David Levy
Dr. Chernick
Text Immersion Paper 1

לא היה ולא עתיד להיות

Introduction

The phrase "לא היה ולא עתיד להיות" is uncommon in rabbinic literature. This phrase appears to rebuff bluntly a Torah law stating that these rules were never actually practiced nor ever will be practiced. The question of how and why such a tradition came into place is an issue. The phrase itself occurs seven times in Rabbinic literature, relating to four distinct topics. How did the rabbis decide on these four topics to be לא היה ולא עתיד להיות? What is their common thread, and why are they singled out in rabbinic literature as actions that go beyond the pale?

The implications of this question also have to do with whether or not the Rabbis perceived ethics and their own moral imperatives as ever superseding Torah law. This idea, of ethics trumping the Torah will be discussed in detail in a attempt to determine how text from the Torah can be tempered for the society in which the Rabbis of lived in. This has ramifications for our own lives, and how we interact with Halakhah and Torah text.

Text Analysis

While there are four large topics, the phrase appears in seven instances within the corpus of rabbinic literature. In order to approach these questions, the first item to consider is the relationship between these seven instances with each other, and their context in rabbinic literature. The seven sources in question relate to four topics:

בן סורר ומורה, בית המנוגע, עיר הנדחת, and איוב. The text relating to איוב is the only one that only has one occurrence and is also in the Talmud Yerushalmi. The other three textual sources appear both in the Babylonian Talmud and in the Tosefta, with some variation between their formulations.

The text referring to איוב appears in the ySotah 5:8 (20d). The text states:

> רבי שמעון בן לקיש אמר איוב לא היה ולא עתיד להיות מחלפה שיטתיה דר' שמעון בן לקיש תמן אמר רבי שמעון בן לקיש בשם בר קפרא בימי אברהם אבינו היה והכא הוא אמר הכין אלא הוא היה וייסורין לא היו ולמה נכתבו עליו אלא לומר שאילולי באו עליו היה יכול לעמוד
>
> Rabbi Simeon ben Lakish said, "Job never existed and never will exist." The opinions attributed to R. Simeon b. Lakish are at variance with one another. Rabbi Simeon ben Lakish said in the name of Bar Kapara "He lived in the time of Abraham Avinu." But here he has said this: "But he really did exist, while the suffering ascribed to him never happened." And why were the sufferings ascribed to him? To say that if they had happened he would have been able to endure them.

The above quotation from the Yerushalmi suggests that Job did exist, but he was not put through suffering; since it is a deeply troubling image to consider that G-d would try someone in this way as a mere wager. Here the idea of לא היה ולא עתיד להיות are not very revolutionary. The books of כתובים have less stature than Torah to begin with, and the idea that a text from כתובים, should be seen as an allegory is consistent with other books from כתובים.[1] For example, Song of Songs was strongly presented as an allegory by our

1. Ginsberg, Harold Louis, et al. "Job, Book of." Encyclopaedia Judaica. Ed. Michael Berenbaum and Fred Skolnik. 2nd ed. Vol. 11. Detroit: Macmillan Reference USA, 2007. 341-359. Gale Virtual Reference Library. Web. 7 Sep. 2011.

Sages.[2] While there are rabbinic sources that argue that Job is in fact a historical character,[3] the implicationס of Job being a real person was too hard for some Rabbis to handle.

The remaining three texts all appear on Sanhedrin 71a, and in the Tosefta. The case of בית המנוגע, is slightly different from the cases regarding בן סורר and עיר הדחת, thus it will be presented first. The first presentation is the text as it is presented in the tNegaim 6:1:

> בית המנוגע לא היה ולא עתיד להיות למה נכתב אלא לומר לך דרוש וקבל שכר ר' אלעזר בר' שמעון אומר מקום היה בתחום עזה והיו קורין אותו חורבתה סגירתה ר' שמעון בן יהודה אומר איש כפר עכום מקום היה בגליל שהיו מציינין אותו שהיו אומרים אבנים מנוגעות היה בו:
>
> There never was a בית המנגוע and there never will be. Why was it written then? To study and receive reward. Rabbi Eleazar son of Rabbi Shimeon said there is a place in the realm of Azza that was called "enclosed ruins." R' Shimeon son of Yehudah said that he met a man from Kfar Akum that said that in a place in the Galil, that was marked off and it was told that leprous stones were there.

The laws regarding the בית המנגוע are rather complex. The description is detailed in the biblical text[4] and discusses the steps for slowly destroying someone's home if the house is afflicted with *Tzara'at*. The בית המנגוע does not initially appear to be terrible enough to be excised from practiced law. On the face of it, it doesn't seem that extreme, it is a ritual to

---

2. Schoville, Keith N., S. David Sperling, and Bathja Bayer. "Song of Songs." *Encyclopaedia Judaica*. Ed. Michael Berenbaum and Fred Skolnik. 2nd ed. Vol. 19. Detroit: Macmillan Reference USA, 2007. 14-20. *Gale Virtual Reference Library*. Web. 9 Sep. 2011.
3. Bava Batra 14b–16b and others
4. Leviticus 14:34-45

ensure that there is nothing impure about someone's house. However as the implications of the text become clearer, the process becomes more troublesome. It requires a person to evacuate their home with their belongings for at least a week and potentially forever for the house could be destroyed. The financial and personal impact upon a person whose home was thus afflicted is rather horrendous. The challenge of needing to raze someone's home due to a the appearance of *tzara'at* seems to be beyond the pale. Some Rabbis seem tohave held that ritual as described in Leviticus and the Mishnah was too taxing upon the community and the people in question and thus should not happen. Without the eye witness account of its destruction the reality of the בית הבמנגוע appears more dubious, simply a matter of hearsay.

The presentation of the situation of the בית המנגוע on bSanhedrin 71a is almost exactly the same as the text from the Tosefta , however it includes some stipulations for declaring of the house a בית מנגוע if it ever were to occur:

דתניא בית המנוגע לא היה ולא עתיד להיות ולמה נכתב דרוש וקבל שכר כמאן כר' אלעזר בר' שמעון דתנן ר' אלעזר ברבי שמעון אומר לעולם אין הבית טמא עד שיראה כשתי גריסין על שתי אבנים בשתי כתלים בקרן זוית ארכו כשני גריסין ורחבו כגריס מאי טעמא דר' אלעזר ברבי שמעון כתיב קיר וכתיב קירות איזהו קיר שהוא כקירות הוי אומר זה קרן זוית תניא אמר רבי אליעזר בר' צדוק מקום היה בתחום עזה והיו קורין אותו חורבתא סגירתא אמר רבי שמעון איש כפר עכו פעם אחת הלכתי לגליל וראיתי מקום שמציינין אותו ואמרו אבנים מנוגעות פינו לשם:

> There never was a בית המנגוע, and never will be. Then why was its law written? That you may study it and receive reward. With whom does it agree? With R. Eliezer son of R Simeon. For we learnt: R. Eliezer son of R. Simeon said: A house never becomes unclean unless a plague spot appears, the size of two beans, on two stones in two walls, and at the angle of the walls; It must be two beans in length, and one in breadth. Why so? Because the Bible refers to the walls and also to the wall: where is

one wall as two? At its angle.

> It has been taught: R. Eliezer son of R. Zadok said: There was a place within a Sabbath's walk of Gaza, which was called the leprous ruins. R. Simeon of Kefar Acco said: I once went to Galilee and saw a place, which was marked off, and was told that leprous stones were thrown there!

The text in the Talmud adds in information about the house shape and size, which presents from the Talmud's perspective is why this never was or never will be. This is simply because the specific expectations of how the *tzara'at* needs to appear, seem to be extremely unlikely. As noted above, it needs to be a large spot at the angle of a single wall, exactly the same amount on each part of the wall. With these particular expectations it is unlikely in the extreme that this could actually occur.

The other item of note is that the attributions of the rabbis is slightly different. In the Tosefta, the text attributes the information to R' Eliezer ben R. Simeon, versus R Eliezer ben R. Zadok in the Talmud. The reason behind this deviation is a matter of scholarly debate. The first main argument is that the Rabbis who created the Talmud had access to other tanaitic sources that were parallel to the Tosefta and the Mishnah that we have today. These tannaitc sources no longer exist outside of the Babylonian Talmud. The other argument is that the braitot in question are "...the end-product of a long process of study and interpretation, emendation, and reformulation..."[5] Thus the text was modified as

---

5. Wald, Stephen G. "Talmud, Babylonian." *Encyclopaedia Judaica*. Ed. Michael Berenbaum and Fred Skolnik. 2nd ed. Vol. 19. Detroit: Macmillan Reference USA, 2007. 470-481. *Gale Virtual Reference Library*. Web. 14 Sep. 2011.

needed, or accidentally through because of oral transmission or scribal errors. Both positions do provide an answer to the issue, and present different perspectives on the Babylonian Talmudic text.

