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TITLE HARM THROUGH THE SPOKEN WORD: מַחֲסָר וְנֶזֶק AND
RELATED CONCEPTS IN RABBINIC LITERATURE

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HARM THROUGH THE SPOKEN WORD:
לשון הרע AND RELATED CONCEPTS IN RABBINIC LITERATURE

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Thesis submitted in partial fulfillment of the requirements
for Ordination.

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DIGEST

Society depends for its functioning on the ability of human beings to communicate verbally with one another. Yet this same faculty of speech can readily be destructive. Human beings find it easy and even fun to engage in malicious gossip and slander about one another, even when these words may hurt their object. Jewish tradition recognizes the dangerous nature of the tongue and seeks to control it by setting up an ethical ideal in which people's speech is only constructive.

This thesis examines in detail the rabbinic attitudes to and attempts to deal with harmful speech. The rabbis of the Talmud and Midrash received a set of vague Biblical laws about forbidden speech and a tradition which forbade them from decreeing punishments for most purely verbal offenses. Working within these constraints, they attempted to clarify the boundary between permissible and forbidden words and to impress upon their people the necessity of guarding their tongues. They stressed the gravity of breaking the laws of proper speech and outlined severe Divinely imposed punishments for the offender.

Specifically, this thesis examines the references in the Tannaitic and Amoraic literature to לשון הרע, its subcategories of מוציא שם רע, רכילות, and אונאת דברים, and its side effects of ביוש בדברים and הלבנת פנים. Within each chapter, we define the term, investigate the rabbinic

treatment of the concept, and seek to understand the origins of the concept and its currency in the rabbinic world. We also look briefly at the medieval development of the concept, noticing the later imposition of more concrete and humanly controlled forms of punishment for verbally harming another.

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This thesis is dedicated to the one who has helped make the last months fly by, to my husband-to-be, Jonathan D. Sarna.

TABLE OF CONTENTS

| | |
|---|-----|
| Chapter I: Introduction | 1 |
| Chapter II: לשון הרע | |
| A. The Most Dangerous Limb in the Body | 10 |
| B. Definition of לשון הרע | |
| 1. General Definition | 14 |
| 2. Potential Objects of לשון הרע | 16 |
| 3. Possible Content of לשון הרע | 19 |
| 4. אבק לשון הרע | 21 |
| 5. Permitted Forms of לשון הרע | 23 |
| 6. The Boundary Between Permitted and Prohibited Speech | 25 |
| 7. Summary | 30 |
| C. The Seriousness of לשון הרע | 30 |
| D. The Punishments for לשון הרע | 38 |
| E. Remedies for the Slanderer and Rewards for Guarding One's Tongue | 52 |
| Chapter III: מוציא שם רע | 62 |
| Chapter IV: רכילות | 80 |
| Chapter V: אונאת דברים | 87 |
| Chapter VI: הלבנת פנים and ביוש בדברים | 101 |
| Chapter VII: Conclusion | 112 |
| Bibliography | 121 |

CHAPTER I: INTRODUCTION

In the first chapter of Genesis, the Bible tells us that human beings were made in the Divine image. This seemingly simple assertion lays the basis for the entire Biblical and Jewish theory of the nature of the human species and its potentialities. If human beings are made in God's image and God represents perfection, then human beings contain in them the ability to become perfect. Although they may currently have many faults, they should be able to identify and overcome those aspects of their being which prevent them from being God-like or perfect. Not only should they be able to do this, but they are commanded to, for God has said to the Israelites, "You shall be holy, for I the Lord your God am holy."¹ The individual Jew and the Jewish nation are commanded to do the best they can to imitate God, to achieve a God-like level of sanctity in all the aspects of their lives. One might term this the ethical goal of Jewish life.²

In striving to fulfill this mission, the Jews developed

¹ Leviticus 19:2.

² Abraham Cohen, "The Ethics of the Rabbis," *Essays in honour of the Very Rev. Dr. J. Hertz, Chief Rabbi of the United Hebrew Congregations of the British Empire, on the occasion of his seventieth birthday, September 25, 1942*, ed. Isadore Epstein, et. al. (London: E. Goldston, 1942), pp. 72-75; M. Gaster, "Conscience (Jewish)," *Encyclopedia of Religion and Ethics*, ed. James Hastings (New York: Charles Scribner's Sons, 1912), IV, 41.

an elaborate code of laws, establishing the correct mode of action for practically every circumstance of life. The rabbis of the Mishnah and the Talmud detailed with great precision the boundaries between proper and improper actions, actions which properly fulfill Israel's mission of *imitatio dei* and those which do not. Alongside the resulting enumeration of the positive and negative commandments, they prescribed remedies for the sinner, ranging from simple repentance to personal correction of the error, to human and Divinely imposed punishments. All arising from the ethical goal of holiness, this catalogue of proper and improper actions and the corrective remedies for the latter is the legal system of Judaism, the *halachah*.

Certain areas, however, found easier definition than others. It was relatively easy for the rabbis to determine which sort of food required what blessing, which actions were prohibited as work on the Sabbath and festivals, or even which principles guided a court in its requiring payment of civil damages or decreeing capital punishment. Although any issue of law requires a definition of the boundary between the permitted and prohibited, the actions or objects on either side of that boundary are usually concrete. Most often it is obvious, except perhaps in minute details, when transgression of that boundary begins to cause harm to the individual or to society.

When we turn to misdeeds involving the spoken word, the matter is not so clear cut. Speech is a necessary facet of society. Without communication of information and ideas,

human beings would be unable to coexist with one another, to cooperate, or to strive for that holiness which is the greater ethical goal of their existence. Anthropologists point to the development of oral communication as one of the prime factors which allowed human civilization to develop. The functioning of the family unit, the market place, the synagogue, or the larger political community depends on people being able to share ideas and information. Social groups are often defined by who is privy to or excluded from certain levels of information sharing.³

Yet, we humans easily abuse our faculty of speech, readily using our gift of communication to harm others, even when we know that to do so is wrong. As Moritz Lazarus says:

The shaming and insulting of another is a sign of a barbarian disposition; one would assume that they would occur less frequently among human beings over the course of time. But the poison of slander has lost neither its frequency nor its sharpness; slander is the civilized form of cruelty.⁴

Information, the dissemination of which serves no constructive purpose, often fascinates. Most of us find it difficult to control our tongues. Gossip, slander, and related misuses of the spoken word can cause enormous pain to others.

³ Samuel C. Heilman, *Synagogue Life: A Study in Symbolic Interaction* (Chicago: The University of Chicago Press, 1973), p. 151 ff.

⁴ Moritz Lazarus, *Die Ethik des Judenthums* (Frankfurt am Main: J. Kauffmann, 1901), I, 308.

Therefore, the rabbis perceived a real need to develop a legal system which would limit the tendency to harm others verbally without destroying the positive benefits of the human ability to communicate. Recognizing that speech could not be fully free or fully circumscribed, they sought to find the nebulous boundary between necessary/ permitted and harmful/forbidden words. They envisaged an ideal society in which, humans having achieved the ethical ideal of *imitatio dei*, communication will be used for solely constructive ends.

The spoken word presents an additional difficulty. The halachic system establishes a strict regimen for the life of the Jew, and this regimen exists in order to elevate that life to a level of holiness. It regulates the Jew's actions throughout practically every moment, but the major prescriptions can be fulfilled rather mechanically. A ritually observant Jew can easily act in ways which are unethical. Such people may strictly observe the dietary laws but be heedless of the repercussions of the words they speak. The morality of one's tongue does not affect one's ability to fulfill the rest of the Divine commandments. Along with the difficulty of defining the point at which the words one speaks become unethical, the commandments against improper speech are particularly difficult to fulfill because they do not involve any concrete action which can easily be habitually performed or avoided.

The rabbis strove to meet these difficulties on a number of levels. They counted the few Biblical injunctions

against improper speech among the *אִיּוֹר*, "negative commandments," thus establishing these precepts on firm legal ground.⁵ Through outright definition and through examples, they attempted to describe the boundaries between permitted and prohibited communication. Finally, they indicated the severity of these verbal sins, hoping to instill the fear of God in their followers by describing the grave light in which God considers these trespasses and the horrible Divinely imposed punishments which await the trespasser.

In these attempts, the rabbis were both guided and limited by several principles. One would expect that because abuse of the human powers of speech involves infractions of specific negative commandments, the course of punishment and retribution would be clear once a specific sin had been identified. Rabbinic law establishes clearly that, unless the Bible specifies otherwise, the punishment for the transgression of a *אִיּוֹר* is *מלקות*, flogging. This flogging takes place in a predefined manner with a maximum of thirty nine lashes.⁶ However, the rabbis also established that this punishment could only be inflicted for a transgression invol-

⁵ As was shown by Rabbi Israel Meir HaCohen in his *Chafets Chaim*, transgression of these *אִיּוֹר* also ultimately involves transgression of positive commandments. See his פתיחה.

⁶ The theoretical maximum was forty lashes, but in practice, only thirty-nine were ever sentenced.

ving an actual act or deed.⁷ Since words involve no physical action, under classical rabbinic law, verbal misdeeds could almost never be prosecuted by human courts. Therefore, there was no realistic enforcement on the human level of the injunctions against improper speech.

However, several of the categories of improper speech either are or could be considered under another rabbinic category of commandments. Many of the commandments of Leviticus, especially in the Holiness Code of Leviticus 19, are given with the words וַיִּרְאָת מֵאלֹהֶיךָ, "You shall fear your God." On each of these verses, we find the Midrash commenting that this phrase indicates that the commandment is a דבר מסור לבב, a "matter entrusted to the heart," meaning that the fulfillment of the commandment was left up to the conscience of the individual. For instance, one should honor the elderly and should avoid taking advantage of others' handicaps, whether physical or otherwise, because one fears God⁸ and knows that, even if no human being can enforce these particular commandments, God certainly knows and takes note of whether one has transgressed or not. Only God and the individual can even judge whether the motivations of one's actions or words are

⁷ *Terumah* 3a-b; *Makot* 16a; *Shavuot* 21a; *Mishneh Torah, Hilkhot Sanhedrin* 18:2. These texts also establish that the only exceptions to this principle are that flogging is prescribed for the one who fails to fulfill an oath, the one who exchanges one gift promised to the Sanctuary with another, and the one who curses another invoking God's name.

⁸ *Sifra Kedoshim* 88d, 91a, *Behar* 107d, 109d.

such that they are unethical.

While, as we will see, only one of the categories of verbal misconduct considered here is specifically considered a *דבר מסור 777*, this principle pervades them all. While the rabbis considered the laws of proper verbal conduct humanly unenforceable, they balanced their sense of human limitation with a very strong certainty that God takes personal concern with the fulfillment of these commandments. In many cases, the rabbis considered a breach of these laws of communication to be more serious than the corresponding punishable acts. The Divine punishments with which the rabbis threatened the sinners were dire, ranging from leprosy in this life to eternal punishment after death.

As we shall see, this reliance on Divine punishment of the person who harms others through the spoken word was not found in every instance completely satisfactory. In Geonic and later medieval periods, the rabbis began to institute some sort of punishment for verbal misdeeds.⁹ It is highly unlikely that the rabbis were ever able to punish every verbal misdeed, for as Maimonides points out in his *Guide for the Perplexed*, "If one were to be sentenced to flogging for every transgression of speech, most people would be whipped

⁹ However, this period is not the focus of this work. We will not look at these changes in detail. Information on them has been collected only from secondary sources, particularly from the *אנציקלופדיה תלמודית*.

daily."¹⁰

Therefore, for the most part we are dealing with a legal system based on the ethical mandate of *imitatio dei*. The Jews are commanded to be God-like in everything, including their speech. However, it was extremely difficult for the rabbis to determine the exact boundaries of God-like speech. At what point does information sharing, witnessing, or proper rebuking begin to be vicious gossip, slander, libel, talebearing, or otherwise harm or embarrassment causing words? In the social setting, what sorts of communication are a necessary part of life, and what becomes abuse of this God-given gift of the tongue? Most significantly, how does society regulate such a prevalent and yet difficult to define abuse?

In the following chapters, we will explore the classical rabbinic treatment of several specific ways that one can harm another through the spoken word, and we will endeavor to understand where the rabbis drew the line between permissible and prohibited speech, how they communicated this boundary to their people, and how they sought to enforce these commandments. While parts of this material have been gathered by others, no one has sought critically to explore this conceptual area of Jewish ethics and halachah as a unit.¹¹

¹⁰ *Moreh Nevuchim* 3:41.

¹¹ Rabbi Israel Meir HaCohen in his *Chafets Chaim* is a prime example of one who explores this field for didactic purposes.

The primary form of forbidden speech to be considered will be slander in the broadest sense of the term, called in rabbinic Hebrew לשון הרע. We will also consider three related concepts, each of which could be considered subcategories of לשון הרע, namely מוציא שם רע, רכילות, and אונאת דברים. In addition we will look at two categories of one of the side-effects of slander, embarrassment, ביוש בדברים and הלבנת פנים. Our sources for the rabbinic treatment of these concepts will be the texts of the Tannaim and Amoraim, both halachic and aggadic, through the codification of the Talmudim and the major Midrashim. Effort has been made to locate all references to these concepts in this literature through consultation of the various concordances, encyclopedias, indices to translations, parallel texts, and notes in the limited secondary literature. Reference is also made to the *Mishneh Torah* for a summary of the laws of these various concepts. No regular effort has been made to establish the development of the concepts within the classical rabbinic period. Too few of the texts are given attribution, and the difficulties in dating them goes beyond the scope of this work. Information about Geonic and medieval changes in the laws has been gleaned from secondary sources.

CHAPTER II: לשון הרע

A. THE MOST DANGEROUS LIMB IN THE BODY

"I said that I would keep watch over my way to avoid sinning with my tongue, (I will keep a muzzle on my mouth so long as the wicked man is in my presence)."¹

There is a story about a Persian king who, about to die, became extremely weak. The doctors told him, "There is no remedy for you unless they bring you lion's milk and you drink it until you are well." He sent to King Solomon, the son of David, giving (his messengers) much money. Immediately, Solomon sent and called for Benayahu ben Yehoyada, saying to him, "How can we find lion's milk?" Benayahu answered, "Give me ten goats." He went with the king's servants to a lion's den where a lioness was nursing her cubs. On the first day, he stood at a distance and threw her a goat which she ate, on the second day he drew a bit nearer and threw another, and so he did on each day. After ten days, he had drawn so near her that he could play with her and touch her teats. He took some of her milk and left. They came to Solomon, who sent the messengers on their way. When they were half way home, the doctor had a dream in which his limbs were arguing with each other. The legs were saying, "No other limbs are like us, for if we had not walked, the body would not have been able to bring the milk." The eyes said, "We are the most exalted, for if we had not shown him the way, he could not have done anything." The heart answered, "I am more exalted than you all, for if I had not given the advice, you could have done nothing to help." The tongue replied, saying, "I am better than you, for without speech, what would you have done?" All the limbs answered and replied to the tongue, "How can you be so presumptuous as to compare yourself to us? You dwell in dark place, and unlike all the other limbs, you do not even have any bone in you!" The tongue said, "Today you will admit that I rule over you." When the man woke up, he remembered his dream and went on his way. When he came into the king, he said, "Here is the bitch's milk which we sought for you

¹ Psalms 39:2.

to drink." Immediately, the king was enraged and ordered that he should be hanged. When he was walking to be hanged, all the limbs began to tremble. The tongue said to them, "Did I not say to you today that you have nothing substantial? If I save you, admit that I rule over you." They agreed. Immediately, the tongue said to the hangmen, "Return me to the king." When they returned him to the king, he said to him, "Why did you command my hanging?" The king said to him, "Because you brought me bitch's milk." He replied, "What difference does it make to you if it heals you? In addition, one can call a lioness a bitch." (The king) took the milk from him, drank it, and was healed. Finding that it was indeed lion's milk, he sent the servant on his way. All his limbs said (to the tongue), "Now we admit to you that you rule over all the limbs." Thus it is written, "Life and death are in the hands of the tongue."² David said, "I said that I would keep watch over my way to avoid sinning with my tongue."³

The rabbis recognized the near impossibility of controlling one's speech, even when has the best of intentions, and following the Biblical model, they attributed this difficulty to the fickle and powerfully independent tongue. The Bible while frequently presenting the tongue as the source of deceit and falsehood, also speaks of it as a sharpened arrow⁴ or sword,⁵ as a consuming fire,⁶ as the improper boaster,⁷ and as a source of life and death.⁸ As a source of life, the

² Proverbs 18:21.

³ *Midrash Tehilim* 39:2.

⁴ Jeremiah 9:7.

⁵ Psalms 57:5, 64:4.

⁶ Isaiah 30:27.

⁷ Psalms 12:4.

⁸ Proverbs 18:21.

controlled tongue can also wield great power. As Proverbs says, "He who guards his mouth and tongue guards his soul from troubles."⁹

Rabbinic tradition continues this view of the tongue, presenting the tongue as a very dangerous character, as a bodily part with power disproportionate to its size, and as one which must be carefully guarded because of its disposition for evil. Its lack of bone or exposure to the outside, far from indicating its weakness, are evidence of its strength. Just to protect the world from its effects, it is kept horizontal, locked behind cheeks and jaws with a ready source of water to quench the fires it can cause. Were it not for this elaborate jail, how much more havoc might the tongue wreak?¹⁰

However, although the tongue's destructive power is great, it can also lead to good. *Vayikra Raba* 33:1 finds several ways to interpret the assertion in Proverbs 18:21 that "Life and death are in the hands of the tongue." Rabbi Chiya bar Aba and Rabbi Yanai claim that this just means that the tongue can choose life by eating only properly tithed produce and death by doing the opposite. The two following *agadot* indicate that other interpretations were also preva-

⁹ Proverbs 21:23.

¹⁰ *Arachin* 15b; *Vayikra Raba* 16:4; *Midrash Tehilim* 120:2.

lent.

Rabban Gamliel said to his servant Tavi, "Go, buy us some of the best meat in the market." He went and brought him tongue. After a few days, he said to him, "Go and buy some of the worst meat in the market." He went and brought him tongue. He said to him, "When I told you to buy some of the best meat in the market you brought us tongue, and when I said to you to buy some of the worst meat in the market, you brought us tongue." He replied, "Master, both the good and the bad come from it. When it is good, only good comes from it, and when it is bad, only bad comes from it."

Rabbi made a feast for his students and served them tender and tough tongue. They began to choose the tender tongue and leave the tough. He said to them, "My children, know what you are doing. Just as you are choosing the tender and leaving the tough, so should your tongues be tender to one another. Therefore, Moses warned Israel and said to them: When you sell property to your neighbor, . . . do not oppress one another."^{11,12}

Thus, the tongue has the ability to be either good or bad, and the human challenge is to curb the bad and choose only the good.

The difficulties of guarding one's speech and avoiding unethical verbal behavior stem from the very nature of the human ability to communicate. God created the human being with a tongue which can, if allowed, control one's entire body and lead it to destruction and sin. On the other hand, it can also lead one to a good and proper life. This dangerous organ can be mastered. Proper use of the facility of

¹¹ Leviticus 25:14. For an explanation of this proof-text, see Chapter V, אִוְנַת הַבֵּרֶךְ.

¹² *Vayikra Raba* 33:1.

speech is the ethical and moral responsibility of every human being.

