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THE STATUS OF THE GOSES IN JEWISH LAW

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Thesis Submitted in Partial Fulfillment of
Requirements for Ordination

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PREFACE

Few issues have sparked as much controversy as those raised in the field of medical ethics. My interest in researching Jewish viewpoints concerning several hotly debated problems in this area was intensified by the tragic ordeal of the parents of Karen Quinlan and their quest to have the respirator removed from their comatose daughter; I wished to ascertain how Jewish law and tradition might respond to such a challenge.

But my initial strong concern with questions of death and dying grew as a concomitant of my work as a Jewish chaplain at New York's Memorial Sloan-Kettering Cancer Center. From my efforts to help patients and their families confront and cope with stressful situations and agonizing decisions evolved my need for answers--not just how particular rabbinic authorities have ruled regarding specific matters, but what attitudes can be discerned from our extensive sources, even those which have not hitherto been tapped for later halachic judgments. I feel that a study of the term goses, a common talmudic word for a dying person, both from rabbinic sources quoted in subsequent Jewish legal materials and those which have yet to be thus deployed, can shed light on possible Jewish stances regarding life and death matters. Please note that all talmudic sources quoted or referred to in this thesis

are from the Babylonian Talmud unless otherwise indicated.

I wish to express my gratitude to various people who contributed to this work in no small measure. Many thanks to Rabbi Michael Chernick, my thesis advisor and Talmud mentor, who has provided valuable guidance and editing, but above all has taught me to study the Talmud with a critical though loving eye. I am grateful to Rabbi Steven Moss, Senior Chaplain at Memorial Hospital, for helping to spark my interest in this field, teaching me much about the dying, and for saving me a great deal of money by lending me his Hebrew typewriter. Likewise, I wish to express appreciation to Marilyn Weinstein, my close friend, who exhibited great skill and patience in deciphering my handwriting and typing this dissertation. Finally, I want to thank the library staffs of both the Hebrew Union College-Jewish Institute of Religion and the Jewish Theological Seminary for tracking down many sources and for being helpful and efficient.

INTRODUCTION

Our century has witnessed unprecedented advancement in medical knowledge and technology. One result of such dramatic and sustained progress is our ability to keep alive and, in some cases, to restore to health many people who would have formerly died. But, the development and proliferation of more complex medical treatment are partly responsible for an increase in the number and range of related medical, ethical and legal dilemmas. What constitutes death? To what lengths should and must we go to keep alive a dying patient? Are we ever allowed to take an active or passive part in the death of one who is dying or suffering? Who should make the ultimate decisions with regard to medical treatment? Many of these problems have been debated in some form for hundreds of years. But the conflicts remain and grow. So does the anguish they engender.

A natural concomitant of the turbulent history of the Jewish people is a profound and constant concern of the Jewish tradition for questions of life and death. It is clear that the preservation of human life is a supreme value in Judaism. The Mishnah teaches that a single man was originally created in the world to teach that if anyone causes a single person to perish from Israel, Scripture imputes it to him as if he caused a whole world

to perish; and if any man saves alive a single soul from Israel, Scripture imputes it to him as if he has saved alive a whole world.¹ That human life per se is valuable regardless of its duration is emphasized by an opinion of R. Judah ben Bathyra. He stated that if a child falling from a roof and facing certain death is caught on the edge of a man's sword just before reaching the ground, the man is guilty of murder although he merely shortened the life of the infant by seconds.² The Midrash shares this view. One who shortens human life by bloodshed is regarded as though he had diminished God's likeness.³

Thus, Pikuach Nefesh, the saving of a life, is of cardinal import in the hierarchy of Jewish values. One may transgress all mitzvot in order to save a life, save murder, idolatry and incest.⁴ But in an era when human life can often be sustained even when the brain has ceased to function, we must pose the question whether all human life is to be treated with equal sanctity, to be preserved at any cost. Is it ever possible within the scope of Jewish law to declare that even though one may be breathing and possess a heartbeat, he is to be considered dead? I do not wish, within this study, to enter into the thorny question of how death is to be determined. This is beyond the purview of this work and my competence. I am concerned with whether our tradition would ever consider a person displaying any of the conventional signs of life to be juridically dead. Needless to say, the legal, medical and ethical implications of such a view would be enormous.

Such is indeed the case with the terefah. It is extremely difficult to define this term. This is due to the paucity of references to it in the Talmud, and because it is generally used without being defined. We are told, however, that "טריפה מהכא סימנים", the terefah has had his vital organs severed or affected in some way.⁵ Precisely what this means and how to draw from it modern equivalents is difficult to determine.

An extremely useful discussion of the terefah is found in an article in הפרנס by Rabbi Immanuel Jakobovits, perhaps the foremost modern expert in Jewish medical law. In the article, "ברין אם מותר לקרב מיתתו של חולה נואש הסובל", Jakobovits points out the difficulty of defining terefah by noting that there is a disagreement between Maimonides and the Tosafot on the one hand, and Rashi on the other, regarding the descriptive definition of a terefah. Maimonides states that a terefah is one who has received a blow to one part of his body, such as a cancer or malignant tumor, which is endangering his life.⁶ Rashi remains faithful to the literal meaning of the statements in Sanhedrin 78a when he defines the terefah as one who, for example, has had his oesophagus or the membrane of his brain pierced.⁷ Jakobovits' view concurs with Rashi's since he concludes that one does not become a terefah by natural means (e.g. illness). Rather, the terefah is one who has received a mortal blow or injury through falling, pushing or burning. Something had to be done to him by an external

agent.⁸

Whether we accept the definition of Maimonides, Rashi or Jakobovits, all agree that the terefah is treated as dead. This is in spite of the possibility which Jakobovits mentions that the terefah may still be eating and drinking and walking in the marketplace.⁹ This view is derived from the discussion in Sanhedrin 78a where Rabbah declares: "הכל מורים בהורג את הטריפה שהוא פסול", "All agree that one who kills the terefah is legally exempt." There is only one possible circumstance in which a conscious murderer might be exempted, a circumstance in which his victim was considered already dead.

Indeed, throughout the Talmud the terefah is treated as dead. For example, in Shebuoth 34a the question is asked, if one sees a person killing another without knowing any other factors, isn't that enough to convict the murderer? The Talmud's answer is that the witness must find out whether, for instance, the victim was a terefah or a healthy person. If the victim was healthy, obviously the murderer is guilty. On the other hand, if he was a terefah, the alleged killer is not culpable because legally he has not changed the status of the victim who was already considered dead.

Similarly, in Makkoth 7a the Talmud tries to elucidate how R. Tarfon and R. Akiba could implement their position that were they in the Sanhedrin, no one would ever receive capital punishment. R. Johanan and R. Eleazar explain that they could challenge the credibility of the

witnesses by asking them whether they saw if the victim was a terefah or a healthy person. If the victim was a terefah, the perpetrator would not be guilty of murder. Since it would be practically impossible for anyone to determine whether or not the victim was a terefah at the moment of the attack, the witnesses' testimony would be sufficiently undermined to prevent a capital conviction.

Thus, terefah is a clear example of a person who can exhibit the appearance of life, yet be legally dead. From the discussions in Shebuoth and Makkoth it is apparent that the terefah can appear as fully alive. He need not be confined to bed and he may be mobile. Yet, one who kills him is legally innocent. Killing a terefah is not, from the juridical standpoint, considered murder. However, the point should be made that though one escapes criminal prosecution for such an act, this does not imply that it is ethically or socially acceptable. That one is not legally condemned does not grant one free license to put terefot to death.¹⁰

Most remarkably, talmudic sources are not conflicted on the status of the terefah. All agree that the terefah is legally dead and that one who kills him is exempt from prosecution. Thus, it is evident that for both passive and active measures to bring about death, both the removing of impediments to death, e.g. respirators, and, for instance, the injecting of a lethal dose of drugs, the agent performing such acts on the terefah would not be legally culpable. Though his actions may not be ethically or medically sound,

he is not legally culpable in the eyes of Jewish law.

It then becomes vital to determine precisely what a terefah is. Rashi provides a narrow definition; hence, one would be liable for acts performed on the vast majority of the dying according to this view. Maimonides' definition is somewhat broader, to include even cancer. To take this position about the terefah would both increase the halachic options available in dealing with some of the terminally ill and raise critical questions about possible limitations upon doctors etc., in the absence of legal restraint. Unquestionably, this term must be brought into sharper focus by halachic authorities in the field of Jewish medical ethics.

However broadly terefah is defined, the term certainly does not encompass the great majority of the dying. Other words exist in Jewish legal literature for the dying, most notably goses. Goses is probably the most prominent expression for the dying in the Talmud, codes and responsa literature, and is certainly the most employed term for the dying in modern Jewish ethical parlance.

While goses appears somewhat more frequently in the Talmud than does terefah, it is probably even more difficult to define. For though the term is used throughout the Talmud, nowhere is there an attempt to define it. Perhaps this is because the word was so widely used and clearly understood that no definition was needed. Perhaps there was no desire to define it, no desire to limit its usage, so that it would remain a general expression for the

dying.

Possibly because the term has become so central in the discussion of the dying, there have been occasional later attempts to determine what a goses is. The most common formulation is that a goses is one in the throes of death, within three days of death. This is generally derived from the ruling in the Shulchan Aruch, Yoreh Deah 339:2: "If it is said to one, 'We saw your relative as a goses three days ago,' he must mourn for him (for it is certain he is already dead)." It is deduced from this text that one must be within three days of death to be classified as a goses. However, we have no indication of this in the Talmud. Moreover, in Isserles' comments on Yoreh Deah 339:1 we find: וכן אסור לגרום למת שימות מהרה כגון מי שהוא גוסס זמן ארוך. "And similarly it is forbidden to cause the dying to die quicker, such as one who has been a goses for a long time." Thus, there does not appear to be a common understanding that the goses is within three days of death. It is probable this has been seized upon of late due to a great desire to determine what a goses is and a lack of textual basis upon which to formulate a definition.

As discussions of Jewish medical ethics and the dying intensify, the need for more closely defining this crucial term goses will become even more pronounced. However, that is not the purpose of this work. In this dissertation I will employ the term, but will refrain from trying to zero in on its precise meaning.

This thesis will probe whether the Halachah treats the goses as living or dead. The ramifications of such a determination are vast and growing. They will be discussed in detail in the conclusion of this work. But, as we have already seen, Jewish law recognizes instances in which a person appears to be alive yet is considered legally dead; no dispute exists in the Talmud about the terefah.

Some of the issues before us are 1) Is the goses ever thought of in similar terms as the terefah? 2) Are there conflicting views, perhaps a majority and minority view, with regard to the goses? and 3) What would be the contemporary implications of a conflict over the goses' status?

Though the term goses is employed throughout Jewish legal literature, it is in the Talmud that the term receives its most extensive and varied treatment. Moreover, the Talmud is the principal source for the codes and responsa literature. Therefore, I will be concentrating on the talmudic sources in my analysis of the goses and his legal status.

This work on goses assumes greater importance because there is strong indication that it has been employed loosely as a somewhat general term for the dying and that it continues to be thus used today. A more thorough understanding of the legal status of the goses may yield a greater insight into what latitude and limits might exist in extant and future halachic writings with regard to euthanasia vis a vis the dying.

Notes

¹Mishnah Sanhedrin 4:5.

²Baba Kamma 26b.

³Genesis Rabbah 34:14.

⁴Ketuboth 19a.

⁵Sanhedrin 78a.

⁶Immanuel Jakobovits, "ברין אפ מותר לקרב מיתתו של", הפרנס, Vol. 31 (October, 1956): p. 31.

⁷*Ibid.*, p. 30. Jakobovits is quoting the Rashi to the sugya in Sanhedrin 78a. Rashi unmistakably considers the terefah a dead man, labeling him a גברא קטילא. Rashi's commentary reads: "הכל מורים בהורג את אדם שריפה כגון נקב הוושט או קרום המוח: שהוא פסור מולא אפליגו ביה שמע מינה כיון דניכרים חתיכת סימנין חיותו גברא קטילא חטיב ליה."

⁸*Ibid.*, p. 31.

⁹*Ibid.*, p. 30. Jakobovits' source is Maimonides' Mishneh Torah, Book of Damages, Laws of Homicide and Life Preservation 2:8.

¹⁰Indeed, Maimonides states that one who kills the terefah is "פסור מויני אדם", which may imply that he is regarded as culpable by God. For Maimonides source see the previous note.

CHAPTER I

The Jewish tradition has long nourished and developed the position that the goses is alive in every respect. That is, in spite of the undeniable fact that he is at the brink of death and that most gosesim do indeed die, he is to be treated as a completely viable, living entity. This position did not arise in the Middle Ages or modern times, nor was it artificially read back into rabbinic literature. There is a great deal of textual support for this view in the Talmud itself. Because the contents of the texts are so crucial to this analysis, I shall quote the relevant material in its entirety, then provide my own translation and brief commentary. It is my view that eisegesis has too often become the norm in the study of both biblical and rabbinic literature. During the course of this study of the goses, I wish, to the fullest extent possible, for the texts to speak for themselves.