The third concept is the עיר הנדחת, as described in the biblical text in depth in Deuteronomy 13:12–18. The text referring to the עיר הנדחת in tSanhedrin 14:1 is below:

עיר הנדחת לא היתה ולא עתידה להיות ולא נכתבה אלא לומר דרוש וקבל שכר

> There never was an Ir Nidachat and there ever will be such, they why was it written? To teach to study and gain reward.

The Talmudic text takes this initial *baraita* and expands upon it in tSanhedrin 71a:

עיר הנדחת לא היתה ולא עתידה להיות ולמה נכתבה דרוש וקבל שכר כמאן כר' אליעזר דתניא רבי אליעזר אומר כל עיר שיש בה אפילו מזוזה אחת אינה נעשית עיר הנדחת מאי טעמא אמר קרא (דברים יג) ואת כל שללה תקבוץ אל תוך רחבה ושרפת באש וכיון דאי איכא מזוזה לא אפשר דכתיב (דברים יב) לא תעשון כן לה' אלהיכם אמר רבי יונתן אני ראיתיה וישבתי על תילה

> It has been taught: 'There never was a condemned city, and never will be.' — It agrees with R. Eliezer. For it has been taught, R. Eliezer said: No city containing even a single mezuzah can be condemned. Why so? Because the Bible states: "And thou shalt gather all the spoil of it in the midst of the street thereof and shalt burn [them]. But if it contains a single mezuzah, this is impossible, because it is written, Ye shall not do so unto the Lord your God. R. Jonathan said: I saw it, [a condemned city] and sat upon its ruins.

As is clarified also in Sanhedrin 111b-113b, the laws for the עיר הנדחת, are extremely meticulous. The expectation is that even a city was to be accused of being an עיר הנדחת, it would require a very particular series of events in order for it to be deemed a true עיר הנדחת. However, there is the simple issue that isn't mentioned here, which is that if the עיר הנדחת were to be enacted, it would require the destruction of a city, to the point that

nothing could be built there again.

In order to be declared an עיר הנדחת, there is no expectation that the entire city as a whole must be led astray into idolatry. The requirement is only that the majority of the city would need to be led astray into idolatry, and this would then be the punishment for the entire city, including everything within it from human beings of any age or gender to property. This again is something that for the Rabbis demands too high an ethical price. Razing the city to the ground is ethically untenable and appears to be beyond the rabbinic capacity to accept.

בן סורר ומורה is the last topic is subsumed under the principle of לא היה ולא עתיד להיות. It is the first topic mentioned on bSanhedrin 71a, and it is the chapter title for this section of Sanhedrin. The original source for the בן סורר comes from Deut. 21:18–21. It is formulated in the Talmud in a fashion similar to the issue of עיר נדחת, and in the Tosefta can be found on tSanhedrin 11:6:

> בן סורר ומורה לא היה ולא עתיד להיות ולמה נכתב לומר דרוש וקבל שכר.
>
> *Ben Sorer umoreh*: there never was and there never will be in the future. And why was it written? to say study it and receive reward.

tSanhedrin 71a then continues:

> בן סורר ומורה לא היה ולא עתיד להיות, ולמה נכתב - דרוש וקבל שכר, כמאן? כרבי יהודה, איבעית אימא: רבי שמעון היא, דתניא, אמר רבי שמעון: וכי מפני שאכל זה תרטימר בשר ושתה חצי לוג יין האיטלקי אביו ואמו מוציאין אותו לסקלו? אלא לא היה ולא עתיד להיות, ולמה נכתב - דרוש וקבל שכר. אמר רבי יונתן: אני ראיתיו, וישבתי על קברו.

There never has been a 'stubborn and rebellious son', and never will be. Why then

> was the law written? That you may study it and receive reward. This agrees with R. Judah. Alternatively, you may say it will agree with R. Simeon. For it has been taught: R. Simeon said: Because one eats a *tartemar* of meat and drinks half a *log* of Italian wine, shall his father and mother have him stoned? But it never happened and never will happen. Why then was this law written? That you may study it and receive reward. R. Jonathan said: 'I saw him and sat on his grave'.

The issue here is the simple question of what kind of parent would actually have their own child stoned to death? The very concept of it seems monstrous from the start, so it is also hard to imagine that something like this could happen. The other potential response, is that this was written to temper what was happening. That people were stoning their children, but that the Rabbis were providing an ethical imperative against it to ensure that it would be viewed as an abomination.[6]

The talmudic text works hard in the preceding dapim to make this idea seem even more implausible. In presenting this issue, it is also a simple moral argument. Moshe Harbertal argues, that there is a moral stance of the Talmud that rejects certain aspects of criminal punishment. He claims that לא היה ולא עתיד להיות is "...the natural reaction to the ethical problem in our sugiyot." [7]

Structural Considerations

---

6. Sicherman, Harvey, and Gilad J. Gevaryahu. "What Never Was and Never Will Be." Jewish Bible Quarterly 29.4 (2001). Print.

7. Halbertal, Moshe. Commentary Revolutions in the Making: Values as Interpretative Considerations in Midrashei Halakhah. Jerusalem: The Hebrew University Magnes Press, 1997. Page 59.

The structural similarities between these four examples is most striking between the examples of *Ben Sorer,* and *Ir HaNidachat*. Both of them are presented in the Tosefta as a single unit. This unit receives additional explanation in the Gemara. Both of these texts end with the same Rabbinic source, Rabbi Jonathan refuting the idea that there never was and never will be *Ben Sorer* or *Ir HaNidachat*. R. Jonathan's statement about *Ir Nidachat* and *Ben Sorer* is identical in form, and slightly varied in content to reflect the different cases.

As the three sources extant in the Bavli appear to have a similar form, and structure, it is entirely possible that this was an intentional redaction of these very similar texts. Each one presents a scenario that for the rabbinic mindset appears to be beyond the capacity for reason, ending with לא היה ולא עתיד להיות, ולמה נכתב - דרוש וקבל שכר. The sugya presents a sage that this opinion "is in agreement with" and cites why this can never happen. Then there is a presentation of an objector, who has potentially experienced this moment. Based upon the extreme similarities between the texts and their formulations, and since their extant versions in the Tosefta are different it would be logical that they were redacted together and modified to fit a similar mold.

Halakhah and Ethics

However, the statement that four laws in Torah never were or would be carried out seems to be a difficult idea. How do the Rabbis come to feel they have the authority to circumvent the written law? Pushing aside law would hypothetically go beyond the sense of

what is acceptable if you perceive the law to be Divine.

Devora Steinmentz, delves into this question from one angle, through the suggestion that Law and ethics are two separate impulses from within a global framework. As she notes, as one of the challenges of Divine Law: "A view of law as based in command can lead to a stance of moral passivity, to a sense that law is self sufficient and all inclusive- that is, that law needs no input from anything outside of itself and that there is nothing outside of law that is normative.[8]"

This viewpoint, as she notes, requires a tempering of the law, through the Rabbinic system. "In fact, rather than the notion of law-as-(divine-) command making human decision making impossible, the Rabbis developed the notion of the rabbinic power to make law as a direct corollary of their understanding of Sinaitic law as based in command."[9] Thus by making the law function in the way that they perceived it to be, they could change it to their own ideal of what the law should be. The classic Talmud example, presented in the aggadic story of the Oven of Aknai on Baba Metzia 59b, points to the Rabbinic supremacy over the Divine law. That text will and shall be interpreted rather than rely on Divine intervention.

With this interpretation, we have the possibility of something outside the law,

---

8. Steinmetz, Devora. Punishment and Freedom: the Rabbinic Construction of Criminal Law. Philadelphia: University of Pennsylvania, 2008. Print. xv

9. ibid. xv

influencing the law. The idea "....that this view of Jewish law does not imply that law exists in a vacuum, isolated from the input and even the critique of morality, nor does it negate the notion that morality constitutes an additional religious imperative to aspire to things beyond what the law demands.[10]" In other words, not only is there a moral imperative that exists separately from law, but there is a relationship between legal and moral imperatives. This leave space for "...the possibility not only of morality filling in where law leaves off but morality critiquing law."[11]

The perception that the law is malleable, to the extent that it allows ethics to seep into decision making, and even redefine what the law is the question. Particularly in dealing with Sanhedrin the question remains whether the biblical system of capital punishment was implemented?

As many scholars have suggested "...the procedures and punishments that are mandated by rabbinic law do not reflect what actually took place during the time when rabbinic sources understand Jewish courts to have been mandated to try capital offenses."[12] Even the Talmud states:

סנהדרין ההורגת אחד בשבוע נקראת חובלנית רבי אליעזר בן עזריה אומר אחד לשבעים שנה

10. ibid. (xvi)

11. ibid. (Xviii)

12. ibid. 1

> A Sanhedrin that kills once in seven years is called destructive, Rabbi Eliezer ben Azaria said once in seventy years. [13]

This tradition of the Sanhedrin not putting people to death on a regular basis is maintained in our text as well. Dr. Steinmetz also argues that "The stringent rules for testimony and for the examination of witnesses and, in particular, the requirement that a warning be delivered to and accepted by the would-be offender in order for the criminal to be executed renders criminal procedure as described by rabbinic sources exceptionally impractical."[14] The suggestion is then made that this system of laws is presented as an "...ideal in the sense of presenting fundamental values."[15]

Rabbinic literature is not confined to the ideal of the theoretical only in Sanhedrin, in fact the textual tradition is content to discuss things for the sake of discussing them, throughout our tradition. The rabbis are tied to a text, the biblical text. However, they mastered the skill of reading that text in a very particular way. In each of our four cases, the rabbis read the text hyperliterally in order render punishment for two capital crimes according to Torah law overwhelmingly improbable. They did the same to prevent the loss of a person's domicile and property in a case of ritual purity law.