B. DEFINITION OF לשון הרע

1. General Definition

According to Rabbi Chanina, every Biblical mention of the word לשון, tongue, refers to לשון הרע, *leshon hara*,¹³ literally "the evil tongue" but best translated as "slander." The specific term לשון הרע does not occur in the Bible, and the only phrase even similar is "נצר לשונך מרע," "Keep your tongue from evil."¹⁴ The terminology of לשון הרע, if not the concept, is purely rabbinic. Because no one proof-text or set of proof-texts exists to delimit its meaning, לשון הרע along with its Aramaic equivalents, לישנא תליתאי and לישנא בישא (the triple tongue), developed into a very broad concept encompassing many different sorts of misuse of the human facility of language. Several of its subcategories, מוציא שם, רע, רכילות, and אונאת דברים, will be examined separately in later chapters.

In medieval and modern times, especially under the influence of Yiddish, לשון הרע has come to be understood as

¹³ *Arachin* 15b. While one might argue that Rabbi Chanina makes this statement only for the sake of creating a series of proof-texts for לשון הרע, it is a significant assertion in its own right.

¹⁴ Psalms 34:14.

"gossip," but, as we shall see, this has virtually no basis in the classical texts. However, in translating לשון הרע as slander, we are admittedly broadening the sense of the English term. Traditionally, slander has been defined as "the utterance or dissemination of false statements or reports concerning a person, or malicious misrepresentation of his actions, in order to defame or injure him."¹⁵ Under this rubric, if the words spoken are true, they are "evil speaking" rather than slander.¹⁶ לשון הרע fits this definition of slander with two exceptions: its content can be true as well as false, and the effect of the words, not the intent behind them, is what matters. We might rewrite the above definition to read, "the utterance or dissemination of statements or reports concerning a person or malicious misrepresentation of his actions, which might defame or injure him."

The rabbis nowhere give us such a concise definition of לשון הרע. In the pre-Geonic literature, we do have several instances where aspects of the concept are clarified, but for the most part, those searching for precise delineation of the limits of proper speech must derive these limits from the numerous examples found in the literature.

As with the other concepts we will examine in this

¹⁵ J. M. Vaizey Hope, "Slander," *Encyclopedia of Religion and Ethics*, XI, p. 585.

¹⁶ Hope, p. 585.

work, the rabbis established that speaking לשון הרע is a sin, a transgression of the negative commandment given either in Leviticus 19:16 "לא תלך רכיל בעמך," "Do not go about as a talebearer among your people," or preferably in Deuteronomy 23:10, "ונשמרת מכל דבר רע," "Keep yourself from any evil word."¹⁷ While לשון הרע is quite definitely a sin against one's fellow human beings,¹⁸ it is also a sin involving only words, not actions, לאו שאין בו מעשה. Therefore, human courts cannot punish the slanderer; consequences for this specific transgression of God's law come only from God. Thus, although the rabbis define לשון הרע within their legal system, on the human level, the concept is ethical in its import.

2. Potential Objects of לשון הרע

The rabbis define לשון הרע as a broad category of verbal misdeeds. It does not occur only in one narrowly circumscribed area of human conduct. The slander can take on many forms, have many objects, and have various sorts of content. Improper comments made about God, other human beings, or even inanimate objects all fall into the category of לשון הרע.

Any questioning or criticism of God's motives or plans

¹⁷ *Yerushalmi Peah* 1:1, f. 4b; *Sifrei Devarim, Ki Tetse*, 234.

¹⁸ *Bamidbar Raba* 8:5.

is considered explicit slander of God. The primeval serpent, in speaking to Eve, slandered God when it questioned God's absolute right to sovereignty and ascribed to God false motives for forbidding to Adam and Eve the fruit of the Tree of Knowledge. According to the midrash, the serpent told Adam and Eve that even God had to eat from the Tree in order to create the world. Not wanting any competition, and jealous of the human potential to be fellow creators, God forbade the fruit of the Tree to Adam and Eve. If they were to eat from the Tree, said the serpent, they would gain the knowledge which God had withheld from them and ensure their continuing mastery over the world.¹⁹

Although the serpent is perhaps the most famous slanderer of God, humans were at times equally blasphemous. Israel, when questioning God's ability to feed the people in the wilderness,²⁰ spoke *לשון הרע* against God.²¹ The rabbis considered God's providence, goodness, and wisdom to be unquestionable. Therefore, to imply any Divine lack, especially in these areas, was scandalous. This concept has vast implications, for no matter how difficult life becomes, the Jews cannot allow themselves to doubt the benevolent protec-

¹⁹ *Bereishit Raba* 19:4; *Devarim Raba* *Shofetim* 5:10; *Tanchuma Bereishit* 8; *Tanchuma Metsora* 2; *Tanchuma Buber Metsora* 7.

²⁰ Numbers 11.

²¹ *Pirkei D'Rabbi Eliezer* 53.

tion of God. This doubt would be considered slander of God. In addition, because human beings are made in the Divine image, and they together with the world are God's creation, slander of anyone or anything is implicit slander of God.

The literature is filled with examples of slander of human beings. Joseph's דָּבָר,²² his slander of his brothers, was, according to the midrash, triplefold. He accused his brothers of eating a limb from a living animal, of denigrating the servant women's sons and treating them like slaves, and of paying inappropriate attention to the Canaanite women. The rabbis derived these specifics from the punishments Joseph himself is known to have suffered: his coat was smeared with the blood of a goat when he was sold into Egypt; he himself became a slave; and he was seduced by Potifar's wife.²³ This slander, because it led Joseph's brothers to sell him, had the grave consequences of leading to the exile and enslavement of all Israel,²⁴ and it prevented the descendants of Joseph from becoming the High Priests.²⁵ Other examples of לשון הרע against human beings include Miriam and Aaron's mutterings about Moses' separating himself from his

²² A Biblical term for slander.

²³ *Yerushalmi Peah* 1:1, f. 4a.

²⁴ *Tanchuma Vayeshev* 2.

²⁵ *Midrash Tehilim* 101:2.

wife in Numbers 12,²⁶ Tsiba's wrongly accusing Mefiboshet of being unlearned in Torah in II Samuel 9:4,²⁷ and Haman's denunciation of the Jews to Ahashuerus.²⁸

לשון הרע directed against inanimate objects can be equally serious in its consequences. The rabbis assert that the verdict was not sealed that the generation of the Exodus would die in the wilderness until the spies brought back their evil report of the nature of the Promised Land. These words were slanderous. However, the rabbis also comment that if this was the result of slander of inanimate objects, how much worse would it have been had they slandered human beings!²⁹

3. Possible Content of לשון הרע

Just as the rabbis did not delimit the possible extent of לשון הרע by defining its object, so they left the scope of potential content of the slander broad. It is obvious, even from these few examples, that לשון הרע can involve the dis-

²⁶ *Avot D'Rabbi Natan* 9:2; *Bamidbar Raba* 16:5; *Devarim Raba Ki Tetse* 6:8, 11; *Pirkei D'Rabbi Eliezer* 54; *Tanchuma Metsora* 5; *Tanchuma Buber Metsora* 6; *Mishnat Rabbi Eliezer*, pp. 174-175.

²⁷ *Shabbat* 56a. When Tsiba tells David that Mefiboshet is in *לך* *לך*, the rabbis understand this to be a statement about Mefiboshet's learning, not the name of his location.

²⁸ *Megilah* 13b.

²⁹ *Arachin* 15a, *Mishnah Arachin* 3:5.

semination of false information. The serpent and the Israelites in the wilderness spoke untrue words about God. Joseph fabricated stories about his brothers. The spies gave false report about the nature of the land. However, not all slander involves lies and misrepresentation of the truth.

Most aspects of לשון הרע involve verbal harm of another. Therefore, if the words spoken are true but still cause their subject harm, they are considered לשון הרע, especially if they are spoken with evil intent. Rabbi considered it improper that Rabbi Shimon, when questioned about an improperly written document, named the person responsible for the error when a mere denial of his own responsibility would have served the same purpose.³⁰ We find a similar sort of לשון הרע described in the Palestinian Talmud:

The flax shopkeepers had a day of forced government service, and one named Bar Chubats did not go out. They asked, "What did we eat that day?" and someone replied, "Cheese (*chuvtsah*)." He said, "Let Chubats come!" Rabbi Yochanan said, "This is unostentatious slander."³¹

Here, Rabbi Yochanan indicates that true but unostentatious לשון הרע can also take the form of an implied or oblique criticism of another by hinting at that person's name and causing others to think of him when he is failing to fulfill a communal responsibility.

³⁰ *Bava Batra* 164b.

³¹ *Yerushalmi Peah* 1:1, f. 4b.

True words about another, even with the best of intentions are also forbidden. In questioning how naming the scribe who did a particularly notable job, words spoken in his praise, can be לשון הרע, the Gemara quotes Rav Dimi who said, "One is forbidden ever to speak favorably about another because through speaking favorably, one comes to speak derogatively."³² What one person considers praise, another may understand as criticism or use as information against the person one was trying to benefit. If one praises an innkeeper publically for his good service, this tells others that he is prospering and is a worthy target of a burglary.³³ Similarly, telling another that they can find fire in Ploni's house is לשון הרע because it implies that the person is rich enough to be cooking meat and fish regularly.³⁴

4. אבק לשון הרע

It is difficult to comprehend how these last two examples could actually be considered slanderous words. In-

³² *Bava Batra* 164b; see also *Arachin* 16a; *Tosefta Avodah Zara* 1:10-14.

³³ *Arachin* 16a. Rashi adds an alternative explanation, saying that the praise encourages others to patronize him and if he is not prepared for that volume of business, he will not be able to maintain his standards and may even fall under.

³⁴ *Arachin* 16a.

deed, Rashi, looking to the Tosefta,³⁵ uses the second as an example of *אבק לשון הרע*,³⁶ literally "dust of slander," words which are almost slander or might lead to it. We find limited instance of this term in the classical rabbinic literature, but its incidence is useful in our identifying the nebulous boundary between prohibited and permissible speech. Words which are *אבק לשון הרע* are permissible, but should be avoided because of their potential capacity either to lead to slander or to cause their object some sort of harm. In their discussion of *אבק לשון הרע*, we find evidence of the rabbis' recognition of the difficulty of avoiding misuse of the tongue. Everyone is guilty of slander, or at least the "dust of slander."³⁷ The Talmud lists *אבק לשון הרע* along with sinful thought and the calculation of the results of prayer as three things which are unavoidable every day.³⁸

אבק לשון הרע can also be white lies which, by repeating or pretending to repeat the words of another, fulfill a higher purpose, such as making or preserving peace between human beings. This too is explicitly permitted, for even God engaged in this practice to preserve domestic harmony. In-

³⁵ *Tosefta Avodah Zarah* 1:10, 14 says that one should avoid even speaking well of another because of *אבק לשון הרע*.

³⁶ *Bava Batra* 165a.

³⁷ *Bava Batra* 165a.

³⁸ *Bava Batra* 164b-165a.

stead of repeating Sarah's disbelief that her aged husband could beget a child, God told Abraham that Sarah questioned her own ability to conceive.³⁹

5. Permitted Forms of לשון הרע

There are a few instances in which לשון הרע itself is explicitly permitted or declared not to be לשון הרע. Because nothing should be allowed to interfere with the functioning of the courts and the court's functionaries must be allowed to protect themselves from abuse, a messenger of the court is allowed to report back if he has received disrespectful treatment.⁴⁰

The rabbis are less comfortable about following God's example and specifically permitting לשון הרע for the sake of peace. Rabbi Shmuel bar Nachman quotes Rabbi Yonatan as saying that it is permissible to speak slander about people who are fighting one another, if the purpose is to make peace and end the struggle.⁴¹ However, in spite of the Biblical precedents the commentators are extremely uncomfortable with this statement because they consider the prohibition against לשון הרע to be absolute. They must have been unwilling to

³⁹ *Yerushalmi Peah* 1:1, f. 4b.

⁴⁰ *Moed Katan* 16a.

⁴¹ *Yerushalmi Peah* 1:1, f. 4b.

extend God's *לשון הרע* אבק in the case of Sarah⁴² ⁴³ to the straight *לשון הרע* which might be spoken in their day and age by human beings. The commentators resolve their difficulty with this permission to slander by understanding the Gemara here to refer exclusively to court testimony. When a fight is involved, a witness may testify without its being considered slander.⁴⁴

Later Jewish law expanded on this concept, detailing the requirements which must be met before one can legitimately speak *לשון הרע*. *לשון הרע* is permitted only for the purpose of saving a harmed person and bringing out the truth. One can report seeing a theft or another similar crime only if: one has personally been a witness and is certain that one's testimony is true; if one is certain that a purposeful crime has been committed; if one has first reproved the sinner and he has failed to make amends; if one does not exaggerate the crime; if the testimony is to the benefit of the person harmed; if there is no other way to accomplish the same benefit; and if what one says does not lead to a stricter judgment than there would otherwise have been. At the

⁴² *Yerushalmi Peah* 1:1, f. 4b, see above, p. 23.

⁴³ When Joseph's brothers report their father's request that Joseph formally forgive them, the Torah, regarded as God's word, similarly attributes words to Jacob which he never said.

⁴⁴ *Gilyon Hashas* to *Yerushalmi Peah* 1:1, f. 4b; *Mishneh Torah, Hilchot Sanhedrin* 25:6. For further treatment of permissible court testimony, see the chapter on *מוציא שם רע*.

other end of the process, לשון הרע is permitted to prevent potential harm, even if it is based only on suspicion and not on solid evidence, as long as the suspicion is well grounded and the לשון הרע does not lead the person into greater trouble. We are even commanded to speak לשון הרע to warn others against people who are bad companions, who do not study Torah, who are flagrant transgressors of well-known commandments, or who do not fear God. This is especially true if we do not speak out of hatred of the person, if we speak out of a desire to help others, and if we have already rebuked the objects of our slander and tried to make them mend their ways. Thus, in certain defined instances, לשון הרע became a legal, moral, and communal obligation.⁴⁵

6. The Boundary Between Permitted and Prohibited Speech

Establishing whether לשון הרע is occasionally permissible or not in specific settings, does not really help in the more difficult problem, the definition of the boundary between לשון הרע and generally permitted communication. At what point does something cease being slander and become simply public information?

Rabah said: Anything said in the presence of the person (spoken about) has no element of slander in it. (Abaye) answered him: Even worse, it is insolence,

45 נחום רקובר, "על לשון הרע ועל הענישה עליה במשפט העברי," סיני נא (1962), 331-337.

and he has spoken slander. (Rabah) replied: I follow the view of Rabbi Yosei who said that he never said something and then retracted it (literally, turned around, i.e., to see who might be listening).⁴⁶

Rabah here is of the opinion that words spoken in the presence of their object are not *לשון הרע* because one would never say things about people in their presence which might later be regretted. However, Abayei, in doubting human beings' capacity habitually to think before speaking, is perhaps the better judge of human nature. His view ultimately prevails, for Maimonides states, "It is the same whether one speaks *לשון הרע* in its subject's presence or not."⁴⁷ Rabah's attempt to limit the scope of forbidden speech is not accepted. An important assumption is made here about *לשון הרע*. *לשון הרע* always involves words about a third party, never comments one makes about oneself or the person to whom one is talking.

Words then retain their element of *לשון הרע* when they are said in their object's presence and when they are truthful. The boundary with public information must then be dependent on the context in which the words are spoken. Until the further tightening of the regulations against *לשון הרע* by the Musar schools,⁴⁸ the consensus was that as soon as

⁴⁶ *Arachin* 15b.

⁴⁷ *Mishneh Torah, Hilchot Deot* 7:5.

⁴⁸ שלם וארהטיג, "לשון הרע", האנציקלופדיה העברית, כרך
כא, ע' 1048.

a matter was spoken of in the presence of three people, it was simply a matter of fact. The rabbis asserted that if one spoke in the presence of three or more people, one had to assume that the word would spread from one friend to another and become generally known.⁴⁹

According to this particular definition, then, לשון הרע must have an element of secrecy and surreptitiousness; anything said publically which would harm another must fall under a different category, perhaps the commandments against embarrassing another (ביוש בדברים) or causing another's face to blanch (הלבנת פנים).⁵⁰ However, our texts do not support this delineation, for we have numerous examples of slanderous words called לשון הרע which are spoken for an entire community to hear. Most noteworthy is the slander of the spies of the Promised Land which was spoken to the entire community of Israel.

The Chafetz Chaim and his predecessors must have sensed this inconsistency, and they filled a major loophole in the law, severely limiting the legitimization of public slander. They claimed that if the words were spoken within a circle of friends or relatives, if they were spoken in a large city, if they were repeated in another city, or if the first teller warned others not to repeat the story, לשון הרע was involved

⁴⁹ Arachin 16a; Mishneh Torah, Hilchot Deot 7:5.

⁵⁰ See Chapter VI.

even if the words were spoken in the presence of three.⁵¹

If slander spoken as public information is not לשון הרע, slander spoken privately certainly is. The midrash comments on Ecclesiastes 5:5, "(Do not allow your mouth to cause your flesh to sin,) and do not say in the presence of the angel that it was an error. (Why should God be angered by your voice and ruin the work of your hands?)" saying:

Do not say, "Behold, I will go and speak slander, and no living creature will know." The Holy One, blessed be He, will say to him, "Know that I am sending an angel who will stand next to you and write down everything that you say about your fellows." From whence do we know this? It is written, "Do not curse a king even in your thoughts (or a rich man in your bedroom, for the bird of heaven will carry away the utterance, and the winged creature will tell of the matter)."⁵² What does it mean that "the winged creature will tell of the matter?" These are the angels, for it is written about them, "... each with six wings."⁵³ ⁵⁴

One is accountable for the words which issue from one's mouth, no matter whether another human being is listening or not, for God is listening. We are morally accountable for our actions whether or not they cause harm.

51 נחום רקובר, "על לשון הרע ועל הענישה עליה במשפט העברי," סיני נא (1962), 327.

52 Ecclesiastes 10:20.

53 Isaiah 6:2.

54 *Devarim Raba*, *Ki Tetse* 6:10; see also *Tanchuma Metsora* 1 and *Tanchuma Buber Metsora* 2 for similar commentaries on the verse. *Midrash Tehilim* 52:2 makes the same point in a different context.

The person receiving the לשון הרע also has some moral responsibility. One tradition goes so far as to call the person a slanderer who understands when slander is merely implied or hinted at by another.⁵⁵ In taking the cue from another's hint, one is helping to make the slander explicit and public. However:

Rava said: In the case of slander, even though one is not required to accept it, one is required to take note of it. For instance, there were some Galileans about whom a rumor had circulated that they had murdered someone. They came before Rabbi Tarfon and asked him to hide them. The master said to them, "What shall we do? If we do not hide you, they will find you. If we do hide you, (it will conflict with) that which the sages said: In the case of slander, even though one is not required to accept it, one is required to take note of it. Go and hide yourselves."⁵⁶

There is always some possibility that the לשון הרע one hears is true. There are cases where, if it is true, the listener will be required by law to follow a certain course of action. In such instances, the one hearing the slander must pay heed to the rumors. Here, if the men were really murderers, Rabbi Tarfon could not legally give them refuge. Therefore, he paid heed to the לשון הרע and told them to find their own hiding place. While he did not help the fugitives, neither did he report them to the authorities.

⁵⁵ *Yerushalmi Peah* 1:1, f. 4b.

⁵⁶ *Nidah* 61a.

