. (You are planting) with mixed species (see Lev. 19:19)
4. In a vineyard (see Deut. 22:9);
5. And during the sabbatical year (see Lev. 25:4)
6. And on a holiday (see Lev. 23, Num. 28-29);
7. And you are a priest (see Lev. 21:1)
8. And a Nazirite ascetic in a graveyard (see Num. 6:6).

Chananya ben Chachinai says, Also you are wearing mixed species (see Deut. 22:11). They told him, That is off the subject (of agricultural law). He told them, The Nazirite is off the subject too. – M. Makkot 3:9

The associated g'mara explores a variety of similar combinations, such as:

וְהָתְנַן, הַמְבַשֵּׁל גִּיד בְּחָלָב בְּיוֹ"ט וַאֲכָלוֹ, לוֹקֶה חָמֵשׁ. לוֹקֶה מִשּׁוּם אוֹכֵל גִּיד, וְלוֹקֶה מִשּׁוּם מְבַשֵּׁל בְּיוֹם טוֹב שֶׁלֹּא לְצוֹרְכוֹ, וְלוֹקֶה מִשּׁוּם מְבַשֵּׁל גִּיד בְּחָלָב, וְלוֹקֶה מִשּׁוּם אוֹכֵל בָּשָׂר בְּחָלָב, מִשּׁוּם הַבְּעֵרָה.

And have(n't) we learned, If you cook the sciatic tendon in milk on a holiday and eat it, you are flogged for five (sins). Flogged for eating the sciatic tendon (see Gen. 32:32), and flogged for cooking unnecessarily on a holiday, and flogged for cooking tendon (meat) in milk, and flogged for eating meat in milk, (and) for lighting the fire. – BT Makkot 21b-22a

Similar multifaceted misdeeds turn up in M. K'ritot 3:4-6 / BT K'ritot 13b-15a. What is the agenda here? Even granting the hypothetical nature of these scenarios, it is hard to say precisely

33. Neusner interprets the use of sanctified livestock as two sins (because there are two animals) but the mixed seed in the vineyard as one sin. (Jacob Neusner. *The Mishnah: A New Translation.* New Haven: Yale University Press, 1988. P. 618.)

what they mean. Are we imagining that someone deliberately breaks as many rules as possible? Or do we expect the judges to analyze every sacrilege into the maximum number of component trespasses? It is as if virtue could be proved by wallowing in the enumeration of lapses.

While the above sin medleys are apparently deliberate, we also find large numbers in relation to accidental mixups. For example:

> כָּל הַזְּבָחִים שֶׁנִּתְעָרְבוּ בְחַטָּאוֹת הַמֵּתוֹת, אוֹ בְשׁוֹר הַנִּסְקָל, אֲפִלּוּ אֶחָד בְּרִבּוֹא, יָמוּתוּ כֻלָּם.
> All offerings, if there were mixed among them any sin offerings left to die, or an ox to be stoned, even one in ten thousand, they shall all be left to die. – M. Z'vachim 8:1

This mishnah (which goes on longer) generates nine pages of g'mara, including the following delightful examples.

> אֲמַר ר"נ אֲמַר רַבָּה בַּר אַבּוּהָ אֲמַר רַב, טַבַּעַת שֶׁל עֲבוֹדַת כּוֹכָבִים שֶׁנִּתְעָרְבָה בְּמֵאָה טַבָּעוֹת, וְנָפְלָה אַחַת מֵהֶם לַיָּם הַגָּדוֹל, הוּתְּרוּ כּוּלָּן, דְּאָמְרִינַן, הָךְ דְּנָפַל הַיְינוּ דְּאִיסּוּרָא... דְּתַנְיָא, ר' יְהוּדָה אוֹמֵר, רִימּוֹנֵי בָּאדָן אוֹסְרִין בְּכָל שֶׁהוּא, כֵּיצַד? נָפַל אֶחָד מֵהֶן לְתוֹךְ רִיבּוֹא וּמֵרִיבּוֹא לְרִיבּוֹא, אֲסוּרִין... אֲמַר ר"ל, חָבִית שֶׁל תְּרוּמָה שֶׁנִּיתְעָרְבָה בְּמֵאָה חָבִיּוֹת, וְנָפְלָה אַחַת מֵהֶן לְיַם הַמֶּלַח, הוּתְּרוּ כּוּלָּן, דְּאָמְרִינַן, הָךְ דְּנָפַל דְּאִיסּוּרָא נָפַל.
> Rav Nachman said Rabbah bar Abbuha said Rav said, A ring of idolatry that was mixed with a hundred rings, and one of them fell into the Mediterranean Sea: all of them have become permissible; as we say, The one that fell is the forbidden one... As it was taught, Rabbi Judah says, Pomegranates of Badan (picked by Samaritans) make others forbidden in all cases. How? If one of them fell among ten thousand, and one of the ten thousand among (another) ten thousand, (all) are forbidden... Resh Lakish said, A barrel of sanctified wine that was mixed with a hundred barrels, and one of them fell into the Dead Sea: all of them have become permissible; as we say, The one that fell, it is the forbidden one that fell. – BT Z'vachim 74a-b

In cases of confusion, one forbidden item causes many permitted items to become forbidden. There is a loophole for manufactured products, but not for natural ones. Or perhaps the aversion to Samaritan merchandise (provided by followers of a variant Judaism) is greater than the aversion to pagan merchandise (provided by non-Jews).

What can we make of this? It seems to me that it is the flip side of the vast numbers used to exalt God or the Sabbath. Great quantities shine a spotlight on the point being made: illegal is illegal. Or perhaps the rabbis mean that iniquity is not a matter of one sin, for there is never an

isolated sin: sins come in series. Perhaps they mean that ritual carelessness leads to ruin: it may waste ten thousand healthy young animals, twenty thousand perfectly good pomegranates. Which might have been served to the ten thousand diners in the *birkat ha-mazon* passage.

Infinity and the Law

Rabbinic marriage is rather different from the modernist understanding of the institution. For one thing, ancient couples married by enacting two separate rituals, אֵרוּסִין *commitment* and נִשּׂוּאִין *fulfillment*, which might be scheduled as much as a year apart. Of course this raises legal questions about the interval between.

> נֶדֶר וְהִיא אֵרוּסָה, נִתְגָּרְשָׁה בּוֹ בַיּוֹם, נִתְאָרְסָה בּוֹ בַיּוֹם, אֲפִלּוּ לְמֵאָה, אָבִיהָ וּבַעְלָהּ הָאַחֲרוֹן מְפֵרִין נִדָּרֶיהָ. זֶה הַכְּלָל כָּל שֶׁלֹּא יָצְאת לִרְשׁוּת עַצְמָהּ שָׁעָה אַחַת, אָבִיהָ וּבַעְלָהּ הָאַחֲרוֹן מְפֵרִין נִדָּרֶיהָ.
> If a betrothed woman took a vow, divorced that same day, became betrothed (again) that same day, even a hundred times, her father and her last husband annul her vows. This is the general rule: whoever has not gone out on her own authority for one hour, her father and her last husband annul her vows. – M. N'darim 10:3

Can we take this at face value? Even the most abused woman in Usha was never jilted a hundred times in one day (every 14.4 minutes for 24 hours). Probably this *hundred times* is rhetorical, meant to drive home the teaching that divorce emancipates a woman from her father only if both halves of the marriage process have been completed. On the other hand, maybe it means there is no limit to how many men can divorce the same woman.

Ancient marriage was also polygamous, or more exactly, *polygynous*: a husband could have many wives, but not vice versa. This too raises special difficulties, such as 100 co-wives in one extended family.

> כְּשֵׁם שֶׁצָּרַת בִּתּוֹ פְּטוּרָה, כָּךְ צָרַת צָרָתָהּ פְּטוּרָה, אֲפִלּוּ הֵן מֵאָה.
> (If a married man died childless,) just as the co-wife of his (brother's) daughter is exempt (from the levirate obligation), so also the co-wife of her co-wife is exempt, even if there are a hundred of them. – M. Y'vamot 1:2

A widow is *permitted* to marry a co-wife's uncle, yet has no levirate *obligation* to a co-wife's uncle, or to a co-wife's co-wife's uncle. It is hard to envision a hundred co-wives of co-wives; or the hundredth link in a chain of co-wives, if that is what the text means: but the rabbis do just that. Why?

In these situations I think the hundreds are trotted out to highlight the absence of a legal ceiling. It suggests a familiar aphorism:

> אֵלּוּ דְבָרִים שֶׁאֵין לָהֶם שִׁעוּר. הַפֵּאָה, וְהַבִּכּוּרִים, וְהָרָאָיוֹן, וּגְמִילוּת חֲסָדִים, וְתַלְמוּד תּוֹרָה.
> These are things that have no limit: the corner of the field (see Lev. 19:9, 23:22), and the first fruits (see Ex. 22:29, Deut. 26:2), and the pilgrimage, and deeds of mercy, and the study of Torah. – M. Pe'ah 1:1

When the rabbis say no limit, they mean no limit. A person can marry and divorce a googol spouses if they can find them: according to the rules spelled out by the Talmud, of course.

Hyperbole

Hitherto we have discussed big numbers that signified big numbers. The following case, with a plethora of false witnesses, may be different.

> בָּאוּ אֲחֵרִים וְהִזִּימוּם, בָּאוּ אֲחֵרִים וְהִזִּימוּם, אֲפִלּוּ מֵאָה, כֻּלָּם יֵהָרְגוּ.
> If other (witnesses) came and contradicted them, and still others came and contradicted *them*, even a hundred, all shall be put to death. – M. Makkot 1:5

> וּמִנַּיִן אֲפִלּוּ מֵאָה, תַּלְמוּד לוֹמַר, עֵדִים.
> And how do we know, even a hundred? Scripture says *witnesses* (plural; Deut. 17:6). – M. Makkot 1:7

> אֲמַר רָבָא, וְהוּא, שֶׁהֵעִידוּ כּוּלָּם בְּתוֹךְ כְּדֵי דִּיבּוּר. אֲמַר לֵיהּ רַב אָחָא מִדִּפְתִּי לְרַבִינָא, מִכְּדֵי תּוֹךְ כְּדֵי דִּיבּוּר הֵיכִי דָּמֵיְ כְּדֵי שְׁאֵילַת תַּלְמִיד לְרַב, מֵאָה טוּבָא הַוְוּ. אֲמַר לֵיהּ, כָּל חַד וְחַד בְּתוֹךְ כְּדֵי דִּיבּוּר שֶׁל חֲבֵירוֹ.
> Rava said, It means (a hundred witnesses) who all testified speaking continually. Rav Acha of Difti said to Ravina, How can they speak continually? (Even) when a student greets a teacher (= the briefest kind of discourse), a hundred of those is a lot! (Ravina) said to (Acha), Each speaks immediately after their colleague (but all 100 do not necessarily have a turn). – BT Makkot 6a

Unlike the *eruv* or the divorces, where one hundred denoted an indefinitely large number, in this case one hundred actually means a *smallish* number, perhaps five to ten. No one has time to take testimony from 100 witnesses. Ravina's clarification undermines the Mishnah's inflated figure. In this instance, I would argue, the large number is just a turn of phrase.

It is also likely that certain Hebrew number words originally denoted indefinite large quantities and were only later fixed in specific denominations. אֶלֶף normally means *thousand*, but it seems to mean something more like *clan* in certain cases.

> וַיֹּאמֶר אֵלָיו בִּי אֲדֹנָי בַּמֶּה אוֹשִׁיעַ אֶת־יִשְׂרָאֵל הִנֵּה אַלְפִּי הַדַּל בִּמְנַשֶּׁה וְאָנֹכִי הַצָּעִיר בְּבֵית אָבִי.
> And (Gideon) said to (the angel), Please, sir, how can I save Israel? Look, my clan is the poorest in Menasseh, and I am the youngest in my family. – Jdg. 6:15

Likewise רְבָבָה / רִבּוֹא can mean *ten thousand* or just *a great many*: the word comes from רַבִּים *many*.[34] So it is possible that some of the numerals in our ancient texts were not really numerals to the authors, but vague expressions of plenitude.

Summary

Why, then, do the rabbis insert large numbers in a text for a community of small numbers? I believe the main reason is theological: to underline God's majesty (ten thousand food blessers, thirteen Temple sieves), the Sabbath's beauty (eighteen garments, a hundred baby-tossers), or sin's ugliness (numerous broken commandments in one forbidden act, thousands of oxen or pomegranates spoiled by one intruder). But in a few situations, such as the multiplication of divorces or co-wives, profuse quantities express the absence of a statutory maximum. Once in a while, such as the proliferation of false witnesses, vast sums are only a

34. Menninger, p. 116.

figure of speech, as in the old song: "M is for the million things she gave me..."

IV. Who's Who

Overview

A typical Talmudic absurdity is the recurring rabbinic anxiety about distinguishing one person from another. I have found a dozen *mishnayot*[35] addressing improbable confusions of individuals, and doubtless there are more. This issue, with its intimation that people really are interchangeable (and individual effort therefore meaningless), is a microcosm of halachah at its most disturbing.