As noted above, this is less of an issue with regards to books of the bible outside of

---

13. Makkot 7a

14. ibid.

15. ibid.

the Torah, so the question of Job is less of a problem. However the other three examples of the בן סורר, עיר הנדחת, ובית מנגוע come directly from Torah law. Looked at this way, how can there be laws that "never were and never will be?" If, as Dr. Steinmetz suggests, the entirety of the Rabbinic enterprise about capital punishment as described in Sanhedrin and Makkot is theoretical, why would these three laws be set apart among the mountains of theoretical text?

As noted above, these examples seem to go to the point of unreasonable extremity. It is hard to conceive of a G-d who would capriciously punish Job in the way the book of Job suggests. It is equally inconceivable imagining a person having their house destroyed because of some discoloration in its walls. However, the line is truly drawn in the case of the *Ben Sorer* and the *Ir Nidachat*. The *Ir Nidachat* requires the wholesale destruction of a town and it's inhabitants. Maimonides, in creating the Mishneh Torah, included the *Ir Nidachat* and the *Ben Sorer* and described the Halachot for implementating their punishment. In his introduction to the english translation of the section referring to the *Ben Sorer*, Eliyahu Touger notes that "...from all the particulars mentioned by the Rambam, one can understand that it could be impossible for such a judgment to have been issued."[16] However, Touger notes that he believes that Maimonides believed that the *Ir HaNidachat*

16. Maimonides, Moses, and Eliyahu Touger. "Hilchot Mamrim Chapter 7." Mishneh Torah. New York U.a.: Moznaim, 2000.

was a possibility.[17]

Moshe Halbertal presents the later halakhic writings about the *Ir Nidachat* as a prime example of morality influencing the halakhah to in fact exclude women and children from destruction, along with the tzaddikim of the town. This shrinking of those who would be killed in the hypothetical *Ir Nidachat* presents yet another example of morality influencing halakhah.[18] The idea of such wholesale destruction is ethically disgusting, and morally depraved regardless of the reason given for the actions.

The idea of killing a badly behaved boy also appears to go too far. The reasoning for his punishment appears in Sanhedrin 71b. He is killed על שם סופו, because of the child's inevitable decline into criminality. This is beyond our conception of the structure of a reasonable and just legal system. How can we pre-judge someone, and punish him simply because of what one believes he will do in the future? It is going too far, even if they think that such a boy will become a danger to society. In place of killing one's own child because of his depraved activities, it becomes incumbent upon the parents to ensure that the child doesn't go down that path.

All of these laws were at variance with what the Rabbis perceived to be an ideal

---

17. Maimonides, Moses, and Eliyahu Touger. "Hilchot Avodah Kochavim Chapter 4." Mishneh Torah. New York U.a.: Moznaim, 2000.

18. Halbertal, Moshe. "Halakhah and Morality: The Case of the Apostate City." Svara 3.1 (1993): 67-72. Print.

system of law. They needed to be included in the rabbinic system because they were initially in the Torah, and the Torah remained G-d's word. But the Torah needed to be examined and discussed, and when it seemed to contravene justice, its rules had to be interpreted into impossibility by including stricture after stricture so they could become statistically improbable.

It should be noted, however, that each of these examples is only improbable, not impossible. As the text reminds the reader in each of the Torah law cases, these activities are possible. In each case the text presents a dissenter claiming that the law was carried out, for what appears to be a two-fold reason. The first is as a macabre reminder that it has the potential to occur if people act in an irrational fashion. If someone goes through all these improbable steps, Torah law would demand action be taken in any of these three cases. The dissenter also serves to remind the Rabbis that there are limits to what they can do. While they may claims that something was לא היה ולא עתיד להיות, they must accept the fact that since it was written in the Torah, it is still law, and still must be able to happen.

Thus the legal cases subsumed under לא היה ולא עתיד להיות appear to be items that the rabbis found too morally abhorrent to accept. They began by placing greater and greater stipulations on the possibility of these scenarios playing out, thereby creating a rabbinic enterprise allowing for reinterpretation to the point of near impossibilty but not the actual excision of the Torah's laws.

David Levy
Dr. Chernick
Text Immersion Paper 2

What are the roles of the Kohen Gadol and the King in the Bible versus their role in bSanhedrin Chapter 2?

The roles of Kohen Gadol, and the King are the main topic of conversation throughout the second chapter of Sanhedrin, Kohen Gadol. The Talmud speak of various restrictions and expectations related to the King and the Kohen Gadol, and some of them seem to be at variance with the TaNaKH. Over time the expectations for our leaders has evolved, however the intriguing aspect is why do they change, and how do they change. Who benefits from the change in these parties' roles, and who loses with the change of role? Of course, the question is also, why is the role changing in the first place?

The laws of the Kohen Gadol and the King are rooted in the TaNaKH, and both offices actually functioned within the Israelite community. However, the reign of the Davidic Kings ended with the destruction of the First Temple, in 586 BCE. The Kohen Gadol's ended with the destruction of the Second Temple in 70 CE. The creation of the text of Masekhet Sanhedrin, the Mishnaic text, while potentially based on other earlier traditions, was not finalized until 200 CE, 130 years after the destruction of the Second Temple.

This leads to the important preamble that Devora Steinmentz notes about the entirety of Masekhet Sanhedrin, "…the practices are themselves, to a large or small degree,

constructed by the texts – that is, the text is not describing a practice out there; it is constructing the practice."[1] It is also important to consider that she describes the world of tractate Sanhedrin as an "Imagined universe," a place where the laws themselves are not practiced but have the potential to become practiced. This was true of the Kohen Gadol and the King.

To better understand the role of Kohen Gadol and King, it is important to begin with what the TaNaKH originally noted about these two positions. Then, with each role, Kohen Gadol and King, consider the ramifications of the Talmudic texts expositions upon the roles.

Kohen Gadol[2]

The role of the Kohen Gadol as described in the TaNaKH comes from a variety of sources in the Tanach. This paper focuses on the interpersonal relationships between the people of Israel and the Kohen Gadol, which is the main concern of bSanhedrin, Chapter 2. Our discussion will concentrate on the direct parallels between the TaNaKH and the Talmud, particularly questions of the Kohen Gadol's place in regards to judgment, and the courts, the relationship between the Kohen Gadol and his wife; how the Kohen Gadol should relate to the corpse of a dead relative; the relationship between the Kohen Gadol

---

1. Steinmetz, Devora. Preface. *Punishment and Freedom: the Rabbinic Construction of Criminal Law*. Philadelphia: University of Pennsylvania, 2008. Xi. Print.
2. Gafni, Isaiah. "High Priest." Encyclopaedia Judaica. Ed. Michael Berenbaum and Fred Skolnik. 2nd ed. Vol. 9. Detroit: Macmillan Reference USA, 2007. 99–100. Gale Virtual Reference Library. Web. 18 Nov. 2011.

and the people during mourning and giving condolences; and the practices expected of him and *Kohanim* in general regarding drinking wine and taking haircuts.

According to the TaNaKH, there are certain restrictions that are placed upon the Kohen Gadol, that is what the Kohen Gadol can do and in what capacities can he serve. The beginning of Leviticus 21 defines who is a Kohen, who can be a Kohen Gadol, and what their obligations are. The first concern is that the Kohen Gadol cannot "defile himself" by contact with a dead person, except for a close relative. This extends to even expecting the Kohen not to show any outward signs of mourning or to leave the Temple (Leviticus 21:10-12). According to Ibn Ezra's commentary, the plain sense of this text is that these restrictions only apply during the time of consecration, which is limited. Ezekiel 44 details particular restrictions with regards to haircuts and drinking wine while serving in the Temple. Ezekiel's rules are not restricted to only a time of consecration. Leviticus 21: 16-23 rules that a Kohen must be free of all bodily defects, from a broken limb to mismatched limbs.