7. Summary

We can now spell out the classical rabbinic definition of לשון הרע in greater detail. לשון הרע can be an either true or false statement, spoken with either good or bad intentions, which causes harm to its object's person or reputation. It is this causing of harm to another which distinguishes לשון הרע from other forms of communication. The objects of לשון הרע can be Divine, human, or even inanimate. Slander is occasionally questionably permissible but is still recognized as slander, if its purpose is to bring peace, and it is always permissible to ensure the functioning of the judicial system. לשון הרע does not require a listener, but it ceases being slander and becomes public information when the words are spoken to three or more people. לשון הרע involves an element of secrecy; the slanderer does not want the slanderer person to know of the slander. The listeners also have an obligation not to act on the information received except to guard their own legal interests. With this definition, we can now proceed to examine the serious light in which the rabbis viewed לשון הרע and the effect of this slander on its objects and speakers.

C. THE SERIOUSNESS OF לשון הרע

The rabbis, recognizing the destructive character of לשון הרע, considered it to be a serious offense. However, unlike most other types of misbehavior, the seriousness of the לשון הרע could not be communicated to the community

through demonstrations of humanly imposed punishments. Without the tool of court imposed sanctions on the slanderer, the rabbis had to turn to other methods to impress on the Jews the necessity to avoid this easily occurring sin. The rabbis resorted to extreme threats, both in their characterization of slander and, as we shall see, in the predicted Divine punishments.

To illustrate the seriousness of לשון הרע, the rabbis created several quite colorful metaphors. The midrash, indicating the destructive nature of slander, says, "Just as a snail soils (the area over which it has passed) and its track is recognizable, so לשון הרע soils (the place it has been) and its damage is recognizable."⁵⁷ In other words, לשון הרע is as damaging to society as snails to a garden and as unpleasant for the community as the slime the snail leaves in its path. Elsewhere, we learn that לשון הרע is as difficult to quench as coals from a fire of broom wood which, although they may seem to have cooled, retain their heat inside for a long time, maybe even as long as eighteen months. Even if one has tried to make amends for one's slander, the person hurt will still feel its effects inside for a long time.⁵⁸ The rabbis also compare לשון הרע to an arrow because it does not require proximity to do harm, and once cast, it cannot be

⁵⁷ Midrash Tehilim 58:3.

⁵⁸ Bereishit Raba 98:19; Midrash Tehilim 120:4; Yerushalmi Peah 1:1, f. 5a.

retracted.⁵⁹

Rabbinic literature commonly connects serpent images with the concept of לשון הרע because, according to the rabbinic understanding of the Bible, the first לשון הרע ever spoken was the words of the serpent enticing Eve to eat of the forbidden fruit in the Garden of Eden. Just as the poison of a serpent bite spreads throughout the body, so the localized effects of the bite of לשון הרע can spread throughout the world. We know this because slander spoken in Rome, one end of the earth, can kill someone in Syria, at the other end.⁶⁰ Similarly, the speaker of לשון הרע is like a serpent, for just as the serpent derives no benefit from its biting, the slanderer slanders without reason or hope for gain.⁶¹

While these statements all indicate the seriousness of לשון הרע in a metaphoric manner, the rabbis also spoke much more directly, comparing לשון הרע with the most heinous crimes human beings can commit. The sins of the speaker of לשון הרע grow as high as heaven.⁶² Unlike other transgressions in which the sinner sins just on earth or just against God, the slanderer sins in both realms for the person who

⁵⁹ *Ibid.* and *Tanchuma Metsora* 2, *Tanchuma Buber Metsora* 4.

⁶⁰ *Bamidbar Raba* 19:2, *Devarim Raba Shoftim* 5:10, *Yerushalmi Peah* 1:1, f. 5a. None of the texts making this or a similar assertion give a specific example as proof.

⁶¹ *Devarim Raba Shoftim* 5:10.

⁶² *Arachin* 15b.

speaks לשון הרע is כופר בעיקר, one who denies the fundamental principle of the existence and authority of God.⁶³ The Divine prohibition against slander is so strong, that anyone purposefully slandering another obviously does not believe that God is concerned with human actions. A God-fearing person would be too afraid of the consequences of slander to engage in לשון הרע.⁶⁴ This disregard for Divine providence will lead the slanderer to all sorts of other serious crimes. לשון הרע, the sin of the mouth, can cause one's entire body to sin and ruin whatever good one may otherwise do.⁶⁵ לשון הרע is more serious than the cardinal sins of idolatry, murder, and sexual immorality for which one is held accountable both in this world and in the world to come.⁶⁶

The rabbis considered לשון הרע itself more deadly than murder. In Palestine, לשון הרע was apparently known as לישנא תליתא, "the triple tongue." Several explanations are

⁶³ *Kohelet Raba* 9:12; see also: *Devarim Raba*, *Ki Tetse* 8:14; *Tanchuma Bereishit* 8; *Tanchuma Metsora* 2; *Tanchuma Buber Metsora* 5; *Midrash Tehilim* 12:2, 52:2; *Arachin* 15b; *Yerushalmi Peah* 1:1, f. 4b.

⁶⁴ Abraham Cohen, "The Ethics of the Rabbis," *Essays in honour of the Very Rev. Dr. J. Hertz, Chief Rabbi of the United Hebrew Congregations of the British Empire, on the occasion of his seventieth birthday*, Ed. Isidore Epstein, et. al. (London: E. Goldston, 1942) pp. 72-73.

⁶⁵ *Vayikra Raba* 16:5.

⁶⁶ *Arachin* 15b; *Avot D'Rabbi Natan* 40; *Tosefta Peah* 1:2; *Yerushalmi Peah* 1:1, f. 4a; *Tanchuma Metsora* 2; *Tanchuma Buber Metsora* 4; *Midrash Tehilim* 12:2, 52:2.

given for this term, the most common being that it "kills three, the one who says it, the one who accepts it, and the one it is said about."⁶⁷ Murder, on the other hand, kills only one.⁶⁸ Interestingly, the example given in almost all the texts comes from the time of Saul, when, according to most of the sources, לִשְׁוֹן הָרָע killed four.⁶⁹ In I Samuel 22, Doeg, the slanderer, reports to Saul, who accepts the slander, that Achimelech, the priest of Nob, the object of the slander, has helped David. For this, Doeg, Saul, Achimelech, and Abner die. The rabbis have no trouble documenting the connection of Doeg, Saul, and Achimelech's deaths to this incident.⁷⁰ The inclusion of the fourth name, Abner, engenders extensive discussion, with the semi-satisfactory conclusion reached that Abner had the power to prevent Saul from

⁶⁷ *Yerushalmi Peah* 1:1, f. 4b; *Tanchuma Metsora* 2, *Chukat* 4; *Tanchuma Buber Metsora* 4, *Chukat* 8; *Pesikta D'Rav Kahana* 4:2; *Midrash Tehilim* 12:2, 52:2, 120:4; *Devarim Raba Shoftim* 5:10; *Vayikra Raba* 28:2; *Bamidbar Raba* 19:2; *Arachin* 15b, the text which specifies this as a Palestinian tradition, says "the one who tells it, the one who accepts it, and the one who says it." This makes less sense.

⁶⁸ *Devarim Raba Shoftim* 5:10; *Midrash Tehilim* 52:2; *Tanchuma Metsora* 2; *Tanchuma Buber Metsora* 4.

⁶⁹ *Sanhedrin* 93b documents the content of Doeg's slander of David to Saul without mentioning Achimelech's aid to David at all. This passage is obviously working on the presupposition that Doeg did slander David to Saul, and that only three people were involved, Doeg the slanderer, David the slandered, and Saul who accepted the slander.

⁷⁰ *Tanchuma Metsora* 2; *Tanchuma Buber Metsora* 4; *Midrash Tehilim* 52:2, 120:4.

vengefully killing the priests of Nob and did not.⁷¹ The net result of this discussion, is that somehow or other, לשון הרע has been known to kill four, not three. Yet, "the triple tongue" is well established as a Western Aramaic translation of לשון הרע. This term is found, among other places, in the *Targum Yerushalmi* to Leviticus 19:16, Psalms 101:5 and 140:12, and Kohelet 10:11. This would seem to indicate that the term and its associated idea were part of the vocabulary of the Palestinean world and were thus unavoidable. It was in everyday use but its original reference had been lost.

Modern attempts to understand this term are only slightly more successful. It seems that this term arose because of the association of לשון הרע with the serpent of the Garden of Eden. Most of the references to לשון הרע killing three are preserved in a series of parallel descriptive passages about the nature of the sin, and immediately adjacent to the discussion of לשון הרע killing three is a discussion of the nature of the serpent's punishment for slandering God.⁷² However, a snake has a forked, double tongue, not a triple tongue. Saul Lieberman points out, though, that in the classical world, the snake's tongue was

⁷¹ *Vayikra Raba* 26:2; *Sanhedrin* 20a; *Tanchuma Chukat* 4; *Tanchuma Buber Chukat* 8; *Pesikta D'Rav Kahana* 4:2; *Bamidbar Raba* 19:2; *Midrash Tehilim* 12:2; *Yerushalmi Peah* 1:1, f. 4b-5a.

⁷² See, for example, *Bamidbar Raba* 19:2; *Devarim Raba Shoftim* 5:10.

often referred to as triple-forked, possibly because, with its quick movements, the two forks appear often to be three.⁷³ He suggests that the term may have originally been "double tongued," and a trace of this is preserved in *Mishnat Rabbi Eliezer* ⁷⁴ where לשון הרע is said to kill only two, the one who says it and the one who receives it, and only occasionally also the one it is said about.⁷⁵ While this theory is attractive, it is difficult to rely on this one reference of very questionable antiquity.⁷⁶

Traditional commentators were equally bothered by the term, but solved the dilemma differently. Rashi says that לשנא תליתא "refers to the talebearer, who is the third party between two people to reveal a secret."⁷⁷ This term would thus describe a specific form of לשון הרע, רכילות, "talebearing," which, as we shall demonstrate in Chapter IV,

⁷³ Saul Lieberman, *Hellenism in Jewish Palestine* (New York: The Jewish Theological Seminary of America, 1962), p. 192; quoting Bochart, *Hierozyicon*, part I, I, ch. 4, p. 25ff.

⁷⁴ p. 176.

⁷⁵ Lieberman, p. 193.

⁷⁶ H. G. Enelow, ed., *The Mishnah of Rabbi Eliezer or the Midrash of Thirty-Two Hermeneutic Rules* (New York: Bloch Publishing Company, 1933). Enelow, in his introduction (p. 13ff.), claims that he is publishing an early Tannaitic midrash. "Minor Midrashim," *Encyclopedia Judaica*, Vol. 16, p. 1515, claims, based on linguistic evidence, that the midrash is only from the eighth century. See note, p. 81, for further support for the later dating.

⁷⁷ Shlomo Buber, ed., *Midrash Tehilim Hamechuneh Shochar Tov* (Jerusalem, 1966), p. 106, n. 22.

only developed as a unique concept in a later period. In the classical rabbinic period, the designation of לשון הרע as the "triple tongue" only indicated its deadly nature.

One tradition does record an incident where לשון הרע killed three:

The rabbis taught: Once there was a man who had three daughters, one was a thief, one was lazy, and one was a slanderer. A man with three sons came and asked to marry them to his sons. The (girls') father said to him, "My daughters are not suitable for your sons." "Why?" he replied. "Because one is a thief, one is lazy, and one is a slanderer." He said, "Even so, I would like to marry them to my sons." He took them and brought them to his sons. What did he do with them? He put the one who was a thief in charge of all his possessions, he placed the lazy one in charge of all his servants, and he came early each morning to ask the welfare of the one who was a slanderer. After a while, the girls' father came to visit. The one who had been a thief and the one who had been lazy praised their father and said to him, "Father, may all blessings rest upon your head for giving us to this house. We have found here much satisfaction." But the one who was a slanderer said, "May all the curses rest on your head, for a man should give his daughter to only one man, and you have given me to two men, to the father and to the son. If you do not believe me, sit under the bed, and see that when his son goes out to work, behold, he (the father in law) comes and seeks me out." Her father sat under the bed, and her father-in-law came to her early to enquire of her well-being, as he was wont to do daily. He came before her, bowed to her, and kissed her head in his usual manner. She said to him, "Stop, because my father is here." Her father thought, "Perhaps he has come to demand (sexual favors) from her." He rose up from beneath the bed and killed (her father in law). His sons heard and killed their father-in-law. She went to weep for her father in the women's house, and they went and killed her. Therefore, you learn that slander kills three, the one who says it, the one who accepts it, and the one it is said about.

And the one who accepts it is the most guilty.⁷⁸

Slander, then, is not only unpleasant, but its consequences are extremely serious. Although it might seem that the above scenario is less than realistic, the rabbis do make their point. The damage caused by לשון הרע goes beyond destruction of reputation; slander can be a direct cause of murder, an unforgiveable crime.

D. THE PUNISHMENTS FOR לשון הרע

If לשון הרע is such a serious crime, its punishments ought to be severe. Biblical law does not decree any specific penalty; the only indication that there should be any consequences for slanderous speech are two verses in Psalms⁷⁹ asking that God cut off the offenders.⁸⁰ Under rabbinic law, human courts cannot punish the slanderer because no deed is involved. The only two exceptions to this principle, the witness giving improper testimony and a man defaming his

⁷⁸ *The Sefer Hamaasiyot*, M. Gaster, ed. In *Judith "Montefiore" College, Ramsgate: Report for the Year 1894-1895 and Report for the Year 1895-1896* (Ramsgate: The Judith "Montefiore" College, 1896), paragraph CXLII, p. 103; a similar story is found in the folio version of *Vayikra Raba* 28:2, but Mordechai Margoliot in his scientific edition of *Vayikra Raba* notes that the story is found in none of the manuscript or parallel texts. The only source he can locate is the story quoted above.

⁷⁹ 12:4 and 101:5.

⁸⁰ George Foot Moore, *Judaism in the First Centuries of the Christian Era: The Age of the Tannaim*, Vol. II (Cambridge: Harvard University Press, 1955), p. 149.

wife, will be discussed in the chapter on מוציא שם רע. However, the slanderer is not to go free, for various horrible punishments will come from God, both in this world and the next. These punishments can be divided into three categories: those occurring in this world which are reversible, those occurring in this world which are irreversible, and those occurring after the slanderer's death.

The primary form of the reversible Divinely imposed punishment for לשון הרע is illness, usually some form of leprosy. The rabbis, not knowing the cause of this malady, saw it as God's punishment for human sins.⁸¹

Let our masters teach us how many things cause leprous plagues to come into the world. Our masters taught this: Leprous plagues afflict humankind (as punishment) for eleven things, for idolatry, for profanation of God's name, for sexual immorality, for robbery, for slander, for false testimony, for false judgment, for vain oaths, for trespassing, for thinking false thoughts, for causing arguments between brothers, and there are those who add, for jealousy . . . Whence do we know that slander (brings leprous plagues)? From Miriam, for it is written, "Aaron turned to Miriam and

⁸¹ By the time of the Talmud, the medical facts of the Biblical disease of leprosy had been forgotten. There are very few Tannaitic references to actual cases of the disease, although it was wide spread in Second Temple times. While the leprosy of the Bible was contagious and thus a matter of deep concern, the leprosy of the Mishnah seems not to have been. Talmudic use of the terms seems to refer only to a class of skin diseases. See: Louis Isaac Rabinowitz, "Leprosy," *Encyclopedia Judaica*, Vol. 11, pp. 33-39. This would explain the rabbis' readiness to "spiritualize" this dread disease. They needed an understanding of the extensive Biblical laws of the leper which would have some resonance in their world.

behold she was leprous."⁸² It is written, "This shall be the law of the leper (המצורע),"⁸³ i. e., the defamer (המוציא שם רע).⁸⁴

Even Maimonides, the physician, shared this sense that something more than simple disease is involved. He says specifically that the manifestations of leprosy "are not the normal way of the world, but rather a sign and wonder to Israel to warn them away from לשון הרע."⁸⁵ The exegetical connection of leprosy and slander exists because of the similarity in sounds between the word מצורע, leprosy, and the name of one of the subcategories of לשון הרע, מוציא שם רע. This will be examined in greater detail in the following chapter. The story of Miriam and Aaron, however, provides sufficient grounds to connect leprosy and לשון הרע.

Rabbi Shimon said: (We know that) leprous plagues afflict the speaker of לשון הרע, for we learn that Aaron and Miriam spoke לשון הרע against Moses and afflictions came upon them; for it is said, "Miriam and Aaron spoke against Moses (about the matter of the Cushite woman whom he had married, for he had married a Cushite woman, and they said, 'Has God spoken just with Moses? Has He not also spoken with us?'; and God

⁸² Numbers 12:10.

⁸³ Leviticus 14:2.

⁸⁴ *Tanchuma Metsora* 4; *Vayikra Raba* 17:3 lists ten causes for leprous plagues with some variations; *Arachin* 16a lists seven causes and gives as a prooftext Psalm 101:5, "He who slanders his fellow in secret, I will destroy." Through a rather convoluted exegesis earlier in the *sugya*, the destruction spoken of in the verse has been proven to be leprosy.

⁸⁵ *Mishneh Torah, Hilchot Tumaat Tsaraat* 16:10.

heard.")⁸⁶ Why does the text place Miriam before Aaron? To teach that Tsiporah went and spoke to Miriam. Then Miriam went and spoke with Aaron and the two of them stood and spoke against the righteous one (Moses). While they were standing and speaking against the righteous one, the afflictions came upon them, for it is said, "God became angry with them and left."⁸⁷ Why does Scripture say "and left"? Because (the affliction) left Aaron and clung to Miriam, for Aaron was not an active party to the (slander). However, Miriam, who had busied herself with the slander was punished more. Miriam said: I received revelation, and I did not leave my husband. Aaron said: I received revelation, and I did not separate from my wife, and even our first ancestors received revelation and did not separate from their wives; but Moses, because he is arrogant, separated from his wife. (Miriam and Aaron) did not judge (Moses) in his presence but behind his back, and not on a matter about which they were certain but rather on a matter about which there was doubt, doubt about whether or not he was arrogant. Behold, there is a *minori ad majus* (קל וחומר) inference to be derived from this. If Miriam was punished, who only spoke against her brother and only spoke against him behind his back, how much more severely would an ordinary person (not a prophet like Miriam) be punished for speaking against people in their presence and embarrassing them.⁸⁸

Other discussions of this incident contain some interesting variants. The קל וחומר argument with which the passage ends here brings the lesson of Miriam's leprosy into the realm of the common person. Other texts make a different inference with the same purpose in mind. Wanting at least to grant Miriam proper motives, they say that if Miriam spoke against her beloved brother, not in his presence, and with

⁸⁶ Numbers 12:1-2.

⁸⁷ Numbers 12:9.

⁸⁸ *Avot D'Rabbi Natan* 9:2; Schechter, version A, pp. 20a-b.

the sole purpose of returning him to his wife, how much more serious is the sin of the person who purposelessly slanders another?⁸⁹

However, the *Pirkei D'Rabbi Eliezer* 54 makes the opposite point. "The Holy One, blessed be He, said to Aaron and Miriam: If there is no healing remedy for any slanderer, how much less is there one for the person who slanders his or her full brother?" This tradition is only reinforced by the statement found in *Devarim Raba Ki Tetse* 6:9 that we are told to "remember what God did to Miriam"⁹⁰ and not accustom ourselves to speak ill of those who are not close to us, for by doing so, we will only come to speak against those who are close to us and incur even greater sin and punishment. If we combine these traditions of argument, we find that the rabbis used Miriam's punishment as a warning against slandering anyone, whether a near relative or bare acquaintance, whether with good intentions or not, for one will in any case be a likely candidate for leprosy.

