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THE PERCEPTION OF OTHERS AS A
MOTIVATION FOR JEWISH PRACTICE

by

Ilene Melamed

Thesis submitted in partial fulfillment of
the requirements for Ordination

Hebrew Union College-Jewish Institute of Religion

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Referee, Jakob J. Petuchowski

DIGEST

The concern over outward appearance is a link that binds together diverse concepts. In the Tannaitic and Amoraic periods, the rabbis invented new standards of behavior which reflect this psychological and sociological concern. These standards of behavior served to limit the practice of Jews both within their own communities and in relationship to their Gentile neighbors. This thesis will seek to define and examine the role of the following sociological phenomena and ethical prescriptions in their literary and/or historical contexts: kebhod tsibbur, yuhara, mar-ith 'ayin, and hillul hashem (bepharhesiah).

Chapter 1 serves as an introduction by defining and providing an example of each term. There is also an explanation of the methodology used in research. In Chapter 2 we cite and analyze every reference to kebhod tsibbur in the Babylonian Talmud. Among the problems analyzed is a discussion of the modern application of the term as dealt with by the Conservative movement in connection with women reading Torah. Chapter 3 contains a discussion and analysis of the few cases of yuhara in the Babylonian Talmud. There is a brief summary of the chapter, and reference is made to similar concerns in Christian literature. After a brief introduction to Chapter 4, we cite and analyze a number of cases of hillul hashem in rabbinic literature. Chapter 5 contains references to cases of mar-ith 'ayin throughout rabbinic literature. We analyze each case and, where necessary, elaborate on our discussion of problematic passages as is the procedure in all of the

chapters. Chapter 6 concludes our study with questions meant to guide us in an assessment of the relative impact of the concepts upon Jewish practice.

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In Memory of
My Beloved Mother
Rita Goldman Melamed ז"ל
Who is with me always

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To have reached fruition and to have spent numerous hours under the guidance and tutelage of Dr. Petuchowski suggest the following passage from the Talmud:

תורה ללמודה זר היא תורה של חסד

"If a man teaches his wisdom to others it is the Torah of kindness."

Dr. Petuchowski was never too busy to see me, to help me and to lift me over the rough spots. There were areas I did not understand, but his insight and patience enabled me to learn in depth.

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GUIDE TO TRANSLITERATION

א - nothing
 ב - b
 ב - bh
 ג - g
 ד - d
 ה - h
 ו - v
 ז - z
 ח - h
 ט - t
 י - y
 כ - k
 ך כ - kh
 ל - l

מ - m
 נ - n
 ס - s
 ע - ' (as in "sephar")
 פ - p
 פ - ph (as in "pharisee")
 צ - ts (as in "tsadek")
 ק - q (as in "qahal")
 ר - r
 ש - sh (as in "shema")
 ש - s (as in "shalom")
 ת - t
 ת - th (as in "thou")

The exception to this are words in common usage, e.g. Shabbat.

CHAPTER 1

Introduction

In the literature of the Tannaitic and Amoraic periods, the rabbis used many expressions which reflected sociological concerns. Recognizing that legal sanctions could not enforce every form of desirable behavior, the rabbis invented new standards of behavior. These standards of behavior served to limit the practice of Jews both within their own communities and in relationship to their Gentile neighbors. By examining these terms in their literary and/or historical contexts, we discover that in most cases these prescriptions were intended to protect Jews from committing acts which might appear objectionable to others and thereby cause discredit to themselves and their people. We may note at the outset that although these standards of behavior were desirable, in most cases they were not enforceable.

This thesis will examine the following terms:

- a) Kebhod tsibbur (sometimes appearing as kebhod ha-tsibbur) is defined as dignity of the congregation, as indicated in the following passage:

Our rabbis taught: Anyone may be included in a quorum of seven, even a minor and even a woman; but the Sages said: a woman may not read from the Torah, because of kebhod tsibbur (b. Megillah 23a).

- b) Yuhara¹ is defined as wrongly arrogating to oneself the reputation of superior piety,² as indicated in the following passage:

If a bridegroom wants to recite the Shema' on his first wedding night, he may recite, that is to say, that Rabban Shim'on ben Gamliel suspected this as appearing as yuhara, and the rabbis did not suspect this as yuhara (b. Berakhot 17b).

- c) Mar-ith 'ayin, sometimes translated as "for appearance's sake," is defined as concern for one's appearance. We are careful of the impressions we convey by consciously avoiding any behavior which may appear objectionable to the public. It involves avoidance of any action which may appear as a transgression of Jewish law, even if one's actions and intentions are perfectly legitimate. The following passage provides an example of mar-ith 'ayin:

A man may plant a cucumber and a gourd in the same hollow provided that the one grows out in one direction and the other in the other, the foliage of the one stretching in one direction and the foliage of the other in the other; for whatsoever the Sages have forbidden they have so decreed because of mar-ith ha-'ayin (Kilaim 3:5).

Mar-ith 'ayin is a technical term but sometimes the components are used in a non-technical sense. When it is used to justify legislation, it is a legal concept. But, the word can literally mean "appearance" and as such can also be used in non-legal contexts.

(See Leviticus Rabbah 26:7.)

- d) Hillul hashem (bepharhesiah) is defined as profanation of the Divine name in public. It assumes a variety of meanings depending on the context in which it appears. In our chapter on hillul hashem we will discuss the various meanings it has. One meaning is indicated in the following passage:

R. Yohanan was suffering from scurvy. He went to a certain matron who prepared something for him on Thursday and on Friday. He asked her: "How shall I do it on the Sabbath?" She answered him: "You shall not need it." "But if I need it, what then?" She replied: "Swear unto me that you will not reveal (it)." "I swear to the God of Israel, I will not reveal it." He went forth and expounded it (revealed it) in a public lecture at the Academy. But did he not swear to her? "'To the God of Israel I will not reveal it,' but to His people I will reveal it." But is this not hillul hashem? (No, it is not.) Because he had told her from the very beginning (that he would not reveal it to the God of Israel) (b. Yoma 84a).

Of all the terms under investigation, hillul hashem is the only one which has some basis in the Bible. Leviticus XXII, 32 says: "You shall not profane My holy name, that I may be sanctified in the midst of the Israelite people." Hillul hashem includes every act or word of a Jew which reflects dishonor not only upon God, but upon the Jewish faith and the entire Jewish people as well.

As stated earlier, we will be analyzing these concepts as they appear in the Tannaitic and Amoraic literature. We will be dealing with sources from the third through seventh centuries. Specifically, we will examine passages from Mishna, Tosefta, Midrash and the Babylonian and Palestinian Talmuds.

The literature consulted is not a literature of legal codes where we may find decisions meant to guide or determine Jewish practice. Rather, it is a body of edited minutes of discussions which have taken place. We may find the decisions in the later literature. While occasionally we may refer to that literature, we are primarily interested in seeing how these concepts developed and in what frames of references

they were discussed.

Occasionally, we will make reference to Rashi's commentary of the eleventh century in full awareness of the fact that Rashi may not have invariably caught the simple meaning of the concepts. As other commentators did, Rashi may have added problems of his own time. It also will be seen that on many passages which we find of interest, Rashi does not comment at all.

When we began this study, it was with the assumption that there is a common denominator or link by which these four concepts (and others not covered here) are related. The concern over outward appearance is that link. Because a person does not live entirely independent of the society of which he is a part, his behavior is influenced by others. Samuel S. Cohon wrote, "It is the persistent effort of Judaism, as of every advanced religion, to fashion human character and behavior."³ "Our actions, instead of being wholly our own, are conditioned by the requirements of our group or people."⁴

In his book, The Lonely Crowd, David Riesman categorizes people into three broad types. There are "tradition-directed" people whose activity is determined by grounded obedience to traditions. There are "inner-directed" people whose sense of direction is implanted early in life by elders and parents. Third, there are "other-directed" people whose "conformity is insured by their tendency to be sensitized to expectations and preferences of others."⁵

If we may apply contemporary sociological principles to the Jewish

practices of the Rabbinic period, we might conclude that the rabbis were "tradition-directed," "inner-directed," and "other-directed."⁶

In our study, we shall be concerned with "other-directed" types of behavior. As Riesman expands his definition, we may find the category to be only peripherally related to our material, but here we choose to use the basic definition mentioned above. Using that definition, we find that in essence we are concerned with cases of people who, being strongly aware of the expectations of others, are highly attentive to the impressions they create.

If we may rely on the accuracy of concordances, we will examine every case where these concepts appear. For example, the term mar-ith 'ayin is not defined in the isolated context of one case. We define the term noting that the meaning could vary depending on the case.

After careful analysis of each concept in its context, we may find that the common link among all four concepts is a reasonable one. We may indeed conclude that all of these concepts under investigation are evidence that certain behavior is patterned on the basis of concern for creating accurate impressions.

CHAPTER 2

Kebhod Tsibbur

Introduction

In the Talmud there are only six distinct references which mention the expression mi-pne kebhod tsibbur. There is no mention of the term in the Mishna or Tosefta, or early Midrashim. In this chapter we will cite the six statements and seek to explain them in their respective contexts. At first observation, we note that each discussion which mentions kebhod tsibbur relates to some aspect of synagogue practice. It seems that kebhod tsibbur is used exclusively in relation to such practice.

When studying these references, we must ask a few questions. How is kebhod tsibbur, translated in our introduction as the "dignity of the congregation," to be understood? To what extent do the officiants of the congregation determine kebhod tsibbur, and what role do the congregants play in maintaining their kebhod tsibbur? When a congregation assembles in a synagogue, is kebhod tsibbur already present? If so, what are the rules which guarantee its maintenance? What influences outside the Jewish community might affect their internal concern to strive for "dignity" when assembled in synagogues? This last question may be difficult to answer. As we cite and analyze the sources, other questions may arise. In establishing the context of each passage from the Talmud, we will also cite the Mishna which precedes it.

Text

Gittin 5:8

These things have they enjoined in the interests of peace. A priest reads first, and after him a levite, and after him an Israelite--in the interests of peace. They put the Erub in the wonted house--in the interests of peace. The cistern...in the interests of peace.... They do not try to prevent the poor among the gentiles from gathering Gleanings, the Forgotten Sheaf and Peah--in the interests of peace.⁷

B. Gittin 60a

The Galileans sent to inquire of R. Helbo: May one read in separate scrolls (of the Torah) in the synagogue in public? It was not in his power (to answer), so he went to ask of R. Isaac, the smith. He was not able to answer, so he went and asked at the school house (House of Study), and they settled (the question) by (from) what R. Samuel bar Nahmani said in the name of R. Yoḥanan: A scroll of the Law that is missing one sheet (may not be read from.) But it is not so. (It has a different reason.) There (in that case) something substantial is missing, here (in this case) nothing substantial is missing. Rabbah and Joseph both said: One may not read from separate scrolls in the synagogues because of kebhod tsibbur (the dignity of the congregation).

Analysis

Rashi explains the nature of "books" in a comment on the phrase, in separate scrolls. They would write for themselves five separate humashin (books of the Torah), each humash complete in itself, and all of their books were in the form of detached scrolls like our Torah scroll. In other words, a humash is a scroll of just one book rather than a Torah whose scroll contains all five books. The question is raised: may one read from a scroll that is missing one sheet? The answer given is no. There is an attempt to make an analogy between a scroll missing a piece of parchment and a separate humash. The analogy does not seem to hold. Certainly, it is forbidden by law to

use a defective (in this case, incomplete) Torah scroll to fulfill the obligation of the public Torah reading. But, a humash is a separate, complete and self-contained scroll. What is wrong with using it?

Rabbah and R. Joseph both agree that a humash may not be used because of kebhod tsibbur.

We see the statement that one does not read from a humash in the synagogue, mi-pne kebhod tsibbur. This rule comes amid a section that deals with the laws on reading from the Torah and the order of those called up for honors. It is improper for the public Torah reading in a synagogue to be conducted from anything less than a complete and kosher scroll, yet the question is raised: is it permitted to read from a humash rather than a complete Torah scroll.

Why would reading from a humash affect kebhod tsibbur? It seems that concern for the dignity of the congregation is an important factor in the rabbis' decision. Every synagogue should possess a complete Torah scroll.

Text

Yoma 7:1

Then the High Priest came to read. If he was minded to read in the linen garments he could do so; otherwise he would read in his own white vestment. The minister of the synagogue used to take a scroll of the Law and give it to the chief of the synagogue, and the chief of the synagogue gave it to the Prefect, and the Prefect gave it to the High Priest, and the High Priest received it standing and read it standing. And he read 'After the death...' and 'Howbeit on the tenth day...' Then he used to roll up the scroll of the Law and put it in his bosom and say 'More is written here than I have read out before you.' And on the tenth... which is in the Book of Numbers, he recited by heart. Thereupon

he pronounced eight Benedictions: for the Law, for the Temple-Service, for the Thanksgiving, for the Forgiveness of Sin, and for the Temple separately, and for the Israelites separately, and for the priests separately; and for the rest a (general) prayer.⁸

B. Yoma 70a

Then he used to roll up the scroll of the Law etc. And whatever for? So as not to bring disgrace upon the scroll of the Law. "And on the Tenth," which is in the book of Numbers he recited by heart. Why? Let him roll it up and read (from it again): Huna the son of R. Joshua said in the name of R. Shesheth: Because they do not roll up a scroll of the Law in public because of kebhod tsibbur. Let him bring another (scroll) and read: R. Huna the son of R. Judah said: Because it would discredit the first (scroll), and Resh Lakish said: Because of the benediction that is not necessary. Do we take into consideration that (a scroll may) be discredited (by reading from a second one in the same service)? Did not R. Isaac, the smith, say: When the New Moon (or the first day of the month) of Tevet falls on the Sabbath, they bring three Torah scrolls, and they read one relating to the day, one of the New Month (Tevet), and one of Hanukah: When three persons read successively from three scrolls, there is no discredit, but when one person reads from two scrolls, there is discredit (it has the appearance as if the first scroll had been found defective).

Analysis

In the Mishnah and the Gemara which comments, we have a description of the Temple Service on Yom Kippur and specifically an account of the High Priest's role in the Torah reading. Again we see the expression mipne kebhod tsibbur given as a reason for a law.

The concern of the rabbis is about the method the High Priest uses when he recites the Maftir, i. e., the three or more concluding verses of the Torah portion; in this case the final verses of the portion for the Day of Atonement are taken from Numbers 29:7ff. The one who reads these final verses, whether on the Sabbath, festival or public fast days, would read them from the Torah scroll. It is forbidden to recite them

by heart.

However, the Maftir reading on the Day of Atonement is treated as a unique situation, not paradigmatic for synagogue practice. On the Day of Atonement the High Priest is permitted to roll up the Torah which was open to the book of Leviticus and recite the verses from Numbers by heart. The question is asked regarding the rolling of the scroll: why is it necessary to say, "more is written here than I have read out before you"? The reason is so as not to bring disgrace upon the scroll of the Law. Rashi tells us, "that when they see him read the third portion from memory, there will be a doubt that the scroll is incomplete and missing that portion." All doubts are cast aside by the reader's pronouncement that there is more in the scroll.

We must still ask, why is the section from the book of Numbers read from memory? Why is the scroll not rolled to the appropriate section? Rav Huna bar Rav Joshau quoting Rav Sheshet provides the answer: it is forbidden to roll a scroll in public mipne kebhod tsibbur. We then ask, why not bring in an additional scroll to use? Two reasons are given: 1) It would require an extra benediction. This reason is not developed by the rabbis. 2) It would discredit the authenticity of the first scroll by bringing a second scroll. The congregants might say that the first scroll was defective.

We are still wondering what kebhod tsibbur has to do with rolling a Torah. If we look back at our discussion of the passage from Sotah 39b, we have a clue. While the Torah is rolled, the congregation is

ignored. The congregation might become restless if not annoyed because of unnecessary delay. Rashi tells us that the people are silently waiting and expecting the continuation of the service. Any delay, such as rolling the Torah, could disrupt the continuity of an intensely emotional and dramatic time. Also, the mere questioning of the Torah scroll's authenticity is disruptive. Anticipating a possible disturbance, the rabbis permitted a section of the Torah reading to be recited by heart. The rabbis were taking into account not only the dignity of the worshippers but also of the Torah scroll. Again, this practice of recitation of a section of the Torah by heart was reserved only for the High Priest only on the Day of Atonement.

Text

Sotah 7:6

After what manner was the blessing of the priests? In the provinces it was pronounced as three blessings, but in the Temple as a single blessing; in the Temple they pronounced the Name as it was written, but in the provinces by a substituted word; in the provinces the priests raised their hands as high as their shoulders, but in the Temple above their heads, excepting the High Priest who raised his hand only as high as the frontlet. R. Judah says: The High Priest also raised his hand above the frontlet, for it is written, And Aaron lifted his hands toward the people and blessed them.⁹

The passage in the following Gemara which mentions kebhod tsibbur does not appear to have any connection to the Mishnah. However, if we look at the verse in its context, we see its relationship to the whole discussion.

B. Sotah 39b

R. H̥isda said: The priests are not permitted to bend the joints of their fingers until they turn their faces away from the congregation. R. Zeira said in the name of R. H̥isda: The reader is not permitted to call "Kohanim" until after "Amen" is said by the congregation; and the priests are not permitted to begin the benediction until the dictate is finished by the reader; And the congregation is not permitted to answer "Amen" until the benediction is completed by the priests; And the priests are not permitted to begin another benediction until after "Amen" is said by the congregation. But R. Zeira said in the name of R. H̥isda: The priests are not permitted to turn their faces away from the congregation until the public reader of the prayers begins with "Sim Shalom" ("Grant us peace"); and they are not permitted to move their feet in order to go until the public prayer reader would finish "Sim Shalom." But R. Zeira said in the name of R. H̥isda: The congregation is not permitted to answer "Amen" until after the benediction is completed by the reader; and the reader is not permitted to read in the Torah until after "Amen" is said by the congregation; And the translator is not permitted to begin with the translation until after the verse is read by the reader.; and the reader is not permitted to begin with another verse until after the translation is given by the translator. R. Tanḥum said in the name of R. Joshua ben Levi: The one who concludes the reading from the Law by reading a selection from the Prophets must first read from the Torah. And R. Tanḥum also said in the name of R. Joshua ben Levi: The one who reads the selection from the Prophets is not permitted to begin to read until the Torah scroll is rolled up. And Rabbi Tanḥum also said in the name of R. Joshua ben Levi: The public prayer reader is not permitted to dissemble the ark in public (in the presence of the congregation) because of kebhod tsibbur (the dignity of the congregation). R. Tanḥum also said in the name of R. Joshua ben Levi: The congregation is not permitted to leave until the scroll of the Law is taken and set in its place. Samuel said: not until the public prayer reader leaves. And they do not dispute: The first case refers to when there is another exit, the latter to when there is not another exit. Raba said: Bar Aḥina explained to me--(that the scriptural basis for the regulation is) "After the Lord your God you shall walk." (Deut. 13:5)

Analysis

The Mishnah and its comments in the Gemara give a detailed account of the order of events in a prescribed part of synagogue worship service. From the priestly benediction of the tefilla to the conclusion of

the Torah service, the role of each participant including that of the entire congregation is defined. The rules for the Torah reading are listed in a logical, sequential order. The statement with which we concern ourselves follows this pattern with one exception. We would expect to find simply another rule in the sequence. So, we have the rule: The public prayer reader is not permitted to strip the ark bare (dismantle the ark) in the presence of the congregation. But, the rule is followed by the words mipne kebhod tsibbur. This is the only rule in the section where a reason is given for its existence.

Rashi explains the procedure of dismantling the ark. While the congregation was in the synagogue it was their practice to bring the scroll of the Law from another building, where it was kept in safe custody, to the synagogue and spread cloth hangings around the ark and place it inside it. When they would depart from the synagogue they would lift up the scroll of the Law in order to carry it to the building where it was guarded. The reader would not remove the garments from the ark in the presence of the congregation for he would trouble the congregation to remain there with the scroll of the Law. Rather, he would carry the scroll of the Law to its chamber and leave it, and the people would leave after him. Afterwards, he would return and dismantle the ark.

Dismantling the ark was time consuming and a procedure requiring only one or two people. It was not necessary to involve the entire congregation in an activity meant to take place after the service is

concluded. Such delay is unnecessary and offensive to the dignity of the congregation. There is also the chance that the congregation may become bored and resentful which might lead them to behave in an undignified manner.

Another mention of the term kebhod tsibbur occurs in Sotah 40a, however the discussion which contains the term describes a situation when the principle of kebhod tsibbur is overridden by a different concern for appearance:

Text

B. Sotah 40a

R. Isaac said: Let the fear (respect) of the assembled congregation always be upon you, for behold, the priests had their faces toward the people and their backs toward the Shekhinah (Divine Presence). R. Nahman said, It is derived from here: "Then King David stood up on his feet and said, Listen to me, my brothers and my people" (I Chron 28:2). If "my brothers" why "my people," and if "my people," why "my brothers?" Rabbi Eleazar said, David said to Israel: If you listen to me, you are my brothers, if not, you are my people and I rule you with a rod. Our rabbis said, it is derived from here: (Rosh HaShanah 31b) that the priests are not permitted to ascend the platform in their sandals, and this is one of the ten ordinances which Rabbi Yohanan b. Zakkai instituted. What is the reason? Was it because of kebhod tsibbur? R. Ashi said: No, there, the reason is lest the shoe-lace becomes untied and he proceeds to retie it, and people say, "He is the son of a divorcee or a halutzah (A woman released from levirate marriage)."