Three aspects that relate particularly to the Talmudic text are mentioned in the TaNaKH as well, concerning marriage, ritual cleanliness, and installation in the role of Kohen Gadol. The TaNaKH discusses the expectation of who the Kohen Gadol can marry, excluding a widow and a divorcee, and requiring only a virgin of Israel, as noted in Leviticus 21:14. The Torah continues with the rules governing a kohen who is afflicted with tzara`at or is ritually impure. He must abstain from consuming Holy things or *terumah*, according to

Leviticus 22:17. The installation of the Kohen Gadol is similar to appointment of the King by being anointed with oil.[3]

The Kohen also has legal responsibilities and powers according to the TaNaKH (Deut. 21:5; Ezekiel 44:24). These legal responsibilities include, but aren't limited to being an arbiter of law and as "judges" who will decide disputes. He also has is expected view the *tzar'at* humans, clothing, and domiciles, as noted in Leviticus 13. If he determines that these items are infected, he declares them subject to the rules governing מצורעים. Deuteronomy 17:12 also gives the Kohen authority to enforce the law. The Kohen Gadol's legal authority is also presented throughout the book of Numbers as well. In Numbers 34:17, it is Joshua and the High Priest that are assigned to distribute the land portion to each tribe. The Kohen Gadol also helped distribute the spoils of war after the war with the Midianites (Number 31:21-26.) The death of a Kohen Gadol allowed a manslayer to leave a city of refuge (Numbers 35:25-28).

The priests also have the special license and obligation to bless the people in the name of G-d (Deut. 10:8, 21:5; the priestly blessing is found in Numbers 6:22-26). The Torah also describes the blessings and curses that are to be recited by the *kohanim* on Mt. Gerizim and Mt. Ebal (Deut 27:12-26). The Levites were described as teachers of "torah" in Moses' blessing over Israel in Deut. 33:10, which of course can be expanded to the Kohanim.

---

3. I Sam. 10:1; II Kings 9:6

The Talmudic discussion begins with the Mishnah reproduced below on bSanhedrin 18a:

משנה. כהן גדול דן ודנין אותו, מעיד ומעידין אותו, חולץ וחולצין לאשתו, ומייבמין את אשתו. אבל הוא אינו מייבם, מפני שהוא אסור באלמנה.
מת לו מת - אינו יוצא אחר המטה, אלא הן נכסין והוא נגלה, הן נגלין והוא נכסה, ויוצא עמהן עד פתח שער העיר, דברי רבי מאיר רבי יהודה אומר: אינו יוצא מן המקדש, משום שנאמר (ויקרא כ"א) ומן המקדש לא יצא.
וכשהוא מנחם אחרים, דרך כל העם עוברין בזה אחר זה, והממונה ממצעו בינו לבין העם. וכשהוא מתנחם מאחרים, כל העם אומרים לו: אנו כפרתך, והוא אומר להן: תתברכו מן השמים. וכשמברין אותו, כל העם מסובין על הארץ והוא מיסב על הספסל.

> The High priest may judge and be judged. He may testify and be testified against, he may perform Chalitzah, and the same can be done to his wife. His wife may have yibum performed for her, but he may not perform Yibum because widows are forbidden to him.
>
> If a relative of his died, he may not follow the funeral procession. Rather when they disappear [from view] he may appear, and when they appear he must hide himself. He may go out with them [the funeral entourage] to the opening of the gate of the city according to Rabbi Me'ir. R. Yehudah said: he may not go out from the Temple, as it says (Leviticus 21) "He may not go out from the sanctuary."
>
> When he consoles others, all the people shall pass, one after the other, and the *memunneh* will position himself between the Cohen Gadol and the people. When he is consoled by others, all the people say to him: "May we be your atonement," and he answers them, "may you be blessed by Heaven." When they give him a meal, all the people recline on the floor and he sits on a stool.

The initial text is concerned with four key areas. The first is the question of the Kohen Gadol's position in and before the court. The second is the relationship between the Kohen Gadol and his wife. The third is how the Kohen Gadol observes funeral rites and mourning for a dead relative. The last is the relationship between the Kohen Gadol and the people during mourning.

The first section of the mishnah, in part discussed in the TaNaKH, describes the Kohen Gadol as legally entitled to be a judge, and the Gemara then questions why the addition that the Kohen Gadol can be judged as well is necessary? The gemara provides a pair reasons why a Kohen Gadol can also be judged. The first reason is because if he can judge then he also must be able to be judged, and the second reason was to have the parallel statement of a King can judge and be judged. Gemara does not concern itself with the ramifications of the Kohen Gadol judging, and the absence of discussion is intriguing. Another issue for the Gemara is the halakhic concern about how a Kohen Gadol could go into exile. Then the question of the Kohen Gadol serving as a witness is brought up as a related question as to whether or not the Kohen Gadol could be judged. The Gemara suggests that this is "beneath the Kohen Gadol's dignity." Therefore in the vast majority of cases the Kohen Gadol would not serve as a witness. Thus the apparent representation of the Kohen Gadol in the court system is rather limited versus being a judge as described in the TaNaKH.

The question of the Kohen Gadol's legal eligibility to marry is not further restricted by the Talmud, rather simply explained in greater detail than in the TaNaKH. The Talmud discusses those women whom a Kohen Gadol can marry and whom he cannot marry. This essentially follows the TaNaKH. However, the most intriguing discussion from this Mishnah is the expansion of the limitations on the Kohen Gadol's interaction with other people as they relate to the mourning rituals. The TaNaKH states only that he cannot come in contact with a dead person unless that person is a close relative. Also, he cannot

show outward signs of mourning.

The Talmud expands this prohibition to include anything from being seen with the bier, and notes that the Kohen Gadol is forbidden to leave the Temple to mourn according to the Torah in Leviticus 21:12. The deputy Kohen Gadol also creates a barrier between the Kohen Gadol and the people by placing himself between the Kohen Gadol and the people during period of condolence. Thus, from the Mishnah's point of view the Kohen Gadol is a figurehead who is barely allowed to leave the Temple. This first Mishnah and subsequent Gemara seem directed toward preventing the Kohen Gadol from becoming overly close with the people. This is not what the TaNaKH suggests.

King[4]

The Gemara discusses the King for the remainder of the chapter, until the very end, when it returns to the question of the Kohen Gadol and his haircut and the haircut of the regular Kohanim.

The Pentateuch only describes the laws regarding to Kings in one place, Deuteronomy 17:14-20:

יד כִּי־תָבֹא אֶל־הָאָרֶץ אֲשֶׁר יְהוָה אֱלֹהֶיךָ נֹתֵן לָךְ וִירִשְׁתָּהּ וְיָשַׁבְתָּה בָּהּ וְאָמַרְתָּ אָשִׂימָה
עָלַי מֶלֶךְ כְּכָל־הַגּוֹיִם אֲשֶׁר סְבִיבֹתָי: טו שׂוֹם תָּשִׂים עָלֶיךָ מֶלֶךְ אֲשֶׁר יִבְחַר יְהוָה אֱלֹהֶיךָ בּוֹ
מִקֶּרֶב אַחֶיךָ תָּשִׂים עָלֶיךָ מֶלֶךְ לֹא תוּכַל לָתֵת עָלֶיךָ אִישׁ נָכְרִי אֲשֶׁר לֹא־אָחִיךָ הוּא: טז רַק
לֹא־יַרְבֶּה־לּוֹ סוּסִים וְלֹא־יָשִׁיב אֶת־הָעָם מִצְרַיְמָה לְמַעַן הַרְבּוֹת סוּס וַיהוָה אָמַר לָכֶם לֹא
תֹסִפוּן לָשׁוּב בַּדֶּרֶךְ הַזֶּה עוֹד: יז וְלֹא יַרְבֶּה־לּוֹ נָשִׁים וְלֹא יָסוּר לְבָבוֹ וְכֶסֶף וְזָהָב לֹא
יַרְבֶּה־לּוֹ מְאֹד: יח וְהָיָה כְּשִׁבְתּוֹ עַל כִּסֵּא מַמְלַכְתּוֹ וְכָתַב לוֹ אֶת־מִשְׁנֵה הַתּוֹרָה הַזֹּאת

4. Liver, Jacob, et al. "King, Kingship." Encyclopaedia Judaica. Ed. Michael Berenbaum and Fred Skolnik. 2nd ed. Vol. 12. Detroit: Macmillan Reference USA, 2007. 163-169. Gale Virtual Reference Library. Web. 18 Nov. 2011.