Text: Mishnah Oholoth 1:6

אדם אינו טמא עד שתצא נפשו ואפילו מנוייד ואפילו
גוסס זקק ליבום ופוסר מן היבום טאכיל בתרומה
ופוסל בתרומה...

Translation:

A man cannot defile until his soul departs. Even if his arteries have been cut or he is a goses, he still binds to levirate marriage and exempts from levirate marriage. He causes to eat terumah (heave-

offering) and disqualifies from eating terumah.

Commentary: Defilement occurs only at the actual point of death. Even if one has had his arteries cut or is a goses (and is at the brink of death), he does not defile and is considered alive in every respect. He has the halachic rights and responsibilities of any other living man: he obligates the widow of a childless man to marry him, or he can exempt her from such levirate marriage. By virtue of his being a priest, the goses (or other living man) confers upon his wife the right to eat of the heave-offering.¹ If he is an Israelite, the goses (or other living man) disqualifies his wife (the daughter of a priest) from returning to her father's house and sharing in the heave-offering.² The point here is that the goses and the מגוייר are not to be regarded as legally different from other living beings. Though the goses is dying, he is to be treated as living up to the moment when his soul finally departs.

Text: Shebuoth 31b (Mishnah), 32b - 33a (Gemara)

מתני'... היו שתי כיתי עדים כפרה הראשונה ואח"כ כפרה
השניה שתיהן חייבות מפני שהעדות יכולה
להתקיים בשתיהן

Translation:

If there were two sets of witnesses and the first denied (knowledge of testimony) and afterwards the second denied, both sets are liable because the testimony could be established by either of them.

Text: Shebuoth 32b - 33a

גמ' היו שתי כיתי עדים כפרה הראשונה ואח"כ כפרה
 השניה: בשלמא שניה תתחייב וכפרה לה ראשונה
 אלא ראשונה אמאי הא קיימא שניה אמר רבינא הכא
 במאי עסקינן כגון שהיתה שניה בטעת כפירת ראשונה
 קרובין בנשותיהן ונשותיהן גוססות מהו דתימא רוב
 גוססים לסיתה קמ"ל / בשתא מיהא לא שכיב /

Translation:

If there were two sets of witnesses, the first denied and afterwards the second denied: granted the second should be liable since the first denied, but the first why (are they liable)? The second still exist! Rabina said: What are we dealing with? For instance, at the time of denial of the first set, the second were related through their wives and their wives were dying. You might have thought that most dying people do die (the second set would thus be eligible to testify); therefore, it teaches us (they are not eligible). /Since they are not as yet dead/.

Commentary: Here the Gemara is questioning the logic of the Mishnah. It is understandable that the second set of witnesses should be liable if they do not testify. Since this would follow a refusal to testify on the part of the first set of witnesses, no witnesses would remain and justice could not be served. But why should the first set be liable, seeing that at the time of their denial of testimony a set of valid witnesses appeared to remain?

Rabina offers a solution to the Gemara's query. He gives an example of the type of specialized case he feels the Mishnah is dealing with: at the time of the first

set's denial, the second set of witnesses were related by marriage through the wives and the wives were גוססות. You might have thought that since most גוססין die, the women were in fact dead; hence, the two men were no longer related and were available for testimony. The Mishnah comes to tell us they are not so eligible, because though their wives are close to death as גוססות, they are still legally alive. The men, then, are still related and, as such, cannot serve as the two independent witnesses needed. Since the second set cannot offer testimony, the burden falls on the first set. They are thus liable if they do not offer testimony. (Of course, we have no evidence that the Mishnah knows anything of the specialized case of which Rabina spoke. Whether this is the sixth generation Babylonian amora Rabina I or the seventh generation Rabina II bar Huna, Rabina is many generations removed from the Mishnah and quite possibly did not understand what the Mishnah meant. Perhaps he is offering a case which would make sense of the Mishnah for him and would satisfy the objection of the Gemara).

According to this sugya, then, the goses cannot be counted as dead; he is still fully alive. And though גוססין למיתה, most gosesim do in fact die, there is an implication in this phrase that there are some gosesim who do not. Perhaps the rabbis, in employing such a phrase, know of the possibility that a goses may survive his affliction and continue to live.³

Text: Arachin 17b (Mishnah), 18a (Gemara)

מתני' היה עני והעשיר עשיר וזה עני נותן ערך עשיר ר' יהודה
אומר עני והעשיר וחזר והעני נותן ערך עשיר אבל
בקרבתו אינו כן אפ' מת אביו והניח לו ריבוא או
ספינתו בים ובאה לו ברבואות אין להקדש בה כלום

Translation:

If one was poor and then became rich, or rich and then became poor, he must pay the value of a rich man. R. Judah says: one who was poor, became rich and then became poor again must pay the value of a rich man. But it is not so with sacrifices. Even if his father died and left him 10,000, or if his ship on the sea brought him 10,000, he doesn't (have to) consecrate any of it (to the Temple).

Text: Arachin 18a

גמ' אבל בקרבתו אינו כן וכו': אביו מת והניח לו
ריבוא עשיר הוא אפ' ר' אבהו איסא מניח לו ריבוא
פשיטא כשהיה אביו גוסס מהו דתימא רוב גוססין
למיתה קמ"ל ...

Translation:

But with sacrifices it is not so, etc.: if his father died and left him 10,000, isn't he a rich man? R. Abahu said: let us say that his father is leaving him 10,000. Then it is obvious (that he is still poor). But if his father is a goses, you might have thought most dying people do die (thus the father would be dead and the son would already possess the 10,000). So, the text comes to teach us (the father is not dead yet, the son does not possess the money and the Sanctuary has no claim on it). Commentary: The Gemara cannot understand the Mishnah. If the father died, would not the son now own the 10,000 and thus

be obligated to consecrate some to the Sanctuary? R. Abahu attempts to resolve this difficulty by revising the Mishnah to read "מִן הַכֶּסֶף" instead of "מִן הַכֶּסֶף"--the father is leaving him the money (instead of has left him). This implies that the son has not yet received the money. However, the Gemara rejects this as too simple an observation, one which does not add anything to that which is already known.

The question is then raised as to what would happen if the father was a goses. You might have thought that since most gosesim do die, this would be the father's legal status; the son would then already have inherited the 10,000. According to the Gemara the Mishnah comes to teach us that this is not the case. The goses is still treated as living in full possession of his property.

The Gemara, then, has first raised a legitimate objection to the Mishnah. After rejecting Abahu's solution as too simple, the text decides that the case in the Mishnah is really one in which the father was a goses. The rabbis here are unable or unwilling to comprehend the Mishnah if the father was indeed dead. So they decide, without ostensible textual basis, that the father must have been a goses. It is most interesting to note that for the second straight sugya we have looked at, the goses was not originally a topic of concern, but was brought in later to seemingly resolve a problem and justify a Mishnah which may no longer have been understood. As both this sugya and the previous one in Shebuoth clearly contend that the goses is still

alive, we cannot discount the possibility that cases concerning the goses were purposely chosen so as to emphasize, perhaps in a polemical way, that the goses is indeed alive.

Text: Nazir 42a (Mishnah), 42b - 43a (Gemara)

מתני' נזיר שהיה שותה יין כל היום אינו חייב אלא אחת
אמרו לו אל תשתה אל תשתה והוא שותה חייב על כל
אחת ואחת היה מגלח כל היום אינו חייב אלא אחת
אמרו לו אל תגלח אל תגלח והוא מגלח חייב על כל
אחת ואחת היה מטמא למתים כל היום אינו חייב אלא אחת
אמרו לו אל תטמא אל תטמא והוא מטמא חייב על כל אחת ואחת

Translation:

A Nazirite who has drunk wine the whole day is only obligated once. If they told him, "do not drink, do not drink" and he drank anyway, he is obligated for each one.

If he cuts hair all day, he is only obligated once. If they said to him, "do not cut, do not cut," and he cuts anyway, he is obligated for every time. If he defiles himself with the dead all day, he is obligated only once. If they said to him, "do not defile, do not defile" and he defiles, he is obligated for each time.

Text: Nazir 42b - 43a

גמ' איתמר אמר רבה אמר רב הונא שקרא מלא דבר בכתוב לא
יטמא כשהוא אומר לא יבא להזהירו על הטומאה להזהירו על
הביאה אבל טומאה וטומאה לא ורב יוסף אמר האלהים אמר
רב הונא אפילו טומאה וטומאה דאמר רב הונא נזיר שהיה
עומד בבית הקברות והושיטו לו סתו וסת אחר ונגע בו
חייב אמאי הא מיטמא וקאים אלא לאו ש"ס אמר רב הונא
אפילו טומאה וטומאה איתייביה אביי כהן שהיה לו סת טומא
על כתיפו והושיטו לו סתו וסת אחר ונגע בו יכול יהא
חייב ת"ל ולא יחלל במי טאינו מחולל יצא זה שהוא מחולל
ועומר א"ל ותיקשי לך מתני' דתנן היה מיטמא למתים
כל היום אינו חייב אלא אחת אמרו לו אל תטמא אל תטמא
חייב על כל אחת ואחת ואמאי הא מיטמא וקאים אלא קשיא
אהורי לא קשיא כאן בחיבורין כאן שלא בחיבורין וטומאה

בחיבורין ואורייתא הא אמר רב יצחק בר יוסף א"ר ינאי לא
 אמרו טומאה בחיבורין אלא לתרומה וקדשים אבל לנזיר
 ועושה פסח לא ואי אמרת ואורייתא מאי שנא כאן בחיבורי
 אדם באדם כאן בחיבורי אדם במת אבל טומאה וטומאה לא
 דהא מיטמא וקאים טומאה וביאה נמי הא מיטמא וקאי אמר
 רבי יוחנן כאן בבית כאן בשדה בבית גבי כיון דאעיל
 ידיה איסתאב כי עייל כולי האי טמא הוא אלא אמר ר"א
 צירף ידו טמא טומאה איכא טמא ביאה ליכא וצירף גופו
 טומאה וביאה בהדי הדדי קאמו הא אי אפשר דלא עייל חוטמו
 בריטא ונחית ליה טומאה אלא אמר רבא הכניס ידו מטמא
 טומאה איכא מטמא ביאה ליכא הכניס גופו טומאה וביאה
 בהדי הדדי קא אתיין והא אי אפשר דלא עייל אצבעתא
 דכרעיה בריטא ונחת להו טומאה אלא אמר רב פפא כגון
 שנכנס בשירה תיבה ומגול ובא חבירו ופרע עליו את
 המעזיבה וטומאה וביאה בהדי הדדי קאתיין מר בר רב אסי
 אמר כגון דעייל כהן גוסס ונ-ק בשמתייה אדיתב
 וטומאה וביאה בהדי הדדי קאתיין

Translation:

It was said that Rabbah said in the name of Huna:
 the Scripture makes the full statement "He shall not defile"
 when It says "He shall not come" to warn him separately
 about defilement and entering, but not against defilement
 twice. R. Joseph said: by God, R. Huna said: even two
 warnings about defilement, as R. Huna said: a Nazirite
 who stood in a cemetery and was handed dead kin or the
 dead of another and he touched him, he is obligated.
 Why? Isn't he already defiled? Therefore, R. Huna must have
 said two warnings about defilement.

Abaye objects: a priest who was carrying a dead
 person on his shoulders and was handed his dead kin or the
 dead of another and touches him, you might have thought he
 was obligated, but the text comes to tell you "he shall
 not profane" (obligating) one who is not profaned and
 releasing from obligation he who is already profaned.
 He (R. Joseph) said to him: our Mishnah should cause you

the same difficulty for we learn: he who defiles himself with the dead all day is obligated only once. If they said to him, "do not defile, do not defile," he is obligated for each time. But why? Isn't he already defiled? So, there must be a contradiction between them (Mishnah and Baraita). There is not a contradiction here. In one instance there is connection (man touching both corpses at once). In the other there is no connection.

Is defilement through such connection a toraitic law? Did not R. Isaac son of Joseph say in the name of Jannai that defilement through connection is held only for terumah and sacrifices, but not for a Nazirite and one who does the Passover? If you should say it is a Torah law, why should there be this difference? In one case it is connection of man with man, in the other of man with the dead.

There are not two warnings for defilement (and hence not two penalties) because he is defiled already. But in the case of defilement and entering, isn't he also already defiled? R. Johanan replied: the latter case occurs in the house, the former in the open.

But also in a house, when his hands are inside he is unclean, so that when all of him is inside, he is already unclean. R. Eleazar said: if he put his hands together (and entered), he would be liable for defilement, but not for entering. If he thrust in his body, defilement and entering occur at the same time.

Is it impossible that his nose would not come in

first and bring defilement upon himself? As Rabbah said: if one puts in his hand, there is a penalty for defilement, but none for entering. If he causes his body to enter, defilement and entering occur at the same time. Is it impossible for his fingers not to enter first and bring defilement upon himself? Thus, R. Papa said: it is like he entered in a box, chest or turret, and his friend came and uncovered the concrete covering, so that defilement and entering occur at the same time.