Why do the rabbis fixate on nightmare scenarios? Modern scholars have posited a number of reasons for the tradition's preoccupation with the bizarre. Leib Moscovitz understands Talmudic improbabilities as a *legal fiction* serving to elucidate subtle points, and possibly also to entertain the reader.[36] David Kraemer argues that the sages saw learning for its own sake as a *spiritual exercise*: one earns salvation by studying any kind of Torah, even if it has no imaginable application.[37] Jacob Neusner believes the rabbis embraced a *theology of abstraction* which is frequently at odds with the evidence of everyday life, but which is truer than what our eyes and ears tell us: this theology is often best illustrated by problems that seem irrational to the practical mind.[38]

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35. Y'vamot 11:3; Gittin 3:1, 4:2, and 9:5; Kiddushin 3:7 and 3:9; Bava Batra 10:7; B'chorot 8:1, 8:5, and 8:6; K'ritot 4:1 and 4:2.
36. Leib Moscovitz. *Talmudic Reasoning: From Casuistics to Conceptualization.* Tübingen: Mohr Siebeck, 2002. Pp. 164-188.
37. David Kraemer. *The Mind of the Talmud: An Intellectual History of the Bavli.* New York: Oxford University Press, 1990. Pp. 159-169. Kraemer means not only Torah as written, but Torah in every possible interpretation: "we engage in Torah study, with proper intent, virtually without limitation (to make sense of every detail of Torah is a potentially infinite task) ... Torah study for its own sake now means for the sake of open-ended study ... its purpose need only be the study of the divine (or divinely sanctioned rabbinic) message," p. 168.
38. Jacob Neusner. *The Theology of the Oral Torah.* Montreal: McGill-Queen's University Press, 1999. Pp. 191-238.

The Problem of Who's Who

No doubt people were sometimes confused in rabbinic times as in any other age. There were no picture IDs or card keys in the era of the sages, no social security numbers or fingerprinting; the inventory of personal names was more limited, and everyone had namesakes. On the other hand, the population was smaller and less mobile: surely society was not so anonymous as today. Was there really a danger that a merchant's debtors (Bava Batra 10:7) or a maiden's suitors (Kiddushin 3:7) could not be differentiated from each other? Was there really a danger that five baby boys would get confused, grow up to marry and die childless, and leave five widows with overlapping levirate obligations (Y'vamot 11:3)? Was there really a danger that a divorcing couple could not be distinguished from other potential divorcees with the same names (Gittin 3:1, 9:5)? I feel sure that these mishaps were nonexistent, or vanishingly rare, in the real life of the Ancient Near East. They are in the text for some reason other than the pragmatic.

Legal Fictions

Moscovitz would say that the scenarios described above are legal fictions, of the sort that exist in many juridical traditions, and that they help the reader to understand the underlying principles of the system. Moscovitz divides legal fictions into various categories: "redefinitional" (overt) and "implicit" (covert), "conceptual" (theoretical) and "functionalist" (practical), "neglective" (pretending something doesn't exist) and "extensional" (pretending it does), etc. In his terms, the problem of who's who is mostly a neglective problem: the rabbis fantasize the absence of evidence distinguishing one person from another. But this only leads to a fuller discussion of the challenge and a deeper appreciation of the solution. Consider the problem of unidentifiable debtors.

> שְׁנַיִם שֶׁהָיוּ בְּעִיר אַחַת, שֵׁם אֶחָד יוֹסֵף בֶּן שִׁמְעוֹן וְשֵׁם אַחֵר יוֹסֵף בֶּן שִׁמְעוֹן, אֵין יְכוֹלִין לְהוֹצִיא שְׁטָר חוֹב זֶה עַל זֶה וְלֹא אַחֵר יָכוֹל לְהוֹצִיא עֲלֵיהֶן שְׁטָר חוֹב.
>
> (If) two men lived in a town, one named Joseph son of Simeon and the other (also) named Joseph son of Simeon, they cannot sue each other for debt, nor can another sue them for debt. – M. Bava Batra 10:7

This sounds inconvenient, especially in a society where there were probably many namesakes. But the mishnah goes on to say:

כֵּיצַד יַעֲשׂוּ, יְשַׁלֵּשׁוּ. וְאִם הָיוּ מְשֻׁלָּשִׁים, יִכְתְּבוּ סִימָן. וְאִם הָיוּ מְסֻמָּנִין, יִכְתְּבוּ כֹהֵן.

How do they proceed? They name the third generation (e.g. Joseph son of Simeon son of Reuben). And if they are named (alike) to the third generation, they describe them. And if they are described (alike), they write "priest" (presumably one is a priest and the other is not). – Ibid.

The g'mara suggests another way to reduce confusion.

תַּנָּא בָּרָא סָבַר: אֵין כּוֹתְבִין שְׁטָר לְלֹוֶה עַד שֶׁיְּהֵא מַלְוֶה עִמּוֹ.

An external Tanna argued: They do not write a document for a borrower until the lender is with him (presumably so there is at least one witness as to who borrowed from whom). – BT Bava Batra 173a

It is the same with the confusion of suitors. The mishnah says:

קִדַּשְׁתִּי אֶת בִּתִּי וְאֵינִי יוֹדֵעַ לְמִי קִדַּשְׁתִּיהָ... זֶה אָמַר אֲנִי קִדַּשְׁתִּיהָ וְזֶה אָמַר אֲנִי קִדַּשְׁתִּיהָ, שְׁנֵיהֶם נוֹתְנִים גֵּט.

(Suppose someone said,) I married off my daughter, but I don't know to whom I married her... (If) one man says, I married her, and another man says, *I* married her, both give her a divorce. – M. Kiddushin 3:7

Not a happy outcome. But the text continues:

וְאִם רָצוּ, אֶחָד נוֹתֵן גֵּט וְאֶחָד כּוֹנֵס.

Or, if they wished, one gives her a divorce and one fulfills the marriage. – Ibid.

That is, if one suitor likes the girl and the other one doesn't, it is the willing suitor who should consummate the marriage. And the g'mara reminds us that the situation might be simpler:

תַּנְיָא כְּוָותֵיהּ דְּרַב אַסִי: קִידַּשְׁתִּי אֶת בִּתִּי וְאֵינִי יוֹדֵעַ לְמִי קִידַּשְׁתִּיהָ, וּבָא אֶחָד וְאָמַר קִידַּשְׁתִּיהָ, אַף נֶאֱמָן לְכָנוֹס.

It was taught according to Rav Asi: (If someone said,) I married off my daughter and I don't know to whom I married her, if (only) one man came and said, I married her, he is believed to take her. – BT Kiddushin 63b

To suit our modern sensibilities, the text ought to consider the woman's feelings as well, but at least there is some attention here to the wishes of actual human beings. In short, these debates

begin on a surreal note – social stability depends on an unattainable certainty as to who's who – but come around in the end to perfectly sane conclusions.

In some degree, the point of these stories is to urge caution in our business or marital dealings. But there is more to them than that. Moscovitz also acknowledges that the rabbis have *artistic* motives in resorting so often to legal fictions. It makes for a lively read: he labels the invention "a figurative way to formulate the relevant legal requirement, which is frequently used for the sake of stylistic flair."[39] Certainly this applies to the fictive treatment of who's-who problems. Tales of mistaken identity are common in books, and not only detective novels. From Isaac's confusion of his sons (Gen. 27) to Jacob's confusion of his brides (Gen. 29), from Plautus's *The Two Menaechmi* to Gogol's *The Inspector General*, the muddling of persons is a favorite plot device. But this sort of thing is usually a metaphor. In real life, we may have a moment of difficulty in placing an acquaintance encountered by chance on the street; and strangers may identify each other wrongly at crime scenes or police lineups, as is abundantly clear from surprise exonerations arising from the new technology of DNA fingerprinting. But a lifetime scarred by misidentification of persons we see regularly – that doesn't happen. What does happen is a lifetime scarred by misidentification of someone's *character*, someone's moral foundation. This is what our storytellers symbolize with their yarns about look-alike lovers or nobodies passing for potentates.

Perhaps mistaken identity is what Freud calls a *parapraxis*, and everyone else calls a *Freudian slip*. Freud gives the example of a new wife who was out shopping, unexpectedly ran into her new husband, and momentarily forgot that they were now married. This is a kind of mistaken identity, husband viewed as gentleman friend: and of course it reveals unspoken reservations about the marriage, which ended in divorce.[40] Inability to identify one's debtors or sons-in-law would seem to be in the same category.

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39. Moscovitz, p. 198.
40. Sigmund Freud. *Introductory Lectures on Psycho-analysis*, transl. James Strachey. New York: W. W. Norton & Co., 1966. Pp. 70-1.

The Spiritual Merit of Learning

If the nonsense about confused debtors or suitors is best explained as a legal fiction, the nonsense about confused infants is best explained as *torah lishmah*: it gives us the opportunity to gain merit by learning about obsolete organizations like the priesthood and marginal arrangements like the levirate law.[41] Kraemer analyzes the historical evolution of *torah lishmah*, learning for its own sake. The tanna'im, he says, mostly condemn study independent of performance. True, the Mishnah famously says:

> אֵלּוּ דְבָרִים שֶׁאָדָם אוֹכֵל פֵּרוֹתֵיהֶן בָּעוֹלָם הַזֶּה וְהַקֶּרֶן קַיֶּמֶת לוֹ לָעוֹלָם הַבָּא. כִּבּוּד אָב וָאֵם, וּגְמִילוּת חֲסָדִים, וַהֲבָאַת שָׁלוֹם בֵּין אָדָם לַחֲבֵרוֹ וְתַלְמוּד תּוֹרָה כְּנֶגֶד כֻּלָּם.
>
> These are acts whose interest is enjoyed in this world and whose principle remains for the world to come: honoring father and mother, and deeds of mercy, and bringing peace between one person and another; *and the study of Torah is equal to them all.* – M. Pe'ah 1:1

But, Kraemer argues, this does not mean study independent of any particular use. The right reason to study is specified in Mishnah Avot.

> רַבִּי יִשְׁמָעֵאל (בְּנוֹ) אוֹמֵר, הַלּוֹמֵד תּוֹרָה עַל מְנָת לְלַמֵּד, מַסְפִּיקִין בְּיָדוֹ לִלְמוֹד וּלְלַמֵּד. וְהַלּוֹמֵד עַל מְנָת לַעֲשׂוֹת, מַסְפִּיקִין בְּיָדוֹ לִלְמוֹד וּלְלַמֵּד לִשְׁמוֹר וְלַעֲשׂוֹת.
>
> Rabbi Ishmael his son says: Whoever learns Torah for the sake of teaching will have enough to learn and to teach. And whoever learns *for the sake of doing* will have enough to learn, teach, observe, and practice. – M. Avot 4:5

Still, Kraemer identifies a couple of tanna'itic texts that seem to hint at a more favorable attitude toward study independent of performance. There is the remark of Simeon ben Yochai in Mishnah Avot:

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41. If a widow has borne her dead husband no children, formal release from the potential claims of her brother-in-law (see Deut. 25:5 ff.) is required before she can remarry outside the family. But the rabbis reframe the obligation to the brother-in-law as just another marriage, probably a satisfactory arrangement for many widows. (Dvora E. Weisberg, "Levirate Marriage and *Halitzah* in the Mishnah," in *Annual of Rabbinic Judaism: Ancient, Medieval, and Modern, Vol. I.* Leiden: Brill, 1998. Pp. 37, 40, 42, 46-7, 50-1, 57, 61, 67.) And if the widow does not care to marry her brother-in-law, release from the requirement is usually available, if only because the rabbis pressure and even deceive the brother-in-law to obtain it. (Dvora E. Weisberg, "The Babylonian Talmud's Treatment of Levirate Marriage," in *Annual of Rabbinic Judaism: Ancient, Medieval, and Modern, Vol. III.* Leiden: Brill, 2000. Pp. 43, 47, 50, 54-62, 66.)

שְׁלֹשָׁה שֶׁאָכְלוּ עַל שֻׁלְחָן אֶחָד וְאָמְרוּ עָלָיו דִּבְרֵי תוֹרָה, כְּאִלּוּ אָכְלוּ מִשֻּׁלְחָנוֹ שֶׁל מָקוֹם בָּרוּךְ הוּא...
(If) three ate at one table and there spoke words of Torah, it is as though they ate from the table of the Blessed Omnipresent... – M. Avot 3:3

Moreover, *midrash halachah* notes that many commandments given in the wilderness could not be practiced until the people had settled in the promised land. And yet:

וּלְמַדְתֶּם אוֹתָם וּשְׁמַרְתֶּם לַעֲשׂוֹתָם שׁוֹמֵעַ אֲנִי שֶׁלֹּא נִתְחַיְּבוּ בְּתַלְמוּד עַד שֶׁנִּתְחַיְּבוּ בְּמַעֲשֶׂה. ת"ל וְהָיָה אִם שָׁמֹעַ תִּשְׁמְעוּ אֶל מִצְוֹתַי. מַגִּיד הַכָּתוּב שֶׁמִּיָּד נִתְחַיְּבוּ בְּתַלְמוּד... מַגִּיד הַכָּתִיב שֶׁהַמַּעֲשֶׂה תָּלוּי בְּתַלְמוּד וְאֵין תַּלְמוּד תָּלוּי בְּמַעֲשֶׂה. וְכֵם מָצִינוּ שֶׁעֹנֶשׁ עַל הַתַּלְמוּד יוֹתֵר מִן הַמַּעֲשֶׂה...
"That you may learn them, and observe to do them" (Deut. 5:1). I would think that they were not obligated to learn them until they were obligated to do them. But Scripture says, "And if you truly listen to my commandments" (Deut. 11:13). Scripture means that they were obligated to learn them immediately... Scripture means that doing depends upon learning, not learning upon doing. And so we find that the punishment for (not) learning is greater than for (not) doing... – Sifrei Deut. 41

Also, the Tosefta identifies a few Torah laws that were supposedly never enforced and exist only to be studied.[42]

בֶּן סוֹרֵר וּמוֹרֶה לֹא הָיָה וְלֹא עָתִיד לִהְיוֹת. וְלָמָּה נִכְתַּב? לוֹמַר, דְּרוֹשׁ וְקַבֵּל שָׂכָר.
A "disobedient and rebellious son" (Deut. 21:18, 20) never existed and never will exist. And why was it written? To say, Expound and receive reward. – T. Sanhedrin 11:6

עִיר הַנִּדַּחַת לֹא הָיְתָה וְלֹא עֲתִידָה לִהְיוֹת. וְלָמָּה נִכְתְּבָה? לוֹמַר, דְּרוֹשׁ וְקַבֵּל שָׂכָר.
A "city gone astray" (Deut. 13:14) never existed and never will exist. And why was it written? To say, Expound and receive reward. – T. Sanhedrin 14:1

בַּיִת הַמְנוּגָּע לֹא הָיָה וְלֹא עָתִיד לִהְיוֹת. וְלָמָּה נִכְתַּב, אֶלָּא לוֹמַר לְךָ, דְּרוֹשׁ וְקַבֵּל שָׂכָר.
The "leprous house" (Lev. 14:34 ff.) never existed and never will exist. And why was it written, but to tell you, Expound and receive reward. – T. N'ga'im 6:1

These three passages set a small but significant precedent for the prevailing ethic of amoraic times: that study is its own justification.

