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Report on the Rabbinic Dissertation Submitted by

Eric Polokoff

in Partial Fulfillment of the Requirements for Ordination

The "Shoteh" in Formative Rabbinic Literature

Mr. Eric Polokoff's thesis is a study of the shoteh in formative rabbinic literature. The material used in Polokoff's thesis includes Mishnah, Tosefta, and the two Talmuds. Mr. Polokoff proceeds to analyze chronologically the use of the term shoteh in these literatures. This allows him to see both the developments in the meaning of this term and developments in law related to the parties it describes from the early tannaitic period until the end of the Talmudic era.

First, Polokoff puts the term shoteh into perspective. He compares it to other terms in formative rabbinic sources which might be considered synonymous. By analyzing the contexts in which these appear and the phenomena they describe he finds that shoteh means one afflicted with long-term, debilitating and other self-destructive mental illness. Other phenomena are short-term or less intense.

Polokoff discovers some particularly interesting phenomena in his work. In the identifiably early tannaitic period, there is practically no law related to someone described as a shoteh. In the period up until the 4th-5th tannaitic generation, shoteh is used to denote "jerk", usually in contexts where a sage is debating paganism or "heresy". From the 4th-5th generation on, the shoteh is defined as one who is seriously incapacitated by mental illness and the subject of legal concern.

Polokoff shows how the law of the shoteh develops in the crucial areas of civil law and torts responsibilities, marriage, and divorce, and ritual/religious obligations and prerogatives. He notes that the law was not only reactive, exempting the shoteh from all sorts of responsibilities due to his/her incapacity, but proactive in trying to keep the party in society and, to the degree possible, a participant in communal life. Systems of guardianships, ways and means of inclusion in religious observances, and granting of limited but significant control over one's affairs in certain areas seem to be the way the formative rabbinic world wanted to deal with the shoteh. As time went on, greater protections of the shoteh's rights were added. More sophistication about his/her different mental states allowed the shoteh more legal options in marriage, divorce, and contractual matters, and more restrictive rulings as to who should be

Thesis Report - Eric Polokoff

classified and limited as a shoteh developed. In no case does the rabbinic legislation seem to indicate a system of "lock-up" for the shoteh.

Based on his findings, Polokoff recommends that our world and society look at the perhaps ideal legal rulings of the formative rabbinic world for guidance in our treatment of the mentally ill. He proposes that the model of communal inclusion, support, and protection of the dignity and rights of such parties found in Jewish traditional sources could provide a much more humane approach to the mentally ill than is generally present in American society.

Respectfully submitted,
Dr. Michael Chernick
Referee

April 2, 1990

Submitted to Partial Fulfillment of
Requirements for Ordination
Jewish Union College-Jewish Institute of Religion
Graduate Rabbinic Program
New York, New York

Referee: Dr. Michael Chernick

THE **נִסְתָּר** IN FORMATIVE RABBINIC LITERATURE

ERIC POLOKOFF

Thesis Submitted in Partial Fulfillment of
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THE שוטה IN FORMATIVE RABBINIC LITERATURE

Eric Polokoff
Hebrew Union College-Jewish Institute of Religion

CONTENTS

	ACKNOWLEDGEMENTS	iii
I.	Introduction	1
II.	Terms Other than שוטה for Describing Mental and Emotional Disability	4
III.	שוטה as Understood by the Tannaim	15
IV.	Anonymous Opinions About the שוטה in the Mishnah, Tosephta and Babylonian Talmud's גר'יות	35
V.	שוטה as Understood by the Amoraim	52
VI.	The שוטה's Conception of the שוטה in the Babylonian Talmud	69
VII.	Tannaitic and Amoraic Understandings of the שוטה Compared and Contrasted	85
VIII.	General Conclusions	97
	APPENDIX 1. Terms Other than שוטה Describing Mental and Emotional Disability	107
	APPENDIX 2. Units from the Mishnah -- משניות מן המשנה	114
	APPENDIX 3. Laws from the Tosephta -- הלכות מן התוספתא	119
	APPENDIX 4. Units from the Babylonian Talmud -- סוגיות מן הבבלי	128
	APPENDIX 5. Units from the Jerusalem Talmud -- סוגיות מן הירושלמי	147

APPENDIX 6.	References from Midrash Rabba -- מדרשים ממדרש רבה	149
APPENDIX 7.	Related References in the Minor Tractates- הלכות מן מסכת קטנות	151
APPENDIX 8.	Generation, Location and Disciple Groups of all Rabbis Noted	153
APPENDIX 9.	Quick Reference of Rabbinic Comments Concerning the שוטה	156
BIBLIOGRAPHY		161

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CHAPTER I INTRODUCTION

This thesis, an analysis of the term שוטה (Shoteh, masculine singular; שוטה, Shotah, feminine singular; שוטים, Shotim, masculine plural) in formative rabbinic literature, presents a summary of the rabbinic attitudes towards mental and emotional disability. In its examination of the rights and conception of the mentally disabled in formative rabbinic literature it uses the Mishnah (משנה), Tosephta (תוספתא), and Babylonian Talmud (תלמוד בבלי) as primary source material. Related works, such as Midrash Rabba (מדרש רבה), the Jerusalem Talmud (תלמוד ירושלמי) and the Minor Tractates (מסכתות קטנות), are also consulted. (The appendices contain detailed listings and translations of the sources concerning mental and emotional disability.)

It is possible to discern a fairly consistent rabbinic usage of the term שוטה. שוטה functions as a noun describing emotional instability, and less frequently, as an adjective delineating a lack of intellectual capacity. It is argued in this thesis that the best "working" definition of the שוטה is "one suffering from a mental or emotional disability," particularly a disability leading to the destruction and neglect of an individual's personal property. The formative rabbinic concept of the שוטה is to be understood in our own times as an individual suffering from a psychiatric disorder, most likely schizophrenia.

The term *ḥalush* does not describe mental retardation.

The *ḥalush* lived through the formative rabbinic period as a member of society with a disability considered beyond the individual's control to remedy. Indeed, the source material studied reflects a paucity of medical treatment available to the *ḥalush*: there is no record of the *ḥalush* being treated for his disorders by physicians. The *ḥalush* lived and often worked in a communal society lacking the concept of a hospital. Yet while the "psychiatric" treatment available to the *ḥalush* was primitive, at best, the legal treatment of the *ḥalush* in the halakah (הלכה) was extremely sophisticated.

Formative rabbinic literature contains a plethora of references to the legal rights, or lack thereof, accorded to the *ḥalush* in a variety of situations. As the *ḥalush* not only suffers from mental anguish but also is unable to grasp fully his actions (*ḥalush*, or understanding/cognition), he is exempt from generally enforced responsibilities to other individuals, to the community, and to God. Instead, guardians, whether relatives, the rabbinic court of law, or its agents, become responsible for the individual as well as for overseeing his property. In their discussion of the *ḥalush*, the rabbis attempt to delineate his societal role in various circumstances such as marriage, levirate marriage, divorce, civil procedure, economic transactions, damages,

rituals, slaughtering, and the like. The record of the Rabbis' judgments depicts a value-system endeavoring to grant the *שו"ת* the community's complete assistance. These judgments correspondingly reject making demands on the *שו"ת* that he would be unable to fulfill.

Throughout my thesis I have left the word *שו"ת* untranslated. By substituting the Hebrew *שו"ת* for its English translations, the term's nuances will, I hope, become more apparent. In addition, the retention of the Hebrew term will free the reader from misleading and obsolete terms such as "lunatic" and "imbecile".

CHAPTER II
TERMS OTHER THAN מוֹסֵר
FOR DESCRIBING MENTAL AND EMOTIONAL DISABILITY

Material that sheds light on the nuances of the word מוֹסֵר, defined here as "mentally disabled", comprises the bulk of this thesis and will be examined at length in the subsequent chapters. Indeed, only the word מוֹסֵר is used with constant precision by the Rabbis throughout their many technical discussions of the legal aspects pertinent to mental illness. In contrast, other words and phrases related to mental distress or a lack of mental functioning such as שׁוֹרֵר, ט'וֹר, and מוֹרַר קָרוֹב rarely if ever carry legal significance. Rather, as evidenced below, the Rabbis eschew these terms in situations with legal ramifications.

These other terms are distinguished from the מוֹסֵר, however, by more than their simple absence in rabbinic legal formulation. As the material presented in this chapter seeks to demonstrate, these terms express various shades of meaning distinct from מוֹסֵר. They either specify a subjective absence of mental ability or they describe a very temporary and relatively minor state of emotional discomfort.

שׁוֹרֵר and ט'וֹר, often translated as "fools" and popularly associated as synonyms of the noun מוֹסֵר, actually serve as contrasts. שׁוֹרֵר and ט'וֹר depict lack of mental acuity as the passage at Sanhedrin 48b will help

demonstrate. In the passage King Shapor of Persia challenges R. Hama to provide a basis from the Torah for the Jewish practice of burial. Curiously, R. Hama does not respond to the ruler's request. Reflecting on R. Hama's silence, a later Amora, R. Aha b. Jacob, becomes incredulous over R. Hama's inability to volunteer an obvious answer. R. Aha b. Jacob exclaims, "The world has been given over to fools! (אִם כֵּן הָיָה עוֹלָם הָיָה לְכָל הָאֲמֹרָיִם)", using the consonant root ו-ג-ו. R. Aha b. Jacob does not consider R. Hama unstable. However, R. Aha b. Jacob finds the lapse in R. Hama's education or memory --that is, the mental acuity depicted in this case -- inexcusable. R. Aha b. Jacob considers R. Hama a fool because the latter was unable to cogently articulate a most basic rabbinic supposition to a prominent non-Jewish authority.

The dispute between Rab and Samuel found at Megilla 12a offers a second illustration of the meaning of וְגו. These Babylonian Amoraim differ over the wisdom of King Ahasuerus's statecraft in entertaining guests. The one who labels the king foolish (הַמֶּלֶךְ הַזֶּה), argues Ahasuerus should have sought to secure domestic support before soliciting the loyalty of distant subjects: "He ought to have entertained the inhabitants of his own city first, so that if others rebelled against him, these [subjects] would have supported him." He would consider King Ahasuerus's

emphasis on inviting outsiders to state occasions folly; a dangerous tactical error. Yet in no way does he imply that emotional distress contributed to the king's unwise decision. In fact, the evaluation of the king's policy is highly subjective. As the passage indicates, other authorities considered the king's policy clever.

An example specifically contrasting the שטט from the שוטט can be found at Song of Songs Rabba 4:7. In the following passage, the שוטט is paralleled with the little used word, שממין (a demented or confused person), whereas the שטט is coupled with חלוקי לב, the doubter.

חני רשב"י בשעה שעמדו ישראל לפני הר סיני
ואמרו כל אשר דבר ה' נעשה ונשמע. אותה שעה לא היה
בהם לא זבים ולא מצורעין ולא חגרין ולא סומין. לא
אלמין ולא חרשין. לא שוטטין ולא שממין. לא טפשיין ולא
חלוקי לב.

"Thou art all fair my love." (Song of Songs 4:7) R. Simeon b. Yohai taught: "When Israel stood before Mount Sinai and said, 'All that the Lord has spoken will we do and obey (Ex. 24:7),' at that moment there were among them neither persons with issue nor lepers nor lame nor blind, no dumb and no deaf, no שוטט nor demented ones, no dullards and no doubters."

The שטט is coupled with the doubter, and not the שוטט, as he (the שטט) has freely chosen to engage in foolish behavior.

Unlike שוטט, which does not appear regularly in Biblical Hebrew, שטט is a Biblical term¹. In both the Bible and later rabbinic literature שטט means a fool, someone unwise and undiscerning. Perhaps we can see this

definition best in Berakhoth 23a. דמיל'ס are described as individuals who cannot distinguish good from evil (כ' אין מרחינין בין טוב לרע and איןם יודעים לעשות רע). This lack of judgment stems from the דמיל'ס's inability to reason, an intellectual handicap. It is worth emphasizing that the term דמיל'ס is not used for legal situations.

The דמיל'ס presented in Baba Bathra 122a, is another term describing one engaging in foolish behavior. Like the דמיל'ס and the שטט, it is also not used consistently by the Rabbis. In addition, it also presents an individual lacking the ability to make proper judgments. In this case, a דמיל'ס (a "fool") would elect to accept soil of inferior quality without equitable compensation. While it is not clear whether the דמיל'ס suffers from emotional distress or a lack of intellectual endowment, he too is unable to reason.

Another term incorrectly related to שטט is דעמיל'ס. In a story at Ta'anith 24b, R. Papa seeks to bring rain by ordering a public fast. Feeling weak himself (and we can infer therefore attempting to prevent placing his own life in danger), R. Papa took some food. He is then visited by R. Nahman b. Ish Prati who castigates him for eating, stating, "If only you would have swallowed another plate of grits, rain would have come." R. Papa is then described as דעמיל'ס or "feeling depressed." R. Papa has been berated

for an ostensibly hypocritical action. He has been chastened and now feels depressed. While he is in this condition, the rain R. Papa had so desperately wanted arrives, apparently to cheer him.

A מִשְׁחָוִיל is used homiletically at Sanhedrin 97a to suggest that one who reforms his behavior will be labelled as foolish by evil cohorts. Adherents of the School of R. Shila, grappling to understand a difficult verse from Isaiah, "he that turns away from evil is despoiled," proclaim: "He who departs from evil will be dubbed a fool by his fellow-men (כָּל מִי שֶׁסָּר מִרָע מִשְׁחָוִיל עַל הַרְיֹוח)." The irony of this answer, of course, is that what is considered by many foolish is in reality great wisdom.

The text-at Kethubboth 105a-b notes that a שֹׁפֵט will be more disoriented by bribery than the wise. The evil (רָע) and the foolish (שֹׁפֵט) are equated together in this unit as two qualities that deter the attainment of justice. This unit also contains the synonyms הָלַל הָלַל and דַּעַת דַּעַת, "anguished mind". These two latter terms do not concern mental agility. Instead, they depict the confusion and uneasiness --presumably guilt and anguish -- that should afflict a repentant and remorseful person who has gravely sinned and is now approaching death. דַּעַת דַּעַת also describes a case of potential confusion and discomfort at Baba Bathra 156b. There despite legislation to the

contrary, R. Levi permits symbolic acquisition on the Sabbath for one who is dying. He argues that an absence of remedies for distributing the estate of a dying person could provoke mental anguish that would upset the dying person's peace of mind and thus hasten his death. For R. Levi, *דעת* is neither a constant state nor a label but an attack of mental anguish.²

דעת is also mentioned in the Babylonian Talmud at Nidda 13b. In this citation the *סנהדרין*, the anonymous voice of the Babylonian Talmud's redactor, itself contrasts the case of a woman suffering from *דעת* with the condition of the *שונה*. The passage states:

שנטרפה דעתה: היינו שיטה שנטרפה דעתה? מחמה
חול'.

Or a woman who has lost her mind. Is not this exactly the same as a *שונה*? -- This refers to one whose mind was deranged owing to a disease.

Though the woman afflicted with *דעת* may temporarily exhibit the same symptoms as the *שונה*, their etiologies are radically different. *דעת*, as conceived by the Rabbis, was not an inherent mental disorder but rather a physiologic reaction with emotional and psychiatric manifestations.

M. Gittin 7:1 introduces another term depicting a temporary failure in judgment, the *קורד'קוס*. The exact meaning of *קורד'קוס* is far from clear, as is evidenced by speculation from several of the Mishnah's commentators³.

During his temporary lapse in understanding/cognition (דעת), the קורדיקוס's testimony is disregarded.

מ' שאחזו קורדיקוס ואמר כתבו גט לאשתי, לא
אמר כלום. אמר כתבו גט לאשתי, ואחזו קורדיקוס,
וחרז ואמר אל תכתבו, אין דבריו האחרונים כלום.
He who was seized by delirium and said,
"Write a bill of divorce for my wife [so I may
divorce her]," has not said anything [that is
legally binding, and hence, his request is
ignored]. If he said, "Write a bill of divorce
for my wife, [so I may divorce her]" and then
delirium seized him, and [only] then he said, "Do
not write it [so I may maintain the marriage],"
his latter statement is nothing [that is legally
binding, and hence, is ignored enabling the bill
of divorce to be written].

The קורדיקוס differs greatly from the שוטה in that he is
accorded the basic understanding/cognition necessary to
grant a divorce⁴. As such, his condition is thus deemed
temporary.

The final term examined in this analysis, רוח רעה or
"possessed by (an evil) spirit", is the closest to שוטה.
Indeed, it is plausible to postulate that the Rabbis may
well have believed a שוטה was a שוטה precisely because a
רוח רעה had overtaken him⁵. While neither condition is
considered permanent, it appears that being possessed by a
רוח רעה is a more temporary state than that of שוטה. The
phrase רוח רעה is used in M. 'Erubin 4:1 where a רוח רעה
induces an individual to venture beyond the permitted
Sabbath limit. As in the case of one who was forcibly
moved beyond the limit by a non-Jew, the individual
suffering from a רוח רעה is regarded as one who has gone

out against his will.

Yet it must be cautioned that the early Rabbis used רוח רעה most inconsistently.⁶ At M. Shabbath 2:5 the term is used to indicate either a lack of intellectual ability, fear of the unknown or unseen, or short-term emotional anguish.

המכבה את הנר מפני שהוא מחירא מפני עו"ג,
מפני לסטים, מפני רוח רעה, ואם בשביל החולה שישון
פסוק.

He who extinguishes a lamp [on the Sabbath] out of fear of gentiles, bandits, or "out of possession by (an evil) spirit", or in order that a sick person might sleep, is exempt [from liability].

The individual suffering from רוח רעה is temporarily exempted from liability for violating the Sabbath. As such, although he is not explicitly certified to lack understanding/cognition (דעת), he would nonetheless fall into a classification similar to that of the שוטה. The redactor of the גמרא at 'Erubin 41b provides a Tannaitic teaching not included in the Mishnah, a ברייתא, where רוח רעה clouds rationality and appreciation of the Divine, as it is equated with idolatry and oppressive poverty.

Formative rabbinic literature contains several words and phrases related to mental and emotional distress and a lack of mental functioning, including טפש, כסיל, טרף דעת, חלש דעתיה, שופתני, and משחולל. These terms represent cases and descriptions that rarely carry distinct legal significance. Two other terms, קורדיקוס and רוח רעה,

describe short-term instances of mental and emotional anguish and a corresponding lack of understanding/cognition. No term, other than the word, is used consistently to describe long-term mental and emotional disability, as will be demonstrated in the subsequent chapters.

FOOTNOTES

CHAPTER II

- 1 See קונקורדנציה חדשה, pages 554-555.
- 2 Another example of putting an otherwise mentally and emotionally sound individual's mind at ease in order to minimize mental anguish is noted at Shabbath 128b.

אמר מר אם הייתה צריכה לנר חבירתה מדלקת לה את הנר. פשיטא. לא צריכה בסומא מהו דתימא כיון דלא חזיא אסור. קא משמע לן איתובי מיחבא דעתא סברא אי איכא מידי חזיא חבירתא ועברה לי.

Master said: "If she needs a lamp, her neighbour may kindle a lamp for her." That [teaching] is obvious. This is necessary [to be taught] only in the case of a blind [woman]: you might argue, since she cannot see it, it is forbidden; Therefore he informs us that we tranquilize her mind, [as] she reasons, 'if there is anything [required] my friend will see it and do it for me.'

- 3 The state of being a קורדיקוס, lacking temporary judgment, is attributed to alcohol by both the גמרא and Rashi. For example, J. Terumoth I:1 states:

מהו קורדיקוס. א"ר יוסי חמים. אחא עוברא קומי ר' יוסי בחד טרסיי דהוון יהבון ליה סימוק גו אכום והוא לעי אכום גו סימוק אמר דו הוא קורדיקוס שאמרו חכמים.

Who is a delirious person? R. Jose says: one who is confused in the mind. A case came before R. Jose concerning an individual from Tarsus. They gave him red meat after dark wine and he would cease raving and dark wine after red meat and he would cease raving. He said that this is the [type of] delirious person of whom the Sages spoke.

Other commentators, however, disagree. Albeck considers its cause to be depression, while Maimonides offers the diagnosis of epilepsy, and Jastrow translates the term as delirium.

- 4 The קורדיקוס who may divorce, is thus distinct from the שוטה who may not, as is stipulated in M. Yebamoth 14:1.

- 5 As with רוח רעה, רוח שטוח describes an individual who overcome is by a wind that changes his or her behavior. A midrash at Sota 3a states:

ר'ש לקיש אמר אין אדם עובר ערירה א"כ נכנס
בו רוח שטוח. שנאמר איש איש כי חשטה אישתו חשטה
כח"ב.

Resh Lakish said: A person does not commit a transgression unless a spirit [lit. "wind"] of folly [acting like a שוטה] enters into him. As it is said, "If any man's wife go aside." Written is חשטה [tishte, lit. "to go aside", in later Hebrew, to act like a שוטה].

In the absence of a plausible reason for a sudden and unfortunate transformation towards deviant behavior, an ephemeral, imperceptible "wind of שטוח" is submitted as the most credible answer.

- 6 The interpretation of רוח רעה as "possessed by an evil spirit" may be attributed to Rashi. In contrast, in his commentary to this משנה, Bartinoro noted that Maimonides deems any source of miscalculation or defect of judgment a רוח רעה.

CHAPTER III הוֹשֵׁה AS UNDERSTOOD BY THE TANNAIM

The Tannaitic (תַּנְיִינִי) understanding of the הוֹשֵׁה presented in this chapter is based on descriptions of the הוֹשֵׁה from the Mishnah, Tosephta and Midrash, as well as from מִנְיָיִת (beraithoth) in the Babylonian Talmud. (For a complete record of the material surveyed, kindly see Appendices 2-4).

The Tannaitic material examined does suggest a generational division amongst the Sages in regard to their conception of the הוֹשֵׁה. Yet before this supposition can be discussed, no less accepted, a caveat is in order: much of the Tannaitic source material on the הוֹשֵׁה is introduced anonymously (by the תַּנְיִינִי). This plethora of anonymous source material could have been formulated at any point within the Tannaitic period. Given this substantial amount of "variable" data, a forcefully pronounced intra-generational Tannaitic change in perception, however intriguing, must only be considered conjecture. Nonetheless, given the likelihood that מִנְיָיִת were formulated in their current form during the late Tannaitic period, it appears quite possible to ascertain when the term הוֹשֵׁה underwent a profound change in meaning.

A reconstruction of the Tannaitic conception of the הוֹשֵׁה by outlining the remarks by disciple generation

presents an evolving notion of the שוטה. The earlier Tannaim using the word שוטה share an impression of the שוטה as one who is foolish, shortsighted, unthinking, illogical, or simply in opposition to the speaker. The word is used by several early Tannaim in a homiletic-aggadic (אגדה) sense exclusively.

Akabiah ben Mahelal, a first generation Tanna, uses שוטה in M. 'Eduyoth 5:6 to describe an irrational person, one who foolishly squanders great opportunity. When offered appointment as patriarch of the Court of Israel on the proviso he retract his previous decisions, Akabiah places principle over opportunity. He states:

מוטב לי להקרא שוטה כל ימי ולא ליעשות שעה
אחד רשע לפני המקום. שלא יהיו אומרים בשביל שרגל
חור בו.

"It is better for me to be called a שוטה my whole life but not be deemed a wicked person before the Omnipresent for even one minute. So that people should not say, 'because he craved for high office, he retracted.'"

It was obviously in Akabiah's self-interest to disavow his earlier rulings. By obstinately refusing to recant, his position of leadership is weakened. Ironically, Akabiah's ethically-minded intransigence ultimately cost him more than his authority. This משנה, 'Eduyoth 5:6, later instructs that Akabiah was not only reputed to have died during excommunication proceedings, but that his bier suffered the additional ignominy of stoning. Akabiah

sought to label himself as the antithesis of opportunistic. Even if that label, a *שוט*, is negative, it was preferable to immoral behavior.

According to the second generation Tanna, Rabbi Johanan ben Zakai, a *שוט* is one who lacks the ability cogently to provide a rationale for a specific practice or belief. It is recounted at Menahoth 65a that the Boethusians insisted that the holiday of Shavuoth be observed on the day after the Sabbath. Rabbi Johanan ben Zakai contemptuously challenged the Boethusians, whom he insults as *שוטים*.

ניטפל להם רבן יוחנן בן זכאי. ואמר להם שוטים
מנין לכם.

But R. Johanan b. Zakai entered into the discussion with them, saying: "*שוטים* that you are! Whence do you derive it?"

The storyteller explains that Rabbi Johanan ben Zakai does not receive an articulate response. For Rabbi Johanan ben Zakai, a *שוט*, need not demonstrate any anti-social or disturbing behavior. In fact, he uses an entirely different phrase for disturbing behavior (or insanity) at Numbers Rabba 19:8, while being quizzed about the alleged similarities between witchcraft and Biblical practice.

In response to a non-Jew's query over a similarity between Pentateuchal practice and witchcraft, Rabbi Johanan ben Zakai inquired whether his questioner had ever seen one overcome with *נ'ון*, with shaking or madness. The

questioner replies that indeed he had, and soon volunteered an effective treatment.

אמר לו: לא נכנסה בך רוח חזונית מימך? אמר לו לאו. ראיך אדם, שנכנסה בו רוח חזונית? אמר לו: הן. אמר לו: ומה אחס עושים לו? אמר לו: מביאים עקרים ומעשנים תחתיו ומרביצים עליו מים, והיא בורחת. אמר לו: ישמעו אנריך מה שאחה מוציא מפך!
R. Johanan asked him: "Has the demon of madness ever possessed you?" "No," he replied. "Have you ever seen a man possessed by this demon of madness?" "Yes," he said. "And what do you do in such a case?" "We bring roots and make them smoke under him, then we sprinkle water upon the demon and it flees..."