עַל־סֵ֣פֶר מִלִּפְנֵ֣י הַכֹּהֲנִ֣ים הַלְוִיִּ֑ם׃ יט וְהָיְתָ֣ה עִמּ֗וֹ וְקָרָ֤א בּוֹ֙ כָּל־יְמֵ֣י חַיָּ֔יו לְמַ֣עַן יִלְמַ֔ד לְיִרְאָ֥ה
אֶת־יְהוָ֖ה אֱלֹהָ֑יו לִשְׁמֹ֞ר אֶת־כָּל־דִּבְרֵ֣י הַתּוֹרָ֤ה הַזֹּאת֙ וְאֶת־הַחֻקִּ֣ים הָאֵ֔לֶּה לַעֲשֹׂתָ֖ם׃
כ לְבִלְתִּ֤י רוּם־לְבָבוֹ֙ מֵאֶחָ֔יו וּלְבִלְתִּ֥י סוּר֙ מִן־הַמִּצְוָ֣ה יָמִ֔ין וּשְׂמֹ֑אול לְמַ֣עַן ׀ יַאֲרִ֣יךְ יָמִ֗ים
עַל־מַמְלַכְתּ֛וֹ הֽוּא֥ וּבָנָ֖יו בְּקֶ֥רֶב יִשְׂרָאֵֽל׃

> 14. When you come to the land Adonai, your God, is giving you, and you possess it and live therein, and you say, "I will set a King over myself, like all the nations around me," 15. You shall set a King over you, one whom Adonai, your God, chooses; from among your brothers, you shall set a King over yourself; you shall not appoint a foreigner over yourself, one who is not your brother. 16. Only, he may not acquire many horses for himself, so that he will not bring the people back to Egypt in order to acquire many horses, for Adonai said to you, "You shall not return that way any more." 17. And he shall not take many wives for himself, and his heart must not turn away, and he shall not acquire much silver and gold for himself. 18. And it will be, when he sits upon his royal throne, that he shall write for himself two copies of this Torah on a scroll from [that Torah which is] before the Levitic kohanim. 19. And it shall be with him, and he shall read it all the days of his life, so that he may learn to fear Adonai, his God, to keep all the words of this Torah and these statutes, to perform them,20. So that his heart will not be haughty over his brothers, and so that he will not turn away from the commandment, either to the right or to the left, in order that he may prolong [his] days in his Kingdom, he and his sons, among Israel.

These laws aside, the idea of having a King is presented in a variety of places as a negative thing. Deut. 17:14 describes it as “like the other nations” which has negative overtones, and Samuel describes all the negative aspects of having a King (I Samuel 8). Having a King also stands in stark contradiction to the understanding that G-d is our King, as Gideon notes in Judges 8:22-23. Thus the earthly King, is a rejection of G-d, as is clearly stated in 1 Samuel 8:7-9, where G--d tells Samuel that the people are rejecting G-d in that moment.

The King is described in a variety of places throughout the text as a shepherd for the people, [5] and is understood to be G-d’s anointed and thus harm to the King will be

5. II Sam. 5:2; Ezek. 34:23; Micah 5:3; Ps. 78:71

punishable by G-d.[6] The King is also continuously described as a righteous judge, and a judge for all the people, which is played out in the books of Kings and Samuel.[7]

Eventually kings are considered legitimate if they are of the Davidic line. This is viewed as a as a covenant between G-d and the house of David. (Psalms 132:11-12; II Samuel 7:8-9).

The Talmudic discussion begins with the Mishnah reproduced below on bSanhedrin 18a:

תלמוד בבלי מסכת סנהדרין דף יח עמוד א

המלך לא דן ולא דנין אותו, לא מעיד ולא מעידין אותו, לא חולץ ולא חולצין לאשתו, לא מייבם ולא מייבמין לאשתו. רבי יהודה אומר: אם רצה לחלוץ או לייבם - זכור לטוב. אמרו לו: אין שומעין לו. ואין נושאין אלמנתו. רבי יהודה אומר: נושא המלך אלמנתו של מלך, שכן מצינו בדוד שנשא אלמנתו של שאול, שנאמר (שמואל ב' י"ב) ואתנה לך את בית אדניך ואת נשי אדניך בחיקך.

> The King may not judge nor be judged, testify nor be testified against. He may not perform Chalitzah nor may it be performed to his wife, and he may not perform Yibum nor may it be done to his wife. Rabbi Yehudah said: If he wishes to perform halitzah or yibum, he shall be remembered for good. They said to him: don't listen to him (if he wants to do that). No one can marry his widow. Rabbi Yehudah said: A King may marry the widow of a King, as we see in the case of David who married the widow of Saul, as it is written (II Samuel 12) And I gave you your master's house and your master's wives unto your breast.

The initial Mishnah parallel's the first few matters that are mentioned regarding the Kohen Gadol. The Mishnah first mentions the King's position in judicial proceedings, and then the question of who a King can marry, and then his participation in halitzah and

---

6. I Sam. 24:7; II Sam. 7:14; 19:20–25
7. I Kings 3:9; II Sam. 15:2; II Sam. 8:15

yibbum. The Gemara harmonizes the initial inconsistency between the TaNaKH and the Talmud, regarding the King's legitimacy to judge. The Talmud's prohibition of the King judging is explained as applying to Kings of Israel and not Davidic Kings who may judge and be judged. The expositions on *yibum, halitzah,* and who the King may marry simply parallels the rules governing the Kohen Gadol. These rules do not appear in TaNaKH.

Starting with the second Mishnah, we see an interesting added restriction, similar to that of the Kohen Gadol. On bSanhedrin 20a, it presents the discussion of the King in mourning:

מת לו מת - אינו יוצא מפתח פלטרין שלו. רבי יהודה אומר: אם רוצה לצאת אחר המיטה - יוצא, שכן מצינו בדוד שיצא אחר מיטתו של אבנר, שנאמר (שמואל ב' ג) והמלך דוד הלך אחר המטה - אמרו לו: לא היה הדבר אלא לפייס את העם, וכשמברין אותו כל העם מסובין על הארץ, והוא מיסב על הדרגש.

> If someone close to the King dies he may not go out from the opening of his palace. Rabbi Yehudah said: If he wants to go after the coffin, he should go, as we saw with David going after the coffin of Abner, as it is written (II Samuel 3) "And the King David went after the coffin." They said to him: He only did this to placate the people. When they feed him the mourners' meal, the entire people sit on the floor and the King sits on a Dargash.

The Gemara then suggests that the King, like the Kohen Gadol should not leave the palace to mourn, a direct deviation from the TaNaKH as the Mishnah notes. The Gemara explains this by claiming it was only a one time event between Avner and David, but that the King is typically did not participate in funerals.

The next Mishnah presents yet another restriction upon the King, that the King cannot go to war without the permission of the Sanhedrin. As we see on bSanhedrin 20b:

ומוציא למלחמת הרשות על פי בית דין של שבעים ואחד, ופורץ לעשות לו דרך, ואין

ממחה בידו. דרך המלך אין לו שיעור. וכל העם בוזזין ונותנין לו, והוא נוטל חלק בראש.

He may go out to a "discretionary war" with the consent of a court of seventy-one. He may break through property to make a path for himself and no one can protest against him. The path of the King has no limits. And all the people plunder and give it to him, and he takes his portion first.

This limitation is found nowhere in the TaNaKH, and the rules governing the distributing the spoils of war are also a new addition by the Talmud.

These two regulations give the Sanhedrin greater authority than the King, which seems odd. I would suggest that represents the sages' perspective on the role and power of the King, which needed to be limited. For "…the sages left the leadership and management of the ongoing matters of the Kingdom in the King's hands; however, in their view, the power of the King is itself limited, and the main source of the limitations placed on the King lies in the authority given to the Sanhedrin (that is the sages themselves, according to their view)."[8] Thus the King was not as much in power as he was an executer of the will of the Torah, which was in the control of the Sages.

Deuteronomy contains among the rules governing the king as section about his wives, on bSanhedrin 21a:

(דברים י"ז) לא ירבה לו נשים - אלא שמנה עשרה. רבי יהודה אומר: מרבה הוא לו, ובלבד שלא יהו מסירות את לבו. רבי שמעון אומר: אפילו אחת ומסירה את לבו - הרי זה לא ישאנה, אם כן למה נאמר לא ירבה לו נשים - דאפילו כאביגיל.

(Deuteronomy 17:17) "He shall not multiply for himself wives" only to eighteen. Rabbi Yehudah said: He may multiply for himself wives, as long as they don't turn his heart. Rabbi Shimeon said: even one can turn his heart, thus he should not marry her. If so, why is it written he may not multiply for himself wives? That even with

---

8. Lorberbaum, Yair. *Disempowered King: Monarchy in Classical Jewish Literature*. New York, NY: Continuum, 2011. Print. p. 183-4

wives like Abigail.

The Mishnah restricts the multiplication of wives up to 18. This addition to the TaNaKH is based upon the way the rabbis understood the number of wives that David had, maKing a distinction between wives and concubines.

Then the Mishnah moves to Deut. 17:16-19, on bSanhedrin 21b:

לא ירבה לו סוסים אלא כדי מרכבתו. וכסף וזהב לא ירבה לו מאד - אלא כדי ליתן אספניא. וכותב לו ספר תורה לשמו, יוצא למלחמה - מוציאה עמה, נכנס - הוא מכניסה עמו, יושב בדין - היא עמו, מיסב - היא כנגדו, שנאמר (דברים י"ז) והיתה עמו וקרא בו כל ימי חייו.

> "He may not multiply for himself horses--only enough for chariots. "Silver and gold he shall not overly multiply for himself"-- except enough to pay wages. "He shall write a personal Torah scroll for himself"-- when he goes out to war it goes with him; when he enters, it enters with him; when he sits in judgment it is within him; when he reclines it is opposite him; as it is written, "And it will be with him and he will read it all the days of his life."