Kraemer traces the germ of the later attitude to the Jerusalem Talmud.

רַב חוּנָה אָמַר, לְמַד תּוֹרָה שֶׁלֹּא לִשְׁמָהּ, שֶׁמִּתּוֹךְ שֶׁלֹּא לִשְׁמָהּ אַתָּ בָּא לִשְׁמָהּ.
Rav Chunah said, Learn Torah not for its own sake, that amid "not for its own sake" you will come to its own sake. – JT Chagigah 76c

42. Kraemer, p. 164.

This is the earliest attestation of the phrase *torah lishmah*, Torah for its own sake. As far as one can tell, the expression here refers to performance: "its own sake" seems to mean "its implementation." But once coined, the idiom becomes a pivot enabling a radical shift of values in the Babylonian Talmud. Kraemer cites a number of approving references in the BT to Torah study detached from any real-world application, such as the following.

> אָמַר רַבִּי אֶלְעָזָר: כָּל אָדָם לְעָמָל נִבְרָא, שֶׁנֶּאֱמַר, כִּי אָדָם לְעָמָל יוּלָּד. אֵינִי יוֹדֵעַ אִם לַעֲמַל פֶּה נִבְרָא אִם לַעֲמַל מְלָאכָה נִבְרָא, כְּשֶׁהוּא אוֹמֵר כִּי אָכַף עָלָיו פִּיהוּ, הֲוֵי אוֹמֵר לַעֲמַל פֶּה נִבְרָא. וְעָדַיִין אֵינִי יוֹדֵעַ אִם לַעֲמַל תּוֹרָה אִם לַעֲמַל שֶׁיֹּחֵא, כְּשֶׁהוּא אוֹמֵר לֹא יָמוּשׁ סֵפֶר הַתּוֹרָה הַזֶּה מִפִּיךָ, הֲוֵי אוֹמֵר לַעֲמַל תּוֹרָה נִבְרָא.
>
> Rabbi Eleazar said: Everyone was created for work, as it is said, "For humanity was born to work" (Job 5:7). I do not know if they were created for verbal work or physical work: but it says, "For their mouth compels them" (Prov. 16:26); thus you may say that they were created for verbal work. And I still do not know if they were created for the work of Torah or to make a living: but it says, "This book of the Torah shall not depart from your mouth" (Josh. 1:8); thus you may say that they were created for the work of Torah. – BT Sanhedrin 99b

> וְאַף שְׁלֹמֹה אָמַר בְּחָכְמָתוֹ: הָכֵן בַּחוּץ מְלַאכְתֶּךָ וְעַתְּדָהּ בַּשָּׂדֶה לָךְ אַחַר וּבָנִיתָ בֵיתֶךָ... ד"א: הָכֵן בַּחוּץ מְלַאכְתֶּךָ, זֶה מִקְרָא; וְעַתְּדָהּ בַּשָּׂדֶה לָךְ, זֶה מִשְׁנָה; אַחַר וּבָנִיתָ בֵיתֶךָ, זֶה גְּמָ'. ד"א: הָכֵן בַּחוּץ מְלַאכְתֶּךָ, זֶה מִקְרָא וּמִשְׁנָה; וְעַתְּדָהּ בַּשָּׂדֶה לָךְ, זֶה גְּמָרָא; אַחַר וּבָנִיתָ בֵיתֶךָ, אֵלּוּ מַעֲשִׂים טוֹבִים.
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> And also Solomon said in his wisdom: "Arrange your work outside, be prepared in your field, then build your house" (Prov. 24:27)... Another view: "Arrange your work outside," this is Bible; "be prepared in your field," this is Mishnah; "then build your house," this is G'mara. Another view: "Arrange your work outside," this is Bible and Mishnah; "be prepared in your field," this is G'mara; "then build your house," this is good deeds. – BT Sotah 44a

The new philosophy is explained partly by the extinction of the institutions around which many commandments revolve: the Temple, the Sanhedrin, the priesthood, the sacrifices, etc. As these phenomena were long obsolete and unlikely to be revived in the foreseeable future, laws relating to them were completely inoperative, yet must still be studied. But the rabbis go further still. In two texts, Abbaye argues that all study deserves reward, presumably including study that has no practical application in *any* historical era.

> אָמַר רַב יוֹסֵף: הִלְכְתָא לִמְשִׁיחָא? אֲמַר לֵיהּ אַבַּיֵי: אֶלָּא מֵעַתָּה, שְׁחִיטַת קָדָשִׁים לֹא לִיתְנֵי: הִלְכְתָא לִמְשִׁיחָא. אֶלָּא דְּרוֹשׁ וְקַבֵּל שָׂכָר, הָכָא נַמִי דְּרוֹשׁ וְקַבֵּל שָׂכָר.
>
> Rav Joseph said (about an impractical debate): Must we discuss law for the time of the Messiah? Abbaye answered him: If we must only discuss law for the present age, one should not study the slaughter of sacrifices: that is law for the time of the Messiah. But rather, study and receive reward; here too, study and receive reward. – BT Sanhedrin 51b (the same story occurs in BT Z'vachim 44b-45a with Rava instead of Rav Joseph)

The issue of babies confused at the time of delivery, considered in Y'vamot 11:3 and several mishnayot in B'chorot 8, is best appreciated as an exercise in *torah lishmah*.

חֲמֵשׁ נָשִׁים שֶׁנִּתְעָרְבוּ יַלְדוֹתֵיהֶן, הִגְדִּילוּ הַתַּעֲרוֹבוֹת וְנָשְׂאוּ נָשִׁים וָמֵתוּ, אַרְבָּעָה חוֹלְצִין לְאַחַת, וְאֶחָד מְיַבֵּם אוֹתָהּ.

Five women confused their infant sons. The confused sons grew up, and took wives, and died. Four (of the men's brothers) are released from the levirate obligation to one (widow), and one (brother) fulfills it. – M. Y'vamot 11:3

מִי שֶׁהָיוּ לוֹ בָּנִים וְנָשָׂא אִשָּׁה שֶׁלֹּא יָלְדָה... יָלְדָה הִיא וְכֹהֶנֶת, הִיא וּלְוִיָּה, הִיא וְאִשָּׁה שֶׁכְּבָר יָלְדָה... בְּכוֹר לַכֹּהֵן וְאֵינוֹ בְּכוֹר לַנַּחֲלָה.

A man had sons and married a childless woman... and she bore (a son) alongside a priest woman, a Levite woman, or a woman with previous children (and the babies were confused)... (Each baby) is considered a firstborn for purposes of the priestly laws, but not for purposes of inheritance. (The impact is on the *other* family. The focal family would *in any case* be acquiring a firstborn for priestly purposes only.) – M. B'chorot 8:1

שְׁתֵּי נָשִׁים שֶׁל שְׁנֵי אֲנָשִׁים שֶׁלֹּא בִכְּרוּ וְיָלְדוּ שְׁנֵי זְכָרִים... מֵת אֶחָד מֵהֶן... יַחֲזִיר לָהֶן חָמֵשׁ סְלָעִים... זָכָר וּנְקֵבָה, הָאָבוֹת פְּטוּרִין.

Two men's wives with no previous children bore two boys (and the babies were confused)... One of the (babies) died.. The priest must refund the five dollars (the fee for a son)... (If) they bore a boy and a girl (and the babies were confused), the fathers are exempt (from the fee, as it is unclear which sired the boy). – M. B'chorot 8:5

אַחַת בְּכָרָה וְאַחַת שֶׁלֹּא בְכָרָה שֶׁל שְׁנֵי אֲנָשִׁים, וְיָלְדוּ... זָכָר וּנְקֵבָה, אֵין כָּאן לַכֹּהֵן כְּלוּם.

Two men's wives, one with previous children and one without, bore... a boy and a girl (and the babies were confused). (The boy is) not (a firstborn) for purposes of the priestly laws. – M. B'chorot 8:6

No doubt babies are occasionally confused in delivery rooms, with potentially heartbreaking results, but the rabbis' discussion of the issue seems remote from experience. First of all, in antiquity most children were born at home, making confusion in the birthing room highly unlikely. And if different people's babies *were* somehow confused, you'd think the text would explain who takes home which infant: that is bound to be the main challenge for those directly affected. In practice, I suppose, the richer or more powerful family kept the baby it preferred, and the other family was left with the consolation prize. And it was probably never mentioned again, as no one stood to gain from publicizing the mix-up.

Instead of addressing these questions of *torah al m'nat la'asot*, the rabbis turn to the most far-fetched and inconsequential aspects of the problem: what happens farther down the road, when financial or matrimonial issues arise and the children's lineage is unclear. In Y'vamot

11:3, baby boys confused at birth grow up, marry, and die childless: it is unclear whose brother has levirate obligations to whose widow. In B'chorot 8:1, babies of different castes or different sibling configurations are confused: it is unclear which is considered a firstborn for purposes of inheritance or redemption from the priesthood. (A *father's* firstborn, if male, enjoys preferential inheritance; a *mother's* firstborn, if male and sired by a layman, requires redemption from the priesthood.) In B'chorot 8:6, babies of different *genders* and different sibling configurations are confused, with consequences similar to 8:1, though it must be difficult to confuse babies of different genders. In B'chorot 8:5, baby boys are confused and one dies, exempting someone from the firstborn redemption fee: but whom?[43]

While the rabbis develop a coherent framework for mixed baby issues – they are strict about marriage and inheritance, and lenient about redemption of the firstborn[44] – they *never* take the straightforward approach. The pragmatic method would be to proceed as if each youngster actually belonged to the family that raised it: surely that's what happened in real life. But the rabbis do not seem to consider this strategy. The absence of a halachic framework for adoption may be part of the problem. But the rabbis' academic impracticality is probably best understood as an attempt to prioritize the theological above all everyday considerations.

Remarkably, all the mixed baby examples above are from the Mishnah: even in this early period, I think, there was quite a lot of *torah lishmah*! Of course the g'mara is stranger still:

> תְּנוּ רַבָּנָן: יֵשׁ חוֹלֵץ לְאִמּוֹ מִסָּפֵק, לַאֲחוֹתוֹ מִסָּפֵק, לְבִתּוֹ מִסָּפֵק. כֵּיצַד? אִמּוֹ וְאִשָּׁה אַחֶרֶת וְלָהֶן שְׁנֵי זְכָרִים, וְחָזְרוּ וְיָלְדוּ שְׁנֵי זְכָרִים בְּמַחֲבֵא, וּבָא בְּנָהּ שֶׁל זוֹ וְנָשָׂא אִמּוֹ שֶׁל זֶה וּבְנָהּ שֶׁל זוֹ נָשָׂא אִמּוֹ שֶׁל זֶה, וּמֵתוּ בְּלֹא בָּנִים...
>
> Our rabbis taught: In cases of doubt, a man may need to enact *chalitzah* (release from the levirate obligation) with his mother, sister, or daughter. How? If his mother and another women both had sons, and then gave birth to two sons in a hiding place (and the babies were confused), and one woman's son married the other baby's mother, and the other woman's son married the first baby's mother, and they died without siring children... – BT Y'vamot 99a

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43. The point is not that this couldn't happen. The point is that, in real life, the family with a live baby at home would pay, and the family without a live baby at home would not pay. No one would raise the question of a possible confusion of babies.

44. The rabbis are lenient about *pidyon ha-ben* because they have no reason to uphold the interests of priests, their rivals for Jewish leadership. Witness the spiritual pedigree in M. Avot 1:1, מֹשֶׁה קִבֵּל תּוֹרָה מִסִּינַי, וּמְסָרָהּ לִיהוֹשֻׁעַ, וִיהוֹשֻׁעַ לִזְקֵנִים, וּזְקֵנִים לִנְבִיאִים, וּנְבִיאִים מְסָרוּהָ לְאַנְשֵׁי כְנֶסֶת הַגְּדוֹלָה *Moses received Torah from Sinai, and turned it over to Joshua, and Joshua to the elders, and the elders to the prophets, and the prophets turned it over to the persons of the Great Assembly*. The priests are conspicuous by their absence.