One obviously unresolved problem in the text is why Aaron is not stricken too. The tradition quoted above tries rather unsuccessfully to state that Aaron was not really actively involved in perpetrating the slander. Unfortunately, the text quoted above actually puts the bulk of the

⁸⁹ *Tanchuma Metsora* 2; *Tanchuma Euber Metsora* 6.

⁹⁰ Deuteronomy 24:9.

slander in Aaron's mouth! That the Biblical text mentions Miriam's name first provides only very tenuous proof of her greater guilt. Other traditions point out that if Aaron had become leprous, he would no longer have been able to fulfill his functions as the High Priest. Therefore, God just had him turn to see Miriam's leprosy, warning him of the possible consequences of his slander.⁹¹

However, the *Tanchuma* records that Aaron, the high priest, actually turned leprous, because "God became angry at them" (Numbers 12:9), meaning Aaron and Miriam. Aaron, though, unlike his sister, was healed immediately. A commentary on this text, *Eitz Yosef*, claims that since status plays no role in punishment for such sins, the mention that it was Aaron, the High Priest, who was stricken indicates that Aaron was wearing the priestly robe at that time.⁹² This priestly robe was considered one of the few routes to atonement for לשון הרע through the sound of its bells.⁹³ It is evident that the rabbis felt that Aaron, by all rights, ought to have been punished for his לשון הרע; since he was not, some reason must have existed which was simply not explicitly stated in the Biblical text. The rest of humanity was not to be allowed to view Aaron as a paradigm of an unpunished slanderer.

⁹¹ *Pirkei D'Rabbi Eliezer* 54.

⁹² *Tanchuma Metsora* 2; *Tanchuma Buber Metsora* 6.

⁹³ See p. 55. *Yoma* 44a, *Zevachim* 88b, *Arachin* 16a-b.

While this is the best known example of leprosy coming as a punishment for slander, others do exist. When, at the Burning Bush, Moses slandered the Israelites by questioning whether they would believe him without miracles, he was punished and his hand turned leprosy. This incident recalls also the slander of the serpent in Eden, for Moses' staff turns into a serpent, and the midrash reports God's saying to Moses, "Just as I afflicted the serpent with leprosy, so 'shall you put your hand into your bosom. He put his hand into his bosom and when he brought it out, it was leprosy like snow.'"^{94 95}

Israel itself only became subject to leprosy and all sorts of other unpleasant illnesses and physical deformations after Sinai.

For what were the Israelites sentenced to bodily issues and leprosy? Rav Chunia said in the name of Rabbi Hoshaiah: Because they cast aspersions on their leaders and said, "What is the status of Ploni's family? Are they not lepers?" This is to teach you that leprosy plagues come only because of לשון הרע. Therefore, Israel was sentenced to issues and leprosy. Rabbi Tanchuma said: Because they cast aspersions on the ark and said, "This ark kills its bearers." And leprosy plagues only come (as a punishment) for לשון הרע. Therefore, Israel was sentenced to issues and leprosy.⁹⁶

This text seems to suggest that only after Sinai could the

⁹⁴ Exodus 4:6.

⁹⁵ *Tanchuma Shmot* 23; see also *Shmot Raba* 3:12.

⁹⁶ *Vayikra Raba* 18:4.

Israelites speak לשון הרע of sufficient severity that it would cause leprosy. The critical statements called לשון הרע here are comments that the people could only have made once they knew the laws of the leper and once they had an ark invested with such awesome power. Either these examples are not carefully chosen, or, more likely, these rabbis are implying that before one can be punished for slander, one must be specifically subject to the law of Torah which prohibits it. This would not absolve any Jews of responsibility for their words, but it would specifically exclude non-Jews from any expectation of proper speech.

Rabbi Yehoshua ben Levi specifically develops this connection between leprosy and Torah, noting that the word Torah is used in connection with a term for leprosy five times in Leviticus. This, he says, using the midrashic connection between מצורע and שם (רע), indicates that the person who speaks לשון הרע transgresses against all five books of the Torah.⁹⁷ Another source points out that לשון הרע is an instance of one's tongue causing one's entire body to sin in that it causes one's body to be stricken with

⁹⁷ *Vayikra Raba* 16:6.

leprosy and lose what little Torah one had to begin with.⁹⁸

Leprosy is not the only illness brought on by לשון הרע. The rabbis spoke of diphtheria and croup, diseases which afflict those parts of the body which produce speech, as just retribution for the sin of slander. Just as diphtheria begins with an upset stomach and proceeds to block the throat and strangle a person, slander begins with the advice of the kidneys, proceeds past the understanding of the heart, is formed by the tongue, and is completed by the mouth.⁹⁹ One of the traditions about the nature of the death of the spies who slandered the land when they brought back their report is that their death was through this illness. Other traditions prefer to seek out more bizarre punishments for the spies like the sluffing off of their bodily parts or the prolongation of their tongues until they reached their navels so that worms could go from the tongue into the navel and back again.¹⁰⁰

Illness is not the only punishment during a person's life for slander. The rabbis find in the Biblical narratives

⁹⁸ *Midrash Tehilim* 52:1. *Avot D'Rabbi Natan* 9, Schechter, version A, p. 21a, specifically connects an additional case of Biblical leprosy with לשון הרע, pointing out that Gehazi became leprous for the rest of his life after he misrepresented Elisha to Naaman and asked in Elisha's name for the reward Elisha had already declined. (II Kings 5).

⁹⁹ *Shabat* 33a-b. In rabbinic tradition, the kidneys are the seat of the emotions and the heart is the locus of the mind.

¹⁰⁰ *Sotah* 35a, *Kohelet Raba* 9:12.

precedents for many different unpleasant consequences. The primeval serpent was cursed and made go on its stomach and eat dust.¹⁰¹ Its legs were cut off and its tongue was split so that it could not speak.¹⁰² Joseph not only was sold to Egypt and caused all Israel to be enslaved, but in speaking the לשון הרע which caused all this he also proved himself to be חסר לב, lacking understanding.¹⁰³ On hearing that news of his killing the Egyptian had spread, Moses realized that לשון הרע existed among the Israelites, and that it was this habit of speaking לשון הרע which had caused them to be and remain enslaved.¹⁰⁴ The לשון הרע of the land by the spies not only caused the death of their generation in the wilderness, but it also turned the spies themselves into fools. These men, of course, did not begin as fools, for Moses would only have chosen righteous men for this important mission. Slander could be the only cause of their transformation.¹⁰⁵ Finally, David's accepting לשון הרע from Mefiboshet led to the division of the kingdom after Solomon's death, the idolatry of

¹⁰¹ *Pirkei D'Rabbi Eliezer* 53; *Devarim Raba Shoftim* 5:10; *Bereishit Raba* 20:1.

¹⁰² *Devarim Raba* 5:10.

¹⁰³ *Tanchuma Vayeshev* 2; *Bereishit Raba* 87:1.

¹⁰⁴ *Shmot Raba* 1:30.

¹⁰⁵ *Bamidbar Raba* 16:4.

Jereboam, and ultimately exile.¹⁰⁶

The unpleasant consequences of slander in this life are not confined to the events of Biblical days. God has said, "(The slanderer) and I cannot dwell together in the world."¹⁰⁷ When Miriam and Aaron slandered Moses, they became unclean, and, unable to dwell with this uncleanness, the *Shechinah*, God's presence, withdrew from the Tent of Meeting.¹⁰⁸ This awesome effect, the withdrawal of God, is still one of the punishments for our slander today.¹⁰⁹ Slander is also one of the many causes of drought.¹¹⁰ The *Menorat Hamaor* comments in connection with this, "It is not sufficient that the slanderer himself be stricken, but the whole world is stricken because of him."¹¹¹ Not only should one avoid slander out of fear of the punishment one might oneself receive, but one must be aware of the possibility of absolutely disastrous consequences for all Israel or all the world when one fails to guard one's tongue.

Of course, the most severe punishment for לשון הרע in

¹⁰⁶ *Shabat* 56a-b.

¹⁰⁷ *Arachin* 15b.

¹⁰⁸ *Mishnat Rabbi Eliezer*, p. 174.

¹⁰⁹ *Devarim Raba Shoftim* 5:10, *Ki Tetse* 6:14; *Midrash Tehilim* 101:3; *Sotah* 42b; *Sanhedrin* 103a.

¹¹⁰ *Taanit* 7b.

¹¹¹ Rabbi Yisrael ben Yosef Alnaqava, *Menorat Hamaor*, ed. H. G. Enelow (New York: Bloch, 1932), vol. 4, p. 354.

this world is removal from the world by death.¹¹² This punishment is a logical consequence of slander, for it was the לשון הרע of the primeval serpent which first brought death to the world.¹¹³ Because in the rabbinic period, לשון הרע was not punishable by human courts, the form of death threatened was generally כרת, premature or sudden death by Divine action, based on the Psalmist's requests of God in Psalms 12:4 and 101:5.¹¹⁴ However, we also find statements of what the rabbis would have liked to do to punish the slanderer:

Rav Sheshet said in the name of Rabbi Elazar ben Azariah: Anyone who speaks לשון הרע, anyone who accepts לשון הרע, and anyone who gives false testimony against another is worthy of being thrown to the dogs, for it is written, "You shall throw him to the dogs,"¹¹⁵ and it is written after that, "Do not bear (תשא) false rumors."¹¹⁶ Read this, "Do not mislead (תשיא)."¹¹⁷

Rav Chisda quoted Mar Uqba: Anyone who speaks לשון הרע is worthy of being stoned. It is written here, "I will destroy (אצמית) him,"¹¹⁸ and it is written there, "They ended (צמחו) my life in the pit and threw stones at

¹¹² *Midrash Tehilim* 52:2.

¹¹³ *Tanchuma Bereishit* 8.

¹¹⁴ See above, p. 38. *Midrash Tehilim* 12:2.

¹¹⁵ Exodus 22:30.

¹¹⁶ Exodus 23:1.

¹¹⁷ *Pesachim* 118a.

¹¹⁸ Psalms 101:5.

In addition, *Masechet Derech Erets Raba* 2 consigns the slanderer to a future fiery death.

In saying that the slanderers are worthy of (ראוי -7) stoning, burning, or of being thrown to the dogs, the rabbis are only saying that, if it were in their power, these are the punishments they would decree. In later periods, punishments were imposed, but not death sentences. The slanderers were subject to מכות מדרבנן, a flogging ordained by the rabbis on their own authority. Slanderers also had the possibility of redeeming themselves with a monetary fine to be paid to the person slandered or to a charitable cause. In addition, they had publically to appease the person harmed.¹²¹ In the Middle Ages, the slanderer was subject to banning or excommunication.¹²²

The rabbis could also point to specific Biblical incidents to support their threats of Divine punishment. In the wilderness,¹²³ the people spoke against God and Moses for bringing them out of Egypt to a place without food or water.

119 Lamentations 3:53.

120 *Arachin* 15b.

121 הגהות מרדכי, p. 1048, quoting from קידושין סימן תקנ"ח.
ווארהפטיג

122 שו"ת דבר משה ח"ב, p. 1048, quoting from ווארהפטיג
א; and רקובר, pp. 199, 209, 339.

123 Numbers 21:4-9.

In response, God sent fiery serpents which bit the people and many died.

Why did God see fit to punish them with serpents? Because the serpent, the first to speak slander, was cursed, and they did not learn from this. The Holy One, blessed be He, said, "Let the serpent who began slander come and punish the slanderers." For it is said, "He who breaches a fence will be bitten by a snake."¹²⁴ ¹²⁵

In Numbers 11 the people also complain against God, questioning, according to the Midrash, God's ability to feed them in the wilderness. As a result, God sends a devouring fire which is restrained only by the supplications of Moses. This fire, instead of returning to God, enters the Tent of Meeting and burns there on the altar for Israel's sacrifices. It is this fire which later destroys Korach and his followers.¹²⁶ The rabbis also turn to Doeg for an example of Divine punishment for slander. His לשון הרע caused the death in battle of otherwise righteous and learned people in the time of David. In contrast, the idolators of Achav's generation were victorious and lived because there was no לשון הרע or informing among them, as is proven by the fact that no one told where

¹²⁴ Ecclesiastes 10:8.

¹²⁵ *Bamidbar Raba* 19:22; see also *Midrash Tehilim* 120:3. Rashi understands the fence of the prooftext to refer to the fence formed by the teeth and lips to guard the tongue.

¹²⁶ *Pirkei D'Rabbi Eliezer* 53.

Ovadhah was hiding the true prophets of God when Izabel persecuted them.^{127 128}

The divinely imposed punishments for לשון הרע continued after a person's death. Again, because the rabbis had no way of disciplining a slanderer themselves, they had to make their threats as dire as possible. If all the possible punishments were obvious to the living community, questions of God's justice would arise when a slanderer, or any sinner, failed to be punished. Therefore, the slanderers were threatened with having no part in the world to come.¹²⁹ Other *midrashim* threaten that for their deeds, the slanderers would be sentenced to eternity in Gehinom.¹³⁰ Even worse, slanderers were promised torture after death, for neither God nor Gehinom would have any part of them and would conspire to torture them forever.¹³¹

E. REMEDIES FOR THE SLANDERER AND REWARDS FOR GUARDING ONE'S TONGUE.

In the absence of possible humanly imposed punishments

¹²⁷ I Kings 18.

¹²⁸ *Devarim Raba Shoftim* 5:10; see also *Pesikta D'Rav Kahana* 4:2; *Tanchuma Chukat* 4; *Tanchuma Buber Chukat* 7; *Bamidbar Raba* 19:2; *Yerushalmi Peah* 1:1, f. 4b; *Mishnat Rabbi Eliezer*, p. 173.

¹²⁹ *Tanchuma Metsora* 1; *Pirkei D'Rabbi Eliezer* 53.

¹³⁰ *Kohelet Raba* 3:9; *Bereishit Raba* 20:1; *Midrash Tehilim* 58:3.

¹³¹ *Arachin* 15b; *Midrash Tehilim* 12:2, 52:2; *Tanchuma Metsora* 2; *Tanchuma Buber Metsora* 5.

for לשון הרע, the rabbis threatened slanderers with Divine retribution, either as punishment during their lives in the forms of illness and agonizing deaths, or as punishment after their deaths in the forms of eternal torture and denial of any form of positive afterlife. Many Divinely imposed punishments can theoretically be circumvented and removed by the sinner's repentance. However, in the case of לשון הרע, the rabbis question whether, once one has uttered slander, these punishments can be avoided. Of course, because human beings had no control over the punishments themselves, any discussion of the punishments is theoretical. The discussion of means to avoid the punishments has only slightly more reality in that, if repentance is possible, it is in the power of human beings to affect their own fate.

We read two contrasting statements of Rabbi Chanina in *Arachin* 15b:

Rabbi Chama quoted Rabbi Chanina: What is the remedy of the slanderer? If he is learned, he should engage in Torah, for it is said, "The healing of the tongue is a tree of life,"¹³² and "tongue" refers only to "the evil tongue" (slander), for it is written, "Their tongue is a sharpened arrow."¹³³ And there is no tree except Torah, for it is said, "It is a tree of life to those who hold it fast."¹³⁴ But if he is a simple person, he should humble his mind, for it is said, "But

¹³² Proverbs 15:4.

¹³³ Jeremiah 9:7.

¹³⁴ Proverbs 3:18.

a devious one makes for a broken spirit."¹³⁵ ¹³⁶

Rabbi Acha quoted Rabbi Chanina, saying: It is told that (the slanderer) has no remedy, for David was inspired by the Holy Spirit to say that (the slanderer) would be cut off, for it is said, "May the Lord cut off all flattering lips, every tongue which speaks arrogance."¹³⁷ (Therefore the issue is) what is the remedy so that one will not come to speak לשון הרע? If he is a scholar, he should engage in Torah, and if he is simple, he should humble his mind, for it is said, "But a devious one makes for a broken spirit."¹³⁸

The Gemara here questions whether Torah study or humility can actually be a remedy for לשון הרע or whether they are merely safeguards against the headstrong tongue. More likely, Torah study and humility create the kind of people who would more easily guard their tongues and avoid לשון הרע. Once one has actually slandered, these remedies cannot make amends for the sin.

In spite of this claim that the fate of the slanderer is irredeemable, the rabbis recall several contrary traditions from Temple times when atonement for most sins was specifically procured with the offering of the proper sacrifices. Although there was no specific sacrificial expiation for לשון הרע, certain of the ritual objects of the Temple

¹³⁵ Proverbs 15:4. Rashi explains this proof-text to mean that the one whose tongue has been devious should come to have a broken spirit.

¹³⁶ See also *Midrash Tehilim* 12:2.

¹³⁷ Psalms 12:4.

¹³⁸ Proverbs 15:4.

served the same purpose. Because the bells on the robe of the High Priest made a sound, they were believed to atone for this sin which was committed through sound.¹³⁹ One tradition finds proof for this in Numbers 12. Here, Aaron was spared of the punishment of leprosy when he and Miriam slandered Moses because he must have been wearing his priestly robe which was adorned with these bells.¹⁴⁰ Similarly, the ritual incense provided atonement for slander, because both were secret.¹⁴¹ These two means of atonement did not duplicate each other; the robe atoned for public slander and the incense for private.¹⁴²

However, the midrash preserves a tradition that the sacrificial offerings brought by the leper on the day of his cleansing were really brought to atone for לשון הרע. On that day he brought two birds: the rabbis, assuming that leprosy is necessarily a punishment for לשון הרע, comment that birds were the ordained sacrifice because their voices sound similar and act like לשון הרע.¹⁴³ The Tosefta also records a tradition that when a leper came to the priest, he was told

¹³⁹ *Zevachim* 88b; *Arachin* 16a-b; *Yoma* 44a; *Vayikra Raba* 10:6; *Shir Hashirim Raba* 4:4:5.

¹⁴⁰ *Mishnat Rabbi Eliezer*, p. 175.

¹⁴¹ *Yoma* 44a; this source explains how the incense is secret.

¹⁴² *Zevachim* 88b; *Arachin* 16a-b.

¹⁴³ *Tanchuma Metsora* 3; *Tanchuma Buber Metsora* 8; *Vayikra Raba* 16:7.

to examine his deeds and repent. The only cause of his leprous plague could be לשון הרע, but God would judge him mercifully if he repented.¹⁴⁴

The destruction of the Temple foreclosed all of these potential means of atonement for לשון הרע except repentance, Torah study and humility. However, since even the means of atonement available during Temple times were not sacrifices specifically designated to demonstrate repentance and procure expiation for לשון הרע, it is not surprising that many teachers felt slander to be an irrevocable sin. By the medieval *musar* literature, we find rabbis asserting that the only solution is preventative silence, because if one is talkative, לשון הרע is unavoidable.¹⁴⁵

While the punishments for speaking לשון הרע are vast and difficult to avert, there are and have been some significant rewards for avoiding this sin, the most significant and widely mentioned of which is life.

"Who is the person who is eager for life, etc.?"¹⁴⁶ Once there was a peddler who circulated among the towns near Tsiפורis, calling out, "Whoever would like to buy an elixir of life, come and take!" He came into the city of Achbara near the home of Rabbi Yanai, who was

¹⁴⁴ *Tosefta Negaim* 6:7.

¹⁴⁵ *Menorat Hamaor*, vol. 4, p. 367.