Mar, son of Ashi said: it is like he came in when the other was a goses, and while he was there the other died, so that defilement and entering came together.

Commentary: The question being discussed is why should there be separate penalties for defilement and entering a place containing a corpse. According to R. Johanan, if he enters the house of the dead and becomes defiled at the same moment, he is liable twice. It is then pointed out that as soon as his hands are inside he is defiled, so that when he fully enters, he has already been defiled. So how can he be liable twice? R. Eleazar said that if he put his hand together there would indeed be no penalty for entering.

Rabbah says that if he puts in his hand there would also be no penalty for entering, but if his whole body enters defilement and entering occur at the same time (and hence two penalties). But, it is asked, won't his fingers enter first? That is, won't he always be liable for

defilement before he would be liable for entering? It would seem, then, that the situation of double liability would never occur.

Then, R. Papa presents such a case where one entered a place containing a corpse in some kind of box which was broken open. In that instance, defilement and entering occur at the same time. Mar. b. R. Ashi gives as an example the case of the Nazirite entering when the other is a goses (which is obviously permissible). When the Nazirite is inside, the goses dies. So, in a sense, defilement and entering a place in which there is a corpse occur at the same moment. Hence, the double penalty would be imposed in this situation.

Clearly, the Nazirite is not liable when entering a place containing a goses, but is liable when entering a place where there is a corpse. The goses is here treated as a fully living being; the Nazirite is indeed permitted to be in his presence.

The case employing the goses is introduced by Mar b. R. Ashi, a seventh generation Babylonian amora. It is true that he offers a plausible example of defilement and entering occurring simultaneously. But, partially because it is such a late entry, I wonder if it was introduced for yet another purpose--to make a strong assertion that the goses is alive.

Text: Kiddushin 71b

גמ' א"ר פאפא סבא משמיה דרב בבבלי כריאה מיטון טיתה כרי
חולה עילם גוססת ומה בין חולין לגוססין רוב חולין
לחיים רוב גוססים למיתה

Translation:

R. Papa the Elder said in the name of Rab: Babylonia is healthy, Mesene is dead, Media is sick, Elam is a goses. What is the difference between the sick and the dying? Most of the sick will recover, while most of the dying will die.

Commentary: The distinction is drawn here between a sick person and a goses. The goses is not merely sick; his condition is a great deal more serious than that. But in the statement "most gosesim will die" lies the implication that it is possible to be a goses and not die. So, according to this passage, the goses cannot be in the category of the dead.

Text: Gittin 28a (Mishnah), 28a (Gemara)

מבני' המביא גם והניחו זקן או חולה נותן לה בחזקת שהוא קיים בת ישראל הנשואה לכהן והלך בעלה לפדינת הים אוכלת בתרומה בחזקת שהוא קיים השולח חטאתו מפדינת הים מקריבין אותה בחזקת שהוא קיים

Translation:

If when the bearer of a get left him he was an old or sick man, the bearer gives it to her on the presumption that he is still alive. If the daughter of an Israelite is married to a priest and her husband goes abroad, she continues to eat terumah on the presumption that he is still alive. One who sends a sin-offering from abroad, it is sacrificed on the presumption that he is still alive.

Text: Gittin 28a

גמ' אמר רבא לא שנו אלא זקן שלא הגיע לגבורות וחולה
 שרוב חולים לחיים אבל זקן שהגיע לגבורות וגוסס שרוב
 גוססין למיתה לא איתביה אביי הסביא גס והניחו זקן
 אפ' בן מאה שנה נותן לה בחזקת שהוא קיים תיובתא ואי
 בעית אימא כיון דאיפליג איפליג...

Translation:

Rabbah said: the Mishnah taught only about an old man who has not yet reached eighty years of age and a sick man, since most sick men recover. But (the Mishnah doesn't speak about) an old man who has reached eighty years of age or a goses since most gosesim die. Abaye refutes this: if when the bearer of a get left him he was an old man, even one hundred years old, the bearer gives it to her on the presumption that he is still alive. This is a refutation. I might still say that this would be exceptional (people do not usually live this long, so we can assume that one who has reached g'vurot, eighty years of age, has died before the get would have been transmitted).

Commentary: Rabbah delimits the Mishnah by assuming that it talked only of an old man under the age of eighty and the sick, but not the dying (goses). Only these aged and sick can be presumed to stay alive in the period between leaving the husband with the get and delivering it to the wife. Rabbah is on firm ground in his declaration that the Mishnah speaks of the sick, not the dying. (Note, too, the distinction drawn in previous text, Kiddushin 71b). However, his claim that the Mishnah spoke only of a certain group of the elderly is indeed spurious. The Mishnah makes no such specification and Abaye is correct in his

assertion. The final position of the Gemara, though, is that the one who lives to such an old age as one hundred years is clearly an exception; in general, we can presume that a person eighty years or older would have died in the interim period before the get would have been delivered.

With regard specifically to the goses, Rabbah argues that the bearer of his get does not deliver it to his wife, because we assume the goses has already died before the document could be delivered. Thus, Rabbah would assert that the goses is alive, but generally has a very short time to live--usually not as long as it takes to transmit a get to his wife.

Text: Pesahim 69b (Mishnah), 70a - b (Gemara)

מתני' אימתי מביא חגיגה עמו בזמן שהוא בא בחול בטהרה
ובמונעט ובזמן שהוא בא בשבת במרובה ובטומאה אין
מביאין עמו חגיגה חגיגה היתה באה מן הצאן מן
הבקר מן הכבשים ומן העזים מן הזכרים ומן הנקבות
ונאכלת לשני ימים ולילה אחד

Translation:

When does one bring a festival-offering with it (the חגיגה)? When the paschal-offering is brought on a weekday, in a state of ritual purity and in small quantity. However, when it is brought on Shabbat, in large amounts, and in a state of ritual impurity, we do not bring a festival-offering with it. One would bring the festival-offering from the flock, herd, lambs or goats, from males and females, and it is eaten for two days and one night.

Text: Pesachim 70a - b

גמ' ת"ש סכין שנמצאת בארבעה עשר שוחט בה מיד בשלשה
 עשר שונה ומטביל קופיץ בין בזה ובין בזה שונה
 ומטביל מני אילימא רבנן מאי שנא סכין ומטביל
 דחזיא לשטח קופיץ נמי הא חזי לחגיגה אלא לאו
 דבן תימא היא ושטח מינה יש בה משום שבירת העצם
 לא לעולם רבנן וכגון שבא בשבת והא מדקתני סיבא
 חל ארבעה עשר להיות בשבת שוחט בה מיד ובחמשה עשר
 שוחט בה מיד נמצאת קופיץ קטורה לסכין הרי היא כסכין
 מכלל דרישא לאו בשבת עסקינן ואלא שבא (70b) במרובה מנא
 ידעי ואלא שבא בטומאה סוף סוף מנא ידעי דמית נשיא
 דמית נשיא אימת אילימא דמית בשלשה עשר סכין למה
 לי דמטבילה ואלא דמית בארבעה עשר מאי שנא סכין
 ומטביל ומאי שנא קופיץ דלא מטביל לה לא צריכא
 דנשיא גוסס בשלשה עשר סכין דחזי ספיקא מטביל לה
 קופיץ דתרי ספיקי לא מטביל לה

Translation:

Come and hear: if a knife is found on the fourteenth
 (of Nisan, the eve of Passover), one may slaughter with it
 immediately. If on the thirteenth, one must repeat the
 ritual immersion (of the knife for purity sake). If
 one found a chopper either on the thirteenth or fourteenth,
 one must repeat the immersion.

Who is the author of this ruling? If we were to say
 the rabbis (who distinguished between the Passover-offering
 and the festival-offering), how does a knife differ
 (from a chopper)? If you say the knife has already been
 immersed so that it is fit for the Passover, why don't
 we say that the chopper has been immersed to be fit for
 the festival-offering? (Since this baraita suggests different
 regulations for the knife and the chopper), this ruling
 must be from Ben Tema, and we infer that the difference
 comes about because of the ruling about the breaking of

bones.⁴ No, it is actually the ruling of the rabbis. The case is one where the Passover comes on Shabbat.⁵ How can you say that since the last part of the baraita (the ו"נ baraita quoted above) teaches: "if the fourteenth comes on Shabbat, then one slaughters with it immediately, and on the fifteenth one also slaughters with it immediately, and if a chopper is found tied to a knife, it is like the knife"? (Since this part of the baraita mentions the Sabbath), we may infer that the first part of the baraita does not deal with the Sabbath. So say rather, that it (the Pesach) came in large amounts.

How can anyone know (that the Passover will come in large amounts)? (Another way to explain the distinction between the knife and the chopper) the Passover is brought, rather, in impurity. But, after all, how could they know (in advance that it will be brought in impurity)? The Nasi had died. When did the Nasi die? If you said he died on the thirteenth, what purpose was served in immersing the knife?⁶ If he died on the fourteenth, how does a knife differ (from a chopper) that (it is said) one should immerse one and not the other?⁷ This happens only when the Nasi is a goses on the thirteenth. A knife, about which there is one doubt, one immerses. A chopper, about which there are two doubts, one does not immerse.

Commentary: This sugya tries to find an explanation for the ו"נ which states that if a slaughtering knife (for the Pesach) is found on the fourteenth (of Nisan), one may slaughter with it immediately, while if one finds a

chopper used to break the bones of a hagigah (festival-offering) on the same day, he must repeat the immersion. At the beginning of 70b it is decided that the Pesach was brought in impurity because the Nasi had died. If he died on the thirteenth, the text is puzzled as to why immersion should be performed on the knife. If the Nasi died on the fourteenth, why do we say that he had already immersed the knife but not the chopper?

This happens, concludes our sugya, when the Nasi was a goses on the thirteenth. The knife would be immersed on the thirteenth because there is only one doubt--whether the goses would die before the Pesach was offered. This death would render the knife unclean again (everyone would go to the funeral of the Nasi, become defiled, return to their homes and hence defile their implements etc.). But it is by no means certain that one who is a goses on the thirteenth will be dead by the fourteenth when the Pesach is offered (the goses will most probably die, but perhaps not that quickly). So, one does immerse the knife on the thirteenth because there is sufficient doubt concerning whether the goses will die that quickly and render the knife unclean. One does not immerse the chopper, however (on the thirteenth), because of the two doubts--whether the Nasi would die and whether a hagigah would be brought.⁸ Hence, the odds are not good enough to warrant immersion of the chopper on the thirteenth.

Our sugya thus says that the ϖ^n situation could arise only when the Nasi was a goses on the thirteenth of Nisan. This ϖ^n baraita, of course, never mentions anything about a goses. In making its distinction between the knife and the chopper for the purpose of ritual immersion, the baraita in no way indicates a limitation of the distinction to a time when the Nasi was a goses on the thirteenth. There is no reason to assume that this is an accurate explanation of the baraita.

In trying to fathom why the sugya offered its exposition of the ϖ^n , we apparently have two real possibilities: 1) this anonymous sugya no longer understood the ϖ^n and was merely trying to find a plausible explanation for it, and 2) the sugya was attempting, in effect, to undo the ruling of the baraita by so defining and delimiting what the ϖ^n was talking about (in saying that the ϖ^n situation could arise only when the Nasi was a goses on the thirteenth, indeed a substantial limiting of the ϖ^n) that the instance whereby one could carry out its ruling would almost never arise.

Which of the two possibilities is at work here is a matter of conjecture. It is also possible that a combination of the two account for our sugya: the rabbis indeed did not understand the ϖ^n ; however, they came up with an explanation which did not merely sound plausible, but which would also accomplish their halachic objectives.

However this sugya is explained, it must be noted

that again the goses is introduced later in the sugya to attempt to make sense of an earlier ruling. We have already said that the goses certainly did not originally concern the goses. The question must be asked whether there was a specific purpose for introducing a case concerning a goses here. As the goses is clearly treated as living in this sugya (there was real doubt as to whether he would be dead the next day), perhaps this case concerning the goses was introduced for purposes of polemic. Elaboration of this will follow in my concluding remarks to this chapter.

Concluding Remarks:

It is undeniable that the position asserting the goses to be fully alive is well represented in the Talmud. But as I have pointed out throughout this chapter, instances concerning the goses often seemed tacked on to the sugya with little real correlation between them and earlier rulings (often mishnah) they were allegedly justifying or explaining.

The situation might certainly arise whereby the meaning of a mishnah, for example, would have been lost through the generations and later rabbis, trying to find a plausible explanation, would have brought in a case concerning the goses. We might say that the case does not adequately address itself to the earlier ruling, but it would be difficult to ascribe to its authors an ulterior motive.

In this chapter alone, though, we have examined

four such sugyot (in Shebuoth, Arachin, Nazir and Pesachim). It would be difficult to argue that in trying to explain the meaning of an earlier position, the authors of all these texts chose, by coincidence, cases involving the goses. I would agree to the possibility that in all these instances the rabbis no longer knew what the earlier texts meant. But I would be skeptical to a view that the frequent use of examples involving the goses which do not essentially relate to the rest of the sugya is merely happenstance. I would suggest that these goses texts may constitute a polemic against a position that the goses is indeed juridically dead. As we will see in a later chapter, this view is also strongly represented in the talmudic sources.