Given his choice of words -- שוטה rather than חזונית -- it is thus unlikely that Rabbi Johanan ben Zakai understood a שוטה to exhibit physically unusual behavior.

Rabbi Ishmael son of R. Johanan b. Baroka, a fifth generation Tanna, expounded a particularly dim view of the שוטה¹. Using the hendiadys שוטה-רשע, he is quoted at M. Avot 4:7 as stating:

רבי ישמעאל בנו אומר החושך עצמו מן הרין,
פורק ממנו איבה וגזל, ושבועת שוא, והגס לבו בהוראה,
שוטה רשע, וגס רוח.

Rabbi Ishmael, his son, said, he who shuns judicial office rids himself of hatred, (and) robbery and perjury, but he that presumptuously thrusts himself forward to lay down a decision is foolishly evil and of an arrogant disposition.

For Rabbi Ishmael actively coveting authority is not merely arrogant, but immoral and foolish. Rabbi Ishmael considered seeking office presumptuous and lusting for power sinful. But his final assessment -- that coveting office is also foolish -- is not readily apparent. Rather,

the inverse could reasonably be deduced: that possessing communal authority places the individual in a more advantageous position. Rabbi Ishmael therefore labelled as a שוטה the individual whose behavior disagreed with his (Rabbi Ishmael's) value-system. The שוטה, as understood by Rabbi Ishmael, need not be certifiably insane.

Rabbi Ishmael, the colleague of Rabbi Akiba, illustrates his assessment of the שוטה in a מעשה, a story at Nidda 30b. Rabbi Ishmael held that different gestation periods for male and female fetuses could be inferred from the Torah's discussion of varying periods of a woman's ritual uncleanness based on her giving birth to either a male or female. Others challenged Rabbi Ishmael by citing autopsies of Cleopatra's executed handmaidens that had shown both male and female fetuses are fully fashioned on the forty-first day. Rabbi Ishmael curtly dismissed his adversaries, charging:

אני מביא לכם ראיה מן התורה ואתם מביאים לי
ראיה מן השוטים.

I bring you proof from the Torah and you
bring proof from some שוטים!

Rabbi Ishmael was speaking emotively. For him, the שוטה is the antithesis of the Torah. The latter serves as the ultimate repository of enlightenment, wisdom, justice and compassion, and as the sole legitimate authority for governing society. Proof from the שוטה is inherently inadmissible as it is the opposite of proof from the Torah.

So too, the D'SH's proof in this case is further suspect as it emanates from a government considered unfriendly by the Rabbis. It is worth repeating that for Rabbi Ishmael, the SH and his arguments are not necessarily proven incorrect nor illogical. Instead, the SH is foolish for not accepting Rabbi Ishmael's hermeneutics.

Rabbi Simeon ben Yohai, a fifth generation Tanna, presents a later conception of the SH² as he identifies him as an afflicted individual. In a midrash at the Song of Songs Rabba 4:7, Rabbi Simeon ben Yohai lumps the SH into a larger group of social outcasts --lepers, blind and deaf persons, dullards, doubters, and the like. He parallels the SH with the little used word, שִׁמְמִין, a demented or confused person³.

חנני רשב"י בשעה שעמדו ישראל לפני הר סיני
ואמרו כל אשר דבר ה' נעשה ונשמע. אוהה שעה לא היה
בהם לא זבים ולא מצורעין ולא חגרין ולא סומין. לא
אלמין ולא חרשין. לא שוטים ולא שִׁמְמִין. לא טפשי'ן ולא
חלוקי לב.

"Thou art all fair my love." (Song of Songs 4:7) R. Simeon b. Yohai taught: "When Israel stood before Mount Sinai and said, 'All that the Lord has spoken will we do and obey (Ex. 24:7),' at that moment there were among them neither persons with issue nor lepers nor lame nor blind, no dumb and no deaf, no שוטים nor demented ones, no dullards and no doubters."

For Rabbi Simeon ben Yohai, a SH is part of an undesirable group. In that sense, Rabbi Simeon ben Yohai like Rabbi Ishmael, viewed the SH as somehow antithetical to Torah. Yet where Rabbi Ishmael attacked the SH's

freely chosen value-system, Rabbi Simeon ben Yohai maintained ד'טלש suffered from a biological disability, like the י'ממם, the demented ones.

Rabbi Simeon ben Yohai astutely places the טלש on his list in between those suffering from physical disabilities (lepers, the blind, the deaf) and those considered of limited or corrupted intellect (dullards and doubters). As such, his comment bridges the early Tannaim who disparaged the טלש on account of their foolish values with the later Tannaim of his very own generation whose discussions of the טלש focus primarily on legal rights. Rabbi Simeon ben Yohai shares with Akabiah, Rabbi Johanan ben Zakai, and Rabbi Ishmael the view that the טלש is the opposite of Torah. With his contemporaries, he understands that a טלש has no choice in his inability to exercise proper judgment.

In their usage of the word טלש, Akabiah ben Mahelel, Rabbi Johanan ben Zakai, Rabbi Ishmael and Rabbi Simeon did not endeavor to delineate the טלש's participation in societal activities such as marriage, divorce, economic transactions, caring for property or eating of the priestly portion. By the fifth Tannaitic generation⁴, however, other Sages were attempting to determine what rights should be accorded the טלש.

Already prior to the fifth generation, it is conceivable that fourth generation Tannaim such as Rabbi

Akiba, considered the שוטה a distinct legal category. In T. Yebamoth 11:8, Rabbi Meir attributed to his teacher, Rabbi Akiba, the view that the thirteen rules⁵ apply to a woman who participates in a halisa (חליצה), even if she lacks understanding/cognition (דעת) herself (a שוטה), or if she participates with one who lacks understanding/cognition (a minor, a קטן):

וכן השוטה שחלצה והחולצת מן הקטן חצא. ושלשה
עשר בה דברי ר' מאיר שאמר משום ר' עקיבה.

So too: a שוטה who performed the rite of halisa, and she who performed the rite of halisa with a minor -- should be divorced. "And thirteen rules apply to her," the words of R. Meir, which he stated in the name of R. Akiba.

The Tosephta's redactor introduces Rabbi Meir's quotation of Rabbi Akiba in this passage to the effect that Rabbi Akiba had a שוטה in mind when he formulated his opinion. But this is by no means certain as Rabbi Akiba does not specifically state that the thirteen rules apply to a שוטה; they may apply to the woman who must be divorced. In similar fashion, Rabbi Johanan ben Nuri, another fourth generation Tanna, is quoted at M. Yebamoth 14:1 in the context of a discussion related to the right of an individual of sound mind to divorce a שוטה. But Rabbi Johanan ben Nuri did not directly address the שוטה. Rather, he raised a question about one who becomes a deaf-mute.⁶

Rabbi Judah, a fifth generation disciple of Rabbi

Akiba, also did not directly refer to the שוטה. As with the remarks of his teacher, they were placed by later parties into a wider context. Rabbi Judah stated in a בריתא:

רבי יהודה אומר: אדם מביא קרבן עשיר על אשתו וכל קרבנות שחייבת שכן כותב לה ואחריות דאית ליה עלי מן קדמך דנא.

R. Judah said: A man must offer a rich man's sacrifice for his wife, and all other sacrifices which are incumbent upon her since he writes thus for her [in the marriage settlement]; [I shall pay] "every claim you may have against me from before up to now."

The redactor of the Babylonian Talmud at Nedarim 35b and 36a, however, applies Rabbi Judah's teaching to the שוטה, as is evidenced by the following:

שוטה בדברי רבי יהודה דתניא:

If [she is] a שוטה, [he offers the sacrifice] in accordance with R. Judah's dictum, who taught [the following in a בריתא]:

and,

אלא מעתה יביא אדם חטאת חלב על חבירו שכן אדם מביא על אשתו שוטה, כר' יהודה.

If so, let one offer a sin offering on behalf of his neighbor for [eating] heleb, since one brings [a sin offering] for his שוטה wife, according to R. Judah.

The phrase כר' יהודה in this passage is best translated as "according to a related legal principle of Rabbi Judah."

In contrast to the absence of a legally-formulated conception of the שוטה in Tannaitic literature prior to the fifth Tannaitic generation, members of the fifth and subsequent generations tended to speak of the שוטה almost

exclusively as the member of a legally-defined category. The Mishnah and Tosephta contain examples of halakhic examinations of the *ḥaluk* by Rabban Simeon ben Gamaliel and Rabbis Eleazar ben Zadok, Jonathan, Jose, Judah Nekosa, and Meir. These rabbis recognized a type of individual, a *ḥaluk*, who lived in a fairly permanent state of mental anguish so severe it expunged his capacity to make legally binding decisions. They therefore sought to stipulate how best to enable this type of person to live within their society.

Rabbi Jose is quoted in Tannaitic literature for his opinions on the *ḥaluk*'s ability to control his property, testify in Court, and discern the conduct of others. We note at the outset the discussion of M. Baba Kamma 4:4 that it is a principle of Tannaitic thought to exempt the *ḥaluk* from the payment of damages. Only one minor Tannaitic figure, Rabbi Jacob, demurs and requires the *ḥaluk* to pay half-damages in the case of goring.

In M. Baba Kamma 4:4, Rabbi Meir, a contemporary of Rabbi Jose and fellow disciple of Rabbi Akiba, held that should a *ḥaluk* recover his senses⁷, any ox the *ḥaluk* owned that had previously been declared to be *ḥaluk*, a warned aggressor, would revert to its original state of *ḥaluk*, a non-aggressor.⁸ In so arguing, Rabbi Meir regarded the *ḥaluk* to be unable to care for his property. In fact, the

שוטה's lack of responsibility at best permitted, and at worst encouraged, the animal to behave improperly. Against this proposition, Rabbi Jose argued that the ox should retain its status. Neither the ox's behavior nor its disposition should be viewed as contingent upon the owner's illness or recovery.

Rabbi Jose's assertion that the שוטה's property could be cared for by the שוטה himself (with an overseer's help) must be examined in connection with his related opinion that the ל"ח דין, the rabbinic court, could appoint a guardian to act as a superintendent of the שוטה's ox. In fact, the very idea of guardianship⁹ is attributed to Rabbi Jose in the Tosephta at Baba Kamma 4:4:

ר' יוסי אומ' מעמידין עליו אפיטרופין העידוהו
בפני אפיטרופין.

R. Jose says: "They appoint a guardian for it, and they give evidence against it in the presence of the guardian."

According to Rabbi Jose, it would be clearly unethical to expect a שוטה to defend his own interests. Therefore, to protect the שוטה, a guardian should be authorized. As in the case above, Rabbi Jose treats the שוטה's oxen equitably. Against this position Judah ben Nekosa, a sixth generation Tanna, proposed special lenient treatment for the שוטה's ox.

יהודה בן נקוסא אומ' לעולם הוא בחמותו עד
שיעידוהו בפני בעלים.

Judah b. Nekosa says: "Under all circumstances it [the ox] remains in the status

of a "non-aggressor" until [witnesses] testify against the beast in the presence of the owner."

Rabbi Jose, would have opposed Judah ben Nekosa on two grounds. First, a $\eta\sigma\lambda\omega$'s property should not be disposed of without a competent guardian's consent. Secondly, a $\eta\sigma\lambda\omega$'s property should not be granted an unusual or unfair remedy. For Rabbi Jose, whether the owner is of sound mind or mentally disabled, justice for the actual offender -- the ox -- is to be dispensed according to a strict equality. Though the $\eta\sigma\lambda\omega$ may not be responsible for his own actions, interests or property, the $\eta\sigma\lambda\omega$'s difficulties or deficiencies should not affect others adversely.

Elsewhere, as recorded in Sota 25a, Rabbi Jose held that a prisoner, upon regaining his freedom, may force a wife suspected of adultery to undergo the potentially capital ordeal of the test of the bitter waters. Rabbi Jose omitted the $\eta\sigma\lambda\omega$, another temporary prisoner of sorts, from his opinion and thereby distinguished between a prisoner and a $\eta\sigma\lambda\omega$. This omission is in keeping with the respect he accords the $\eta\sigma\lambda\omega$. A prisoner incarcerated away from home has no grasp on his wife's activity. The $\eta\sigma\lambda\omega$, however, can still perceive another's actions.

Rabbi Jose's contemporary, Rabbi Meir, also expressed an interest in rabbinic legislation concerning the $\eta\sigma\lambda\omega$.¹⁰ As mentioned earlier at T. Yebamoth, Rabbi Meir links Rabbi Akiba's mention of the thirteen rules applying to a

childless widow who remarried a שוטה and who has performed the rite of halisa (or a woman who performed halisa with a minor) should be divorced. So too, as noted above, in the משנה at Baba Kamma 4:4¹¹ Rabbi Meir believed an ox owned by a שוטה that is declared a warned aggressor should revert to its original state should the שוטה recover his senses. Rabbi Meir thus outlined an intrinsic link between master and beast -- the latter affected by changes in the former.

In a משנה at Baba Kamma 86b Rabbi Meir distinguishes between the deaf-mute, minor and שוטה regarding damages for insult.

ח"ש ר"מ אומר: חרש וקטן יש להן בושה. שוטה
אין לו בושה.

Come and hear: R. Meir says: A deaf-mute and a minor are subject [to be paid for] Degradation, but a שוטה is not subject to be paid for Degradation.

The deaf-mute and minor may comprehend their situation; sadly, the שוטה may not. Therefore, Rabbi Meir does not award damages to the שוטה.

With the deaf-mute and minor, the שוטה shares many exemptions from the responsibilities of rabbinic society. For example, the rabbinic court will generally not accept testimony offered by any of these parties. But only the שוטה is not awarded payment for his degradation by Rabbi Meir. It is possible that Rabbi Meir's based his decision on the notion that the שוטה becomes too mentally and

emotional unstable to testify (or accept testimony) regarding a personal attack. It is more likely, however, that the שוטה's behavior was so self-degrading by Tannaitic standards that Rabbi Meir did not consider it possible for the שוטה to actually recognize what constitutes a degradation. Rabbi Judah HaNasi (Rabbi), the sixth generation Tanna credited with editing the Mishnah, disagrees. In T. Baba Kamma 9:13, he offers an unaccepted minority opinion.

שוטה פעמים יש לו בושה ופעמים אין לו בושה.
[Regarding] a שוטה, sometimes he is subject to degradation, and sometimes not.

For Rabbi, a שוטה's inability to comprehend what is degradation was not absolute.

The שוטה may not sue for degradation, nor may he be sued for it. Rabbi Meir's decisions simultaneously proscribe and prescribe a clear role for the שוטה. Similarly, T. Nidda 2:9 and Nidda 13b both describe Rabbi Eleazar ben Zadok, another fifth generation Tanna, as proscribing and prescribing for the שוטה. Rabbi Eleazar ben Zadok sought to create a remedy to ensure that a priest who is a שוטה would be able to eat חרומה, his priestly portion. The Talmud's¹² version is as follows:

חנו רבנן: כהן שוטה מטבילין אותו, ומאכילין אותו לערב. ומשמרין אותו שלא יישן. ישן טמא -- לא ישן טהור. רבי אליעזר ברבי צדוק אומר: עושין לו כיס של עור. אמרו לו: כל שכן שמביא לידי חימום. אמר להן: לדבריכם שוטה אין לו חקנה. אמרו לו: לדברינו, שוטה ישן טמא, לא ישן טהור. לדבריהם, שמא יראה טפה

בחרדל וחולע בכיס.

Our Rabbis taught: A priest who is a שוטה may be ritually immersed and then fed with חנומה in the evening, and he must be watched to prevent him from sleeping. If he falls asleep he is deemed unclean, and if he does not fall asleep he remains clean. R. Eliezer son of R. Zadok ruled: He should be provided with a leather bag. The Rabbis said to him: "Would not this cause heat all the more?" "According to your view," he replied, "a שוטה has no remedy." "According to our view," they retorted, "only if he falls asleep is he deemed unclean but if he does not fall asleep he remains clean. According to your view there is the possibility that he might discharge a drop of semen of the size of a mustard seed and this would be absorbed in the bag."

Rabbi Eleazar ben Zadok ventured to propose a standard that would enable the priest-שוטה to eat his portion. The difficulty Rabbi Eleazar faced was ensuring that the priest-שוטה had not unwittingly emitted semen that would thereby disqualify him from partaking in that evening's portion. Rabbi Eleazar b. Zadok sought to enable the שוטה to conduct his daily affairs independently. Rabbi Eleazar b. Zadok's objection relates to the problem of constant help and supervision by others. In the absence of direct supervision, the שוטה on his own, has no remedy. But his own prescribed remedy -- a leather bag worn as underwear -- was judged insufficient as proof of his ritual purity. Indeed, the Rabbis even warned that the proposed leather garment which would empower the שוטה might actually cause the ritual impurity which would prevent him from consuming his priestly portion.

What is indeed remarkable about this material is the emphasis both Rabbi Eleazar ben Zadok and the Rabbis placed on legitimating the priest-*הוֹטֵן*'s consumption of *חֲרוֹמֶה*.

This indicates that the Rabbis conceived of the *הוֹטֵן* as an accepted member of society and tried to promote mechanisms by which he might retain his communal and economic privileges. This concerted effort may be understood more clearly when considered in light of the Mishnaic prohibition against a *הוֹטֵן*'s offering *קִרְבָּנוֹת*, individual sacrifices. Why distinguish between offering sacrifices and consuming them? I would suggest that the community, in recognition of the *הוֹטֵן*'s disability, limits his individual responsibility to other parties, including God. However, the community, charged with securing the greatest possible benefits for its members, secured the greatest benefits possible for the disabled *הוֹטֵן*.

Other fifth generation Tannaim addressing issues related to the *הוֹטֵן* include Rabban Simeon ben Gamaliel and Rabbi Jonathan. In M. Bekkoroṯ 7:6 Rabban Simeon ben Gamaliel disputes the majority view. While the majority stipulated that a human *הוֹטֵן* is restricted from participating in the sacrificial cult, an animal-*הוֹטֵן* is permitted as a sacrifice. Rabban Simeon ben Gamaliel prohibits the sacrificial use of an animal-*הוֹטֵן*.¹³ It is likely that Rabban Simeon ben Gamaliel deemed an animal-

הוֹלָה unfit for cultic usage as he only considered "normal" animals as worthy of cultic sacrifice. Finally, the fifth generation Tanna, Rabbi Jonathan, provides a halakhic midrash which appears in Sota 24a-b. According to his interpretation, the repetition of the word "man" in Numbers 12:14 exists in order to include the warning of a suspected adulteress married to one lacking his complete senses, such as the deaf-mute or the הוֹלָה.

In sum, the הוֹלָה of the fifth generation Tannaim is a radical variant of Akabiah ben Mahelel's foolish idealist, Rabbi Johanan ben Zakai's heretic or Rabbi Ishmael son of R. Johanan b. Baroka's presumptuous office-seeker. By the fifth Tannaitic generation, the הוֹלָה had become an individual requiring a specific legal classification and rabbinic legislation. Fifth generation Tannaim diverged widely in their conceptions of the הוֹלָה. Anonymous material in the Mishnah, Tosephta and Talmud would augment the attributed Tannaitic Sages in delineating a spectrum of values and attitudes towards the הוֹלָה.

"With reference to that moment it says: 'Then art all fair as beloved.' After that, when not many days passed before there were among them persons with leprosy and leprosy, deaf and blind, dumb and deaf, and dumb and deaf. Then the order was given: 'Let them go out of the camp.'

FOOTNOTES

CHAPTER III

- 1 The School of Rabbi Ishmael -- though not necessarily Rabbi Ishmael himself -- refers to the שוטה in the following בר'יה at Yebamoth 113b:

וְחָנָא דְּבִי רַבִּי יִשְׁמָעֵאל: וְשִׁלְחָה מִבֵּיתוֹ מִי שִׁמְשִׁלְחָה
וְאֵינָהּ חוֹרֶת יָצְתָה זֶה שִׁמְשִׁלְחָה וְחוֹרֶת לֹא.

It was further taught in the School of Rabbi Ishmael: "And he sends her out of his house." Only a woman who, when he sends her out, does not return. But this woman is excluded since she returns even if he sends her out."

The שוטה is deduced to be the woman who, from a lack of understanding/cognition, would return even upon the conclusion of divorce proceedings. This non-aggadic passage presents a view of the שוטה that is in contrast to the other remarks of Rabbi Ishmael, though it is not directly attributed to him. It is therefore suggested that the passage is likely the work of later Tannaim.

- 2 Rabbi Simeon, holds that a boy nine years and one day old can marry both his deceased brother's widow and co-wife. The redactor of the Tosephta at Yebamoth 11:11 mentions this opinion as part of a larger discussion of the role of דעת, of understanding/cognition in levirate marriage, including the case of the שוטה. As the שוטה is not specifically mentioned by Rabbi Simeon, it is highly unlikely that Rabbi Simeon's comments should be understood to give direct consideration to the שוטה-qua-שוטה and her rights.

- 3 The שוממין, a demented person, and חלוּקִי לֵב, a doubter, are dropped from the final summation of undesirable types of people. The שוממין is thus subsumed into the category of שוטה.

עַל אוֹתָהּ שָׁעָה נֹאמַר כּוֹלֵךְ יִפָּה רַעִיחִי. כּוֹיִן שְׁחָטָאוֹ
לֹא הָיוּ יָמִים קָלִים. וְהָיוּ בָם זָבִים וּמַצּוֹרְעִים חֲגָרִין
וְסוּמִין. אֲלֵמִים חֲרָשִׁים שׁוֹטִים וְסָפְשִׁים. הָאוֹתָהּ שָׁעָה נֹאמַר
וַיִּשְׁלַךְ מִן הַמַּחֲנֶה כָּל צָרוּעַ וְכָל זָב.

"With reference to that moment it says, 'Thou art all fair my beloved.' After they sinned not many days passed before there were among them persons with issue and lepers, lame and blind, dumb and deaf, שׁוֹטִים and dullards. Then the order was given, 'Let them put out of the camp

ever leper, and every one that has an issue.'
(Num. 5:2)"

4. Though perhaps earlier. Not resolved: whether the Rabbi Eleazar ben Zadok quoted in these passages lived in the third or fifth Tannaitic generation; and whether the Rabban Simeon ben Gamaliel quoted lived in the second or fifth Tannaitic generation.
5. The thirteen rules are thirteen different regulations applicable to a chained wife (an עגונה) who remarries and whose husband returns. See M. Yebamoth 10:1.
6. R. Johanan ben Nuri stated M. Yebamoth 14:1:
 אמר רבי יוחנן בן נורי מפני מה האשה שנחתרשה יוצאת. והאיש שנחתרש אינו מוציא?
 Said R. Johanan ben Nuri, "On what account does a woman who became a deaf-mute become divorced, whereas a man who became a deaf-mute does not divorce his wife?"
7. Hence the condition of being a שוטה is semi-permanent; a שוטה may recover his senses.
8. Note that the משנה concerns other parties in addition to the שוטה, such as the deaf-mute and the minor.
9. The majority view introduces guardianship for those lacking דעת in the משניות at Baba Kamma and Yebamoth. Read in light of this halakah from the Tosephta, Rabbi Jose can be seen as the concept's original exponent.
10. It is held here that only the last comment of this משנה, regarding the status of the ox, is Rabbi Meir's. The prior material is an anonymous formulation of the Mishnah's redactor, Rabbi Judah HaNasi.

שור של פקח שנגח שור של חרש שוטה וקטן חייב.
 ושל חרש שוטה וקטן שנגח שור של פקח פטור. שור של
 חרש שוטה וקטן שנגח בית דין מעמידין להן אפוטרופוס
 ומעמידין להן בפני אפוטרופוס. נחפקה החרש נשחפה
 השוטה והגדיל הקטן חזר לתמותו דברי ר' מאיר.
 If an ox of an owner with unimpaired
 faculties gores an ox of a deaf-mute, a שוטה or a
 minor, the owner is liable. Where, however, an ox

of a deaf-mute, a נִטְלָה, or a minor has gored an ox of an owner whose faculties are unimpaired, there is no liability. If an ox of a deaf-mute, a נִטְלָה, or a minor has gored, the court of law appoints a guardian in whose presence witnesses will be able to testify. If the deaf-mute recovers his senses, the נִטְלָה becomes sane, or if the minor becomes of age, the ox previously declared "an aggressor" will return to the state of "non-aggressor" -- these are the words of Rabbi Meir.

- 11 Rabbi Meir appears to have been less sympathetic towards the disabled than other Sages. At T. Kethubboth 1:3, his student, Sumkhos, related that Rabbi Meir did not uphold a blind woman's claim of virginity. The editor of the Tosephta, in contrast, would not accept the claim of the deaf-mute girl, the נִטְלָה, the mature woman or the woman wounded by a blow, but upheld the blind woman's claim as she would be able to scream for assistance if sexually assaulted.
- 12 A slightly altered version is presented in T. Niddah 2:9.
- 13 As the majority permits cultic sacrifice of an animal-נִטְלָה, it is not likely to find prohibitions against eating or making other use of acceptably slaughtered unstable animals.

CHAPTER IV
ANONYMOUS OPINIONS ABOUT THE שוטה IN THE MISHNAH,
TOSEPHTA AND BABYLONIAN TALMUD'S גר' חות

The evidence presented in the last chapter suggests that the term שוטה underwent a profound change in meaning during the fifth Tannaitic generation before the Mishnah and Tosephta were redacted. Yet much of the Tannaitic material on the שוטה in these sources was introduced without attribution by the Tannaitic סנה. Moreover, several anonymous גר' חות, Tannaitic statements excluded from the Mishnah, appear in the Babylonian Talmud. (For a complete record of the material surveyed, kindly see Appendices 2-4).