Analysis

The law is stated that priests are not permitted to ascend the platform for the priestly blessing while wearing their sandals. They are to remove them before the blessing; the preferred practice is that they

remove them in a place separate from the synagogue, perhaps in an adjoining room, or in a discreet place within the synagogue. Attempts are made to give a reason. Was it because of kebhod tsibbur as in the case of dismantling the ark which appears on the previous page of Gemara? Why was this considered so important as to be one of the ten ordinances instituted by R. Yoḥanan b. Zakkai? Jacob Neusner surmises that the reason behind the law could be that Yoḥanan required the priests to behave as if the synagogue at Yavneh and elsewhere were the Temple. In this decree, he not only claimed for his court and its prayers the same prerogatives as had formerly applied in the Holy Sanctuary. He also forced the priests to conform to his will if they hoped to continue their function of blessing the whole people.¹⁰

Neusner's explanation focuses on priestly respect for the synagogue. Perhaps kebhod tsibbur is suggested as a rationale behind the law. But, the comment which follows the kebhod tsibbur question suggests a different consideration.

Rav Ashi's view is that the priest remove his sandals out of concern for his own dignity. Perhaps the priest's sandal strap might be broken or untied and he would need to stoop down on the platform to attend to it. Such action might cause onlookers to call the priest ben gerushah or ben halutsah thus questioning his status and ridiculing him. The concern is that people might think he had been disqualified for priestly service.

Perhaps the dignity of the priest is somehow connected to the dignity of the congregation. The Gemara states that the law is meant to prevent someone from calling the priest a name which would mar his reputation.

Were congregants to do such a thing, they might diminish their own kebhod tsibbur.

Rashi's comment does not shed much light on the matter. Rashi uses the words emetha detsibbura rather than the words that actually appear in the text, kebhod tsibbur. He would translate the question, "was it not out of fear of the congregation?" Of course it is possible that Rashi had a different manuscript which contained the words emetha detsibbura in the text of the Gemara. Regardless of what text he had, he does not deal with the issue but only explains why the priest would not ascend wearing sandals. Because when they would look at his clothes made to his size (stature) when he raised his hands, the sandals would be visible to the congregation and they would not be suitable to be seen because of the mud on them.

Rashi also comments on the phrase, Lest the shoelace become untied: it is a disgrace to himself for they would scoff at him when his sandal is open and he sits to tie it while his colleagues recite the benediction, and they would say: "He is not fit for uttering the priestly benediction" and "let him sit down!"

A safe conclusion would be that the priest is consciously avoiding any action which would both diminish the dignity of the congregation and mar his own reputation.

Text

Megillah 4:5-6

He that gives the concluding reading from the Prophets also recites the Shema' with its Benedictions; and he leads the 'Amidah, and he recites (the Benediction of the Priests). If he is a minor, his father or his teacher lead the 'Amidah on his behalf.

A minor may read in the Law and interpret, but he may not recite the Shema' with its Benedictions or lead the 'Amidah or recite (the Benediction of the Priests). He whose clothes are ragged may recite the Shema' with its Benedictions and interpret, but he may not read in the Law or lead the 'Amidah or recite (the priestly benediction). He that is blind may recite the Shema' with its Benedictions and interpret. R. Judah says: He that has never seen the light may not recite the Shema' with its Benedictions.¹¹

B. Megillah 24a-b

What is the reason? R. Papa said: on account of respect (honor). Raba b. Shimi said: because it may come to quarrels between them. What difference is there between them? There is a difference between them in that one did it gratuitously (gratis).

We learned: if he is (was) a child, his father or his teacher passes before him; if you say it is 'because of quarreling,' will a child quarrel? If not, why? If it is because of honor (respect), does the child receive respect? But it is (a case of) respect for his father and his teacher. Here also, there is (a case of) quarreling, involving his father and involving his teacher.

One who is clad in rags may recite the Shema' etc.

Ulla b. Rabh asked of Abaye: Is a child in rags allowed to read in the Torah? He answered him: You could ask about a 'naked one.' Why is a naked person not allowed? Because of kebhod tsibbur. Here also (he is not allowed) because of kebhod tsibbur.

Analysis

The Mishnah deals with those who can read from the Torah, and it questions the right of children or those improperly dressed to do so.

The concern here is for the dignity of the congregation because one who

is exposed would bring shame upon himself and the congregation.

Reading from the Torah is an honor, therefore only a person properly dressed should be permitted to have such an honor. Rashi explains the term poheah: In Tractate Sophrim it is explained as one whose knees are exposed, whose garments are torn, and who is barefoot. One might ask why a person in rags is permitted to recite the Shema' with its benedictions but is not permitted to read the Torah, lead the 'Amidah, or act as shaliah tsibbur. Rashi explains that he is obligated to recite the Shema' and its Benedictions. But he may not read in the Torah because of kebhod Torah, honor due to the Torah; and likewise with regard to acting as shaliah tsibbur leading the 'Amidah, and reciting the priestly benediction for these actions would bring disgrace to the congregation. The concern here is not only for the dignity of the sacred scroll of the Law but also for the people in whose presence such action would occur. Rashi explains the phrase, "Is a child in rags allowed to read in the Torah?" An adult clad in rags is forbidden because of the verse in the Torah, "For the Lord your God walks in the midst of your camp, to deliver you and to give up your enemies before you; therefore your camp shall be holy; that He see no unseemly thing in you, and turn away from you." (Deut. 23:15) An unseemly thing can refer to indecent conduct or literally nakedness. Rashi goes on to explain that a child is not forbidden (from reading in the Torah) or it may be that the Mishna does not distinguish between a child and an adult in this case. Perhaps in the strict understanding of the law, a child, although improperly

clothed, is not included in the prohibition from Deuteronomy which evidently pertains only to adult males. But the rabbis do not hesitate to include children in this law. Kebhod tsibbur, concern for the dignity of the congregation, is clearly the overriding principle.

Text

Megillah 4:1

He that reads the Scroll may stand or sit. If one reads it, or if two read it, they have fulfilled their obligation. Where the custom is to say a Benediction (after it) they say it; where it is not the custom, they do not say it. On a Monday and a Thursday and on the afternoon of a Sabbath the Law is read by three: they may not take from them or add to them, and they do not close with a reading from the Prophets. He that begins the reading from the Law and he that completes it say a Benediction the one at the beginning and the other at the end.

Megillah 4:2

And in the beginnings of the months and during mid-festival the Law is read by four; they may not take from them or add to them, and they do not close with a reading from the Prophets. He that begins the reading from the Law and he that completes it say a Benediction the one at the beginning and the other at the end. This is the general rule: when the Additional Prayer is appointed and it is not a Festival-day, the Law is read by four. On a Festival-day it is read by five, on the Day of Atonement by six, and on the Sabbath by seven. They may not take from them but they may add to them, and they close with a reading from the Prophets. He that begins the reading from the Law and he that completes it say a Benediction the one at the beginning and the other at the end.¹²

Analysis

The discussion which follows in the Gemara focuses specifically on the reasons why certain numbers of honors were designated for each holiday, citing scriptural proof for each case. The following Baraita then appears, almost as an incidental comment:

Text

B. Megillah 23a

Our Rabbis taught: Anyone may be included in a quorum of seven, even a minor and even a woman; but the Sages said: a woman may not read from the Torah, because of kebhod tsibbur (the dignity of the congregation).

For purposes of comparison we cite the following text from the Tosefta and its notes.

TOSEFTA MEGILLAH CH. 3 (Erfurt manuscript, ch. 4)

3:11 On a festival day five (read), on the Day of Atonement six (read), on the Sabbath seven (read), and if they wanted to add (readers), they may not add, according to the words of R. Ishmael. R. Akiva says, on a festival day five (read), on the Day of Atonement, seven read and on the Sabbath, six. And if they wanted to add, they may add. Anyone may be included in a quorum of seven, even a woman, even a minor. They do not permit the woman to read publicly.

3:12 In a synagogue which only has one that may read, he stands, reads and sits; stands, reads, and sits; stands, reads, and sits, even seven times.

Short notes from Tosefta

In a quorum of seven etc. That is to say, if a man of Bar Mitzvah age already read in the Torah, and the Mosaic ordinance was already fulfilled, thus also a woman and a minor may be included to complete the quorum.

They do not permit a woman etc. In other words, if there is not even one there that knows how to read in the Torah, they do not permit the woman to read in order to release the congregation (from the obligation of hearing the Torah read), for behold, she is not obligated regarding the Mosaic ordinance. And she is not able to release the congregation (from its obligation). And this baraita is attached to the following baraita. And look in the long commentary (Tosefta Kifshuta).

And sit etc. For in their time they only recited one blessing at the beginning of the portion and a second blessing at the end of the portion, and therefore, one needed to sit in the meantime, in order to divide the portion into seven parts.¹³

Here, we have a discussion of the number of people that are called to read from the Torah for different holidays and the significance of each number. The discussion then shifts from how many go up to who can go up. According to the passage, women and children were permitted by Halacha to read from the Torah publicly. The Sages said that a woman should not be allowed, because of kebhod tsibbur. Before we analyze this baraita which is a Tosefta passage, we might first study the passage as it stands independently in the Tosefta, without the Gemara discussion in the context of other Tosefta passages.

Tosefta Megillah, Ch. 3

3:11 On a festival day five (read), on the Day of Atonement six (read), on the Sabbath seven (read), and if they wanted to add (readers), they may not add, according to the words of R. Ishmael. R. Akiva says, on a festival day five (read), on the Day of Atonement, seven read and on the Sabbath, six. And if they wanted to add, they may add. Anyone may be included in a quorum of seven, even a woman, even a minor. They do not permit the woman to read publicly.

3:12 In a synagogue which only has one that may read, he stands, reads, and sits; stands, reads, and sits; stands, reads, and sits, even seven times.

As we will do later in our analysis of the Gemara passage, we will divide the Tosefta passage into two strata for easier analysis and comparison:

- A. Anyone may be included in a quorum of seven, even a woman, even a minor.
- B. They do not permit the woman to read publicly.

Statement A is a halakhic statement. If a man of Bar Mitzvah age

already read in the Torah, and the Mosaic ordinance was already fulfilled, then a woman and a minor may be included to complete the quorum of seven readers. The Mosaic ordinance requires at least one adult male to read first.

The second statement overrides the first. They do not permit the woman to read publicly. No reason is given in the text. Note that they do not exclude the minor in what is evidently a later strata, just the woman. "They" the subject of the sentence presumably refers to the men in the synagogue. Lieberman discusses the statement in his notes to the Tosefta.

Even if there is not one man in the synagogue who knows how to read, they may not bring the woman to read publicly, because she is not able to release the congregation from their obligation. She is not included in the procedure defined by the Mosaic ordinance.

Lieberman sees this statement as a transition between what preceded it and the Tosefta passage that follows:

3:12 In a synagogue which only has one that may read, he stands, reads, and sits; stands, reads, and sits; stands, reads, and sits, even seven times.

Even if a synagogue has only one person that knows how to read, they would still not permit a woman to read. It is better to have the one man read, return to his seat, and read again seven times than to have a woman read who is unable to fulfill the public obligation.

Let us now look at the baraita which is the Tosefta passage as it appears in the Gemara:

- A. Our Rabbis taught: Anyone may be included in a quorum of seven, even a minor and even a woman.
- B. But the Sages said: a woman may not read from the Torah because of kebhod tsibbur.

Note the slight difference in word order between stratum A in the Tosefta and stratum A in the Gemara. In the Tosefta, woman appears before minor. In the Gemara, minor appears before woman. Lieberman indicates the verbal differences in the manuscripts. In the first edition of Tosefta and in the Leiden manuscript, woman appears before minor. In the Erfurt manuscript, minor appears before woman. But, this variation is insignificant compared to the differences between strata B of the Tosefta and Gemara.

In the Tosefta, no reason is given for the exclusion of the woman from the quorum, and, the statement is not attributed to anyone. But, in the Gemara, the ruling preventing women from reading is attributed to the Sages, and a reason is given. Out of concern for the dignity of the congregation, it is not allowed. No attempt is made to invoke scriptural authority. The Sages have invented a new concept: kebhod tsibbur. They are not concerned about Halacha and divine revelation. Rather, they are concerned about the mores of a particular society.

Perhaps stratum A was a very old Halakhah which could not be upset by later generations. The Sages could only recommend that people not avail themselves of the early Halakhah. They could not uproot the Halakhah but they could ignore it. Women could be (and presumably were) called to the Torah as part of the quorum, but the

practice was discarded because of the honor of the community.

Neither Rashi nor the Tosaphists comment on the expression, kebhod tsibbur. What were the rabbis concerned about when they speak of the honor of the community? Could tsibbur be a euphemism? Perhaps tsibbur refers specifically to certain men in the congregation:

In the early synagogue, too, there were no formal rules as to the place of the women at the service. The few references in the Mishnah would imply that women participated in the service and even in the public reading of the Torah. However, there was already a bias against women acting as public readers of the Torah because it might prove embarrassing to the men.¹⁴

A woman might be called to reading of the Torah but this was disapproved on grounds of propriety. It might embarrass the menfolk who were not able to read from the scroll. This principle is laid down by the rabbis of the Talmud: 'All are qualified to be among the seven (who read), even a minor and a woman, only the Sages said that a woman should not read in the Torah out of respect for the congregation.' (Meg. 23a)¹⁵

It was not just that women could not read because of their inability to fulfill the public obligation. That should have been reason enough for the rabbis to forbid them from reading. Evidently, the reputation of the men was at stake; perhaps, more specifically, the reputation of husbands.

We see an analogous situation in Berakhot:

Berakhot 3:3

Women and slaves and minors are exempt from reciting the Shema¹ and from wearing phylacteries, but they are not exempt from saying the Tefillah, from the law of the mezuzah or from saying the Benediction after meals.¹⁶

In a comment to this Mishnah, the Gemara states:

B. Berakhot 20b

Rabina said to Raba: Is the obligation of women to say grace after meals Rabbinical or Scriptural? What difference does it make which it is? -- For deciding whether they can perform the duty on behalf of others. If you say the obligation is Scriptural, then the one who is bound is bound by Scripture. But if you say the obligation is only Rabbinical, then a woman is not strictly bound to do this, and whoever is not strictly bound to do a thing cannot perform the obligation on behalf of others. What (do we decide)? Come and hear. In truth they did say: A son may say grace on behalf of his father and a slave may say grace on behalf of his master and a woman may say grace on behalf of her husband. But the Sages said: a curse will befall the man whose wife or children have to say grace for him.

In this case it is assumed that he cannot say grace himself. A man would be shamed if his wife could recite the blessing, and he could not. Similar to the idea of kebhod tsibbur in a public setting for the Torah reading, the concern here is for the husband's dignity in a domestic setting.

The rabbis could not invoke a curse on a male who permits his wife to say grace because legally she is permitted to do so. They could only discourage such practice. Likewise, although a man is obligated to read from the Torah, the woman is permitted to do so. If the rabbis of a later generation are already concerned with the self-esteem of the male in his own home and there is not a whole congregation present to see, then in the case of a whole congregation assembled, that same motivation is present in the concept of kebhod tsibbur.

In his long commentary to the Tosephta, Saul Lieberman gives examples of later interpretations of the passage in Megillah. The Meiri commentary describes the practice of Torah reading. The

procedure was that if seven read, only the first reader recited the blessing before the reading and the last said the blessing after the reading. Only the first and last recited blessings. The intermediate readers read verses from the Torah. But the first reader had already fulfilled the Mosaic ordinance. A woman would not be permitted to recite the blessings, but, theoretically, she could act as an intermediate reader. But Meiri points out that in the case where there is no man who is able to read, a woman could not be called up to read. She is not commanded for the obligation of Talmud Torah. Therefore, she cannot exempt the congregation from hearing the public reading. Male children may read because they are potentially commanded for the obligation of Talmud Torah.

Lieberman's review of other later commentaries indicates that all are concerned with the halakhic considerations of releasing the congregation from its obligation. Lieberman quotes other commentaries who simply say that women cannot read because of kebhod tsibbur.¹⁷ No interpretation of the phrase is given. They all seem to have trouble with the first statement, "women can read," yet their arguments bypass the consideration of kebhod tsibbur.

The issue of kebhod tsibbur, the dignity of the congregation, was not just discussed by the rabbis of the Talmudic period. Reference was made to the expression in later commentaries, codes and responsa literature, particularly in relation to the woman's role in the Torah service. In fact, the same issue has been of concern in this century.

In 1977, the Rabbinical Assembly of Conservative Judaism published a volume entitled Conservative Judaism and Jewish Law. Contained in the volume are three articles pertaining to the role of women in Jewish law. In each article, the author explains the expression kebhod tsibbur as it relates to his argument.

In the article, "An Aliyah for Women,"¹⁸ Aaron H. Blumenthal argues that women be permitted to be called to the Torah. He points out the talmudic precedent for this in the statement from b. Megillah 24b, "Anyone may be included in a quorum of seven, even a minor and even a woman." Blumenthal analyzes the second part of the statement, "But the Sages have said: a woman may not read from the Torah because of kebhod tsibbur." He believes that in today's congregations there is no breach of kebhod tsibbur in calling women to the Torah.

After a brief review of the five other passages in the Talmud which mention kebhod tsibbur, Blumenthal assumes that the expression has basically the same meaning, dignity of the congregation. He asks why it would be offensive to the dignity of the congregation for women to read Torah. As in the case of a woman reciting Grace after Meals for her husband who cannot, here, too, the implication is that there is no man present who can read from the Torah. Women are only denied the privilege because it is considered offensive or improper.

"We could solve our problem very expeditiously by saying that many of the things which offended K'vod Hatzibbur in talmudic times no longer offend us,"¹⁹ says Blumenthal. Jewish women have played

an indispensable role in the welfare of synagogues and the Jewish community. Moreover, Blumenthal points out, kebhod tsibbur is not a law of the Torah, but only a rabbinic concept. Even so, the Rabbis have re-interpreted the law, when necessary, and have contravened Biblical commandments such as in the case of Hillel's Prozbul and the prohibition of polygamy. Blumenthal states, "If the Halachah could modify laws enunciated in the Torah, it certainly can re-define the rabbinic concept of K'vod Hatzibbur."²⁰

Blumenthal then traces the historical development of the law to see whether kebhod tsibbur is the only consideration and whether the prohibition is as old or as fixed as it seems to be. Blumenthal notes the two versions of the text, one in the Tosephta and the other, a Baraita in the Babylonian Talmud. There are significant differences in the wording of the parallel texts, but most apparent is that kebhod tsibbur is not mentioned in the Tosephta.

Blumenthal consulted with a professor at the Jewish Theological Seminary who explained the meaning of both passages. It was improper to invite a woman to read the scroll because it reflects on kebhod tsibbur that there is no man who can read the Torah. Such was the practice in Palestine. The Baraita which reflects the Babylonian practice indicates that women could receive and aliyah, but she could not be the official reader for the congregation. "The Tosefta and the B'raita, therefore, reflecting the practice in both Palestine and Babylonia, indicate that a woman was called to the reading of the Torah in talmudic times.

K'vod Hatzibbur drew some distinctions between the privileges of a man and those of a woman, but not enough to deny her an aliyah. "21

There is no halakhic objection to granting a woman the privilege of an aliyah. They are not obligated in the study of Torah but the benedictions for the reading of the Torah are not in observance of the mitsva of Talmud Torah; rather, they are to honor the Torah. Nowhere does the law forbid women to recite the benedictions. Even in daily morning prayers women recite benedictions over the Torah.

Clearly, there is no halakhic objection to granting modern women aliyoth. But was it ever practiced? Blumenthal cites the case which appeared in the Responsa of Rabbi Meir of Rothenburg:

In a city whose men are all Cohanim and there is not even one Israelite among them, it seems to me that one Cohen takes the first two aliyot and then women are to be called, for, 'All may ascend...'

In Tannaitic times a woman was granted the privilege of aliyoth, but we do not know how late the practice was observed. The practice may have varied depending on the community. Blumenthal suggests an important consideration: "Local customs in the treatment of women among the non-Jewish community might have exercised an influence."22

Blumenthal declares that the refusal of our ancestors to implement the halakhah over centuries has acquired the sanctity of a strong minhag and minhag for our ancestors is Torah. However, we must not neglect another matter of compelling concern--the emancipation of Jewish

women under Jewish law.

The Rabbis have changed laws. This is the dynamic and creative halakhah of which to be proud. Blumenthal appeals for someone to reverse the direction in which the halakhah has been moving for centuries.

Blumenthal concludes:

In view of all these considerations, the precedent in Tannaitic times, the classic halachic permissibility, and the contemporary needs to extend equality of status to the Jewish woman under Jewish law, we declare that it is proper to grant the privilege of an aliyah to a Jewish woman during the reading of the Torah in the synagogue. 'If they wish to place themselves under the yoke of the law, that is their privilege, and no one may interfere.'²³

Blumenthal sees the need to reinterpret kebhod tsibbur in light of the modern age. It is not a Biblical law, but only a rabbinic concept presenting a weak reason for ignoring an earlier halakhic statement. It is time for women to be accorded the equal place they deserve.

In his article, "Women in a Prayer Quorum,"²⁴ Rabbi Philip Sigal argues for the inclusion of women in the prayer quorum. Women should be equal in the obligation of public worship which is of vital importance in Jewish life.