Though the texts in this chapter build a strong case for the position that the goses is alive, it is not from them that later Halachah derives its strongly monolithic view that the goses is alive in every respect. It is the material in Masechet Semahot which is most often quoted in this regard. Chapter two will contain a discussion of the Semahot texts as well as of the relationship of this "Tractate" to the Talmud and of how this material is treated and developed in later legal writings.

Notes

¹See Numbers 18:8 ff. and Mishnah Yebamoth 9:5.

²See Leviticus 22:12 and Mishnah Yebamoth 9:6.

³Note that essentially the same sugya appears in Shebuoth 37a - b.

⁴Ben Tema is of the opinion that rules applying to Passover-offerings also apply to festival-offerings. The Torah states in regard to the Passover-offering that "וְעֵצֶם לֹא תִסְבְּרוּ בּוֹ" and Thou shall break no bone thereof (Exodus 12:46). According to Ben Tema, then, a chopper, whose purpose is to break bones, may not be prepared for sacrificial purposes.

⁵Different rulings about knives and choppers take effect when the Passover is brought on Shabbat. According to the Mishnah, no festival-offering is brought on Shabbat; hence, there is no reason to prepare the chopper. But since the Passover is offered on Shabbat, there is a need to ritually prepare the knife.

⁶The knife would remain impure anyway for seven days by virtue of being in contact with those defiled by the dead. Thus, no efforts would be made to purify the knife. Neither the knife nor the chopper would be immersed.

⁷Would not both have been ritually prepared on the thirteenth?

⁸The conditions for bringing a festival-offering are set forth in the Mishnah.

CHAPTER II

Before discussing how the Semahot baraitot relate to the Talmud and later halachic compendia, I will quote the texts in this "Tractate" relevant to our inquiry about the goses. Whether these texts may have served as a basis for that talmudic attitude that the goses is alive in every way or as a summation of or polemic for this attitude, or whether any connection at all may be established between these passages will then become a matter of important conjecture. A crucial element in such a discussion is the attempt to date the Semahot baraitot, an attempt which is, as with most other rabbinic texts, fraught with difficulty. Nevertheless, a brief consideration of how Masechet Semahot may be placed chronologically will also be included in this chapter.

Text: Masechet Semahot 1:1¹

הגוסס הרי הוא כחי לכל דבר: זוקק ליבום ופוסר
מן היבום, ופאכיל תרומה, ופוסל מן התרומה, ונוחל
ומנחיל, פירש ממנו אבר כאבר מן הח, בשר כבשר מן
החי. וזורקין על ידו דם הטאתו ודם אשמו - עד שעת
שימות.

Translation:

A dying man is considered the same as a living man in every respect. He may obligate to levirate marriage, and he may exempt from levirate marriage. He may confer the right to eat of the heave-offering, and he may disqualify from eating of the heave-offering. He may inherit and

bequeath. If a limb is severed from his body, it is considered as a limb from a living person. And if flesh, like flesh from a living person. They may sprinkle for him the blood of his sin-offering or guilt-offering. All this until the time he dies.

Commentary: The text lists different respects in which the goses is considered fully alive. Like any other living man, he may obligate his childless brother's widow to marry him (or perform חליצה) and so forth. His status of being alive in every regard is maintained, according to this passage, right up to the time of death.

Text: Masechet Semahot 1:2

אין קושרין את לחייו, ואין פוקקין את נקביו, ואין
נותנין עליו כלי של מתכת ולא כל דבר שהוא מיקר על
שימרו - עד שעת שימות.

Translation:

They cannot bind his jaws, nor stop up his orifices, nor place upon him any metal vessels, nor put any cooling thing on his belly--until he dies.

Commentary: As these are all post-mortem practices, one is forbidden from doing them to the goses who is still treated as fully alive. Such premature actions could even serve to hasten death, either physically or psychologically.

Text: Masechet Semahot 1:3

אין מדידין אותו, ואין מדיחין אותו, ואין מטיילין
אותו לא על גבי החול ולא על גבי המלח - עד שעת
שימות.

Translation:

They may not move him, or wash him, or place him upon sand or salt--until the time of his death.

Commentary: Moving a dying person is viewed as hastening his death.²

The bodies of the dead were washed and allowed to lie on sand.³ Hence, the according of such treatment to the dying could constitute a psychological impetus to death, which is clearly not permitted in this Masechet.⁴

Text: Masechet Semahot 1:4

אין מעצמין את עיניו. הנוגע בו ומזיזו, הרי הוא
נופך דמים. רבי מאיר היה מושלו לנר משהסוף: כיון
נוגע בו אדם, מיד כיבהו. כך כל המעצמין עיני
הנוסס, מעלין עליו כאילו הוא שומט את נשמתו.

Translation:

They may not close his eyes. Whoever touches him or moves him is a shedder of blood. R. Meir used to compare him to a flickering flame: when one touches it, it is immediately extinguished. So too, all who close the eyes of the goses are regarded as if they snuff out his life.

Commentary: One can do nothing to hasten another's death. Whoever performs an action--closing of eyes, touching or moving of the dying--which may expedite death is regarded as a murderer, as one who has killed a fully living being.

Text: Masechet Semahot 1:5

אין קורען, לא חולצין, ולא מספידין. ואין
מכניסין עזו ארון בבית - עד שעת מיתות.

Translation:

They do not tear clothes, bare shoulders, or eulogize. And they do not bring a coffin into the house-- until he dies.

Commentary: Acts of mourning are to be performed for the dead, not for the goses who, in this "Tractate", is treated as completely alive. As previously mentioned, they may serve to hasten death. Similarly, seeing a coffin enter his house can have a terrible psychological impact on a goses, one which may greatly contribute to his death. Hence, in the Halachah, we find the stipulation that no such preparations for a man's death may take place until he has actually died.⁵

Text: Masechet Semahot 1:6

אין מסמיעין עליו, ואין מסננין עליו את מעשיו.
רבי יהודה אומר: אם היה חכם מסננין את מעשיו.

Translation:

They may not announce about him or acclaim his works. R. Judah said: if he was a wise man, they may acclaim his works.

Commentary: As Dov Zlotnick has noted in his volume

The Tractate "Mourning",

If the goses is a scholar, he would not be alarmed when he hears people reciting his merits, for he is accustomed to public deference; but if he is in no way distinguished by reason of his superior learning, the unwonted praise might hasten his death; indeed, he may hear it as a prelude to a eulogy.⁶

Text: Masechet Semahot 8:13

אין מבטלין תלמוד תורה למת עד שתצא נשמתו. וכשהיה
 שמעון בנו של רבי עקיבה חולה, לא בטל מבית המדרש
 שלו אלא פיקדו ביד שלוהין. בא הראשון, ואמר לו:
 נסען. אמר להם: שאלו. בא השני ואמר לו: הכביר.
 החזירו לתלמוד. בא השלישי ואמר לו: גוסס. אמר להם:
 שאלו. בא הרביעי ואמר לו: השלים. עמד וחלץ תפיליו,
 וקרע את בגדיו, ואמר להם: אחינו ישראל שמעו - עד כאן
 היינו חייבין בתלמוד. מיכאן ואילך אני ואתם חייבין
 בכבודו של מת...

Translation:

We do not put aside the study of Torah for the
 dead until his soul has departed. When Simeon the son of
 R. Akiba was sick, Akiba did not absent himself from his
 academy. Rather, he kept informed by way of his agents.
 The first came and said to him: "He is very ill." He
 said to them: "Ask!" (Carry on). The second came and
 said to him: "He is getting worse." He had them
 return to study. The third came and said to him:
 "He is a goses." He said to them: "Ask!" The fourth
 came and said to him: "He is dead." He stood up, took
 off his tefillin, tore his clothes and said to them:
 "Our brethren, Israel, listen--until now, we were obligated
 to study. From this point on, you and I are obligated to
 honor the dead."

Commentary: We set aside the study of Torah when one
 has died, but not while the dying person is still alive.
 The goses is obviously treated as alive in this text:
 whereas one must stop studying to honor the dead, one
 does not cease studying for the goses.

In his edition מסכת סמחות, Dr. Michael Higger enumerates various theories as to the dating of "המסכתות הקטנות או ההיצורות", including מסכת סמחות or אבל רבתי. According to הרב האיריט, אבל רבתי is among the collections of baraitot composed at the time of Rabbi. ר' יצחק די לאטיט believes that all the baraitot were composed right after the time of ר' הושעיה and ר' א, whom Strack⁸ lists as a fifth generation tanna and first generation Palestinian amora respectively. Another theory dates אבל רבתי two or three generations after Rabbi. Finally, there are some who feel that the Tractates Sophrim, Semahot, Kallah, Derech Eretz and Perek Hashalom were composed in the days of the gaonim.⁹ Higger warns, however, against acceptance of any of these general hypotheses before an examination of each Masechet:

וכל המעלות האלה אין להן יסוד, ואין יכולים אנו
לבא לידי מסקנות בנוגע לזמן חבורם של המפרים
האלה קודם שגורם ונחקר בסיבה ובהתפתחותם של כל
מסכת ומסכת בפני עצמה, וגם ביהוסה של כל אחת
ואחת מהן להברותיה.¹⁰

Isaac Hirsch Weiss claims that our Masechet Semahot is a product of a late author.¹¹ As evidence, Weiss claims that it is indeed clear that our Masechet Semahot is not the work אבל רבתי mentioned in the Talmud because we do not find the אבל רבתי material which is cited in the Talmud in our Masechet Semahot.¹² This is despite the fact that the rishonim took for granted the identification of our Masechet Semahot with the אבל רבתי of the Talmud.¹³ For Weiss, the talmudic אבל רבתי is a

baraita of the tannaim but our מסכת שמחות is later:

...במס' שמחות שלנו נראה ברור באין כל ספק שנעתקו
 בו הלכות מן התלמוד של האמוראים מלה במלה שתאר
 וצייר מאמרים בלשון מסנה על פי מסקנת הגמרא
 ובירוסיה ודקדוקיה. 14

Thus, to further support his contention of the lateness of our Masechet Semahot, Weiss writes that our Masechet copied word for word halachot from the Talmud. Moreover, though our Masechet is written in the language of the Mishnah, it is based on the Gemara.

Dov Zlotnick refutes Weiss' claim that it is clear our text cannot be identified with the Talmudic אגל רבתי. That these talmudic citations are not found in our Semahot text is no proof, argues Zlotnick, that they were not once there and omitted either intentionally or unintentionally as a scribal error.¹⁵ However, he feels that we cannot assert with any certainty that מסכת שמחות and אגל רבתי are the same work.¹⁶

Zlotnick discusses the proofs modern scholars use for placing the time of final redaction of Semahot at about the middle of the eighth century. Based on a study of the parallel passages of Semahot found in the Palestinian and Babylonian Talmuds, these proofs are of two types: 1. The text presupposes the later amoraic discussions in both Talmuds. 2. The text exhibits a lateness of idiom and structure.¹⁷

Zlotnick does not believe that these "proofs" substantiate a late date. Whereas passages are cited to show the influence of both Talmuds on Semahot and

hence to propound a late date for this collection, he points out quite correctly that it is not always clear which text influenced the other. He also rejects the "proof" based on literary structure.¹⁸

Zlotnick is rather convincing as he sums up his point of view regarding the dating of Masechet Semahot (or Sm):

We have thus found nothing in Sm pointing decisively to a late date. On the contrary, it can now be stated that the latest authorities mentioned in the text are the Tannaim of the fifth generation, Rabbi Judah the Prince and his contemporaries. Moreover, the language is Mishnaic Hebrew, and its style and structure, the literary formulation and sequence of the Halakah and the Aggadah, is always that of the Tannaim. In the absence of further textual evidence and in view of the fact that Sm is clearly identified as Tannaitic by the Gaon Natronai and by all the medieval scholars, it seems preferable to submit to the authority of the ancients and suggest an early date--the end of the third century.¹⁹

Zlotnick theorizes that our מסכת סנהדרין represents a very early recension of the אבן רבתי mentioned in the Talmud.²⁰ The dating of Semahot and its relationship to the Talmud will be further discussed in my concluding remarks to this chapter.

In any case Masechet Semahot assumes particular importance because it clearly serves as the basis for halachic rulings concerning the goses in both codes and responsa literature. I wish to illustrate the profound influence of this work on later legal materials by quoting correlative halachot in Maimonides' Mishneh Torah and Joseph Karo's Shulchan Aruch as well as by noting two related responsa.