In the absence of inter-textual or intra-textual corroborative evidence, it must be conceded that the unattributed formulations of the Tannaitic סנה for both the Mishnah and Tosephta, as well as the גר' חות in the Babylonian Talmud, could have been conceived and articulated at any point within the Tannaitic period. However, a detailed examination of the Tannaitic סנה's consideration of the שוטה supports the claim that this substantial body of "variable" data was developed late in the Tannaitic period. In fact, the Mishnaic סנה uses שוטה only in its strict legal sense, and the Tosephta uses שוטה in a homiletic-aggadic sense only once.

THE DND IN THE MISHNAH

At the center of the Mishnaic DND's conception of the שוטה is the שוטה's total exemption from liability. The Tannaitic DND explained in M. Baba Kamma 8:4 that in contrast to the adult male of sound senses, the שוטה, deaf-mute and minor are not responsible for their own actions:

חרש שוטה וקטן פגיעתן רעה, החובל בהן חייב, והם שחבלו באחרים פטורים.

It is a bad thing to come into damaging contact with a deaf-mute, a שוטה or a minor, since he that wounds them is liable, whereas if they wound others they are not liable.

The Tannaitic DND¹ acknowledged that the שוטה, like the deaf-mute and minor, did not have full legal understanding/cognition, and hence, denied his liability. Women and bondsmen, on the other hand, were accorded a limited liability by the Tannaitic DND. If they became independent, they could be held liable for past damages. The משנה continues:

העבד והאישה פגיעתן רעה, החובל בהן חייב, והם שחבלו באחרים פטורים, אבל משלמין לאחר זמן, ונחגרשה האישה, נשחרר העבד, חייבין לשלם.

It is a bad thing to come into damaging contact with a bondsman or a woman, for he that wounds them is liable, but if they wound others they are not liable. Nevertheless they must pay compensation thereafter. If the woman were divorced or the bondsman were emancipated, they are liable to pay damages.

In contrast to the woman and bondsman, the שוטה, deaf-mute and minor were granted total protection from

later litigation. The Tannaitic דנן had cogent reasons for differentiating the former from the latter: women and bondsmen were considered exempt from liability for a different set of reasons². Hence, the Tannaitic דנן offers no mechanism for retrieval of losses should the minor mature or the שוטה regain his sanity. Unlike the woman or bondsman, their actions were protected from later scrutiny because they lacked rational control over their behavior at the time of the incident.

An important corollary to the שוטה's protection from liability was the requirement that the שוטה be safeguarded from abuse by others. To that end the responsible party was liable for damages inflicted on the שוטה. The Tannaitic דנן then extended these principles to the שוטה's property, as is noted in M. Baba Kamma 4:4:

שור של פקח שנגח שור של חרש שוטה וקטן חייב.
ושל חרש שוטה וקטן שנגח שור של פקח פטור.

If an ox of an owner with unimpaired faculties gores an ox of a deaf-mute, a שוטה or a minor, the owner is liable. Where, however, an ox of a deaf-mute, a שוטה, or a minor gores an ox of an owner whose faculties are unimpaired, there is no liability.

In this expansion, the שוטה's property was considered an extension of himself. However, a notable distinction was drawn by the Tannaitic דנן (identified in the Tosephta to be the formulation of Rabbi Jose) as this משנה continues:

שור של חרש שוטה וקטן שנגח ביה דין מעמידין

להן אפוטרופוס ומעידין להן בפני אפוטרופוס.

If an ox of a deaf-mute, a שוטה, or a minor has gored, the Court of Law appoints a guardian in whose presence witnesses will be able to testify.

In M. Baba Kamma 8:4, the Tannaitic דנן did not provide a specific mechanism to ensure a שוטה would not harm others should he repeatedly prove violent. But in the above passage a remedy to protect others was provided. The authorized appointment of a guardian was thus best understood as an attempt to differentiate human from animal behavior. Since a שוטה was not subject to warning or capital punishment, a שוטה's life was considered of greater value than his beast's. So too, the Tannaitic דנן's opinion offered a profound moral distinction between the animal who could be harnessed, and a human suffering from emotional disability who should not be chained or imprisoned.

The Tannaitic דנן by no means sought to limit rabbinic authority to appoint guardians for the שוטה to cases concerning the protection of another's property. Guardianship was also a vehicle for ensuring that the שוטה's own "property" was in order, and that societal values would be enforced³. In M. Sota 4:5 the Tannaitic דנן ordained that a court of law may admonish the שוטה's wife suspected of adultery for him, thereby initiating a process that could invalidate her marriage contract.

ואלו שב"ד מקנאין להן. מי שנחרש בעלה. או
משחטה. או שהיה חבוש בביית האסורין. לא להשקותה
אמרו. אלא לפוסלה מכתובתה.

And these are the women whom a court subjects to admonition [on their husbands' behalf]: A woman whose husband became a deaf-mute or שוטה, or was imprisoned. Not to impose upon her the ordeal of drinking the water did they state the rule, but to invalidate her from receiving her marriage contract.

The court of law acts as the שוטה's agent since he, lacking understanding/cognition, could not perform the act himself. Indeed, because both marriage and divorce require understanding/cognition, the שוטה cannot divorce and likewise, the שוטה cannot be divorced. M. Yebamoth 14:1 states the rule:

פקח שנשא פקח ונחרשה אם רצה יוציא ואם רצה
יקיים. נשחטה לא יוציא נחרש הוא או נשחטה אינו
מוציאה עולמית.

If a man of sound senses married a woman of sound senses and she became deaf, he may, if he wishes, release her or retain her. If she became a שוטה, he may not divorce her. If he, however, became deaf or שוטה, he may never divorce her.⁴

As mentioned above, the שוטה was unable to perform acts that require understanding/cognition. The חסם disqualified the שוטה from participating in the sacrificial cult at M. Bekkorothe Chapter 7:7. M. Gittin 2:5 and 2:6 specifically exempted the שוטה from being an agent to deliver a bill of divorce. Even should the שוטה regain his senses, the Tannaitic חסם prohibited him from delivering the bill of divorce. In fact, only in the case when an individual lapsed briefly into שוטה-like behavior was he

permitted by the Tannaitic **דנא** to continue as an agent to deliver the bill of divorce. As M. Gittin 2:6 explained:

זה הכלל כל שחילתו וסופו בדעת כשר.

This is the general principle: in any case in which the agent was at the outset and at the end in full command of his senses, it [the divorce's delivery] is valid.

So too, M. Hullin 1:1 commenced with an anonymous ruling that a **שוטה** was unable to effect an acceptable slaughter. However, as an instrument of an individual of sound senses the **שוטה** could perform an acceptable slaughter.

וכולן ששחטו ואחרים רואין אותן שחיטתן כשרה.

But if any of these slaughter with others watching them [to witness that it was done properly], then their slaughter is valid.

By watching the **שוטה** the person of sound senses enabled him to effect an acceptable slaughter because the act of watching provided the legally requisite understanding/cognition. As such, the **שוטה** himself was literally an instrument performing the act. In this ruling, the Tannaitic **דנא** enunciated the value of enabling the **שוטה** to live as a participant in communal society. M. Gittin Chapter 2:5 offered a second example of the Tannaitic **דנא** sanctioning the **שוטה**'s performance of a communal task. The **שוטה** may write a bill of divorce because the writing itself does not require legal understanding/cognition.

הכל כשרין לכחוב את הגט אפי' חרש שוטה וקטן.

האשה כוחבת את גיטה והאיש כוחב את שוברו שאין קיום
הגט אלא בחותמיו.

All are valid for the writing of a writ of Divorce, even a deaf-mute, a שוטה, or a minor. Any woman may write her own writ of divorce, and a man may write his own quittance; for the confirmation of the writ of divorce is solely through its signators.

Yet another example of how the Tannaitic דת⁵ narrowly defined understanding/cognition in order to include the שוטה, appears at M. Nidda 13:2:

החרש והשוטה והסומא ושנטרפה דעתה אם יש להן
פקוח מחקנות אוחן והן אוכלות בחרומה.

In the case of a deaf-mute, a שוטה, a blind woman or a temporarily insane woman, if other women of sound senses are available they attend to her, and she may then eat the priestly portion [חרומה].

In the above citations the שוטה was in no way required to perform a specific act or task. However, the Tannaitic דת offered remedies that facilitated the שוטה's inclusion in communal activities and protected the שוטה's economic rights.

THE TANNAITIC דת IN THE TOSEPHTA

The שוטה is used in its homiletic-aggadic sense by the Tannaitic דת in the Tosephta only once, in T. 'Aboda Zara 6:7, where it recounts a debate between Roman philosophers and the Sages in Rome.

שאלו פילוסופים את זקנים ברומי אם אין רצונו
בעבודה זרה מפני מה אינו מבטלה. אמ' להן אילו לדבר
שאין להן צורך היו עובדין היה מבטלן, והיו הן
עובדין לחמה וללבנה ולכוכבים יאבד עולמו מפני
השוטים? אלא הנח העולם שינהגו כמנהגו והשוטים
שקילקלו יבואו ויתנו את הדין. גנב זרעים לזרוע לא
סופן לצמח? בעל אשת איש לא סופה שחלד? אלא הנח את

העולם ש'נהגו כמנהגו והשוטים שקילקלו יתנו את הד'ן.

Philosophers asked Sages in Rome, "If God's will is not for idolatry, why does He not negate (get rid of) it?" They said to them: "If people worshipped something of which the world did not need, he certainly would destroy it. But, note, people worship the sun, moon and stars. Now do you think He is going to wipe out His world on account of the ד'ש? Rather, let the world be in accord with its accustomed way, and the ד'ש who behave ruinously will come and receive The Judgment [of God]. If one has stolen seeds for planting, shall they not ultimately sprout? If one has had sexual relations with a married woman, will she not ultimately give birth? Therefore, let the world be in accord with its accustomed way, and the ד'ש who behave ruinously will come and receive The Judgment [of God]."

In the passage above the conception of the ד'ש is reminiscent of those of Rabbis Ishmael and Johanan ben Zakai. The ד'ש appears as not only a foolish jerk, but as wicked as well. God tolerates, but need not sustain, the ד'ש⁶, who is linked with evil and idolatry, the antithesis of Torah. Indeed, the listener is informed that the ד'ש will ultimately receive Divine wrath.

But elsewhere in the Tosephta the word ד'ש is used as it had been by the fifth Tannaitic generation. In those references the ד'ש had become an individual requiring a specific legal classification and rabbinic legislation. Like the Mishnaic ד'ש, the Tosephta addresses such issues as exemptions from liability, damages, consumption of sacrificial offerings, marriage and divorce.

As in the Mishnah, T. Baba Kamma 4:4's ד'ש exempted

the שוטה from liability for his ox.

שור חרש שוטה וקטן שנגח שור של פיקח פטור;
[Concerning] the ox of a deaf-mute, a שוטה,
or a minor which gored the ox of a person of
sound senses, its [owner] is exempt.

The Tosephta's סנה at T. Baba Kamma 4:6 went further
than the Mishnah's by explicitly stipulating what the
Mishnah left implicit: that the ox who killed is liable to
the death penalty.

שור חס שהמית ושור חרש שוטה שהמית המית גר
ועוד משוחרר חייב במיתה ופטור מן הכופר.

An ox deemed harmless which killed somebody,
an ox belonging to a deaf-mute or a שוטה which
killed, killed a proselyte or freed slave, is
liable to the death penalty but [the owner] is
exempt from the ransom-payment.

The Tosephta's סנה at T. Baba Kamma 9:13 also goes
farther than the Mishnah as it limited to physical damages
the fines imposed for one who harmed a שוטה.

החובל בחרש שוטה וקטן חייב בארבעה דברים;
ופטור מן הבושת. מפני שאין לו בושת.

He who inflicts injury on a deaf-mute, a
שוטה, or minor is liable on four counts, but
exempt on the count of Degradation. Because they
(the above) are not subject to Degradation.

It is worth noting the contrast between the Tosephta's
סנה and Rabbi Meir, who held in a בר' יחא in Baba Kama 86b
that the deaf-mute and minor are subject to damages for
insult.

ח"ש ר"מ אומר: חרש וקטן יש להן בושת. שוטה
אין לו בושת.

Come and hear: R. Meir says: A deaf-mute and
a minor are subject [to be paid for] Degradation,
but a שוטה is not subject to be paid for
Degradation.

The Tosephta's **סנה**, however, did not distinguish the various categories of those lacking understanding/ cognition.

The Tosephta's **סנה**, like the Mishnah's, presented remedies that would enable the **שוטה** to participate in communal activities, as in T. Nidda 2:9.

שוטה מטבילין אותו ומאכילין אותו בחרומה לערב
ומשמרין אותו שלא יישן ואם ישן ועמד טמא מיד.
A **שוטה** -- they dunk him and feed him with
heave offering in the evening. And they watch
him as to sleeping, and if he went to sleep and
got up, he is then unclean.

Again an emphasis is placed on protecting the **שוטה's** economic rights, in this case, securing the **שוטה**-priest's birthright to eat his priestly portion.

The Tannaitic **סנה** in the Tosephta offered an extensive delineation of the rights accorded to a **שוטה** within marriage. In T. Kethubboth 1:3 the Tannaitic **סנה** grants equal status to the **שוטה** despite the problems of her marrying legally given her state of mind. The **שוטה** is protected despite the problematic legal status of her marriage having been contracted without full legal understanding/ cognition.

פיקח שנשא חרש או שוטה כחובתו מאתים מפני
שרצה לזנוק לה נכסים.
A man of sound mind who marries a deaf-mute
or **שוטה** -- their marriage contract is two hundred
zuz, in order to confer on them (her) property.

The Tosephta's **סנה** denies that a **שוטה** can marry legally. Hence, a **כחולה**, a marriage contract, is not

required, nor could a שוטה legally arrange one. If after regaining his sanity the former שוטה decides to marry his "wife", his marriage would be legal. A marriage contract of 100 zuz would be given since the wife is no longer a virgin.

חרש ושוטה שנשא פיקחת אף על פי שחזר חרש
ונתפקח שוטה ונשתפה אין להם כחובה. רצו לקיים נותן
כחובה מנה.

A deaf-mute or a שוטה who married a woman of sound senses, even though the deaf-mute went and became sound in his senses, or the שוטה regained his mind -- they [the women] do not receive a marriage contract. If he wishes to maintain the marriage, he gives a marriage contract of 100 zuz.

Just as the Mishnaic סתם negated the שוטה's liability for the period he is a שוטה, so too the Tosephta's סתם absolved the שוטה from any obligations he undertook while lacking understanding/cognition. Should the שוטה recover and determine to maintain the marriage, the marriage contract is increased only marginally as a way of clarifying the couple's legal status.

רצו לקיים נותן כחובה מנה.
[If after being healed] they want to keep
the marriage, they pay a מנה [1/100 dinar] as the
marriage contract.

The Tosephta's סתם most definitely conceived of the שוטה as having a disability that required articulation prior to marriage.⁷ Additionally, the שוטה, in her distress, was not conceived as able to "protect" her virginity until marriage. The Tannaitic סתם at

T. Kethubboth 1:3 ruled, therefore, that she could not be divorced without her marriage contract settlement for not being a virgin at the time of her marriage:

החרשת והשוטה בוגרת ומוכת עץ אין להן טענת
בחולים.

The deaf-mute girl, שוטה, mature woman, or woman wounded by a blow are not subject to virginity suits [by their husbands].

The שוטה was thus given more legal protection than provided for a woman of sound senses. However, she did not receive damages for having been raped, as is noted in T. Kethubboth 3:5.

הבא על חרשת ועל השוטה ועל הבוגרת ועל מוכת
עץ אין להם קנס.

He who has sexual relations with a deaf-mute, or with a שוטה, or with a mature woman, or with a woman injured by a blow [and therefore without a hymen], they do not receive a fine for seduction.

As her emotional state was deemed to preclude her from granting either complicity or warning to the offender -- as well as from providing rational testimony about the occurrence -- the שוטה was unable to prove she was violated.

Should the husband of a שוטה die, the סתם ruled in T. Yebamoth 2:5 that she would enter into levirate marriage rather than undergo the rite of halisa. So too, the following halakha stated that the שוטה would also enter a levirate marriage rather than perform the halisa ceremony, for the halisa ceremony required understanding/cognition.

However, should the שוטה undergo the halisa rite with her brother-in-law, the חתם at T. Yebamoth 11:8 upheld the proceeding ex post facto.

חרש שנחלץ וחרש שחלצה והחולצה מן השוטה; וכן השוטה שחלצה והחולצה מן הקטן חצא.

A deaf-mute with whom the rite of halisa was performed, a deaf-mute who performed the rite of halisa, she who performs the rite of halisa with a שוטה, So too: a שוטה who performed the rite of halisa, and she who performed the rite of halisa with a minor -- goes forth.

Since the wives of a שוטה whom he "married" while emotionally disabled were not truly married to him (note that they do not have a marriage contract), the Tannaitic חתם at T. Yebamoth 11:11 exempted them from undergoing halisa or levirate marriage after their husbands' deaths.

שוטה וקטן שנשאן נשים ומתו -- נשיתם פטורות מן החליצה ומן יבום.

A שוטה or a minor who married wives and then died -- their wives are exempt from performing the rite of halisa.

ANONYMOUS ברייתות IN THE BABYLONIAN TALMUD

The anonymous Tannaitic ברייתות in the Babylonian Talmud offer supporting evidence to the conceptions put forward by the חתם of the Mishnah and Tosephta. Similar issues are covered.⁸ The חתם's ruling on the eating of the priestly portion is repeated verbatim at Nidda 13a. Shabbath 104b reaffirms that a שוטה's word does not constitute authoritative proof. Sota 25a accords the court of law the right to admonish a suspected adultress married to a שוטה on his behalf. Yebamoth 110b and 112b,

respectively, reiterate that the שוטה may not be divorced during her illness and the שוטה may never divorce, and that the wife of a שוטה need not undergo halisa, as a means of discouraging marriages to שוטים.

A final anonymous בר"תא, however, greatly contributes to the Tannaitic conception of the שוטה. It is recounted at Hagiga 3b.

חנו רבנן: איזהו שוטה? היוצא יחיד בלילה.
והלך בבית הקברות. והמקרה אח כסוחו.
Our Rabbis taught: Who is [deemed] a שוטה?
He that goes out alone at night, and he that
spends the night in a cemetery, and he that tears
his garments.

These three actions -- venturing out alone, sleeping or dwelling in a cemetery at night, and rending a garment -- need not be ascribed only to those lacking mental acuity or behaving foolishly. Instead, they are emotional responses; signs of mental anguish, distress and abnormal behavior. Whereas all three activities are self-destructive, the venturing out alone or sleeping in a cemetery were especially apt to place the individual into certain danger.

Curiously, all three actions mentioned in the בר"תא also describe a dysfunctional grief reaction. Given the association of rending one's garment, קרעה, with mourning, as well as the reference to a cemetery, it is worth speculating that the בר"תא did reflect the actual clinical presentation of a שוטה in mourning.

FOOTNOTES

Whether or not it reflects an actual case, the לר"א in Hagiga 3a conforms to the overwhelming majority of other anonymously attributed Tannaitic formulations. These formulations, like those from fifth generation Tannaim and their disciples, present the טולט as an individual within a specific legal category who requires protection from liability and being taken advantage of by others. So too, the Tannaitic דנן offered remedies that facilitated the טולט 's inclusion in communal activities and protected the טולט 's economic rights.

Other anonymous passages in Tannaitic literature repeat these themes. Numbers Babla 9.15 states:

When a wife... goes astray... This is to

FOOTNOTES

CHAPTER IV

1. The Tannaitic **דמיון**'s conception of the **שוטה** as **פסול**, or lacking liability, was not uniform. This conception is disputed in M. Baba Kamma 4:4 by Rabbi Jacob who argues the **שוטה** must compensate for half the damages caused by his goring ox.
2. Women and bondsmen were exempted as both were considered their owners' property. The **שוטה**, deaf-mute and minor were all deemed independent. Their exemption from providing testimony in a court of law stems from their emotional condition.
3. The **שוטה**'s property is theoretically **הפקר** (ownerless) and available to all. The guardian, therefore, is also acting as the claimant on behalf of the **שוטה**.
4. See the **גמרא**'s extensive discussion of the difference between "may not" and "never" in Appendix 4.
5. The Tannaitic **דמיון**'s agenda appears strikingly similar to that of the Sages in their discussion with Rabbi Eliezer.
6. The Tannaitic **דמיון** argues just as God permits other sins and their outcomes to occur, such as idolatry and adultery, in the course of God's stewardship.
7. See T. Kethubbot 7:10:

אמר לו קדש לי בתך זו על מנת שאין בה מומין
 אמ' לו שוטה היא שעמומית היא חולה היא נכפית היא אם
 אמר לו אותו המום ומום אחר עמו אין זה מקח טעות.
 He who says to another: "betroth this
 daughter of yours to me on condition that there
 are no blemishes on her"; if he says to him she
 is a **שוטה**, or is dull-witted, or is sick, or is
 an epileptic -- if he stated there was this
 blemish plus another one (unspecified), this is
 not a fraudulent acquisition. -
8. Other anonymous passages in Tannaitic literature also rehearse these themes. Numbers Rabba 9:26 states:

אשר חשטה אישה תחת אישה. להביא את מי שנחתרש
 בעלה או שנשחתה או שחיה חבוש בבי"ח האסורים, שבי"ח
 דין מקנאים להם לפסלן מכתובתן.
 "When a wife... goes astray." This is to

include one whose husband has become deaf, or a שוטה, or was imprisoned; for in such cases the court may warn the wives on their [husbands'] behalf, and disqualify them from receiving their marriage settlement.

while Numbers Rabba 9:28 adds:

דבר אחר: איש איש לרבות חרש, שוטה ואשח
שעמום, ושהלך בעלה למדינת הים ושהיה חבוש בביה
האסורים, שביח דין מקנאים להן לפסלן מכתובתן.

Another interpretation: The expression, "A man, a man" is intended to include the wife of a deaf-mute or a שוטה, the wife of a madman, and one whose husband has gone abroad or imprisoned; for in such cases the court can warn them in order to disqualify the wives from obtaining their marriage settlement.

Other ברייתות mention that sometimes a שוטה when he is deemed a שוטה is categorized as such for all legal questions (Rosh Hashana 28a) and that שוטים provide no legal proof (Shabbath 104b).

CHAPTER V

שוטה AS UNDERSTOOD BY THE AMORAIM

The Amoraic understanding of the שוטה presented in this chapter is based on descriptions of the שוטה from the Babylonian Talmud, as well as a reference from the Jerusalem Talmud. (For a complete record of the material surveyed, kindly see Appendices 4-5).

The Amoraic conception of the שוטה corresponds to the view first enunciated by the later Tannaim. For the Amoraim (אמוראים), the שוטה was an individual suffering from severe emotional/mental distress. Regardless of generation and location, the Amoraim share common assumptions about the שוטה's personal and communal responsibilities. They also tend to characterize the שוטה similarly. Amoraic debate concerning the שוטה attempts to refine both the late Tannaitic designation of who is a שוטה and prescribe his (and her) rights within the society.

In the literature surveyed, only one Amora, Resh Lakish, advances a conspicuously negative depiction of the שוטה. Resh Lakish, a first generation Amora from the Land of Israel, offers a midrash at Sota 3a associating the שוטה with sin.

ר' לקיש אמר אין אדם עובר עבירה אלא כ"כ נכנס
בו רוח שטות. שנאמר איש איש כי חשטה אישחו חשטה
נח"ב.

Resh Lakish said: A person does not commit a transgression unless a spirit [lit. "wind"] of folly [acting like a שוטה] enters into him. As

it is said, "If any man's wife go aside." Written is תִּשְׁתַּח [tisteh, lit. "to go aside", is read as tishte, to act like a תִּשְׁתַּח].

In the passage above, Resh Lakish seeks to analyze why people transgress. He opines such activity emanates from being overcome by an ephemeral, imperceptible wind¹ -- a "spirit" that then manipulates the individual's subsequent activity. Resh Lakish's explanation could well be grounded on the personal observation of individuals whose normative behavior was radically altered without an apparent catalyst. In the absence of a plausible reason for a sudden and unfortunate transformation towards deviant behavior, a "wind of תִּשְׁתַּח" is submitted as the most credible answer.

Resh Lakish points out that both concepts -- transgression and תִּשְׁתַּח-like behavior -- can be homiletically "derived" from the same Hebrew root, ת-ש-ח. Using this etymological connection, he then posits that the temporary (and uncontrollable) wind of תִּשְׁתַּחness is a prerequisite for sin. While such coupling does not offer a particularly sympathetic depiction of the תִּשְׁתַּח, the significance of Resh Lakish's midrash should not be overstated. He did not condemn all תִּשְׁתַּח as sinful. Moreover, given the tenor of his statement below regarding the תִּשְׁתַּח, Resh Lakish emerged as more charitable in his assessment of the תִּשְׁתַּח than his colleagues. The following

case from J. Terumoth I:1 demonstrates Resh Lakish's willingness to place the interests of the שוטה on par with those of the עגונה.

אחא עובדא קומי שמואל אמר כד הוא חלים יתן גט. ושמואל כריש לקיש. דריש לקיש אמר לכשישתפה רובה דשמואל מן דר"ש בן לקיש דחוא אמר כד דו חלים יתן גט וחלמיני והחייני.