This is probably what Elizabeth Alexander means by "the pedagogical use of borderline cases." Alexander, following Louis Jacobs, believes the Talmud creates brainteasers to sharpen the minds of students. Riddles like the present one are, in Jacobs' words, "semi-humorous intellectual exercises" to develop the analytical skills of aspiring sages.[45]

Theology of Abstraction

Alongside legal fictions and spiritual exercises, there is a third way to understand bizarre halachah: as an expression of theology. Humanity (or the chosen people) is an abstraction, a single entity in relationship with God. According to Neusner, that is why the rabbis showed limited interest in the individual Jew. Each Jew is first and foremost an incarnation of Israel, participating communally in the Israelite covenant and obligations.

The centerpiece of the rabbis' worldview is the Jew / gentile distinction, supplemented by gender and caste distinctions within the category of Jews. Neusner points to the following mishnah.

> קוֹנָם שֶׁאֵינִי נֶהֱנֶה לָעֲרֵלִים, מֻתָּר בְּעַרְלֵי יִשְׂרָאֵל וְאָסוּר בְּמוּלֵי הָאֻמּוֹת. קוֹנָם שֶׁאֵינִי נֶהֱנֶה לַמּוּלִים, אָסוּר בְּעַרְלֵי יִשְׂרָאֵל וּמֻתָּר בְּמוּלֵי הָאֻמּוֹת, שֶׁאֵין הָעָרְלָה קְרוּיָה אֶלָּא לְשָׁם הַגּוֹיִם.
>
> (If someone said,) I vow not to benefit from the uncircumcised, they are permitted to benefit from the uncircumcised of Israel, but forbidden to benefit from the circumcised of the nations. (If someone said,) I vow not to benefit from the circumcised, they are forbidden to benefit from the uncircumcised of Israel, but permitted to benefit from the circumcised of the nations: for the word *uncircumcised* only refers to gentiles (and evidently *circumcised* only refers to Jews). – M. N'darim 3:11

If *circumcised* always means *Jewish* and *uncircumcised* always means *gentile*, regardless of anyone's anatomical specifics, then the Jew is not a body, a person: rather, the Jew is a manifestation of a (circumcised) people. Even the individual sage is of little importance, for the prevailing view in the Talmud is usually the anonymous opinion:

> הוּא הָיָה אוֹמֵר, נְגַד שְׁמָא, אֲבַד שְׁמֵהּ.
>
> (Hillel) used to say: Promote your name, lose your reputation. – M. Avot 1:13

45. Elizabeth Shanks Alexander. *Transmitting Mishnah: The Shaping Influence of Oral Tradition.* New York: Cambridge University Press, 2006. Pp. 179-82.

The rabbis' identity problems around divorce are best explained by their inattention to the individual as a distraction from the categories that count. Two mishnayot in Gittin discuss men with the same name who wish to divorce women with the same name.

כָּתַב לְגָרֵשׁ (בּוֹ) אֶת אִשְׁתּוֹ וְנִמְלַךְ, מְצָאוֹ בֶּן עִירוֹ וְאָמַר לוֹ שְׁמִי כְּשִׁמְךָ וְשֵׁם אִשְׁתִּי כְּשֵׁם אִשְׁתְּךָ, פָּסוּל לְגָרֵשׁ בּוֹ.

A man drew up a document of divorce from his wife, but reconsidered. He found another (unhappy husband) in town and observed, "My name is the same as your name, and my wife's name is the same as your wife's name." (But) the document is invalid (for the second man). – M. Gittin 3:1

שְׁנַיִם שֶׁשָּׁלְחוּ שְׁנֵי גִיטִין שָׁוִין וְנִתְעָרְבוּ... אֲבַד אֶחָד מֵהֶן, הֲרֵי הַשֵּׁנִי בָּטֵל.

Two men sent identical divorces to their wives (presumably the husbands were namesakes and the wives were namesakes), and the documents were confused... (If) one was lost, the second is void. – M. Gittin 9:5

The writs of divorce are identical, but they are not interchangeable: if one is missing, the other cannot take its place. I'm not sure how often this happened, but it does not matter: the problem is an archetype, a symbol. For the rabbis, *all* divorces involve men with the same name ("Jew") and women with the same name ("Jewess"). The requirements of the Torah must be fully enacted by each Israelite, not because they are an individual, but because they are an instance of the paradigm, as the Mishnah teaches.

הַקָּדוֹשׁ בָּרוּךְ הוּא טָבַע כָּל אָדָם בְּחוֹתָמוֹ שֶׁל אָדָם הָרִאשׁוֹן.

The Blessed Holy One minted every person from the stamp of Adam. – M. Sanhedrin 4:5

Thus, identity of *individual* names is not the real issue. The Mishnah specifies that if identical writs of divorce become confused, they remain valid *provided both are extant.* The intention to divorce is verifiable for two marriages: and probably the rabbis did not want to retroactively invalidate a divorce, so they were as lenient as they felt they could be. It is only when one document is lost (M. Gittin 9:5) or never existed (M. Gittin 3:1) that the other cannot fill in for it. When the number of enacted commandments is commensurate with the number of Jewish souls, all is well.

By upholding technicalities that make no sense in practice, the rabbis teach a law that is not law in any conventional sense of the word, but an expression of theology. "Treating the holy

people, Israel, and individual Israelites as one, the sages never for one minute doubted that the world order of justice encompassed those private lives."[46]

Summary

The rabbinic anxiety about distinguishing one person from another arises from a combination of causes. To some extent, the problem of ambiguous identity is a *legal fiction* as analyzed by Leib Moscovitz: for example, when merchants are unable to differentiate their debtors or young women are unable to differentiate their suitors. The fictitious scenario makes it easier (and more fun) to discuss everyday issues of commitment and obligation. On the other hand, the problem of ambiguous identity may be *an opportunity for study as a religious practice* as defined by David Kraemer: for example, when babies of different castes, sibling configurations, or genders are confused. It is meritorious to study the question and the obsolete or marginal laws to which it pertains, even though it proves nothing about the real world. Finally, the problem of ambiguous identity may *clarify the role of human beings in God's eyes* as explained by Jacob Neusner: for example, when prospective divorcees cannot be differentiated from other prospective divorcees with the same names. If human beings exist mainly to embody halachic categories like husband, wife, ex-spouse, potential spouse, then it really makes no difference *which* Reuben marries or divorces *which* Shelomith.

For a modern meditation on identity and its meaning, one thinks of the Chasidic tale of Zusya. As the story goes, Zusya feared the heavenly judgment. His friends reassured him of his worthiness: "Do you imagine that God will say: Why weren't you Moses?" But Zusya replied, "I am afraid God will say: Why weren't you Zusya!" Is Zusya's concern a legal fiction, a religious exercise, or abstract theology? Primarily abstract theology, I submit.

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46. Neusner, p. 193.

V. I Didn't Mean to Do It

Overview

Though the common-sense definition of sin includes volition, *choosing* a bad action, nevertheless the Torah specifies that a sin may be quite inadvertent.

> וְאִם־נֶפֶשׁ כִּי תֶחֱטָא וְעָשְׂתָה אַחַת מִכָּל־מִצְוֹת יְהוָה אֲשֶׁר לֹא תֵעָשֶׂינָה וְלֹא־יָדַע וְאָשֵׁם וְנָשָׂא עֲוֹנוֹ.
> And if a person sins, and breaks any of the commandments of the Eternal, things which are not to be done, *and does not know it*, they are guilty and shall bear their iniquity. – Lev. 5:17

In fact Leviticus says quite a lot about unwitting or unintentional sins, which require either a חַטָּאת or an אָשָׁם offering for their expiation. Jacob Milgrom explains that חַטָּאת is required for sins that "can drive Israel out of its land and even God out of [God's] sanctuary," אָשָׁם for sins with less dire consequences.[47] The category of שְׁגָגָה *error*, according to Baruch Levine, has "two related aspects: (1) inadvertence with respect to the facts of law; and (2) inadvertence with respect to the nature of the act."[48]

The Mishnah confirms the point.

> ...שֶׁעָשָׂה בָהּ אֶת הַמֵּזִיד כַּשּׁוֹגֵג.
> ...for they treat the deliberate offender the same as the unintentional offender (and vice versa). – M. K'ritot 2:4

Surely this is unfair, and irrational. Indeed, Judaism differentiates itself from *predestinarian* religions like Islam, or Calvinist Christianity, by embracing a theory of free will. Commandments are meaningless, reward and punishment arbitrary, if humanity does not have the power to choose. And yet the Talmud deals at some length, mainly in tractates Sh'vu'ot and

47. Jacob Milgrom. *Leviticus: A Book of Ritual and Ethics.* Minneapolis: Fortress Press, 2004. P. 51.
48. Baruch A. Levine, ed. *The JPS Torah Commentary: Leviticus.* Philadelphia: The Jewish Publication Society, 1989. P. 19.

K'ritot, with the problem of unwitting transgression. Granted that the Talmud is committed to the categories of the Bible, one might still wonder why the rabbis develop the theme in the particular way they do. In some cases, perhaps, the sages are addressing the psychological phenomenon of guilt more than the ritual concept of sin: if, indeed, the two can be entirely differentiated.

I Didn't Mean to Go There

It is puzzling that inadvertent violation of Temple purity rules can be mitigated by the mode of departure:

> נִטְמָא בָּעֲזָרָה וְנֶעְלְמָה מִמֶּנּוּ טֻמְאָה, וְזָכוּר אֶת הַמִּקְדָּשׁ, נֶעְלַם מִמֶּנּוּ מִקְדָּשׁ וְזָכוּר לַטֻּמְאָה, נֶעְלַם מִמֶּנּוּ זֶה וָזֶה. וְהִשְׁתַּחֲוָה אוֹ שֶׁשָּׁהָה בִּכְדֵי הִשְׁתַּחֲוָאָה. בָּא לוֹ בָאֲרֻכָּה, חַיָּב. בַּקְּצָרָה, פָּטוּר.
> (Suppose someone) became unclean in the Temple courtyard, but forgot the uncleanness while remembering the sanctuary, or forgot the sanctuary while remembering the uncleanness, or forgot both. And they bowed down, or lingered in order to bow down. *If they went the long way, they are obligated (to bring an expiatory sacrifice); if the short way, they are exempt.* – M. Sh'vu'ot 2:3

This suggests that inadvertent defilement does not contaminate the surroundings if it is very brief, i.e. if the offender arrived and departed by the shortest route. One is reminded of today's folkloric fifteen-second rule, whereby food dropped on the floor is considered still edible if retrieved promptly.

There would seem to be little rational basis to either the ancient provision or the modern one, but perhaps the human mind instinctively regards fleeting contact as relatively inconsequential. After all, momentary exposure to extreme heat or cold (or to difficult personalities) is less harmful than prolonged exposure, and so forth. However, the g'mara implies that *time elapsed* is not the real issue:

בְּעָא מִינֵּיהּ אַבַּיֵי מֵרַבָּה, בָּא לוֹ בַּאֲרוּכָּה שִׁיעוּר קְצָרָה, מַהוּ? שִׁיעוּר גְּמִירִי, וְכִי בָּא לוֹ בַּאֲרוּכָּה שִׁיעוּר קְצָרָה, פָּטוּר? אוֹ דִּלְמָא גְּמִירִי, בַּאֲרוּכָּה, חַיָּיב, בִּקְצָרָה, פָּטוּר? א"ל, לֹא נִתְּנָה אֲרוּכָּה לְהַדְּחוֹת אֶצְלוֹ.

Abbaye asked Rabbah, What if one went the long way in the duration of the short way (i.e. faster)? Do they know that duration (is what counts), and if one goes the long way in the duration of the short way, one is exempt? Or perhaps they know precisely that one who goes the long way is obligated and one who goes the short way is exempt? (Rabbah) said to (Abbaye), The long-way rule was not given to be superseded for (the offender). – BT Sh'vu'ot 17a

Is Rabbah using a nominal stringency to mask a substantive leniency? Perhaps he means, we're willing to overlook your defilement if you get out of here as fast as possible. On the other hand, maybe leaving by the long route (even hastily) indicates a less-than-honorable intention. Pinhas Kehati's commentary on M. Sh'vuot 2:3 says, "But if he went out the shorter way – if he neither prostrated himself *nor stayed long enough to do so after he became unclean*, but left the Sanctuary the short way, he is not liable..."[49] The defilement is mitigated by the *intention* to leave quickly, proved by the choice of the shorter route.

Another *sugya* touches on a pilgrim who takes the wrong road *to* the Temple, probably a male reluctant to ask for directions.

תְּנוּ רַבָּנָן, שְׁנֵי שְׁבִילִין, אֶחָד טָמֵא וְאֶחָד טָהוֹר. וְהָלַךְ בָּרִאשׁוֹן וְלֹא נִכְנַס, בַּשֵּׁנִי וְנִכְנַס, חַיָּיב... אֲמַר רַבָּה, הָכָא בְּמַאי עָסְקִינַן, כְּגוֹן שֶׁהָלַךְ בָּרִאשׁוֹן וּבְשָׁעָה שֶׁהָלַךְ בַּשֵּׁנִי שָׁכַח שֶׁהָלַךְ בָּרִאשׁוֹן, דַּהֲוָיָא לֵיהּ מִקְצָת יְדִיעָה...