In this case the Gemara provides some latitude with regards to horses and silver and gold, citing the practical concerns of running a country. These concerns require that the King collect a certain amount of silver and gold for wages and enough for the chariots of war. This is confirmed in the Gemara, where it states clearly that the money and horses cannot be collected for the personal use of the King, but rather for wages and for defending the country. The Gemara then moves to the writing of the Torah scroll, and the importance of the King writing one for himself, and having two on hand. The Gemara also reads the TaNaKH hypocritically expecting the King to have it on hand at all times and to read it and learn from it. This in turn creates a king who is a תלמיד חכם, a wise student, and thus a part of the rabbinic class.

The last Mishnah of this section takes a closer look at the biblical quote from Deut. 17 on bSanhedrin 22a:

אין רוכבין על סוסו, ואין יושבין על כסאו, ואין משתמשין בשרביטו, ואין רואין אותו כשהוא מסתפר, ולא כשהוא ערום, ולא כשהוא בבית המרחץ, שנאמר (דברים י"ז) שום תשים עליך מלך - שתהא אימתו עליך.

> No one shall ride his horse, no one shall sit on his throne, and no one may use his scepter. No one shall see him while he is getting his hair cut, nor when he is naked, or when he is in the shower, as it is written "You shall surely put yourself a King and you will remain in awe of him."

The Mishnah and Gemara appear to put a great deal of separation between the King and the people. This is reinforced by the Mishnah in particular stipulating the amount of things that must be done to keep the “awe” of the King in place. The King in the end is presented as separate from the people, and has very few interactions with the people unlike the presentation of the King throughout the TaNaKH. The structure seems to present a new way of viewing the King, not that the King was an active part of the peoples lives, as it appears to be presented in the biblical narrative, but a King that is more removed from the people, and is presented with less power than he seems to yield throughout the books of Samuel and Kings.

Rabbinic reading of the TaNaKH, is not always in concert with the straight reading of the Torah. After all, historically the sages did not have a place in the biblical society. Therefore, in rereading the TaNaKH, the sages needed to create a place for their own authority,. In turn that weakened some of the authority that was traditionally vested with other figures. Thus the power to declare war, as noted above, becomes a prerogative of the

sages, with whom the King must counsel.

This also applies to the legal system in it's entirety, which was originally subject to the King and the Kohen Gadol. It has been removed from their spheres of influence and has been squarely placed within the hands of the sages.

As Yair Lorberbaum notes, "In this tractate, the sages deal with the creation of a political system or the shaping of a regime that is not isolated from the social and political environment within which they lived."[9] There is clearly an attempt by the rabbinic leaders to shape a new way of living. However, this is also most likely a blueprint for a new society. As Lorberbaum continues, "Mishnah Sanhedrin clearly involves a utopian dimension too, as it was created and written after the destruction of the Temple at a time when Israel did not enjoy political independence and all the institutions discussed in this tractate the priesthood, the King, the Sanhedrin, and apparently also the lower courts – were not in fact operative."[10]

Thus the theoretical point of these systems was to create this utopian ideal of what the Temple, the priesthood and the King would be like in a new world. This then leads to the question why is image of the power and status of the King and the Kohen Gadol so different in the Talmud, compared to the image of their power in the TaNaKH?

---

9. Lorberbaum, Yair. *Disempowered King: Monarchy in Classical Jewish Literature*. New York, NY: Continuum, 2011. Print. P. 184
10. ibid. P. 184-5

The most logical answer is the rise of the rabbinic class. With the destruction of the Temple, and the end of the monarchy, there was the power vacuum that eventually was filled by the rabbinic enterprise. As the adage goes, the winners write the history. There appears to be an attempt to rewrite the history so it favors the rabbinic enterprise.

This rabbinic orientation limits the powers of the Kohen Gadol and the King and subjects them, at least in theory, to rabbinic authority. No longer are Kings and the Kohen Gadol able to judge as they appear to do in TaNaKH for the Kohen Gadol and the Davidic Kings are allowed only to judge as a part of the Sanhedrin, i.e., the rabbinic court. Otherwise they are removed from what are the main positions of power. Ideologically, This change creates a world in which the rabbis are more in control.

While they would allow for the autonomy of both of these archetypes in their particular spheres of influence, the text appears to limit the power of both these groups. The Kohen Gadol was left mostly to his own devices, for "[t]he sages do not assume any task in the area of cult and Temple… Nevertheless, the sages also supervise the priesthood and the high priest…"[11] The entire process of the rabbinic creating of the position of the Kohen Gadol was to make space for a Rabbinic role in a pre-established system that existed in Israel according to the TaNaKH. On paper the Rabbis created a perfect society based on their own perspectives. In that society King and a Kohen Gadol operate in their own spheres of influence as defined by the Rabbis, but lack the influence and power that the

11. ibid. footnote 39 page 184

TaNaKH granted them.

David Levy
Dr. Chernick
Sanhedrin Text Immersion

Paper III: Zeh Borer

1) What is the likelihood of the practices described in mishnah 1 being actually practiced? Why would all the leniencies allowed in the mishnah indicate that indeed these halakhot were practiced? How does the first sugya's reference to ערכאות שבסוריא back this up? I.e., what were the leniencies intended to accomplish?

The likelihood of this being practiced, is relatively high. As Nuesner notes, from his perspective, this is one of the few chapters in Sanhedrin that actually occurred.[1] Part of this is based upon the amount of lenience that was present in this mishnah. There was a push and an attempt to encourage people to be a part of the Rabbinic court establishment, and to avoid the Roman courts. If the courts operated as described in the Mishnah, it would allow for the litigants to pick at least one judge, and potentially invalidate witnesses that they found objectionable. This construction is incredibly favorable for the litigants, and eliminates much of the impartiality that litigants would surely get if they were to try and go to court in the Roman system.

ערכאות שבסוריא are, as Rashi notes, the secular courts in Suria. These were courts that were state appointed, but were Jewish courts. The secular courts in Suria were trying to take care of cases presented by the Jewish population, but were specifically appointed by the local secular government. The Rabbis negatively portrayed these secular courts to encourage people to operate within their legal structure. Thus this is an attempt to invalidate these secular Jewish courts and ensure that the only courts that are used by Jews are the Rabbinic courts. The fact that these courts that flaunt Torah law were even mentioned also points to their likelihood that they existed, and in opposition to the Jewish religious courts.

1. Neusner, Jacob. Baba Batra, Sanhedrin, Makkot: Transl. and Explanation. [S.l.]: [s.n.], 1984. Print.

This line of discussion is continued with the later reference to the Secular courts in Suria where the gemara states that the only type of disqualification of a judge is when they are from the secular courts of Syria. However, a rabbinic court with appropriate rabbinic authorities should be accepted, and are potentially free from disqualification unless they were otherwise disqualified by being קרובים or פסולים. However if they are actual expert judges, the gemara presents a situation where everyone agrees that expert judges are acceptable in comparison to the secular judges in Syria.

2) Explain how a litigant could invalidate another litigant's witnesses. What halakhic problem would the litigant have to circumvent in order to accomplish this?

The Mishnah states the following on bSanhedrin 23a:

This (one) can disqualify his witnesses, and this (one) can disqualify the other's witnesses, according to R' Meir. The sages say, when? In times when a person brings witnesses that are related or ineligible. However, if they are eligible to testify, he may not disqualify them.

The first attempt to clarify the disqualification of witnesses is at the bottom of the Daf, where they attempt to argue that it refers to a case where there is only a single witness, not a pair of witnesses. The gemara then ends this particular sugya, by noting that this must be about a pair of witnesses, but that the argument is not over rejecting witnesses in general, but rather rejecting witnesses after the fact that would have been unacceptable as witnesses to begin with, like a person's father. This particular case creates a larger ideal according to Rabbi Meir, that if someone who is typically פסול to serve is a witness is accepted, they can later be rejected.

The major challenge of the next explanation of how to disqualify a witness is that the litigant who is trying to disqualify the witness is נוגע בדבר, or partial in the testimony. Therefore, in order to disqualify the witness, the litigant needs to figure out a disqualifying flaw, like that a person's family is a family of slaves and therefore is ineligible to serve as witnesses. It is only in that case, where the issue is with the family and not the particular witness that a person could be disqualified as a witness.

The subsequent sugya attempts to again explain the issue of disqualifying witnesses, and in this case they attempt to do so by presenting it as an issue where there are multiple sets of wit-

nesses, and therefore the first set could be disqualified if they knew there was another set and they were disqualified by the acceptable means of being relatives or otherwise ineligible.

3) Why could one accept otherwise invalid parties as a judge? Could litigants accept more than one such party as a judge? Provide a thumbnail sketch of the terms of the dispute between R. Meir and the Sages as stated by the sugya on 24a. How does אתן לך play a role in their dispute about the litigant's right to renege on his agreement to be heard by a court including an invalid judge whom he accepted? What about מחול לך?