¹⁴⁶ *Psalms* 34:13.

sitting and studying in the reception room.¹⁴⁷ He heard the peddler calling out, "Who would like to buy an elixir of life?" Rabbi Yannai looked down and said to him, "Come up here and sell some to me." (The peddler) replied, "You do not need any, neither you nor anyone like you." (Rabbi Yanai) pressed him, so he went up, brought out a book of Psalms and showed him the verse, "Who is the person who is eager for life, who desires days in which to see goodness?" What is written next? "Guard your tongue from evil and your lips from speaking deceit. Turn from evil and do good, seek peace and pursue it."¹⁴⁸ Rabbi Yanai said, "All my life I read this text and did not know how to explain it until this peddler came and told (me)." "Who is the person who is eager for life." Rabbi Chagai said, "Even Solomon called out and said, 'He who guards his mouth and his tongue, guards his soul from trouble (מצרות),'¹⁴⁹ i.e., he guards his soul from leprosy (מצרעת). Therefore, Moses warned Israel and said to them, 'This shall be the law of the leper (המצורע),'¹⁵⁰ i.e., the law of the defamer (המוציא רע)."¹⁵¹

This story is quite interesting, for it is the peddler, the רוכל, the paradigm of the talebearer,¹⁵² who advertises that longer life can be achieved through the avoidance of slander or anything related to it. Here we see combined a number of themes: first, the study of Torah is the key to avoidance of

¹⁴⁷ Soncino translates טרקלינה as attic. Jastrow's translation of this word makes no sense here, but he translates טריקלין as dining or reception room. Since the difference is only vowels, and the word is obviously of Greek origin, I follow Jastrow.

¹⁴⁸ Psalms 34:13-15.

¹⁴⁹ Proverbs 21:23.

¹⁵⁰ Leviticus 14:2.

¹⁵¹ *Vayikra Raba* 16:2; see also *Tanchuma Buber Metsora* 5; *Midrash Tehilim* 39:4, 52:2; *Avodah Zara* 19b.

¹⁵² See Chapter IV.

לשון הרע, for Rabbi Yanai, who is studying, has no need of the peddler's remedies and Scripture itself, David's book of Psalms, provides the remedy; second, Proverbs, Solomon's book of wisdom, advises that guarding one's mouth will allow one to guard oneself against the plague of leprosy; and third, implicit in the entire passage, is the message that a reward for avoiding לשון הרע or any of the related sins, is long life.

There can be rewards for avoiding לשון הרע because ultimately, whether one slanders or not, is a decision of the individual. Not slandering, therefore, while not fulfilling a specific positive law, does carry positive ethical weight. Thus, one can decide between occupying one's tongue with Torah and thereby meriting life and fewer troubles, and busying oneself with לשון הרע and deserving death or leprosy.¹⁵³ The difficulty of avoiding לשון הרע does not prevent the person who makes an honest effort from receiving this reward, for even if one slips and speaks לשון הרע while asleep, one then certainly has the remedy of occupying oneself with Torah.¹⁵⁴ In addition, the rabbis point out that לשון הרע is a danger because the tongue is one of the body parts under our direct control. Therefore, if we merit, God will take our tongue out of our control, and everything we

¹⁵³ *Midrash Tehilim* 52:2; *Tanchuma Metsora* 2; *Tanchuma Buber Metsora* 4.

¹⁵⁴ *Avodah Zara* 19b.

say will be in blessing.¹⁵⁵ Once we make the first step, God will aid us on the road to this moral perfection. The slippery nature of the tongue makes the total avoidance of לשון הרע an impossible task to achieve alone. Distancing oneself from לשון הרע will not only allow one to have life in this world, but after death, one will escape Gehinom, and one will merit life in the world to come.¹⁵⁶

These statements are not totally theoretical. The rabbis are able to point to several instances in Biblical narratives where people have been rewarded either for not speaking or for not accepting לשון הרע. The Israelites did not speak לשון הרע when, for an entire year, they kept secret Moses' command to prepare themselves for the Exodus by borrowing valuables from their Egyptian neighbors. As a reward, they were redeemed from the land of their enslavement.¹⁵⁷ Many generations later, Jereboam, the builder of the temples in Dan and Beth El with their golden calves, still merited to be counted among the kings of Israel because he did not accept לשון הרע about Amos.¹⁵⁸ As we have seen, Achav's generation, even though they too were idolators, were mili-

¹⁵⁵ *Bereishit Raba* 67:3.

¹⁵⁶ *Midrash Tehilim* 52:2; *Tanchuma Metsora* 4; *Tanchuma Buber Metsora* 5.

¹⁵⁷ *Vayikra Raba* 32:5.

¹⁵⁸ *Pesachim* 87b commenting on Amos 7.

tarly victorious and lived because there was no informing or slander, as is proven by the fact that no one told where Ovadiah had hidden the prophets whom Izabel was persecuting.¹⁵⁹ ¹⁶⁰ In addition, the prophets themselves were saved.¹⁶¹

However we look at it, though, avoiding לשון הרע and achieving these rewards is a difficult task. The rabbinic definition of לשון הרע is so vast that practically anything one might say except in Torah study has the potential of harming another or leading to words which might cause another harm. Practically any human communication includes in it either לשון הרע or אבק לשון הרע. This system, then is not set up to be realistic; rather the rabbis present us with an ideal of human conduct towards which we may strive. There are concrete rewards and punishments to spur us on the quest for an ethical life, and specific instructions to follow to avoid the pitfalls associated with this most dangerous limb, the tongue. Serious pursuit of knowledge, the study of Torah, is the only route one may take to avoid idle thoughts and their attendant dangerous expression. Since even scholars must do more with their lives than study Torah, our only reassurance is the knowledge that once we have made serious

¹⁵⁹ I Kings 18.

¹⁶⁰ *Devarim Raba Shoftim* 5:10; *Pesikta D'Rav Kahana* 4:2; *Tanchuma Chukat* 4; *Tanchuma Buber Chukat* 7; *Yerushalmi Peah* 1:1, f. 4b; *Bamidbar Raba* 19:2.

¹⁶¹ *Mishnat Rabbi Eliezer*, p. 173.

efforts to guard our own tongues, God will provide the necessary help to allow us to fulfill this otherwise impossible task.

CHAPTER III: מוֹצִיא שֵׁם רָע

Should a man take a wife, cohabit with her, and come to hate her; should he then make baseless charges against her, *defaming her* (הוֹצֵא עָלֶיהָ שֵׁם רָע), saying, "I married this woman and when I came near to her, I discovered that she was not a virgin;" then the girl's father and mother shall bring forth the evidence of the girl's virginity to the elders of the town at the gates. The girl's father will say to the elders, "I gave my daughter to this man to be his wife and he despised her. Moreover, he has brought against her baseless charges, claiming, 'I did not find your daughter a virgin.' Yet here is the evidence of my daughter's virginity!" The (parents) will spread out the garment before the elders of the city. Then the elders of the city will take the man, flog him,¹ and punish him with a fine of one hundred pieces of silver to be given to the girl's father, for he (the husband) has *defamed* (כִּי הוֹצִיא שֵׁם רָע) an Israelite virgin. She shall be his wife, and he may never divorce her. But if the claim was true, and there was no evidence of the girl's virginity, they shall take the girl to the door of her father's house; the people of her city shall stone her until she dies, for she did a abominable thing in Israel, fornicating while in her father's house. So shall you utterly remove the evil from your midst.²

This Deuteronomic scenario provides the Biblical basis for one of the major subcategories of לשון הרע, the concept of מוֹצִיא שֵׁם רָע, *motsi shem ra*, best translated as defamation of character. The rabbinic treatment of this concept follows two distinct tracks. The primary track deals directly with the many significant halachic problems presented by the Bib-

¹ Literally, discipline him, but Rashi, based on *Ketubot* 46a indicates that this is understood to mean flogging.

² Deuteronomy 22: 13-21.

lical text quoted above. The defamation of one's wife's character is a serious matter, and the rabbis carefully define both the situation and its solutions. The secondary track extends the concept of מוציא שם רע to include other forms of defamation of character. However, although the rabbis can legitimately extend the idea of defamation beyond the Biblical case, they cannot extend its accompanying legal consequences. On the human level, only the ethical elements of the prohibition of מוציא שם רע remain operative; the punishment for this transgression is no longer in human hands. Because only God can punish the מוציא שם רע, the human courts do not need strict definition of the misbehavior. The rabbis mention the consequences of defamation as a warning against the transgression. The punishments they describe, like those of לשון הרע, are often extreme and fantastic. The similarities between this extension of the concept of the מוציא שם רע and לשון הרע are great, for מוציא שם רע comes to be understood to be a not entirely distinct subcategory of לשון הרע.

In order to understand fully the development of the extended concept of defamation, we must first look briefly at the rabbinic development of the Deuteronomy text. The rabbis deal with this issue in quite typical fashion. They closely examine each word of the Biblical text for its exact meaning. It is interesting to note that the Tannaim did not define this law so closely as to make it impossible to apply. When we look at the *Sifrei Devarim*, we find example after example

of places where the rabbis reject the narrowest possible interpretation of the text. If the girl does not have both a mother and a father, she is still chargeable because "father and mother" in verse 15 refers to those who raised the child.³ Similarly, if the girl has misbehaved, her lacking a father or her father lacking a house does not prohibit her from being taken out and stoned.⁴

However, the Amoraic discussion of this issue in *Ketubot* 44b-45a⁵ decides that this law does not apply to every newly married woman. The Gemara questions whether Deuteronomy's use of the term נַעֲרָה, understood by the rabbis as a technical term for a woman between the ages of twelve and twelve and a half, refers here to any woman or only to a woman of this age. They conclude that because a child under twelve years is not legally responsible for her own actions, she cannot be punished for her premarital fornication. An older woman, a full adult, who is found to have misrepresented her virginity to her new husband, is assumed to be adulterous and is strangled, not stoned. Therefore, the laws of the לַעֲרֹא שָׁם רָע refer only to the defamation of a woman married during this six month period of her life. Although this greatly limits the application of the law, it is impor-

³ *Sifrei Devarim* 235.

⁴ *Sifrei Devarim* 239.

⁵ *Mishnah Ketubot* 4:3 presents a summary of the discussions recorded more fully in the *Sifrei Devarim*.

tant to note that this six month period was considered the proper age for a young woman to marry.

The treatment of this issue in the Talmud and halachic literature is quite extensive, largely because Deuteronomy 22 presents an anomalous case which contradicts many of the neat principles of Jewish law. Significant for our study is that הוצאת שם רע, a husband's false accusation that his wife was not a virgin at marriage, is technically a transgression of a שאין בו מעשה לאו, a negative commandment which does not involve a deed, in which case human courts cannot decree punishment. Because Deuteronomy 22 does prescribe specific humanly imposed punishments for this verbal misdeed, the rabbis declare the entire issue of defamation of ones wife a חידוש, meaning that no analogies may be drawn from it.

We do not learn (legal precedents) from it (the הוצאת שם רע) because in no other case can one be held guilty for something one has said, and here one is judged guilty for something spoken. Therefore, do not learn from it.⁶

That the laws of the הוצאת שם רע have been ruled anomalous becomes highly important in the framework of the entire halachah. This system frequently draws parallels from one set of circumstances to another to help elucidate unclear legal issues. These analogies help the rabbis extend the

⁶ Yerushalmi Ketubot 3:1, see also Ketubot 45a and Maimonides, *Mishneh Torah, Hilchot Isurei Biah*, ch. 3.

precedents of Biblical law to fit cases arising in their later world. Since Deuteronomy 22 gives the only Biblical example of a person being punished for defamation,⁷ this specific occurrence becomes the only exception to the court's inability to punish someone for causing verbal harm.⁸

Although the specific legal formulations of the מוציא שם רע could not be extended beyond their Biblical boundaries, the ethical concept itself was not so confined. If human courts only have power to punish for the specific offense of defamation of one's wife's character, God would obviously take care of the rest. מוציא שם רע as an ethical concept comes to refer to any sort of defamation.

The rabbis specifically discussed the ethical implications of the laws of Deuteronomy 22, and in this discussion we begin to see the emergence of the more general concept of defamation. The laws presented in Deuteronomy are laws of punishment, and, according to rabbinic understanding of the Bible, God does not call for the punishment of a sin without first warning the Israelites elsewhere against its commission. *Ketubot* 46a preserves a debate over whether the source of the warning for the punishments outlined in Deuteronomy 22 is "לא תלך רכיל," understood to mean "Do not go about as a

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"שם רע, הוצאת," האנציקלופדיה העברית, כרך לב, 145-146.

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נחום רקובר, "על לשון הרע ועל הענישה עליה במשפט העברי," סיני 51 (1962), ע' ר.

talebearer,"⁹ or "ונשמרת מכל דבר רע," "Keep yourself from any evil word."¹⁰ Both verses are, as we have seen, understood to be the general warning of the Torah against all forms of לשון הרע.

The second verse in its original context describes proper conduct in war and obviously means there "Keep yourself from any *thing* evil." Understood according to this translation, it could be a warning against the act of defaming one's wife, but given that the sin of מוציא שם רע is verbal and that the discussion of the prooftexts makes no attempt to differentiate between the import of the two verses, we are justified in positing that דבר is here understood as "word." The rabbis fail to agree on their warning text, not because of import, but because each requires the other's text for an unrelated purpose. The overall intent is clear. The warning against מוציא שם רע, whether the act has legal implications or not, stems from the general warnings against verbally harming another, not from warning against this specific accusation of a husband against his wife.

This blurring of the distinction between the two understandings of the term מוציא שם רע becomes most glaring in *Mishnah Arachin* 3:5:

How can one sometimes be strict and at other times

⁹ Leviticus 19:16.

¹⁰ Deuteronomy 23:10.

lenient in (judging) the case of the man who defames his wife (מוציא שם רע)? Both the man who defames the most important woman of priestly descent and the one who defames the most insignificant Israelite woman must pay one hundred sela. Thus we find that a verbal crime is more serious¹¹ than an actual physical deed! For¹² thus we have found that the verdict was sealed on our ancestors in the wilderness only because of their slander (לשון הרע), for it is said: They tested Me these ten times and did not listen to My voice.¹³

This Mishnah is the last of a series, all beginning with the question: in the case of a specific type of misconduct, at what times is the punishment strict or lenient? In the case of claims of non-virginity against one's wife, the claim would appear to be much more serious if the woman is of a socially prominent background; it receives wider notice and brings much more public shame to the woman's family. Therefore, one might think it appropriate to raise or lower the fine according to the status of the defamed woman, but this is not the case. No matter who the woman is, the fine remains the same. The punishment is thus lenient for the defamation of a prominent woman and strict for the defamation of someone less significant. So far then, the Tannaim of this Mishnah are merely explicating a straightforward principle of equality before the law.

However, with the next phrase, we begin to cross the

¹¹ Variants: fined more.

¹² Variant: and.

¹³ Numbers 14:22.

boundary to the extended, broader, non-juridical interpretation of defamation. In the previous Mishnah, the rabbis have established that no matter what the status of the woman, the fine for rape or seduction is only fifty sela. Here we have a fine double that size, implying that the crime of defamation, of accusing one's wife of sexual misconduct before marriage, is much more serious than actually committing that misconduct oneself. Although these fines are Biblically mandated, it is still fair to ask whether this makes any sense. Logic would tell us that an actual rape is a more serious crime than an accusation of non-virginity. The message of tradition must, then, go beyond the obvious realm of courtroom procedure to make a statement about values and ethics.

In explaining this problem, the Tannaim make just this jump. All of a sudden, לשון הרע is מוציא שם רע, and as we have seen, in the rabbinic system, לשון הרע is an ethical concept which functions exclusively outside of the human judicial system. The relative size of the fines comes to indicate to us that defamation or slander, the use of the spoken word to harm another person, is, in the eyes of God, a heinous sin, more destructive to society than a violent physical crime. This concept is explicated more clearly in the Tosefta:

See where, in punishing the perpetrators of violence or the slanderers (לשון הרע), Torah is more stringent. The rapist, the seducer, and the perpetrator of violence pay a fine of fifty selaim and are not flogged; but the defamer (מוציא שם רע) is whipped and pays a fine of one hundred sela. Torah is more stringent

about words than deeds. It is said: "He who strikes his father and mother shall surely die,"¹⁴ and it is said, "He who curses his father and mother shall die."¹⁵ The first is (punished by death) by strangulation and the second by stoning.¹⁶ Torah is more stringent about words than deeds.¹⁷

With this in mind, we can understand better the homily implicit in the ending of the Mishnah. We may tend to think of our statements as ephemeral words, but in universal or divine terms, their impact is much more serious than any deed we might do. We know this to be true, because our ancestors rebelled against and disobeyed God ten times in the wilderness. However, only when the spies brought back their evil report, when they slandered the land which God had promised to the Israelites, did God determine that the generation who had escaped from Egypt would not live to enter the land.

As we have seen in both the Mishnah and the Tosefta passages, once we enter the realm of the extended concept of לשון הרע, the distinction between מוציא שם רע and לשון הרע blurs. The terms are used interchangeably, but this is not to say that they become synonymous. Maimonides rightfully identifies מוציא שם רע as a subcategory of לשון הרע. However, he defines מוציא שם רע to be that לשון הרע in which one

¹⁴ Exodus 21:15.

¹⁵ Exodus 21:17.

¹⁶ The more painful and drawn out death.

¹⁷ Tosefta Arachin 2:10; see also Mishnat Rabbi Eliezer, p. 172.

person speaks a falsehood about another.¹⁸ This distinction is not totally supported by the use of the term in the rabbinic texts. We have many examples of falsehood spoken about another person which are referred to only as לשון הרע. The common thread instead in all examples of the specific use of the term מוציא שם רע, including those of the purely legal discussions based on Deuteronomy 22, is that they involve destruction of another person or thing's reputation, a defamation of character. The content of the מוציא שם רע may be true or false; at issue is its effect. Maimonides' definition may reflect more the interpretation given to the term in post-Talmudic times. The scope of מוציא שם רע may easily have changed, because the textual sources for the extension of the concept of מוציא שם רע are almost all aggadic. The texts define the concept by example rather than by direct discussion.

As we have seen, one of these examples of the extended concept of מוציא שם רע is the midrashic interpretation of the words of ten of the twelve spies on their return from scouting out the land of Canaan. The rabbis interpret the verse "וימותו האנשים מוציאי דבת הארץ רעה," "The men died who uttered evil speech about the land,"¹⁹ to mean that the spies spoke מוציא שם רע about the land. Here, the defamation is of

¹⁸ *Mishneh Torah, Hilchot Deot*, ch. 7.

¹⁹ Numbers 14:37.

land, the Promised Land, not of people. The rabbis comment that if, for defamation of sticks and stones, the punishment was death, how much more horrendous would it be for defamation of people!²⁰ The midrash here extends the concept of מוציא שם רע to defamation of the land because of the similarities between the phrases מוציא שם רע and מוציא דבת הארץ רעה.

Possibly but not necessarily based on the precedent of this midrash, the Gemara speaks elsewhere against a generalized defamation of land. One who rents land has an obligation to weed it properly, for even if one pays the agreed upon rent, if the soil becomes full of weeds, the reputation of the property will be ruined and its value lessened. The owner has every right to say to the tenant, "קא מנסבת שם," "You have ruined the reputation of my land."²¹ The object of מוציא שם רע may be totally inanimate, whether the defamation is false as in the case of the spies or true as with the weed infested land. It is interesting to note that in the second case, this is not a verbal defamation although the ultimate effect is the same. The tenant is not the actual defamer, just the one who has created the grounds for the defamation.