Our rabbis taught, (Suppose) there are two paths, one unclean (e.g. a shortcut through a cemetery) and one clean. And someone went by the first (path) and did not enter (the Temple), then (perhaps realizing their mistake and going back to correct it) by the second (path) and *did* enter (the Temple): they are liable (though the more recent path was clean)... Rabbah said, What are we dealing with here? For example, someone went by the first (path), but when they got to the second (path) they forgot that they had gone by the first, so that they had (only) partial knowledge (of their own transgression)... – BT Sh'vu'ot 19a-b

The case does not superficially make much sense. If the path is unclean, the traveler is defiled: there is nothing for it but to fulfill the complicated and expensive purification ritual with the ashes of the red heifer; what is the use of going back the other way? Rabbah speculates that the

49. Bernard Susser, ed. *The Mishnah With a Commentary by Rabbi Pinhas Kehati*, transl. R. Fisch. Jerusalem: Torah Education Department of the World Zionist Organization, 1988. Volume "Shevuot," p. 21. My italics.

pilgrim does not fully understand the situation, perhaps uncertain (or only intermittently certain) of whether this or that path is unclean.

In fact, since the Temple was long destroyed by the time these words were written, the narrative seems to be addressing the larger problem of taking the wrong path *in life*: a life in which, perhaps, there is no correct path. The Talmudic vignette is practically interchangeable with a one-paragraph story by Kafka:

> It was very early in the morning, the streets clean and deserted, I was on my way to the station. As I compared the tower clock with my watch I realized it was much later than I had thought and that I had to hurry; the shock of this discovery made me feel uncertain of the way, I wasn't very well acquainted with the town as yet; fortunately, there was a policement at hand, I ran to him and breathlessly asked him the way. He smiled and said: "You asking me the way?" "Yes," I said, "since I can't find it myself." "Give it up! Give it up!" said he, and turned with a sudden jerk, like someone who wants to be alone with his laughter.[50]

In spite of all efforts to avoid the places we shouldn't go, we tend to stumble into them. Who has not occasionally found him/herself in one place while intending to go elsewhere? The TV room when we meant to pay bills in the library, the candy counter when we meant to visit the produce aisle: human error has a kind of lovable expediency. And how hard it is to break a comfortable habit, to walk *around* the flower bed rather than through it, to go down the back stairs when grandma is sleeping in the front parlor. We all make mistakes, but are they really mistakes?

I do not believe the פְּשָׁט, the plain meaning, of the wrong-path texts would be particularly compelling even if the Temple were standing. Mixed motives or mixed states of consciousnessness do not lend themselves to legal analysis. They do lend themselves to psychological analysis, or whatever the equivalent was for the rabbis. In this context, guilt is a matter of degree, and is essentially in the mind.

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50. "Give It Up!" by Franz Kafka, transl. Tania and James Stern. *The Basic Kafka.* New York: Pocket Books, 1979. Pp. 157-8.

I Didn't Mean to Touch It

One of the inadvertent sins specified in the Torah is that of physical contact with sources of ritual impurity.

> אוֹ נֶפֶשׁ אֲשֶׁר תִּגַּע בְּכָל־דָּבָר טָמֵא אוֹ בְּנִבְלַת חַיָּה טְמֵאָה אוֹ בְּנִבְלַת בְּהֵמָה טְמֵאָה אוֹ בְּנִבְלַת שֶׁרֶץ טָמֵא וְנֶעְלַם מִמֶּנּוּ וְהוּא טָמֵא וְאָשֵׁם. אוֹ כִי יִגַּע בְּטֻמְאַת אָדָם לְכֹל טֻמְאָתוֹ אֲשֶׁר יִטְמָא בָּהּ וְנֶעְלַם מִמֶּנּוּ וְהוּא יָדַע וְאָשֵׁם.
>
> Or if a person touches any unclean thing, be it the carcass of an unclean beast or the carcass of unclean livestock or the carcass of an unclean reptile, and they are unaware of it, then they are unclean and guilty. Or if they touch unclean persons, who are defiled by any sort of uncleanness, and they are unaware of it: when they find out, they are guilty. – Lev. 5:2-3

No doubt sins of a ritual nature are particularly susceptible to inadvertent commission. The mishnah says:

> נִטְמָא וְיָדַע וְנֶעְלְמָה מִמֶּנּוּ הַטֻּמְאָה וְזָכוּר אֶת הַקֹּדֶשׁ, נֶעְלַם מִמֶּנּוּ הַקֹּדֶשׁ וְזָכוּר אֶת הַטֻּמְאָה, נֶעְלְמוּ מִמֶּנּוּ זֶה וָזֶה...
>
> (Suppose someone) became unclean and knew it, but forgot the uncleanness while remembering the sanctity (of the venue / activity); or forgot the sanctity, but remembered the uncleanness; or forgot both... – M. Sh'vu'ot 2:1

The g'mara discusses what sorts of uncleanness might be forgotten, or rather, might escape one's full consciousness. For example:

> בָּעֵי רַב פַּפָּא, נֶעֱלְמוּ מִמֶּנּוּ הִלְכוֹת טוּמְאָה, מַהוּ? הֵיכִי דָּמֵי? אִילֵימָא דְּלָא יָדַע אִי שֶׁרֶץ טָמֵא אִי צְפַרְדֵּעַ טָמֵא, זִיל קְרִי בֵּי רַב הוּא. לְעוֹלָם דִּידַע בְּטוּמְאַת שֶׁרֶץ, וּכְגוֹן דְּנָגַע בִּכְעָדָשָׁה. וְלָא יָדַע כַּעֲדָשָׁה אִי מְטַמֵּא אִי לֹא מְטַמֵּא, מַאי?
>
> Rav Pappa asks, What if you were unaware of the laws of uncleanness? In what way? If you say you did not know if reptiles are unclean or frogs are unclean, go read it in school. More likely you knew the uncleanness of reptiles, and for example you touched a piece the size of a lentil. And what if you did not know if a piece the size of a lentil defiles or does not defile? – BT Sh'vu'ot 14b

I know from my own untidy home that a small nondescript particle on a table or countertop might be anything, and the Temple precincts were probably not much cleaner, in the days before electric housekeeping devices and industrial detergents. No priest or worshiper could be expected to maintain absolute certainty of ritual purity for a significant period of time: common

sense requires some wiggle room. Here I think the rabbis are subtly satirizing the Biblical system, which requires a level of perfection unattainable in real life, and pursued only by those suffering from an obsessive-compulsive disorder.

I Didn't Mean to Eat It

Food taboos are a well-known feature of Jewish ritual law, and it should be no surprise that the Talmud addresses inadvertent dietary violations.

> אָמַר רַבִּי יְהוֹשֻׁעַ, שָׁמַעְתִּי בָּאוֹכֵל מִזֶּבַח אֶחָד בַּחֲמִשָּׁה תַמְחוּיִין בְּהֶעְלֵם אֶחָד, שֶׁהוּא חַיָּב עַל כָּל אֶחָד וְאֶחָד מִשּׁוּם מְעִילָה... אָמַר רַבִּי שִׁמְעוֹן ... אֶלָּא בָּאוֹכֵל נוֹתָר מֵחֲמִשָּׁה זְבָחִים בְּהֶעְלֵם אֶחָד, חַיָּב ... אַחַת עַל כָּל אַחַת וְאַחַת?
>
> Rabbi Joshua said, I heard that if a person ate from one sacrifice in five dishes in one oversight, they are liable for each and every one on account of sacrilege... Rabbi Simeon said ... But rather, if a person ate remnant from five sacrifices in one oversight, do they owe ... for each and every one? – M. K'ritot 3:9

This raises the interesting question of whether several transgressions committed in one period of inattention can be lumped together as one sin. Rabbi Akiva discerns enough of a distinction between the two cases to treat them differently. Carelessly eating five helpings of one sacrifice is five sins; but carelessly eating remnant of five sacrifices is only one sin, if it happened in one daydream.

What about a more complicated kind of distraction?

> חֵלֶב וְנוֹתָר לְפָנָיו, אָכַל אֶחָד מֵהֶם וְאֵין יָדוּעַ אֵיזֶה מֵהֶם אָכַל. אִשְׁתּוֹ נִדָּה וַאֲחוֹתוֹ עִמּוֹ בַּבַּיִת, שָׁגַג בְּאַחַת מֵהֶן וְאֵין יָדוּעַ בְּאֵיזוֹ מֵהֶן שָׁגַג. שַׁבָּת וְיוֹם הַכִּפּוּרִים וְעָשָׂה מְלָאכָה בֵּין הַשְּׁמָשׁוֹת וְאֵין יָדוּעַ בְּאֵיזֶה מֵהֶן עָשָׂה. רַבִּי אֱלִיעֶזֶר מְחַיֵּב חַטָּאת, וְרַבִּי יְהוֹשֻׁעַ פּוֹטֵר.
>
> (Suppose) tallow and remnant (two kinds of forbidden food) are before you, and you ate one of them, but it is unknown which of them you ate. (Or suppose) somebody's menstruating wife and his sister are with him in the house, and he erred with one of them, but it is unknown with which of them he erred. (Or suppose) you worked after sunset on the Sabbath or the Day of Atonement (both compulsory days of rest), but it is unknown on which of them you worked. Rabbi Eliezer requires a sin offering, but Rabbi Joshua waives it. – M. K'ritot 4:2

All these scenarios are distinctly improbable. A good Jew does not put forbidden foods on the table, so they are unlikely to be eaten. The Sabbath is marked by feasting and Yom Kippur by fasting, so the days are unlikely to be confused. And no one in his right mind could forget whether he sinned with his wife or his sister.

The point, presumably, is to explore what happens if you don't know what crime you committed. In each of the above cases, the specific transgression is unidentifiable: for example, a menstrual violation is different from incest. We know the law has been broken, and who broke it, but the iniquity itself is undefined. It is interesting that while Rabbi Eliezer imposes the penalty even when it is unclear precisely what sin we are talking about, Rabbi Joshua does not. One might say that Rabbi Eliezer punishes the sinner, Rabbi Joshua punishes the sin. The g'mara clarifies:

> תַּנְיָא, א"ר אֱלִיעֶזֶר: מַה נַּפְשָׁךְ? אִי חֵלֶב אָכַל חַיָּיב, אִי נוֹתָר אָכַל חַיָּיב. אִי אִשְׁתּוֹ נִדָּה בָּעַל חַיָּיב, אִי אֲחוֹתוֹ בָּעַל חַיָּיב. אִי בְּשַׁבָּת עָשָׂה מְלָאכָה חַיָּיב, אִי בְּיה"כ עָשָׂה מְלָאכָה חַיָּיב. אָמַר לוֹ רַבִּי יְהוֹשֻׁעַ: הֲרֵי הוּא אוֹמֵר אֲשֶׁר חָטָא בָּהּ, עַד שֶׁיִּוָּדַע לוֹ בַּמֶּה חָטָא.
>
> It was taught, Rabbi Eliezer said: What difference does it make? If you ate tallow you are guilty, if you ate remnant you are guilty; if you were intimate with your menstruating wife you are guilty, if you were intimate with your sister you are guilty; if you did work on the Sabbath you are guilty, if you did work on the Day of Atonement you are guilty. Rabbi Joshua told him: Look here, (Scripture) says, "(You are informed of the sin) which you have committed" (Lev. 4:23); (you cannot be punished) until you know how you sinned. – BT K'ritot 19a

Rabbi Joshua's formulation anticipates modern democratic freedoms, specifically the right of habeas corpus. No one can be guilty of an unspecified crime: culpability does not exist without a defined offense. The position of Rabbi Eliezer is like that of anguished modern authors such as Franz Kafka. As one critic notes:

> "Guilt is never to be doubted," says the officer in the story Kafka wrote after the dissolution of his first engagement to Felice Bauer, "In the Penal Colony" (October 1914)... "Guilt is never to be doubted" and if, in any legal sense, it cannot even be detected, it has to be assumed that it lies hidden under an opaque surface of innocence.[51]

51. Erich Heller, "Introduction," in *The Basic Kafka.*

And another scholar observes:

> It is guilt – that most revolting of all human sentiments – that prevents Gregor [in *The Metamorphosis*] from embracing his insect form... There is an implied agency, as if Gregor truly possesses the ability to snap out of his state and return to his old self. Whatever his decision, he can't help but fail.[52]

Kafka perfectly understood the Talmud's *machmir* position. One may be effectively guilty – or one may *feel* guilty – even if the transgression is unidentified. Unconsciousness is no excuse. And why? That should be obvious:

> וְרַבִּי אֱלִיעֶזֶר הַאי בָּה מַאי עָבֵיד לֵיהּ? מִיבְּעֵי לֵיהּ: פָּרָט לְמִתְעַסֵּק. מִתְעַסֵּק דְּמַאי? אִי דַּחֲלָבִים וַעֲרָיוֹת, חַיָּיב. דַּאֲמַר רַב נַחְמָן אֲמַר שְׁמוּאֵל, הַמִּתְעַסֵּק בַּחֲלָבִים וַעֲרָיוֹת חַיָּיב, שֶׁכֵּן נֶהֱנֶה.
>
> And what does Rabbi Eliezer understand by *(you are informed of the sin) which you have committed* (Lev. 4:23)? He understands it to exclude the unintentional sinner. Unintentional how? If (you indulged in) tallow or forbidden intimacies, you are guilty. As Rav Nachman said Samuel said, Even if you *unintentionally* indulged in tallow or forbidden intimacies, you enjoyed it! – BT K'ritot 19a-b