Sigal does not discuss the issue of kebhod tsibbur but cites the passage from Megillah 23a to demonstrate that women were in the place of public worship. They were obligated equally with the men to be included in the quorum of seven Torah readers and they were permitted to sound the shofar.

But Sigal also circumvents the issue by explaining the meaning of aliyah to the Torah. Sigal states that she is to be called to the Torah, thus enabling the public to fulfill its obligation, but she is not obligated to study it. She is permitted the honor because the blessing she recites is not for the study of Torah, but for the Election of Israel and the Revelation.

In an article entitled, "Woman's Role and Jewish Law,"²⁵ Rabbi David M. Feldman argues that women should not be included in the prayer quorum. Since they are not obligated to pray in a regular minyan, it would not be proper to include them. Feldman dismisses the notion of equality as inapplicable here. Rather, he recognizes the different roles of men and women in the religious life of Judaism and believes that these differences are sound from halakhic, psychological and sociological viewpoints.

In his article, there is a section called "Aliyot and K'vod Ta-Tzibbur" where Feldman cites the passage from Megillah 23a. He asks how we should interpret kebhod tsibbur when neither the Talmud, nor the Codes, nor their Commentaries, nor the Responsa literature defines the term. He also cites the case of the community made up entirely of kohanim. Here, the concern for kebhod tsibbur is set aside to insure the dignity of a kohen. This is an exceptional case.

Upon examination of the halakhic sources, Feldman concludes that only men have the statutory obligation to read the Torah publicly; thus only men can discharge it for others. "This would lend a legally

specific, as opposed to a sociologically variable, meaning to 'k'vod
ha-tzibbur,²⁶ says Feldman. Since she has no obligation to study
Torah, a woman should not even say the benediction.

Feldman assumes that formal obligation is the important halakhic
factor. But we must also take into consideration the issue of sex
segregation. To have aliyot for women would mean to construct a
special, covered stairway leading the women, unseen, to and from
the reading desk.

Feldman insists that the issue of equality is not of concern here.
Rather we must appreciate the obligation differences in the respective
roles of men and women.

CHAPTER 3

Yuhara

Introduction

We define yuhara as wrongly arrogating to oneself the reputation of superior piety. If we may rely on the completeness of Kassovsky's Otsar Leshon Hamishnah, we find that the term does not occur a single time in the Mishnah. But, relying on Kassovsky's Otsar Leshon Hatalmud, we find it occurs only four times in the Talmud. We also note that verbs with the same root as yuhara have appeared a few places in the Talmud. The verbs have the meaning of to boast or to display haughtiness.²⁷ The root also has an adjectival form meaning arrogant or presumptuous.²⁸ We will limit our investigation to those instances where the root appears in its technical nominal form: yuhara. Since only four cases are mentioned, we might wonder just how concerned the rabbis were over yuhara. Let us look at these cases:

Text

Berakhot 2:4

Craftsmen may recite the Shema' on the top of a tree or on top of a course of stones, which they may not do when they say the Tefillah.²⁹

Berakhot 2:5

A bridegroom is exempt from reciting the Shema' on the first night, or until the close of the (next) Sabbath if he has not consummated the marriage. Once when Rabban Gamaliel married he recited the Shema' on the first night. His disciples said to him, 'Master, didst thou not

teach us that a bridegroom is exempt from reciting the Shema' on the first night?' He said to them, 'I will not hearken to you to cast off from myself of the kingdom of heaven even for a moment.'³⁰

B. Berakhot 16a

A bridegroom is exempt from reading the Shema'. Our Rabbis taught: "When thou sittest in thine house," excluding one who is engaged in a mitsva; "and when thou walkest by the way," excluding a bridegroom. From this they said: he who marries a virgin is exempt, and, if a widow he is obligated. How does it imply? Rav Pappa said: As a "way": just as "way" is optional, so here it is also optional. Are we not dealing with one who is going on a religious mission, and yet the Torah says: Let him recite. If so, the Torah should have said, "when walking. Why 'when thou walkest?'" You can infer from this: When you walk for yourself you are obligated, but if it is for a mitsva, you are exempt. If so, why specify: 'He who marries a virgin?' Even he who marries a widow, also; the one is anxious and the other is not anxious. If because of anxiety, even one whose ship is sinking at sea also. Why did R. Abba bar Zavda say in the name of Rav: A mourner is obligated in all of the precepts mentioned in the Torah except for Tephillin, which are said to be an ornament, as it is said: "Bind the tire of thine head upon thee, etc." (Ezek. 24:17) Say, here his anxiety is an optional one, there his anxiety is an obligatory one.

Analysis

The Mishnah deals with the requirement of kavvana (concentration or intent) in recital of the Shema'. The Gemara includes a Baraita as commentary on the second part of the Mishna, "A bridegroom is exempt from reciting the Shema'..." For a more detailed explanation of the phrase from the Baraita, "'When thou sittest in thine house,' excluding one engaged in a mitsva," Rashi refers us to his comments on Berakhot 11b. Let us go back to that discussion in the Gemara which comments on Mishna 1:3, for the Mishna, Gemara, and Rashi's comments are all necessary for our understanding of a later passage in Berakhot (17b) which contains the term yuhara.

Text

Berakhot 1:3

The School of Shammai say: In the evening all should recline when they recite (the Shema'), but in the morning they should stand up, for it is written, And when thou liest down and when thou risest up. But the School of Hillel say: They may recite it every one in his own way, for it is written, And when thou walkest by the way. Why then is it written, And when thou liest down and when thou risest up? (It means) the time when men usually lie down and the time when men usually rise up. R. Tarfon said: I was once on a journey and I reclined to recite (the Shema') in accordance with the words of the School of Shammai, and so put myself in jeopardy by reason of robbers. They said to him: Thou hadst deserved aught that befell thee in that thou didst transgress the words of the School of Hillel. ³¹

B. Berakhot 11a

The School of Hillel correctly explain their reason and the reason of the House of Shammai. But why do the School of Shammai not hold with the School of Hillel? The School of Shammai will tell you: Were it so, the verse would say 'In the morning and in the evening.' Why "When you lie down and when you rise up?" At the time of lying down, actual lying down, and at the time of rising up, actual rising up. But what do the School of Shammai do with this: "And when you walkest by the way?" They require it for this which has been taught: "When thou sittest in thy house"--excluding one engaged in a mitzva; "And when thou walkest by the way" excluding a bridegroom; From this they said: He who marries a virgin is exempt, and, if a widow, he is obligated. How does this follow? Rav Papa said: As a way, just as way is optional so also anything is optional. Are we not dealing with one who is going on a religious mission, and yet the Torah says: Let him recite. If so, the Torah should write: 'when sitting and when walking.' Why: "When thou sittest and when thou walkest?" When you sit for yourself and when you walk for yourself, you are obligated, but if it is for a mitzva you are exempt. If so, even he who marries a widow: The one is anxious, and the other is not anxious. If because of anxiety, even one whose ship is sinking at sea: Should you say that is so, why did R. Abba b. Zavda say in the name of Rav: A mourner is obligated in all of the precepts mentioned in the Torah except for Tephillin, which are said to be an ornament, as it is said: "Bind the tere of thine head upon thee." There his anxiety is a religious one, here his anxiety is an 'optional' (discretionary) one. And the School of Shammai? They require it: excluding those on a religious mission. And the House of Hillel? They say: Automatically, you may infer that one also recites 'by the way.'

Analysis

The Mishna discusses the postures one assumes when reciting the Shema'. In the Gemara, the School of Shammai is challenged. How do they interpret, "And when thou walkest by the way?" The School of Shammai relies on the Baraita. The phrase "When thou sittest in thine house" excludes those preoccupied with the performance of a religious duty. The phrase "When thou walkest by the way" specifically refers to a bridegroom who also would be exempt from reciting. The Tosaphot in b. Sukkah 25a suggest that it is rather the phrase "when thou sittest in thine house" that refers specifically to a bridegroom, and "when thou walkest by the way" refers generally to anyone preoccupied with another religious duty. For our purposes, we may assume that both phrases together refer equally to both cases. The case of the bridegroom is a particular example of one preoccupied with a religious duty: wedlock. According to Rashi, it is not so much the religious act itself which prevents him from reciting the Shema' as the anticipation. The excitement may prevent proper intent of recital.

Using the groom just as an example of one preoccupied with a religious duty, the Gemara asks how this is suggested in the biblical phrase. Rav Papa answers that vadderekh ("by the way") has a connotation of voluntariness (reshut) as distinct from an authoritative and compulsory religious command. By saying that the Shema' is to be recited when one sits in one's house and walks by the way, Scripture envisioned one who happens to be staying at home or going out, not in

performance of a religious duty, but for private reasons of business or pleasure. Under such circumstances, one must stop and recite the Shema'. But, if one stays at home to perform a religious duty, as the bridegroom does, or if one is out performing a religious duty, exemption is granted.

Later, the Gemara discusses whether or not this permission is given to the bridegroom engaged to a widow. Presumably, the bridegroom does not experience the same kind of anxiety before wedding a widow as before wedding a virgin. The rabbis conclude that he is only granted exemption on the wedding night when he is marrying a virgin.

Why all this preliminary discussion? With a basic understanding of the issue, we turn to the discussion in Berakhot 17b.

The provision of the Mishna under discussion on Berakhot 17b is found on page 16b.

Text

Berakhot 2:8

If a bridegroom wants to recite the Shema' on his first (wedding) night, he may recite it. Rabban Shim'on b. Gamaliel says: not every one that wants to assume the name may assume it.³²

B. Berakhot 17b

If a bridegroom wants to recite, etc. Shall we say that Rabban Shim'on b. Gamaliel fears yuhara, and the Rabbis do not fear yuhara? Surely, we understand their views to be the other way around!

For we have learned: In a place where it is customary to do work on the ninth of Av, one may work. In a place where it is not customary to do work on the ninth of Av, one may not do so, but in all places scholars are exempt.

R. Shim'on b. Gamaliel says: 'A man may always behave as if he were a scholar.' There is a discrepancy between the Rabbis and between the two sayings of R. Shim'on b. Gamaliel. R. Yohanan said: Reverse the statement. R. Shisha, the son of R. Iddi, said: There is absolutely no need to reverse. There is no discrepancy between the two sayings of the rabbis. There, in the case of the recitation of the Shema', since everybody recites, and he also recites, it does not appear as yuhara; but here, since everybody does work, and he does not work, it looks like yuhara.

Nor is there a contradiction between the sayings of R. Shim'on b. Gamaliel, since there the matter depends on mental concentration (kavvana) and we can testify that is unable to concentrate his minds. But here, whoever sees him will say: He has no work, go and see how may jobless (idle) there are in the marketplace!

Analysis

Mishna 2:8 apparently contradicts the first part of Mishna Pesahim 4:5, which we will discuss shortly. Here, the rabbis permit a bridegroom to recite the Shema' on the first wedding night, if he so wishes, but R. Shim'on b. Gamaliel disagrees. Such recital is the sole prerogative of eminent scholars. It would be presumptuous for one without a reputation of superior piety to arrogate it to himself. As mentioned earlier, the reason given for freeing the bridegroom from the recital of the Shema' on his wedding night was because he is preoccupied with the religious duty of wedlock. His anxiety would prevent him from attaining proper concentration. Here, also, R. Shim'on b. Gamaliel argues that because recital of the Shema' requires kavvana, only those with exceptional moral and mental qualities would have the remarkable power of detachment necessary to recite it on that night. Only R. Shim'on b. Gamaliel and those of his scholarly rank could possess

these traits. "Not every one who wishes to take the name shall take."
To assume a reputation of great piety without earning it is to be guilty
of yuhara.

Before we continue, we must look at the Mishna under discussion
in Tractate Pesahim which is referred to in the passage on Berakhot 17b.
Note the discrepancy between the two statements of Rabban Shim'on b.
Gamaliel, that of Mishna Berakhot 2:8 and that of Mishna Pesahim 4:5a:

Text

Pesahim 4:5a

Where the custom is to do work on the Ninth of Ab, they may do so;
where the custom is not to do work, they may not do work. But every-
where the disciples of the Sages cease from work. Rabban Simeon b.
Gamaliel says: a man should always behave as a disciple of the Sages.³³

B. Pesahim 55a

But everywhere the disciples of the sages etc. Shall we say that R.
Shim'on b. Gamaliel reasoned: we do not fear yuhara while the Rabbis
reasoned: we do fear yuhara. But surely we understand their views to
be the other way around! For we learned: If a bridegroom wishes to
recite the Shema' on the first night, he may. R. Shim'on b. Gamaliel
says: not everyone who wishes to assume the name may assume it. R.
Yohanan said: Reverse the statement. R. Shisha, the son of R. Iddi,
said: do not reverse it. There is no discrepancy between the two
sayings of the Rabbis. Here (in this case), since everybody works,
while he alone does not work, it appears as yuhara. But there, since
everybody recites the Shema', and he also recites, it does not appear
as yuhara.

Nor is there a contradiction between the sayings of R. Shim'on b.
Gamaliel. There we require kavvana and we witness that he is unable
to concentrate his mind; it appears as yuhara. But here it does not
appear as yuhara, for they will say: He has no work, go and see how
many idle there are in the marketplace.

Analysis

This Mishna comes in a series of mishnayoth dealing with what kinds of work may be performed on the eve of Passover and on the Ninth of Abh. Abstention from work depends on local customs.

Apparently R. Shim'on is at variance with his own principle. In Mishna Berakhot 2:8, he permits only a person with a reputation for great piety to perform certain acts. The rabbis permit a bridegroom to recite the Shema' on his wedding night. R. Shim'on considers this yuhara if anyone other than a recognized scholar does so.

But here, in Mishna Pesahim 4:5a, R. Shim'on declares that one may always behave as a scholar. Even if it is the local custom to do work on the Ninth of Abh one may abstain from work just as the scholars would.

The discussions in the respective Gemara passages are virtually identical.

Should a person desist from performing a mitsva simply because the act might be construed as yuhara, a boastful display of piety? An unscholarly bridegroom might still have an honest desire to recite the Shema', so why should he be told that it would be yuhara if he did? It would appear that the Sages who grant a bridegroom discretion to recite the Shema' or not have any objection, if a person by performing a mitsva, seems to be ostentatious. They are not as bothered by yuhara as R. Shim'on b. Gamaliel is. The Mishna from Pesahim seems to turn the problem around. The Sages fear yuhara; R. Shim'on does not. The

question is whether manual work may be done on the Ninth of Av. By strict halakhah, it may, but the custom of some places was universal rest. The Mishna rules that, where there is such a custom, nobody may work, where the custom is to work, anyone may; scholars, however, refrain from work. It proceeds to say that R. Shim'on recommends that everybody, everywhere, even non-scholars, may emulate the scholars. Apparently, R. Shim'on is not worried that layperson's imitation of the scholar might be viewed as yuhara. Although it is not mentioned here, R. Shim'on might be aware of the passage from b. Ta'anit 30b: "let a man always consider himself a scholar that he may feel more strongly the fast."

Apparently, there is a clash between the Mishnayoth. R. Yohanan suggests an emendation to the second Mishna: attribute the opinion recorded as that of R. Shim'on's to the Sages. R. Shisha, son of R. Iddi sees no need to emend. Both the Sages and R. Shim'on are apprehensive about yuhara in the performance of mitsvoth, but differ as to what conditions warrant such a fear. As to the wedding night, the Sages reason that, since all around him recite the Shema', the bridegroom's recital will go unnoticed, and therefore, there is no question of yuhara. But if a common person ceases work on the Ninth of Av where nobody else does, the Sages fear that the idleness may be so blatant as to be deemed yuhara. But R. Shim'on insists that the crucial point is that the recital of the Shema' requires kavvana. For an ordinary man to recite it on his wedding night is as though he says: I am a man of

superior attributes like the great scholars and can concentrate on the Shema' despite all the excitement of the moment. As regards not working on the Ninth of Abh, there is no question of yuhara, for there is nothing conspicuous in not working. There are always unemployed people everywhere at any time. There are always idlers roaming the streets and marketplaces.

In our understanding of yuhara, we assume that there are other people nearby who will take note of the person's behavior. As for the bridegroom, who is present to see him recite the Shema' besides his bride? He would probably not be found in the synagogue at evening services on his wedding night. The rabbis' concern over yuhara seems to be only theoretical in this case.

The case of the bridegroom is analogous to the case presented in Berakhot 3:1: "He whose dead lies unburied before him is exempt from reciting the Shema', from saying the Tefillah and from wearing phylacteries."

Chapter three discusses more cases of exemption from the obligation to recite the Shema'. Mishna 3:1 exempts those directly occupied with the burial of the dead. As in the case of the mourner, the bridegroom is actively engaged in the performance of a mitsvah, and it is unlikely that he could attain the requisite kavvana for the recital of the Shema'.

Text

Babha Kamma 59a-59b

The Mishna that precedes this discussion is found on page 55b but has such a minimal relation to it that we will not quote it. In the context of a discussion of the correct amounts of payment for various property damages we encounter the following story:

Eliezer Zeira had put on black shoes and had stood in the marketplace of Nehardea. Those of the house of the Exilarch found him and asked him, "What basis is there for wearing these shoes?" He answered them, "I am mourning for Jerusalem." They responded to him, "Are you considered so important as to mourn over Jerusalem (in such a manner)?"

Considering this to be yuhara, they took him and imprisoned him. He insisted, "I am a great man!" They asked him, "How do we know?" He replied to them, "Either you ask of me a legal point or I will ask one of you." They answered him, "You ask!" He challenged them, "If a man cuts a date-flower, what does he pay?" They said to him, "He pays the price of the date-flower." "But would it not become dates?" They then replied, "He should pay the value of the dates." "But, surely it was not dates that he took from them!" They rejoined, "You tell us." He answered them, "Sixty times (the value)." They challenged him: "What authority do you have?" He said to them, "Lo, Samuel is alive, and his Court of Law is in session (in town)." They sent (this problem) to Samuel. He said to them, "The statement he made to you is correct, (the value of) sixty times (is accurate)." So they released him.

Analysis

As a demonstration of his great love for the fallen Jerusalem, Eliezer Zeira put on black shoes (or shoes with black laces). According to Rashi, it was the custom of mourners to wear black shoes (or shoe-laces). If ordinary Jews were to mourn Jerusalem by wearing black shoes, they would have been taught to do it. Evidently, Eliezer Zeira dressed entirely in black garments from head to foot. Considering this

to be an unwarrantable assumption of piety, the Jewish civil authorities arrested him.

There may have been an elite class who engaged in this custom of wearing black shoes. Eliezer, who did not belong to the elite, imitated their custom. The authorities were concerned that Eliezer would be mistaken for a member of the group. He sought the opportunity to prove his status by submitting to a test over a principle of civil law. By seeking support from Samuel, the Babylonian amora and outstanding authority in civil law, who verified his answer, Eliezer Zeira was released and allowed to continue his public mourning.

According to the Tosafists, the issue here is not just concern over yuhara. We must also take note of the political and social conditions of Eliezer Zeira's time. Nehardea was the seat of the exilarch and his court in Babylonia during the end of the second and third centuries C. E. This was a time of religious persecution by the government. The Tosaphists refer to a passage in Tractate Sanhedrin (74a-b) which says that during the time of a royal decree forbidding the practice of Judaism, one must submit to martyrdom rather than transgress even a minor precept. The question is asked, "What is meant by a 'minor precept?'" Rabba, son of R. Isaac in Rabb's name answered, "even to change one's shoe strap." The Tosaphists say that during the Roman occupation of Palestine, non-Jews wore black shoelaces. In order to remain distinct in appearance even down to the laces on their shoes, and so they would not be mistaken as non-Jews, the Jews were to wear white shoelaces.

The Tosaphists suggest that the civil authorities were more concerned over hukkoth hagoyim, imitation of non-Jewish practices, than over yuhara. Even if the Tosaphists are right, the practice they discuss applies to Palestine. Here, our case concerns a practice in Nehardea. Hukkoth hagoyim is not an issue in this case.

Hukkoth hagoyim does not seem to be the motivation of Eliezer Zeira. He felt sincere sorrow over the destroyed Jerusalem and wanted to mourn deeply and openly. Certainly, a member of the elite class would not engage in hukkoth hagoyim. The Tosaphists, who lived in France in the 12th and 13th centuries, may have been reflecting concerns of the Jewish communities in their time.

Text

Sukkah 2:5

Once they brought cooked food to Rabban Yoḥanan b. Zakkai to taste and two dates and a pail of water to Rabban Gamaliel, they said, 'Bring them up to the Sukkah.' And (once) when they gave R. Zadok less than an egg's bulk of food he took it in a towel and ate it outside the Sukkah and did not say the Benediction after it.³⁴

B. Sukkah 26b

Does this case (come) to contradict? The relation is defective (a clause has been omitted [Jastrow, p. 489]) and so he learns: If he comes to be strict upon himself, he may be strict, and it does not constitute yuhara for him. And there is also a case when they brought cooked food to Rabban Yoḥanan b. Zakkai to taste, and two dates and a pail of water to Rabban Gamaliel that they said: 'Bring them up to the Sukkah.' But when they gave R. Zadok less than an egg's bulk of food he took it in a towel and ate it outside the Sukkah and did not say the Benediction after it. Surely, an egg's bulk must be (eaten) in a Sukkah. Shall we say that this is a refutation of R. Joseph and Abaye? Perhaps, one does not require washing and a benediction for less than an olive's bulk, but here for an olive's bulk, one requires washing and a benediction.