The question of accepting an otherwise invalid person as judge points back to two aspects of the first mishnah. First that they want to encourage people to use their system, therefore they are willing to accept judges that would classically by פסול.

The first part of the Mishnah on bSanhedrin 24a is relevant to this gemara.

Mishnah: If a litigant says to an opponent: My father is acceptable to me or your father is acceptable to me or Three cattle herders are acceptable to me, Rabbi Meir says he may reverse himself, and the sages say he may not reverse.

The sugya determines that this case is only relevant when they are discussing replacing one of the three judges with the father. The discussion then moves into the positions of who can retract their acceptance of the father, the person who is in the position to give the money, אתן לך, if he loses (the defendant), or the person who is suing for the money, who might say מחול לך (the plaintiff). The initial discussion claims that the plaintiff cannot retract from forgiving the debt (מחול לך), whereas the defendant can retract from giving the money (אתן לך). This leads the initial discussion to claim that the מחלוקת between the sages and R' Meir is only about whether or not a defendant can retract at that point.

Then the next part is clarification of whether or not that was the intent of the מחלוקת, whether it is really only about אתן לך, or if it is a מחלוקת regarding both אתן לך and מחול לך. Rava then states that it is as described above: the dispute is whether or not a defendant can retract on his statement of אתן לך, but everyone agrees that you cannot retract the forgiveness of מחול לך. The gemara then attempts to turn this into a third opinion, regarding the nature of the argument is, and leaves it unresolved.

The places of אתן לך and מחול לך represent two sides of the transfer of ownership, and in what situation can one retract one's position. The main issue of אתן לך is the idea that you are voluntarily committing yourself to giving something financially to someone else. This also assumes that you are giving the court the power to impose upon you the transfer of something monetary. The antecedent, מחול לך, does not require the actual transfer of financial instruments, and therefore appears to be much more acceptable, for it allows for someone to forgive a debt, thus leaving all financial transactions aside. It seems reasonable in the end that a person can, for all intents and purposes, drop the suit for money, and say מחול לך, and for that to be binding, since that would make the suit virtually unnecessary.

However, the larger issue is with אתן לך. If there is a question about the courts legitimacy because of a judge being פסול, then allowing for the litigant who says אתן לך to renege seems appropriate. For enacting אתן לך means there is an actual transfer of ownership, which the court would be imposing, and that would be unacceptable if the court was ultimately illegitimate.

4) Why are those listed as invalid witnesses in the mishnah on 24b (bottom) considered unacceptable? Provide two reasons that are given in the sugya. Under what rubric is the witness considered nearly a thief? Under the other stated rubric, why is the witness invalid?

Mishnah:

> These are the ones ineligible to be judges or witnesses: Dice players, lenders on interest; pigeon fliers; merchants on the sabbatical year. Rav Shimeon said: they originally called these people Shiv'it gatherers; but when it was oppressive they changed to merchants. R' Yehudah said: When? Only when they have no other trade, but if they have a trade besides they are eligible.

The first reason that is cited by the gemara according to Rammi b. Hama is that he is disqualified because it is אסמכתא, which Steinzaltz defines as:

Surety. An obligation undertaken by a person which he does not expect to be called upon to fulfill.[2]

---

2. Steinsaltz, Adin. The Talmud: A Reference Guide. New York: Random House, 1989. Print.

Gambling is a prime example. Person A is betting Person B on something, and both are expecting that they will not have to pay anything to the other because they perceive themselves as making the better bet. Therefore, when Person A wins, Person B does not willingly give the amount of the wager over to Person A. Based on the halakhah, this is considered stealing, and makes the people who engage in gambling thieves and thus רשעים, and therefore ineligible to serve as witnesses.

The second example that is cited in the gemara, but is also present in the Mishnah, which is the suggestion that these people add nothing to the general welfare. An assertion is made that if they gained another profession, they would be acceptable. According to this position, a gambler who has another profession has a greater knowledge of the world and can therefore contribute to the general welfare. However, a baraita is later cited, that claims a gambler is ineligible regardless, simply because the fact that they are gamblers, and even having a separate job does not contribute to the public welfare. This is based on the assumption that gamblers are operating on אסמכתא and are therefore רשעים regardless.

A witness who is nearly a thief is a person who, on bSanhedrin 25b, is a person who takes something from a deaf mute, a deranged person or a minor, who retrieved a lost item, and assumed ownership. The Rabbis decided that they shouldn't take testimony from these people, מפני דרכי שלום. That is, there actions was tantamount to stealing because they disrupted the peace. Whoever would "steal candy from a baby" as the adage goes, would therefore be disqualified as a thief for the purposes of witnessing. This ruling, states that these three categories of people are a protected class. It states that taking something from this protected class harms them in a meaningful way. By protecting these three groups in this way, it promotes the ways of peace. For while the items that are found clearly do not belong to the minor, deaf mute or deranged person, they are allow to keep these items as it would create a larger problem if these items were to be retrieved from them. Under this rubric, someone who disrupts the public welfare is an evildoer. The biblical citation of Exodus 23:1, points to the important distinction that an evildoer is disqualified as an appropriate witness.

5) Why is one who admits to borrowing on interest still acceptable as a witness (25a)? Who stated the principle on which a self-declared violator of the Torah is still acceptable as a witness? What is the Hebrew formulation of this principle?

The person who admits to borrowing on interest is still accepted as a witness, according to the text, because he cannot incriminate himself. It would require two witnesses observing him borrowing the money to allow for him to be convicted as a רשע. "For Raba said: Every man is a relative in respect to himself, and no man can incriminate himself."

דאמר רבא: אדם קרוב אצל עצמו, ואין אדם משים עצמו רשע.

6) Summarize the mishnah and first part of the sugya on 27b (mid-page until ולא מיחו).

This particular mishnah comes to clarify the initial mishnah of Zeh Borer, which states that: וחכמים אומרים, אימתי, בזמן שהוא מביא עליהם ראיה שהן קרובים או פסולים. The proceeding mishnayot have clarified what makes a person פסול, and this mishnah is here to present what makes someone קרוב, and thus ineligible to serve as a witness.

Mishnah:

These are the relatives: Brother, father's brother, mother's brother, sister's husband, father's sister's husband, and his mother's sister's husband; and his mother's husband, his father-in-law, and his brother in law; they their sons and their sons in law. His stepson alone as well. R' Yose said this is the Mishnah of Rabi Akiba but an earlier Mishnah: His uncle, his uncles son, and all who are eligible to inherit from him. All those that were related at that time. If he was related and then became unrelated, he is eliglbe. R' Yehudah says: Even if one's daughter died but has children from her, he is a relative. One's friend and one's enemy. A friend is one's groomsman; an enemy is anyone with home he did not speak for three days out of enmity. They said to him: Israel is not suspected of this.

Gemara:

Koshi1: From where do we know that relatives cannot be judges?

Teretz1: As it is taught in a baraita that cites Deuteronomy 24:16, stating: "Fathers shall not be put death because of their sons."

Koshi2: What does it teach from this?

Teretz2: If it is to teach that fathers should not be put to death for their sons sins and vic versa, however, this is already taught by the end of the verse "that a man shall be put to death by his own sin."

K3: Why teach this twice?

T3: Rather the "fathers should not be put to death for their sons" teaches that there should be no testimony of sons, and "Sons shall not be put to death because of their fathers," teaches that they should not have testimony of the father.

K4: Aren't sons culpable for their fathers sins? as Exodus 34:7 notes "Visiting the sins of the fathers upon the sons."

T4: In that case it's when the sons retain the sinful practices of their fathers, as a baraita teaches about Leviticus 26:39: "and also in the sins of their fathers, with them shall they wither away"; saying that this refers to retaining their fathers sinful practices.

K5: Do you say that it refers to them retaining the father's practices? Or perhaps it refers to where the don't retain them?

T5: When the text states, "Each man shall be put to death because of his own sin" that is when they retain their fathers practices.

K6: It's also written "Man will stumble over his brother," suggesting man will stumble because of the sins of his brother, and doesn't this teaches that we are all responsible for each other?

T6: That verse relates to a situation where they could protest but did not when a person observed an evil action occuring.

7. Describe the process of the examination of witnesses. (Mishnah on 29a). Sugya: does one have to appoint his/her witnesses? According to the sugya on pages 29a-b, does the court or a judge provide excuses for the behavior of parties accused of wrong doing? If so, give an example? If so, are there any exceptions.

Mishnah: The mishnah then discusses the process for examining witnesses, taking them one by one, and ensure he was telling the truth. This was done through intimidation, which is done with the one witness alone in the room, along with the interrogators, and then the second witness brought in alone to corroborate. The mishnah also notes that the testimony must be eye witness in this case, and records the inappropriate responses.