A matter came before Samuel. He said, "When [the שוטה] is lucid, he may give a גט [bill of divorce]. And Samuel appears to agree with Resh Lakish, for Resh Lakish said, "When he becomes sane." In fact, however, Samuel's ruling is more permissive than Resh Lakish's insofar as he may give the גט when lucid [though still a שוטה and not fully recovered]. [Proof that this is so may be deduced from the verse] וחלמיני והחייני ["Restore me to health and make me live."] (Isaiah 38:16) [this implies being strengthened before being fully cured].

Lacking understanding/cognition, the שוטה is unable to perform the act of divorcing his wife. Indeed M. Yebamoth 14:1 stipulates that should a man become a שוטה, he can never divorce his wife. In contrast, two Amoraim, Resh Lakish and Samuel, propose the very remedies implicitly prohibited in the Mishnah. Indeed, Resh Lakish not only permits the שוטה to grant a divorce, he would support his granting the divorce so long as the שוטה is temporarily lucid. Samuel demurs, stating in a formulation closer to the Mishnah that the divorce be given only when the שוטה is no longer deemed to be a שוטה.

Resh Lakish, like the later Tannaim, offers opinions on delineating the שוטה's rights within the civil law. He displays halakhic creativity in his providing a specific

mechanism to repair a grievance within the שוט 's immediate family.

In Kethubboth 48b a first generation Amora, Mar Ukba of Babylonia, frames legislation that enables the court to act as a guardian for the שוט and thereby provide support for his family.

רב חסדא אמר מר עוקבא: מי שנשחטה בית דין
יורדין לנכסיו וזניין ומפרנסין את אשתו וזניין
ובנותיו.

R. Hisda further stated in the name of Mar Ukba: If a man became a שוט the court of law may take possession of his estate and provide food and clothing for his wife, sons and daughters.

Mar Ukba's opinion providing guardianship for the שוט has substantial precedence. Rabbi Jose as well as the Tannaitic דנן in both the Mishnah and Tosephta had already outlined a concept of guardianship that sought to impede the שוט 's oxen from harming others and to discourage his spouse from committing adultery. It should be noted, though, that in both circumstances presented above (a goring ox and a wife suspected of adultery) the court is confronted with evidence which questions the שוט 's ability effectively to retain control of his property or domestic relationships. But Mar Ukba materially broadens this view in two ways: he expressly includes the needs of family members; and by stating, "בית דין יורדין" or "the court of law may take possession" he advocates a potentially proactive interest in the שוט 's affairs by the court.

Mar Ukba's halakhic creativity is evidenced by later disagreement between, Rabina, a sixth generation Amora from Babylonia, and his colleague, R. Ashi. Rabina asks R. Ashi why the court of law should intercede into the private estate of a שוטה when it refrained from doing so to provide support to the children of an individual who has traveled to a distant locale (למדינת הים). R. Ashi, defending Mar Ukba's decision, contrasts the traveler who has willingly departed (and is thus assumed to have specifically determined to withhold support) and the שוטה, whose illness makes him incapable of freely determining whether or not to provide support (and is thus assumed to desire to offer it).

Just as Resh Lakish and Samuel challenged a narrow understanding of the Tannaitic ruling that a שוטה could not divorce, the second generation Amora from the Land of Israel, R. Isaac, proposed that a שוטה could not be divorced from her husband of sound mind. M. Yebamoth 14:1 holds that a husband may not divorce his wife, should she become a שוטה. Yet R. Isaac inferred from the Pentateuch that a husband may indeed divorce his wife even if she is a שוטה. Therefore, according to him, preclusion of her divorce is a rabbinic חק (ordinance).

נשחטית וכו': א"ר יצחק דבר תורה שוטה מחגרשת
 מדי דהוה אפקחח בעל כרחא. ומה טעם אמרו אינה
 מגורשת? שלא ינהגו בה מנהג הפקר.
 And she became a שוטה. R. Isaac said: "It is

(a word) [a ruling] from the Torah that a שוטה may be divorced since her case is similar to that of a woman of sound mind who may be divorced against her will. And what is the reason that they said she [the שוטה] could not be divorced? So that others will not treat her [wantonly] as a piece of ownerless property."

For R. Isaac, the Torah mandates that the decision of whether or not to divorce is determined at the husband's sole discretion. As the decision rests entirely with the husband, the wife need not be consulted and thus need not have understanding/cognition. R. Isaac therefore does not distinguish between the שוטה and a woman of sound mind. Yet, in order to protect the שוטה from sexual maltreatment, R. Isaac opines that the Rabbis precluded her being divorced,

R. Isaac's colleague, R. Johanan, a second generation Amora from the Land of Israel, is the Babylonian Talmud's most prolific author concerning the שוטה. In Baba Bathra 12b R. Johanan provides an insulting homiletic rebuttal to believers in prophecy following the destruction of the Second Temple². He stated:

א"ר יוחנן מיום שחרב בית המקדש ניטלה נבואה
מן הנביאים וניתנה לשוטים ולתינוקות.

R. Johanan said: Since the Temple was destroyed, prophecy has been taken from prophets and given to שוטים and children.

R. Johanan's statement is reminiscent of Rabbi Ishmael's curt dismissal of his adversaries at Nidda 30b (where proof from the Torah is contrasted with proof from

ד'טו) and Rabbi Johanan ben Zakai's contemptuous insistence at Menahoth 65a that ד'טו are unable to provide a cogent rationale for a specific practice or belief. He labels as ד'טו those whose belief systems present a challenge to his own. But it is possible to discern a subtle difference between R. Johanan's conception of the טו and that of the early Tannaim. For R. Johanan, post-Second Temple prophecy, the province of the טו, is neither explicitly antithetical to the Torah nor inherently illogical. Instead, it is inchoate, unsubstantiated and suspect. It is most telling that R. Johanan designated children and ד'טו as the latter day recipients of prophecy as both the child and the טו lack understanding/cognition.

R. Johanan's consideration of the טו was not limited to homiletic discourse; he also examined the טו's legal rights. R. Johanan is credited with the opinion that an individual's sacrifice is affected by his personal practice or state of mind. Ulla, a second to third generation Amora from the Land of Israel, quotes R. Johanan at Sanhedrin 47a as annulling the sacrifice of an apostate.

אמר עולא א"ר יוחנן: אכל חלב והפריש קרבן
והמיר דחו וחזר בו הואיל וננחה ידחה.

Ulla said in R. Johanan's name: If one ate forbidden fat and thereupon dedicated a sacrifice, abjured his faith, but subsequently returned, since it [the offering] has [once] been invalidated, it remains so.

The sacrifice is an individual's offering to God.

R. Johanan astutely perceived the sacrifice as the embodied expression of an individual's faith at a certain moment in time. The sacrifice represents the individual throughout the period of its dedication and offering. For R. Johanan, to commit apostasy is to deny God's sovereignty³. To offer a sacrifice at the same time when one is denying God is to mock God, the sacrifice, and the whole sacrificial system. For just as the sacrifice itself may be transformed into a representation of an individual's faith, it may also be transformed into a sullied embodiment of the individual's apostasy. The apostate's sacrifice is thus permanently rejected as its acceptance would promote the hypocrisy of simultaneously praising and denying God.

R. Johanan does not assert an apostate may never dedicate a sacrifice, only that the dedication of a sacrifice to the God of Israel must be performed in a consistent and legal manner. The *K'110* at Sanhedrin 47a continues with R. Jeremiah quoting R. Johanan's disciple, R. Abbahu as stating in his master's name that the sacrifice of the *7010* is also invalid. While the outcome of this second case groups the *7010* with the apostate, it is likely that he disqualifies the *7010* for a profoundly different reason. The *7010* is not accused of apostasy, but of lacking the understanding/cognition requisite to

dedicate an offering.

איחמר נמי: א"ר ירמיה אמר ר' אבהו א"ר
יוחנן: אבל חלב והפריש קרבן ונשחטה וחזר ונשחפה,
הואיל ונדחה ידחה.

It has been stated likewise: R. Jeremiah said in the name of R. Abbahu in R. Johanan's name: If one ate [heleb] forbidden fat and thereupon dedicated a sacrifice, became a שוטה, but later recovered, since it [the sacrifice] has once been invalidated, it remains so⁴.

For R. Johanan, to perform a ritual act without the security of a basic understanding of its rationale and intent would be to affront God. During the individual's period as a שוטה, he has transformed his sacrifice into a representative offering unqualified for service at God's holy altar. The sacrifice is thus rendered permanently rejected. Yet the recovered שוטה, like the apostate who has returned to Judaism, may offer other sacrifices provided these sacrifices in no way represent a deviation from their ideal as understood and consistent acts of faith.

R. Johanan not only legislated whether a שוטה could offer a sacrifice, he also sought to establish the parameters for defining who should be deemed a שוטה. He is quoted in Hagiga 3b-4a as requiring only one of three שוטה-like behaviors⁵ that indicate a lack of functioning to establish a person as a שוטה from a legal perspective. The three behaviors are outlined in a ברייתא:

חנו רבנן: איזהו שוטה? היוצא יחיד בלילה.
והלן בבית הקברות. והמקדע את כסותו. איחמר, רב
הונה אמר: עד שיהו כולן בבח אחת. רבי יוחנן אמר:
אפילו באחת מהם.

Our Rabbis taught: Who is [deemed] a שוטה? He that goes out alone at night, and he that spends the night in a cemetery, and he that tears his garments. It was taught: R. Huna said: they must all be [done] together. R. Johanan said: Even if [he does only] one of them.

R. Huna⁶, a second generation Amora from Babylonia, is far stricter than his colleague from the Land of Israel, R. Johanan. R. Johanan defines as a שוטה one who manifests a single atypical action illustrative of mental illness. He also intuitively discerns different kinds of mental illnesses; that people develop different types of mental illnesses with different presentations. Clearly, R. Johanan's understanding of the שוטה facilitates the classification of a greater number of individuals as שוטים⁷. For R. Johanan, the שוטה is not a member of a small, legal category typically existing only in theory, but an individual within society whose interests must be protected and whose role must be circumscribed.

In response, R. Huna argues at J. Terumoth I:1 that his strict interpretation of the לר"ח affords necessary protection to both "offbeat" individuals and individuals suffering a momentary lapse of consciousness.

סימני שוטה -- היוצא בלילה והלן בבית הקברות והמקרה את כסותו והמאבד מה שנוחנין לו. א"ר חונא והא שיהא כולהו בו. דלא כן אני אומר היוצא בלילה קנייטרוקוס. הלן בבית קברות מקטיר לשדים. המקרה את כסותו סוליקוס. המאבד מה שנוחנין לו קודייקוס.

These are the signs of a שוטה. (1) A person who goes out (alone) at night and (2) a person who sleeps in a cemetery and (3) a person who rips his clothing and (4) a person who destroys

what is given to him. Rabbi Huna said: "This (type of person, a שוטה) must exhibit all of them. For otherwise I could claim that a person who goes out at night is a werewolf. [So too] a person who sleeps in a cemetery could be offering incense to spirits. A person who tears his clothes could be seeing visions. A person who destroys what is given to him could be delirious."

R. Huna warns that even people of sound mind will exhibit unusual behavior or experience temporary delirium. These individuals differ from the שוטה in the pathology and severity of their illness. Given the many curbs placed on a שוטה, as well as the plethora of responsibilities the שוטה imposes upon his family and the community, R. Huna considers it folly for the court of law to legitimize an open-ended definition.

The dispute between R. Huna and R. Johanan typifies a larger debate over the ethical balancing of competing interests. By R. Huna's definition, only those individuals exhibiting multiple presentations of שוטה-like behavior are classified a שוטה. The chance for misdiagnosis of a person of sound mind as a שוטה is extremely small. Conversely, it is likely that the needs of guardianship and an exemption from liability by a large number of שוטים will not be met. By R. Johanan's definition, these needs are more likely to be addressed, but the chances for depriving an individual of sound mind of his full rights are considerably greater.

The Jerusalem Talmud's אמר ר' concerning the שוטה at

J. Terumoth I:1 contains the additional statement: והמאבד
 לו מה שנותנין לו, "a person who destroys what is given to
 him". Rabbi Huna, in his effort to disqualify
 classifications of a שוטה on only one noted behavior,
 commented in the version rebounded in the Jerusalem Talmud
 that the person who destroys all that is given him could be
 temporarily suffering from delirium. R. Bun (or Abin I), a
 fourth generation Amora from the Land of Israel, however,
 disagrees, and sides with R. Johanan.

רב ארבי יוחנן אמר אפילו אחד מהן. אמר רבי אבון
 מסחברא מה דאמר ר' יוחנן אפי' אחד מהן בלוד. במאבד
 מה שנותנין לו אפילו שוטה שבשמים אין מאבד כל מה
 שנותנין לו. קונדיקוס קורדיקוס אין בו אחד מכל
 אלו.

Rabbi Johanan said: "A person (is a שוטה) if
 even only one of them (applies)." R. Bun said:
 "R. Johanan's statement that even only one of
 them alone (suffices) is logical. With regard to
 a person who destroys that which is given to him,
 even the greatest of שוטים does not destroy
 everything given to him. A delirious person does
 not evidence any of these."

R. Bun regards the above test as outrageous. Even
 those totally incapacitated by mental illness do not
 destroy everything given to them. According to R. Huna's
 standard, no individual would ever be declared a שוטה; the
 standard is therefore illogical. R. Bun further castigates
 R. Huna for misleadingly lumping the behavior of a
 delirious person with that of the שוטה. So too, R. Papa, a
 fifth generation Amora from Babylonia, also rejects
 R. Huna's position that multiple presentations must be

manifest. R. Papa states at Hagiga 4a that had R. Huna known the formulation that a שוטה is "one who destroys all that is given to him" he would have accepted it as a single criterion for defining the שוטה.

The difficulty in determining when one is indeed a שוטה is likewise mentioned by R. Ashi at Kethubboth 20a. When unsure whether or not an individual is a שוטה, R. Ashi gives the suspected שוטה the benefit of the doubt.

דבר שטיא. זבין נכסי. אחו בי חרי אמרי שהוא
שוטה זבין. אחו בי חרי ואמרי כשהוא חלים זבין. אמר
רב אשי: אוקי חרי להדי חרי. ואוקי ממונא בחזקת בר
שטיא.

An act [a case regarding] of one who is a שוטה. A [certain] שוטה sold property. Two [witnesses] came [and] said [that] he sold [the property] when he was insane, and two [other witnesses] came [and] said he sold [the property] when he was sane. [And] R. Ashi said: Set the two [witnesses] against the two [other witnesses] and leave the property in the possession of the שוטה.

In this case, the witnesses before the court of law leave the individual's status uncertain. A שוטה lacks the understanding/cognition requisite for business dealings. He is thus unable to transfer property. As such, ownership of the property is questionable. In this doubtful case, R. Ashi protects the שוטה by enabling him to retain possession of the property.

Yet not every Amora sought to protect the שוטה's property. Raba, a third generation Amora from Babylonia, offers a strict ruling at Baba Kamma 39a and Kethubboth 48a⁸. In the K'110, Raba is quoted as challenging the

belief that the ox of a שוטה (for which a guardian has been appointed) is presumed to be חס, that is, that it was not known to have had an intent to injure. Rather, Raba holds that the oxen may be presumed to be gorers and categorized as מוער, as attested dangerous animals.

Finally, Rami b. Hama, a fourth generation Amora from Babylonia, also discusses the שוטה's legal rights within civil society. He queries at Yebamoth 112b why the Rabbis legalized marriage for the deaf-mutes but not for שוטים⁹, stating:

חרש וחרשת דקיימא תקנתא דרבנן חקינן להו רבנן
נשואין. שוטה ושוטה דלא קיימא תקנתא דרבנן דאין אדם
דר אם נחש בכפיפה אחת לא חקנו רבנן נשואין.

[In the case of] a deaf man or woman, where the Rabbinical ordinance could be carried into practice [that is, they could lead a happy life], the marriage was legalized by the Rabbis; [But in that of] a שוטה or שוטה, where the Rabbinical ordinance cannot be put into practice, since no one can live with a serpent in the same basket, the marriage was not legalized by the Rabbis.

Rami b. Hama's response reflects his belief that the שוטה is incapable of participating responsibly in marriage. The שוטה's aberrant comportment, his emotional distress and instability, vitiates marriage's purpose, companionship.¹⁰ As the שוטה could not divorce, the individual married to a שוטה was without the possibility of escaping from this unfortunate situation. The Rabbis, therefore forbade the marriage of a שוטה. Rami b. Hama's treatment of the שוטה is paradigmatic of the Amoraim. He presents the שוטה as an

individual with emotional/mental disability. This disability necessitates a legal interest in delineating his rights. Rami b. Hama therefore seeks to understand and refine the basic principles of a TANNAM's rights outlined by his predecessors, the Tannam.

FOOTNOTES

CHAPTER V

- 1 Note the similar paring of למה with לו at M. 'Erubin 4:1 and M. Shabbath 2:5, mentioned in Chapter II on page 11. In לו למה as is שטח לו the individual is overcome by a wind that changes his behavior.
- 2 Rabbinic belief held that Malachi was the last prophet. Moreover, even incidents after the destruction of the Second Temple that were construed to be either prophecy or a divine revelation were of limited halakhic utility. See, for example, the story of the oven at 'Akhnai in Baba Mesi'a 59b.
- 3 That is to say, the denial of the rabbinic conception of the God of Israel.
- 4 The same statement by R. Johanan is presented at Zebahim 12b. An extremely close variant is also presented at Nedarim 36a. The difference between these passages are as follows: the phrase הלא ידחה "since it has been rejected it remains rejected" at Sanhedrin 47a and Zebahim 12b is substituted for the phrase הלא, "it is invalidated" at Nedarim 36a. (See Appendix 4)
- 5 A variant tradition at J. Terumoth I:1 offers:
 סימני שוטה -- היוצא בלילה והלן בנח העברות
 והמקרה אח כסוחו והמאגר מה שנוחנין לו... רבי יוחנן
 אמר אפילו אח מהן.
 These are the signs of a שוטה. (1) A person who goes out (alone) at night and (2) a person who sleeps in a cemetery and (3) a person who rips his clothing and (4) a person who destroys what is given to him... Rabbi Johanan said: "A person (is a שוטה) if even only one of them (applies)."
- 6 R. Papa's assertion later in this נ"י that R. Huna was not as strict in his interpretation of this נ"י is called into question. R. Papa posits that had R. Huna heard the stipulation "one that destroys all that is given to him" R. Huna would have considered one action as proof. This statement is contested at J. Terumoth I:1 by the inclusion of this very stipulation on the list of behaviors that R. Huna insists must be exhibited. It is unresolved, however,

whether or not R. Huna knew of the statement.

- 7 As noted in Chapter IV, the תנ"ך suggests a שומט is one suffering from a dysfunctional grieving disorder. R. Johanan's broader interpretation of the תנ"ך -- as opposed to R. Huna's -- enables more individuals to be classified as a שומט. R. Johanan's characterization is closer to modern epidemiological understandings of mental disability as it not only assumes a larger group of שומט, but also proposes greater diversity within the presentation of their illnesses. The Cecil Textbook of Medicine (18th Edition, Volume 2, pages 2092-2103) reports that the incidence of schizophrenia in the general population is about 1 per cent for lifetime risk; major depression has a prevalence of about 3.2 per 100 males and about 4.5 to 9.3 per 100 females; and that dysthymic disorder (depressive neurosis) has an estimated prevalence of 60 per 1000.

- 8 The Kethubboth 48a reference is identical to the one from Baba Kamma 39a. It is as follows:

אמר רבא הכי קחני ואם נגחין מעמידין להם
אפוטרופוס ומעידין להן בפני אפוטרופוס. ומשוינן להו
מועד דכי הדר ונגח לשלם מעלייה.

Raba replied [that the text] should be understood thus: If the oxen are presumed to be gorers, then a guardian is appointed and witnesses will give evidence for the purpose of having the cattle declared "an aggressor". So that should another goring take place, the payment would have to come from the best [of the general estate].

- 9 Note the lack of consensus on whether a שומט can marry. T. Kethubboth 7:10 would suggest she can.
- 10 It is worth mentioning that Rami b. Hama does not offer eugenics as a valid reason for denying marriage to a שומט.

CHAPTER VI
THE **דנן**'S CONCEPTION OF THE **גזלן**
IN THE BABYLONIAN TALMUD

The **דנן**'s conception of the **גזלן** presented in this chapter is based on descriptions of the **גזלן** from the Babylonian Talmud. (For a complete record of the material surveyed, kindly see Appendix 4).

The **דנן**, the anonymous voice of the Babylonian Talmud's redactor, raises and then attempts to address issues concerning the **גזלן** on numerous occasions. In fact, the **דנן** presents the most comprehensive understanding of the **גזלן** that is to be found in formative rabbinic literature as it reviews and enhances the Tannaitic and Amoraic understandings of such questions as: Who is a **גזלן**? What behaviors does a **גזלן** exhibit? What are the **גזלן**'s legal rights? Can the **גזלן** marry or divorce? and Can **ד'גזלן** offer or partake in ritual sacrifices?

The Talmud's redactor is able to sew together diverse teachings that, taken as a unit, will then espouse a distinct comprehension of the **גזלן**.¹ For example, at Baba Bathra 12b R. Johanan is quoted as noting prophecy, after the destruction of the Second Temple, had become the sole province of **ד'גזלן** and children. The Talmud's redactor next illustrates this contention by furnishing a story of a **גזלן** who prophesized. The **דנן**'s request for an example of how prophecy has been given to the **גזלן** is immediately followed

by a story from the late Amoraic period concerning Mar b.

Rav Ashi, a seventh generation Amora from Babylonia.

לשטים מאי היא. כי הא דמר בר רב אשי דהוה קאי ברסחא דמחוזא שמעיה להווא שוטה דקאמר ריש מחיבתא דמליך במחא מחסיא טביומי חתים. אמר מאן חתים טביומי ברבון אנא. שמע מונה לדידי קיימא לי. שעתא קם אחא אדאחא אימנו רבנן לאותביה לרב אחא מדפתי ברישא. כיון דשמעי דאחא שדור זוגא דרבנן לגביה לאימלוכי ביה עכביה הדר שדור זוגא דרבנן אחרינא עכביה גביה עד דמלו בי עשרה כיון דמלו בי עשרה פתח הוא וחנא ודרש לפי שאין פוחחין בכלה פחות מעשרה. קרי רב אחא אנפשיה כל המריעין לו לא במהרה מטיבין לו וכל המטיבין לו לא במהרה מריעין לו.

How is it given to שטים? The case of Mar b. Rav Ashi will show. He was one day standing in the manor of Mahuza when he heard a certain שוטה exclaim, "The man who is to be elected head of the Academy in Matha Mehasia signs his name Tabiumi." He said to himself: "Who among the Rabbis signs his name Tabiumi? I do. This seems to show that my lucky day has come." When he arrived, he found that the Rabbis had voted to appoint R. Aha of Difti as their head. When they heard of his arrival, they sent a couple of Rabbis to him to consult him. He detained them with him, and they sent another couple of Rabbis. He detained these also, until the number reached ten. When ten were assembled, he began to discourse and expound the Oral Law and the Scriptures because a public discourse should not be commenced if the audience is less than ten. R. Aha applied to himself the saying, 'if a man is in disfavor he does not readily come into favor, and if a man is in favor he does not readily fall into disfavor.'

The story fits well into the Talmud's discussion of prophecy as it provides a "historic" example that supports R. Johanan's dictum. In fact, the story adds a further refinement on the nature of a שוטה's prophecy. The שוטה does prophesize, but without apparent success. Nevertheless, the future had been accurately predicted as

Mar b. R. Ashi was elected as the head of the Academy, and R. Aha of Difti was pushed aside. As such, the DNO 's question "How is it (prophecy) given to D'SOTS ?" (D'SOTS M'A H'A) assumes a profound significance. The question introduces the test case which establishes that a D'SOTS 's prophecy, unclear and problematic as it may be, carries a kernel of truth. Hence, R. Johanan's sarcastic remark about prophecy which proposes that following the destruction of the Second Temple prophecy is inevitably erroneous has been reread by the DNO in that R. Johanan's statement is taken at face value. Thus, according to the DNO , the D'SOTS may have more insight than we credit him with.

It is likewise possible to discern the DNO 's agenda at Hagiga 3b-4a, where a proposed definition of a D'SOTS is offered. In this DNO R. Huna and R. Johanan disagree whether all three examples of D'SOTS -like behavior enumerated in a D'SOTS must be present to classify one a D'SOTS , or whether one symptom will suffice.

איתמר, רב הונה אמר: עד שיהו כולן בנת אחת.
 רבי יוחנן אמר: אפילו באחת מהם. היכי דמי? אי
 דעביד להו דרך שטות -- אפילו בחדא נמי. אי דלא עביד
 להו דרך שטות, אפילו כולהו נמי לא. -- לעולם דקא
 עביד להו דרך שטות. והלן בבית קברות -- אימור כדי
 שחשרה עלין טומאה הוא דקא עביד. והיוצא יחידי
 בלילה -- אימור גנדרפס אחדיה. והמקרע את כסותו --
 אימור בעל מחשבות הוא.

It was taught: R. Huna said: they must all be [done] together. R. Johanan said: Even if [he does only] one of them. What is the case? If he does them in a D'SOTS -like manner, even one is also

[proof]. If he does not do them in a שוטה-like manner, even all of them [prove] nothing?
 --Actually, [it is a case where] he does them in a שוטה-like manner. But if he spent the night in a cemetery, I might say: He did [it] in order that the spirit of impurity might rest upon him. If he went out alone at night, I might say: He was seized by lycanthropy [to assume the form and characteristics of a wolf]. If he tore his garment, I might say: He was lost in thought.