Sin is judged not by intention, but by the pleasure derived from it. The point is proved when Rabbi Eliezer takes the opposite line in a superficially similar case, where one does not recall the source of ritual uncleanness:

> רַבִּי אֱלִיעֶזֶר אוֹמֵר, הַשֶּׁרֶץ וְנֶעְלַם מִמֶּנּוּ, עַל הֶעְלֵם שֶׁרֶץ חַיָּב, וְאֵינוֹ חַיָּב עַל הֶעְלֵם מִקְדָּשׁ.
>
> Rabbi Eliezer says of the reptile that "they are unaware of" (Lev. 5:2): they are liable for forgetting the reptile, but they are not liable for forgetting the sanctuary. – M. Sh'vu'ot 2:5

> ר' אֱלִיעֶזֶר סָבַר, בָּאִינָן עַד דְּיִדַּע אִי בְּשֶׁרֶץ אִיטְמֵי אִי בִּנְבֵלָה אִיטְמֵי. וְרַבִּי עֲקִיבָא סָבַר, לֹא בָּעִינַן עַד דְּיִדַּע, דְּכֵיוָן דְּיִדַּע דְּאִיטְמָא בָּעוֹלָם, לָא צְרִיךְ אִי בְּשֶׁרֶץ אִיטְמֵי אִי בִּנְבֵלָה אִיטְמֵי.
>
> Rabbi Eliezer argued, We require a person to know if they were defiled by a reptile or by a corpse. And Rabbi Akiva argued, We do not require them to know: for since they know that they were in fact defiled, they do not need to know if they were defiled by a reptile or by a corpse. – BT Sh'vu'ot 18b

Ulla rescues Eliezer from inconsistency by pointing to the apparent redundancy in Lev. 5:2, "if a person touches any unclean thing ... *or* ... a reptile." Since *any unclean thing* includes reptiles,

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52. Jason Baker, "Introduction," in Franz Kafka. *The Metamorphosis and Other Stories.* New York: Barnes & Noble Classics, 2003. P. xxvi.

but it is an article of faith that the Torah contains nothing superfluous, perhaps the reptile is separately specified to indicate that one must be able to differentiate the reptile from the generic source of defilement: the human corpse.

But I think Eliezer lets *these* muddled sinners off the hook because touching a corpse or a reptile is not an experience most people savor. Few keep reptiles as pets, and no one becomes a mortician or a coroner for fun. Eliezer is strict about ambiguous defilement *that you probably enjoyed.* It is a kind of *cui bono* argument: the guilty party is the one who stood to benefit from the crime; if you liked it, you're in the wrong. Let us return to the mishnah that mentioned the inadvertent eating of five forbidden dishes: M. K'ritot 3:9. The beginning of that mishnah addresses inadvertent sacrifices:

> וְעוֹד שְׁאָלָן רַבִּי עֲקִיבָא, הַשּׁוֹחֵט חֲמִשָּׁה זְבָחִים בַּחוּץ בְּהֶעְלֵם אֶחָד מַהוּ? חַיָּב אַחַת עַל כֻּלָּם, אוֹ אַחַת עַל כָּל אֶחָד וְאֶחָד?
>
> And Rabbi Akiva asked them further, What if you slaughter five sacrifices outside (the permitted area) in one inadvertence? Are you responsible for one (expiatory offering) for all, or one for each? – M. K'ritot 3:9

This question is unresolved in the mishnah, but lest you try to deduce the answer from the five-dishes case, the g'mara notes:

> מָה רְאָיָה לִשְׁוֹחֵט מֵאוֹכֵל? מַה לְאוֹכֵל שֶׁכֵּן נֶהֱנֶה.
>
> How does evidence from eating pertain to slaughtering? Eating is enjoyable (and slaughtering is not). – BT K'ritot 15b

This implies that if you relish the transgression, even though it may have been inadvertent, you are guilty in some higher sense. That may conflict with the conventional wisdom that Judaism is a religion of deeds not thoughts. But it dovetails with the worldview of a psychological novelist like Dostoevsky, of whom one critic noted, "His contemporaries ... admired his great knowledge of morbid human types and the power of his psychopathic

analysis."[53] In Dostoevsky's *The Brothers Karamazov*, for example, a man's four sons all plan to kill him. One son gets to him first, but the bumbling authorities arrest and punish a different son. And yet, the novelist implies, this is no real injustice: the convicted boy is as guilty in his heart as the real murderer; he too wanted the father dead. Dostoevsky's characters hold our attention "with their 'cracks' (*nadrýv*), a word used in a sense not unlike Freud's 'complex.'"[54] For Mirsky, the grotesque features of Dostoevsky's characters are "exteriorizations of the author's self."[55] The inadvertent sinners of the Talmud may play the same role for the rabbis.

I Didn't Mean to Sleep with Her

Above, in M. K'ritot 4:2 and BT K'ritot 19a-b, we touched on the inadvertent sexual sin. This theme is developed rather extensively in the Talmud. The lack of distinction between the deliberate and the inadvertent is explicit in the case of improper relations with a maidservant.

> וּמַה בֵּין הַשִּׁפְחָה לִבְיַן כָּל הָעֲרָיוֹת, שֶׁלֹּא שָׁוְתָה לָהֶן לֹא בָעֹנֶשׁ וְלֹא בַקָּרְבָּן?... זֶה חֹמֶר הֶחְמִיר בַּשִּׁפְחָה שֶׁעָשָׂה בָהּ אֶת הַמְזִיד כַּשׁוֹגֵג.
>
> And what is the difference between the maidservant and all other sexual transgressions, that the one case is not equal to the others in the punishment or in the expiatory sacrifice? ... This stringency is more serious in the case of the maidservant: they treat the deliberate offender the same as the unintentional offender (and vice versa). – M. K'ritot 2:4

The Torah touches only briefly on the legalities of intimacy with a maidservant, in Lev. 19:20 and Deut. 21:10-14, but it was clearly forbidden in the eyes of the rabbis:

> דִּתְנַן, מִי שֶׁחֶצְיוֹ עֶבֶד וְחֶצְיוֹ בֶּן חוֹרִין, עוֹבֵד אֶת רַבּוֹ יוֹם אֶחָד וְאֶת עַצְמוֹ יוֹם אֶחָד, דִּבְרֵי בֵּית הִלֵּל. בֵּית שַׁמַּאי אוֹמְרִים, תִּקַּנְתֶּם אֶת רַבּוֹ, וְאֶת עַצְמוֹ לֹא תִקַּנְתֶּם. לִישָׂא שִׁפְחָה אֵינוֹ יָכוֹל, שֶׁכְּבָר חֶצְיוֹ בֶּן חוֹרִין. לִישָׂא בַּת חוֹרִין אֵינוֹ יָכוֹל, שֶׁעֲדַיִין חֶצְיוֹ עֶבֶד.
>
> As we have learned, one who is half slave and half free works for his master one day and for himself one day: so say the House of Hillel. The House of Shammai say, You have solved his master's problem, but you have not solved his own (the slave's) problem. He cannot marry a slave woman, because he is already half free. He cannot marry a free woman, because he is still half slave. – BT P'sachim 88a-b

53. D. S. Mirsky. *A History of Russian Literature*, ed. Francis J. Whitfield. New York: Vintage Books, 1958. P. 284.
54. Mirsky, p. 290.
55. Mirsky, p. 289.

Still, are *inadvertent* intimacies with maidservants a major feature of the landscape of human transgression? It seems a surprising legal category.

In the next chapter we find something more shocking:

> אָמַר רַבִּי עֲקִיבָא, שָׁאַלְתִּי אֶת רַבָּן גַּמְלִיאֵל וְאֶת רַבִּי יְהוֹשֻׁעַ בָּאִטְלִיס שֶׁל אַמָּאוּס, שֶׁהָלְכוּ לִקַּח בְּהֵמָה לְמִשְׁתֵּה בְנוֹ שֶׁל רַבָּן גַּמְלִיאֵל, הַבָּא עַל אֲחוֹתוֹ וְעַל אֲחוֹת אָבִיו וְעַל אֲחוֹת אִמּוֹ בְּהֶעְלֵם אֶחָד מַהוּ? חַיָּב אַחַת עַל כֻּלָּן, אוֹ אַחַת עַל כָּל אַחַת וְאַחַת? וְאָמְרוּ לִי, לֹא שָׁמָעְנוּ. אֲבָל שָׁמַעְנוּ, הַבָּא עַל חָמֵשׁ נָשָׁיו נִדּוֹת בְּהֶעְלֵם אֶחָד, שֶׁהוּא חַיָּב עַל כָּל אַחַת וְאַחַת. וְרוֹאִין אָנוּ שֶׁהַדְּבָרִים קַל וָחֹמֶר.
>
> Rabbi Akiva said, I asked Rabban Gamaliel and Rabbi Joshua in the Emmaus butcher shop, where they had gone to get meat for Rabban Gamaliel's son's wedding: What if a man is intimate with his sister and his father's sister and his mother's sister in one oversight? Does he owe one (expiatory sacrifice) for all, or one for each? And they told me, We have not heard. But we have heard, If a man is intimate with his five menstruating wives in one oversight, he owes one (expiatory sacrifice) for each. And we see (if the law is strict about menstruating wives), all the more in case (of incestuous connections). – M. K'ritot 3:7

There is a clear analogy here with the treatment of forbidden foods, which are enjoyable to eat. Apparently the rabbis view inadvertent sexual transgressions as likely to be pleasurable, therefore each requires a separate atonement. While this text may provoke revulsion – and incredulity, as the episode is supposed to be *inadvertent* – the g'mara blithely expands the exercise:

> הַבָּא עַל אֲחוֹת אָבִיו שֶׁהִיא אֲחוֹת אִמּוֹ, חַיָּב אַחַת עַל כּוּלָּן אוֹ חַיָּב עַל כָּל אַחַת וְאַחַת, מַהוּ? מִי אָמְרִינַן, הֲרֵי שְׁמוֹת מוּחְלָקִין, אוֹ דִּלְמָא, הֲרֵי אֵין גּוּפִין מוּחְלָקִין?
>
> What if somebody is (inadvertently) intimate with his father's sister who is also his mother's sister? Does he owe one (expiatory sacrifice) for all, or does he owe one for each? Do we say there are different offenses here, or perhaps, there are *not* different *persons* here? – BT K'ritot 15a

Incest is of course found in Greek mythology, notably the Oedipus story. And inbreeding is tacitly present in the Biblical account of humanity's origins:

> וַיֵּדַע קַיִן אֶת־אִשְׁתּוֹ וַתַּהַר וַתֵּלֶד אֶת־חֲנוֹךְ...
>
> And Cain knew his wife: and she conceived, and bore Enoch... – Gen. 4:17

The Torah does not explicitly say so, but Cain's wife was presumably one of his sisters.[56] For

56. BT Sanhedrin 58b spells it out.

that matter, Eve was in a sense Adam's sister, if not his twin. Incest is mentioned a few more times in Biblical narrative, notably Gen. 19:31-36 and II Sam. 13:11-14, but there is no reason to suppose it was particularly common in the daily life of the ancient Israelites.

Why does it suddenly become necessary for the rabbis to belabor the subject of incest? And how can incest possibly be inadvertent? I think we must give a psychological answer to this question. The rabbis may have anticipated Freud by forty generations in discovering the universality of incestuous feelings. The father of psychoanalysis declared, "These wishes, which are censored and given a distorted expression in dreams, are first and foremost manifestations of an unbridled and ruthless egoism... The desire for pleasure – the 'libido', as we call it – chooses its objects without inhibition, and by preference, indeed, the forbidden ones: not only other men's wives, but above all incestuous objects, objects sanctified by the common agreement of mankind, a man's mother and sister..."[57] Freud believed that "A child who has been put into second place by the birth of a brother or sister, and who is now for the first time almost isolated from his mother, does not easily forgive her this loss of place ... He may take his sister as a love-object by way of substitute for his faithless mother."[58] Freud's perspective is very male, but then so is the Talmud's. And if others sublimate their forbidden longings into dreams, myths, or drama, is it far-fetched that the rabbis may have sublimated them into legalistic ramblings?

David Biale argues that, for the rabbis, the forbidden is always the most desirable.[59] He compares יֵצֶר הַטּוֹב and יֵצֶר הָרָע to the superego and id of psychoanalysis,[60] and cites Sifrei

57. Sigmund Freud. *Introductory Lectures on Psycho-analysis*, transl. James Strachey. New York: W. W. Norton & Co., 1966. P. 175.
58. Freud, p. 415.
59. David Biale. *Eros and the Jews: From Biblical Israel to Contemporary America.* New York: BasicBooks, 1992. Pp. 47-8. His proof text is Sifra K'doshim 20:26.
60. Biale, pp. 44-5.

Deut. 45 to define Torah study as a kind of sublimation.[61] And he observes that the rabbis go into embarrassing depth in discussing sexual acts,[62] thus – according to Michael Satlow – "extending their authority into the bedroom, totally obfuscating the barriers between public and private."[63] Satlow maintains that the rabbis see incestuous feelings as natural (though not to be acted upon), unlike Greco-Roman authors who view the very idea of incest as unnatural.[64]

Summary

Though at first it seemed bizarre to blame *unintentional* sinners for their actions, we have come to see that it is inevitable. Even our careless mistakes may leave us feeling guilty: it is one of religion's functions to assuage that sense of transgression with appropriate liturgy, ritual, or whatnot. Besides, audacious political and literary figures have been known to suggest that we are not as innocent as we imagine: to some extent we are all complicit in the world's infinite cruelties. And modern psychology has demonstrated that we may be unconsciously directing our steps toward the destination we claim to avoid.