Just as the spies' questioning of God's wisdom in

²⁰ *Arachin* 15a, *Tosefta Arachin* 2:11.

²¹ *Bava Metsia* 105a.

directing the Israelites to Canaan was כֹּהֵן שֹׁמֵם, so was Korach's questioning of Moses' authority. *Bamidbar Rabah* compares Korach's claims against Moses to an untrue claim of non-virginity leveled against the daughter of a king.

Moses said, "By this you shall know that the Lord sent me (to do all these things, that I did not make them up.) If these men die the death of all men, (if their fate is the fate of all men, it is not the Lord who sent me.)"²² To what can this be compared? To the case of the agent of the king's daughter who was responsible for the tokens of her virginity. One of the guests stood up and cursed the agent, claiming that the king's daughter had not been a virgin. The agent stood before the king and said to him, "If you do not claim redress for this insult, and if you do not take this man out and kill him publically, I too will say that the king's daughter was certainly not found a virgin." Immediately the king said, "It is better for me to kill this one man than that the agent defame my daughter." Similarly, Korach opposed Moses and claimed that Moses had fabricated all of his words (of revelation). Then Moses began to speak before the Holy One, blessed be He saying, "If these men die on their beds in the way human beings die and the doctors visit them like all the sick are visited, then I too will deny (Your Torah) and claim that the Lord did not send me and it was all my creation!"²³

A claim that Moses did not really receive his revelation and authority from God is here equated with a claim to a father that he misrepresented his daughter's state of virginity at her marriage. According to our parable, the woman defamed is Torah, and her virginity, guarded by Moses, is the true Divine nature of revelation. The point of this midrash is

²² Numbers 16:28-29.

²³ *Bamidbar Rabah* 18:10.

that any questioning of the legitimacy of Israel's revealed teachings is a serious defamation of Torah and thus of God.

Israel too is not to be defamed, even by Moses. According to a tradition recorded in *Shmot Rabah* 3:12,²⁴ Moses claims in Exodus 4:1 that, in spite of God's promise to the contrary, the Israelites will not believe him to be a Divine emissary. This is a defamation of his people and he deserves to be punished, for why else would God immediately draw Moses' attention to the staff in his hand? Moses should be beaten with the staff, according to one of the punishments of the *לֹא יִשְׁמַח בְּעַמּוֹ*. And why does the staff turn into a serpent if not to recall the serpent of the Garden of Eden which defamed its Creator? Moses, in questioning the faithfulness of the Israelites, defames them and at least is threatened with punishment.

Other examples of *לֹא יִשְׁמַח בְּעַמּוֹ* are less midrashic and relate even more directly to the injunction against destroying the reputation of others. They deal more specifically on a realistic human level with the defamation of other human beings. The Talmud warns strongly against claiming either that the other merits of a suspected adulteress can qualify

²⁴ See also *Tanchuma Shmot* 23.

the accuracy of the *sotah* ²⁵ or that, in spite of the fact that the woman was proven innocent by the *sotah*, there are witnesses to her adultery who are too far away to come to testify. Either way, one calls into question the character (מוציא שם רע) of all truly innocent women who have endured this trial.²⁶ The rabbis would rather that a few guilty women go unpunished than that the character of many innocent women be suspect.

Guarding the reputation of others is the motivating force behind a quite famous rebuke for מוציא שם רע.

The Holy One, blessed be He, detests three kinds of people: the hypocrite, one who withholds testimony, and one who is a sole witness testifying about a matter of sexual misconduct.²⁷ It happened that Tovia sinned, and Zigod came alone and testified before Rav Papa. They whipped Zigod. They said to (Rav Papa), "Tovia sinned and Zigod was whipped?!" "Yes," he said, "for it is written: A single witness shall not testify against a person,²⁸ and you testified against him alone. You only defamed his character (and did not help to prove him guilty).²⁹

²⁵ *Sotah* refers to the bitter waters given to verify an alleged adulteress' claims of innocence. Note that although the defamed woman of Deuteronomy 22 was not charged with adultery, the two accusations are very similar. It is not surprising to find illustrations of the extended concept of לשון הרע which involve issues of adultery.

²⁶ *Mishnah Sotah* 3:5 and *Sotah* 6a.

²⁷ Jewish law requires two witnesses for testimony to be considered valid.

²⁸ Deuteronomy 19:15.

²⁹ *Pesachim* 113b.

The ethical system of Judaism seeks to prevent people from spreading information which would be harmful to the reputation of another. However, if this were an absolute, no one would be able to testify in court and the system of justice would break down. To prevent false testimony, the Torah established a system by which two or three witnesses with the same testimony must be found before evidence can be validly heard in court. In this case, Zigod has come forward to testify without anyone to verify his words. Therefore, his testimony cannot be considered in reaching a verdict. However, by testifying, he has encouraged popular suspicion about Tovia's guilt. Even if the court finds Tovia innocent, the community, thinking that the verdict was based on lack of evidence, may ostracize him. An innocent man's name will be defamed, his reputation ruined.

This case becomes particularly interesting when we remember that only in the exact scenario of Deuteronomy 22 can a human court decree punishment for a specifically verbal crime. But the precedent set by the story of Zigod combined with the fuzzy distinction between the ethical and purely legal conceptions of *מוציא שם רע* allowed the *halachah* to change in the post-Talmudic period. The Talmudically established punishment for false testimony, breaking an oath, and cursing invoking the Divine Name³⁰ were extended to include

³⁰ *Makot* 4b.

the מוציא שם רע.³¹

One cannot say with certainty that this was the intention, since it is not explained, but in any case, it is hinted at in the Torah that the court has the power to sentence whipping for transgressions between human beings, and, under this rubric, for defamation (הוצאת שם רע). Because of this, the sages established the punishment of whipping also for other slanderous uses of language (הוצאת דיבה אחרת) (beyond the one who defames his wife).³²

However, this is a later phenomenon,³³ resulting from an extension of the statement in *Kiddushin* 28a that one could be excommunicated for calling someone a slave or whipped for calling someone a bastard. In Tannaitic and Amoraic texts referring specifically to the מוציא שם רע, the punishment was left solely to God. The Divine punishment took the form either of death, as in the case of the spies, or of leprosy.

Rabbi Pedat said, "A covenant was made between the Holy One, blessed be He, and the world that any one who speaks slander will be stricken with leprosy. From whence do we know this? From what we have read in (*Parshat Metsora*): This shall be the law of the leper.³⁴ Do not read 'the leper' (המצורע) but the defamer (המוציא שם רע).³⁵

As we saw in the preceding chapter, the rabbis saw leprosy as

31 ח. ז. ריינס, "ביוש בדברים בהלכה," סיני, נ"ה (תשכ"ד), ריז-רכ. See page 5.

32 ריינס, pp. 219-220.

33 רקובר, p. 201.

34 Leviticus 14:2.

35 *Tanchuma Metsora* 1.

something unusual, as a sign of warning from God.³⁶ Because of the similarity in sounds between the word for leper (מצורע) and the phrase מוציא רע (שם), they drew a parallel, and, through the midrashic process, came to understand leprosy itself to be the Divine punishment for defamation. The association of leprosy with לשון הרע was most likely an extension of this idea, for מוציא שם רע was generally considered a subcategory of לשון הרע. Not only did this connection of leprosy with verbal misconduct provide them with an excellent threat of punishment for the defamer and slanderer and a good explanation of the reason for the disease, but it also seemed to be just retribution. Slanderers and defamers through their words create divisions and separations among people. Leprosy is an appropriate punishment for such people, for the lepers themselves must be separated from the community.³⁷

This concept is very neat, but the rabbis must have recognized that the midrashic connection on which it is based is rather weak. מצורע and מוציא רע are related only by their similar sounds. In *Arachin* 15b, we find that the rabbis attempted to find another proof-text for this association, but the end result is very convoluted. Since this theory resorts to several different verses and the Targum to achieve their

³⁶ רמב"ם, p. 197.

³⁷ רמב"ם, p. 197, referring to *Arachin* 16b.

end, it cannot be judged any more convincing. However, if the rabbis were searching so hard for a Biblical basis for the connection between leprosy and slander or defamation, the association of this disease with this area of misconduct must have been well established in their world. A proof-text would only serve to buttress what must have been a popularly held conception. In the view of the rabbinic world, then, although human beings could not discipline each other for any defamation except that which was specifically described in Leviticus, this punishment would come from God instead.

It is interesting to note that even when the rabbinic tradition has extended the Biblical concept of מוציא שם רע into a purely ethical realm, many of the examples given are still somehow connected to the original Biblical scenario. Korach's מוציא שם רע is compared to a defamation of the daughter of a king, Zigod is testifying improperly about an act of sexual misconduct. One cannot question the efficacy of the drink given to women accused of adultery. The concept of the מוציא שם רע thus covers a continuum of ideas, ranging from the narrow legal interpretation of Deuteronomy 22 where a new husband's claim that his wife's virginity was misrepresented, to the broad ethical injunction against destroying anyone or anything's character. Throughout the entire continuum, the overarching idea is the disapproval of defamation. Ultimately, there is an intrinsic unity to the concept of מוציא שם רע as it is presented in the rabbinic tradition.

CHAPTER IV: רכילות

Leviticus 19:16 reads, "לא תלך רכיל בעמך", most commonly understood to mean, "Do not go about as a talebearer among your people." While the rabbis understand this prooftext to be one of the primary Divine warnings against לשון הרע and לשון הרע,¹ they only rarely refer to slander by the word derived directly from this verse, רכילות. Although in the classical rabbinic world, the unique concept of רכילות did exist, the meaning and usage of the term, in contrast to the term לשון הרע, was extremely specialized and was tightly tied to its Biblical prooftexts. It is only in later usage that רכילות gains a more independent meaning.

The root רכל means to peddle, and it appears in this sense in both the Biblical and rabbinic literature. However, when the root appears in the form רכיל in the Bible, it signifies not a peddler of goods, but a peddler of words, a gossip or talebearer. The abstract noun רכילות, meaning talebearing, is a later linguistic invention. As far as I have been able to ascertain, it appears only once in the entire classical rabbinic literature, in the Palestinian

¹ *Ketubot* 46a; *Yerushalmi Peah* 1:1, f. 4b.

Talmud.² The term was thus most likely unknown in Babylonia. Even in the Palestinean usage, the term רכילות appears only as a modifier of לשון הרע, indicating that רכילות had no status as an independent category of forbidden speech even there. Maimonides also does not use the word רכילות in his *Mishneh Torah* although he does make specific reference to Leviticus 19:16.^{3, 4}

The rabbis do discuss the exact meaning of the term as it appears in the Torah in Leviticus. There the commandment against being a רכיל appears in the midst of a series of verses devoted to the maintenance of the judicial system.⁵ In this context, a commandment to avoid talebearing is out of place; it is very possible that the text means something quite different by this term, but this meaning was no longer

² *Yerushalmi Peah* 1:1, Venice edition, f. 16d and both the Leiden manuscript (*Codex Leiden Scalii* 3, f. 35a) and the Vatican manuscript (*Ebreo* 133) read רכילות לשון הרע. Other printed editions, most notably the Zhitomir, f. 4b, read only רכילת, a relatively simple error, perhaps because the printers did not understand this unusual form.

³ *Mishneh Torah, Hilchot Deot* 7.

⁴ The term does appear in *Mishnat Rabbi Eliezer*, p. 171. This would support the *Encyclopedia Judaica's* claim that linguistic evidence points to a significantly later dating than Enelow's suggestion of early Tannaitic origins. See note 76, p. 36, above.

⁵ "You shall not render an unfair decision. Do not favor the poor or show deference to the rich; judge your neighbor fairly. Do not go about as a talebearer among your people; do not stand upon the blood of your neighbor; I am the Lord." (Leviticus 19:15-16).

remembered, even by the rabbis. The only solution offered which attempts to keep the meaning of the words fitting with their context is the suggestion that Torah commands that "one should not speak gently (-7 77) to some and harshly to others."⁶ This interpretation clearly goes beyond the simple meaning of the verse, and the rabbis quickly offer its more standard interpretation: One should not be like a peddler who carries מִדְּבָרִים (words, things, matters) from one to another and back again.⁷

However, in spite of their difficulty in finding a suitable juridical interpretation of this phrase, the rabbis' usage of the verse and discussion of the concept of the כִּי־ takes place largely in a judicial context. Immediately after the two comments quoted above, the *Sifra* records:

Rabbi Nechemiah said: This is the conduct of the judges.⁸ The litigants stand before them and they hear (the litigants) words. Then they send the litigants out and debate the matter. When the judges have decided the case, they bring (the litigants) back in, and the senior judge tells one litigant that he is acquitted and the other that he is guilty. And whence do we know that when (the judges) leave (the representative of the minority opinion) should not say, "I found you/him innocent, but my fellow judges found you/him guilty. What can I do, for they overruled me?" For this purpose it is said, "Do not go about as a talebearer among

⁶ *Sifra Kedoshim* 89a.

⁷ *Yerushalmi Peah* 1:1, f. 4b; *Sifra Kedoshim* 89a.

⁸ A civil case, according to Jewish law, would be heard by a panel of three judges.

your people."⁹ And Scripture also says, "The one who goes about as a talebearer reveals secrets."^{10, 11}

While the *Sifra* presents this as only one of several unrelated possible meanings of Leviticus 19:16, the Mishnah and Gemara in *Sanhedrin* record this *baraita* as part of a larger, coherent discussion of proper court procedures. However, the *Sifra's* context probably more accurately records the rabbis' search for the meaning of this verse. It is difficult to accept that *לֹא תֵלֵךְ רֵכִיל* refers only to those cases where the overruled justice in a divided court has reason to want to curry favor with the person who has just lost his case. Although this interpretation is plausible, it gives the Biblical passage only a very narrow application. In *Sanhedrin*, the prooftext about the talebearer are brought in only to support a narrow but important point, not as part of an attempt to understand the verse itself.

This passage, as it is used in *Sanhedrin*, does make an important implicit point. The rabbis there simply assume that a *רֵכִיל* is a talebearer. Thus, no matter what questions were raised in Tannaitic times about the meaning of Leviticus 19:16, by Amoraic times, this meaning was unquestioned. The passage goes on to discuss, not whether this prooftext is

⁹ Leviticus 19:16.

¹⁰ Proverbs 11:13.

¹¹ *Sifra*, Kedoshim 89a; *Mishnah Sanhedrin* 3:7; *Sanhedrin* 31a; *Bava Kama* 99b.

appropriate to the situation discussed, but how to avoid talebearing in the announcement of a verdict. The rabbis decide that in the presentation of a non-unanimous verdict two principles are of equal importance. While the court should not lie and pretend that all three justices agreed when they did not, neither should they engage in talebearing and reveal who dissented. By phrasing the verdict to read, "From (the litigants) words, Mr. X was found innocent," the judges can avoid transgressing the prohibitions against both lying and talebearing.¹²

As we have seen already in the discussion of לשון הרע, though, the prohibition against slander and talebearing was not so stringent as to interfere with the functioning of the courts. The second half of Leviticus 19:16 is equally obscure; a literal translation reads, "Do not stand on the blood of your neighbor." The *Sifra* ¹³ interprets this verse to mean "that if one has testimony, one may not withhold it." Thus, just as one may not improperly reveal the inner workings of the court, one may also not be so close-mouthed as to hold back testimony. Under the controlled circumstances of the court, one may tell about another's doings without becoming a רכיל.

One agadic example gives us a sense of the gravity of

¹² *Sanhedrin* 30a.

¹³ *Kedoshim* 89a.

the sin of talebearing. *Sanhedrin* 31a records:

After twenty two years, Rav Ami expelled from the house of study that student about whom circulated a rumor that he had revealed a matter which had been discussed in the house of study. (Rav Ami) said, "This one revealed a secret."

This passage directly follows the *baraita's* dictum that the justice with the minority opinion should not tell anyone. The prooftext "The one who goes about as a talebearer reveals secrets"¹⁴ ends that passage and is the direct antecedent to this story. It is possible that this story is quoted in *Sanhedrin* only because Rav Ami's statement in Aramaic is reminiscent of the Proverb, but the allusion is sufficiently specific that we can assume that Rav Ami considered this student a רכיל, even though his talebearing had occurred twenty two years previously.

Given these few bits of information, we can now define רכילות more closely and differentiate it from לשון הרע. Unlike לשון הרע, רכילות cannot be private; it involves the revelation of information about oneself or a third party which was meant to be kept secret. In addition, while לשון הרע can be either true or false and is most often false, רכילות must be true. While the evidence for this is scanty in the classical texts, *Mishnat Rabbi Eliezer* points out that Doeg was killed, not for speaking falsehood to Saul about

¹⁴ Proverbs 11:13.

Achimelech, but for speaking the truth. Therefore he was not killed for the content of his words, but for his act of רכילות.¹⁵

Maimonides also speaks of the רכיל as a truthful tale-bearer, and differentiates him from the speaker of לשון הרע whose words can be true but denigrating of the other.¹⁶ He correctly describes talebearing to be a less serious manifestation of the same transgression as לשון הרע, as both of them rely on Leviticus 19:16 for their Scriptural basis. We can extend Maimonides' statement and say that although רכילות was a significant category of forbidden speech in the Biblical world, in the rabbinic parlance it became merely a limited subcategory of לשון הרע, that concept with little specific Biblical background of its own. The evidence for this is manifold, from the Palestinian Targum's translation of רכיל as לישנא תליתאי,¹⁷ to the *Menorat HaMaor*'s classification of לשון הרע as only the fifth of its eight aspects of רכילות.¹⁸

¹⁵ p. 172. All other texts refer to Doeg's words as לשון הרע. See pp. 34ff., 51.

¹⁶ *Mishneh Torah, Hilchot Deot* 7:1-2.

¹⁷ See the *Targum Yerushalmi* to Leviticus 19:16; see also pp. 33ff, 36 above. לישנא תליתאי is a common Aramaic equivalent for לשון הרע. Rashi understands it to refer to exactly this act of talebearing.

¹⁸ ed. Enelow, pp. 357-366.

CHAPTER V: אונאת דברים

Rabbi made a feast for his students, and served them both tender and tough tongue. When they began to choose the tender meat and leave the tough, he said to them: My children, realize what you are doing. Just as you are choosing the tender (meat) and leaving the tough, so should your tongues be tender to one another. For this purpose, Moses warned Israel and said to them, "When you make a purchase from your fellow, one person should not wrong his brother."^{1, 2}

Up to this point, we have examined categories of harm through the spoken word which, in most of their manifestations, involve speech about a second party which is directed to a third. We turn now to the concept of אונאת דברים, *onaat devarim*, the paining, insulting, or shaming of others through words spoken directly to them. While אונאת דברים, because it has its own set of well defined prooftexts, is not specifically a subcategory of לשון הרע it is conceptually closely related.³ In content and essence, if not in strict legal definition, אונאת דברים is that לשון הרע which is spoken directly to its object.⁴

¹ Leviticus 25:14.

² *Vayikra Raba* 33:1.

³ Moritz Lazarus, *Die Ethik des Judenthums* (Frankfurt am Main: J. Kauffmann, 1901), Vol I, p. 308.

⁴ נחום רקובר, "על לשון הרע ועל הענישה עליה במשפט העברי"; סיני 51 (1962), ע' 198. referring to the thirteenth negative commandment listed in the introductory chapter of חפץ חיים.