Analysis

In the preceding Mishna it is taught that casual eating and drinking is permitted outside the Sukkah. For example, tasting cooked food is permitted outside the Sukkah. Mishna 2:5 brings a case of casual eating. Rashi explains the Mishna. R. Zadok took the small amount of food in a napkin out of concern for cleanliness. Less than an egg's bulk of food requires neither washing of the hands, nor Sukkah nor grace after meals because it is not enough to satisfy the appetite. R. Zadok acted in accordance with the previous Mishna.

The Gemara discusses the cases of R. Yohanan b. Zakkai and Rabban Gamaliel. The question arises if it was necessary for R. Yohanan b. Zakkai and Rabban Gamaliel to insist that the small amount of food be tasted in the Sukkah. Why did they choose to be stricter upon themselves with regard to the Law? This seems to be yuhara. It is a Mosaic ruling that foods of an olive's bulk and in some cases an egg's bulk must be eaten with a blessing. Rashi notes the following passage from Berakhot 49a, "And when you have eaten and are satisfied you shall recite the benediction over food enough to satisfy the appetite, which is an egg's bulk. They were merely tasting some food. But Rashi points out that any amount requires a benediction for surely one has benefitted in some way and it is forbidden to benefit from this world without a benediction.

Since R. Yohanan and Rabban Gamaliel derived some benefit they thought it necessary to eat in the Sukkah. The Gemara does not

recognize their actions as yuhara. Of course, the concern of yuhara really only applies to the common Jew. The elite, such as R. Yohanan and Rabban Gamaliel, would be permitted to be as strict upon themselves as they desired. The scholar class reserves certain privileges which are not afforded to the general populace.

Evidently, the Rabbis were not that concerned with yuhara. It only concerned the Jews within their own society. Excessive displays of piety were reserved for the elite class of the rabbis. Of course, when they demonstrated their piety, it was not considered excessive. Reviewing the cases, we notice that there is even some disagreement over what really constitutes yuhara. Is it wrong to pretend to be a scholar? In one instance, Rabban Shim'on b. Gamaliel said, "One should always behave as a disciple of the Sages." However, elsewhere he declared, "Not everyone who wishes to assume the name may assume it." In the first case, that of abstention from work on the Ninth of Abh, anyone, regardless of status, may abstain.

Even in the case of the bridegroom, there is no problem. No one, except for the bride, is within hearing distance. For yuhara to be genuine, one would have to engage in such behavior in public.

In the case in Sukkah, there is still some question if the practice of the two famous rabbis is actually yuhara. After all, they were recognized authorities who were known for their piety.

It is only in the "shoelace" incident that the authorities are very concerned. In that case, the offender had to prove himself worthy of

demonstrating such piety in public. He proved himself by demonstrating knowledge that a scholar would have.

It is not just the scarcity of cases, but also the nature and resolution of the cases which seem to suggest the minor importance of yuhara. But there may be another consideration which pertains to more than the Jewish "in-group."

In the New Testament we see a similar concern for ostentation. In a series of denunciations, Jesus condemns the Pharisees:

Then said Jesus to the crowds and to his disciples; the scribes and the Pharisees sit on Moses' seat; so practice and observe whatever they tell you, but not what they do; for they preach, but do not practice. They bind heavy burdens, hard to bear, and lay them on men's shoulders; but they themselves will not move them with their finger. They do all their deeds to be seen by men; for they make their phylacteries broad and their fringes long, and they love the place of honor at feasts and the best seats in the synagogues, and salutations in the market places, and being called rabbi by men.³⁵

The Pharisees are accused of three sins: hypocrisy, cruelty and ostentation. Matthew believed that the scribes and the Pharisees did all their deeds "to be seen by men."

It is unlikely that the Rabbis of the Talmudic period were aware of the accusations against them for excessive pride and display of piety; but it is interesting to note the similar concerns reflected in both bodies of literature.³⁶

Hillul Hashem

CHAPTER 4

Introduction

Hillul hashem, the profanation of the Divine Name, refers to

unworthy actions which reflect discredit upon God.

One's behavior must reflect the divine, and render Him beloved by other men. . . Priests, prophets and the whole people of Israel must so conduct themselves as to reflect credit upon the God they worship.³⁷

By extension, hillul hashem includes any acts which tarnish Judaism,

the Jews or oneself. "Religion is judged by the conduct of those who

profess it."³⁸

Every Jew, regardless of his/her social status, has a responsi-

bility for the honor of the Jewish faith and the Jewish people. Every

Jew must avoid an act which, although permitted by law, may provoke

the defamation of Israel and of God. In spite of the act's legality, it

becomes an unpardonable sin. Even an act that is not expressly banned

in the Torah, but which provokes defamation of the name of God, is

regarded as a heinous transgression. As we will see, one may even

disregard parts of the Torah to prevent hillul hashem.

Hillul hashem takes on different shades of meaning depending on

the context. Within the Jewish setting, we find such acts to constitute

hillul hashem: not paying the butcher on time, excessive feasting by a

scholar, disobeying a law or permitting another to transgress a law

out of concern for the dignity of one's teacher, and causing one's colleagues shame by having a bad reputation.

The Talmud cautions against any misdeed toward a non-Jew because it gives a false impression of the moral standards of Judaism. In the realm of Jewish-Gentile relations, the rabbis consider the following dishonorable actions as hillul hashem: not returning the lost article of a Gentile, cohabiting with a Gentile, and breaking an oath sworn to a Gentile.

Discrediting the Jews and defaming God's name are tied closely together. It is not easy to draw the distinction between God and Israel. We see this if we look at a case of hillul hashem's opposite, kiddush hashem:

It once happened that R. Shim'on b. Shetah purchased an ass from an Ishmaelite. His students came and found a precious stone suspended from its neck. They said to him: 'Master, "The blessing of the Lord makes rich' (Proverbs X, 22). R. Shim'on b. Shetah answered them: 'I purchased an ass; I did not purchase a precious stone.' He went and returned it to that Ishmaelite, and the latter exclaimed of him, 'Blessed be the Lord God of Shim'on b. Shetah.'³⁹

Although it was the honesty and integrity of the Jew which constituted kiddush hashem, the recipient of the Ishmaelite's praise is the God of the Jews.

Text

Yoma 8:9

If a man said, 'I will sin and repent, and sin again and repent,' he will be given no chance to repent. (If he said,) 'I will sin and the Day of Atonement will effect atonement,' then the Day of Atonement

effects no atonement. For transgressions that are between man and God the Day of Atonement effects atonement, but for transgressions that are between a man and his fellow the Day of Atonement effects atonement only if he has appeased his fellow. This did R. Eleazar b. Azariah expound: From all your sins shall ye be clean before the Lord--for transgressions that are between man and God the Day of Atonement effects atonement; but for transgressions that are between a man and his fellow the Day of Atonement effects atonement only if he has appeased his fellow. R. Akiba said: Blessed are ye, O Israel. Before whom are ye made clean and who makes you clean? Your Father in heaven; as it is written, And I will sprinkle clean water upon you and ye shall be clean. And again it says, O Lord the hope (mikweh) of Israel; --as the Mikweh cleanses the unclean so does the Holy One, blessed be he, cleanse Israel.⁴⁰

In the Gemara, we find several statements which mention hillul hashem:

B. Yoma 86a

R. Matthia b. Heresh asked R. Elazar b. Azariah in Rome: Have you heard about the four kinds of sins, concerning which R. Ishmael has lectured? He answered: They are three, and repentance is connected with each one. If one transgressed a positive commandment and repented, he does not move from his place until he is forgiven, as it is said: "Return, O backsliding children" (Ex. 34:7). If he has transgressed a prohibition and repented, then repentance suspends (the punishment) and the Day of Atonement atones, as it is said: "For on this day shall atonement be made for you... from all your sins" (Lev. 16:30). If he has committed (a sin to be punished) with kareth or death through the Beth din, and repented, then repentance and the Day of Atonement suspend (the punishment), and suffering effects forgiveness (lit. 'cleanses'), as it is said: "Then will I visit their transgression with the rod, and their iniquity with strokes" (Ps. 89:33).

But, if one is guilty of hillul haShem, then repentance has no power to suspend punishment, nor the Day of Atonement to effect atonement, nor suffering to effect forgiveness, but all of them suspend punishment and death effects forgiveness, as it is said: "And the Lord of hosts revealed Himself in my ears; surely this iniquity shall not be expiated by you till you die" (Isa. 22:14).⁴¹

What is a practical illustration of hillul hashem? Rabh said: If, for example, I take meat from the butcher and do not pay him at once....

R. Yohanan said: If, for example, I walk four cubits without (speaking words of) Torah or (wearing) tefillin.

Isaac, of the school of R. Yannii, said: If one's colleagues are ashamed of his reputation, that constitutes hillul hashem.

On page 86b we find the phrase: One should expose hypocrites because of hillul hashem.

Analysis

The first reference illustrates the seriousness of hillul hashem. No type of punishment or suffering, not even the Day of Atonement, can procure atonement for such an offense. Such a sinner does not become clear until death. The Rabbis provide examples of offenses which constitute hillul hashem. If Rabh, a scholar of high repute, does not pay the butcher on time, that constitutes hillul hashem. He is esteemed and well-known in the community, and if he does not pay immediately, people are liable to think that he took the meat from the butcher and will not pay at all. Others might learn from Rabh's bad example to treat debts dishonestly by delaying and eventually ignoring the payment.

Another example is of R. Yohanan who would not walk four cubits without speaking Torah or wearing tefillin. According to Rashi, people might not know that he is weak and would learn from his example that it is permissible to neglect Torah study.

Neither of these actions are violations of laws in the Torah. Nevertheless, they constitute hillul hashem. A person who is learned in Torah and has a reputation for great piety performs actions which the public

notices and may imitate. Even though they are not transgressions, they rank high as serious offenses. Such actions diminish the honor of God.

Isaac acknowledges the significance of preserving one's favorable reputation. If a famous scholar is behaving in a way that causes the public to speak ill of him, and his colleagues are embarrassed to be associated with him, that constitutes hillul hashem.

The Rabbis are concerned about setting proper examples in public. They state that one should expose hypocrites to prevent hillul hashem. Rashi explains that hypocrites are those who are wicked yet represent themselves as righteous. If someone sees through the hypocrite's actions, it is a mitsvah to expose him to prevent hillul hashem. People learn from his actions, and might think he is upright. Moreover, when he is punished, people will say: Of what use is his merit!

Text

Pesahim 3:7-8

If a man was on the way to slaughter his Passover-offering or to circumcise his son or to eat the betrothal meal at his father-in-law's house and he remembered that he had left hametz in his house, if he has yet time to go back and remove it and return to fulfil his religious duty, let him go back and remove it; but if not, he may annul it in his heart. (If he was on the way) to render help against ravaging soldiery or a flood or a fire or a falling building, he may annul the hametz in his heart; but if it was but to keep the Feast at a place of his own choice he must return at once.

So, too, if a man had gone forth from Jerusalem and remembered that he still had with him flesh that was hallowed, if he had already passed Zofim he may burn it there and then; but if not, he must return and burn it before the Birah with wood for the Altar-hearth. By reason of how much (flesh or hametz) must they return? R. Meir says: In either case an egg's bulk. R. Judah says: In either case an olive's bulk. But

the Sages say: An olive's bulk of hallowed flesh or an egg's bulk of hametz.⁴²

B. Pesahim 49a

Our Rabbis taught: Every scholar who feasts much in every place, eventually destroys his home, widows his wife, orphans his children, forgets his learning, and great disputes befall him; his words are not heeded and he desecrates the Name of Heaven and the name of his teacher and the name of his father and he brings an evil name upon himself, his children, his grandchildren and until the end of all generations.

Analysis

This Baraita appears as an incidental comment on feasting.

Feasting on the eve of Passover is the topic of the preceding Mishna.

If a scholar is going out frequently to feast and drink, he neglects his home, his family, and his studies. Besides bringing shame upon himself, he destroys all that is of value to him. In addition, he brings a bad name upon himself and his future descendants. To the Rabbis, his behavior would constitute hillul hashem. His reputation is so damaged that he is considered to have committed a heinous crime.

Note, that the Mishna says "man" but the Baraita says "scholar." In the case of a scholar's reputation, more is at stake.

Text

Moed Qatan 3:1

These (alone) may cut their hair during mid-festival; he that comes from beyond the sea, or from captivity, or out of prison; or he that was under a ban and was released by the Sages; and so, too, he that sought of a Sage (release from a vow) and was released; and the Nazirite and the leper that is come forth from uncleanness to cleanness.

3:2 And these (alone) may wash their clothes during mid-festival: he that comes from beyond the sea, or from captivity, or out of prison; or he that was under a ban and was released by the Sages; and so, too, he that sought of a Sage (release from a vow) and was released. (Also it is permitted to wash) hand-towels, barber's towels and bath-towels. Men or women that had a flux, menstruants, and women after childbirth, and all that pass from conditions of uncleanness to cleanness are permitted (to wash their clothes); but for all others it is forbidden.⁴³

B. Moed Qatan 17a

R. Joseph said: A rabbinic student may make a legal decision for himself in a matter where he is certain (of the law). There was once a certain student who was ill-reputed. Said R. Judah: How is one to act? To excommunicate him, we cannot, as the Rabbis need him! Not to excommunicate him (we cannot afford) as the name of Heaven is being profaned! He asked Rabbah b. Hanna, 'have you heard anything about this?' He answered: So said R. Johanan: 'What does this verse mean, "For the lips of a priest shall guard knowledge and people shall seek Torah at his mouth; for he is a messenger of the Lord of Hosts?"' (Malakhi II, 7)

If the rabbi is similar to a messenger of God, people will seek Torah from his mouth. But if not, they should not seek Torah from his mouth. R. Judah excommunicated him. In the end, R. Judah became sick. The rabbis came to inquire about him, and that man also came along with them. When R. Judah saw him, he grinned. He said to him: It is not enough for him that he excommunicated that man, but he even laughs at me? He answered him: I am not laughing at you, but as I am leaving this world I feel happy that even to a man such as you, I showed no favoritism. R. Judah's soul came to rest.

The man then came to the Academy and said: 'Absolve me.' The rabbis said to him, there is no man here with the standing of R. Judah who could absolve you, but go to R. Judah Nesiah who may absolve you. He went before him; he said to R. Ammi: Go look into his case; if it is necessary to absolve him, absolve him. R. Ammi looked into his case, and planned to absolve him. Then R. Samuel b. Nahmani rose to his feet and said: Why, if already in the case where a decree of banishment which was placed on one of the maids of Rabbi's house was not lightly treated by the rabbis for three years, how much the more so when it is imposed by R. Judah, our colleague. R. Zera said: What does this case before us mean now that this man has turned up at the Academy? Because he has not been here for years, you must infer that it is not desirable to absolve him. He did not absolve him. He went away weeping. A wasp then came and stung him in his penis and he died. They brought him up into the burial cave of the Pious who did not accept

him. They brought him into the burial cave of the Judges who did receive him. What is the reason? Because he had acted according to R. Il'lai, for it was taught: R. Il'lai says: If a man sees that his evil inclination is taking hold of him, let him go to a place where no one knows him; let him put on black clothes and wrap himself in black and do what his heart desires; but let him not profane the name of God in public...

A discussion of cases of excommunication follows. Then:

R. Huna said: At Usha, they established a rule that if the Abh Bet Din committed an offense, he is not excommunicated, but someone tells him: 'Save your dignity and remain at home' (II Kings XIV: 10). If he offends again, they may excommunicate him, because of a profanation of the Name. And this differs with the opinion of Resh Lakish for Resh Lakish said: If a scholar commits an offense, they may not excommunicate him publicly, for it is said, "Therefore you shall stumble in the day and the prophets also shall stumble with you in the night" (Hosea IV, 5). Conceal it (keep it dark) like night.

Analysis

Moed Qatan deals with laws regarding the intermediate days of the festival. The Mishnayoth discuss the prohibition of shaving and washing clothes, giving the exceptions to these laws. For example, one under a ban of excommunication for some flagrant breach of discipline, a religious or moral offense, who has just been absolved, is permitted to shave and wash clothes. The person under ban was expected to go about in shabby apparel and a generally unkempt appearance during the time of disgrace. As soon as he was absolved by the Rabbis, he was permitted to shave even if this absolution comes during the intermediate days of the festival. It was important for his dignity that it immediately be apparent to onlookers that he has regained a proper position in society.

After a long discussion on the rules of excommunication, the

Rabbis discuss one of their own students, a respected and acknowledged scholar, who committed an offense. The Rabbis deliberate over whether or not to excommunicate him. If the body of rabbis publicize his offense by taking public action against him, they might make matters worse. They are concerned about their reputation as messengers of God. If they keep the matter quiet, this could intensify the problem. He should be punished for his actions. Of course, the public ceremony of excommunication of a rabbinic student could likely cast aspersions on the Academy which might also be construed as hillul hashem in public.

Taking a risk, the Rabbis decide to excommunicate him. The next issue is whether or not to release him from excommunication. After much effort and travel, he is not absolved and faces an accidental and painful death. The Rabbis cite the famous dictum of R. Il'lai which we will see mentioned elsewhere: "If a man sees that his evil inclination is taking hold of him, let him go to a place where no one know him; let him put on black clothes and wrap himself in black and do what his heart desires; but let him not profane the name of God in public."

Rashi comments that if a person goes to all the trouble of dressing like a mourner, perhaps his passion will cool off and he will not be forced to sin. The law may not have the power of preventing him from sinning, but at least, if he must surrender to temptation, it is better to go somewhere where no one will recognize him. We will discuss this dictum at greater length after we cite the two other places in which

it is mentioned.

The last passage cited just demonstrates the rabbis' disagreement over whether or not to excommunicate a scholar. The Abh Bet Din gets a second chance, but even he is excommunicated for a repeat offense. Resh Lakish disagrees, preferring to keep the matter quiet.

Text

Qiddushin 1:10

If a man performs but a single commandment it shall be well with him and he shall have length of days and shall inherit the Land; but if he rejects a single commandment it shall be ill with him and he shall not have length of days and shall not inherit the Land.⁴⁴

B. Qiddushin 40a

R. Abbahu said in the name of R. Hanina: It is better that a man commit a sin in secret, than profane the name of Heaven in public, for it is said, 'As for you, O house of Israel, thus said the Lord God: Go, every one of you, and worship his idols and continue, if you will not obey me; but do not profane My Holy Name' (Ezek. XX, 39).

R. Il'ai the Elder said: If a man feels that his evil inclination threatens to overcome him, he should go to a place where no one recognizes him and put on black clothing and cover himself with black and do as his heart desires, but let him not profane the name of Heaven in public. Can it be?! Did we not learn: Whoever is not careful of his Master's honor, it would have been better for him if he had not come into the world. Now, to what does this refer? Rabbah said, to one who gazes at the rainbow. R. Joseph said, to one who commits a transgression in secret. There is no difficulty. The first case refers to one who can subdue his evil desires, the other to one who cannot.

We learned elsewhere: No comparing (balancing of sins against good deeds) is granted when the Name of God is profaned, whether inadvertently or deliberately. What is meant by no 'comparing?'

Mar Zutra said: Heaven does not act like a shopkeeper. Mar, the son of Rabina said: This is to teach that if it (one's scale of sin and merit) is equally balanced, it (the profanation of God's name) tips the scale.

Analysis

The Mishna deals with mitsvot and averoth, commandments and transgressions. The passage in Gemara discusses extreme examples of transgressions. Anything is better than hillul hashem in public. Even idolatry in secret is better than public profanation of the name of God. This passage only further illustrates the seriousness of the crime of hillul hashem. One's merits could balance equally against one's sins, and the commission of hillul hashem, whether deliberately or accidentally, would "tip the scale."

Again, we see the dictum of R. Il'lai which we will see in the next passage:

Text

Hagigah 2:1

The forbidden degrees may not be expounded before three persons, nor the Story of Creation before two, nor (the chapter of) the Chariot before one alone, unless he is a Sage that understands of his own knowledge. Whosoever gives his mind to four things it were better for him if he had not come into the world--what is above? what is beneath? what was beforetime? and what will be hereafter? And whosoever takes no thought for the honour of his Maker, it were better for him if he had not come into the world.⁴³

B. Hagigah 16a

Whoever takes no thought for the honor of his Maker, it would have been better for him if he had not come into the world. What does this mean? R. Abba said: This refers to one who gazes at the rainbow. R. Joseph said: This refers to one who commits a transgression secretly. 'One who gazes at the rainbow', as it is written, 'Like the appearance of the bow which shines in the clouds on a day of rain, such was the appearance of the surrounding radiance. That was the appearance of the semblance of the Presence of the Lord' (Ezek. I, 28).

R. Joseph said: This refers to one who commits a transgression secretly, in accordance with R. Asaac, for R. Isaac said: When one commits a sin secretly, it is as if he has pushed aside the feet of the Divine Presence. For it is said, 'Thus saith the Lord: The heaven is My throne and the earth is My footstool' (Isa. LXVI, 1).

Is that really so? Did not R. Il'ai the Elder say: If a man sees that his evil inclination is overcoming him, let him go to a place where no one recognizes him, and put on black garments, and wrap himself in black, and do what his heart desires; but let him not profane the name of God publicly!

There is no difficulty. In the first case he is able to overcome his evil inclination. In the other case, he is not able to overcome his evil inclination.