Text: Maimonides, Mishneh Torah, Book of Judges, Laws of Mourning, 4:5

הגוסס הרי הוא כחי לכל דבר. אין קושרין לחייו.
ואין פוקקין נקביו ואין מניחין כלי מתכות וכלי
מיקר על טבורו שלא יתפת. ולא סכין אותו. ולא
מדיחין אותו. ולא מטילין אותו על החול ולא על
המלח עד שעה שימות והנוגע בו הרי זה שופך דמים.
למה זה דומה לנר שמטפטף כיון שיגע בו אדם יכבה.
וכל המאטץ עיניו עם יציאת נפש הרי זה שופך דמים
אלא ישהא מעט שמא בתעלף. וכן אין קורעין עליו.
ולא חולצין כתף. ולא מספידין. ולא מכניסין עמו
ארון ותכריכין בבית עד שימות.

Translation:

The goses is like the living in every respect.
We cannot bind his jaws, nor stop up his orifices, nor
place upon his belly any metal or cooling vessels so that
he will not swell. We may not anoint or wash him. And
we may not place him on sand or salt until he dies. And
he who touches him is a spiller of blood. To what is
he compared? To a flickering candle, when one touches it,
it is extinguished. Whoever closes the eyes of one about
to die is a spiller of blood. Rather, he should wait a
bit, perhaps he has only fainted. And so, we do not
tear our clothes for him, nor bare our shoulder, nor
eulogize, nor bring a coffin and burial shrouds into the
house for him, until he dies.

Commentary: This section is a composite of Semahot entries
1:1 - 1:5. At two points Maimonides adds rationales for
the rulings. He reasons that we are not to bind the jaws,
stop up the orifices, or place metal or cooling vessels
on the belly of the goses so that he will not swell.

Moreover, he declares, we may not close his eyes
 "עם יציאת נפש", but must wait a bit, because it is
 possible he has not yet died, but only fainted (Maimonides
 may be alluding to a coma here).

The line "וכל המאמץ עיניו עם יציאת נפש הרי זה" clearly derives from the Mishnah in Shabbat 151b where it is written, "והמעצים עם יציאת הנפש הרי זה" "נפך דמים."

Text: Shulchan Aruch, Yoreh Deah, 339:1

הגוסס הרי הוא כחי לכל דבריו אין קושרין לחיו.
 ואין סכין אותו ואין מדיחין אותו ואין פוקקין
 את נקביו ואין שומטין הכר מהחיתו ואין בותנין
 אותו על גבי חול ולא על גבי חרסית ולא על גבי
 אדמה ואין בותנין על כריסו לא קערה ולא סגריה
 ולא בלוחית של סים ולא גרגיר של מלח ואין מטפיעין
 עליו עיירות ואין שוכרין חלילין ומקוננות ואין
 מעמצין עיניו עד שתצא נפשו וכל המעמץ עם יציאת
 הנפש ה"ז שופך דמים ואין קורעין ולא חולצין ולא
 מספידין עליו ולא מכבסין עמו ארון לבית עד שימות
 ואין פותחין עליו בצדוק הדין עד שתצא נפשו.

Translation:

The goses is like the living in all respects. His
 jaws are not bound. He is not anointed or washed. His
 orifices are not stopped up. The pillow is not removed from
 under him. He is not put upon sand, red soil or earth.
 Not a dish, shovel, glass of water or grain of salt is put
 on his belly. We do not announce about him in the cities,
 nor hire flutes and mourning women. We do not close his
 eyes until he has died. And whoever closes the eyes of
 the dying is a spiller of blood. We do not rent, bare
 shoulders or eulogize about him. We do not bring a
 coffin into the house until he has died. We do not say

the prayer for him until he has died.

Commentary: This ruling is based on several sources.

Certainly מסכת שמחות, including 1:6, is a primary influence, joined by previous codes literature. It is also quite possible that Karo drew from a Mishnah at the bottom of Shabbat 151a where we find:

„עושיו כל צרכי הטת סכין ומדיחין אותו ובלבו של יזיו בו אבר שומטין את הכר מתחתיו ומטילין אותו על החול בשביל שימתין קושרין את הלחי...“

Text: Rabbi Moses Isserles Commentary to Yoreh Deah 339:1

וי"א דאין חוצבין לו קבר אע"פ שאינו עמו בבית עד אחר שימות (ריב"ש סי' קי"ד) ואסור לחצוב שום קבר להיות פתוח עד למחר שלא יקברו בו המת באותו היום ויש סכנה בדבר (רבינו ירוחם בשם ר"י החסיד ז"ל) וכן אסור לגרום למת שימות מהרה כגון מי שהוא גוסס זמן ארוך ולא יכול להפריד אסור להשמש הכר והכסת מתחתיו מכח שאומרים שיש נוצות מקצת עופות שגורמים זה וכן לא יזיזו ממקומו וכן אסור לשום מפתחות ב"ה תחת ראשו כדי שיפריד אבל אם יש שם דבר שגורם עכוב יציאת הנפש כגון שיש סמך לאותו בית קול דופק כגון חוטב עצים או שיש מלה על לשונו ואלו מעכבים יציאת הנפש מותר להסירו משם דאין בזה מעשה כלל אלא שמסיר המונע.

Translation:

There are those who say that a grave is not dug for him in spite of the fact that it is not in the house with him until after he dies. And it is forbidden to dig and leave open any grave until the next day in order that the dead not be buried on the same day. And there is danger in the matter.

And thus, it is forbidden to cause the dying to die quicker, like one who has been a goses for a long time and is unable to die. It is forbidden to remove the

pillow and the cushion from under him, because it is said there are some types of feathers that cause this (his soul not to depart). And thus, he cannot be moved from his place. And so, it is forbidden to put the keys of the synagogue under his head in order that he would die. But, if there is near that house a banging noise like a woodcutter or if there is salt on his tongue and these prevent his dying, it is permitted to remove it from there since that is not an action measure at all, but a removing of the impediment.

Commentary: Since the goses is treated here as fully alive, one must take no active part in helping to bring about his death. However, if there is an obstacle to the departure of the soul, such as the loud noise of a woodcutter, one is permitted to remove the obstacle since that is not considered an action directly affecting the goses.

(However, one may not move the goses from the woodcutter as that would be an active measure expediting death).

There appears to be an underlying belief in the Isserles commentary that the life of the goses should be in God's hands. It is for God to decide when one should die; man must not help bring death about. Moreover, external, unnatural obstacles to death may be removed so as not to let anything interfere with the will of God.

Text: Yoreh Deah, 339:2

מי שאמרו לו ראינו קרובך גוסס היום שלטה ימים
צריך להתאבל עליו (דו"א כ"ב כ"א)

Translation:

If it is said to one, "We saw your relative as a goses three days ago," he must mourn for him (for it is certain he is already dead).

Commentary: It is assumed in this halachah that one who becomes a goses can survive no more than three days. However, Isserles does not concur. In his commentary to 339:1, he mentions גוסס זמן ארוך, one who has been a goses for an extended time.

In a responsum to the question whether it is permitted to bring nearer the death of a sick person where such death will constitute a liberation from great suffering, Rabbi Nathan Zvi Friedmann echoes the major codes by asserting "וודאי וגוסס הרי הוא כחי לכל דבריו".²¹ Moreover, it is forbidden to cause one to die quicker in spite of the fact that he has been a goses for a long time and great suffering has accrued to him and his relatives.²²

Even when it is clear that one will not survive much longer, we should attempt to preserve life for there is great value in life's final moments; one can still do mitzvot and good deeds, repent, etc.²³ And if one is not in a physical, mental or spiritual state to perform mitzvot, still no one is permitted to shorten his life.²⁴

According to Friedmann, a physician may not take pity on his patient and grant a wish to die; he must be cruel when necessary to give him the medicaments to cure him.²⁵ The doctor is granted authority to treat

and attempt to cure the patient. That is all. If he is unable to effect a cure, at that moment his authority ends. The patient would then be in God's hands.²⁶

However, halachic authorities recognize that the attempt to save lives involves risks that medical procedures will actually hasten death. Rabbi Jacob Reischer is asked about a situation where the doctors estimate that a dying patient will die within a day or two. But there is one medicament which may cure him or may kill him within an hour or two. May such a drug be used? In his responsum Rabbi Reischer reiterates Jewish tradition's great concern with preserving human life, even, in his view, that of a goses. We are not permitted to take life-endangering risks lightly. However, in this case where death is a certainty, the risk is worth taking; the drug may be administered.²⁷ Great caution must be exercised though. Specialists in the town must be consulted, according to Reischer. In addition, the consent of the rabbinic authority in the city must be obtained.²⁸

Concluding Remarks:

The baraitot quoted from מסכת עמונה, then, are the source for these halachic rulings in the Mishneh Torah, Tur (not previously cited), Shulchan Aruch and in some important responsa.

There is no disagreement among scholars that the rishonim identified our מסכת עמונה with the אבל רבתי referred to in the Talmud.²⁹ Indeed, we do not know

what kind of Semahot text the medieval authorities had. However, as our מסכת שמחות does not contain talmudic אבל רבתי citations and in the absence of other evidence, such as a manuscript containing these talmudic references,³⁰ we have no basis for, in fact, identifying מסכת שמחות with the talmudic אבל רבתי. Our מסכת שמחות does seem, then, to be a strictly extra-talmudic collection.

What sort of relationship, if any, might Masechet Semahot have with either Talmud? This is where the issue of dating the material becomes particularly important. For, if we can argue convincingly for a late dating, for example the eighth century, and, moreover, that, as Weiss asserts, our מסכת שמחות copied halachot from the Talmud,³¹ then we might be able to establish this Masechet as a summation of the talmudic position vis a vis the goses, or perhaps as an attempt to somehow codify the rulings of the Gemara.

However, given the fact that the material in מסכת שמחות appears clearly tannaitic, that the latest authorities mentioned in the Masechet are tannaim, and that, as Zlotnick points out, "Sm is clearly identified as Tannaitic by the Gaon Natronai and by all the medieval scholars,"³² the burden of proof for a late date lies with the proponents of such a view. In my opinion, they do not build a strong case. That our מסכת שמחות is not the אבל רבתי of the Talmud does not at all indicate that it is late. Furthermore, our Masechet Semahot in no way clearly bears the influence of the Gemara. Finally, despite Weiss' contention, there

appears to be no indication that our שמחות copied halachot from the Talmud. Whenever passages are cited to show the influence of the Talmuds on מסכת שמחות, it is possible to argue the reverse, that it was Semahot that influenced the Talmud.

In sum, it is necessary to agree with Zlotnick that "we have thus found nothing in Sm pointing decisively to a late date."³³ I would certainly hypothesize that the collection is tannaitic, though I would not wish to get involved in the issue of exact dating. Consequently, מסכת שמחות is not, in my view, an attempt at summation, codification or even polemic of a talmudic position regarding the goses.

I do not wish, however, to entirely eliminate from consideration the possibility that though the material in Masechet Semahot is quite early, the collection itself may be late. Such a collection could very well have been selective and revisionist with regard to the tannaitic material on goses. That is, it may have presented one trend of opinion instead of a more complex view of the goses extant in tannaitic sources. A compilation of this sort might serve to give the desired though distorted impression that it is a thorough digest of rabbinic thought on the subject. Thus, Masechet Semahot could be a further attempt to downplay and discredit the rabbinic material which shows the goses to be juridically dead.

That the baraitot from מסכת שמחות, which I quoted, do not seem to be related to the talmudic

material on goses cited in chapter one is not to deny any possibility of a connection between the entire collection of baraitot and the Talmud. Most likely, though, איןנו אכזב is a collection which was extant in part of the tannaitic period and thenceforth, but which was not widely known or greatly influential. It was only later that this material was picked up and quoted as the basis for halachic rulings.

Most of the laws given in this chapter about the goses flow quite logically from the stated belief that the goses is alive in every respect. Just as with any other living being, we are told by the texts quoted in this chapter that we cannot kill the goses or in any active way induce or expedite his death.

This ruling, הגוסס הרי הוא כמי לכל דבריו, clearly has emerged as the position vis a vis the goses in the Halachah.³⁴ From all that has appeared in this work thus far, it would seem that this is the only position represented in our halachic writings. However, I have not finished presenting the talmudic statements concerning the goses. In the next chapter I will show a final group of texts in which the goses is treated as dead. The significance of such a find will subsequently be discussed.

Notes

¹The Hebrew texts are quoted from Dov Zlotnick, The Tractate "Mourning" (New Haven: Yale University Press, 1966).

²See Masechet Semahot 1:4 and Isserles' commentary to Yoreh Deah 339:1.

³Mishnah Shabbat 23:5.

⁴See especially Semahot 1:5.

⁵See Shabbat 151a; Maimonides' Mishneh Torah, Book of Judges, Laws of Mourning 4:5; and Yoreh Deah 339:1.

⁶Zlotnick, The Tractate "Mourning," p. 99.

⁷Michael Higger, ed., מסכת שפחות (New York, 1931; reprint ed., Jerusalem: Makor Ltd., 1970), p. 13.

⁸Hermann L. Strack, Introduction to the Talmud and Midrash (The Jewish Publication Society of America, 1931; reprint ed., New York: Atheneum, 1974), pp. 119-20.

⁹Higger, מסכת שפחות, p. 13.

¹⁰Ibid., p. 14.