The DNO strictly upholds neither R. Huna nor R. Johanan's definition. Instead, it advocates the stipulation "in שוטה-like manner" (דרך שטות), an amorphous and undefined classification, as the test of proving a person a שוטה. In accordance with R. Huna², who advocated all three examples of שוטה-like behavior be observed prior to categorizing an individual a שוטה, the DNO states that even if one behavior could be logically shown to have been performed for other reasons, the individual is not classified a שוטה.

אפילו בחדא נמי. אי דלא עביר להו דרך שטות,
 אפילו כולהו נמי לא. -- לעולם דקא עביר להו דרך
 שטות.

If he does not do them in a שוטה-like manner, even all of them [prove] nothing.
 --Actually, [it is a case where] he does them in a שוטה-like manner [thus rendering himself a שוטה according to the law].

So too, the DNO offers explanations that support R. Huna's position. Sleeping or dwelling in a cemetery at night or tearing one's garment need not be a sign of mental illness requiring classification as a שוטה. Yet in accordance with R. Johanan, who argued that one example of

abnormal behavior is sufficient to classify the individual a שוטה, the סתם also posits, "If he does them in a שוטה-like manner, even one is also [proof]" (א' דעביד להו דרך) (א' דעביד להו דרך). Like R. Johanan, the סתם recognizes that not all שוטים will demonstrate all of the סתם's examples of שוטה-like abnormal behavior. By synthesizing R. Huna and R. Johanan, the סתם leaves the Talmud's reader without a clear definition of the שוטה. The reader is left to infer a שוטה is one whose behavior -- in the absence of another rationale to explain such activity -- corresponds to one or more of the סתם's description of the שוטה.

The סתם's general conception of the שוטה appears closest to that of R. Huna. Not only does the סתם present arguments favoring R. Huna to refute immediate characterizations of the שוטה based on limited evidence, it also identifies itself with R. Huna by presenting the analogy of the goring ox. The סתם continues:

כיוון דעבידינהו לכולהו הוה כמו שנגח שור חמור וגמל. ונעשה מועד לכל.

But as soon as he does them all, he becomes like [an ox] who gored an ox, an ass and a camel, and becomes [thereby] מועד [forewarned gorers] in regard to all.

An ox is not initially regarded as a goring ox; its status changes only after it has gored three times. So too, the סתם suggests, the שוטה is considered by all to be a שוטה only after the three abnormal behaviors outlined in

the תלמידי ר' חנניאל have been definitively proven.

Finally, the DNO aligns itself with R. Huna in the conclusion of this הלכה. The Talmud's redactor notes R. Papa's assertion that R. Huna would have conceded to R. Johanan. Given that R. Huna conceives of a שוטה as engaging in self-destructive behavior, R. Papa argues had R. Huna been aware of the comprehensive formulation of the שוטה as "one that destroys all that is given to him" (זה המאבד כל מה שנותנים לו), he would have accepted it.

אמר רב פפא: אי שמיע ליה לרב הונא הא דחניא:
אי זהו שוטה -- זה המאבד כל מה שנותנים לו, הוה הבר
ביה. איבעיא להו: כי הוה הדר ביה -- ממקדע כסותו הוא
דהוה הדר ביה. דדמיא להא, או דלמא מכולהו הוה
הדר -- חיקו.

R. Papa said: If R. Huna has heard of that which is taught: Who is [deemed] a שוטה? "One that destroys all that is given to him"; he would have retracted [and considered one action as proof]. The question was raised: When he would have retracted, would he have retracted only with regard to the [case of the] man who tore his garment, because it resembles this [case]; or would he have retracted with regard to all of them? It remains [undecided].

The DNO, having succeeded in linking R. Huna's position to that of the goring ox (that is, the requirement of multiple incidents to effect a change in status), accepts, but undercuts, R. Papa's assertion. The DNO agrees with R. Papa that R. Huna would have preferred the later formulation "one that destroys all that is given to him" to the תלמידי ר' חנניאל's "and he that tears his garments" (והמקדע את כסותו). Yet the DNO leaves unresolved the

question of whether R. Huna would have found these actions a satisfactory test of who is a שוטה. This wariness may well reflect the DNO's own opinion that a שוטה cannot be incontrovertibly defined. For ultimately, the question of who is a שוטה is left unresolved; no definitive answer is provided.

Though the DNO eschews a single standard for determining mental illness at Hagiga 3a-4b, it does offer a single case at Kethubboth 60b where an individual who had functioned abnormally is most certainly a שוטה.

הוה עובדא וחנקתיה. ולא היא, ההיא שוטה. ולא
עבדי נשי דחנקן בניהו.

It once actually happened that a mother strangled her child. This incident is no proof. That woman was a שוטה. For it is not likely that [sane] women would strangle their children.

The DNO thus labels any woman who harms her child because she is suffering from severe postpartum depression a שוטה. The שוטה's abnormal behavior does not stem from another medical ailment as a source in Nidda 13b explains. There the Talmud differentiates between a שוטה and one who has lost her mind (נטרפה דעתה) as the latter's mind was deranged only owing to another disease. The שוטה's mind is at war with itself.

The DNO does not conceive of the שוטה's condition as permanent, as is evidenced by a passage at Rosh HaShana 28a. The DNO notes that Jews compelled to perform a religious obligation like eating matzah are considered to

have performed their religious duty. The **תנ"ך** wonders about the source of the compulsion. Is it duress applied by non-Jews, or is it the compulsiveness which accompanies being a **שוטה**? The Talmud's redactor then offers the following **לר' יוחנן** as proof that a mentally disabled individual is exempt from his communal and ritual obligations.

והתניא: עתים חלים עתים שוטה -- כשהוא חלים
הרי הוא כפקח לכל דבריו, כשהוא שוטה הרי הוא כשוטה
לכל דבריו.

But has it not been taught, 'If a man is sometimes in his sound mind and sometimes a **שוטה**, when he is in his sound mind he is regarded as sane in all his particulars, and when he is a **שוטה**, he is regarded as a **שוטה** in all particulars.

Should the **שוטה** regain his sanity, this felicitous development is not a product of his own doing. The **תנ"ך** reasons the **שוטה** has no control over his illness. In two separate rulings, both recounted at Sanhedrin 47a and Zebahim 12b, R. Johanan held the sacrifice of the apostate and the **שוטה** to be invalid. The **תנ"ך**, commenting on the necessity of both rulings, contrasts the apostate -- who intentionally opts out of the commandment (**מצוה**) system -- to the **שוטה**.

וצריכא דאי אשמעינן קמייחא: משום דאיהו דחה
נפשיה בידים אבל האי דממילא קא דחי אימא כישן דמי:
ואי אשמעינן הכא משום דאין בידו לחזור אבל החם
בידו לחזור אימא לא צריכא.

And both rulings are necessary. For had he taught us the first one only, [one might have assumed that] it was because he had rendered himself unfit [to offer a sacrifice] by his own

action; but as for the latter case [being a שוטה] where he was automatically unfit⁵, I might say that he is [merely] as a person who has slept [in the meantime]. Again, had he taught us only the latter, [one might have thought that] it was because it was not in his power to recover; but there [in the case of apostasy], since it was in his power to return, one might say that it does not [remain invalidated]. Both rulings are therefore necessary.

The שוטה's recovery, unlike the apostate's return, is not of his own control.

The symptoms of the שוטה's illness specific to his condition are the שוטה's incapability of fully comprehending his environment and his inability to control his behavior. At Baba Kamma 86b, as part of a discussion of whether the standard for embarrassment leading to payable damages (נזיל) is to be based on degrading the party in the eyes of others (אנלי) or on the internal reaction of the party himself (אפלי). The Talmud's redactor recounts Rabbi Meir's opinion that unlike the deaf-mute or minor, the שוטה is not subject to damages for degradation. The דנח explains that a minor, like a שוטה, would not feel the internal embarrassment of degradation. Rabbi Meir's standard for awarding damages for insult, therefore, must not be based on the internal reaction of the party himself (אפלי).

א"ב משום וילוחא היינו דקחני קטן אלא אי
אמר משום כיסופא קטן בר בושח הוא.

Now no difficulty arises if you say that Degradation is paid on account of the insult, [we have to ask], is a minor subject to feel

insulted?

Having dispensed with כ'פולא, the דנא proposes ו'לחא as the basis for requiring ג'ולא.

אלא מאי? משום ו'לוחא אפילו שוטה נמי אמר
שוטה אין לך בושת גדולה מזה.

What then? [You say that] Degradation is paid because of the disgrace (ו'לחא)? Why then should the same not apply even in the case of a שוטה? It may, however, be said that the שוטה by himself constitutes a disgrace of the highest order.

The שוטה is not accorded the right to sue for damages for insult as the שוטה's own abberant behavior is, regrettably, publicly embarrassing. The דנא, of course, is not advocating public ridicule of the שוטה. But rather, expressing its own horror over the שוטה's proclivity towards demeaning and inappropriate behavior. Given the שוטה's utter inability to control or recognize his comportment, it would be impossible for the court of law to legally determine the validity and/or effect of the insult against him. Tactless, cruel and inconsiderate insults levelled at the שוטה, however, are certainly not encouraged.

Notwithstanding the דנא's abhorrence of inappropriate behavior, it still recognizes the שוטה as human. In Shabbath 153a a case appears in which a traveller is caught at the beginning of the Sabbath carrying objects before finding an inn or domicile at which to stay. The דנא proposes a case in which the traveller has the choice of

giving the objects to a deaf-mute, a שוטה, or a minor or placing them on an ass in order to avoid breaking the Sabbath. Which is preferable in view of the fact that one is commanded to allow his animal to rest while these disabled parties are exempt from Sabbath law? The חסד responds it is preferable to put the objects on the ass, an animal, than to demean the deaf-mute, שוטה, or minor who are human beings.

חומר וחרש שוטה וקטן -- אחמור מנח ליה. לחרש
שוטה וקטן לא יהיב ליה. מ"ט? הני אדם, האי לאו
אדם.

[If there] an ass, and a deaf-mute, שוטה, or minor, he must place it on the ass and not give it to the deaf-mute, שוטה, or minor. What is the reason? The latter are human beings whereas the former is not.

The חסד thus affirms the שוטה's inalienable humanity. It insists that the שוטה's human dignity, like the minor and deaf-mute's, must be upheld. But as would be expected in light of the חסד's previous comments on the שוטה ("the שוטה by himself constitutes a disgrace of the highest order"), it is not surprising that the שוטה (completely lacking understanding/cognition) is accorded less regard than both the deaf-mute or minor.

חרש ושוטה לשוטה. שוטה וקטן לשוטה.
[In the case of] a deaf-mute and a שוטה --
then the שוטה [should be given the object in
order for the sound person to avoid Sabbath
violation. In the case of] a שוטה and a minor
[the object should be given] to the שוטה.

The שוטה is thus considered more of an "instrument"

available to the individual of sound mind than either the deaf-mute or the minor.

In its attempt to delineate the שוטה's legal rights, the DND reveals its agenda to be analogous to that of the later Tannaim, the Tannaitic DND, and the Amoraim. The DND at Baba Kamma 39a examines an apparent contradiction (קשיא) in Tannaitic teaching. M. Baba Kamma 4:4 states that the שוטה is not liable for damages caused by his ox. However, the next clause states that the court of law will appoint a guardian in whose presence testimony to determine damages may be given. The Talmud's redactor resolves the contradiction by presenting Raba's opinion that the guardian is appointed only when the ox is presumed to be a gorer. In so doing the שוטה's estate would only be liable for later gorings performed after the שוטה has been granted the assistance of a guardian responsible for keeping the ox under control.

The DND also sought to maintain the privileges accorded the שוטה. At Nedarim 35b the DND legislates that a husband must provide a sacrifice on behalf of his wife -- even should she be a שוטה -- as mandated by the marriage contract. Offering a בריתא of Rabbi Judah's as support, the Talmud's redactor frames the סוגיא as follows:

ואת חורה היולדת בין פקחח בין שוטה שכן אדם
מביא קרבן על אשתו. שוטה כדברי רבי יהודה דתניא:
רבי יהודה אומר: אדם מביא קרבן עשיר על אשתו וכל
קרבנות שחייבת שכן כותב לה. ואחריות דאית ליה עלי

מן קדמך דנא.

That verse, "This is the law for her that hath born" (Lev. 12:7) [Teaches] that whether the woman be sane or a שוטה, a man must offer a sacrifice on behalf of his wife. If [she be] a שוטה, [he offers the sacrifice] in accordance with R. Judah's dictum, who taught [the following in a בריתא]: R. Judah said: A man must offer a rich man's sacrifice for his wife, and all other sacrifices which are incumbent upon her; Since he writes thus for her [in the marriage settlement]; [I shall pay] "every claim you may have against me from before up to now."

On the other hand, the דמא agrees that the שוטה, on account of her disability, is exempted from her obligations. As the דמא at Nedarim 36a states:

אשחו שוטה היכי דמי, אי דאכלא כשהיא שוטה לאו
בח קרבן היא; ואי דאכלא כשהיא פקחח ונשחטית הא א"ר
רמיה...

[Now consider:] In respect to his שוטה wife, what are the circumstances? If she ate [heleb] whilst a שוטה, she is not liable to a sacrifice; while if she ate it when sane, and subsequently became a שוטה, [there is the ruling of] R. Jeremiah who said ["... the sacrifice is invalid"]³.

The שוטה is not liable for ritual, civil or criminal misdeeds. She has no specific obligations to either humanity or even God. Yet others are not free to renege on their obligations to the שוטה. Indeed, obligations incumbent upon others to דמא remain irrevocable.

At Kethubboth 20a the דמא grants the שוטה the privilege of engaging in commerce, though within certain limitations. In this דמא, the דמא differs pointedly with R. Ashi, who maintains that the שוטה can never effect a business transaction. In contrast, the דמא argues that

only the שוטה's inheritance must be safely maintained.

דבר שטיא. זבין נכסי. אחו בי חרי אמרי שהוא
שוטה זבין. אחו בי חרי ואמרי כשהוא חלים זבין. אמר
רב אשי: אוקי חרי להדי חרי. ואוקי ממונא בחזקת בר
שטיא. ולא אמרן אלא דאית ליה חזקה דאבהתיה. אבל ליה
ליה חזקה דאבהתיה אמרינן כשהוא שוטה זבין וכשהוא
שוטה זבין.

A [certain] שוטה sold property. Two [witnesses] came [and] said [that] he sold [the property] when he was a שוטה, and two [other witnesses] came [and] said he sold [the property] when he was sane. [And] R. Ashi said: Set the two [witnesses] against the two [other witnesses] and leave the property in the possession of the שוטה. And we say [this] only when he has the ownership-right of his forefathers. But if he has not the ownership-right of his forefathers, we say that he bought [the property] when he was a שוטה and that he sold [it] when he was a שוטה [and therefore the property passes to the purchaser].⁴

While the שוטה's inherited property must be protected by rabbinic legislation as it is suspected the שוטה might impulsively and injudiciously sell it, the דמם still seeks to give the שוטה considerable autonomy over his economic affairs. As such, the דמם's remedy champions the שוטה's conducting himself as a member of society with self-worth. The דמם will not deprive the שוטה of his privilege of making and carrying out daily economic decisions⁵.

The דמם advocates that the court of law afford the שוטה additional protections. For example, at Sota 25a, the Talmud's redactor provides בר' יוחנן stipulating that the court of law can not only admonish a suspected adultress on behalf of her incapacitated husband, but even assign

guardians to accompany the $\eta\sigma\iota\omega$ in order to ensure that he retracts the admonition before cohabiting with her, thereby reaffirming his marriage.

In sum, the $\Delta\eta\delta$ preserves the earlier Tannaitic and Amoraic conceptions of the $\eta\sigma\iota\omega$ as a disabled individual, who on account of his (or her) disability, must be protected under rabbinically-mandated legislation. It places inherited property under special protection, and assures a $\eta\sigma\iota\omega$ that her husband must meet his contractual obligations towards her. In addition, while the $\Delta\eta\delta$ seeks to harmonize earlier teachings concerning "who is a $\eta\sigma\iota\omega$," it proposes its own independent understanding of the $\eta\sigma\iota\omega$: it knows a $\eta\sigma\iota\omega$ when it sees one; such as when one behaves in a $\eta\sigma\iota\omega$ -like manner or in the case of postpartum depression at Kethubboth 60b. The $\Delta\eta\delta$ understands the $\eta\sigma\iota\omega$ to have no control over his extremely embarrassing behavior, which it deems disgraceful. Yet however much the $\Delta\eta\delta$ may abhor the $\eta\sigma\iota\omega$'s behavior, it nonetheless affirms his humanity. In rereading R. Johanan's view on prophecy and $\Delta\eta\delta$, the $\Delta\eta\delta$ even goes so far as to recommend that even the $\eta\sigma\iota\omega$'s apparently abnormal utterances not be dismissed summarily. The $\eta\sigma\iota\omega$, for all his problems and anguish, may still possess insight and information we may need.

FOOTNOTES

CHAPTER VI

- 1 The **סחם** also uses the word at Sota 21b in the hendiadys **שׁוֹטֵה חֲסִיד** or "foolish pietist". This phrase clearly matches many early Tannaim's conceptions of the **שׁוֹטֵה**. The individual is a **שׁוֹטֵה** for misplacing the commandment of modesty above that of saving another's life. The word **שׁוֹטֵה** by itself (as opposed to in this hendiadys), however, is not employed by the **סחם** to mean "foolish".

הֵיכִי דְּמִי חֲסִיד שׁוֹטֵה כְּגוֹן דְּקָא טַבְעָה אִיחָחָא
בְּהֵרָא וְאָמַר לָאו אִוְרָח אֶרְעָא לֹאִי־טַחְכוּלִי בֵּה וְאֶצְוֵלָה.
What is a foolish pietist like? -- A woman
is drowning in the river, and he says, 'It is
improper for me to look upon her and rescue her.'

- 2 The **סחם**'s attempt to dismiss abnormal behavior that could have been performed by a person of sound mind is remarkably similar to R. Huna's own thinking as noted in Jerusalem Talmud at Terumoth I:1.

א"ר חונא והא שיהא כוליהן בו. דלא כן אני אומר
היוצא בלילה קנוטרובוס. הלן בבית קברות מקטיר
לשדים. המקרע אח כסותו כוליקוס. המאבד מה שנותנין
לו קורייקוס.

Rabbi Huna said: "This (type of person, a **שׁוֹטֵה**) must exhibit all of them. For otherwise I could claim that a person who goes out at night is a werewolf. "[So too] a person who sleeps in a cemetery could be offering incense to spirits. A person who tears his clothes could be seeing visions. A person who destroys what is given to him could be delirious."

- 3 R. Jeremiah's ruling that is attributed to R. Johanan is discussed at length in Chapter 5 on pages 59-60. The ruling is affirmed here by the **סחם**.
- 4 The non-inherited property is thus classified as **הפקר**, ownerless property, that passes through the **שׁוֹטֵה**.
- 5 Preventing the **שׁוֹטֵה** from engaging in any business transactions would also be highly impractical.

CHAPTER VII
TANNAITIC AND AMORAIC UNDERSTANDINGS OF THE הו"ו
COMPARED AND CONTRASTED

In this chapter I will compare and contrast the Tannaitic and Amoraic understandings of the הו"ו. The reader will immediately note the many similar conceptions shared by both the Tannaim and Amoraim. Indeed, notwithstanding an occasional homiletic reference, the preeminent characteristic of formative rabbinic thought concerning the הו"ו is the emphasis it accords to constructing legal guarantees and safeguards for הו"ו, as well as to defining and examining boundaries on the הו"ו's communal and personal activities.

By the fifth Tannaitic generation, a basic consensus regarding the הו"ו had been reached -- he had neither understanding/cognition nor person control over his behavior. This consensus would prevail unchanged throughout the late Tannaitic and Amoraic periods. Despite the general concord, however, there was by no means unanimity in the delineation and articulation of the הו"ו's rabbinically mandated rights, privileges and exemptions. Nor was the process without combative seminal thinkers who greatly influenced later conceptions of the הו"ו. Disputes between Rabbis Meir and Jose in the Tannaitic period or Johanan and Huna in the Amoraic period reflect divergent philosophies and sympathies. The end of the Tannaitic

period marked a corresponding denouement in substantive halakhic creativity concerning the $\eta\sigma\iota\omega$. The Amoraim, though ready to examine, debate among themselves, refine and expand the Tannaitic concept of the $\eta\sigma\iota\omega$, generally refrained from advancing their own novel legal arguments.

Negative homilies concerning the $\eta\sigma\iota\omega$ are replete during the early Tannaitic period. Akabiah ben Mahelal conceived of the $\eta\sigma\iota\omega$ not as one suffering from mental illness or distress, but as a fool -- an irrational individual who squandered great opportunity¹. Rabbi Johanan ben Zakai was equally harsh: the $\eta\sigma\iota\omega$ is unable to understand Scripture and incapable to voice cogent dissent.² Rabbi Ishmael's view of the $\eta\sigma\iota\omega$ was unabashedly hostile. For Rabbi Ishmael the $\eta\sigma\iota\omega$ represented both a challenge to his system of hermeneutics and the antithesis of Torah. He considered proof from the $\eta\sigma\iota\omega$ as inherently inadmissible as it was the opposite of proof from the Torah.³ So too, an anonymously attributed passage in the Tosephta⁴ also likens the $\eta\sigma\iota\omega$ to the wicked and warns that $\eta\sigma\iota\omega$ will ultimately receive Divine wrath. For these early Tannaim, the $\eta\sigma\iota\omega$ had freely chosen to behave as a fool, if not as an idolater.

Yet a less strident view of the $\eta\sigma\iota\omega$ had emerged in the fifth Tannaitic generation and is exemplified by Rabbi Simeon ben Yohai, who held that the $\eta\sigma\iota\omega$ was not

responsible for his behavior as it stemmed from a biological disability.⁵ With his contemporaries, Rabbi Simeon ben Yohai understood that the *ḥoṭeṭ* had no choice in his inability to exercise proper judgment. The influence of this insight on the Amoraic homilies concerning the *ḥoṭeṭ* cannot be understated. In fact, the sole distinctly negative Amoraic statement associating the *ḥoṭeṭ* with sin, uttered by Resh Lakish⁶, does not hold the *ḥoṭeṭ* accountable for his behavior.

Likewise, the other Amoraic homilies concerning the *ḥoṭeṭ*⁷ --that link the *ḥoṭeṭ* with false prophecy-- do not propound the view of the *ḥoṭeṭ* himself as in any way responsible for his erroneous prognostications. In fact, the Amoraic statement about the *ḥoṭeṭ* and prophecy castigates post-biblical prophecy, not the *ḥoṭeṭ*. Later Amoraic or post-Amoraic readings of this material will, in fact, suggest that the *ḥoṭeṭ* has, on occasion, serious prophetic insight.

The later Tannaim not only transformed the definition of the *ḥoṭeṭ* from an often wicked "fool" or "jerk" to an individual with a specific mental disorder, they also sought to determine who should be placed into this new classification, or "who was a *ḥoṭeṭ*?" In an anonymous *ḥoṭeṭ*⁸, the later Tannaim maintained -- in a radical departure from their predecessors -- that a *ḥoṭeṭ* exhibited

three self-destructive behaviors: sleeping or dwelling in a cemetery, venturing out alone at night, and tearing his garment.⁹

This definition contains many paradigmatic elements of the later Tannaitic conception of the שוטה, namely his absence of free will, his deep mental anguish, and his self-destructive actions. Moreover, the definition corresponds to late Tannaitic thought as it rejects any correlation between the שוטה and a lack of mental acuity. As such behaviorally based classification would imply, categorization as a שוטה need not be permanent. Another anonymous אמוראי¹⁰ taught that the שוטה is not always considered a שוטה.

עמים חלים עמים שוטה. כשהוא חלים הרי הוא
נפקח לכל דבריו, כשהוא שוטה הרי הוא כשוטה לכל
דבריו.

If a man is sometimes in his sound mind and sometimes a שוטה, when he is in his sound mind he is regarded as sane in all his particulars, and when he is a שוטה, he is regarded as a שוטה in all particulars.

As such, the majority of provisions and restrictions specific to the שוטה are only enforced when his illness presents itself.

Unlike their predecessors, the Amoraim did not devise radically altered understandings of the שוטה. Instead, the Amoraim went about refining Tannaitic conceptions and legislation concerning the שוטה. It is worth noting that the overwhelming majority of Amoraic material on the שוטה

is commentary on Tannaitic formulations regarding the שוטה and his rights and exemptions. For example, Rabbis Johanan, Huna, Bun and the Babylonian Talmud's סנהדרין all accept the אמוראים that proposes "who is a שוטה?" as the acknowledged fundamental basis of their own opinions concerning the שוטה.¹¹ It is quite telling that the essential Amoraic dispute between R. Johanan and R. Huna emerged from the אמוראים' legal definition of a שוטה. Their only question was how many of the characteristics enunciated in the אמוראים needed to be manifest prior to classifying the individual as a שוטה.

Only R. Papa was willing to actually propose as a legal definition the "unprecedented" alternative¹² "One that destroys all that is given to him" (זה המאבד כל מה שנתן לו). This formulation, however, was coldly received by the סנהדרין, who undercut R. Papa's reasoning as insufficiently faithful to the original אמוראים. The סנהדרין itself, however, ingeniously subverted the Tannaim's tidy conception of an authoritative definition of the שוטה by leaving the entire issue unresolved. Yet when it observed what it considered highly atypical or abnormal behavior, such as postpartum depression¹³, it unhesitatingly classified the woman a שוטה.