Analysis

The Mishna discusses the prohibition of engaging in Gnostic speculation. To do so would mean to degrade the God of the Jews to the rank of an inferior deity, that is, the world-creating god and not the spiritual God. What constitutes desecration of the Divine Name? -- Not to be concerned with the honor of God would be equivalent to hillul hashem. R. Joseph explains that the secrecy of the sin is also designated as a desecration of the Divine Name. (In a chapter on qiddush hashem and hillul hashem), Joseph Bloch explains: "He who flees with his lust from human eyes, but is not afraid of the eye of his Creator has twice dishonoured the majesty of God: not only has he committed a sin in itself, but also proved by the manner of his deed that he was more anxious about the judgement of man than of God himself."⁴⁶

Bloch cites a passage from Pirke Avoth which strengthens his position: "R. Johanan ben Barokah said: He who profanes the Name

of Heaven in secret they exact the penalty from him openly. Ignorant and willful are all one in regard to profaning the Name."⁴⁷

Herford says that this is "a lesson in profanity, a sin which includes not merely impious speech but any act which offends against the majesty of God."⁴⁸

But it's more than a lesson in profanity. It is "aimed at the hypocrisy of the man who is outwardly pious and holy while inwardly he is corrupt and unclean."⁴⁹

Neither Bloch nor Herford sees the Rabbis permitting secret sinning. Secret sinning is just as much a desecration of the Divine Name. So what do we do with the dictum of R. Il'lai who evidently asserts that secret sinning is permissible?

Bloch points out that "later rabbis, perhaps anxious that the saying of Rabbi Ilai might be misconstrued, tried to divest it of everything offensive by their interpretation."⁵⁰ Bloch cites a comment of the Tosaphist on Qiddushin 40a and of Rashi on Moed Qatan 17a:

Our teacher Chananel says, God forbid that it should be permitted to commit a sin; Rabbi Ilai said thus (thought thus), The exertion of the journey, the strange surroundings and the black garment break the evil impulse, and keep man from sin.⁵¹

Bloch explains the "innocent" statement of R. Il'lai in light of Rashi's comments:

He who takes time before following the desires and impulses of the heart, if only to change his garment and to put on mourning-dress for the peace of the soul which he is about to abandon, a mourning-dress for the innocence and spotlessness of his mind which he is about to throw from him; who goes where nobody knows him but he himself and his God; who, in the

moment of overwhelming passion, preserves so much self-control as to think of his God and of the sinfulness of his purpose, let him take the advice of Ilai--he may well do what his heart commands him. This is what Rashi thought.⁵²

With strong reference to the medieval commentators, Bloch notes the problem the Rabbis must have had with the comment of R. Il'ai.

With much apologetic explanation, they try to re-interpret the motivation of R. Il'ai. They are obviously concerned about the misleading impression it gives the non-Jew.

But Bloch had one purpose in trying to explain the advice of R. Il'ai. He was responding to Christian authors who quoted the passages from Hagigah, Qiddushin, and Moed Qatan in order to assert that the Talmud permits secret sinning.

Bloch was so troubled by the passage that he overlooked a significant feature of rabbinic literature. Perhaps the advice of R. Il'ai was not meant literally. The rabbis were wont to use hyperbolic speech. It is unlikely that they were sanctioning sinning whether done deliberately or inadvertently, publicly or privately. By stating that it is better to sin in a place where one is not known, R. Il'ai may have wanted to emphasize the overriding significance and severity of hillul hashem.

Text

Berakhot 3:1

He whose dead lies unburied before him is exempt from reciting the Shema', from saying the Tefillah and from wearing phylacteries. They that bear the bier and they that relieve them, and they that relieve these, they that go before and that follow after the bier--they that are needful for the bier are exempt, but they that are not needful are not

exempt (from reciting the Shema'). Both alike are exempt from saying the Tefillah.

3:2 When they have buried the dead and returned, if they begin (the Shema') and finish it before reaching the Row they begin it; but if they cannot, they do not begin it. Of them that stand in the Row, they of the inner line are exempt (from reciting the Shema') but they of the outer line are not exempt.

3:3 Women and slaves and minors are exempt from reciting the Shema' and from wearing phylacteries, but they are not exempt from saying the Tefillah, from the law of the kezuzah or from saying the Benediction after meals.⁵³

B. Berakhot 19b

R. Judah said in the name of Rabh: If one finds "mingled stuff" in his garment, he is to take it off even in the marketplace. What is the reason? "There is no wisdom, nor understanding, nor counsel against the Lord" (Prov. 21:30). Wherever there is profanation of the Name, one pays no respect to a Master.

Analysis

Rashi's simple comment is on the verse from Proverbs. Nothing is important, not even wisdom compared to God.

The Gemara records a dictum of R. Judah in the name of Rabh. To understand it, we consider Lev. XIX, 19: "...nor shall there come upon you a garment of cloth made of two kinds of stuff," and Deut. XXII, 11: "You shall not wear a mingled stuff, wool and linen together." If a person suddenly discovers that he has sha'atnez (mingled stuff) in his garment, Rabh strictly rules that he must remove the garment immediately, even if he happens to be in the market-place. The Gemara refers to Prov. XXI, 30. The will of God must be honored. It is a law from the Torah that wearing

sha'atnez is forbidden. It is of no avail to argue that removing the garment in a public place would involve a public embarrassment. The honor of God takes precedence over one's own or that of anyone. As the Gemara puts it: Where the profanation of God's Name is involved, one is to disregard even the honor of one's teacher.

This passage has nothing to do with funerals. We are dealing with motivations, and thus the connection to the Mishna. There are at least two reasons why one would go to a funeral. One would go to comfort the bereaved. Or, one might go out of curiosity. If one goes to a funeral to comfort the bereaved, that person is engaged in a mitsvah and is not obligated to engage in another mitsvah. If one goes out of curiosity, that person is not engaged in a mitsvah and therefore is not exempt from performing a mitsvah; in this case, the mitsvah of reciting the Shema'.

In this connection, the Gemara quotes a statement of R. Judah in the name of Rabh about the overriding nature of paying respect to God. Here the specific mitsvah of not wearing sha'atnez overrides any personal considerations about being properly dressed. Which is the greater sin: hillul hashem, wearing sha'atnez, or getting undressed in a marketplace? When R. Judah says in the name of Rabh, "Wherever there is profanation of the Name, one pays no respect to a master," he is concerned with motivation. When a student tells his teacher to remove sha'atnez, the student is motivated by his desire to fulfill the will of God. The teacher wants to remove it, yet he also

wants to protect his self-respect. His concern for self-respect must give way to a greater motivation, preventing hillul hashem.

Text

Shavuoth 4:1

(The law about) 'an oath of testimony' applies to men but not to women, to them that are not kinsfolk but not to them that are kinsfolk, to them that are qualified (to bear witness) but not to them that are not qualified, and it applies to them that are fit to bear witness and (it applies whether uttered) before a court or not before a court; but it must be uttered out of a man's own mouth. If (he was adjured) at the mouth of others, he is not liable until he has denied his knowledge before a court. So R. Meir. But the Sages say: Wherever (he swore) out of his own mouth or (was adjured) at the mouth of others, a man is not liable until he has denied his knowledge before a court.

4:2 (If they swore falsely) they are liable whether they swore wantonly or in error if they wantonly denied their knowledge, but they are not liable if they denied it in error. And to what are they liable if they had sworn wantonly? To a Rising and Falling Offering.⁵⁴

The Gemara comments on the phrase from Deuteronomy 19:17,

"The two parties to the dispute shall appear before the Lord, before the priests or magistrates in authority at the time."

B. Shavuoth 30b

And Rabbah b. R. Huna: If a rabbinic student knows some testimony, and such an occupation is beneath his dignity to go to a judge, who is inferior to him, to give testimony before him, he need not go. R. Shisha the son of R. Idi said: We also learned thus: If he found a sack or a basket which is not in his manner to handle, he need not take it. But, these words apply only to money matters, but in the case of a prohibition (he must give evidence, for it is written): "There is no wisdom nor understanding nor counsel against the Lord." Wherever there is a profanation of the Name, the honor of the Master is not regarded.

Analysis

The case is straightforward. In a civil case such as finding a lost article, the rabbinic student does not need to involve himself. Invariably, he would have to testify before a judge who is inferior to him in learning and status. This would be undignified. But, in a case of ritual law, he is obligated to appear in court to testify even though the judge is of inferior status. In light of the verse from Proverbs, human knowledge is of little value compared to the honor of God.

There are a number of legal requirements that a scholar does not have to fulfill on the principle of zaken ve-eno lefi khevodo, he is an elder and it is not in accordance with his dignity. For example, there is a law in Leviticus that states that if one found an article one must pick it up and restore it to its owner. Under this principle, a famous rabbi would not have to pick it up. It is beneath his dignity to do so. The principle is mentioned on Berakhot 19b of a scholar or elder being exempt from raising someone's animal that has fallen in a hole.

Perhaps this principle is at play here as a subcategory. We wonder how much of this is a clear case of hillul hashem and how much of it is to protect one's dignity following the principle of zaken ve-eno lefi khevodo. The exemptions provided under the latter principle only apply to money matters. In capital cases or cases of ritual law, the personal dignity of the scholar does not stand up against avoiding hillul hashem.

Text

B. 'Erubhin 63a

The preceding Mishna which appears on page 61b is not directly related so we will not cite it. The following passage comes in the context of a discussion on desecration of the Sabbath.

Rabina was sitting in the presence of R. Ashi when he saw that a certain person was tying his ass to a palm-tree on the Sabbath; he called out to him but the other paid no attention to him. He said to him: 'Let this man be placed under a ban.' He (Rabina) then asked (R. Ashi): 'Does my act appear as impudence?'

He replied to him: " 'There is no wisdom nor understanding nor counsel against the Lord' (Prov. 21:30). Wherever the Divine Name is being profaned no respect is to be shown to one's teacher. "

Analysis

We see this last passage mentioned in three other places in the Talmud. When two laws are in collision, which principle gets preferential treatment? Hillul hashem is an overriding principle. Normally, one would not exercise authority in the senior's presence. Rabina was a student of R. Ashi and should have deferred the task of excommunicating someone to his teacher. But, the honor of one's master is of no consequence when an act is committed against the Lord.

Text

Sanhedrin 3:3

And these are they which are not qualified (to be witnesses or judges): a dice-player, a usurer, pigeon-flyers, or traffickers in Seventh Year produce. R. Simeon said: Beforetime they used to call them 'gatherers of Seventh Year produce,' but after oppressors grew many they changed this and called them 'traffickers in Seventh Year produce. R. Judah

said: This applies only if they have none other trade, but if they have some other trade than that they are not disqualified.⁵⁵

Analysis

Chapter three of Sanhedrin discusses the rules concerning the qualifications of judges and witnesses.

Text

B. Sanhedrin 26b

R. Nahman said: 'Those who eat of a thing unnamed' (metaphorical expression for 'Those who accept charity from Gentiles') are incompetent as witnesses. These words refer to those who accept it publicly; but not if they accept it privately. But even if publicly, we are only speaking of one who could obtain it privately yet he degraded himself publicly. But if it (private receipt) is impossible, it (public receipt) is necessary.

Analysis

Although the term hillul hashem bepharhesiah is not stated in the text, the commentators explain the case using the term "Those who eat of a thing unnamed" to refer to those who receive charity from Gentiles. Meiri calls them despised because they are unconcerned about their dignity. R. Yehonatan, as quoted by Steinsaltz, says that this is a profanation of the Divine Name because such an action shows the Gentiles that Israel is not compassionate with their own who stand in need.

Also, in light of Meiri's comment, we have to question the character of one who, for financial gain, would bring shame upon himself and his people. Evidently, if he had no choice, he should

accept the money privately, unless that is impossible. If his intentions are to avoid the action but (he must engage in it, and he) does so discreetly, he may still act as a witness.

Text

Sanhedrin 9:6

If one steals a sacred vessel or curses by enchantment or cohabits with an Aramean woman, the zealots may punish him. If a priest performed the Temple service while impure--his brothers, the priests, do not bring him to the court, but the young priests take him outside the Temple Court and split open his brain with clubs. If one that was not a priest performed the service in the Temple, R. Akiva says: (he is put to death) by strangling; The Sages say (his death is) at the hands of Heaven.⁵⁶

B. Sanhedrin 82a

...or cohabits with an Aramean woman...

So Moses said to Israel's judges, "Each of you slay those of his men who attached themselves to Baal-poor." So the tribe of Shim'on went to Zimri ben Salu and said unto him: Behold, they are judging cases for capital punishment and you sit quietly? What did he do? He rose and assembled twenty-four thousand Israelites and went unto Cozbi, and said unto her, 'Surrender yourself unto me.' She replied, 'I am a king's daughter, and thus has my father commanded me: "You shall surrender only to their greatest man."' He answered her, I also am the prince of a tribe; and moreover, my tribe is greater than his, for mine is second in birth, while his is third in birth.

He then seized her by her braid and brought her to Moses. He said to him: Son of Amram! Is this woman forbidden or permitted? And if you say she is forbidden, who permitted you Jethro's daughter? He forgot the halakhah, and everyone burst into tears; thus it is written "And they were weeping at the entrance to the Tent of Meeting" (Num. 25:6). And it is also written, "Then Pinhas, the son of Eleazar, the son of Aaron the priest, saw it" (Num. 25:7). What did he see? Rabh said: He saw what was happening and remembered the halakhah. He said to him, "O great-uncle! Did you not teach us on your descent from Mt. Sinai: He who cohabits with a heathen woman is punished by zealots?" He replied: "He who reads the letter, let him be the agent (to carry out the instructions)." Samuel said: He saw that "There is no wisdom nor understanding nor counsel against the Lord" (Prov. 21:30).

Wherever the Divine Name is being profaned, honor must not be paid to one's teacher.

Analysis

We will see the expression, "Wherever the Divine Name is being profaned, must not be paid to one's teacher" in other places.

The Mishna mentions a practice of the nationalists where they took the law into their own hands. The legal authorities did not interfere because there was legal precedence in the Torah. Under normal circumstances, they would not kill people who are engaging in practices they do not like without the authorization of a Bet Din. To put someone to death requires a Bet Din of 23.

But here a distinction is made. If a Jew had sexual relations with a Gentile woman, that is a profanation of the Divine Name. That is tantamount to marrying into idolatry. The identification of this forbidden act is made in the Bible. In Malakhi 2:11 we read: "Judah has been faithless, and abomination has been committed in Israel and in Jerusalem; for Judah has profaned the sanctuary of the Lord, which he loves, and has married the daughter of a foreign god." Marriage is a sacred covenant which must not be scorned. The nationalists are free to exact punishment.

The "prince" of the tribe of Shim'on is about to cohabit with a foreign woman which would be a profanation of the Divine Name. Pinhas does not wait for Moses' ruling. It is more important to prevent someone from transgressing than to be concerned about the

teacher's honor.

Text

Yebhamoth 8:3b

Bastards and Nathins are forbidden for all time, whether they are males or females.⁵⁷

Analysis

In chapter eight of Yevamoth, there is a discussion of all categories of men or women who as a result of personal physical defects or national origin are forbidden to marry Jews. Bastards and Nathinim are among those categories. Nathins are descendents of the Gibeonites whom Joshua made into Temple slaves. They are one of the ten family stocks that returned from Babylon to Palestine after the period of exile.

B. Yebhamoth 79a

Gemara

David said: For Saul the twelve months of the year have passed and it would be unusual to arrange for his mourning. Let them call the nethinim and we shall pacify them. 'The king summoned the Gibeonites and spoke to them... "What shall I do for you? How shall I make expiation so that you may bless the Lord's own people?" The Gibeonites answered him, "We have no claim for silver or gold against Saul and his household; and we have no claim on the life of any other man, etc... Let seven of his male issue be handed over to us, and we will impale them before the Lord "' (II Sam. 21:1-6).

He tried to pacify them but he could not pacify them. He said: This nation has three characteristics: They are merciful, bashful and benevolent. "Merciful" as it is written, 'And show you mercy, and have compassion on you and multiply you' (Deut. 13:18). "Bashful" as it is written, 'That His fear may be before you' (Ex. 20:13). "Benevolent" as it is written, 'That he may command his children and his household, etc.' (Gen. 18:19). Only he who has these three

characteristics is fit to join this nation.

'But the king took the two sons of Rizpah the daughter of Aiah, whom she bore unto Saul, Armoni and Mephibosheth, and the five sons of Michal the daughter of Saul, whom she bore to Adreil the son of Barzillai the Meholathite' (II Sam. 21:8).

What difference does it make that it was these? R. Huna explained: They were caused to pass before the Ark. Whomever the Ark ingested (was condemned) to death, and whomever the Ark did not retain was permitted to live.

R. Hana b. Kattina raised an objection: 'But the king spared Mephibosheth, the son of Jonathan, the son of Saul?' For he did not make him pass. Was this not favoritism? In fact, he did let him pass and retained him, but pleaded for mercy on his behalf and it released him. But, there is still favoritism in this. The fact is, however, that he pleaded for mercy so that the Ark would not absorb him in the first place. Surely it is written, 'The fathers shall not be put to death for the children etc. (and the children shall not be put to death for the fathers).'

R. Hiyya b. Abba said in the name of R. Johanan: It is better that one letter be uprooted from the Torah than the Divine Name be publicly profaned.

Analysis

In Saul's conquests, he slaughtered many Gibeonites. In the selection from the Gemara, we read a description of the account in II Samuel when the Gibeonites seek revenge for the murder of their people. They wanted seven of Saul's descendants to do with what they would, that is, kill them. But there is a principle from the Torah that states that children should not die for the sins of their parents (Deut. 24:16). How could David hand over the people? This would be a violation of a principle of the Torah. That children should not die for the sins of parents is only one principle of the Torah. If David

had not carried out the wish of the Gibeonites, he would have been guilty of breaking his oath. An oath is an invocation of God's name. To break it would be hillul hashem.

In the hierarchy of seriousness of sin, hillul hashem would emerge as the worst possible sin. One may even disregard other portions of the Torah to prevent hillul hashem.

Text

Baba Qamma 10:16

None may take change for money from the counter of excisemen or from the wallet of tax-gatherers, or take any alms from them; but it may be taken from them at their own house or in the market. 58

B. Baba Qamma 113b

R. Bibi b. Giddal said that R. Shim'on the Pious said: The robbery of a Canaanite is forbidden, though an article lost by him is permitted. His robbery is forbidden, for R. Huna said: How do we know that robbery of a Canaanite is forbidden? Because it says, "And you shall consume all the peoples that the Lord your God shall deliver unto you" (Deut. 7:16). In the time when they are delivered into your hands but not in the time when they are not delivered into your hands.

An article lost by him is permitted, for R. Hama b. Guria said in the name of Rabh: How do we know that the lost article of a Canaanite is permitted? Because it says: "And with any lost thing of your brother's" (Deut. 22:3). To your brother you make restoration, but you do not make restoration to a Canaanite. But I can say that these words apply only when the lost article has not yet come into his possession so he is not obligated to go around searching for it. But when it does come into his possession, I could say that he should return it. Rabina said, "And you have found it" means that it has come into his possession.

It was taught: R. Pinhas b. Yair says: In a place where there is profanation of the Name even (the retaining of) a lost article of a non-Jew is forbidden.

Analysis

In analyzing the passage from Gemara, we also cite a passage from Tosephta Baba Qamma. Tosephta Baba Qamma 10:15 says:

- A. He who robs from a gentile is liable to restore to the gentile (what he has stolen).
- B. A more strict rule applies to robbing from a gentile than to robbing from an Israelite,
- C. because of the profanation of the Divine Name (involved in robbing from a gentile).⁵⁹

Also, in Baba Metsia 87b we read that one may steal grapes from a neighbor's vineyard but not from a gentile neighbor. That would constitute a profanation of the Divine Name.

At issue here is that the laws about the restoration of lost property are based on the principle of reciprocity. Jews live under the same law, the Torah, which states that it is a mitsvah to restore a lost article to a fellow Jew.

The assumption is that the Gentile who does not live by the Torah, and, therefore, since it may be presumed that he may never return a lost article to a Jew, the Jew is under no obligation to restore his article. The Torah says ahikha, "your brother," which refers only to one's fellow Jew, not to a Gentile.

However, in a time, place, or environment where Jews fear that Gentiles will say that the Jews have a lower morality because they do not restore lost articles to Gentiles, then it is forbidden to keep the article. By keeping a lost article of a Gentile, the Jew brings the

Torah into disrepute. The consideration of reciprocity does not apply when there is the overriding concern that a Jew might bring God, the Torah, and Israel into disrepute by following the letter of the law.

Hillul hashem assumes a general meaning to include all that is important in Judaism. Jews have a responsibility to protect not only themselves but their God and their Torah as well. The prevention of hillul hashem overrides a law from the Torah.