¹¹Isaac Hirsch Weiss, דור ודור Vol. 2 (Jerusalem: Zev Books, n.d.), p. 218.

¹²Ibid.

¹³Ibid., p. 219.

¹⁴Ibid.

¹⁵Zlotnick, The Tractate "Mourning," pp. 2-3.

¹⁶Ibid., pp. 3-4.

¹⁷Ibid., p. 4.

¹⁸Ibid., pp. 4-7.

¹⁹Ibid., pp. 8-9.

²⁰Ibid., p. 4.

²¹Nathan Zvi Friedmann, האם מותר לקרב מיתתו של החולה, באותו מצב הייאוש אשר המיתה תהיה לו לגאולה ופדות בצר מטעי, מיסוריו הקשים Vol. 1 (Tel Aviv:

Tarbuth, 1957), p. 123.

²²Ibid.

²³Ibid., p. 126.

²⁴Ibid., pp. 126-27.

²⁵Ibid., p. 128.

²⁶Ibid.

²⁷Jacob Reischer שבות יעקב Vol. 3 (Lemberg, 1897; reprint ed., Brooklyn, n.d.), responsum 75.

²⁸Ibid.

²⁹See, for instance, Weiss, נור ונר ונר ונר Vol. 2, p. 219 and Zlotnick, The Tractate "Mourning," p. 3.

³⁰Zlotnick, The Tractate "Mourning," p. 4.

³¹Weiss, נור ונר ונר ונר Vol. 2, p. 219.

³²Zlotnick, The Tractate "Mourning," p. 9.

³³Ibid., p. 8.

³⁴It cannot escape notice that the codes have used as a basis for judgment a source (Semahot) which is non-canonical. One wonders if this demonstrates a desire to avoid the talmudic stance on goses which, as we shall see, is far from monolithic.

CHAPTER THREE

It might be argued that there is really no need for this chapter. For, from מסכת שבתה through contemporary responsa literature, it appears that the Halachah concerning the legal status of the goses has been firmly and unquestionably established. What is the purpose of presenting and discussing talmudic materials which show the goses to be other than alive in all respects?

My answer would be that Jews have never slammed the door on halachic development. Throughout the generations the halachic system has thrived as a dynamic process, creatively encountering changing social conditions. Merely from the proliferation of responsa in recent decades, it is evident that this legal development has not ceased.

The Talmud remains the major source for halachic rulings. If it can be demonstrated that there exists in the Talmud a substantial body of opinion that the goses is juridically dead, then we have new grist for halachic decisions vis a vis the goses and a more fluid picture of his legal status.

It is true that the codes and responsa have not picked up this halachic strand in their legal decisions. Possibly this is because they were unaware of it. Possibly

they had cogent reasons for ignoring it and adhering to the position that the goses is alive in all respects. But, with the illumination of this talmudic view that the goses is, in fact, dead, we will be able to use halachic material not heretofore used, while improving our understanding of Jewish tradition's stance toward the goses.

Text: Yebamoth 120a (Mishnah), 120b (Gemara)

מתני' אין מעידין אלא על פרצוף פנים עם החוטם אע"פ
שיש סימנים בגופו ובכליו אין מעידין אלא עד
שתצא נפשו ואפ' ראוהו מגוייר וצ'לוב והחיה אוכלת
בו אין מעידין אלא עד ג' ימים ר' יהודה בן בבא
אומר לא כל האדם ולא כל המקום ולא כל השעות שוין

Translation:

We testify (about the dead) only on the basis of what is shown on the full face with the nose, in spite of the fact that there are marks on his body or his belongings. We may not testify until he has actually died, even if we have seen him with his arteries cut, crucified, or with a wild beast devouring him. We can give testimony only if we have seen him within three days (after his death). R. Judah b. Baba said: not is every man, and not is every place, and not are all times alike.

Text: Yebamoth 120b

גמ' ואפילו ראוהו מגוייר וכו': למימרא דמגוייר חיי
ורמינהי אדם אינו מטמא עד שתצא נפשו אפילו מגוייר
ואפ' גוסס טמא לא מטמא הא מיחייא לא חיי אמר
אביי לא קשיא הא ר"ש בן אלעזר הא רבנן דתניא מעידין
על המגוייר ואין מעידין על הצ'לוב רבי שמעון בן
אלעזר אומר אף על המגוייר אין מעידין מפני שיכול
לכוות ולחיות ומי מצית לאוקומי כר"ש בן אלעזר והא

קתני סיפא מעשה בעסא באחד ששילסלוהו לים ולא
 עלתה בידם אלא רגלו ואמרו חכמים מן הארכובה ולמעלה
 תנשא מן הארכובה ולמטה לא תנשא שאני מיה דמרוז
 מכה והאמר רבה בר בר חנה לדידי חזי לי ההוא טייעא
 דסקיל ספסירא וגיייריה לגמליה ולא אפסיקתיה לנערותיה
 אמר אביי ההיא כחישא הויה רבא אמר בסכין מלובנת
 ודברי הכל

Translation:

Even if they have seen him with his arteries cut,
 etc.: that is to say that a man whose arteries have been
 cut may live. This is refuted by the following: a man does
 not defile until his soul departs, even if he is one whose
 arteries have been cut and even if he is a goses. He does
 not cause defilement, but he is not alive.

Abaye said: there is no contradiction. One is the
 view of R. Simeon b. Eleazar, the other of the Rabbis who
 taught: we can testify (as to death) about one whose
 arteries are cut, but we cannot testify about the crucified.
 R. Simeon b. Eleazar said: we cannot even testify about
 one whose arteries have been cut because one can burn
 (cauterize) and he can live.

How can this be reconciled with the views of
 R. Simeon b. Eleazar? Lo, it is taught at the end: it
 happened in Asia that one was lowered into the sea and
 only his leg surfaced. And the Sages said: if it was
 above the knee, the wife may remarry. Below the knee,
 she may not remarry. Waters are different, as they irritate
 the wound. But, Rabbah bar bar Hana said: I myself have
 seen an Arabian caravan merchant who took a sword and cut

open his camel's arteries. But this did not cause his braying to cease. Abaye said: this was a weak (knife). Rabbah said: it was done with a glowing hot knife, and all agreed with this.

Commentary: According to the Mishnah, even though witnesses saw him as a מגויי, that is no evidence of death; one whose arteries are cut may live. But, this is refuted in the sugya by quoting Ohaloth 1:6 that one does not מטא before his soul has departed, although his arteries have been cut or he is a goses. As was pointed out in Chapter One of this work, Ohaloth 1:6 actually depicts the גוסס and מגויי as alive in every respect. However, it is clearly being invoked here to refute its and the Mishnah's position. The reasoning of the sugya is that the Ohaloth text says that a person doesn't מטא, but does not say he can live. There is an assumption in this section of our text that one who is a מגויי or a גוסס is not alive. This contradicts our Yebamoth Mishnah.

Thus, presented in the Gemara is the unmistakable position that the גוסס and the מגויי are not alive. They do not yet defile, but for either the מגויי or the גוסס, "הוא מיהייא לא חי", he is not alive. For our purposes it matters little that the Gemara misuses the Ohaloth Mishnah to establish its position. What matters is the clear intention to refute the Mishnah by introducing the view that the goses is in fact dead.

The rest of the sugya contains attempts to reconcile the points of view established in the Mishnah

and Gemara respectively. Abaye claims rather spuriously that no contradiction exists. Late in the sugya when Rabbah bar bar Hana tells of a camel which was a **מגוייר** and yet survived, Abaye countered that the knife was weak; in other words, were the knife stronger and the arteries really pierced (if the camel was really a **מגוייר**), the camel would be dead. So apparently, for Abaye, the **מגוייר** and, by extension from the Mishnah in Ohaloth, the **גוסס** are dead.

By saying the piercing of the arteries was done by a glowing hot knife, Rabbah is implying that the wound was thus cauterized, and the **מגוייר** can thereupon live. The "דברי הכל" concluding the sugya intimates that all agree that with the use of such a knife, which cauterizes while it pierces, the **מגוייר** (and the **גוסס**) can remain alive.

Even granting Rabbah's controversial claim that all parties indeed agree, such agreement would surround only the use of a **סכין מלובנת**. In discussion about the piercing of arteries in other parts of the sugya, there is no reason to think that a **סכין מלובנת** is called for. In other words, Rabbah does not remove the **קשיא**; the two distinct positions about the **מגוייר** and the **גוסס** continue to co-exist in the sugya.

Text: Nazir 43a

גם' ת"ר להחלו עד שעה שימות רבי אומר במוותם יטמא עד שימות מאי בינייהו אמר ר' יוחנן משמעות דורטין איכא בינייהו ר"ל אמר גוסס איכא בינייהו למאן דאמר מלהחלו אפילו גוסס למ"ד במוותם עד שימות אין גוסס לא ולמ"ד מלהחלו הכתיב במוותם מיבעי ליה לכורבי דתניא רבי אומר במוותם אינו מטמא אבל מטמא בנגעתם ובזיבתם ולמאן דאמר במוותם הא מיבעי ליה להאי סברא א"כ לימא קרא במוות מאי במוותם שמעת מינה תרתי ולמ"ד במוותם הכתיב להחלו להחלו להכי הוא דאתא במי טאינו מחולל יצא זה שמחולל ועומד ולמ"ד מלהחלו הא מיבעי ליה להאי סברא א"כ לימא קרא להחלו מאי להחלו שמעת מינה תרתי מיתיבי אדם אינו מטמא אלא עד שתצא נפשו ואפילו מגוייד ואפילו גוסס ולמ"ד מלהחלו הא קתני דאינו מטמא לענין טוויי עד דנפקא נפשיה לענין אתחולי הא איתהיל

Translation:

Our rabbis taught: "to profane himself"¹ signifies that (he can stay with him) until he dies. Rabbi said: "when they die"² signifies that he is only defiled when the other has died. What is the difference between them? R. Johanan said: they differ only as to the texts from which the law is derived. R. Lakish said: they differ as to the law about a dying man. The one who uses "to profane himself" includes goses as profanation. The one who uses "when they die" says (there is no prohibition) until he is dead, and so none in the case of goses.

The one who derives the law from "to profane himself", does he not have "when they die"? He needs this for the following of Rabbi: it has been taught that when Rabbi said "when they die," he does not defile himself, but he does defile himself (when in contact with those)

suffering from the plague or an issue.

The one who derives the law from "when they die" also requires it for this purpose. If this were all it were needed for, it would read "when dead." As it says "when they die," we infer from it both things.

The one who derives the law from "when they die," does he not have "to profane himself"? "To profane himself" signifies the following: that one who is not profaned (is obligated), but the one who is already profaned is freed from obligation.

The one who derives the law from "to profane himself" also requires it for this purpose. If this were its sole use, the Scripture would read: "to profane." As it says "to profane himself," we infer from it both things.

There is an objection: a man does not spread defilement until his soul departs. Not even one whose arteries have been cut or who is a goses. The one who derives the law from "to profane himself", is it not taught here that he does not spread defilement? Defilement is not spread until the soul departs, but there is already profanation (before death).

Commentary: Two biblical texts seemingly are interpreted to say that defilement is spread only after death. The Gemara asks: what is the difference between them? (The Gemara and R. Johanan feel that the rabbis and Judah Ha-Nasi are saying the same thing, thus implying that defilement and profanation are the same.) R. Lakish answers that

they differ as to the law about goses. The one who derives the law from "לְהַחֲלִי", "to profane himself", includes goses as profanation (goses profanes—he is no longer alive); the one who derives the law from "בְּמוֹתָם", "when they die", does not count a goses as defilement (the goses is still alive).

There is an objection to the view that a goses profanes; Ohaloth 1:6 is quoted to show that even a goses does not spread defilement until he dies (the very fact that this Mishnah which contends that a goses does not defile is marshalled as a contradiction to the view that a goses profanes demonstrates once again that defilement and profanation were regarded as the same). The way this sugya finally "solves" the contradiction between the positions that a goses profanes, on the one hand, and that a goses does not defile, on the other, is to make of defilement and profanation two different concepts and to say that one can profane without being dead, while one defiles only after death.

But, it is quite obvious that no distinction was made between defilement and profanation elsewhere in this sugya. Rather, they are seen as the same concept. The difference of opinion revolves around the question of whether the goses profanes (or defiles). Clearly, he would were he considered dead and would not if thought alive. So, stated in this sugya are two distinct positions, one that the goses is alive and does not defile, and the other that he is dead and does defile.

In stating that defilement occurs after death, but profanation can precede death, the authors of the sugya are asserting, in effect, that the goses is alive in any case. There exists here a scarcely veiled attempt to obliterate the position that the goses is dead. In spite of this effort, the view that the goses is considered dead is plainly present in the Gemara.