On reflection we see that the rabbis who classified and condemned inadvertent sins had remarkable insight. Perhaps the sin we are unaware of is the worst sin of all.

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61. Biale, p. 46.
62. Biale, p. 52.
63. Michael L. Satlow. *Tasting the Dish: Rabbinic Rhetorics of Sexuality.* Atlanta: Scholars Press, 1995. P. 327.
64. Satlow, pp. 76-7. His proof texts are Sifrei Num. 90 and BT Shabbat 130a.

VI. Conclusion

Overview

The Talmud is *sui generis* among the holy books of the world. People turn to sacred text for answers, but the Talmud just prompts more questions: you come to the Talmud with one question and leave with fifty. Perhaps the higher purpose of the Talmud is to validate the asking of questions, to privilege questions over answers.[65]

Part of what makes scripture sacred is its elasticity of interpretation: it must resonate with readers of different kinds, in different times and places, most often in a figurative way. For example, the Torah speaks to us because it is a book of journeys, and we are all on some type of journey; the Prophets speak to us because they challenge hypocrisy, and we all encounter hypocrisy. But the Talmud is more difficult to read and appreciate. Some may say the Talmud is not meant for average congregants, but for rabbis; that would explain its focus on rabbinic discourse and debate. On the other hand, it seems clear that the Talmud's unique style has shaped the personality of the Jewish people. It is a cliché that the Jew answers a question with a question, that the Jews are a disputatious people, endlessly identifying yet another way to look at an issue. Amos Oz remembered his parents' friends:

65. Analyzing a typical *sugya*, David Kraemer comments, "The cumulative impact is unfailing: alternatives are valid and decisions are to be avoided. Argumentation serves to demonstrate the validity of alternatives; its primary purpose is not the rendering of decisions." (David Kraemer. *The Mind of the Talmud: An Intellectual History of the Bavli.* New York: Oxford University Press, 1990. P. 92.)

> There were Revisionists from Odessa and socialist Zionists from Bobruisk, scholarly researchers of mysticism and scholarly researchers of the deserts, the treasurer of the religious men's club, who spent his free time writing new commentaries on the interpretations of Maimonides, and a stormy Jewish Agency clerk who knew of a new formula to soften the hearts of the British people. There were atheists, vegetarians, and other assorted world reformers, each of them with his own personal plan for the salvation of the People and the Reform of Humanity in one fell swoop. Everyone knew exactly what had to be done – and at once. They all knew where Chaim Weizmann was in error and what it was that Ben-Gurion didn't understand. Everyone talked of the future. They would argue, through the deepening shadows of the garden, into the night, piling argument upon quotation.[66]

It is no coincidence that Jews (or ex-Jews, who often retain the habits of Jewish discourse) have invented some of the modern world's most radical and provocative ideas, from communism to psychoanalysis to Esperanto. Would this have happened without the habit of endless debate inculcated by the Talmud?

The Jewish tendency to word play, to paronomasia and fanciful etymologies and kaleidoscopic reconfiguration of language, also reflects the Talmud's attention to reinterpreting and reparsing Biblical or Mishnaic expressions. A philologist identified the defining idiosyncrasy of Yiddish literature:

> Anything may be linked with anything else. From every situation, one can shift to another situation which does not explicitly relate to the problem at hand, but is rich in new experiential detail. In principle, every chain developed in a text may link it with the whole universe of discourse. Thus every trivial anecdote may attain "metaphysical" dimensions. Indeed, the principle of universal analogy, derived from "Talmudic" thinking and domesticated in Yiddish, is typical of Freud's method as well... [In Sholem Aleichem's *Tevye the Milkman*] Events are not presented directly, but through Tevye's rambling, roundabout associative chains telling not about events proper but about other, similar dialogues in the past... the book is a parody of a world based on talking and of a culture steeped in quotations and commentaries of texts rather than in facing realities. When a wave of pogroms sweeps Russia, Tevye refers to it with his typical historiosophical complacency: "when the time came *to talk* about pogroms"... [67]

Probably every Jewish literature shares much of this approach. In our American Jewish canon, the pun-laden dialogue of the Marx brothers – where every word is in danger of suddenly meaning something else – differs from the Talmud chiefly in not being Aramaic. Of course the

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66. Amos Oz. *In the Land of Israel*, transl. Maurie Goldberg-Bartura. New York: Harcourt Brace Jovanovich, 1983. Pp. 19-20.
67. Benjamin Harshav. *The Meaning of Yiddish.* Berkeley: University of California Press, 1990. Pp. 102-4.

Talmud is more than an argument at Amos Oz' family dinner table, a chapter of a Sholom Aleichem novel, or a Marx brothers' movie. But some of the bizarre material we have examined foreshadows these modern kinds of Jewish discourse rather well.

As we complete our survey of bizarre material in the Mishnah and Babylonian Talmud, one thing is clear: no generalization can do it justice. In this thesis I have only scratched the surface of absurd rabbinic texts, focusing for brevity's sake on four subject areas: animals, big numbers, mistaken identity, and unintentional transgressions. But even in this limited corpus, there seem to be many different reasons for the inclusion of these surprising materials.

The Educational

One obvious reason for peculiar rabbinic discussions is the instructive. The sages use the extreme or unlikely case to explain the common or typical case. Nonexistent animals like the *tachash* or the sheep-goat clarify the issues surrounding real animals; the stratospheric or subterranean *eruv* illuminates the significance of the normal *eruv*; the improbable chain of 100 co-wives, or 100 conflicting witnesses, elucidates the legalities of shorter series.

The brainteasers the rabbis ponder remind me of the playground riddles of my childhood, which typically made an easy question difficult by supplying complicated extraneous information to confuse the audience. Again, rabbinic puzzles have some of the pleasure of a detective novel: one must sort out the clues from the red herrings. The difference is that there is only one Sherlock Holmes, or Hercule Poirot, but the rabbis' mysteries feature numerous detectives with conflicting methodologies. Part of the suspense is wondering if they will be able to reconcile their divergent findings. I have yet to read a secular detective story that ends with תֵּיקוּ.

If the Talmud's agenda is to train rabbis, the frequent resort to improbable questions is perfectly natural: it develops the aptitude for abstract reasoning. Even agnostics admire religion as *unscientific science*; religion cultivated humanity's potential for complex abstract thought before there was astrophysics or microbiology to think about. From the rabbis' point of view, the abstract thought developed by bizarre *halachah* will prove useful later in dealing with more conventional quandaries. As the Talmud itself comments, דָּנִים אֶפְשָׁר מִשֶּׁאִי אֶפְשָׁר, *they judge the possible from the impossible* (or *they reason from the impossible to the possible*).

The Spiritual

Another reason for the Talmud's exotic subject matter is that the sages found something uplifting in meditation upon unexpected situations. As we know, studying Torah is holy in itself, regardless of the content, but it is possible that marginal material is *especially* holy in some instances. The passages involving confusion of infants, who then grow up with overlapping obligations to ambiguous kin, invite reflection on our common humanity and our shared fate. They might even be understood as an oblique protest against a society where birth equals destiny, where gender and lineage and sibling configuration determine far too much about a person's prospects in life. Or, perhaps, they point to the need (unmet till modern times) for a formal halachic definition of adoption.

This is what the Talmud calls הִלְכְתָא לִמְשִׁיחָא, law for the days of the Messiah, a phrase with a double meaning. It could mean law for a fanciful world, or law for a visionary world; law for a time that will never be, or law for a time that should come as soon as possible. The dual nature of this category reveals the profundity of what we can learn from the Talmud's peripheral

situations.

The Theological

Similar to the confusion of infants, but more radical in their implications, are the cases where people or things lose their individuality without any precipitating mishap. This includes namesakes who are legally interchangeable, swarms of guests whose multitude is noticed only when dinner is over, towers of sieves, lines of baby-passers. The implication can only be that earthly distinctions are of no account in God's eyes, that the Deity is indifferent to the identities and positions we cherish. It may be hard for us to accept the ramifications of this. It is a lesson in humility. But it cannot be otherwise. None of us is *individually* the image of God: rather, all of us are *collectively* the image of God. We love to quote a text like the following:

> וְהַרְבָּה אַרְבֶּה אֶת־זַרְעֲךָ כְּכוֹכְבֵי הַשָּׁמַיִם וְכַחוֹל אֲשֶׁר עַל־שְׂפַת הַיָּם...
> And I will surely multiply (Abraham's) seed like the stars of the sky or the sands on the seashore...
> – Gen. 22:17

But we typically forget the corollary: according to this formula, each of *us* is one of those grains of sand, as tiny and undistinguished as another speck of quartz on the beach! It is like the Zen Buddhist's rock garden, a model of human insignificance: you and I are about as important as two pebbles in a field of gravel; which is meaningless even in its entirety, as a *real* garden is plants, not stones. Hillel's aphorism about עָבַד שְׁמֵהּ, losing one's name, though he may have meant it as personal advice to one or two self-aggrandizing colleagues, effectively sums up this category of absurdities.

In his book on immortality, Neil Gillman notes:

> I understand the central thrust of the doctrine of the afterlife as establishing the everlasting preciousness to God of the life I led here on earth. I lived that life as a concrete individual. A doctrine of the afterlife that has my soul merging into some cosmic soul after my death would defeat the entire purpose of the myth. The mishnah that records the courts' admonition to witnesses in a case of capital punishment reminds me that God created but one single person from whom all of mankind descended. "Therefore but a single person was created in the world, to teach that if anyone has caused a single soul to perish from Israel, Scripture imputes to him as though he had caused a whole world to perish; and if any person saves a single soul from Israel, Scripture imputes to him as though he had saved a whole world. (Mishnah *Sanhedrin* 4:5)"[68]

Though emphasizing individuality, Gillman perhaps concedes implicitly that individuality is not fully realized in this life: it can only be a reality in the world-to-come.

The Metaphorical

My instinct tells me that many of the Talmud's far-fetched conditions are allegories of more conventional situations. I am conscious of a danger zone here. Philo of Alexandria notoriously treated *any* difficult or disturbing text as an allegory of something else:

> Thus, Adam allegorically is the mind—every human has a mind—and Eve is sense perception: all minds function through the perceptions of the senses... The adhesive that binds together what Philo presents allegorically is the narrative nature of the Pentateuch... Genesis is a book of narratives, not of laws. How, then, can Genesis fit logically in a work called the *Law*? The answer that Philo gives rests on his distinction between the "special laws," that is, specific, written requirements, and the so-called Unwritten Law of Nature... The patriarchs lived in accordance with the Unwritten Law of Nature; the particular laws set forth as requirements for their descendants those deeds which the patriarchs did.[69]

The laws themselves were allegories:

> [The Law] subjoins a general test and verification of the ten species of animals, employing two signs, the parted hoof and the chewing of the cud. Animals lacking both or one of these are unclean. Now both these signs are symbols of the methods of teaching and learning most conducive to knowledge... For just as the ruminant animal after chewing up the food fixes it in the gullet, again after a while draws it up and masticates it and then transfers it to the belly, in like manner the student, after receiving from the teacher through his ears the principles and intuitions of wisdom, prolongs the learning process,... till by repeating in his memory through constant exercises,... he firmly stamps their impression in his soul.[70]

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68. Neil Gillman. *The Death of Death: Resurrection and Immortality in Jewish Thought.* Woodstock, VT: Jewish Lights Publishing, 1997. P. 271.
69. Samuel Sandmel. *Philo of Alexandria: An Introduction.* New York: Oxford University Press, 1979. Pp. 24, 55-56.
70. David Winston. *Philo of Alexandria: The Contemplative Life, the Giants, and Selections.* Ramsey, NJ: Paulist Press, 1981. P. 283.

Working in this way, one might easily turn the whole Talmud into a homily on some contemporary concern, or a mystical treatise on the architecture of the heavens.[71] That would not be satisfactory. But I am convinced that a part of the material *is* allegorical.

The Bible foreshadows the Talmud's use of allegory: for example, in Ezekiel's vision of the dry bones.

> וַיֹּאמֶר אֵלַי הִנָּבֵא עַל־הָעֲצָמוֹת הָאֵלֶּה וְאָמַרְתָּ אֲלֵיהֶם הָעֲצָמוֹת הַיְבֵשׁוֹת שִׁמְעוּ דְּבַר־יְהוָה. כֹּה אָמַר אֲדֹנָי יְהוִה לָעֲצָמוֹת הָאֵלֶּה הִנֵּה אֲנִי מֵבִיא בָכֶם רוּחַ וִחְיִיתֶם. וְנָתַתִּי עֲלֵיכֶם גִּדִים וְהַעֲלֵתִי עֲלֵיכֶם בָּשָׂר וְקָרַמְתִּי עֲלֵיכֶם עוֹר וְנָתַתִּי בָכֶם רוּחַ וִחְיִיתֶם וידַעְתֶּם כִּי־אֲנִי יְהוָה... וַיֹּאמֶר אֵלַי בֶּן־אָדָם הָעֲצָמוֹת הָאֵלֶּה כָּל־בֵּית יִשְׂרָאֵל הֵמָּה הִנֵּה אֹמְרִים יָבְשׁוּ עַצְמוֹתֵינוּ וְאָבְדָה תִקְוָתֵנוּ נִגְזַרְנוּ לָנוּ.
>
> And (God) said to me, Prophesy on these bones, and say to them, Dry bones, hear the word of the Eternal. Thus says the Sovereign Eternal to these bones: Here I bring spirit into you, and you shall live. And I will give you sinews, and raise flesh on you, and cover you with skin, and give you spirit: and you shall live, and know that I am the Eternal... And (God) said to me, Human being, these bones are all the house of Israel: they say, Look, our bones are dry, and our hope is lost; we are cut off. – Ezek. 37:4-6, 11

Verse 11 spells out that the preceding verses are allegorical. Better yet, consider Jotham's parable about Shechem's unwise choice of leadership.