In a variety of cases, the Tannaim established a conception of the שוטה as one, who on account of his

disability, is unable to shoulder his communally mandated responsibilities. He was therefore released from these responsibilities and exempted from all activities that required understanding/cognition such as offering sacrifices, slaughtering animals, or delivering a bill of divorce.

The שוטה was not held liable for transgressing either the civil or criminal law. For example, the שוטה was not considered liable at M. Baba Kamma 8:4 for wounding another person (והם שחבלו באחרים פטורים). Yet the שוטה, despite his handicap and potentially violent behavior, was not cast off as a pariah. Rather, laws were constructed to secure the greatest possible benefit for the disabled שוטה. For example, the above משנה specifies that while the שוטה is not liable for wounding others, they are liable for wounding him (חרש שוטה וקטן פגיעתן רעה, החובל בהן חייב). So too, a man was liable to offer a sacrifice on behalf of his wife should she be a שוטה, and priests who were שוטים were permitted to consume their priestly portion.

During the Tannaitic period, the sages determined the שוטה could not legally marry as understanding/cognition was requisite for the contractual act. Though marriages to שוטים were upheld by the court ex post facto, the intent of Tannaitic legislation was to shield שוטים from proceedings that would change their status without their own legal

consent¹⁴. The Amora Rami b. Hama also provides a psychological reason for this decision. Given the שוטה's lack of understanding/cognition, emotional insecurity and self-destructive behavior, Rami b. Hama views the Tannaitic decision as an attempt to minimize marital discord. As he states:

שוטה ושוטה דלא קיימא תקנתא דרבנן דאין אדם
 דר אם נחש בבפיפה אחת לא תקנתא דרבנן נשואין.
 [But in that of] a שוטה or שוטה, where the
 Rabbinical ordinance cannot be put into practice,
 since no one could live with a serpent in the
 same basket, the marriage was not legalized by
 the Rabbis.¹⁵

Once married, however, the שוטה¹⁶ was not permitted to divorce or undergo the ritual of halisa as both proceedings required understanding/cognition for legal consent. The שוטה was thus provided legal protection to ensure his (or her) personal status and economic rights would not be subject to unfair alteration.

This Tannaitic philosophy was not uniformly accepted by -- or known to? -- the early Amoraim. While a ברייתא¹⁷ teaches:

נחרשה יוציא נשתתית לא יוציא. נחרש הוא או
 נשתתה לא יוציא עולמית
 If she became deaf, he may divorce her; if
 she became a שוטה, he may not divorce her. But
 if he became deaf or a שוטה he may never divorce
 her.

Samuel and Resh Lakish maintain, respectively, that a שוטה may divorce his wife when he is quiet or when he has regained his sanity¹⁸. This perhaps is due to the

consistent rabbinic concern for the *ḥayyib*. However, the later Amoraim, as well as the Babylonian Talmud's *ḥayyib*, though careful to note that the marital laws concerning the *ḥayyib* are rabbinically derived¹⁹, do accept Tannaitic protection for both the *ḥayyib* and *ḥayyib* in family law.

Rabbi Jose, a fifth generation Tanna, is credited by the Mishnah with developing the concept of guardianship²⁰, whereby the *ḥayyib*'s affairs are placed in part under the guardianship of the rabbinic court or its agent. Rabbi Jose's innovation was his advocating the appointment of a guardian to help the *ḥayyib* manage his ox accused of goring. This concept is extended in Tannaitic literature to include the court warning a *ḥayyib*'s wife suspected of adultery. These same decisions are repeated by Amoraim in the Talmud without significant comment or conceptual expansion. Yet Mar Ukba, a first generation Amora, does broaden the concept of guardianship by offering additional economic protection to the children of a *ḥayyib* in order to ensure that the *ḥayyib*'s estate will provide funds for their support and maintenance. This proactive ruling, it should be cautioned, was not uniformly accepted. Rabina and R. Ashi disputed its basis in the sixth Amoraic generation²¹.

In mandating the appointment of a guardian, Rabbi Jose granted the *ḥayyib* a modicum of autonomy over his own affairs. Over the "objection" of R. Ashi, this concept was

expanded by the Babylonian Talmud's דנן^{22} to permit the שוטה to effect business transactions.

ולא אמרן אלא דאית ליה חזקה דאבהתיה. אבל ליה
 ליה חזקה דאבהתיה אמרין כשהוא שוטה זבן וכשהוא
 שוטה זבין.

And we say [this] only when he has the ownership-right of his forefathers. But if he has not the ownership-right of his forefathers, we say that he bought [the property] when he was a שוטה and that he sold [it] when he was a שוטה .

So long as the שוטה 's inheritance is safely protected, he is granted the privilege of considerable autonomy over his own economic affairs. As with Rabbi Jose's guardian, the דנן 's injunction presumes a benefit in granting the שוטה limited independence.

Finally, both the Tannaim and Amoraim seek to affirm the שוטה 's humanity. While this objective is more explicit in Amoraic literature, it is most assuredly based on Tannaitic precedent. The דנן , in distinguishing between an animal and those lacking understanding/ cognition²³, is merely articulating the obvious Tannaitic assumption that people can neither be used nor treated like beasts.

חמור וחרש שוטה וקטן -- אחמור מנה ליה. לחרש
 שוטה וקטן לא יהיב ליה. מ"ט? הני אדם, האי לאו
 אדם.

[If there] an ass, and a deaf-mute, שוטה , or minor, he must place it on the ass and not give it to the deaf-mute, שוטה , or minor. What is the reason? The latter are human beings whereas the former is not.

There is no contradiction in the דנן 's contention that there is no indignity greater than becoming a שוטה^{24} and

its statement above. However unfortunate or demeaning the ḥōlō's situation, he is still endowed with human dignity. Surely, the entire focus of rabbinic literature concerning the ḥōlō from the fifth Tannaitic generation onwards is to recognize the ḥōlō as a person. For instance, when Rabbi Jose distinguishes between a returning prisoner who can subject his wife to the test of the bitter waters and a ḥōlō who may not, he is not merely discussing civil or ritual procedure. He is also noting the ḥōlō, though a prisoner of his disability, can still perceive in part his environment and is therefore presumed to have greater insight into his wife's activities.²⁵

During both the Tannaitic and Amoraic periods the ḥōlō was best known as belonging to a specific of legal classification. With regard to civil and criminal procedure, marital status, communal rights, and economic responsibilities, there is little substantive difference between the sages of the fifth Tannaitic generation and their attributed or anonymous Tannaitic successors and the attributed or anonymous Amoraim living in the Land of Israel or in Babylonia. Rather, these rabbis devised rulings recounted in the Mishnah, Tosephta, Babylonian and Jerusalem Talmuds that delineated a remarkably stable conception of the ḥōlō's rights, privileges and exemptions. Their work would be examined and discussed well past their own times.

FOOTNOTES

CHAPTER VII

- 1 Source, M. 'Eduyoth 5:6.
- 2 Source, Menahoth 65a.
- 3 Source, Nidda 30b.
- 4 T. 'Aboda Zara 6:7.
- 5 Source, Song of Songs Rabba 4:7.
- 6 At Sota 3a.
- 7 At Baba Bathra 12b.
- 8 At Hagiga 3b.
- 9 There is no evidence that this definition was actually used in a court of law. Through the lengthy discussion of civil procedure in M. Sanhedrin, there is no mention of the נטוי.
- 10 At Rosh HaShana 28b.
- 11 See the נטוי at Hagiga 3b-4a and J. Terumoth I:1.
- 12 While the formulation R. Papa proposes is found at J. Terumoth I:1, it is not cited by the דנן of the Babylonian Talmud and hence, should not be considered part of its body of knowledge concerning the נטוי. As such, R. Papa offers a "unique" (that is, unprecedented) formulation.
- 13 Source, Kethubboth 60b.
- 14 Significantly, neither the Tannaim nor Amoraim offer a guardian that will enable the נטוי to participate in a marriage.
- 15 At Yebamoth 112b.
- 16 The Tannaim suggest a נטוי can never divorce.
- 17 At Yebamoth 110b.
- 18 At J. Terumoth I:1.

- 19 Even should a woman be capable of preserving her Bill of Divorce, the court may still order her husband to maintain the marriage. See Yebamoth 113b. For the Tannaim ruled that a שוטה should not be dismissed where she is incapable of protecting herself (ואמור) (רבנן לא ליפקא שלא ינהגו בה מנהג הפקר)
- 20 See M. Baba Kamma 4:4.
- 21 At Kethubboth 48b.
- 22 At Kethubboth 20a.
- 23 At Shabbath 153a.
- 24 Literally, "the שוטה by himself constitutes a disgrace of the highest order" (שוטה אין לו בושה) (גדולה מזה), Baba Kamma 86b.
- 25 Source, T. Sota 4:5

CHAPTER VIII GENERAL CONCLUSIONS

The rabbis of the fifth Tannaitic generation espoused the radical conception of the שוטה as a member of a specific legal category whose rights and privileges required particular attention. This view, surviving well past the formative rabbinic period, characterizes the שוטה as one whose severe mental distress leads to both self-destructive behavior and an absence of understanding/cognition in legal proceedings. Like the קורר'קוס, נטרפה דעת or individual possessed by a רוח רעה, the שוטה is assessed as having no rational control over his behavior. But while their exhibited behavior may be deemed inappropriate, these groups of people themselves are not considered bad, evil, or inferior. The שוטה distinguishes himself from the קורר'קוס, נטרפה דעת or individual possessed by a רוח רעה for the latter's loss of functioning is temporary. In contrast, the שוטה's inability to function independently is long-term.

Both the late Tannaim and the Amoraim considered the שוטה emotionally disabled, not mentally retarded. Indeed, there is no record in the formative rabbinic period of a single rabbinic attempt to curb the rights of one of limited intellectual aptitude. The Rabbis did not offer standards for curbing the intellectually limited

individual's rights. They did not seek a foothold on the slippery slope of determining who was -- and was not -- intellectually qualified to participate fully in communal life. Instead, they endeavored to exempt from activities requiring autonomous understanding/cognition the individual whose exhibited self-destructive behavior had already indicated his inability to function independently. Because the person of limited mental acuity does not readily demonstrate an inability to function independently, he therefore was not regarded as needing protective exemptions.

Rabbinic *halakha* protecting the *shoteh* include the ordinance proscribing the *shoteh's* right to legally contract a marriage. This prohibition is grounded on the *shoteh's* inability to provide legal consent to a contract and the social view that a *shoteh's* disruptive and self-destructive behavior precluded normal companionship. It is not based on eugenics. The Rabbis did not advocate a system whose purpose was to genetically weed-out the offspring of persons judged mentally incompetent. Nor did they propose general prescriptions such as sterilization or mandatory birth control to ensure the *shoteh* will not reproduce. In fact, no genetic stigma whatsoever is placed upon the *shoteh* as the Rabbis refrain from attributing *halakha* to a transgression performed by the individual's parents¹.

The formative rabbinic period ends in disagreement over what *ḥalutz*, mental disability, entails. In anonymously attributed *ḥalutz* in Hagiga 3a-b and J. Terumo 1:1 the Rabbis conceive of the *ḥalutz* as displaying three examples of self-destructive behavior: venturing out alone at night, sleeping or dwelling in a cemetery and rending one's garment. The early Amoraic interpreters of the *ḥalutz*, however, disagree whether all three enumerated examples must be present to classify one a *ḥalutz*, or whether one behavior will suffice. The *ḥalutz*, having undermined specific tests for defining a *ḥalutz*, leaves the entire question of "Who is a *ḥalutz*?" unresolved.

Instead, the *ḥalutz* promotes analysis of each alleged *ḥalutz* on a case-by-case basis. The *ḥalutz* acknowledges human behavior as the product of highly complex motives and personal histories. It also recognizes that even non-psychotic individuals may act on occasion in an abnormal, anti-social, or self-destructive fashion. Hence, the *ḥalutz* refuses to reduce its understanding of mental disability into a single, simple legal formulation. This reluctance to place individuals into rigid classifications reflects a profound, intuitive grasp of modern psychiatric technique. Like the *ḥalutz*, modern psychiatry eschews mechanistic diagnoses that are based entirely on narrowly-defined standards. Determinations of psychiatric

disorders -- and the subsequent judgment of mental competency -- are made after the therapist has conducted interviews with the patient, observed his behavior, examined his medical condition, and presented these conclusions in a written case history.

Similarly, the DND advocates classifying persons as D'UW only when their behavior was performed in a UW-like manner and cannot be attributed to any other "legitimate" reason. Yet the analogy of rabbinic and psychiatric definitions of mental and emotional disability must not be overstated. The UW was not diagnosed by the Rabbis as having a particular disease. So too, there is no record of physicians providing clinical treatment for the UW. But perhaps this absence of medical care should come as little surprise. Before the advent of hospitals and anti-psychotic drugs, what substantive assistance could the physician actually provide?

It is most revealing that the discussion of the UW falls within the category of medical ethics, a discipline unknown to our Sages. This new field of study seeks to establish and criticize grounds for decisions and procedures specific to the practice of modern medicine, as well as raise ethical dilemmas and construct comprehensive theories of ethical medical practice. Although contemporary medical ethical discourse testifies to a

revolutionary transformation in medical treatment, its underlying issues transcend modernity. For the Jew, it is extremely instructive to note that the Rabbis of the formative rabbinic period grappled with the exact same moral dilemma posed to the medical ethicist today. They questioned: how can society affirm human dignity while simultaneously circumscribing the rights of disabled persons incapable of making autonomous decisions.

As detailed in the body of this thesis, the Rabbis offered a variety of mechanisms to assist the נטול. Remedies like guardianship, limited liability and exemption established a communal role in guaranteeing the נטול as many benefits as possible. Such rabbinic wisdom is not without its contemporary relevance. For all of its wealth and medical knowledge, America's treatment of the mentally disabled is appalling. State and federal governments budget meager resources for the care of the mentally and emotionally disabled. Indeed, they are guilty of the widespread, egregious practice of de-institutionalizing the mentally disabled from state-supported psychiatric hospitals without offering alternative care. Such policies mock even the pretense of societal morality as they compel persons totally incapable of caring for themselves to fend for themselves.

Formative rabbinic literature provides a conceptual

framework that, if accepted, would refine medical ethics and public policy regarding mental disability. Rabbinic guidelines for the management of mental disability applicable to contemporary medical ethics and public policy are outlined below.

Medical and Legal Treatment of the Mentally Disabled is a Communal Issue

The discussion of the *שו"ת* in formative rabbinic literature emphasized not just the *שו"ת*'s legal exemptions, but the community's responsibilities to the *שו"ת*. Ultimately, care for the *שו"ת* was entrusted to the authoritative body for communal regulation, the *בית דין* (court of law).

The care and well-being of the mentally disabled in our own time also rests ultimately with the community. Modern society must therefore also study and delineate how it can best serve the interests of the disabled.

Mainstream the Mentally Disabled

Rabbinic legislation concerning the *שו"ת* was developed primarily to include his participation in society. The *שו"ת* was neither ostracized nor left to his own devices. Instead, provisions were enacted not only to enable the *שו"ת* to manage his routine affairs², but also to ensure the *שו"ת*'s spouse or family would provide care.

Where the ability exists to care for the mentally disabled at home or in supervised community homes, they should not be conveniently institutionalized and abandoned. Programs encouraging contact between the mentally disabled and the greater population should be expanded. Moreover, opinionmakers should stress the morality of creating zoning provisions in residential areas for facilities such as community homes for the mentally disabled. Finally, when feasible, remedies that grant the disabled control over routine economic decisions should be encouraged.

Foster Guardianship and Supervisory Support for the Mentally Disabled

Rabbi Jose first described a concept of guardianship for the נטול, arguing that the נטול be granted assistance enabling him to live with a modicum of independence. Similarly, the rabbinic prohibition against a נטול's being divorced is derived from the conviction that others must not place a woman lacking understanding/cognition of her own actions into a position where she would be likely to be abused or otherwise violated.

Mentally and emotionally disabled persons should likewise receive assistance that will grant them limited autonomy. However, where they are deemed unable to care for themselves, courts and state agencies should not advocate their deinstitutionalization on constitutional grounds.

Where the mentally disabled individual lacks competency, he should not be considered the arbiter of his own care. The mentally disabled individual should be prohibited from residing in unhealthy, squalid, and dangerous environments such as public parks and subways, where he is subject to the likelihood of abuse or violation.

Maintain Liabilities for the Mentally Incompetent

The Mishnah noted that נטול were not responsible to pay monetary damages that resulted from either their own or their animal's violent behavior. As such, a נטול could not be executed for having [unwittingly] committed a capital offense.

It is immoral to judge and assess the liability of a mentally disabled individual by the same standard employed in determining the culpability of a person of sound mind. So too, the advocacy of capital punishment for those lacking understanding/cognition of their deeds is completely reprehensible.

Carefully Delineate When a Mentally Disabled Person is Incompetent

In a נטול the Rabbis explained that the נטול when behaving normally should be treated as

a person of sound mind.³ The Amoraim extended this view and suggested that mental disability could have multiple presentations.

Modern anti-psychotic drugs enable some mentally ill people to function within societal norms. In other cases, mentally disabled persons may function normally without pharmacologic intervention. In such situations, their legal status should conform to their general behavior.

Do not Immediately Curb the Rights of the Mentally Retarded

As mentioned above, there is no record in the formative rabbinic period of a single rabbinic attempt to curb the rights of one of limited intellectual aptitude.

Given the dangers of elitism and tyranny inherent in mechanistically labelling the intellectual status of those of limited mental acuity, as a general rule, a mentally retarded person who is able to function independently should be accorded full rights by the community.

Discourage both the Marriage and Divorce of Parties Lacking Understanding/Cognition

Tannaitic and Amoraic literature is replete with rulings that seek to circumscribe, if not revoke, the *gadol*'s ability to marry and divorce.

Contemporary marriages should be grounded on the understanding/cognition of a spouse's responsibilities no less than those of the formative rabbinic period. As such, the clergy should refrain from marrying those who are unable to understand their own actions, or whose severe mental anguish would likely vitiate domestic tranquility.

So too, divorce from a mentally disabled partner should be discouraged as the mentally disabled partner is likely to be left helpless and neglected. If divorce is inevitable, however, the partner of sound mind should be admonished to provide some form of security and well-being for the mentally disabled person.

In conclusion, rabbinic compassion for the $\eta\eta\eta$ was manifest in the Rabbis repeated and detailed efforts to provide the $\eta\eta\eta$ special protection. Formative rabbinic literature offers great legal, psychological and moral insight into the question of mental and emotional disability. Rabbinic decisions offer profound guidance to all endeavoring to affirm the human dignity of the least fortunate members of society, the mentally and emotionally disabled.

FOOTNOTES

CHAPTER VIII

- 1 Not only is eugenics absent from the rabbinic conception of the שוטה, the שוטה is not the product of illicit sexual activity. The equation of various types of disability with sexual activity considered aberrant was proposed in Masekkeh Kallah 50b by R. Johanan, though it is completely rejected by the rabbinic majority in the following passage:

אמר רבי יוחנן ארבעה דברים סחו לי מלאכי השרת ואלו הן. חגרים, סומים, אלמים, חרשים. חגרים מפני מה מפני שהופכים את שולחנם ועושים כמעשה בהמות. סומים מפני מה מפני ש מסתכלין באוחו מקום. חרשים מפני מה מפני שנושקים בואחו מקום. וחכמים אומרים [אין הלכה כרבי יוחנן אלא] כל מה שאדם רוצה לעשות באשחו [עושה כי אין הדבר דומה אלא למי שלקח בשר מטבח רצה אוכלו צלי רצה אוכלו מבושל רצה אוכלו ע"ג גחלים].

R. Johanan said: The Ministering Angels told me four things and they are related to the lame, the blind, the dumb and the deaf. Why [are children born] lame? Because [their parents] overturned the table ["unnatural acts"] and behaved like animals. Why blind? Because they gaze at 'that place'. Why deaf? Because they converse during cohabitation. Why dumb? Because they kiss 'that place'. The Sages say the law is not in agreement with R. Johanan, but a man may do with his wife as he desires; because the matter can be best compared to a man who purchased meat from the butcher: if he wishes he eats it raw, if he wishes he eats it boiled, if he wishes he eats it roasted over coals.

*Note that the שוטה is not mentioned in the above list.

- 2 As opposed to more substantive economic decisions such as the disposal of inherited property.
- 3 It should be noted that this mandate was not considered absolute. They also argued that a שוטה, even should he regain his sanity temporarily, can never divorce.

APPENDIX 1
TERMS OTHER THAN שוטה
DESCRIBING MENTAL AND EMOTIONAL DISABILITY

HALASH DA'ATO -- חלש דעתו
Ta'anith 24b

רב פפא גזר תעניתא חלש לביה טעים מדי בעא רחמי ולא אתא
 מטרא. אמר ליה רב נחמן בר איש פרתי אי שריף מר חדא פונא
 דריסא הוה אחי מטרא. חלש דעתיה אתא מטרא. (תענית כד:ב)
 R. Papa ordered a fast but, feeling very weak, took
 some food. He prayed, but no rain came. R. Nahman b. Ish
 Prati (of the Eurphrates) then said to him: "If only you
 would have swallowed another plate of grits, rain would
 have come." R. Papa felt depressed, and then the rain
 came.

KORDIKOS -- קורדיקוס
J. Terumoth 2a

במאבד מה שנותנין לו אפילו שוטה שבשוטים אין מאבד כל מה
 שנותנין לו.
 With regard to a person who destroys that which is
 given to him, even the greatest of שוטים does not destroy
 everything given to him.

קורדיקוס קורדיקוס אין בו אחח מכל אילו.
 A delirious person does not evidence any of these.

מהו קורדיקוס. א"ר יוסי המים.
 Who is a delirious person? R. Jose says: one who is
 confused in the mind.

אחא עובדא קומי ר' יוסי בחד טרסיי דהוון יהבון ליה
 סימוק גו אכום והוא לעי אכום גו סימוק אמר דו הוא קורדיקוס
 שאמרו חכמים.
 A case came before R. Jose concerning an individual
 from Tarsus. They gave him red meat after dark wine and he
 would cease raving and dark wine after red meat and he
 would cease raving. He said that this is the [type of]
 delirious person of whom the Sages spoke.

M. Gittin 7:1

מי שאחזו קורדיקוס ואמר כתבו גט לאשתי, לא אמר כלום.
 He who was seized by delirium and said, "write a bill
 of divorce for my wife [so I may divorce her]," has not
 said anything [that is legally binding, and hence, his
 request is ignored].

Shabbath 115a

אמר כתבו גט לאשתי, ואחזו קורדיקוס, וחזר ואמר אל
 תכתבו, אין דבריו האחרונים כלום. (גטין ז:א)
 If he said, "write a bill of divorce for my wife, [so
 I may divorce her]" and then delirium seized him, and
 [only] then he said, "Do not write it [so I may maintain
 the marriage]," his latter statement is nothing [that is
 legally binding, and hence, is ignored enabling the bill of
 divorce to be written].

כסילים -- K'SILIM
Berakhoth 23a

וקרוב לשמוע (דברי חכמים) אמר רבא הוי קרוב לשמוע דברי
 חכמים שאם חוטאים מביאים קרבן ועושים תשובה.
 "And be ready to hearken." (Ecclesiastes 4:17) Raba
 said: Be ready to hearken to the words of the wise, who, if
 they sin, bring an offering and repent.

מחח הכסילים [זבח] אל תהי ככסילים שחוטאים ומביאים קרבן
 ואין עושים תשובה.
 "It is better than when fools give." Do not be like
 the fools who sin and bring an offering and do not repent.

כי אינם יודעים לעשות רע.
 "For they know not to do evil."

אי הכי צדיקים ניהו.
 If that is the case, are they not righteous? [As they
 do not know how to perform evil deeds].

אלה אל תהי ככסילים שחוטאים ומביאים קרבן ואינם יודעים
 אם על הטוב הם מביאים אם על הרעה הם מביאים.
 What it means is: Do not be like the fools who sin and
 bring an offering and do not know whether they bring it for
 a good action or for a bad action.

אמר הקב"ה בין טוב לרע אינן מבחינים והם מביאים קרבן
 לפני.
 Says the Holy One, blessed be He: They do not
 distinguish between good and evil, and they bring an
 offering before me.

רב אשי ואיחמי רב חנינה בר פפא אמר שמור נקיבך בשעה
 שאחא עומד בחפלה לפני. (ברכות כג:א)
 R. Ashi -- or some say, R. Hanina b. Papa -- said:
 Guard your orifices at the time when you are standing in
 prayer before Me.

מיתבא דעת -- MEITVA DA'AT
Shabbath 128b

אמר מר אם הייתה צריכה לנר חבירתה מדלקת לה אה הנר.
Master said: "If she needs a lamp, her neighbor may kindle a lamp for her."

פשיטא.

That [teaching] is obvious.

לא צריכה בסומא מהו דחזמא כיון דלא חזיא אסור.
This is necessary [to be taught] only in the case of a blind [woman]: you might argue, since she cannot see it, it is forbidden;

קא משמע לן איחובי מיתבא דעתא סברא אי איכא מירי חזיא חבירתא וענדה לי. (שבת קכח:ב)
Therefore he informs us that we tranquilize her mind, [as] she reasons, 'if there is anything [required] my friend will see it and do it for me.'