Text: Sanhedrin 78a

גמ' אמר רבא הכל מודים בהורג את הטרפה שהוא פסול בגוסס בידי שמים שהוא חייב לא נחלקו אלא בגוסס בידי אדם מר מרמי ליה לטרפה ומר מרמי ליה לגוסס בידי שמים מאן דמרמי ליה לטרפה מאי טעמא לא מרמי ליה לגוסס בידי שמים גוסס בידי שמים לא איתעביד ביה מעשה האי איתעביד ביה מעשה ומאן דמרמי להי לגוסס בידי שמים מ"ט לא מרמי ליה לטרפה טריפה מהחכי סימנים הא לא מהחכי סימנים

Translation:

Rabbah said: all agree--one who kills the terefah is exempt; one who kills one dying through an act of God is liable. There is a dispute only about one dying through an act of man: one likens him to a terefah, and one likens him to one dying through an act of God. The one who likens him to a terefah, why does he not liken him to one dying through an act of God? Because nothing has been done to the one dying through an act of God; something has been done to this one. And the one who likens him to one dying through an act of heaven, why does he not liken him to a terefah? A terefah has his vital organs cut; this one does not have his vital organs cut.

Commentary: We are introduced to two types of גוסס--

גוֹסֵס בִּידֵי אָדָם and גוֹסֵס בִּידֵי שָׁמַיִם. There is no question that the גוֹסֵס בִּידֵי שָׁמַיִם is alive; one who kills him is חַיִּיב. There is a dispute, however, about the גוֹסֵס בִּידֵי אָדָם, one dying through an act of man. Some treat him as alive, like the גוֹסֵס בִּידֵי שָׁמַיִם, others as dead, like the טְרֵיפָה. The גוֹסֵס בִּידֵי אָדָם, though, is different from both the גוֹסֵס בִּידֵי שָׁמַיִם and the טְרֵיפָה; he does not fit completely into either category.

The text does not try to resolve whether the גוֹסֵס בִּידֵי אָדָם is alive or dead. This time both positions are allowed to stand without an attempt to stifle the latter.

This is the only place in the Babylonian Talmud where such types of גוֹסֵסִים are discussed. Elsewhere, only the term goses is used. We do not know whether it refers to גוֹסֵס בִּידֵי אָדָם or גוֹסֵס בִּידֵי שָׁמַיִם, or whether the distinction made here is really valid for the rest of the Talmud.

Text: Arachin 6b (Mishnah), 6b (Gemara), 6b - 7a (Gemara)

מתני' הגוסס והיוצא ליהרג לא נידר ולא נערך ר' חנינא
בן עקיבא אומר נערך מלבי שדמיו קצובין רבי יוסף
אומר בודר ומערין ומקריש ואם הוּזַק חַיִּיב

Translation:

One who is a goses or is about to be killed cannot have his worth vowed or be subject to valuation.

Ra. Hanina ben Akabia says: he can be made the subject of valuation since his price is fixed. R. Jose says: he may vow another's worth, evaluate and sanctify, and if

he causes damage, he is obligated (to make restitution).

Text: Arachin 6b (Gemara)

גמ' בשלמא גווס לא נידר דלאו בר דמים הוא ולא נערך
דלאו בר העמדה והערכה הוא אלא יוצא ליהרג בשלמא
לא נידר דלאו בר דמים הוא אלא לא נערך אמאי לא...

Translation:

Granted that a goses cannot have his worth vowed since he has no worth and cannot be evaluated because he is not fit to be set before the priest and be evaluated. But one about to be killed, granted he cannot have his worth vowed since he has no worth, but why can he not be made the subject of valuation?...

Commentary: Chapter twenty-seven of Leviticus discusses the ערך, value, of a person which is vowed to the Sanctuary. One's ערך is determined solely by his age and not by physical or mental condition (or even, for that matter, by whether he is living or dead). So, if a person is obligated to pay the ערך of another to the Sanctuary, all he generally needs to know is the other person's age. However, from the verse "והעמידו לפני הכהן והעריך אתו הכהן" ³ "and he shall be set before the priest, and the priest shall value him," the Gemara has interpreted that anyone who can be set before the priest can be evaluated, and anyone who cannot be thus set cannot be evaluated.⁴ In our passage we are told that the goses falls into the category of one who cannot be set before the priest and hence who cannot be נערך. R. Hanina ben Akavia rejects

this view in the Mishnah, claiming instead that the גוסס and the יוצא ליהרג can be נערך, since their respective prices are established by their age and by no other criteria. Obviously, the Gemara does not support his contention.

When the Mishnah talks of worth vowed, on the other hand, it speaks of the actual worth of the individual. Here, who one is and in what condition are of paramount importance. The Gemara makes explicit that the גוסס and the יוצא ליהרג cannot have their worth vowed because they have no worth. It is indeed impossible to say about a living human being that he has no worth. It is only upon acquiring the status of a dead entity that a person truly becomes worthless. Apparently, the גוסס and the יוצא ליהרג are regarded in such status in this sugya.

The גוסס and the יוצא ליהרג are given the same status in this sugya. Each is not subject to valuation, and each cannot have his worth vowed for the same reason: he has no worth. To bolster my claim that this is because they are viewed as legally dead, it is important to see if the legal status of the יוצא ליהרג is anywhere firmly established.

In Sanhedrin 85a is found that if a son of a יוצא ליהרג hits and curses his father, he is חייב; however, if another person hits and curses the same man, he is גסור. The question is logically asked: what is the difference between a son and another person? The answer finally given is that the son cannot be made an agent of the Bet Din to

smite and curse his father. His obligation to honor his father is so firm that it continues after his father's death.⁵ So, he is **חייב** for these actions by virtue of being a son of the **ליהרג**.

But, another person is **פטור**, explains the text, because the **ליהרג** is already a **קטילא**, a dead man. As he has the status of a dead entity, one who inflicts blows or curses upon him is no longer held liable. In fact, speaking of a **ליהרג**, the rabbis quote the sages as saying that it is impossible to reverse the legal decision rendered.⁶ His status is solidly established. Since his status is conceptually linked to that of the **goses** in the *Arachin* sugya, the status of the **גוסס** therein is hardly in doubt. He is legally dead.

Text: *Arachin* 6b - 7a

רבי יוסי אומר נזדר ומעריך כו': ותנא קמא מי
קאמר דלא אלא בנזדר ומעריך ומקדיש כ"ע לא פליגי
כי פליגי באם הזיק תנא קמא סבר אם הזיק אינו חייב
בתשלומין ורבי יוסי סבר אם הזיק חייב בתשלומין
במאי דמיפליגי אמר רב יוסף במלוה על פה גובה מן
היורשין קמיפלגי תנא קמא סבר מלוה על פה אינו
גובה מן היורשין ורבי יוסי סבר מלוה על פה גובה
מן היורשין רבא אמר דכ"ע מלוה על פה אינו גובה מן
היורשין והכא במלוה כתובה בתורה דמיפלגי תנא קמא
סבר מלוה כתובה בתורה לאו ככתובה בשטר דמיא ורבי
יוסי סבר ככתובה בשטר דמיא ואיכא בהנמי לה אהא היוצא
ליהרג הוא שחבל באחרים חייב אחרים שחבלו בו
פוטרינן רבי שמעון בן אלעזר אומר אף הוא אם חבל
באחרים פטור שלא ניתן לחזרת עמידת בית דין מכלל
דנא קמא סבר ניתן לחזרת עמידת בית דין יוסף
במלוה על פה גובה מן היורשין קמיפלגי תנא קמא
סבר מלוה על פה גובה מן היורשין ור"ש בן אלעזר
סבר אינו גובה מן היורשין רבא אמר דכ"ע מלוה על
פה אינו גובה מן היורשין והכא במלוה כתובה בתורה
ככתובה בשטר דמיפלגי תנא קמא סבר ככתובה בשטר
דמיא ור' שמעון בן אלעזר סבר לאו ככתובה בשטר
דמיא

Translation:

R. Jose says: he may vow and evaluate etc.: Did the first tanna say that? There is actually no dispute about vowing, evaluating and sanctifying. There is a dispute concerning if he causes damage. The first tanna says that if he causes damage, he is not obligated to make restitution. R. Jose says: if he causes damage, he is obligated to make restitution.

What are they disputing? R. Joseph said: they are disputing whether an oral debt can be collected from the heirs. The first tanna says an oral debt cannot be collected from the heirs, and R. Jose says an oral debt can be collected from the heirs. Rabbah said: all are agreed that an oral debt cannot be collected from the heirs. They are disputing here a written debt derived from the Torah. The first tanna holds that a written debt derived from the Torah is not like one written in a document. R. Jose believes it is like one written in a document.

There are those who teach this as referring to the following: if one who is about to be killed wounds others, he is obligated. Others who wound him are exempt. R. Simeonben Eleazar says: also he who wounds others is exempt because he cannot be brought before the Bet Din again. From this it would seem that the first tanna believed he could be brought before the Bet Din again.

R. Joseph said: they are disputing whether an oral

debt can be collected from the heirs. The first tanna believes an oral debt can be collected from the heirs, and R. Simeon ben Eleazar believes it cannot be. Rabbah said: all are agreed that an oral debt cannot be collected from the heirs. Here they are disputing whether a written debt derived from the Torah is like one written in a document. The first tanna thinks it is like one written in a document. And R. Simeon ben Eleazar thinks it is not like one written in a document.

Commentary: The Gemara states that the first opinion in the Mishnah does not conflict with that of R. Jose concerning נזיר, זכרין, and מקדש. This is by no means clear from the Mishnah. We must ask, if there was indeed no disagreement, why did R. Jose feel compelled to say that the גוסס and the יוצא ליהרג may vow another's worth, evaluate and sanctify? Such a categorical denial of a dispute on these points by the Gemara appears baseless. It is quite possible that the tanna kamma believed the goses and the יוצא ליהרג unable to perform these acts.

The Gemara does feel that the two tannaim are in dispute over whether the גוסס or יוצא ליהרג is חייב when he causes damage. This is a dispute of some magnitude, since to claim that if one causes damage, he is not obligated to make restitution is to say that the perpetrator is no longer considered alive.

The rabbis are obviously uncomfortable with the view that the tanna kamma held this position and with the

implication that the גוסס and the ליהרג are legally dead. So, they ask "במאי קמיפלגי" and claim that the argument is really about oral debts and written debts. A cursory glance at the Mishnah will convince anyone that this is not the subject of a dispute between the tanna kamma and R. Jose. This certainly appears to be an attempt to divert attention and discussion from the Mishnah and its Gemara and from the issue of whether the גוסס and the ליהרג are legally dead or alive. By asking "במאי קמיפלגי" the rabbis insinuate that, unlike the previous Gemara material, they now understand what the Mishnah is talking about. This may have been their way, albeit a far fetched one, of subverting the position that the גוסס and the ליהרג are juridically dead.

Text: Kiddushin 78b (Mishnah), 78b (Gemara)

האומר בני זה סמור אינו נאמן ואפילו שניהם מודים
על העובר שבמעיה סמור הוא אינם נאמנים רבי יהודה
אומר נאמנים

Translation:

If one says: this son of mine is a bastard, he is not believed. And even if both acknowledge that the fetus in her womb is a bastard, they are not believed. R. Judah says: they are believed.

Text: Kiddushin 78b

רבי יהודה אומר נאמנים: כדתביא יכיר יכירנו
לאחרים מכאן אחר רבי יהודה נאמן אדם לומר זה בני
בכור וכסם נאמן אדם לומר זה בני בכור כן נאמן
אדם לומר זה בן גרושה וזה בן חלוצה וחכמים אומרים
אינו נאמן אחר ליה רב נאמן בר יצחק לרבה גמלא
לרבי יהודה היינו דכתיב יכיר אלא לדבון יכיר למה
לי בצריך הכירא למאי הלכא למה לו פי טנים
טנים למה לי קרא סגו דאי בעי מיתבה ליה מתנה

ט"י לא יתבי ליה בנכסיה שנפלו לאחר מיכן ולרבי
מאיר דאמר אדם מקנה דבר שלא בא לעולם יכיר לפה
לי שנפלו לו כשהוא גוסס

Translation:

R. Judah says, they are believed: as it was taught, "he shall acknowledge"⁷ (the first-born)--he shall acknowledge him before others. From this R. Judah said: a man is believed when he says "this is my first-born son." And just as a man is believed when he says "this is my first-born son", so is a man believed when he says "this is the son of a divorced woman" and "this is the son of a halizah". And the sages say: he is not believed.

R. Nahman son of Isaac said to Rabbah: it is clear why R. Judah needs the text "he shall acknowledge." But, for the rabbis, why do they need "he shall acknowledge"? Where acknowledgement is necessary. For what is this ruling? To give him a double portion? That is obvious. What is the need for a verse, for if he wanted to make him a gift, could he not do so? This refers to property which fell to him afterwards. But to R. Meir who said: man can transfer a thing which does not exist, why is "he shall acknowledge" needed? When it fell to him while he is a goses.

Commentary: The text quotes a related baraita of R. Judah. Later rabbis try to explain why "יכיר" is needed. It is clear to them why R. Judah needs it, but why do the rabbis need it? Where acknowledgement of the first-born is necessary. When is this? Not in order to give a double

portion, because if he wants to give a gift he can do so. How about vis a vis property that he will get in the future? But R. Meir says man can transmit something non-existent. One does not have to declare the first-born in this case. R. Meir declares that acknowledgement is necessary for the time when property will come to he who is a goses.