The gemara states unequivocally that witnesses must be informed they are about to be witnesses, presenting a series of examples where the witnesses would not count as witnesses unless they were properly deputized as such. The sugya on 29a-b, presents two possible answers to a particular scenario. The scenario is that someone does not claim someone as a witness, yet there is someone who witnesses a statement between two people where there is a promise of a monetary agreement, and the defendant later says that "he was only joking." If the next day he is confronted and says "I never said that," the first position is that the person is established as a liar, and therefore cannot be trusted according to Abaye. The second opinion, said in the name of Rava, is that the person cannot be expected to remember every stupid thing he says. There are thus two opinions. The first is that a person is to be expected to remember their acceptance of a legally binding statement, the second that a person could claim that they were merely joking.

Within this sugya, there is a case where a judge provides excuses for the behavior of parties accused of wrongdoing.The case in question was adjudicated by R' Shimon b. Gamliel, and is reproduce below:

ההוא דהוה קרו ליה קב רשו אמר מאן מסיק בי אלא פלוני ופלוני אתו תבעוהו לדינא קמיה דרב נחמן א"ר נחמן אדם עשוי שלא להשביע את עצמו

> There was a man and they called him: "A Kav (measure) of debt." He said: "Who has a claim against me other than Ploni and Ploni?" They [ploni and ploni] came and prosecuted him for judgement before Rav Nachman. Rav Nachman said: "A man may want to make himself [appear] to be not be sated with himself. [therefore we ignore his claims of indebtedness]

8. Explain the content and arguments in the mishnah on 31a. Related to the first part of the mishnah one amora states that that the halakhah in the argument between R. Shimon b. Gamaliel and the Sages follows R. Shimon. Another amora says that the halakhah does not follow the Sages.

Provide a synopsis of the question and answer provided by the sugya about these opinions. Related to the second part of the mishnah there is a similar argument about whom the halakhah follows. Summarize the sugya's give and take up to the words ערב וצידן וראיה אחרונה. What are the cases of ערב וצידן וראיה אחרונה?

> Mishnah: Whenever a litigant brings evidence to support a claim after a verdict has been given, he can nullify the verdict. If they told him: all evidence that you have, bring it until 30 days, if it's found within the 30 days it nullifies the verdict, and after 30 days, it does not nullify. Rabban Shimeon ben Gamliel said: What do you do if it's not found within the 30 days, but found after 30 days?
>
> Say to him bring witnesses and he said: I have no witnesses. Say: bring proof, and he says: I have no proof. After a time he brought evidence, and found witnesses, behold it is as if it is nothing. Said Rabban Shimeon ben Gamliel: What will be done if he didn't know that he had witnesses, and then found them. If he didn't know he had evidence and he found some. Upon seeing that he will be found guilty in judgment and says: bring ploni and ploni to witness on my behalf, or bring this proof from his bag, this is treated as if it's worthless?

Point1: Rabbah bar R. Huna: The halachah is with Rabban Shimeon b. Gamliel, not with the sages, in regards to bringing witnesses and evidence after thirty days.

Koshi1: פשיטא It's obvious that if it rests with R' Shimeon ben Gamliel it doesn't rest with the sages!

Teretz1: מהו דתימא: הני מילי; I might have thought that the ruling was only true for the first part of the mishnah, but this teaching helps to point out that it's for both aspects of the initial mishnah; therefore even if proof is brought after the prescribed time, it is to be accepted.

P2: Quoting Mishnah: Bring witnesses...etc, this Rabbah b. R Huna said in R. Johanan's name that the halakha rests with the sages and does not rest with Rabban Shimeon ben Gamliel; with regards to if the court asks for witnesses/proof and he claims he has none.

K2: פשיטא It's obvious that if it rests with the sages and it doesn't rest R' Shimeon ben Gamliel based on the formulation!

T2: This comes to teach that only in this particular case does the halakhah not rest with Rabban Shimeon ben Gamliel but in all other cases it rest with him.

New Idea: The Halakhah rests with Rabban Shimeon ben Gamliel, except for three cases: Areb, Zidon and the latter proof.

ערב וצידן וראיה אחרונה

So according to the end of the sugya, the Halakhah is not according to Rabban Shimeon ben Gamliel in these three cases. The last item on the list is the example we just studied, where a person claims to have no evidence or witnesses, and then later produces them. The first case, ערב, refers to a case fond in Bava Batra 173b, where the issue is the source of guaranteeing a loan. The term means a guarantor, and it is a case where a person is creating a loan, and the issue is whether you can exact the payment from the person who is the cosigner, or guarantor of the loan. The sages say this is possible with conditions, Rabban Shimeon ben Gamliel says that it is never acceptable.

The second case, the צידן, is found on Gittin 74a, describes the ruling for giving a get. The mishnah opens with a description of preconditions for the finalization of a *get*. Rabban Shimeon ben Gamliel cites an example in Tzidon where a man requires his robe to be returned in order for the get to be finalized. Rabban Shimeon ben Gamliel says the robe is lost, and we assume that he means that the get will not happen. The sages suggest that the woman should provide the financial equivalent to the robe.

9. Explain the judgments in the following cases in the sugya at the bottom of 31a-top of 32a::

1) the case of an orphan who was sued by parties claiming that the child's father owed them money;

This ruling focuses on the knowledge a child might have of his father's estate. It is assumed that son will know less about his father's estate, therefore the case allows for witnesses to be brought in after the fact. As the Rambam later codifies in Hilchot Sanhedrin 7:9:

> Different concepts apply, however, with regard to an heir who was a minor when the person whose estate he inherited died and a suit was lodged against him because of that person after he came of age. Even though he stated: "I have neither witnesses, nor proof," and after he departed from the court after being held liable, others told him: "We know testimony that favors your father that will cause this judgment to be rescinded," or "The

> person whose estate you inherited entrusted this written proof to me," he may bring the testimony or the proof immediately and have the judgment rescinded. The rationale is that a minor is not aware of all the proofs possessed by the person whose estate he inherited.

2) the case of the woman who testified that an iou note had been paid (two versions of the ruling)..

In both of these cases, the assumption is that the promissory note could have been destroyed without anyone knowing that it had ever existed. So by the mere fact that the woman is bringing the document to the court, even though the promissory note is not related to her, the woman is to be believed. This points towards an encouragement for third parties to produce these legal documents, and to have them appropriately discharged. In the first case she is believed simply because she could have destroyed it, and in the second case she is believed because the document had already been verified by the two parties and a court had discharged it. All of these seem to point towards trusting a third party with a note as long as they don't receive any discreet benefit from the transaction.

This is especially intriguing based upon the fact that it was a woman coming in to present this evidence. In the previous case, it was clear that as a child a person has limited liability, but in this case a woman was trusted though typically a woman could not serve as a witness according halakhah. This was codified by Rambam in Hilchot Malveh v'loveh 16:8 where he even changes the gender of the third party from this talmudic example:

> When a promissory note is in the hands of a third party, and he produces it in a court of law and says: "It has been paid," his word is accepted. This applies even if the authenticity of the note has been verified. The rationale is that if he had desired, he could have burned it or torn it.

10.Explain the following passage: bSanehdrin 31b

כי אתא רב דימי אמר רבי יוחנן התוקף את חבירו בדין אחד אומר נדון כאן ואחד אומר נלך למקום הוועד כופין אותו וילך למקום הוועד. אמר לפניו רבי אלעזר רבי מי שנושה בחבירו מנה יוציא מנה על מנה אלא כופין אותו ודן בעירו איתמר נמי אמר רב ספרא (אמר רבי יוחנן) שנים שנתעצמו בדין אחד אומר נדון כאן ואחד אומר נלך למקום הוועד כופין אותו ודן בעירו ואם הוצרך דבר לשאול כותבין ושולחין

ואם אמר כתבו ותנו לי מאיזה טעם דנתוני כותבין ונותנין לו

When Rab Dimi came, he said in the name of R' Yochanan: if someone harasses his fellow in a matter of law, and one says let us go judge here, and one says, let's go to the place of assembly to judge the case, we force him to got to the place of assembly. R' Elazar said before him: My teacher if someone has a claim on his fellow for a sum of money, shall he be forced to spend that sum of money for the sum? Rather they should force a litigation in his city. It was also stated: Rav Sapra said (Said Rabi Yochanon) If two were feuding on law, one said we will judge here, another said: let's go to the place of assembly, we force him to judge in his own city. And if, there is something that needs to be asked (during the trial) write and send it.

And if a litigant says write and give me a reason you judged me, write it and give it to him.

This presentation again seems to present an encouragement to use the Rabbinic system of judgement. The first example presents a situation where the difficult litigant should be forced to go to the higher court, so that a the best judgement can be rendered. However, this can be superseded if there is a great financial hardship in going to the other court. This decision puts the financial well being of the litigants above the best judgment, suggesting that in that particular case the financial situation is the larger concern.

In the second example the two litigants are encouraged, if there are no other factors to remain in their own city and be judged by the local authorities. However, if the litigants in the local dispute are concerned about the appropriate decision, every effort is made to encourage finding the deeper answer. So their is an encouragement to follow the best ruling, but also to encourage people to follow the rulings by helping them challenge the ruling in a higher court.