The rabbinic concept of אונאה דבריהם is an extension and interpretation of the Biblical prohibition of אונאה, usually translated as overreaching. The Torah seems to repeat itself, saying:

You shall not wrong (תונו) a stranger or oppress him, for you were strangers in the land of Egypt.⁵

When a stranger dwells with you in your land, do not wrong (תונו) him.⁶

When you sell anything to your fellow, or buy anything from your fellow, one person should not wrong (תונו) the other.⁷

A person should not wrong (תונו) his fellow, and you shall fear your God, for I am the Lord your God.⁸

Only the third of these four verses gives any sense of what is meant by "wronging" one's fellow human being.⁹ In Leviticus 25:14, אונאה clearly refers to malpractice in the market place, either on the part of the buyer or the seller. The rabbinic texts clarify the details of this prohibition, defining אונאה to be the seller's overcharging or the buyer's

⁵ Exodus 22:20.

⁶ Leviticus 19:33.

⁷ Leviticus 25:14.

⁸ Leviticus 25:17.

⁹ One additional text from Deuteronomy 23:16-17 prohibits the wronging of a runaway slave by returning him to his master. "You shall not turn over to his master a slave who seeks refuge with you. He shall dwell with you in any place he may choose among the settlements in your midst, wherever he pleases; you must not wrong him (תונו)."

underpayment by one sixth or more, taking advantage of the other's ignorance of the going market rate. This then is a form of theft, and claims can be settled in court. If the overcharge has been only one sixth of the item's true value, only the difference must be returned. However, if the seller has charged more than this, the transaction is voided, and the purchaser has the right to keep the goods.¹⁰

This explanation does not clarify the other uses of the concept of אונאה in the Bible. Our other verses obviously deal with harm in some form to different sorts of people, including strangers, slaves, and one's fellow Israelites. The rabbinic tradition deduces from this that there are two sorts of אונאה, אונאת ממון, the monetary overreaching discussed above, and another kind which they term אונאת דברים. As Lazarus comments:

. . .there are other various forms of harm which one can inflict on another, and foremost is the harming of the other's honor; Holy Scripture deals with them with a general prohibition, and the rabbis include them under the (not so happily chosen) heading of אונאת דברים.¹¹

Lazarus' aside about the connection of the term אונאת דברים to its meaning is merited. As he and later scholars correctly point out, אונאת דברים is a prime example of the rabbinic

¹⁰ For more details, see Aaron Levine, "Value Theory in Talmudic Literature," *Tradition*, 17 (Summer 1978), pp. 23-34; "אונאה," אנציקלופדיה תלמודית, כרך א', קנז-קס.

¹¹ Lazarus, I, p. 304.

extension of the Biblical text to the point that the Biblical concept is totally altered. Beyond their prooftexts, there is almost no connection between *אונאת ממון* and *אונאת דברים*. In *אונאת דברים*, the meaning of the term *אונאה* maintains only its senses of causing another harm and taking advantage of the other; the ideas of overreaching and greed which distinguish the concept of *אונאת ממון* from so many others have been discarded. Instead, *אונאת דברים* means verbal oppression or abuse.

In spite of this tenuous connection in meaning, the derivation of the two terms from the same set of verses and their consequent linguistic similarity force the rabbis to tie them together. The major locus of discussion of *אונאת דברים* in the Talmud is in *Bava Metsia* 58b-59b following an extended discussion of *אונאה* and commenting on the Mishnah which reads: Just as there is *אונאה* in business dealings, so there is *אונאה* in words.¹² The Gemara here and parallel texts elsewhere then proceed to establish the Scriptural basis for this concept, claiming that because Leviticus 25:14 obviously refers to *אונאת ממון*, the vaguer "A person should not wrong his fellow" of Leviticus 25:17 must refer to *אונאת דברים*.¹³ The rabbis divide Exodus 22:30 similarly, declaring that not wronging the stranger refers to *אונאת דברים* and not

¹² *Mishnah Bava Metsia* 4:10.

¹³ *Bava Metsia* 58b; *Sifra Behar* 3:4, 4:1.

oppressing him to ממון אונאת דברים.¹⁴

These statements alone do little more than establish that there is Scriptural basis for אונאת דברים, but the rabbis also assert based on a comparison of the two Leviticus verses, that אונאת דברים is a more serious offence than ממון. While Leviticus 25:14, the prooftext for ממון אונאת, warns against wronging one's brother, Leviticus 25:17 warns against harming one's fellow, a person not so closely related to oneself. אונאת דברים then has broader social implications. Further proof of the gravity of אונאת דברים lies in the conclusion of its prooftext with the words, "You shall fear your God," indicating that this is a special area of Divine concern.¹⁵ Several sources point out that because אונאת דברים is commanded with these words, it is one of the דברים המסורים ללב, a matter entrusted to the heart,¹⁶ implying that because only the person speaking the words knows the intent behind them, a human court is unable to judge whether their purpose was good or bad.¹⁷

The Gemara recognizes that these arguments are still very abstract, and it records two other more convincing

¹⁴ *Mechilta Mishpatim* 18.

¹⁵ *Tosefta Bava Metsia* 3:25; *Bava Metsia* 58b.

¹⁶ *Bava Metsia* 58b; *Sifra Behar* 107d.

¹⁷ *Bartinuro and Tosefet Yom Tov to Mishnah Bava Metsia* 4:10.

opinions. Rabbi Eliezer considers אונאת דברים to be more serious because it wrongs the person himself, not just his finances. Underlying this assertion is the understanding that unfair business transactions, while wronging others, only harm them superficially. אונאת דברים, on the other hand, wounds the ego. Rabbi Shmuel bar Nachmani makes a related statement, asserting that אונאת דברים is more serious because, unlike אונאת ממון, there can be no settlement for the damages caused.¹⁸ Thus we have in אונאת דברים, like מוציא שם רע, an instance where words are more serious than deeds.¹⁹

Before proceeding to examine the means of retribution for אונאת דברים, we need to have a clearer idea of what it is. In the contexts where we would expect to find explicit definitions of the concept, we find only examples of this sort of conduct. The Mishnah in *Bava Metsia* follows its assertion that there is "verbal overreaching" by three examples:

One should not ask, "How much is this?" when one has no intention of buying. If a person is a repentant sinner, one should not say to him, "Remember your former deeds." If a person is the son of proselytes, one should not say to him, "Remember the deeds of your ancestors." For it is said, "You shall not wrong the

¹⁸ *Bava Metsia* 58b.

¹⁹ See p. 69 above.

stranger (proselyte) or oppress him."²⁰, 21

The Gemara continues the theme of this Mishnah, saying:

If a proselyte came to study Torah, one should not remark to him, "A mouth which ate carrion, diseased animals, and the meat of forbidden animals is coming to learn the Torah which was proclaimed by the Mouth of Might (God)?" If troubles befell him, or if he fell ill, or if he buried his children, one should not say to him as his companions said to Job, "Is not your piety your confidence, your integrity your hope? Think now, what innocent man ever perished?"²² If ass-drivers ask him for feed, he should not say, "Go to Ploni, for he sells feed," when one knows that Ploni has never sold it. Rabbi Yehoshua said: Additionally, one should not even lay one's eyes on goods when one has no money, for behold the matter is entrusted to the heart, and it is said about every matter entrusted to the heart, "You shall fear your God."²³

These texts present us not with a definition for *אונא* but with a widely varied set of examples, ranging from *דברים*, but with a widely varied set of examples, ranging from exhortations not to drag up parts of people's past to prohibitions against misleading others. Even Maimonides,²⁴ in defining *אונא דברים*, just repeats this list of examples,

²⁰ Exodus 22:20.

²¹ *Mishnah Bava Metsia* 4:10; see also *Tanchuma Vayera* 14; *Tanchuma Buber Vayera* 32.

²² Job 4:6-7.

²³ *Bava Metsia* 58b; see also *Tosefta Bava Metsia* 3:25; *Sifra Behar* 107d. The *Sifra* adds one more example, that should one claim to be giving good advice, it should be so, but this is recorded here in error, because of the parallelism with a similar text in *Sifra Kedoshim, Parshata* 2:14.

²⁴ *Mishneh Torah, Hilchot Mechirah* 14:12f.

adding on his own authority²⁵ only that one should not ask the opinion of someone whom one knows to be unlearned in that subject. The midrashic literature provides only two additional examples. Rabbi Yanai commits אונאת דברים when he calls a man a dog for being unlearned when the man was really very righteous and wise in the ways of the world (דרך ארץ).²⁶ The *Tanchuma* adds to its listing of the previous examples:

The Holy One, blessed be He, said: It should be sufficient for you to be like Me. As it were, when I created the world, I did not want to wrong (להונות) the creation, so I did not publicize to the inhabitants of the world which was the tree from which the first man ate.²⁷

God did not want the sullied history of this particular tree to be used against it.

The unifying factor in all these examples is that one should not take advantage of the situation or prior situation of others to put them into uncomfortable positions. Just as in אונאת כספן, one takes advantage of another's ignorance of the going price for something, here in אונאת דברים, one takes advantage of others' less than perfect past or unfamiliarity with the area and denigrates them or puts them into compromising situations. One should never use the former actions of the ancestors of the proselyte to put the proselyte into

²⁵ *Kesef Mishneh* to 14:14.

²⁶ *Vayikra Raba* 9:3.

²⁷ *Tanchuma Vayera* 14; *Tanchuma Buber Vayera* 32.

an inferior position; one should never call forth the former actions of a repentant sinner to denigrate the person; one should never question the righteousness of a person just because tragedy has struck. As the *Mechilta* comments, one should not call forth the other person's blemishes, because you yourself have blemishes too.²⁸

While these particular examples are all a form of לשון הרע because they involve an actual or implied slight of the other person, the remainder of the examples are not. When one takes advantage of the stranger's ignorance of the area and sends ass-drivers astray in their search for feed for their animals, or takes advantage of merchants by using up their time and attention by feigning interest in their goods without any intention of buying, one is misleading the other rather than insulting or verbally abusing them. In these cases, the לשון הרע אונאת דברים is less a form of לשון הרע than of גניבת דעת, *geneivat daat*, literally "theft of understanding" meaning "purposeful misleading."²⁹

The rabbis question whether the laws of אונאה apply to

²⁸ *Mechilta Mishpatim* 18, Horowitz-Rabin ed., p. 311.

²⁹ While these two concepts are closely related, גניבת דעת, based on the examples furnished to us in the literature, rarely involves a specifically verbal misdeed. It usually involves the creation of a misrepresentation, as in urging someone to visit or to accept a gift when one knows that the person cannot, cheating in measures, surreptitiously mixing two kinds of produce, or pretending ownership of something already sold to another. See *Mechilta Mishpatim* 13, Horowitz-Rabin, pp. 294f.; *Tosefta Bava Metsia* 3:27.

non-Jews or to proselytes (גר). Because the proof-text for *אונאה ממון* commands that a person should not harm his brother, there is a claim that the laws of overreaching in the market place do not apply to non-Jews. In other words, a Jew can seek to take advantage financially of non-Jews by overcharging or underpaying them without being held liable under Jewish law. The reverse is not true. A non-Jew who overcharges or underpays a Jew is still liable.³⁰ On the other hand, in most of the worlds where Jews have lived under Talmudic law, their commercial dealings with non-Jews have been regulated by the secular authorities, not the rabbis. One might question the actual impact of this distinction.

On the other hand, the Gemara specifically states that *אונאה* of the גר is forbidden by three negative commandments in the Torah,³¹ making it a very serious transgression. It is clear, however, that the גר spoken of here is the rabbinic גר, the proselyte and not the non-Jew. One of the verses quoted as a commandment against wronging the גר does not mention the גר at all but rather the word *עמיתו*, fellow.³² An earlier statement in this same *sugya* has already established that *עמיתו* means "the people who are with you (עם

30 "אונאה" אנציקלופדיה תלמודית, כרך א', קנח.

31 *Bava Metsia* 59b.

32 *Leviticus* 25:17.

תלמוד) in Torah and mitsvot."³³ Therefore, the γ spoken of in the later passage is one who is with Israel in Torah and mitsvot; this then is a proselyte, not a non-Jew. A comment in the Palestinian Talmud enforces this conclusion. There Rabbi Yose claims that the proselyte is not equal to a Jew except in three matters, one of which is the commandment against תלמוד.³⁴ Therefore, although a non-Jew can legally be wronged either financially or with words, a born or proselyte Jew cannot.

One example exists in which the תלמוד is of oneself.

Come and see that everyone who wrongs his fellow is punished first. Sarah wronged herself and took her reward when she said to Abraham, "Behold, the Lord has prevented me from giving birth. Consort with my maid."³⁵ The Holy One, blessed be He, said to her, "You wronged yourself. By your life, with the same words with which you spoke to him, I will take note of you. You said 'prevented me.'" What is written above? "For the Lord had closed fast every womb (of the household of Avimelech because of the word of Sarah, Abraham's wife.)"³⁶ The Holy One, blessed be He said, "Abraham prayed before Me on behalf of the evil Avimelech, and I was filled with mercy for him. Behold I will take note of Abraham with him," for it is said, "(God) healed Avimelech, his wife, and his slave girls, and they gave birth."³⁷ What is written next? "The

³³ *Bava Metsia* 59a.

³⁴ *Yerushalmi Yevamot* 8:1, f. 44b.

³⁵ *Genesis* 16:2.

³⁶ *Genesis* 20:18.

³⁷ *Genesis* 20:17.

Lord took note of Sarah."^{38, 39}

If one is punished first for wronging another, one should be rewarded for humbly wronging oneself, especially if this means avoiding the wronging of another. Sarah called herself barren and took steps to ensure that Abraham would at least have progeny through Hagar. Therefore God took note of her, and she was enabled to conceive.

Like all the other concepts considered here, even if one has committed *אונאה דברים*, one cannot be punished in the human courts because this too is considered a *לאו שאין בו* *מעשה*, a transgression of a negative commandment which involves no act. Additionally, this negative commandment, as we have seen, falls under the category of *דברים המסורים ללב*, "matters entrusted to the heart." Therefore, one should obey the commandment out of the fear of God, and only God can be responsible for its punishment.

The rabbis speak explicitly of God's special providence for the person wronged by *אונאה*.

Rabbi Elazar said: Since the day when the Temple was destroyed, the gates of prayer have been locked . . . and even though the gates of prayer have been locked, the gates of tears have not been locked . . . Rabbi Chisda said: All the gates have been locked except for the gates of *אונאה* . . . Rabbi Abahu said: Before three things, the curtain of heaven is not locked, *אונאה*,

³⁸ Genesis 21:1.

³⁹ *Tanchuma Vayera* 14; *Tanchuma Buber Vayera* 32.

theft, and idolatry.⁴⁰

Rashi comments here that all the gates of prayer are closed except for the one for those crying out because of אונאה ובריה. His tying the various statements of the Gemara together finds its source in the text itself. The Gemara actually began this section by saying that one must be careful about wronging one's wife, for her tears come easily, and once she cries, she is almost wronged. Thus, one must be extremely careful even in domestic relations, for אונאה ובריה at home leads to tears, and both the tears and the אונאה itself guarantee God's personal attention.

This attention takes the form of punishment. "Rabbi Elazar said: The punishment for everything comes by means of a messenger except for אונאה."⁴¹ God personally chastises the person who wrongs another. In one instance, as recorded in the rabbinic understanding of II Chronicles 13, this took the form of a plague on Abiyah, the king of Judah, after he had taunted Jereboam, the king of Israel, reminding him of his past misdeeds.⁴² The rabbis comment that if this is the severe nature of the punishment for אונאה between two kings,

⁴⁰ *Bava Metsia* 59a.

⁴¹ *Bava Metsia* 59a.

⁴² The Biblical text read simply indicates that Jereboam was the one who was plagued, but the rabbis prefer to take advantage of the vagueness of the antecedents of the verbs to claim that Abiyah did not go unpunished for his taunts.

how much more serious must be the punishment for common people who verbally wrong or insult one another?⁴³

As with the other concepts considered, the reliance on Divine punishment did not last into the medieval world. Even though, as a לאו שאין בו מעשה, there is no Divine mandate to flog the speaker of אונאת דברים, the medieval rabbis instituted this punishment on their own human authority (מכות מדרות מדרבנן) as a form of chastisement. Flogging was deemed the appropriate punishment because of the association of אונאת דברים with אונאת ממון for which this was the punishment.⁴⁴

In the classical rabbinic world, however, אונאת דברים remained a transgression of Divine law for which consequences came only from God. It remained a halachic concept with no human enforcement; in effect, then, the prohibition of אונאת דברים was an ethical injunction against taking advantage of the history or ignorance of others to insult, mislead, or be otherwise unkind to them.

⁴³ *Bereishit Raba* 65:20; 73:5; *Vayikra Raba* 33:5 presents this argument tied to a specific discussion of אונאת. Although the text discussed is Leviticus 25:14, the commentator Maharzo indicates rightly that the אונאת involved is ממון אונאת.

⁴⁴ רקובר, p. 207.

barrassment causes blood to drain from a person's face.⁵ Whatever the specific categorization of these two concepts, it is clear that, in addition to prohibiting the various forms of slander, the rabbis specifically proscribed causing one of the major effects of this slander, embarrassment of its object.

בְּרִישׁ בְּרִבְרִים is a category arising from the rabbinic discussions of the various monetary penalties one must pay someone whom one has harmed. According to the rabbinic understanding,

The one who injures another is obligated (to make recompense) for five things: for the damage, for the pain, for the medical costs, for the time of incapacitation, and for the embarrassment.⁶

The Mishnah continues with a discussion of exactly how these amounts are determined, saying that the fine of בְּרִישׁ is arranged according to the rank of the people involved. One is not exempt from payment because the person one has embarrassed is publically naked and presumably beyond being further embarrassed, blind and unable to perceive what would embarrass him, or asleep and unaware of the incident at the time. In addition, בְּרִישׁ, the fine for embarrassment, can only be levied in cases where the person has actually been purposefully and physically hurt.

⁵ *Bava Metsia* 58b.

⁶ *Mishnah Bava Kama* 8:1.

In establishing acts which could cause embarrassment and lead to the fine of כּוּשָׁת, the Mishnah⁷ specifically excludes the case where one spits at another but the spittle fails to reach the other person's body. In the Gemara, Rav Papa comments that the spitter is not liable if the spittle just reached the person's clothing; it must physically touch his body. The Gemara goes on to ask:

Is this not like embarrassing (someone) verbally? They say in the West (Palestine) in the name of Rabbi Yosi bar Avin: This is to say that the one who embarrasses another verbally is free from all (fines).⁸

The Babylonian rabbis are aware of a Palestinian tradition which indicates that because the words which cause someone embarrassment never physically touch the person's body, כּוּשָׁת cannot be levied. Therefore, because there is no other punishment decreed for causing embarrassment, the one who embarrasses another can do so without fear of legal consequences. Although the Babylonian rabbis do not offer an alternative to this statement, they do not indicate that this is also the Babylonian custom. Either they did levy a fine for כּוּשָׁת בְּדִבְרִים, or this issue was for them only theoretical. More likely, since this Palestinian opinion stands uncontested, it was accepted.

⁷ *Mishnah Bava Kama* 8:6.

⁸ *Bava Kama* 91a; see also *Yerushalmi Bava Kama* 8:6.