> הָלוֹךְ הָלְכוּ הָעֵצִים לִמְשֹׁחַ עֲלֵיהֶם מֶלֶךְ וַיֹּאמְרוּ לַזַּיִת מָלְכָה עָלֵינוּ. וַיֹּאמֶר לָהֶם הַזַּיִת הֶחָדַלְתִּי אֶת־דִּשְׁנִי אֲשֶׁר־בִּי יְכַבְּדוּ אֱלֹהִים וַאֲנָשִׁים וְהָלַכְתִּי לָנוּעַ עַל־הָעֵצִים. וַיֹּאמְרוּ הָעֵצִים לַתְּאֵנָה לְכִי־אַתְּ מָלְכִי עָלֵינוּ. וַתֹּאמֶר לָהֶם הַתְּאֵנָה הֶחָדַלְתִּי אֶת־מָתְקִי וְאֶת־תְּנוּבָתִי הַטּוֹבָה וְהָלַכְתִּי לָנוּעַ עַל־הָעֵצִים. וַיֹּאמְרוּ הָעֵצִים לַגֶּפֶן לְכִי־אַתְּ מָלְכִי עָלֵינוּ. וַתֹּאמֶר לָהֶם הַגֶּפֶן הֶחָדַלְתִּי אֶת־תִּירוֹשִׁי הַמְשַׂמַּח אֱלֹהִים וַאֲנָשִׁים וְהָלַכְתִּי לָנוּעַ עַל־הָעֵצִים. וַיֹּאמְרוּ כָל־הָעֵצִים אֶל־הָאָטָד לְךְ אַתָּה מְלָךְ־עָלֵינוּ. וַיֹּאמֶר הָאָטָד אֶל־הָעֵצִים אִם בֶּאֱמֶת אַתֶּם מֹשְׁחִים אֹתִי לְמֶלֶךְ עֲלֵיכֶם בֹּאוּ חֲסוּ בְצִלִּי וְאִם־אַיִן תֵּצֵא אֵשׁ מִן־הָאָטָד וְתֹאכַל אֶת־אַרְזֵי הַלְּבָנוֹן.
>
> It happened that the trees went to anoint a king over themselves: and they said to the olive, Reign over us. But the olive said to them, Shall I leave my fatness, for by me they honor God and humanity, and go move above the trees?
>
> So the trees said to the fig, You come reign over us. But the fig said to them, Shall I leave my sweetness and my good fruit, and go move above the trees?
>
> So the trees said to the vine, You come reign over us. But the vine said to them, Shall I leave my new wine, which gladdens God and humanity, and go move above the trees?
>
> So all the trees said to the bramble, You come reign over us. And the bramble said to the trees, If you truly anoint me king over you, come rejoice in my shadow: and if not, may fire come out of the bramble and consume the cedars of Lebanon. – Jdg. 9:8-15

It must be fairly clear that these trees are actually people, people reluctant to relinquish their

71. In Robert Heinlein's science fiction classic *Orphans of the Sky*, a regressive culture no longer understands the scientific tomes of its antecedents, and reinterprets all the texts as sacred allegories.

honorable occupations for public service, except the one who has no honorable occupation. Likewise in the Talmud: stories about noble or wicked animals, for example, are surely a folkloric way of discussing different *human* types. The expression יִשְׂרָאֵל כְּיוֹנָה מְתֻילָא, Israel is compared to a dove, typifies this category.

The Humorous

There's no avoiding the admission that some of the Talmud's singularities are intentionally funny or satirical. These passages are supposed to make us laugh, or to subvert the tradition by spotlighting its irrationalities. Or, perhaps, this material obliquely *shores up* the tradition by giving us permission to snicker at its irrationalities *within safe boundaries*. This category includes laws addressed *to* animals, and laws about composite sins violating many different commandments. It is easy to imagine these texts being written after a few too many *l'chayyim*s.

To some extent the humorous overlaps with the other classes of Talmudic absurdities: discussions begin with the educational or spiritual but gradually slide over into the comical. For example, the mouse that brings leaven into our homes on Passover begins in the mishnah as a metaphor for the nonobservant Jew: but in the g'mara the discussion becomes more and more outlandish, ending in hilarity. The Mishnaic term אֵינוֹ הַשֵּׁם, "not the point" or "off the subject," seems to define this group of rulings.

The Literary

Some of the incredible scenarios in the Talmud are best understood as products of the

literary sensibility, not so much in a humorous vein but in a manner suggesting life's complexity and difficulty, evoking identification and sympathy from the reader. Typical here are the confusing predicaments where a pilgrim loses his way or a worshiper forgets what she has done. We have all had experiences of this type, even if the context was secular. We often hear people identify confusion and forgetfulness as symptoms of advancing age, but they may just as easily be shortcomings of the young and inexperienced. Personally I have been absent-minded all my life, as bad at 15 as at 50.

A style of worship, for example, will tend to become second nature when repeated daily or weekly for long periods. If our congregation then changes its ritual leadership, or if we switch to a different congregation, it may take a very long time to break our attachment to the old tunes and habits. And those times of year requiring deviation from entrenched liturgical reflexes are apt to throw off even the most devout, as I deduce from the frequent notations in my Artscroll prayerbook, indicating how to proceed if one forgets a seasonal insert or variation of text. For example, in the winter you add the verbiage מַשִּׁיב הָרוּחַ וּמוֹרִיד הַגָּשֶׁם to the גְּבוּרוֹת blessing of the עֲמִידָה prayer: in the summer you omit it; if you get it wrong, you must start the whole עֲמִידָה over from the beginning. If you're past the point of insertion and realize you don't remember what you said, the presumption during the first 30 days after the season change is that you said it wrong.[72] I cannot tell if mistakes are common or rare in the Artscroll constituency, but the provision of rules to cover them recalls the Talmud's rules for inadvertent transgressions. The rabbinic moniker for this type of incident is מִקְצָת יְדִיעָה, partial knowledge.

72. Rabbi Nosson Scherman. *The Complete Artscroll Siddur, Nusach Ashkenaz.* Brooklyn: Mesorah Publications, 1984. Pp. 984-5.

The Psychological

Some of the most startling circumstances described by the rabbis are suggestive of buried intentions and unacknowledged motives. Surely the inadvertent transgressions, especially those related to food or sex, bespeak unconscious choices and reveal the insight of the sages into the dark and devious longings of the human heart. The Bible foreshadows this insight too. Take the following stories from Genesis.

> וַיָּבֹא אֶל־אָבִיו וַיֹּאמֶר אָבִי וַיֹּאמֶר הִנֻּנִי מִי אַתָּה בְּנִי. וַיֹּאמֶר יַעֲקֹב אֶל־אָבִיו אָנֹכִי עֵשָׂו בְּכֹרֶךָ עָשִׂיתִי כַּאֲשֶׁר דִּבַּרְתָּ אֵלָי קוּם־נָא שְׁבָה וְאָכְלָה מִצֵּידִי בַּעֲבוּר תְּבָרֲכַנִי נַפְשֶׁךָ. וַיֹּאמֶר יִצְחָק אֶל־בְּנוֹ מַה־זֶּה מִהַרְתָּ לִמְצֹא בְּנִי וַיֹּאמֶר כִּי הִקְרָה יְהוָה אֱלֹהֶיךָ לְפָנָי. וַיֹּאמֶר יִצְחָק אֶל־יַעֲקֹב גְּשָׁה־נָּא וַאֲמֻשְׁךָ בְּנִי הַאַתָּה זֶה בְּנִי עֵשָׂו אִם־לֹא. וַיִּגַּשׁ יַעֲקֹב אֶל־יִצְחָק אָבִיו וַיְמֻשֵׁהוּ וַיֹּאמֶר הַקֹּל קוֹל יַעֲקֹב וְהַיָּדַיִם יְדֵי עֵשָׂו. וְלֹא הִכִּירוֹ כִּי־הָיוּ יָדָיו כִּידֵי עֵשָׂו אָחִיו שְׂעִרֹת וַיְבָרֲכֵהוּ.
>
> And he came to his father, and said, My father: and he said, Here I am; who are you, my son? And Jacob said to his father, I am Esau your firstborn: I have done as you told me; please rise, sit and eat of my venison, that your soul may bless me. And Isaac said to his son, How did you find it so quickly, my son? And he said, Because the Eternal your God appointed it before me. And Isaac said to Jacob, Please come near and I will feel you, my son: are you my son Esau or not? And Jacob went near to Isaac his father; and he felt him, and said, The voice is Jacob's voice, but the hands are Esau's hands. So he did not recognize him, for his hands were hairy like his brother Esau's hands: and he blessed him. – Gen. 27:18-23

> וַיִּרְאֶהָ יְהוּדָה וַיַּחְשְׁבֶהָ לְזוֹנָה כִּי כִסְּתָה פָּנֶיהָ. וַיֵּט אֵלֶיהָ אֶל־הַדֶּרֶךְ וַיֹּאמֶר הָבָה נָּא אָבוֹא אֵלַיִךְ כִּי לֹא יָדַע כִּי כַלָּתוֹ הִוא וַתֹּאמֶר מַה־תִּתֶּן־לִי כִּי תָבוֹא אֵלָי. וַיֹּאמֶר אָנֹכִי אֲשַׁלַּח גְּדִי־עִזִּים מִן־הַצֹּאן וַתֹּאמֶר אִם־תִּתֵּן עֵרָבוֹן עַד שָׁלְחֵךְ. וַיֹּאמֶר מָה הָעֵרָבוֹן אֲשֶׁר אֶתֶּן־לָךְ וַתֹּאמֶר חֹתָמְךָ וּפְתִילֶךָ וּמַטְּךָ אֲשֶׁר בְּיָדֶךָ וַיִּתֶּן־לָהּ וַיָּבֹא אֵלֶיהָ וַתַּהַר לוֹ.
>
> And Judah saw her: and he thought her a harlot, for she had covered her face. And he turned to her on the way, and said, Please, let me be intimate with you: for he did not know that she was his daughter-in-law; and she said, What will you give me, that you may be intimate with me? And he said, I will send you a kid of the goats from the flock: and she said, If you give me a pledge until you send it. And he said, What pledge shall I give you? and she said, Your seal, and your cord, and your staff that is in your hand: and he gave them to her; and he was intimate with her, and she conceived by him. – Gen. 38:15-18

Notwithstanding the plain meaning of the text, Isaac must have had an inkling that the supplicant was his younger son Jacob; Judah must have suspected that the "harlot" was his daughter-in-law Tamar. The disguise worked because the patriarch was more or less willing to be deceived, but this is hardly to the patriarch's credit. In the Mishnah's language, הַמֵּזִיד כַּשּׁוֹגֵג, the accidental is as bad as the deliberate.

And what of the following delicious paradox:

תִּמְחֶה אֶת־זֵכֶר עֲמָלֵק מִתַּחַת הַשָּׁמָיִם לֹא תִּשְׁכָּח.
Wipe out the memory of Amalek under heaven: do not forget! – Deut. 25:19

The enigma of *remembering to forget* proves the psychological depth of the Pentateuch's authors. They perceived that the mind has levels, that the heart is a labyrinth. This wisdom is all the clearer by the time of the rabbis.

Summary

If politics is the art of the possible, religion is the art of the impossible: or let us say, the scarcely possible. Medieval Christian scholastics famously debated how many angels could stand on the head of a pin, a question which (in my opinion) does not have even a theoretical answer. The Talmudic sages were fully capable of that kind of ethereal nonsense, but their usual brand is more down-to-earth. There is something *heymish*, something folksy, about the problem of devious mice, or of forgetting *which* forbidden food you ate. If religion must be irrational, and it does seem to be a requirement, then that is the direction we Jews prefer to take it.

There is, then, no one reason for outlandish content in the Talmud. Outlandish content is one of the Talmud's *techniques*, no different in essence from the technique of quoting the Bible or of interpreting it according to the standard rules. In some degree, also, the oddness of the Talmud's subject matter is a symptom of its gender bias. There is something boyish about the frequent resort to the grotesque, the mischievous attraction to the preposterous. Of course, the Talmud is written to be *studied*: and for the sake of Jewish continuity, it must be studied especially by *young people*, whose natural interests might lie elsewhere than with religious law. In premodern times the students were almost always male: so the Talmud has to appeal to the

same demographic as modern cinema, with its reliance on crime and car chases, absurd premises and ridiculous plot twists, to hold the audience.

In short, it is understandable that the Talmud should cloak its dry subject matter in the sort of foolishness that captures the attention of young males. Or the occasional middle-aged man who retains a puerile sense of humor, even if he is a rabbinical student.

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