Text

Yoma 8:6

If ravenous hunger seized a man he may be given even unclean things to eat until his eyes are enlightened. If a mad dog bit him he may not be given the lobe of its liver to eat; but R. Mattithiah b. Heresh permits it. Moreover R. Mattithiah b. Heresh said: If a man has a pain in his throat they may drop medicine into his mouth on the Sabbath, since there is doubt whether life is in danger, and whenever there is doubt whether life is in danger this overrides the Sabbath.⁶⁰

B. Yoma 84a

Furthermore, R. Mattithiah said: R. Yoḥanan suffered from scurvy; he went to a certain matron who prepared something for him on Thursday and on Friday. He said to her: 'How shall I do it on the Sabbath?' She answered him: 'You shall not need it.' 'But, if I need it, what then?' She replied: 'Swear unto me that you will not reveal (it).' 'I swear to the God of Israel, I will not reveal it.' He went forth and expounded it (revealed it) in a public lecture at the Academy. But did he not swear to her? 'To the God of Israel I shall not reveal it,' but to His people I shall reveal it. But is this not a profanation of the Name? No, it is not, because he had told her from the very beginning (that he would not reveal it to the God of Israel).⁶¹

Analysis

This is a story of a rabbi who accepted medical treatment from a Gentile woman prior to the Sabbath. He was concerned about continuing

treatment on the Sabbath which the Mishnah permits. Anxious about guarding the secret of her remedy, the woman asked R. Yoḥanan to swear that he would not reveal it. R. Yoḥanan swore "to the God of Israel" that he would not reveal it and then divulged the secret remedy in a public lecture. The rabbis asked if this constituted hillul hashem, especially because R. Yoḥanan was a rabbi of high standing. Breach of oath is also a form of hillul hashem. Certainly the rabbis were concerned about discrediting themselves before Gentiles. But, R. Yoḥanan argued that by use of clever semantic games he indeed was cleared of the accusation and was guilty of no crime.

CHAPTER 5

Mar-ith 'Ayin

Introduction

Mar-ith 'ayin is understood as concern for one's appearance. We are careful of the impression we convey and consciously avoid any behavior which may appear objectionable to the public. It involves avoidance of any action which may appear as a transgression of Jewish law, even if one's actions and intentions are perfectly legitimate.

In the rabbinic literature, mar-ith 'ayin is used as a quasi-halakhic justification elevated in some cases to an authentic halakhic justification for certain actions and the avoidance of others. Unlike kebhod tsibbur and yuhara, mar-ith 'ayin appears in the Mishna. It might be argued, however, that when the Rabbis invoke mar-ith 'ayin, they invoke a category which is not as strong as another statement from Mishnah or a verse from Scripture. But, since it does occur earlier in the development of the Oral Law than the other two concepts mentioned, it may have been taken more seriously by the Rabbis.

In the Mishna, Tosefta, and Gemara, mar-ith 'ayin is mentioned in connection with agricultural laws, Sabbath and Holiday laws, idolatry, the Temple Cult, and various other aspects of life. Also, it is occasionally mentioned in the midrashic literature.

We will be limiting our analysis to the places where the term mar-ith 'ayin actually appears.⁶² There are numerous other cases

where the idea of mar-ith 'ayin is present or a later commentator mentions it, but these cases are not presented for analysis.

As we investigate these cases, we will notice that occasionally the Rabbis provide an alternative method of action, a loophole, or a remedy in some situations. In others, certain actions are forbidden without alternatives offered. We will attempt to understand why the rabbis are lenient in the former cases.

Let us look first at the cases where mar-ith 'ayin is mentioned in connection to agricultural laws.

Text

Kilaim 3:5b

A man may plant a cucumber and a gourd in the same hollow provided that the one grows out in one direction and the other in the other, the foliage of the one stretching in one direction and the foliage of the other in the other; for whatsoever the Sages have forbidden they have so decreed only because of Mar-ith Ha-ayin (for appearance's sake).⁶³

Analysis

Comprised of nine chapters, Tractate Kilaim deals with the prohibitions of cross-breeding and mingling of varied species of plants, animals and clothing. Chapter three mainly discusses the methods of sowing vegetables of different species in a small garden-bed. Our Mishna discusses two closely related vegetables--the gourd and the cucumber. In terms of scientific classification, the cucumber and the gourd, both from vine-growing plants, belong to the same family but not the same species. The authors of this Mishna may not have had

strictly scientific names for these vegetables but they recognized their differences which were not just physical. The cucumber was an edible plant, and the gourd was used for ornamental purposes. For the rabbis it was not satisfactory just to plant the seeds of each separately, which halakhah dictated; the foliage of each plant, evidently similar in appearance should be positioned such that there should be no doubt or suspicion of forbidden injunction. The Mishna suggest that the leaves of one species incline away from those of the other as a proof to any passersby or inspectors that care had been taken against transgressing Leviticus 19:19: "Thou shall not sow thy field with two kinds of seed." In and by themselves, there is no prohibition for the gardener does not transgress the Biblical law even if they are in the same hollow. But the Sages are concerned that it might look like they are planted together. Lest the gardener create such an impression, he must position the vines so they are obviously separate.

The Albeck commentary on the Mishna explains the phrase, "for whatsoever the Sages have forbidden etc." to mean that it is understood from the Torah that if the species are not mingled with one another but only sown alongside each other, it is permitted; but the Sages prohibited it unless it is easily recognized that they (the seeds) are not mixed.

The Babylonian Talmud has no commentary on Mishnah Kilaim, but the Jerusalem Talmud has some commentary worth citing:

Text

J. Kilaim III, s (p. 28d)

A man may plant a cucumber... He teaches: It is permissible for a man to make a small hollow, one hand-breadth deep, within his field in order to sow within it four seeds and turn them towards four directions.

Analysis

The Gemara describes the procedure of planting seeds of different species in the same hollow. Care must be taken to turn the leaves in different directions. Evidently, seeds of up to four different species may be planted in the same hollow.

Aware of the needs of the gardener, the rabbis provide a remedy. If a man only owns a small plot of land, he is unable to plant the seeds of two different species in separate hollows. He must plant them together in the same hollow. The rabbis offer a solution which insures onlookers that the gardener knows the law. The livelihood of the gardener is carefully considered, and his reputation is protected.

The Rabbis provide a remedy for the person with only a small plot of land in which to plant. The Rabbis suggest positioning the plants in an unusual way to avoid the appearance of transgression.

We find a remedy in a case mentioned in the Kitzur Shulhan 'Arukh which shows modern applicability of the same principle. In the chapter on Laws about Forbidden Foods, the author suggests that when at a meat meal, one serves almond milk, one should let an almond float in the milk jug to let people know that it is a dairy substitute. The

author states that one does this because of mar-ith 'ayin.⁶⁴ Just as one positions the plants in a certain way, so does one place the almond in the jug. The gardener and the host know that everything is proper, but it is very important that onlookers or guests know also.

The next passage we will discuss is also from Mishnah Kilaim.

Text

Kilaim 9:2

Silk and bast-silk do not come under the law of Diverse Kinds, but they are forbidden because of mar-ith ha-'ayin.

Mattresses and cushions do not come under the law of Diverse Kinds provided that a man's naked flesh does not touch them. Diverse Kinds may not be worn even momentarily, and Diverse Kinds may not be worn even over ten (other garments), even to escape customs dues.⁶⁵

Analysis

This Mishna deals with the forbidden mixtures of materials in garments. One must not wear or cover oneself with material composed of sheep's wool and linen made from flax. (See Lev. XIX, 19 and Deut. XXII, 9-11.)

The Mishna mentions shi-raim and kalakh, two kinds of silk. The exact meanings of the two words are not known. The first clause of the Mishna says that they are treated as if they do not come under the law of forbidden junction. But, shi-raim, which was an uncommon material in Mishnaic times, had the appearance of flax. Kalakh was "a wooly substance growing on stones at the Dead Sea, looking like gold and being very soft...and it resembles sheep-wool" (Jastrow, p. 10).

Both were silk, so, legally they could be woven with any substance. But, because shi-raim had the appearance of flax it was forbidden to be woven with wool. Kalakh, which had the appearance of wool was forbidden to be woven with flax. Perhaps, after both materials were more prevalent in Palestine, and the rabbis knew they were permitted for use in the same article of clothing, they forbade it simply because of mar-ith 'ayin.

There is a brief discussion of this Mishna in the Jerusalem Talmud:

Text

J. Kilaim IX, 2(p. 32a)

Shi-raim and kalakh etc. (Shi-raim is) the silk for clothing. And kalakh is of the cissaros blossom. Rabban Shim'on b. Gamaliel said: I reviewed all of my sea-voyages and they said it is called kalkha. But it is forbidden because of mar-ith ha-'ayin. Rabh said: Anything that is forbidden because of mar-ith ha-'ayin is forbidden even in strictest privacy.

Analysis

The Pene Moshe explains the passage. Rabban Shim'on b. Gamaliel inquired of different sea-voyagers who told him the accurate name of the plant. The Sages do not discuss Rabh's dictum. Rabh's statement will be discussed later.

Text

Shevi'it 3:4

If a man used his field for a cattle-fold he should make a pen covering

two seahs' space, and (when that has been filled with dung) uproot three sides of the pen (and set them up around the adjoining two seahs' space) leaving the middle wall standing as before; thus four seahs' space will have been used for a cattle-fold. Rabban Simeon b. Gamaliel says: Eight seahs' space (may be used after that same fashion for a cattle-fold). If the whole field covered but four seahs' space he must leave a part of it unused by the cattle-fold (because of mar-ith 'ayin) for appearance's sake. He may shift the dung from the cattle-fold and set it out on his field (in heaps) after the (prescribed) manner of them that bring out dung.⁶⁶

Analysis

The law of the Sabbatical year is based on passages from three different books of the Torah: Exodus 23:10-11; Lev. 25:2-7, 20-22; and Deut. 15:1-3. Briefly the law is: land must lie fallow and all kinds of labor on it are forbidden; all debts must be remitted; and no trade may be carried on with Seventh year produce. Arising from this law are numerous restrictions and ramifications which are meticulously discussed in Mishna Shevi'it.

Chapter three of Tractate Shevi'it discusses the work which is permissible during the Sabbatical year. The case in Mishnah 3:4 is of one who has limited space in which to keep his cattle. By allowing them to abide in that area of the field, manure is collected. To deliberately gather manure is forbidden during the Seventh year because it might lead to fertilization of the land. But, building an enclosure with the primary intention of keeping cattle is permitted.

The Mishna prescribes the correct method and measurements for constructing an enclosure for the cattle. The earlier mishnayoth in Chapter three of Shevi'it describe the proper method of collecting

manure during the Sabbatical year. One builds a pen in the field and lets cattle live in it. The concern of the Mishnah is that if a farmer's field covers only an area of four seah, he should leave a part of it unpenned out of concern for appearance. He builds the pen in such a way which allows a portion of the field to remain unenclosed thus making it apparent to onlookers that he is attentive to the law.

As Pene Moshe, the commentary to the Jerusalem Talmud indicates, he must allay the suspicions of passersby who might say, "This one manured his entire field during the Sabbatical year." They should know that the flock deposited the manure in it and it was not carried there by the owner.

The rabbis are concerned because of mar-ith 'ayin, but they also are aware of the owner's needs so they provide a remedy. Let the owner construct the pen in an unusual way to demonstrate his knowledge of the law.

Text

Kilaim 1:2 or J. Kilaim I, 2 (p. 80a)

R. Eleazar b. Azariah says: During mid-festival and during the Seventh year they may not dig a new water-channel. But the Sages say: During the Seventh year they may dig a new water-channel, and during the mid-festival they may repair what has been broken down; they may repair damaged water-ways in the public domain and clean them out; and they may repair roads, open places, and pools of water, and perform all public needs and mark the graves; and they also go forth (to give warning) against Diverse Kinds.⁶⁷

J. Kilaim I, 2 (p. 80b)

There we learned: R. Eleazar b. Azariah forbids until it reaches

three (piles) deep or it reaches three (piles) high or until one reaches a stone. He offered two explanations: Since he had a limited quantity inside his house from before the Seventh year and wanted to transport it to the interior of his field during the Seventh year; surely this is continuing to add to it even after the sinners would have ceased.

R. Eleazar b. Azariah forbids. What is the reasoning of R. Eleazar b. Azariah? Lest he already find dung for himself and the outcome is that he is found to be manuring his field. R. Eleazar b. Azariah acted as R. Yose for just as R. Yose said: Manure is not found in this way, so R. Eleazar b. Azariah said: Manure is not found in this way.

He offered another explanation: Since he had a limited amount (a little bit) inside his house from before the Seventh year he wanted to carry it out to his field during the Seventh year; this is continuing to add after the sinners would have ceased.

R. Eleazar b. Azariah forbids. What is the reasoning of R. Eleazar b. Azariah? Perhaps he will not find manure for himself and that same place (the field) will be found to be manured. But it was not already fertilized before the Seventh year.

R. Jeremiah, R. Abun Ḥiyya in the name of R. Aba of the family of Mammal: Because of mar-ith 'ayin until he takes out ten baskets full (of dung) at once. And the rabbis reject it because of mar-ith 'ayin. R. Idi of Ḥutra said: His basket and shovel show that he is preparing dung. R. Yose the son of (or of the school of) R. Abun said: These are the traditions there (in this place) that we learned there.

R. Eleazar b. Azariah says: During mid-festival and during the Seventh year they may not dig a new water-channel. R. Jeremiah said: Because he is preparing his furrows for seeding. R. Jeremiah, R. Abun the son of Ḥiyya in the name of R. Abba of the family of Mammal said: Because of mar-ith 'ayin. Those wanted to say as the one who said there because of mar-ith 'ayin and here because of mar-ith 'ayin. The one who says there because he wants to prepare his furrows for seeding; but here, what do you have? You only have this: Perhaps he will not find dung and that same place will already be found to be manured. What is the practical difference between them? If he dug in order to make a water-channel of this structure, they would want to say as the one who says: There because of mar-ith 'ayin and here because of mar-ith 'ayin. The one who says there because he wants to prepare his furrows for seeding, surely this one does not want to prepare his furrows for seeding. All agree that if he had stones, pebbles, lime, or plaster there, it is permitted.

Analysis

This Mishna deals with the question of work during the intermediate days of the festival and during the Sabbatical year. The Mishna opens with the opinion of R. Eleazar b. Azariah who opposes the digging of a new water-channel during those times. The Gemara, which comments on this Mishna, also opens with the opinion of R. Eleazar b. Azariah. But, instead of discussing water-channels, it discusses the method of removing manure during the Sabbatical year. After the Sabbatical year has commenced, is one permitted to remove dung from one's house and carry it to a field? This is only permitted if the person makes it clear that he is not fertilizing his field. He must have already piled a significant amount of manure in the field before the Sabbatical year began or he must unload it in an area of the field where fertilization is impossible, i. e., on top of a boulder. He must make it clear to onlookers that he is not fertilizing his land, a transgression during the Sabbatical year.

The Rabbis provide a remedy by suggesting that he prepare the field in such a way that it is apparent that his intentions are legitimate. The Rabbis were certainly aware of the annoyance of accumulating manure over a year in one's living quarters.

Text

Tosefta Shev'it 2:2

If Lof produced (yielded) beans during the Sabbatical year, one may not take from it (remove them) during the Sabbatical year because of mar-ith 'ayin (out of concern for appearance).⁶⁸

Analysis

Lof is a plant with edible leaves and root which bears beans. It is classified with onions and garlic. In his short commentary, Lieberman says that it is forbidden to remove the leaves or beans which are tender and appear as if they grew from the earth during the Sabbatical year. There is another discussion of this plant in Tosefta Terumoth, ch. 9. According to that text as explained in Tosefta K'fshuta, Lof is from the species of plants which are underground (concealed in the earth), in this case for a period of three years. Based on the definition in Ben Yehuda's lexicon and on passages in other Tannaitic sources, Lieberman describes the behavior and physical appearance of the Lof. He writes: Lof is of the species that is buried underground, and the Arabs describe it. (According to Ben Yehuda under Lof): When it sprouts, green leaves emerge from it etc., and a reed comes out of its middle and a bud from its top (and it has (that is to say, the Lof has) an onion resembling the desert onion. And in our Mishna (Ch. 2 Mishna 10): Gourds that have been left for seed only may be left growing during the Seventh Year if they have hardened before the New Year and become unfit for human food etc. Their buds are forbidden during the Seventh year. Tosafot Yom Tov: And now I found explicitly that I mentioned (quoted) (attributed to Elijah of London): that wrote and these are his words(:) the buds, the blossom etc., and that type of blossom has a form of food appearing on it even after it has hardened, and they are

forbidden because of Mar-ith 'Ayin (its appearance). And it is expressed clearly by the Tosefta here. And following up Rabbi Meir's principle (mentioned in line 3) they are speaking here about the Lof that has hardened which is not forbidden because of spontaneous growths (of the Sabbatical year, dating from the sixth year which are generally permitted), but if a bud sprouted from it, even though it sprouted from out of fruit that grew legally, anyway it is forbidden because of mar-ith ayin (the way it appears), because it is soft and appears as if it grew during the Seventh year from out of the ground, and according to the Toseftan ruling mentioned later Halacha 11 and Halacha 12. And Rambam made a general (rule) mentioned later and the Toseftan ruling here.

According to the interpretation of R. Shimshon of Sens: the buds are forbidden for eating, because they all sprouted during the Seventh year, and even though the Lof itself is permissible for eating if one added (food was added) during the Seventh year, at any rate the buds appear as greens which sprouted entirely during the Seventh Year, and are forbidden because of mar-ith 'ayin.⁶⁹

Text

Sifra Parashat Qedoshim 1:10

And so R. Shim'on used to say: On account of four things they said: A man should only leave the corner at the end of his field: because of the taking by the poor, because of a loss of time to the poor (when compelled to wait for their share in the crop), and because of mar-ith 'ayin and because the Torah has stated: 'You shall not wholly reap the corner of your field ' (Lev. 19:9). Because of the taking by the

poor: how will a man not find a free moment to say to the poor nearby, 'Come and take a portion for yourself?' Because of a loss of time to the poor, how? So that the poor will not be sitting and waiting all day and saying, 'Now he is leaving a corner.' Rather, they will go and gather (the gleanings) in another field and come at the time of reaping. Because of mar-ith ha-'ayin, in what respect? So that passersby will not say, 'See how so-and-so reaped his field but did not leave a corner for the poor!' And because the Torah says: 'You shall not wholly reap the corner of your field.'⁷⁰

Analysis

The title peah comes only when the owner leaves a plot uncut at the end of the field. If it is left uncut in the middle of the field, the poor cannot have easy access to it. The owner must leave the corner of the field and designate it as the poor man's share.

The Midrash expounds on the verse from the Torah, "You shall not wholly reap the corner of your field." According to R. Shim'on there are four reasons. One obvious reason is so that the poor will be provided with sustenance. It is a stipulated part of the field which is easily recognized by the poor who wait until the field-owner is finished reaping.

The third reason given is out of concern for mar-ith 'ayin, as is explained in the text. The unreaped corner is conspicuous not only to the poor but to any passersby who, assured that the field-owner has not transgressed the law in Leviticus, would not spread rumors about or falsely accuse the owner thus marring his reputation.

Text

Baba Metsia 7:2

These may eat (of the fruits among which they labour) by virtue of what is enjoined in the Law: He that labours on what is still growing after the work is finished, and he that labours on what is already gathered before the work is finished; (this applies only) to what grows from the soil. These are they that may not eat: he that labours on what is still growing while the work is still unfinished, and that labours on what is already gathered after the work is finished, and (he may not eat) of what does not grow from the soil.⁷¹

In the Gemara discussion which follows there is a long list of

Baraitot in which the following is included:

B. Baba Metsia 89b-90a

Our Rabbis taught: When cows stamp grain, or thresh terumah and tithes, there is no transgression of, "Thou shall not muzzle (the ox when he threshes his corn); but because of mar-ith ha-'ayin, he must bring a handful of that species and hang it on the nosebag at its mouth.

Analysis

The Baraita is related to the Mishna in that the Mishna discusses what eating is permitted to laborers employed in the production of food, and the Baraita discusses what eating is permitted to animals which labor for the production of food. The Mishna seems to be an extension of the laws in the Torah.

When you enter your neighbor's vineyard, you may eat your fill of the grapes, as many as you want; but you must not put any in your vessel. When you find yourself amid your neighbor's standing grain, you may pluck ears with your hand; but you must not put a sickle to your neighbor's grain (Deut. 23:25-26).

The Baraita is a qualification of the following law in Deuteronomy:

"You shall not muzzle an ox while it is threshing" (Deut. 25:4).

This rule applies to all animals used in labor, not just the ox. It is cruel to excite the animal's desire for food and prevent its satisfaction. While it is performing hard labor, it would continually have food before its eyes. The law forbids muzzling the animal and denying the possibility of eating.

But the Gemara brings in a Baraita which presents a case when muzzling is necessary. When the animal is threshing Terumah and tithes, it must be muzzled. The owner is forbidden to derive any benefit from produce set aside for the priesthood. Even after the Temple was destroyed, and the sacrificial cult ceased, the produce was still forbidden for use by the laity. The owner's animal also was denied benefit from the designated portions of the crops.

So, the owner is permitted to muzzle the animal. But, there is still the concern for cruelty. To an onlooker, it would appear that the owner is violating the law of the Torah. Passersby would not know that the animal is threshing Terumah and tithes. Certainly, the animal would not be able to distinguish between permitted and forbidden food. The Rabbis provide a remedy. The owner should muzzle the animal with a feedbag containing a handful of the species it is threshing.

We now turn to those passages which deal with Sabbath and Festival observance and contain the term mar-ith 'ayin.

Text

Betsah 1:3

The School of Shammai say: They may not remove a ladder from one dovecot to another but only incline it from one opening to another (of the same dovecot). And the School of Hillel permit it. The School of Shammai say: A man may not take (pigeons for slaughtering on a Festival-day) unless he stirred them up the day before. And the School of Hillel say: He need only go up and say, 'This one and this one shall I take.'⁷²

B. Betsah 9a

R. Hanan b. Ammi said: This dispute refers only to public property, when the House of Shammai reasons that whoever sees might say that he needed to plaster his roof. And the House of Hillel holds that his dovecot proves his intention, but on private property all agree that it is permitted.