Normally, people can acquire property and give possession of their wealth as they wish. Obviously, R. Meir is putting the goses in a separate category; he cannot participate in קניין as other human beings do (and for Meir is thus not חי לכל דבריו, alive in all respects). So, a man must determine his first-born in anticipation of this unfortunate circumstance. The first-born would inherit the property which came to his father when he is a goses.

A larger discussion of inheritance and primogeniture, also containing this sugya, not all germane to this study, can be found beginning on the bottom of Baba Bathra 127a and continuing on 127b (Mishnah on 126b).

Text: Pesahim 97b - 98a (Mishnah), 98a (Gemara)

מתני' המפריש נקבה לפסחו או זכר בן שתי שנים ירעה עד שיסתאב וימכר ויגלו דמיו לנדבה לסלמים המפריש פסחו וסת לא יביאנו בנו אחריו לשם פסח אלא לשם סלמים

Translation:

One who sets aside a female or a two-year old male for his Passover-offering, it should be grazed until it

becomes defiled. Then it is sold and its money spent for a voluntary-offering or a peace-offering. One who separates his Passover-offering and dies, his son after him must not bring it as a Passover-offering, but as a peace-offering.

Text: Pesahim 98a

גמ' המפריש פסחו וכו': ה"ר המפריש את פסחו ומת אם בנו ממנוה עמו יביאנו לשום פסח אין בנו ממנוה עמו יביאנו לשום שלמים לשטה עשר ליי"ו אין לש"ו לא קא סבר נדרים ונדבות אין קריבין ביי"ט דמית האב אימת אילימא דמית קודם חצות בנו ממנוה עמו יביאנו לשום פסח הא חלה אבינות עילויה מעיקרא אלא דמית אחר חצות אין בנו ממנוה עמו יביאנו לשום שלמים הא קבעתיה חצות אמר (רבא) לעולם דמית קודם חצות ומאי יביאנו לשום פסח שני אביי אמר לצורדין קתני מת אחר חצות בנו ממנוה עמו יביאנו לשום פסח מת קודם חצות אין בנו ממנוה עמו יביאנו לשום שלמים רב שרביא אמר לעולם דמית לאחר חצות וכגון שהיה אביו גוסס בחצות רב אשי אמר לעולם דמית לאחר חצות ור"ש היא דאמר אין בעלי חיים נדחין רבינא אמר כגון שהפרישו אחר חצות ומתו בעלים אחר חצות וקא סבר חצות קבע

Translation:

One who sets aside his Passover-offering etc: our rabbis taught: a man who sets aside his Passover-offering and dies, if his son is counted with him, he must bring it as a Passover-offering. If his son is not counted with him, he must bring it as a peace-offering on the sixteenth. On the sixteenth and not the fifteenth; it is thought that vows and voluntary offerings are not sacrificed on festivals.

When did the father die? If you said that he died before midday, (then how is it said) if his son is counted with him, he should bring it as a Passover-offering? Certainly mourning had already come upon him. If he died after midday, if his son is not counted with him, he

must bring it as a peace-offering. But midday has stamped it.

(Rabbah) said: actually, it is meant that he died before midday, and what does "he must bring it as a Passover-offering" mean? For the second Passover. Abaye said: it is taught incidentally: if he died after midday and his son is counted with him, he must bring it as a Passover-offering. If he died before midday and his son is not counted with him, he must bring it as a peace-offering.

R. Sherabia said: actually, it means that he died after midday when, for example, his father was a goses at midday. R. Ashi said: actually, it means that he died after midday which is like R. Simeon who said: live animals are not rejected. Rabina said: it means, for example, where he sets it aside after midday and the owners died after midday. And it is thought, midday sets it.

Commentary: The Mishnah says that if a man separates his Passover-offering and dies, his son after him must not bring it as a זבח, but as a שלמים.

The rabbis ask: when did the father die? Problems are seen with placing the time of death either before or after midday. Before: the obligation of mourning would precede obligation vis a vis Passover. Afterwards: midday would have stamped his offering as a זבח, so how could he bring it as a שלמים?

Rabbah says the Mishnah is talking about when the father died before midday. Abaye interprets it that if he died after midday and his son is counted with him, he brings

it as a Passover-offering. If he died before midday and his son is not registered with him, he brings it as a peace-offering. R. Sherabia (pupil of Rabbah and Abaye) says that the Mishnah speaks of when the father died after midday in such a case where, for example, the father was a goses at midday.

Usually, midday establishes the Passover. R. Sherabia says the father died after midday. This should mean that the חוב has already been established. How, then, could it be brought as a שלמים? Sherabia gives as an example the case where the father was a goses at midday. He is not yet one hundred percent dead; that is to say, his status does not yet call for his being mourned. So, there is no question of the mourning obligation preceding the Passover obligation. But, obviously, according to Sherabia, midday does not establish the חוב for the goses. Hence, the son can bring the offering as a שלמים consistent with the Mishnah.

For Sherabia, then, midday does not establish the חוב for the goses. He seems to be giving the goses a different status from other people. It must be remembered that in Jewish law all vital signs of life need not be extinguished (and the mourning obligation need not have begun) for an individual to be juridically dead.⁸

Concluding Remarks:

It has been my purpose in this chapter to demonstrate that the attitude toward the goses contained in מסכת שמחות, the codes and many responsa, that he is הי לכל דבר, is not the only position vis a vis the goses evident in the Talmud. From a close reading of these halachic passages in this chapter, it is possible to discern another attitude with regard to the goses--that he is legally dead. In some of these texts this stance is stated rather explicitly. In others, it is more implicit. The last two sugyot did not ostensibly exhibit this view, but did give the goses a status distinct from living humans.

Thus has been found and isolated this distinct strand concerning the goses woven through the Talmud. It is undoubtedly a minority position, but it is there nevertheless, to be studied, developed and perhaps applied to modern problems.

That this view--the goses is juridically dead--is not the dominant judgment found in the Talmud is of no surprise. It is perhaps more surprising that it can be found and traced at all. For we have seen attempts to destroy, denigrate or deemphasize this view in this chapter. Earlier we witnessed what most probably constitutes a polemic against this position from some late amoraim. The stance that the goses is legally dead was clearly not always looked upon with favor, to put it mildly. It is altogether possible that even stronger

expressions of this attitude were squelched or were present among the tannaim and the amoraim, but never made it into the Talmud. We can be a bit amazed and somewhat gratified that this different opinion of the goses' status was not completely purged from this major halachic compendium. The ramifications of the presence of this position in the Talmud will be discussed in the concluding chapter along with some hypotheses as to why this stance was ill-treated by some rabbis of the talmudic period and ignored by later halachic authorities.

Notes

¹Leviticus 21:4.

²Numbers 6:7.

³Leviticus 27:8.

⁴Arachin 4a.

⁵See the next Mishnah--Sanhedrin 85b--in which one who curses his parents after their death is חייב. Curiously enough, though, the son is not חייב for smiting them after their death.

⁶Sanhedrin 44b.

⁷Deuteronomy 21:17.

⁸See my discussion of the terefah in the introduction to this thesis.

CONCLUSION

In the introduction to this thesis I raised the issue whether the goses ever possessed the same legal status as the terefah, juridically dead. I hope I have succeeded in demonstrating this to be the case. Though not the dominant position to be sure, this stance is evident in various sugyot in the Talmud. Still to be confronted is the question of why the view that the goses is legally dead really matters, especially since it is not cited at all in later halachic compendia.

My answer is three-fold. First, I believe that only when shown the range of attitudes held by our sages can Jews who derive values and guidance from their religion make informed Jewish judgments. After a thorough presentation of the tradition on any given issue, Jews should have a better understanding of what viewpoints may legitimately be considered Jewish and may make critical decisions according to these guidelines. In this case the illumination of the stance that the goses is legally dead may broaden the medical options contemplated by Jews.

Second, that later legal collections have not utilized the notion of the goses being juridically dead in no way prevents rabbinical authorities from doing so in the future. As early a source as Mishnah Eduyoth 1:5 shows support for the use of a minority view as possible halachic

precedent.¹ If Jewish law is to avoid crippling stagnation, it will become necessary to look beyond the codes to find material not previously quoted which may become the basis for future juridical decisions. At least, these sugyot on goses must be part of any impartial responsum on the status of the goses in the face of contemporary medical and technological advances not known to former אבות.

Third, the utilization of this minority stance on goses would raise intriguing possibilities and problems in the area of medical ethics. For if the goses is regarded as possessing the same status as the terefah, then it stands to reason that one who kills him is exonerated from guilt.

I have already pointed out that a legal רופא does not constitute medical or ethical license. Moreover, Maimonides' statement that one is exempt from the laws of man may imply that he is not seen as guiltless in the eyes of God.² Nevertheless, whether a doctor or anyone else made use of direct or indirect, active or passive means to bring about the patient's death, he could not be successfully prosecuted in Jewish law, given this understanding of the goses. This would be the case whether, for example, the doctor injected lethal drugs, removed an artificial respirator or withheld treatment.

Assuming goses or for that matter terefah can be clearly defined, hardly an insignificant hurdle, we can readily see how such a ruling could profoundly influence

Jewish approaches to medicine. Relatively free from legal encumbrance, the doctor would now have greater latitude from the perspective of Jewish law to assess the case of a goses and to do, perhaps in consultation with other physicians, family, etc., what he sees fit, even if this would involve acts of euthanasia.

At this moment there is little the Halachah prescribes for relieving the agony of the patient and family. The law rather firmly ties the doctor's hands. A ruling based on the minority position regarding goses outlined in this work could loosen the reins upon the doctor. He might decide, for instance, that the efforts now expended to keep a hopelessly dying goses alive can be reduced or suspended.

Among the dangers of releasing the doctor from judicial strictures would be investing him with nearly unlimited power to decide who shall live and who shall die. The physician could "play God," as it were, with legal impunity. We have learned too many painful lessons of late to trust people in authority to abide by an inner ethical sense even that which comes from יראת שמים, fear of God. Some type of ethics committee would inevitably have to be set up to keep watch over medical practitioners.

Perhaps we can now understand more clearly why later rabbinic authorities may have ignored this talmudic viewpoint uncovered in this thesis. We may also understand why the position was subjected to such abuse even within the

Talmud. Quite possibly the reason was that the rabbis did not wish to permit anybody to "play God." Human life was too sacred to them to leave judgments as to who shall live and who shall die in the hands of anyone but God. Any support for the view that the goses, a term which certainly encompassed a great percentage of the dying, is juridically dead could permit human beings to perform actions which would terminate signs of life in fellow human beings without legal consequences. The rabbis may have felt, in addition, that such a situation would lead to an overall debasement of the value of human life, something they could in no way condone.³

Indeed, adopting the position that the goses is חַי וְקַי is life-affirming. A monolithic stance such as the one taken by the post-talmudic authorities cited in this thesis is also convenient, for it permits the avoidance of knotty problems. Under halachic rubrics like those in the codes, there is no need to determine precisely what a goses or a terefah is. Similarly, many dilemmas of an ethical, religious and legal nature are also avoided.

What I hope I have achieved in this dissertation is to convey the sense that Jewish tradition is far from monolithic in its approach to the goses. Certainly once we determine the possibility that a person can exhibit conventional signs of life and even, as Maimonides has stated, be able to eat, drink and walk in the marketplace⁴, yet nevertheless be considered dead (and that the goses

is at times thought of in like status), we can begin to appreciate the complexity of Jewish thought on life and death issues.

I know full well that I have not solved any of the major contemporary halachic problems related to euthanasia and the treatment of the terminally ill. In fact, I have most likely complicated more than I have clarified. However, muddying the waters was part of my intention. I have tried to show that we can not assert that the goses is alive in all respects and then feel confident that the Jewish view toward euthanasia is clear. Jewish tradition not only has breadth; it also has great depth, tremendous complexity. That, hopefully, has come through in this work. If after reading this paper, the reader cannot state Judaism's view of the goses in a single sentence, then my efforts have borne fruit, and the process of dealing with a complex issue with all sides of the question before us has been started.

Notes

¹The Mishnah reads: "ולמה מזכירין דברי היחיד בין המרובין. הואיל ואין הלכה אלא כדברי המרובין. שאם יראה ב"ד את דברי היחיד ויסמוך עליו שאין ב"ד יכול לבטל דברי ב"ד הברו עד שיהיה גדול ממנו בחכמה ובמנין. היה גדול ממנו בחכמה. אבל לא במנין. במנין. אבל לא בחכמה. אינו יכול לבטל דבריו עד שיהיה גדול ממנו בחכמה ובמנין."

²See Maimonides' Mishneh Torah, Book of Damages, Laws of Homicide and Life Preservation 2:8.

³See, for example, Mishnah Sanhedrin 4:5.

⁴Maimonides, Mishneh Torah, Laws of Homicide and Life Preservation 2:8.

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