Like all the other concepts already considered, ביוש, as a purely verbal misdeed, was not punishable by the human courts under classical rabbinic law. All that could be required was that, as with all other misdeeds, the sinner do all in his power to appease the embarrassed person, either through verbal appeasement or if necessary, with a financial settlement.⁹ The only exception to this practise was if someone embarrassed a scholar, in which case the courts levied a fine of a gold Roman pound.¹⁰

Whether because people became less God-fearing or because the rabbinic law was forced to match the standards of the civil governments under which the Jews lived, this solution was not entirely satisfactory to later generations.¹¹ Medieval Judaism developed mechanisms to enforce the prohibition against verbally embarrassing another. The *halachah* contains an inherent contradiction in its assertion that in the case of the מוציא שם רע, words are more serious than the actual act, while in most other instances, a verbal transgression is considered unpunishable simply because it involves no act.¹² Therefore, the Rosh establishes that embar-

⁹ Yoma 87a; see ת. ז. רי"נס, "ביוש בדברים בהלכה", סיני נ"ה (תשכ"ד), רכא-רכב.

¹⁰ Yerushalmi Bava Kama 8:6; Mishneh Torah, Hilchot Chovel Umazik 3:5.

¹¹ רי"נס, p. 223.

¹² רי"נס, p. 221.

rassing someone through words is more serious than embarrassing someone through an injury.¹³ He quotes Rav Sharira Gaon's extension of *Kidushin* 28a's statement that "one who calls another a slave shall be excommunicated," saying that the one who embarrasses another must be excommunicated until he has made amends to the person hurt.¹⁴

This approach to punishment does not contradict the statement of the Mishnah that there is no punishment for *ביוש בדברים*, for the Mishnah's statement can be read to refer only to monetary fines. Excommunication was the only non-monetary punishment available to the Jewish courts in the world of the Geonim. The custom of excommunicating the one who verbally embarrasses another was continued by the Sefarim. Jews in the Ashkenazi world required flogging of the *מבייש בדברים*, based on the dictate of the continuation of the statement in *Kidushin* quoted above that if one calls another "a bastard, he should be given forty lashes." However, sinners have the right to redeem themselves from the flogging with a payment to the person harmed, which that person was supposed to refuse, and the money went to charity. Essentially, then, in the Ashkenazi world, *ביוש בדברים* was

13

"בושת," אנציקלופדיה תלמודית, כרך ג, מט.

14 *Rosh to Bava Kama* 8:14; see נחום רקובר, "על לשון הרע ועל הענישה עליה במשפט העברי," סיני 51 (1962), 70. see also ריינס, p. 216.

punished by a fine.¹⁵ However, it was not universally accepted that the one who embarrasses another was punished by human courts. The *Tosefet Yom Tov* shows no awareness of these traditions in its comment on *Mishnah Bava Kama* 8:1 that although one does not have to make payment for בְּיוֹשׁ בְּדִבְרִים, one has no part in the world to come until one has made amends for the embarrassment.

Unfortunately for our purposes here, the classical rabbinic literature goes no further in its discussion of בְּיוֹשׁ בְּדִבְרִים. We find multiple examples of measures taken or prescribed to avoid embarrassment of others, especially the poor, but few if any of these pertain to verbal embarrassment, and none specifically use the term. Interestingly, the few examples we do have of בְּיוֹשׁ בְּדִבְרִים appear in texts warning about the evils of לְשׁוֹן הָרַע, and these examples appear only in the versions of these stories appearing in *Avot D'Rabbi Natan*. There, in a discussion of the punishment of the wilderness generation and the spies for their slander of the land of Canaan, the rabbis remark that if the punishment was so great for slander of inanimate objects, how much worse would it be if one slandered people and embarrassed them? The text continues with a discussion of Miriam and Aaron's slander of Moses and makes a similar comment, asking how much worse is the punishment of a normal person who slanders

¹⁵ ריינס, p. 222.

someone to his face and embarrasses him?¹⁶ In both these cases, the embarrassment is a by-product of slander. It is not clear whether we can consider the punishments of death and leprosy to be punishments for the embarrassment as well as for the slander. We have ample evidence elsewhere to indicate that these punishments were inflicted for slander, but we have no parallels to indicate that simply embarrassing another carried the same grave consequences.

When we turn to the other rabbinic concept of embarrassment, *הלבנת פנים*,¹⁷ we do not find this dearth of examples. Unlike *ביוש ברברים*, *הלבנת פנים* is not directly related to any humanly punishable offense. Therefore, as with *לשון הרע*, the rabbis do not begin with a detailed discussion of the specific definition and punishment for this sin by the courts. The only realm in which they can impress upon the Jews the seriousness of embarrassing another in this fashion is to compare *הלבנת פנים* to other known transgressions and to publicize threats of Divine retribution after the sinner's death.

¹⁶ *Avot D'Rabbi Natan* 9:2, Schechter, Version X, pp. 20a-b.

¹⁷ Although the prohibition of causing another's face to blanch in public is not specifically directed at verbal misdeeds, the examples with which we are provided indicate that, in most cases, words rather than actions of improper reproof or scorn cause the *הלבנת פנים*. One of the specific forms of *הלבנת פנים* mentioned in the Gemara is call someone by a name (other than a given name) even if the person is accustomed to it. (*Bava Metsia* 58b.)

As mentioned above, the rabbis compared פנים פלגות to murder, for both crimes cause the blood to drain from the victim's face.¹⁸ However, this is one isolated statement. We find several times the extreme comment that those who cause others' faces to blanch by embarrassing them in public, even if they are otherwise good and learned people, will have no part in the world to come.¹⁹ They will go down to Gehinom like everyone else but along with the adulterer and the namecaller will never come up.²⁰ The sequel to this statement indicates the lack of a consistent theology of the afterlife in this literature. Raba bar bar Chana said in the name of Rabbi Yochanan that it is better for a man to risk having an adulterous relationship than to cause another's face to blanch publically. The explanation for this comes from David, who, according to the *agadah*, when he was being publically rebuked for his relationship with Bat Sheva, replied, "(For adultery,) my death is by strangulation and I have a part in the world to come. But those who cause another to blanch publically have no part in the world to come."²¹

It is not clear how the adulterer who, as the Gemara has already established, will never come up from Gehinom, can

¹⁸ *Bava Metsia* 58b.

¹⁹ *Pirkei Avot* 3:11; *Sanhedrin* 99a.

²⁰ *Bava Metsia* 58b.

²¹ *Bava Metsia* 58b-59a.

also have a part in the world to come, but this is relatively unimportant for our discussion. As was the case with the similar statements about the speaker of לשון הרע, all these assertions are totally unprovable. However, they do serve to underscore the gravity of the sin of embarrassing another in public. Maimonides does lighten the sentence somewhat, asserting that הלבנת פנים is a sufficiently minor transgression that these punishments are decreed only for the unrepentant sinner. Repentance can restore to the sinner a part in the world to come.²²

In a less theologically troublesome context, the rabbis assert that it is better for one to throw oneself into a fiery furnace than to cause another's face to blanch in public. The proof that martyrdom is preferable to embarrassing another interestingly also involves issues of adultery.²³ Tamar preferred risking the accusation of adultery and its consequent sentence of death by fire to embarrassing Judah publically. When he sent for her once it became known that she was pregnant, she did not openly reveal Judah's complicity, but only indicated that the owner of the tokens

²² *Mishneh Torah, Hilchot Teshuvah 3:14.*

²³ Rabbinic tradition claims that to save one's life, all the commandments of the Torah may be broken, save the commandments against idolatry, adultery, and murder. (*Sanhedrin* 74a) Throwing oneself into a fiery furnace is a form of martyrdom, then, to avoid the "murder" of הלבנת פנים.

he had left with her was the father.²⁴ Therefore, even being thought to be an adulteress is preferable to הלבנת פנים. The rabbis also give us an example of this from their own world:

Mar Ukba was accustomed daily to throw four zuzim in the door socket of a poor person in his neighborhood. One day (the poor person) said, "I will go and see who performs this good deed for me." That day Mar Ukba was delayed in the House of Study and his wife came publically. When (the poor man) saw that the door was moving, he came from behind it. They fled from him and entered a furnace which had been swept clean of coals, but Mar Ukba's feet began to burn. His wife said to him, "Lift your feet and place them on mine." He was upset. She said to him, "I am found in the house and perform good deeds (and am thus better protected.)" What does all this mean? . . . It is better for a person to martyr himself in a fiery furnace than to cause another's face to blanch publically . . .²⁵

The only other specific example of הלבנת פנים, David's refusal to wear Saul's clothes when fighting Goliath because his appearing like a king would shame Saul,²⁶ also involves no verbal embarrassment. However, it is clear, even from these few specific examples, that embarrassing another publically, whether it be called ביוש בדברים or הלבנת פנים is a grave consequence of לשון הרע and its related transgressions.

There is not sufficient material preserved using these two terms for us to begin to differentiate their application in the rabbinic world. The secondary literature uses them

²⁴ *Bava Metsia* 59a; *Berachot* 43b; *Sotah* 10b.

²⁵ *Ketubot* 67b.

²⁶ *Tanchuma Emor* 4; *Vayikra Raba* 26:9.

fairly interchangeably.²⁷ It may be fair to assume that given its narrowly halachic discussion, ביוש בדברים was merely an offshoot of the rabbinic discussion of בוש. The concept may have developed only to tie the legal discussion of damage payment with the more abstract and aggadic concept of הלבנת פנים. הלבנת פנים developed as a proscribed action which had no humanly enforceable punishments. As such, its total import on the earthly level is ethical, and its discussion in the literature is fanciful and aggadic.

²⁷ See:

אנציקלופדיה תלמודית, כרך ט, "הלבנת פנים", 72-77.

CHAPTER VII: CONCLUSION

Three times a day, the traditional Jews end their *amidah* prayer with the private prayer of Mar the son of Ravina. Although it continues with other unrelated requests, this prayer begins with a paraphrase of Psalms 34:14, saying, "My God, keep my mouth from evil and my lips from speaking deceit."¹ This intensely personal prayer pleads for Divine aid in avoiding improper and destructive speech. It became a thrice daily reminder to the Jews of the difficulty and importance of struggling to guard their tongues and avoid לשון הרע.

Relatively little has been written about Judaism's ethical system, let alone about the specific issue of the ethics of communication. The pietistic writings of the *Musar* schools, designed to teach and inspire Jews to follow the proper mode of conduct, represent one of the major categories of this literature. Of this genre, Rabbi Israel Meier HaCohen's *Chafets Chaim* presents the most comprehensive and the best known treatment of the laws of שמירת הלשון, of guarding one's tongue. While he draws heavily on the sources consulted in this work, he also moves beyond them, considering under the rubrics of לשון הרע and רכילות many categories

¹ *Berachot* 17a; Traditional *Sidur* at the conclusion of every *Amidah*.

which the earlier sources treat separately. His treatment of רכילות is almost entirely a resurrection of the Biblical concept from its rabbinic anonymity; he correctly describes many examples as רכילות which the rabbis simply refer to as לשון הרע. This work is not a mere recapitulation of Amoraic thought. Rather, it is another contribution to the ongoing process of the development and clarification of the laws of forbidden speech.

Not all works on Jewish ethics have been written by those striving to guide others on the right paths of life. Another type of scholarship comes from those modern writers who look at Judaism critically in order to describe and analyze it. To do this, they must step outside the purely traditional Jewish world view and apply critical and historiographical techniques learned from secular scholarship. Much of the early writing on Jewish ethics, typified by such works as Moritz Lazarus' *Die Ethik des Judenthums*, is clearly apologetic in thrust, written to demonstrate to Christian theologians that Judaism does indeed have an ethical system. Consequently, the scholars tried to extract Jewish ethics from its legal framework and then to develop a systematic expression of these values according to the measuring rod of Western logical thought. These highly descriptive outlines of ethics succeeded in establishing that Judaism was worthy of full status in Western society; they failed to do justice to Judaism. Recognizing the impossibility of achieving a satisfactory description of Jewish ethics, the task was drop-

ped. We find few publications after the early part of this century. More recent writers concentrate either on Jewish ethical responses to current issues, or they deal with abstract questions of the structural relationship between ethics and *halachah*.²

It remains now to combine this theoretical work on the function of ethics within the *halachah* with some of the specific attention to detail found in the pietistic writings. Although a few critical articles have addressed aspects of our problem, this thesis has begun the more extensive exploration of the nature of the Jewish prohibitions of slander and related concepts. Several questions have been addressed. How are these ethical strictures against hurtful speech defined, and how are they expressed within the halachic structure of Judaism? How and why does the expression of these ethical ideals change through the various stages of the Jewish experience? How do the various categories of forbid-

² For an example of this genre, see שמעון פדרבוש, המוסר והמשפט בישראל (ניו יורק: הוצאת עון, ה' תש"ד).

den speech interrelate with one another?³

As we have seen, the rabbis struggled to express and impress upon the Jews an ideal of proper use of their communicative abilities. They had inherited a Biblical commandment understood to eschew talebearing,⁴ several verses understood to forbid the verbal wronging of another,⁵ a specific law against a bridegroom's defamation of his wife,⁶ and one warning interpreted to refer to evil words.⁷ The Prophets and Writings also provided warnings of the dangerous nature of the tongue and statements about the dire nature of the sin of slander.

However, rabbinic Judaism's conceptual framework was not totally confined to its Biblical heritage. Even though their vocabulary for the various manifestations of slander came primarily from the Biblical world, the rabbis' usage of

³ A more comprehensive study would have to answer these questions in more detail, and it would have to broaden its scope to examine other aspects of improper speech, including the issues of falsehood, improper words of rebuke, (Leviticus 19:17 commands the Jews to reprove one another, but does not explain how this can be done without embarrassing the errant person or providing material for slander to the community.) unacceptable court testimony, and the exceptions made to all these rules for the sake of peace and appearances.

⁴ Leviticus 19:16.

⁵ Exodus 22:20; Leviticus 19:33; Leviticus 25:17.

⁶ Deuteronomy 22:13-21.

⁷ Deuteronomy 23:10.

their inherited words indicates that the shades of meaning between the terms *לשון הרע*, *הרע*, *מוציא שם רע*, *רכיל*, and *אונאת דברים* are really very fine. Although *מוציא שם רע* and *אונאת דברים* can refer to other issues, all these terms refer to one facet or another of slander, and all these facets are at one point or another actually referred to as *לשון הרע*.

לשון הרע is the only term considered here which has no obvious legal source in the Torah. The term seems instead to be derived from Psalms 34:14. Therefore, while all the other forms of slander must refer back to a specific Biblical scenario, *לשון הרע* could be enlarged to be an overarching, more free ranging concept. *מוציא שם רע* is never totally free from association with a husband's charges of misrepresentation of virginity or threats of leprosy; even when it was used outside the specific Biblical scenarios, the term's reference tends to be issues of sexual misconduct or specific examples somehow related to incidents of leprosy. It always maintains its Biblical aspects of defamation of another's character. *רכילות*, where it is discussed at all, carries overtones of the judicial discussions of Leviticus 19; the stories and discussions of talebearing tend to center on the courts. *אונאת דברים* often functions in the realm of everyday life, especially in the marketplace.

לשון הרע had no such original reference. The concept thus had no initial limitations to its application; it became the term *par excellence* in rabbinic literature for hurtful abuse of the spoken word. Its scope encompassed all other

related concepts, and it was used interchangeably with them. One often senses, especially in the case of רכילות, that the other terms appear in the rabbinic literature primarily because of their Biblical references. Examples of לשון הרע obviously involve talebearing, yet the word רכילות does not appear in these texts. Similarly, not all defamation is called מוציא שם רע. In rabbinic parlance, all the various manifestations of slanderous language were first and foremost לשון הרע.

לשון הרע in its broadest sense included within it the English concepts of slander, libel, defamation, talebearing, and evil speech, whether it was spoken to a third person, to its object directly, or even simply voiced for no one to hear. In short, any words which cause harm or have the slightest potential of causing harm to another have been considered at some point to be לשון הרע. The only attempt to define the boundary between public information and slander which ever found full acceptance was the specific exceptions made to ensure the proper functioning of the judicial system. As a result, the texts seem to forbid almost all sharing of information about anything except Torah study. The resulting broad, impractical definition of forbidden speech reflects the rabbis' inability to achieve the impossible and define the border between necessary communication and harmful words.

The rabbis leave us only with their dream of a world in which human communication would never embarrass or harm another. This was explicitly an ideal. They recognized the impossibility of the unaided human being's meeting this goal

and believed that what was necessary was human effort. If the person had proper intentions, God would then help in the task.⁸

The literature is filled with implicit and explicit explanations of the steps one must take to demonstrate one's efforts to guard one's tongue. We see these in the various midrashic examples of improper speech, presented to warn the Jews against falling into the same mistakes as their predecessors. The Chafets Chaim considers "Remember what the Lord your God did to Miriam"⁹ to be one of the Toraitic commandments against לשון הרע.¹⁰ The definitions of אונאת דברים give clear indication of forms of speech which should be avoided. But even if strict definition of the limits of forbidden speech was impossible, the rabbis left their students with a clear inner sense of the nature of improper speech and with an incentive to begin or continue the difficult task of avoiding it.

Human beings work best when there are consequences for failing to meet a particular goal of achievement or conduct. All legal systems prescribe concrete consequences for those who fail to meet its standards. However, because of the impossibility of specifically defining the standards for

⁸ *Bereishit Raba* 67:3.

⁹ Deuteronomy 24:9.

¹⁰ *Chafets Chaim* 11b.

proper speech¹¹ and because often the distinction between proper and improper speech rests on the difficult to establish intention behind the words,¹² the rabbis were unable to decree punishments in any realistic way. Restricted from imposing any punishments themselves, they considered the retribution for slander to be in the hands of God. The spur for proper speech was, then, the fear of Divine punishment both in this world and the world to come. To emphasize the reality of these threats, the rabbis also made very clear that God considers the verbal harming of another to be a very serious offense.

In an ideal God-fearing, pious society, this should be sufficient to encourage the ethical use of the gift of communication. However, in the real world, people find it very difficult constantly to remember such abstract and invisible punishments. Even when someone is stricken by leprosy, it is never possible to know whether that leprosy comes as punishment for לשון הרע, מוציא שם רע, or any one of a dozen of unrelated sins. Without a human court publicizing a sentence of specific punishment, the threatened legal consequences for slander or other verbal abuses have little reality for the common person, and it becomes nearly impossible to impress

¹¹ A בן מעשה לאו שאין בו מעשה cannot be punished because of the impossibility of pinpointing the point at which one begins to transgress the commandment.

¹² In a דבר מסור לב, only God can judge the intentions of the alleged sinner.

the ethical ideals of שמירת הלשון on the community. Therefore we find various attempts in the medieval period to impose specific punishments on the one who slanders, defames, verbally wrongs, or embarrasses another. We also find Musar writers systematically expounding on this particular area of Jewish ethics and law.

As this study has demonstrated, the Jewish ethical system clearly struggles with the issues of the limits of permissible speech, and it does so within the context of the *halachah*. A larger study is merited to complete this work, for although the rabbis were not totally successful in their quest for definition, they did achieve significant success. The Bible's treatment of slander and related concepts is extremely limited. The rabbis expanded on the few texts they had received and extended their concepts, creating an explicit Jewish ethical system in which, even if the means were nebulous, the goal of establishing a human society in which communication would be used for solely constructive purposes was clear. Because an ethical system describes an ideal, not a current reality, the rabbis inability clearly to define the point at which speech becomes harmful does not limit the efficacy of their system. In establishing the prohibition of *לשון הרע* with its subcategories *מוציא שמם רע*, *רכילות*, and *הלבנת* and *ביוש בדברים* and its side effects of *אונאת דברים*, the rabbis outlined an ideal to which all humankind should aspire.

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