Rashi

Ha-roeh Whoever sees that he carries it may say that he needs to plaster his roof and surely he is doing prohibited work on a Festival Day. They used to coat their roofs with mud (plaster) so that they would not be slanted but rather made as a kind of roof (ceiling) above it and they would use them. Therefore they would cover them and smooth the plaster to the side of the walls so that it would flow from the right side.

Shokhvo mokhiah alav His dovecot proves his intention. The dovecot of the ladder proves that it is apparent that it belongs to the dovecot.

Mutar This is permitted in private for here no one would see it.

Gemara

Is that so! Did not Rab Judah say in the name of Rabh: Wherever the Sages have forbidden because of mar-ith 'yin, it is forbidden even in the innermost chambers?! (Jastrow, "in the remotest recesses," "in strict secrecy") It is (a controversy of) Tannaim, for it was taught: One may spread them out in the sun but not in the presence of people. R. Eliezer and R. Simeon forbid this.

Rashi

Rabh's position is difficult for Rav Hanan for even though Rabh was an Amora he objects (or we accept his objection) because in his generation he was Rabban (chief teacher) over all the inhabitants of the Diaspora excluding Samuel.

Tanai hi There is a Tanna whose opinion was that whoever let his garments drop on the road in rainwater may spread them out in the sun to dry by themselves. But the person should not spread them out in public so that people will not say that someone washed them on the Sabbath; likewise for anything it may be, because of mar-ith ha-'ayin, is permitted in a hidden (concealed) place.

Gemara

There are some who say that R. Hanan said: The dispute refers to private property; for the House of Shammai accepts the teaching of R. Judah in the name of Rabh and the House of Hillel rejects the teaching of R. Judah in the name of Rabh. But regarding public property, all agree that it is forbidden.

Shall it be said that Rabh ruled according to the House of Shammai? ! It is a controversy of Tannaim; for it was taught: One may spread them out in the sun, but not in the presence of people. R. Eliezer and R. Simeon forbid.

Rashi

R. Hanan raised an objection holding with that of the House of Hillel who forbid on public property but permit on private property. If so re: R. Hanan said in the name of Rabh who said: Wherever the Sages have forbidden etc. is surprisingly as the House of Shammai said who certainly would not abandon the view of the House of Hillel and act according to the House of Shammai and against your will; for the House of Hillel, it is permitted even on public property because his dovecot proves his intention (certainly) that if on public property it is forbidden and private property permitted, not as Rav said to whom you listened.

Tanai hi In other words, R. Hanan told you that certainly Rabh reasoned according to the House of Hillel even with regard to public property where they permitted and differed with me for I agreed with those who say that this Tanna said: One may spread them out in the sun which Rabh does not accept; and this Tanna accepts the opinion of the House of Hillel who only permit in a private place. R. Eliezer and R. Simeon reason according to Rabh who obtains his authority from the House of Hillel in our Mishna where even on public property they

certainly reason that his dovecot proves his intention. But the House of Shammai does not hold that his dovecot proves his intention and therefore forbid even in the strictest privacy. There are sayings of Rabh where he certainly disagreed for Rabh can say to you: It is the opinion of Tannaim and it is not law from those Rabbis, R. Eliezer and R. Simeon, but rather from the House of Hillel. Surely the view of the House of Shammai is strong but the Halacha is not according to them.

Gemara

Our Mishna is not in agreement with the following Tanna; for it was taught, R. Simeon b. Eleazar said: The House of Shammai and the House of Hillel agree that one may carry the ladder from one dovecot to another. They disagree only about returning it for the House of Shammai says that one may not return it (bring it back), and the House of Hillel says that one may even return it. R. Judah said: These words apply only to a dovecot ladder but regarding a loft-ladder all agree that it is forbidden.

Rashi

Matnithin As they taught: Over the carrying of a ladder they do not dispute for this Tanna taught that with respect to carrying they agree because it is needed for the festival.

Aval shel 'aleha asur A loft-ladder is forbidden for upon seeing this, people would certainly say that so-and-so needs to plaster his roof.

Analysis

The Mishnah deals with moving a ladder on a Festival day and the hunting and preparing of birds. The question is: On a Festival day, may one carry a ladder from one dovecot to another in order to take a pigeon to slaughter for a festival meal? The School of Hillel permits such carrying, even through a public domain. Since the ladder is recognizable as a dovecot ladder, people will not think that one is carrying it to repair a roof.

The School of Shammai forbids carrying but permits inclining it

from one hole to another. Tilting the ladder is all that is necessary in order to retrieve the birds.

All agree that a tall ladder that one normally uses to climb from one story of a house to another is forbidden for use on the Festival day. One who sees his neighbor carrying such a ladder would likely assume that he is carrying it in order to repair his roof which is prohibited labor on the Festival.

In this discussion, we have at least three opinions presented. The most lenient view, that of the House of Hillel, permits carrying it even in a public place, if necessary. The School of Hillel understands the obligation stated in the Torah, "And you shall rejoice in your holiday" (Deut. 16:14) to include eating festive meals which contain meat. Even though 39 categories of labor were forbidden on the Sabbath, the Rabbis made exceptions for the Festivals. They permitted any actions necessary to obtain or prepare food on the Festival for the Festival.

A less lenient, but still moderate, view is that moving the ladder only on private property is permitted. There is no specific attribution given although this view seems to be in accordance with that of R. Hanan b. Ammi.

The strictest view is that of the House of Shammai which forbids carrying of the ladder under any circumstances. This view is also expressed by R. Eliezer and R. Shim'on who reason according to the dictum of Rabh: Whatever the Sages have forbidden because of mar-ith 'ayin is forbidden even in the innermost room. The paradigmatic

case of drying garments which accidentally became soaked is invoked as the precedent for this principle.

The inevitable question to which there are no easy answers is: Why Rabh's dictum? The prohibition of mar-ith 'ayin refers to acts which arouse the suspicion of onlookers. The cases of mar-ith 'ayin contain rabbinical enactments which forbid one to perform an activity which will lead someone to suspect that he is committing a transgression. This assumes that onlookers or someone is nearby to see. It is peculiar that Rabh would extend these prohibitions to include even places where no one other than the person committing the act is present. Moreover, all of the cases which involve mar-ith 'ayin involve actions which are not really forbidden. They only appear to be. Also, the person committing the act has purely legitimate intentions. It seems that Rabh and those advocates of his dictum do not trust the populace to be able to distinguish between private and public domain.

The reason could simply be that one could never be assured of being completely alone. Someone could burst in the room and see the act. But let us assume that the person is in complete privacy. Perhaps the reason behind the dictum relies on a general rule. The Rabbis wanted to prevent disagreement over different details of a prohibition. They were afraid that the edict might be undermined in some way. So, rather than risk transgression due to any misunderstanding of the principle, the Rabbis forbade under any circumstances.

Also, by forbidding the actions in private, a person's behavior is

reinforced. A person gets practice avoiding the prohibited activity. If one does not do it in private, one will not do it in public. Rabh's dictum is an extension of a rule. It is similar to the notion of putting a "fence around the Torah." The Rabbis sought to protect the laws in the Torah by developing "cautionary rules to halt a man like a danger signal before he gets within breaking distance of the divine statute itself."⁷³

So, if we take the paradigmatic case of soaked garments on the Sabbath, we see how the Rabbis operated. By law from the Torah, one is forbidden to wash garments on the Sabbath. The next step would be that one is forbidden to lay garments out in the sun in a public place on the Sabbath because passersby might assume that the law in the Torah had been broken. The remedy would be to lay them out to dry in the privacy of one's courtyard. As a cautionary measure, Rabh's dictum even forbids such activity in private. The cautionary measure apparently assumes the same degree of significance as the avoidance of the actual prohibition in the Torah. That is, the practices forbidden because of mar-ith 'ayin are just as serious as a direct offense of the Torah law.

We note that Rabh's dictum is not included in every discussion of mar-ith 'ayin that we have seen. In many cases, the Rabbis provide alternative methods to achieve the same outcome. Aware of possible monetary loss or loss of livelihood, the Rabbis provide remedies. We see this especially in relation to agricultural laws.

Text

Shabbat 6:5

A woman may go out with bands of hair, whether it is her own or another's, or from cattle, or with a forehead-band or head-bangles sewn (on the head-dress) or with a hair-net or with false locks (if she remains) in (her own) courtyard; or with wool in her ear, or with wool in her sandals, or with the wool that she has arranged for her menstruous flow, or with a peppercorn or piece of salt or aught that she puts in her mouth, if only she does not first put it there on the Sabbath; but if it falls out she may not put it back. Rabbi permits a false tooth or a gilded tooth; but the Sages forbid it.⁷⁴

B. Shabbat 64b

Or with a hair net or with false locks to her courtyard...

R. Judah said in the name of Rabb: Wherever the Sages have forbidden because of mar-ith 'ayin, it is forbidden even in the innermost chambers. We learned: Nor with a bell even though it is plugged up, and it was taught elsewhere: One may plug the bell around the neck and walk about with it in the courtyard. It is (a controversy) of Tannaim, for it was taught: One may spread them out in the sun, but not in the sight of people. R. Eliezer and R. Simeon forbid it.

Rashi

Rashi comments on the passage "Wherever the Sages have forbidden because of mar-ith 'ayin..." so that they will not suspect a transgression like mail, helmet and metal arms or so he will not tie camels together which might appear and if he is going to the fair.

"Nor with a bell" So he does not produce a sound, nor will an animal go out with it and I explain the reason in Chapter Bameh Behemah (Shabbat 54b) because it may appear as if he is going to market.

"And it was taught" in a Baraita that in a courtyard where there is no mar-ith 'ayin, it is permitted.

"One may spread them out in the sun" One who (accidently) let

his garments drop on the way in rain water.

"But not in the sight of people" So they will not say, "He washed his clothes on the Sabbath." The Tanna reasons that some activity (prohibited) because of mar-ith 'ayin is permitted in innermost quarters.

"They forbid" They forbid as Rabh.

Analysis

The Mishna is not concerned with mar-ith 'ayin. Rather, it is concerned with the problem of carrying from one domain to another on the Sabbath. Articles which are part of one's personal attire may be carried, although they must be attached to one's garments.

Even though the Mishna appears not to contain the principle of mar-ith 'ayin, the Amoraim in their discussion of the Mishna introduce the principle of mar-ith 'ayin. The Amoraim are concerned that people might not do what is permitted. They might not know what is personal attire and suspect persons of breaking the Sabbath law against carrying. As we have seen in the discussion of the preceding case, Rabh's dictum is associated with the paradigmatic case of one whose clothing accidentally got soaked on the Sabbath.

What is interesting is that the Gemara adds a perspective which the Mishna does not have.

Text

Shabbat 22:4

They may put a cooked dish in the cistern to preserve it, or put (a vessel containing) fresh water into foul to keep it cool, or cold water into hot to warm it. If a man's clothes dropped into the water while he was on the way, he may go on walking in them without scruple; when he has reached the outermost courtyard (of the town) he may spread them out in the sun, but not in the sight of the people. ⁷⁵

B. Shabbat 146b

If one's garments drop (etc.) R. Judah said in Rab's name: Wherever the Sages have forbidden because of mar-ith 'ayin, it is forbidden even in the innermost chambers. We learned: He may spread them out in the sun but not in the sight of people. It is (a controversy) of Tannaim. For it was taught: He may spread them out in the sun but not in the presence of people. R. Eliezer and R. Simeon forbid it.

Rashi

Rashi's comment to this section is brief and we will see it in other contexts in Tractate Shabbat. One would spread the garments out in the sun in order to dry them but would be careful not to do it in a public place lest people suspect Sabbath desecration.

Analysis

The case of drying wet garments on the Sabbath is the paradigmatic case, and it is mentioned in Tractate Betsah and elsewhere in Tractate Shabbat. The case is straightforward. Mar-ith 'ayin is present in the inherent logic of the periscope though it is not explicitly mentioned. It seems the principle is inherent in the source and perhaps was tacked on later. As seen earlier, there are cases where the term already appears in the Mishna.

The Mishna permits a person to dry his garments in a private place. The Gemara overrides that ruling by invoking Rabh's dictum.

Text

Shabbat 6:2

A man may not go out with sandals shod with nails or with a single sandal if he has no wound in his foot, or with phylacteries, or with an amulet that has not been prepared by one that was skilled, or with a breastplate or helmet or greaves. But if he went out (wearing the like of these) he is not liable to a Sin-offering.⁷⁶

B. Shabbat 61a-61b

Nor with an amulet, that has not been prepared by one that was skilled...

R. Papa said: Do not think that both the man (expert) and the amulet must be approved. As long as the man is approved, even if the amulet is not approved (it may be worn on the Sabbath). This may also be proved, for it is stated: Nor with an amulet, if it was not prepared by one that was skilled; but it is not taught; it was not approved. Thus this proves it.

Our Rabbis taught: What is an approved amulet? One that has healed a second and a third time; whether it is an amulet in writing or an amulet of roots, whether it is for an invalid whose life is endangered or for an invalid whose life is not endangered. Not just for a person who already had an epileptic attack, or to prevent one from having an epileptic attack. And one may tie and untie it even in the public domain, providing that he does not fasten it with a ring or bracelet and go out with it into the street, because of mar-ith ha-'ayin.

Analysis

A person is not permitted to carry any object on the Sabbath unless it is functional. Phylacteries have no function on the Sabbath. One cannot fulfill the obligation of donning them on the Sabbath, so one should not wear them. Also, one should not wear military apparel which has no function on the Sabbath.

Likewise, an amulet which is not prepared by an expert is a useless object and should not be worn on the Sabbath. If the amulet is efficacious, that is, it was prepared by an expert, then it has a function. For medicinal reasons, one may carry it. It may not have the appearance of jewelry which would be ostentatious.

In a Baraita, the Rabbis provide a remedy. Apparently, the normal way of wearing an amulet was to wear it on a ring or a bracelet. On the Sabbath, because of mar-ith 'ayin, if one carries something around one's neck with a conspicuous fastener, it may look as if one is carrying something forbidden. If one wears it with a string, people will not suspect violation of the Sabbath. It is really not the normal way of wearing a ring or a bracelet to attach something to it. One should be careful not to attract attention.

Text

'Erubhin 8:9

They may not pour out water on the Sabbath into a courtyard whose area is less than four cubits too small to absorb the water that may be thrown out, the water will flow away into the public domain, which offends against the rule about throwing a thing from one domain into another; unless they had made a cavity holding two seahs, from the opening downwards, whether it was outside or inside; save only that if it was outside it must be covered over, but if inside it need not be covered over.

8:10 R. Eliezer b. Jacob says: Water may be poured into a (roof-) drain on the Sabbath if four cubits (of the drain) were covered over in the public domain. But the Sages say: Even if a roof or a courtyard is a hundred cubits in area, water may not be poured over the mouth of the drain, but it may be poured from roof to roof, so that the water flows down into the drain. The courtyard and the portico are included together in making up the prescribed four cubits.

8:11 So, too, if there were two habitations over against one another, and (the occupants of) the one made a cavity but not (the occupants of) the other, they that made the cavity are permitted (to throw out water) but they that had not done so are forbidden.⁷⁷

Analysis

The relevant discussion in the Gemara appears on J. 'Erubhin VIII, 10 (p. 25b). Due to its technical language, we will not provide a translation here but only briefly summarize the contents.

The discussion is about whether it is permitted to publicly dispose of waste on the Sabbath. We have a debate between Bar Kappara and the advocates of Rabh's dictum. Bar Kappara permits the waste disposal if it is done discreetly, in as private a place as possible. Bar Kappara's suggestion allays the worry over mar-ith 'ayin. Rabh and his followers disagree and the famous dictum⁷⁸ is quoted. Whatever is forbidden because of mar-ith 'ayin is forbidden even in the innermost chambers.

We now turn to cases of mar-ith 'ayin related to idolatry, physical appearance, and the priestly cult.

Text

'Avodah Zarah 1:4

If there was an idol inside a town it is permitted (to have business with them) outside it; if there was an idol outside, it is permitted (to have business with them) inside. Is it permitted to go in that direction (on the festivals of the gentiles)? If the road leads to that place alone it is forbidden, but if one can go by it to another place it is permitted. If there was an idolatrous festival in a city and some shops therein were adorned and others not adorned--such a case happened in Beth Shean, and the Sages said: Those that are adorned are forbidden and those that are not adorned are permitted.⁷⁹

B. 'Avodah Zarah 11b-12b

How about going there? Our Rabbis taught: It is forbidden to enter a city while idolatrous worship is taking place in it, or to go from it to another city; this is the opinion of R. Meir. But the Sages say: Only when the road leads exclusively to that same place is it forbidden; if the road does not exclusively lead to that same place it is permitted. If a thorn got into his (foot) while in front of an idol he should not bend down to remove it because he may appear as if he is bowing to the idol, but if he does not appear so (or it is not apparent) it is permitted. If his coins scattered in front of an idol he may not bend down to retrieve them because it may appear as if he is bowing down to an idol; but if he does not appear so (or it is not apparent), he is permitted. If there is a fountain flowing in front of an idol he should not bend down to drink because it may appear as if he is bowing down to the idol, but if it is not apparent, it is permitted.

One should not place one's mouth on the mouth of sculptures of human faces which throw forth water in the large cities because he may appear as one who kisses the idolatrous figure. Likewise one should not place one's mouth on a water pipe and drink from it for fear of danger.

What is meant by "eno nireh?" Shall we say that he is not seen? Surely R. Judah said in the name of Rabb that wherever the Sages prohibited because of mar-ith 'ayin, it is also forbidden in utmost secrecy! I can only say, if he does not appear as one who bows to an idolatrous figure, it is permitted.

And all (three cases) are necessary. For if we were taught the case of the thorn only (we would have thought that it is forbidden) because he is able to walk away from it (the idol) and remove it, but in the case of coins where this is not possible, I will say no. But if we learned the case of the coins only (we might say that the prohibition holds good) because only a loss of money is incurred, but in the case of the thorn where there is pain, I say no (the prohibition is not to be applied).

But if we were given both these cases (we might still say that the prohibition applied to them) because there is no danger involved, but in the case of the fountain where there is danger, for if one did not drink, one would die, I can say no (that the prohibition should be waived). Hence all three cases are necessary.

Why the mention of (placing one's mouth on the mouths of the) figures? That is only because he wanted to teach the instance, which resembles it, of not placing one's mouth on the water pipe and drinking from it for fear of danger. What is the danger? --Of swallowing a leech.

Rashi

Rashi explains the phrase "a city while idolatrous worship is taking place in it" to refer to a city in which the citizens are celebrating the anniversary of an idolatrous festival. On that specific day a Jew is permitted to conduct business with those settlers outside the city who are not followers of that particular form of idolatry being observed within the city. Certainly a non-Jew who is outside the city in which the festival is being observed would not be engaging in the customs of those who worship within the city, rather he would worship on the anniversary of his idolatrous festival. In other words, the idolatrous festivals of one non-Jew would not necessarily fall on the same days as those other non-Jews. Similarly, if the idols are being worshipped outside the city, using the same reasoning; the citizens of the city are not worshipping their idols within it.

Rashi explains the phrase "how about going there" to mean that one might go there in order to speak with one of the citizens of the city.

In his explanation of the phrase "when the road leads exclusively to that place" Rashi touches on the very theme of which we are concerned, creating false impressions: If the road leads to that place alone it is forbidden for the road does not lead out of that same city to another city; the road connecting from one's point of departure to that city is exclusively to that city. It is forbidden to go there because one would be suspected as appearing to go there in order to worship the idol.

Analysis

The Gemara discusses the case when one must walk through a city where the citizens are celebrating an idolatrous festival. In this case, the road taken leads out of the city to another destination where the citizens are not celebrating such a festival. R. Meir forbids entry into such a city even if one is just passing through because, as Rashi states, it is feared that people will say that the Jewish traveler also went to worship there. But the Sages permit a person to pass through as long as the road leads to a place where no idol worship is taking place at the time. The Gemara then cites three situations when someone might be mistaken to be worshipping an idol. If while passing through, one should get a thorn in his foot, and he is in front of an idol, he should not bend down to remove it because he may appear as if he is bowing to the idol. If he should drop coins in front of an idol, he should not bend down to retrieve them because of how it appears. Finally, if there is a fountain flowing in front of an idol, or as Rashi explains, a hollow human figure with a water pipe inserted behind or through its mouth, one should not drink because it may appear as if he is worshipping the idol. For each case the Gemara permits the action provided eno nireh translated as "it is not apparent." As long as no one sees him, it is permitted.

The discussion would not be complete without mentioning Rabh's famous dictum: Wherever the Sages prohibited because of mar-ith 'ayin, it is also forbidden in utmost secrecy. We have seen this dictum

mentioned in other cases. Just because no one is nearby to see the action and mistakenly assume that a person is committing a transgression does not mean that the person is free to carry on with the action. Here, Rabh's dictum is challenged. As long as the person passing through the city does not appear to be worshipping an idol, he is permitted to remove a thorn, gather his money, or drink. According to the Rabbis, "to appear" or "to be apparent" presumes that there is someone else who will be watching. The Gemara permits him to do what is necessary if it is not apparent to an onlooker. Rashi explains that the person should face the back or side of the idolatrous figure.