MISHTOLEIL -- משחולל
Sanhedrin 97a

וחהי האמת נעדרת.
"Honesty has been lacking, he who turns away from evil is despoiled." (Isaiah 59:15) What is meant by "Honesty has been lacking"?

אמרי דבי רב מלמד: שנעשיה עדרים עדרים והולכת לה.
The Scholars of the School of Rab said: This teaches that it will split up into separate groups and depart.

מאי וטר מרע משחולל על הבריות? אמרי דבי ר' שילא: כל מי שטר מרע משחולל על הבריות. (סנהדרין צו:א)
What is the meaning of "he who turns away from evil is despoiled"? The School of R. Shila said: He who departs from evil will be dubbed a fool by his fellow-men.

RUACH RAE'AH -- רוח רעה
'Erubin 41b

מי שהוציאוהו נכרים או רוח רעה אין לו אלא ד' אמות
He whom Gentiles, or an evil spirit have taken out [beyond the permitted Sabbath limit] has no more than four cubits [in which to move].

החזירוהו כאילו לא יצא.
If he was brought back, [he is regarded] as if he had never gone out.

הולכיכוהו לעיר אחרת נתנוהו בדיר או בסהר. ר"ג ור' אלעזר
בן עזריה אומרים מהלך אה כולה.

If he was taken to another town, or if he was put in a cattle-pen or cattle-fold, he may ruled R. Gamaliel and R. Eleazar b. Azariah, move through the whole of its area.

רבי יהושע ור"ע אומרים אין לו אלא ד' אמות...
But R. Joshua and R. Akiba ruled: he has only four cubits [in which to move].

גמ': ח"ר ג' דברים מעבירין את האדם על דעתו ועל דעת קונו.
Gemara. Our Rabbis learned: Three things deprive a person of his senses and of a knowledge of his Creator.

אלו הן -- עובדי כוכבים, ורוח רעה ודקדוקי עניות.
Namely, idolaters, possession by a רוח רעה, and oppressive poverty.

למאי נפקא מינה? למיבעי רחמי עלייהו. (עירובין מא:ב)
In what respect could this matter? In respect of invoking heavenly mercy to be delivered from them.

RUACH RAE'AH -- רוח רעה
M. Shabbath 2:5

המכבה את הנר מפני שהוא מחירא מפני עו"ג, מפני לסטים,
מפני רוח רעה, ואם בשביל החולה שישון פטור. (שבת נ:ד)
He who extinguishes a lamp [on the Sabbath] out of fear of gentiles, bandits, or possessed by an רוח רעה, or in order that a sick person might sleep, is exempt [from liability].

SHE'AMUM -- שעמום
Sota 24a-b

רבי יונתן האי איש איש מאי עבד ליה? מיבעי ליה לרבות
אשת חרש ואשת שוטה ואשת שעמום. (סוטה כד:א-ב)
What then, does R. Jonathan make of the repetition of the word 'man' [at Numbers 12:14]? He required it to include the wife of a deaf-mute man, the wife of a שוטה, and the wife of a weak-minded man.

SHOPHTANI -- שופחני
Baba Bathra 122a

ולא נתחלה אלא לכספים. שנאמר: בין רב למעט. למאי
אילימא לשופרא וסניא אטו בשופחני עסקינן. (בבא בתרא קכ"א)
And it was divided only according to monetary [values], as it is said, "Whether few or many." In what respect? If it be suggested [concerning lands] of superior and inferior quality, [it could be retorted] "Are we discussing fools?" [It is obvious that a person of sound

senses would not accept a portion of soil of inferior quality without equitable compensation.]

TAERUF DA'AT -- טרוף דעת
Baba Bathra 156b

אמר רבי לוי. קונין קנין משכב מרע אפי' בשבת, ולא לחוש
לדברי ר' אליעזר אלא שמא חטרוף דעתו עליו. (בא נחרא קנו: ב)
R. Levi said: [symbolic] acquisition may be acquired
from a dying man even on the Sabbath; but [this is] not due
to a consideration of the view of R. Eliezer, but to the
possibility his [peace of] mind might be disturbed. [Note:
seeing that no legal acquisition is being arranged, the
dying person will consider himself dying; this will
provoke mental anguish that could accelerate his death.]

TAERUF DA'AT -- טרוף דעת
Nidda 13b

שנטרפה דעתה: היינו שיטה שנטרפה דעתה? מחמת חולי.
[Regarding תרומה] Or a woman who has lost her mind
[Pisqa]. Is not this exactly the same as a שוטה? -- This
refers to one whose mind was deranged owing to a disease.

TAERUF DA'AT -- טרוף דעת; TIPAESH -- טפש

Kethubboth 105a-b

חנו רבנן: כי השוחד יעור עיני חכמים קל והומר לספשי
ויסלף דברי צדיקים קל והומר לרשעים.
Our Pabbis taught: "For bribes blind the eyes of the
wise [clearsighted] (Ex. 23:8)" -- and much more so those
of the foolish. "And pervert the pleas of those who are
right" -- and much more so those of the wicked.

מדי טפשים ורשעים בני דינא נינהו,
For the foolish and the wicked will receive their
judgment,

אלא הכי קאמר: כי השוחד יעור עיני חכמים אפילו חכם גדול
ולוקח שוחד אינו נפטר מן העולם בלא סמיוח הלב.
But is this what is meant: "For bribes blind the eyes
of the wise [clearsighted]" -- even a great Sage who takes
bribes will not depart from the world without [the
affliction of] a dullness of mind.

ויסלף דברי צדיקים אפילו גמור ולוקח שוחד אינו
נפטר מן העולם בלא טרוף דעת. (כתובות קה:א-ב)
"And pervert the pleas of those who are right", even one
who is righteous in every respect and takes bribes will not

depart from this world without [the affliction of] confusion of mind.

TIPAESH -- פ"ט
Megilla 12a

ובמלאות הימים האלה וגו': רב ושמואל. חד אמר מלך פיקח היה חד אמר מלך טיפש היה. מאן דאמר מלך פיקח היה. שפיר עבד דקריב רחיקא ברישא דבני מאחיה כל אימת דבעי מפייס להו.
"And when these days were fulfilled." (Esther 1:5)
Rab and Samuel interpreted this differently. One said he was a sensible king and one said he was a foolish king.

מאן דאמר מלך פיקח היה. שפיר עבד דקריב רחיקא ברישא דבני מאחיה כל אימת דבעי מפייס להו.
The one who said he was a sensible kind said that he did well in entertaining his distant subjects first, because he could win over his own city at any time he wished.

ומאן דאמר טיפש היה. דאיבעי ליה לקרובי בני מאחיה ברישא דאי מרדו ביה הנך הווי קיימי בהדיה. (מגילה י"ב:א)
But the one who held that he was foolish says that he ought to have entertained the inhabitants of his own city first, so that if others rebelled against him, these [subjects] would have supported him.

TIPAESH -- פ"ט
Sanhedrin 48b

ח"ל כי קבר חקברנו מכאן רמז לקבורה מן החורה.
In the verse "You shall surely bury him (Deut. 21:29)" -- here we find an allusion to burial in the Torah.

א"ל שבור מלכא לרב חמא. קבורה מה"ח מניין? אישחיק ולא א"ל ולא מיד.
King Shapor [II of Persia, 309-380] asked R. Hama: From what passage in the Torah is the law of burial derived? But he [R. Hama] remained silent and made no answer.

אמר רב אחא בר יעקב: אימסר עלמא בידא דטפשי דאיבעי ליה למימר כי קבור דליעבד ליה ארון... (סנהדרין מח:ב)
R. Aha b. Jacob (said) [exclaimed]: The world has been given over to fools, for he should have quoted, "For you shall bury him."

TIPAESH -- פ"ט
Song of Songs Rabba 4:7

חני רשב"י בשעה שעמדו ישראל לפני הר סיני ואמרו כל אשר
 דבר הי נעשה ונשמע. אוהה שעה לא היה בהם לא זבים ולא מצורעין
 ולא חגרין ולא סומין. לא אלמין ולא חרשין. לא שוטין ולא
 שממין. לא טפשין ולא חלוקי לב. (שיר השירים רבה ד:ז)
 "Thou art all fair my love." (Song of Songs 4:7) R.
 Simeon b. Yohai taught: "When Israel stood before Mount
 Sinai and said, 'All that the Lord has spoken will we do
 and obey (Ex. 24:7),' at that moment there were among them
 neither persons with issue nor lepers nor lame nor blind,
 no dumb and no deaf, no שוטים nor demented ones, no
 dullards and no doubters."

APPENDIX 2
UNITS FROM THE MISHNAH -- מסניות מן המשנה

M. ABOT 4:7

רבי ישמעאל בנו אומר החושך עצמו מן הדין, פורק ממנו
 איבה וגזל, ושבועת שוא, והגס לבו בהוראה, שוטה רשע, וגס רוח.
 (אבות ד:7)

Rabbi Ishmael, his son, said, he who shuns judicial
 office rids himself of hatred, (and) robbery and perjury,
 but he that presumptuously thrusts himself forward to lay
 down a decision is foolishly wicked and of an arrogant
 disposition.

M. BABA KAMMA 4:4

שור של פקח שנגח שור של חרש שוטה וקטן חייב.
 If an ox of an owner with unimpaired faculties goes an ox
 of a deaf-mute, a שוטה or a minor, the owner is liable.

ושל חרש שוטה וקטן שנגח שור של פקח פטור.
 Where, however, an ox of a deaf-mute, a שוטה, or a
 minor gores an ox of an owner whose faculties are
 unimpaired, there is no liability.

שור של חרש שוטה וקטן שנגח בית דין מעידין להן
 אפוטרופוס ומעידין להן בפני אפוטרופוס.
 If an ox of a deaf-mute, a שוטה, or a minor gores, the
 court of law appoints a guardian in whose presence
 witnesses will be able to testify.

נחפקח החרש נשתפה השוטה והגדיל הקטן חזר לתמותו דברי ר'
 מאיר.
 If the deaf-mute recovers his senses, the שוטה becomes
 sane, or if the minor becomes of age, the ox previously
 declared an aggressor will return to the state of
 non-aggressor -- these are the words of Rabbi Meir.

ר' יוסי אומר הרי הוא בחזקתו.
 R. Jose, however, says that the ox will remain in the
 status quo.

שור האצטדין אינו חייב מיתה שנאמר כי יגח ולא שיגחוהו.
 In the case of a stadium ox, the death penalty is not
 imposed, as it is written: "If an ox gore, excluding cases
 where it is goaded to gore."

M. BABA KAMMA 8:4

חרש שוטה וקטן פגיעתן רעה, החובל בהן חייב, והם שחבלו
באחרים פטורים.

It is a bad thing to come into damaging contact with a deaf-mute, a שוטה or a minor, since he that wounds them is liable, whereas if they wound others they are not liable.

העבד והאישה פגיעתן רעה, החובל בהן חייב, והם שחבלו
באחרים פטורים,

It is a bad thing to come into damaging contact with a bondsman or a woman, for he that wounds them is liable, but if they wound others they are not liable.

אבל משלמין לאחר זמן, נחגרשה האישה, נשחרר העבד,
חייבין לשלם. (בבא קמא 42:ח)

Nevertheless they must pay compensation thereafter.
If the woman were divorced or the bondsman were emancipated, they are liable to pay damages.

M. BEKKOROTH 7:6

הכוש הגיחור והלבקן והקפח והננס והחרש והשוטה והשיכור
ובעלי נגעים טהורים -- פטולין באדם בכשרים הבהמה. רשב"ג אומר:
שוטה מן הבהמה אינה מן המחובד... (בכרות ז:ו)
[If one is like an] Ethiopian, a Gihur, a Labkan, a Kippeah, a dwarf, a deaf-mute, a shoteh, intoxicated, or afflicted with plague marks which are clean -- [these defects] disqualify in human beings but not in animals.
R. Simeon b. Gamaliel says: One should not choose for sacrifice a mad animal...

M. 'EDUYYOTH 5:6

עקביא בן מהללאל העיד ארבע דברים. אמרו לו עקביא חנור
בן בארבע דברים שהיית אומר ונעשך אב ב"ד לישראל.
Akabiah b. Mahalalel gave testimony in four matters.
They said to him, "Akabiah, retract the four rulings which you have laid down, and we shall make you patriarch of the Court of Israel."

אמר להן: מוטב לי להקרא שוטה כל ימי ולא ליעשות שעה אחת
רשע לפני המקום. שלא יהיו אומרים בשביל שררה חזר בו.
He said to them: "It is better for me to be called a שוטה my whole life but not be deemed a wicked person before the Omnipresent for even one minute. So that people should not say, 'because he craved for high office, he retracted.'" [On account of his heretical accusation that the bitter water to a freed slave girl named Karkemit was administered (against his legal judgment) solely to make an example of her:]

This is the general principle in cases in which

ונדוהו ומח בנדויו וסקלו ב"ד אח ארונו. (עדויוח ה:6)
 They excommunicated him, and he died while he was
 subject to the excommunication, so the court stoned his
 bier. [Note: R. Judah says in this mishnah that it was
 not Akabiah who was excommunicated, but rather Eliezer b.
 Hanokh].

M. GITTIN 2:5

הכל כשרין לכחוב אח הגט אפי' חרש שוטה וקטן.
 All are valid for the writing of a bill of divorce,
 even a deaf-mute, a שוטה, or a minor.

האשה כותבת אח גיטה והאיש כותב את שוברו שאין קיום הגט
 אלא בחותמיו.
 Any woman may write her own bill of divorce, and a man
 may write his own quittance; for the confirmation of the
 bill of divorce is solely through its signators.

הכל כשרין להביא את הגט חוץ מחרש שוטה וקטן וסומא ועובר
 כוכבים. (גיטין 5:1)
 All are valid for delivering a bill of divorce, except
 for a deaf-mute, a שוטה, and a minor, a blind man, and a
 gentile.

M. GITTIN 2:6

קיבל הקטן והגדיל
 If a minor received [a bill of divorce to deliver as
 an agent] and then passed the point of maturity,

חרש וחפקה סומא ונחפתח שוטה ונשטפה עובר כוכבים ונתגייך
 a deaf-mute and he regained the power of speech, a
 blind man and he regained the power of sight, a שוטה and he
 regained his mind, a gentile and he converted,

7109.
 it remains invalid.

אבל פקח ונחרש וחזר ונחפקה פתוח ונסתמא וחזר ונחפתח
 שפוי ונשטפה וחזר ונשטפה כשר.
 But [if the bill of divorce had been received] by one
 of sound senses who then lost the power of speech and then
 regained his senses, by one who had the power of sight and
 who was blinded but then recovered his power of sight, by
 one who was sane and then became a שוטה and regained his
 sanity, it is valid.

זה הכלל כל שתחילתו וסופו בדעת כשר. (גיטין 6:1)
 This is the general principle: in any case in which

the agent was at the outset and at the end in full command of his mind, it (the divorce's delivery) is valid.

M. HULLIN 1:1

הכל שוחטים ושחיטתן כשרה, חוץ מחרש שוטה וקטן, שמא יקלקלו במשחיטתן.

All persons may slaughter and their slaughtering is valid, except a deaf-mute, one that is a שוטה, or a minor, in case they impair what they slaughter;

וכולן ששחטו ואחרים רואין אותן שחיטתן כשרה.

But if any of these slaughter with others watching them [to witness that it was done properly], then their slaughter is valid.

ששחטו ואחרים רואין אותן שחיטתן כשרה. שחיטת עובר כוכבים נבלה, ומטמאה במשא. השוחט בלילה וכן הסומא ששחט, שחיטתו כשרה. (חולין א:1)

The slaughtering by a non-Jew is carrion and it communicates uncleanness by carrying. If one slaughtered by night and likewise also is a blind man slaughtered [at any time] -- his slaughtering is valid.

M. NIDDA 13:2

החרש והשוטה והסומא ושנטרפה דעתה אם יש להן פקחות מחקנות אותן והן אוכלות בתרומה. (נדה יג:ב)

In the case of a deaf-mute, a שוטה, a blind or a temporarily insane woman, if other women of sound mind are available they attend to her, and she may then eat the priestly portion.

M. SOTA 4:5

ואלו שב"ד מקנאין להן.

And these are the women whom a court subjects to admonition [on their husband's behalf]:

מי שנתחרש בעלה. או משחטה. או שהיה חבוש בביה האסורין.

A woman whose husband became a deaf-mute or שוטה, or was imprisoned.

לא להשקותה אמרו. אלא לפוסלה מכתובתה.

Not to impose upon her the ordeal of drinking the water did they state the rule, but to invalidate her from receiving her marriage contract.

רבי יוסי אומר: אף להשקות. לכשיצא בעלה מבית אסורין

APPENDIX 3

(סוטה ד: 5)

R. Jose says: "Also: to impose upon her the ordeal of drinking the water. When her husband goes free from prison, he may then impose the ordeal of drinking the water."

M. YEBAMOTH 14:1

אמר רבי יוחנן בן נורי מפני מה האשה שנחתרשה יוצאה.
והאיש שנחתרש אינו מוציא?

Said R. Johanan ben Nuri, "On what account does a woman who became a deaf-mute become divorced, whereas a man who became a deaf-mute does not divorce his wife?"

M. YEBAMOTH 14:4

פקח שנשא פקחת ונחתרשה אם רצה יוציא ואם רצה

יקיים. נשחטפית לא יוציא נחתרש הוא או נשחטפה אינו מוציא
עולמית. (יבמות ד: 4)

If a man of sound mind married a woman of sound senses and she became deaf, he may, if he wishes, release her or retain her. If she became a שוטה, he may not divorce her. If he, however, became deaf or a שוטה, he may never divorce her.

An ex-heretic who became a deaf-mute, or lost his mind or went overseas --

APPENDIX 3
הלכות מן התוספתא -- LAWS FROM THE TOSEFHTA

T. 'ABODA ZARA 6:7

שאלו פילוסופים את זקנים ברומי אם אין רצונו בעבודה
 זרה מפני מה אינו מטבילה.

Philosophers asked Sages in Rome, "If God's will is not
 for idolatry, why does He not negate (get rid of) it?"

אמ' להן אילו לדבר שאין להן צורך היו עובדין היה
 מטבילן, והיו הן עובדין לחמה וללבנה ולכוכבים יאבד עולמו מפני
 השוטים?

They said to them: "If people worshipped something of
 which the world did not need, he certainly would destroy
 it. But, note, people worship the sun, moon and stars.
 Now do you think He is going to wipe out His world on
 account of the שוטים? [M. 'A.Z. 4:7]

אלא הנח העולם שינהגו כמנהגו והשוטים שקילקלו יבואו
 ויחנו את הדין.

"Rather, let the world be in accord with its
 accustomed way, and the שוטים who behave ruinously will
 come and receive The Judgment [of God].

גנב זרעים לזרוע לא סופן לצמח? בעל אשח איש לא סופה
 שחלד? אלא הנח את העולם שינהגו כמנהגו והשוטים שקילקלו יחנו
 את הדין. (חוט. עבודה זרה 7:1)

"If one has stolen seeds for planting, shall they not
 ultimately sprout? If one has had sexual relations with a
 married woman, will she not ultimately give birth?
 Therefore let the world be in accord with its accustomed
 way, and the שוטים who behave ruinously will come and
 receive The Judgment [of God].

T. BABA KAMMA 4:4

שור חרש שוטה וקטן שנגח שור של פיקח פטור;
 [Concerning] the ox of a deaf-mute, a שוטה, or a minor
 which gored the ox of a person of sound mind, its [owner]
 is exempt. [M.B.K.4:4]

ר' יעקב אומר משלם חצי נזק.
 [but] R. Jacob says: "the owner pays half-damages."

שור שנחרשו בעליו או שינשטו בעליו או שהלכו בעליו
 למדינת הים,
 An ox whose owner became a deaf-mute, or lost his
 mind or went overseas --

יהודה בן נקוסא אומ' לעולם הוא בתמותו עד שיעידוהו בפני בעלים.

Judah b. Nekosa says: "Under all circumstances it remains in the status of a "non-aggressor" until (witnesses) testify against the beast in the presence of the owner."

ר' יוסי אומ' מעמידין עליו אפיטרופין העידוהו בפני אפיטרופין.

R. Jose says: "They appoint a guardian for it, and they give evidence against it in the presence of the guardian" [M.B.K.4:4]

נחפיקה החרש ונשתפה השוטה והגדיל הקטן או שבאו בעליו ממדינת הים

If the deaf-mute gained capacity to hear, the שוטה regained his mind, or the minor reached maturity [M.B.K.4:4], or the owner came back from overseas,

יהודה בן נקוסא אומ' סומכוס אומ' לעולם הוא בתמותו ראשונה עד שיעידוהו בפני בעליו שנייה

Judah b. Nekosa says: "Sumkhos says, 'Under all circumstances it remains in its original status of a "non-aggressor" until (witnesses) testify against the beast in the presence of the owner yet a second time" [M.B.K.4:4]

ר' אומ' הרי הוא כחוקתו... (חוס. בנא קמא ד: 4)

Rabbi says: "Behold, it is as its original state..."

T. BABA KAMMA 4:6

יש כן חייב בכופר וחייב במיתה חייב במיתה ופטור מן הכופר חייב בכופר ופטור מן המיתה...

There are [oxen] liable to a ransom payment and liable to death...

שור תם שהמית ושור חרש שוטה שהמית המית גר ועבד משוחרר

An ox deemed a non-aggressor which killed somebody, an ox belonging to a deaf-mute or a שוטה which killed, and killed a proselyte or freed slave,

חייב במיתה ופטור מן הכופר. (חוס. בנא קמא ד: 6)

is liable to the death penalty but [the owner] is exempt from the ransom-payment [which is omitted, since there are no heirs].

T. BABA KAMMA 9:13

החובל בחרש שוטה וקטן חייב בארבעה דברים; ופטור מן

הבושת.

He who inflicts injury on a deaf-mute, a שוטה, or minor is liable on four counts, but exempt on the count of degradation.

מפני שאין לו בושת.

Because they (the above) are not subject to degradation.

ר' אומר אומ' אני לחרש יש לו בושת ולקטן אין לו בושת.

Rabbi says: "I [maintain regarding] a deaf-mute that he [indeed] is subject to degradation; while a minor is not subject to degradation;

שוטה פעמים יש לו בושת ופעמים אין לו בושת. (חוס. בבא קמא ט:13)

[Regarding] a שוטה, sometimes he is subject to degradation, and sometimes not."

T. KETHUBBOTH 1:3

פיקח שנשא חרשת או שוטה כתובתו מאתים מפני שרצה לזון לה נכסים.

A man of sound mind marries a deaf-mute or שוטה -- their marriage contract is two hundred zuz, for he wants to gain hold of her possessions.

חרש ושוטה שנשאו פיקח אף על פי שחזר חרש ונחפך שוטה ונשתפה אין להם כתובה רצו לקיים נותן כתובה מנה;

A deaf-mute or a שוטה who married a woman of sound mind, even though the deaf-mute went and became sound in his mind, or the שוטה regained his mind -- they [the women] do not receive a marriage contract. [If after being healed] they want to keep the marriage, they pay a מנה [1/100 dinar] as the marriage contract.

גוי ועבד הבא על בת ישראל אף על פי שחזר הגוי נחגייר עבד נשחרר אין להם כתובה רצו לקיים נותנין כתובה מנה.

A gentile or a slave who had sexual relations with an Israelite girl, even though the gentile went and converted, the slave went and was freed, they [the women] do not receive a marriage contract. [If] they [the convert or the freed slave] wanted to keep the marriage, they pay a מנה as the marriage contract.

ישראל הבא על השפחה ועל נכרית ואף על פי שחזרה שפחה ונשחררה נוכרית ונחגיירה אין להן כתובה רצו לקיים נותנין כתובה מנה.

An Israelite who had sexual relations with a slave-girl or with a gentile woman, even the

slave-girl went and was freed, or the gentile-girl went and converted -- they [the women] do not have a marriage contract. [If] he wanted to confirm the marriage, he gives a מנה as the marriage contract.

בוגר ואיילונית כחובתן מאתיים.

An adult woman and a barren woman -- their marriage contract is two hundred zuz.

נשאה בהזקת שהיא כשירה ונמצאת זו איילונית אין להן כחובה רצו לקיים נוחן כחובה מנה.

[If] she was married on the assumption that she is suitable and turned out to be barren, she has no marriage-contract. [If] he wanted to keep the marriage, he gives a מנה as the marriage contract.

החרשת והשוטה בוגר ומוכת עץ אין להן טענת בחולים.

The deaf-mute girl, שוטה, mature woman or woman wounded by a blow are not subject to virginity suits (by their husbands).

סומא ואיילונית יש להן טענת בחולים.

[In the case of] a blind woman or a barren woman, they are subject to virginity suits (by their husbands).

סומכוס אומ' משום ר' מאיר סומא אין לה טענת בחולים.
(חוס. כחובות א:3)

But Sumkhos says in the name of R. Meir: "a blind woman is not subject to virginity suits."

T. KETHUBBOTH 3:5

הבא על חרשת ועל השוטה ועל הבוגר ועל מוכת עץ אין להם קנס:

He who has sexual relations with a deaf-mute, or with a שוטה, or with a mature woman, or with a woman injured by a blow [and therefore without a hymen], they do not receive a fine for seduction.

על הסומא ועל האיילונית יש להן קנס:

A blind girl and a barren girl receive a penalty fine for seduction.

ר' נחוניא בן הקנה אומ' הבא על אחותו ועל אחות אביו ועל אחות אמו ועל אחות אשתו ועל אשת אחיו ועל אשת אחי אביו ועל הנדה אין להן קנס,

R. Nehuniah b. HaKahane says: "He who has sexual relations with his sister, with the sister of his father, with the sister of his mother, with the sister of his

wife, with the wife of his brother, with the wife of the brother of his father, or with a menstruating women [M.Ket. 3:1] -- they do not receive a fine for seduction" [and receive instead the more severe penalties of כרת or מכה].