Text

Shabbat 19:6

These shreds (of the foreskin, if they remain,) render the circumcision invalid: flesh that covers the greater part of the corona (such a one [if a priest] may not eat of Heave-offering); if he waxes fat (and the corona is covered anew) this must be set aright for appearance's sake (because of mar-ith 'ayin). If one is circumcised without having the inner lining torn, it is as though he had not been circumcised.⁸⁰

Analysis

This Mishna presents cases of invalid circumcisions. If shreds of the foreskin remain, the infant is not considered circumcised. If a child of a priest is not properly circumcised, he cannot fulfill his priestly duties. The Mishna then presents a case of a person who was properly circumcised, but because he became fat after the foreskin was removed he again appears as one who is uncircumcised.

Literally, his appearance is misleading. Those who see him in the bathhouse might say that he is uncircumcised. The law dictates that he submit to a procedure to correct the problem. If we were to categorize types of mar-ith 'ayin, we might call this mar-ith 'ayin of the "locker-room" variety.

In connection to this Mishna, it is interesting to point out a Mishna from the same chapter which contains the principle of mar-ith 'ayin although the term is not mentioned:

Text

Shabbat 19:1

R. Eliezer says: If they had not brought the implement (circumcision knife) on the eve of the Sabbath it may be brought openly on the Sabbath; and in time of danger a man may cover it up in the presence of witnesses.⁸¹

Analysis

According to halakhah, the mitsvah of milah overrides Sabbath observance. If the mohel forgot to bring the circumcision knife to the place of the ceremony, he may carry it there on the Sabbath. But he must carry it openly for if he carried it covered, he could create the impression that he is carrying something else. He should not give rise to the wrong suspicions.

While ordinarily mar-ith 'ayin legislation is expressed in negative terms, telling people what they should not do lest they create wrong impressions, in this case the law is formulated positively, according

to the view of one rabbi, so that onlookers see that a person is doing something right.

Because the law is clearly predicated on the impression a person makes on others and because God knows that, in this case, the person is not breaking the Sabbath law even if he carries the knife covered, he carries it openly only to prevent people from thinking wrongly of him.

Text

Bekhorot 7:1

These same blemishes, whether lasting or passing, likewise render (priests) unqualified (to serve in the Temple). Among men are more-over added: he whose head is wedge-shaped or turnip-shaped or hammer-shaped, or whose head is sunk in or is flat at the back. R. Judah declares the humpbacked qualified, but the Sages declare him unqualified.

7:2a He that is bald-headed is unqualified. 'Bald-headed' means any that has not a strip of hair going round from ear to ear; but if he has that much he is qualified.⁸²

Rashi

"These blemishes:" spoken of regarding the first-born render a priest unfit for Service.

"Whether permanent or transitory:" All the time that he has it.

Kilyon, Liftan, Mukvan These names of blemishes are explained in the Gemara.

"Whose head is sunk in or flat:" also is explained in the Gemara.

There is disagreement regarding the humpbacked.

B. Bekhorot 43a

Among men are moreover added: How are these words proven? Said R. Johanan: Scripture says: "No man of the seed of Aaron, the Priest, that has a blemish" (Lev. 21:21). What is the difference between (a priest) with a blemish and one "who is not like the seed of Aaron"? The difference is whether the Temple Service is profaned. If it is a blemish, the Temple Service is profaned, as it is written, "Because he has a blemish, he shall not profane..." (Lev. 23:23). If it is not a case of being "like the seed of Aaron," then the Temple-Service is not profaned. What is the difference between the case of one "who is not like the seed of Aaron" and of (a priest) who is unfit because of mar-ith ha-ayin? The difference between them regards (the transgression of) a positive precept...

A bald-headed person is unfit... R. Johanan said: Baldheads, dwarfs and the blear-eyed are unfit (for the priesthood) because they "are not like the seed of Aaron." Have we not already learned (in the Mishnah) about the case of baldheads! Have we not already learned about the case of dwarfs! He needs to teach us the case of the blear-eyed. And regarding the rest, you might have thought was "because of mar-ith ha-ayin." Surely the Tanna states that in every case it is because of mar-ith ha-ayin, for it says: "If his eyelids are hairless, he is unfit because of mar-ith ha-ayin." You might have thought that he states one case but the same applies to all of them. But does not the Tanna state wherever there is a case (of unfitness because of mar-ith ha-ayin) review this as taught. One whose teeth were removed is unfit (for the priesthood) because of mar-ith ha-ayin. Rather (the explanation is that the intention of R. Johanan is) to exclude what has been taught; for it was taught: Bald-heads, dwarfs, and the blear-eyed are fit, and have been said to be disqualified only because of mar-ith ha-ayin. Who is this Tanna? It is R. Judah, for it has been taught, R. Judah says: (Scripture says) 'The priests,' to include the bald-heads.

Bekhorot 7:3

He that is flat-nosed is unqualified. 'Flat-nosed' means one that can paint both his eyes together. If both his eyes are too high or his eyes too low, or if one eye is too high or one eye too low; if he can see both the (lower) room and the upper chamber together, or cannot bear the sun; or if he has unmatched or watery eyes (he is unqualified). He whose eyelashes have fallen out is unqualified because of his unsightliness [because of mar-ith ha-ayin].⁸³

Bekhorot 7:4

If his eyes are big like those of a calf or little like those of a goose; if his body is too big or too little compared with his other parts; if his nose is too big or too little compared with his other parts; or if he is tzimmem or tzimme' (he is unqualified). Tzimme' means he whose ears are too little; tzimmem means he whose ears are like a sponge.

Bekhorot 7:5a

If his upper lip juts out beyond his lower lip, or the lower beyond the upper, this is a blemish. If he has lost his teeth he is unqualified by reason of unsightliness [because of mar-ith ha-ayin].⁸⁴

Analysis

All of these mishnayot discuss priests and their fitness for Temple Service. They give examples of blemishes which disqualify a priest for public service. But the rabbis were concerned about certain kinds of blemishes which, although they do not disqualify the priest, do restrict him for purely aesthetic reasons. It is similar to the case of the sha-liah tzibbur in tatters who is prohibited from leading the congregation in the Eighteen Benedictions because it is offensive to the dignity of the congregation.

The rabbis were concerned that one who has a role of public service be physically attractive. This is not a moral case as were many of the others mentioned. The rabbis were literally concerned about physical appearance.

But there may be another issue present. It is likely that the populace was not aware of what were the standard blemishes which disqualified a priest. The additional blemishes mentioned were

questionable. There should be no semblance of doubt that the person is qualified to serve as a priest. By disqualifying those with "questionable" blemishes, there is no danger of damaging the reputation of the priest or of challenging the ritual's efficacy.

CHAPTER 6

Conclusion

In bringing this study to an end, we are left with many questions. We began with the premise that the rabbis of the talmudic period invented new ethical standards which reflect a concern for the perception of others. We investigated four of these concepts: kebhod tsibbur, yuhara, mar-ith 'ayin, and hillul hashem bepharhesiah.⁸⁵

The questions that arise are:

1. What kind of society do they presuppose?
2. What is the feeling about trust people have in each other?
3. Does the institution of such principles indicate the oppressive nature of the society?
4. Are they dealing with an internalized ethical system or is everything based on compulsion from outside pressures?
5. Is there anything corresponding to these principles in the Christian or secular society?
6. What is the net result? Has it made the Jews a better people?

The concern for creating the proper impressions covers a variety of activities ranging from maintaining proper decorum in the synagogue to preventing the public profanation of the name of God. We learn

from several of the cases that Jews did not live in self-contained ghettos cut off from the influence of the external environment. Certainly, some of the cases involve only the Jewish in-group. But, there was interaction with non-Jews so that it became important to present the best possible image of the Jewish religion. This concern is evident in some of the cases of hillul hashem.

We might also wonder to what degree non-Jewish practice influenced Jewish practice. For example, women were originally permitted to read from the Torah in public; only later, and for no apparent halakhic reason, this privilege was denied. This could have been merely a matter of etiquette or concern for decorum as in the other cases of kebhod tsibbur, or perhaps the change is a reflection of some practice in the general society. For instance, within Christianity women were adjured to keep silent in church.⁸⁶ There is not necessarily a direct influence from the case of Paul to the case of the rabbis. But the existence and similarity of the two cases may reflect the position of women in the Near East.

In the case of yuhara, we find the Jews concerned about their own people behaving ostentatiously. But, also, in Christian literature, we find the Jews being accused of such behavior.⁸⁷ Furthermore, there is even a reference in the Talmud of Jews accusing non-Jews of the same type of hypocrisy.⁸⁸

Normally, the consideration of mar-ith 'ayin applies only to a case where the Jewish individual would be misjudged by fellow Jews.

The moment non-Jews do the judging, it becomes a case of hillul hashem. Although we did not find such a case, we could envisage one: If a Jew eats a kosher meal in a restaurant known to serve non-kosher food, another Jew seeing the former leave the restaurant might mistakenly assume that the person ate non-kosher food. A non-Jew, familiar with the Jewish dietary laws, who sees the Jew leave the restaurant, might question the Jew's respect for his own religion.

The creation of new legal principles could reflect two different motivations. By inventing new legal principles which have little or no basis in the Torah, the rabbis seem to be concerned with raising the ethical standards of the community. On the other hand, this development could reflect their mistrust of the general populace. The rabbis legislate to protect the individual against the suspicion of the general population. Particularly in the case of mar-ith 'ayin, they mistrust the onlookers who would not give a person the benefit of the doubt.

As an example of a positive motivation, that of raising the ethical standards, the rabbis sought to protect the reputation of the individual. This presupposes a society of socially self-conscious people. A commendable reputation was a valuable possession which, once damaged, was difficult to restore. By extension, the reputation of one's religion had to be protected. Jews, therefore Judaism, were in the public eye.

Because people did not live in isolation from one another, the notion of social responsibility was crucial. Surely, the rabbis intended these principles to apply to every Jew. "Rabbis and laymen share the same responsibilities of faith."⁸⁹ But a person of high standing or scholarly reputation had to be particularly scrupulous. In a discussion of hillul hashem, Samuel Cohon wrote:

A man of piety, scholarship or prominence must strive to be above reproach in matters of business, in his food and drink, and in his relations with his neighbors in general. He must keep himself from pretence and duplicity, and exercise patience and forbearance. Above all he must avoid giving grounds for offence against his faith.⁹⁰

This is not just a prescription for proper behavior. People who were in the public eye were role models for the general populace.

In these principles, we see the rabbis not just concerned with matters of ritual and civil law, but also concerned with developing a more refined social ethic.

But the rabbis do not devise these principles in order to make society oppressive. They are aware of human needs and temper their decisions with compassion. For example, in the paradigmatic case of mar-ith 'ayin, that of drying soaked garments on the Sabbath, the rabbis forbid it and invoke Rabh's dictum to support their argument.⁹¹ But in the case of positioning plants of different species in a small plot, the rabbis devise a loophole, an alternative method. In the case of removing manure during the Sabbatical year, the rabbis suggest a

procedure to make it permissible. In the case of retrieving pigeons with a ladder on a Festival day, the rabbis suggest a remedy. These are apparent inconsistencies which upon closer inspection relate to the application of different principles. The rabbis are lenient in situations of potential loss of livelihood or sustenance, or danger of health. In the latter case, the joy of the Festival overrides the fear of mar-ith 'ayin.

The question still remains. Are the rabbis elevating the standards of the community by establishing these principles? Is it truly praiseworthy to refrain from some activity solely for the sake of appearances? This verges on hypocrisy. Yet, if one's intentions are to protect one's religion and set a good example for others, then one's motivations are consummate with one's actions. In essence, the rabbis both protect the reputation of the individual and safeguard the mores of society.

We can find analogous cases in the contemporary experience. For example, in the area of professional ethics, there is a principle called avoiding the appearance of impropriety, which is the legal profession's equivalent of mar-ith 'ayin. Even if a lawyer does not do anything unethical or illegal, he/she should not give the impression of doing anything wrong. For instance, a lawyer who happens to be a friend of a judge does not give a lavish gift to the judge for this might look like the lawyer is seeking a favor. This principle does not have the force of law, but the action is still forbidden.⁹²

Are the Jews a better people with the principles of kebhod tsibbur,

yuhara, mar-ith 'ayin, and hillul hashem bepharhesiah than they would have been had they not had this kind of legislation? As mentioned earlier, we would have to examine a person's motivations. If a person is solely guided by the concern for what others think, then the person's intentions might be questioned. If one only functions to gain the approval of others, one's integrity is subject to doubt.

But, if these principles increase one's sensitivity to others, inspire a person to uphold high standards and to assume responsibility for the group, then these are progressive principles. The Jews as individuals and as a group have been enriched.

Of course, Jews may not need that kind of legislation today. Over the course of generations, Jews have internalized those considerations so that they no longer have to be spelled out in detailed legalistic form.

In the case of hillul hashem, many Jews have developed a sense of what actions do and do not constitute hillul hashem. Once the general principles of hillul hashem are grasped, the individual applications no longer have to be spelled out as in the classical rabbinic period. The rabbis have provided enough material for the principle to be recognized and internalized. What was a part of a new and growing tradition has now become an accepted tradition.

On the other hand, where the rabbis themselves adduce as a reason for their legislation an aspect of the sociology of their own times, then under changed sociological conditions, that part of their legislation becomes open to question as happened precisely where kebhod tsibbur

is given as a reason why women do not read the Torah publicly. That legislation invites challenge. Thus, a modern movement in Judaism such as the Conservative movement which claims to stand within the halakhic tradition can legitimately argue that what was kebhod tsibbur in classical rabbinic times is no longer kebhod tsibbur in 20th century America. Consequently, they permit women to read from the Torah publicly.

We can only speculate on whether or not hillul hashem, mar-ith 'ayin, and yuhara can be similarly challenged. Are hillul hashem, mar-ith 'ayin, and yuhara more universal principles overriding the limitations of a given society and therefore of permanent value? Certainly, as society changes, the principles may remain the same in terms of structure and form but vary as to the content.

This study has been limited to the appearance of these principles in the classical rabbinical literature. But, from the Talmud down to the medieval Codes to the literature of the present day, these concepts have occupied the minds of Jewish legalists. Their timeless nature attests to the fact that the ancient rabbis were attuned to the psychological needs and the sociological reality of their people.

FOOTNOTES

- 1) The root of yuhara, y. h. r., is found in the Bible in Proverbs 21:24 and Habakkuk 2:5 and has the meaning of haughty or arrogant. Although related, it is not the same as the technical meaning it assumes in the Talmud.
- 2) As defined by Jakob J. Petuchowski in an oral communication.
- 3) Samuel S. Cohon, Judaism: A Way of Life (Cincinnati, 1948), p. 3.
- 4) Cohon, op. cit., p. 116.
- 5) David Riesman, The Lonely Crowd (New Haven and London, 1950), p. 8.
- 6) Jakob J. Petuchowski, Heirs of the Pharisees (New York and London, 1970), p. 18.
- 7) The Mishnah, tr. Herbert Danby (London, 1933), pp. 313-314.
- 8) The Mishnah, tr. Herbert Danby, pp. 170-171.
- 9) The Mishnah, tr. Herbert Danby, p. 301.
- 10) Jacob Neusner, Life of Yohanan ben Zakkai (Leiden, 1962), p. 162.
- 11) The Mishnah, tr. Herbert Danby, p. 206 with my emendations.
- 12) The Mishnah, tr. Herbert Danby, pp. 205-206.
- 13) Tosephta Megillah 3(4): 11-12, ed. Lieberman, pp. 355-366.
- 14) Abraham Millgram, Jewish Worship (Philadelphia, 1971), p. 340.
- 15) Millgram, op. cit., pp. 561-563.
- 16) The Mishnah, tr. Herbert Danby, p. 4.
- 17) Saul Lieberman, Tosephta Ki-Fshutah, Part V, Order Mo'ed (New York, 1962), pp. 1176-1178.
- 18) Aaron H. Blumenthal, "An Aliyah for Women," in Conservative Judaism and Jewish Law, ed. Seymour Siegel (New York, 1977), pp. 266-280.

- 19) Blumenthal in Siegel, op. cit., p. 268.
- 20) Blumenthal in Siegel, op. cit., p. 269.
- 21) Blumenthal in Siegel, op. cit., p. 271.
- 22) Blumenthal in Siegel, op. cit., p. 276.
- 23) Blumenthal in Siegel, op. cit., p. 279.
- 24) Phillip Sigal, "Women in a Prayer Quorum," in Conservative Judaism and Jewish Law, ed. Seymour Siegel (New York, 1977), pp. 282-292.
- 25) David M. Feldman, "Woman's Role and Jewish Law," in Conservative Judaism and Jewish Law (New York, 1977), pp. 294-305.
- 26) Feldman in Siegel, op. cit., p. 296.
- 27) B. Pesahim 66b.
B. Baba Bathra 10b.
- 28) B. Sotah 47b.
B. Hullin 111b.
B. Megillah 29a.
- 29) The Mishnah, tr. Herbert Danby, p. 3.
- 30) The Mishnah, tr. Herbert Danby, pp. 3-4.
- 31) The Mishnah, tr. Herbert Danby, p. 2.
- 32) The Mishnah, tr. Herbert Danby, p. 4.
- 33) The Mishnah, tr. Herbert Danby, p. 140.
- 34) The Mishnah, tr. Herbert Danby, p. 175.
- 35) Matthew 23:1-7.
- 36) See b. Baba Bathra 10b where non-Jews are accused of giving charity only to display haughtiness.
- 37) Samuel S. Cohon, Judaism: A Way of Life, p. 135.
- 38) Ibid.
- 39) Deuteronomy Rabbah 3:3, ed. Vilna, p. 105d.

- 40) The Mishnah, tr. Herbert Danby, p. 172.
- 41) Cf. Mekhilta Bahodesh Parasha 7, ed. Horowitz-Rabin, p. 228.
- 42) The Mishnah, tr. Herbert Danby, pp. 139-140.
- 43) The Mishnah, tr. Herbert Danby, p. 209.
- 44) The Mishnah, tr. Herbert Danby, p. 323.
- 45) The Mishnah, tr. Herbert Danby, pp. 212-213.
- 46) Joseph Bloch, Israel and the Nations (Berlin-Vienna, 1927), p. 318.
- 47) Aboth 4:5 in R. Travers Herford, translation, Pirke Aboth, 3rd edition, (New York, 1945), p. 99.
- 48) R. Travers Herford, Pirke Aboth, 3rd edition, (New York, 1945), p. 99.
- 49) Ibid.
- 50) Bloch, op. cit., p. 320.
- 51) Ibid.
- 52) Ibid.
- 53) The Mishnah, tr. Herbert Danby, p. 4.
- 54) The Mishnah, tr. Herbert Danby, pp. 408-409.
- 55) The Mishnah, tr. Herbert Danby, p. 385.
- 56) My translation.
- 57) The Mishnah, tr. Herbert Danby, p. 230.
- 58) The Mishnah, tr. Herbert Danby, p. 346.
- 59) Tosephta Baba Qamma 10:15, in Jacob Neusner's translation, The Tosephta (New York, 1981), p. 63.
- 60) The Mishnah, tr. Herbert Danby, p. 172.
- 61) Cf. 'Avodah Zarah 28a.

- 62) It may be necessary to cite a passage which, although it does not contain the term, is related to a passage under investigation.
- 63) The Mishnah, tr. Herbert Danby, p. 32.
- 64) Solomon Ganzfried, Kitsur Shulhan 'Aruch 46:14. (Ma-akhaloth Asuroth)
- 65) The Mishnah, tr. Herbert Danby, p. 38.
- 66) The Mishnah, tr. Herbert Danby, p. 42.
- 67) The Mishnah, tr. Herbert Danby, p. 208.
- 68) Tosephta Shevi'it 2:2, ed. Lieberman, p. 169.
- 69) Saul Lieberman, Tosefta Ki-Fshutah, Order Zera'im Part II, (New York, 1955), p. 497.
- 70) Siphra, Qedoshim, 1:10, ed. Weiss, p. 87c.
- 71) The Mishnah, tr. Herbert Danby, p. 359.
- 72) The Mishnah, tr. Herbert Danby, p. 182.
- 73) George Foot Moore, Judaism in the First Centuries of the Christian Era, I, (Cambridge, MA, 1932), p. 259.
- 74) The Mishnah, tr. Herbert Danby, p. 105.
- 75) The Mishnah, tr. Herbert Danby, p. 119.
- 76) The Mishnah, tr. Herbert Danby, p. 104.
- 77) The Mishnah, tr. Herbert Danby, p. 133.
- 78) With minor verbal variants from the text in the Babylonian Talmud.
- 79) The Mishnah, tr. Herbert Danby, p. 437.
- 80) The Mishnah, tr. Herbert Danby, p. 117.
- 81) The Mishnah, tr. Herbert Danby, p. 116.
- 82) The Mishnah, tr. Herbert Danby, p. 538.
- 83) The Mishnah, tr. Herbert Danby, p. 538 [my brackets].

- 84) The Mishnah, tr. Herbert Danby, p. 538 [my brackets].
- 85) A more complete study would include analyses of hashash (suspicion), mi-pne darkhe shalom (in the interests of peace),⁷ and mi-pne tikkun olam (for the benefit of society).
- 86) I Corinthians 15:34.
- 87) Matthew 23:1-7.
- 88) Baba Bathra 10b.
- 89) Samuel S. Cohon, Judaism: A Way of Life, p. 26.
- 90) Cohon, op. cit., p. 138.
- 91) Maimonides, Mishneh Torah, Hilkhos Shabbat, 22:20.
- 92) Clifford E. Librach, a lawyer, shared this example with me in a conversation.

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