שכן שהיה ר' נחוניא בן הקנה אומ' יום הכפורים הרי הוא בשבת לחשלומו' (חוס. כחובות ג:5)
And so did R. Nehuniah b. HaKahane say, "The Day of Atonement is equivalent to the Sabbath as to payment."

T. KETHUBBOTH 7:10

אמר לו קדש לי בתך זו על מנת שאין בה מומין
He who says to another: "betroth this daughter of yours to me on condition that there are no blemishes on her";

אמ' לו שוטה היא שעמומיה היא חולה היא נכפית היא
if he says to him she is a שוטה, or is dull-witted, or is sick, or is an epileptic --

אם אמר לו אותו המום ומום אחר עמו אין זה מקח טעות.
if he [lied and] stated there was this blemish but no other, this is a null and void purchase.

היו בה מום אחר וסנפו בין המומין הרי זה מקח טעות.
If there was some other sort of blemish on her, and he concealed it among these [unspecified] blemishes, note, this is a null and void purchase.

ומודה ר' מאיר במומין שדירכה לילוד עמה שאפילו היא נביח בעלה שאביה צריך להביא ראיה;
And it is conceded to R. Meir that in the case where she has congenital blemishes, that even though she is in her husband's house, her father must bring proof [that they did not occur prior to betrothal].

כנסה שחם ונמצו בו מומין או נדרים הרי זה יקיים.
If he married her without specification, and he found on her blemishes and encumbering vows, note, this one continues the marriage.

רבן שמעון בן גמליאל אומ' אם היה חיגר ברגלו אחת או שהיה סומא באחת מעיניו מומין גדולין הן יציא ויתן כחובה.
(חוס. כחובות ז:10)

Rabban Simeon b. Gamaliel says, "If she was lame in one foot, blind in one eye, they are major blemishes and he must put her away and pay off her marriage contract."

T. NIDDA 2:9

שֹׁטָה מְטִילִין אוֹתוֹ וּמַאֲכִילִין אוֹתוֹ בַּחֲרוּמָה לַעֲרֹב וּמְשַׁמְרִין
 אוֹתוֹ שֶׁלֹּא יֵישֵׁן וְאֵם יֵישֵׁן וְעַמֵּד טַמָּא מִיָּד;
 A שֹׁטָה -- they dunk him and feed him with heave
 offering in the evening. And they watch him as to
 sleeping, and if he went to sleep and got up, he is then
 unclean.

ר' אלעזר בן צדוק אומר עושין לו כִּיס של עור ומלבישין
 אוֹתוֹ וּבֹדְקִין אוֹתוֹ בַּחוּכּוֹ וְאֵם נִמְצָא בַּחוּכּוֹ שִׁכְבָּת זָרַע טַמָּא וְאֵם
 לֹא טָהוֹר.

R. Eleazar b. Zadok says, "They make him a leather
 bag, and they put it on him and inspect its contents. If
 inside it semen is found, he is unclean, and if not, he is
 clean."

אָמְרוּ לוֹ נִמְצָאת מְבִרִיחַ מִן הַסֶּפֶק וּמֵבִיאוּ לִידֵי וְדָאֵי מִפְּנֵי
 שֶׁבֶא לִידֵי חִימוּם.
 They said to him, "You turn out to remove him from a
 situation of doubt and to place him into a situation of
 certain [uncleanness], because he ends up being heated by
 the bag."

אָמַר לָהֶם לֹא מְדַבְּרִיכֶם טַמָּא הוּא?
 He said to them, "Yes. Is it not so that in accord
 with your opinion he is (and remains) unclean?"

אָמְרוּ אֵם נִמְצָאת שִׁכְבָּת זָרַע טַמָּא וְאֵם לֹא טָהוֹר וְאֵינוֹ אוֹמְרִים
 יֵצֵאת טָפָה כָּל שֶׁהוּא וְנִבְלָעָה לָהּ בְּכִים (בְּכִיס). (חוֹס. נְדָה ב: 9)
 They said to him, "You say, 'If semen is found [in
 the bag] he is unclean, if not he is clean,' and we say,
 'A drop in any amount exuded from him and was absorbed by
 the bag.'"

T. YEBAMOTH 2:5

הַחֲרָשָׁה וְהַשֹּׁטָה וְלֹא חוֹלְצוֹת
 ... The deaf-mute and the שֹׁטָה enter into levirate marriage
 but do not effect a rite of halisa.

אִסּוּר מִצֻּוֹה קְדוּשָׁה חוֹלְצוֹת וְלֹא מִחֵיִבְמוֹת
 A woman prohibited by reason of a commandment and one
 prohibited by reason of sanctity [M. Yeb. 2:3,2:4] effect
 halisa and do not enter into levirate marriage.

עֲקָרָה אוֹ זָקְנָה וְשָׂאֵר כָּל הַנְּשִׁיִּים אוֹ חוֹלְצוֹת אוֹ מִחֵיִבְמוֹת.
 (יְבָמוֹת ב: 5)
 A woman who cannot bear children and one past
 menopause and all other women either effect a rite of

halisa or enter into levirate marriage.

T. YEBAMOTH 2:6

יש או חולצין או מחייבין חולצין ולא מייבמין מוסיף
עליהם סריס חמה ואנדרגיננוס ואח מאם וגר ועבד משוחרר לא
חולצין ולא מייבמין.

With the forbidden degrees of whom we have spoken
[M.Yeb1:1,3] men do not undergo the rite of halisa, nor
do they enter into levirate marriage. In addition to
them, a eunuch by nature, a man who bears sexual traits of
both sexes, a brother from the same mother, a proselyte
and a freed slave neither undergo the rite of halisa nor
enter into levirate marriage.

החרש והשוטה מייבמין ולא חולצין ספיקוח חולצין ולא מייבמין.
The deaf-mute and the שוטה enter into levirate
marriage but do not undergo the rite of halisa. Those
who are subject to doubt undergo a rite of halisa but do
not enter into levirate marriage.

פצוע דכא וכרוח שפכה וסריס אדם וזקן חולצין ולא מייבמין.
A man with crushed testicles and one whose penis is
cut off, a eunuch by human action, an old man either
undergo a rite of halisa or enter into levirate marriage.

ושאר כל אדם או חולצין או מייבמין. (יבמות 6:1)
And everyone else either undergoes the rite of halisa or
enters into levirate marriage.

T. YEBAMOTH 9:4

בת ישראל פיקחה שנישאת לכהן חרש אינה אוכלת בחרומה
עבירה לא תאכל וילד תאכל.
An Israelite girl of sound mind who was married to a
priest who was a deaf-mute does not eat heave-offering.
If she became pregnant, she does not eat heave offering.

בת ישר' חרשת שנישאת לכהן פיקח אינה אוכלת בחרומה עבירה
לא תאכל נחחק עובר במעיה תאכל.

An Israelite girl who was a deaf-mute who was married
to a priest of sound mind does not eat heave-offering.
If she became pregnant, she does not eat heave-offering.
If she gave birth, she then does eat heave-offering.

בת כהן פיקחה שנישאת לישר' שוטה טובלת מחיק בעלה
ואוכלת חרומה לערב עבירה לא תאכל וילדה לא תאכל.
A priest's daughter of sound mind who is married to
an Israelite שוטה immerses out of the embrace of her

husband and then eats heave-offering in the evening. If she became pregnant, she no longer eats heave offering. If she gave birth, she does not eat heave-offering.

כל שיש לה זרעה מכהן בין בזרכים בין בנקיבות אפילו זרע מזרע הרי זו אוכלת בחרומה.

Anyone who has seed of a priest, whether male or female, even seed of his seed, note, such a woman eats heave-offering.

היתה בתה מישראל נשואה לכהן אינה אוכלת בחרומה עד שיהא לה זרע מכהן תחילה... (יבמות 4:ט)

If her daughter from an Israelite was married to a priest, she [the daughter] does not eat heave-offering, until she has seed from a priest first...

T. YEBAMOTH 11:8

חרש שנחלץ וחרשת שחלצה והחולצת מן השוטה;

A deaf-mute with whom the rite of halisa was performed, a deaf-mute who performed the rite of halisa, she who performs the rite of halisa with a שוטה,

וכן השוטה שחלצה והחולצת מן הקטן חצא.

So too: a שוטה who performed the rite of halisa, and she who performed the rite of halisa with a minor -- should be divorced.

ושלשה עשר בה דברי ר' מאיר שאמר משום ר' עקיבה.

"And thirteen rules apply to her," the words of R. Meir, which he stated in the name of R. Akiba.

וחכ' אומ' אין ממזר ביבמה. (תוס. יבמות יא:8)

And the Sages say, "The status of a mamzer is not applicable to the offspring of levirate marriage."

T. YEBAMOTH 11:11

בן חשע שנים ויום אחד שבא על יבמתו ואחר כך בא על צרתה
פסול על ידי עצמו;

A boy nine years and one day old who had sexual relations with his deceased childless brother's widow and went and had sexual relations with her co-wife, spoils her for himself.

ר' שמע' אומ' לא פסול.

R. Simeon says: "He has not spoiled her for himself."
[M. Yeb.10:8]

שביאתו על הרשאנה ביאה ואין ביאתו על השניגה ביאה.

For if his act of sexual relations with the first is valid, his act of sexual relations with the second is not valid. [One valid act cannot follow another such act]

במה דברים אומרים בביאה בן חשע שנים ויום אחד;
Under what circumstances? In the case of an act of sexual relations of a boy nine years and one day old.

אבל חרש ושוטה שבעלו קנו ופטרן את הצרות.
But a deaf-mute, a שוטה, and a minor who have had sexual relations have effected an act of acquisition and have freed the co-wives [from levirate marriage].

שוטה וקטן שנשא נשים ומתו -- נשיהם פטורות מן החליצה
ומן יבום.
A שוטה or a minor who married wives and then died -- their wives are exempt from performing the rite of halisa.

זה הכלל כל ביאה שצריך דעת הרי זה ביאה ושאינו דעת הרי
זו אינו ביאה. (חוס. יבמות יא:11)
This is the general principle: Any act of sexual relations which requires articulated consciousness is not a valid act of sexual relations. But any which does not require articulated consciousness -- note, this is a valid act of sexual relations.

APPENDIX 4

UNITS FROM THE BABYLONIAN TALMUD -- סוגיות מן הבבלי

BABA BATHRA 12b

א"ר יוחנן מיום שחרב בית המקדש ניטלה נבואה מן הנביאים וניתנה לשוטים ולתינוקות.

R. Johanan said: Since the Temple was destroyed, prophecy has been taken from prophets and given to שוטים and children.

לשוטים מאי היא. כי הא דמר בר רב אשי דהוה קאי ברסחקא דמחוזא שמעיה ליהווא שוטה דקאמר ריש מתיבתא דמליך במחא מחסיא טביומי חתים.

How is it given to שוטים? The case of Mar b. Rav Ashi will show. He was one day standing in the manor of Mahuza when he heard a certain שוטה exclaim, "The man who is to be elected head of the Academy in Matha Mehasia signs his name Tabiumi."

אמר מאן חתים טביומי ברבנן אנא. שמע מינה לדידי קיימא לי. He said to himself: "Who among the Rabbis signs his name Tabiumi? I do. This seems to show that my lucky day has come."

שעתא קם אחא אדאחא אימנו רבנן לאוחביה לרב אחא מדפתי ברישא.

When he arrived, he found that the Rabbis had voted to appoint R. Aha of Difti as their head.

כיון דשמעי דאחא שדור זוגא דרבנן לגביה לאימלוכי בי עכביה הדר שדור זוגא דרבנן אחרינא עכביה גביה עד דמלו בי עשרה כיון דמלו בי עשרה פתח הוא וחנא ודרש לפי שאין פותחין בכלה פחות מעשרה.

When they heard of his arrival, they sent a couple of Rabbis to him to consult him. He detained them with him, and they sent another couple of Rabbis. He detained these also, until the number reached ten. When ten were assembled, he began to discourse and expound the Oral Law and the Scriptures because a public discourse should not be commenced if the audience is less than ten.

קרי רב אחא אנפשיה כל המריעין לו לא במהרה מטיבין לו וכל המטיבין לו לא במהרה מריעין לו. (בבא בתרא י"ב:ב) R. Aha applied to himself the saying, 'if a man is in disfavor he does not readily come into favor, and if a man is in favor he does not readily fall into disfavor.'

BABA KAMMA 39a

מחנ'': שור של פקח שנגח שור של חרש שוטה וקטן חייב.
Mishnah. If an ox of an owner with unimpaired faculties gores an ox of a deaf-mute, a שוטה or a minor, the owner is liable.

ושל חרש שוטה וקטן שנגח שור של פקח פטור.
 Where, however, an ox of a deaf-mute, a שוטה, or a minor has gored an ox of an owner whose faculties are unimpaired, there is no liability.

שור של חרש שוטה וקטן שנגח בית דין מעידין להן אפוסטרופוס ומעידין להן בפני אפוסטרופוס.
 If an ox of a deaf-mute, a שוטה, or a minor has gored, the court of law appoints a guardian in whose presence witnesses will be able to testify.

נחפקח החרש נשחפה השוטה והגדיל הקטן חזר לתמותו דברי ר' מאיר.
 If the deaf-mute recovers his senses, the שוטה becomes sane or if the minor becomes of age, the ox previously declared an aggressor will return to the state of non-aggressor -- these are the words of Rabbi Meir.

ר' יוסי אומר הרי הוא בחקתו.
 R. Jose, however, says that the ox will remain in the status quo.

שור האצחדין אינו חייב מיתה שנאמר כי יגח ולא שיגחוהו.
 In the case of a stadium ox, the death penalty is not imposed, as it is written: "If an ox gore, excluding cases where it is goaded to gore."

גמ': הא גופא קשיא.
Gemara. Is not the text in contradiction with itself?

אמר שור של חרש שוטה וקטן שנגח שור של פקח פטור.
 In the first clause you state, "If an ox of a deaf-mute, a שוטה, or a minor gores an ox belonging to one whose faculties are unimpaired, there is no liability,"

אלמא אין מעמידין אפוסטרופוס לחם לגבוה מגופו.
 [Thereby] implying that a guardian is not appointed in the case of a non-aggressor to collect [payment of half-damages] out of its body.

אימא סיפא שור של חרש שוטה וקטן שנגח ב"ד מעמידין להם אפוסטרופוס ומעידין להם בפני אפוסטרופוס.
 But read the following clause: "If an ox of a deaf-mute, a שוטה, or a minor has gored the court of law appoints

a guardian in whose presence witnesses will be able to testify".

אלמא מעמידין להם אפוטרופוס לתם לגבות מגופו אמר רבא הכי קחני ואם נגחין מעמידין להם אפוטרופוס ומעידין להן בפני אפוטרופוס. ומשוינן להו מועד דכי הדר ונגח לשלם מעלייה.
Now, does this not prove that a guardian is appointed in the case of a non-aggressor to collect [payment] out of its body?

אמר רבא הכי קחני ואם נגחין מעידין להם אפוטרופוס ומעידין להן בפני אפוטרופוס.

Raba replied [that the text] should be understood thus: If the oxen are presumed to be gorers, then a guardian is appointed and witnesses will give evidence for the purpose of having the cattle declared an aggressor.

ומשוינן להו מועד דכי הדר ונגח לשלם מעלייה מעלייה.
(בבא קמא לט:א)

So that should another goring take place, the payment would have to come from the best [of the general estate].

BABA KAMMA 86b

ח"ש ר"מ אומר: חרש וקטן יש להן בושת. שוטה אין לו בושת.

[Regarding differences of whether the standard for embarrassment leading to damages, or בושת, is to be based on זילתא (degrading the party in the eyes of others) or on כיסופא (internal reaction of the party himself). Come and hear: R. Meir says. A deaf-mute and a minor are subject [to be paid for] Degradation, but a שוטה is not subject to be paid for Degradation.

א"ב משום זילותא היינו דקטני קטן אלא אי אמרת משום כיסופא קטן בר בושת הוא. אלא מאי?

Now no difficulty arises if you say that Degradation is paid on account of the insult, [we have to ask], is a minor subject to feel insulted? What then?

משום זילותא אפילו שוטה נמי אמרי שוטה שין לך בושת גדולה מזה.

[You say that] Degradation is paid because of the disgrace? Why then should the same not apply even in the case of a שוטה? It may, however, be said that the שוטה by himself constitutes a disgrace of the highest order.

מכל מקום ניפשוט מינה דמשום זילותא הוה דאי משום כיסופא
קטן בר כיסופא הוה.

But in any case, why not conclude from this statement that Degradation is paid on account of the disgrace, for if on account of the insult, is a minor subject to feel insulted?

כדאמר רב פפא דמיכלמו ליה ומיכלם הכא נמי דמיכלמו ליה
ומיכלם.

As elsewhere stated by R. Papa, that if where the insult is recalled to him he feels abashed [he is subject to Degradation]; so also here he was a minor who when the insult was recalled to him would feel abashed.

HAGIGA 3b-4a

חנו רבנן: איזהו שוטה?

Our Rabbis taught: Who is [deemed] a שוטה?

היוצא יחידי בלילה. והלן בבית הקברות. והמקרע את כסותו.

He that goes out alone at night, and he that spends the night in a cemetery, and he that tears his garments.

איחמר, רב הונה אמר: עד שיהו כולן בבת אחת.

It was taught: R. Huna said: they must all be [done] together.

רבי יוחנן אמר: אפילו באחת מהם.

R. Johanan said: Even if [he does only] one of them.

היכי דמי? אי דעביד להו דרך שטות -- אפילו בחדא נמי.

What is the case? If he does them in a שוטה-like manner, even one is also [proof].

אי דלא עביד להו דרך שטות, אפילו כולהו נמי לא --
לעולם דקא עביד להו דרך שטות.

If he does not do them in a שוטה-like manner, even all of them [prove] nothing? -- Actually, [it is a case where] he does them in a שוטה-like manner.

והלן בבית קברות -- אימור כדי שחשרה עליו טומאה הוא דקא עביד. והיוצא יחידי בלילה -- אימור גנדרפס אחדיה. והמקרע את כסותו -- אימור בעל מחשבות הוא.

But if he spent the night in a cemetery, I might say: He did [it] in order that the spirit of impurity might rest upon him. If he went out alone at night, I might say: He was seized by lycanthropy [to assume the form and characteristics of a wolf]. If he tore his garment, I might say: He was lost in thought.

כיוון דעבדינהו לכולהו הוה להו כמי שנגח שור חמור וגמל.
ונעשה מועד לכל.

But as soon as he does them all, he becomes like [an ox] who gored an ox, an ass and a camel, and becomes [thereby] an aggressor [forewarned gorer] in regard to all [animals].

אמר רב פפא: אי שמיע ליה לרב הונה הא דתניא: אי זהו שוטה -- זה המאבד כל מה שנוחנים לו, הוה הבר ביה.
R. Papa said: If R. Huna has heard of that which is taught: Who is [deemed] a שוטה? "One that destroys all that is given to him," he would have retracted [and considered one action as proof].

איבעיא להו: כי הוה הדר ביה -- ממקדע כסותו הוא דהוה הדר ביה. דמאי להא, או דלמא מכולהו הוה הדר --
The question was raised: When he would have retracted, would he have retracted only with regard to the [case of the] man who tore his garment, because it resembles this [case]; or would he have retracted with regard to all of them?

חיקו.

It remains [undecided].

KETHUBBOTH 20a

דבר שטיא. זבין נכסי. אחו בי חרי אמרי שהוא שוטה זבין.
אחו בי חרי ואמרי כשהוא חלים זבין.
A [certain] שוטה sold property. Two [witnesses] came [and] said [that] he sold [the property] when he was a שוטה, and two [other witnesses] came [and] said he sold [the property] when he was sane.

אמר רב אשי: אוקי חרי להדי חרי. ואוקי ממונא בחזקת בר שטיא.
[And] R. Ashi said: Set the two [witnesses] against the two [other witnesses] and leave the property in the possession of the שוטה.

ולא אמרן אלא דאית ליה חזקה דאבהתיה.
And we say [this] only when he has the ownership-right of his forefathers.

אבל לית ליה חזקה דאבהתיה אמרינן כשהוא שוטה זבין וכשהוא שוטה זבין.
But if he has not the ownership-right of his forefather, we say that he bought [the property] when he was a שוטה and that he sold [it] when he was a שוטה [and therefore the property passes to the purchaser].

KETHUBBOTH 48b

הא גופא קשיא:

Is not the text in contradiction with itself?

אמרת שור של חרש שוטה וקטן שנגח שור של פקח פטור.

In the first clause you state, "If an ox of a deaf-mute, a
שוטה, or a minor gores an ox belonging to one whose
faculties are unimpaired, there is no liability,"

אלמא אין מעמידין אפוטרופוס לתם לגבות מגופו.

[Thereby] implying that a guardian is not appointed in the
case of a non-aggressor to collect [payment of
half-damages] out of its body.

אימא סיפא שור של חרש שוטה וקטן שנגח ב"ד מעידין להם

אפוטרופוס ומעידין להם בפני אפוטרופוס.

But read the following clause: "If an ox of a deaf-mute, a
שוטה, or a minor has gored the court of law appoints a
guardian in whose presence witnesses will be able to
testify".

אלמא מעידין להם אפוטרופוס לתם לגבות מגופו אמר רבא

הכי קתני ואם נגחין מעמידין להם אפוטרופוס ומעידין להן בפני

אפוטרופוס. ומשוינן להו מועד דכי הדר ונגח לשלם מעלייה.

Now, does this not prove that a guardian is appointed in
the case of a non-aggressor to collect [payment] out of its
body?

אמר רבא הכי קתני ואם נגחין מעמידין להם אפוטרופוס

ומעידין להן בפני אפוטרופוס.

Raba replied [that the text] should be understood thus: If
the oxen are presumed to be gorers, then a guardian is
appointed and witnesses will give evidence for the purpose
of having the cattle declared an aggressor.

ומשוינן להו מועד דכי הדר ונגח לשלם מעלייה מעלייה...

So that should another goring take place, the payment
would have to come from the best. [of the general estate]...

רב חסדא אמר מר עוקבא: מי שנשחטה בית דין יורדין לנכסיו

וונין ומפרנסין את אשתו ובניו ובנותיו.

R. Hisda further stated in the name of Mar Ukba: If a man
became a שוטה the court of law takes possession of his
estate and provides food and clothing for his wife, sons
and daughters, and or anything else.

ודבר אחר: א"ל רבינא לרב אשי. מ"ש מהא דתניא מי שהלך

למדינת הים ואשתו חובעת מזונות בית דין יורדין לנכסיו וונין

ומפרנסין את אשתו אבל לא בניו ובנותיו לא.

Said Rabina to R. Ashi, "Why should this be different from that concerning which was taught: If a man went to a country beyond the sea and his wife claimed maintenance, court of law takes possession of his estate and provides food and clothing for his wife, but not for his sons and daughters or for anything else.

דבר אחר: א"ל ולא שאני לך הין יוצא לדעת ליוצא שלא לדעת. (כתובות מח:א)

The other replied: Do you not draw a distinction between one who departs deliberately and one who departs without knowing it.

KETHUBBOTH 60b

למא קטלה ליה ואולא ומיגסבא הוה עובדא וחקתיה. ולא היא, ההיא שוטה.

It once actually happened that a mother strangled her child. This incident is no proof. That woman was a שוטה.

דלא עבדי נשי דחנקן בנייהו.

For it is not likely that [sane] women would strangle their children.

MENAHOTH 65a

איחותב חגא דשבועותא דלא למספר שהיו בייחוסין אומרים עצרח אחד השבת.

For the Boethusians held that the Feast of Weeks must always be on the day after the Sabbath.

ניטפל להם רבן יוחנן בן זכאי. ואמר להם שוטים מנין לכם.

But R. Johanan b. Zakai entered into the discussion with them, saying: "שוטים that you are! Whence do you derive it?"

ולא אחד שהיה משיבו חוץ מוקן אחד שהיה מפטפט ... (מנחות סה:א)

Not one of them was able to answer him, save one old man who commenced to babble and said...

NEDARIM 35b

זאת תורה היולדת

That verse, "This is the law for her that hath born" (Lev. 12:7)

בין פקחח בין שוטה שכן אדם מביא קרבן על אשתו.

[Teaches] that whether the woman be sane or a שוטה, a man must offer a sacrifice on behalf of his wife.

שוטה כדברי רבי יהודה דתניא: If [she is] a שוטה, [he offers the sacrifice] in accordance with R. Judah's dictum, who taught:

רבי יהודה אומר: אדם מביא קרבן עשיר על אשתו וכל קרבנות שחייבת שכן כותב לה.

R. Judah said: A man must offer a rich man's sacrifice for his wife, and all other sacrifices which are incumbent upon her,

ואחריות דאית לך עלי מן קדמך דנא. (נדרים לה:ב) since he writes thus for her [in the marriage settlement]; [I shall pay] "every claim you may have against me from before up to now."

NEDARIM 36a

גופא א"ר יוחנן: הכל צריכין דעת חוץ ממחוסר' כפרה, שהרי אדם מביא קרבן על בניו ועל בנוחיו הקטנים. The [above] text [states]: 'R. Johanan said: All require [the owner's] consent, save for those lacking atonement, since one brings a sacrifice for his sons and daughters when minors.'

אלא מעתה יביא אדם חטאת חלב על חבירו שכן אדם מביא על אשתו שוטה, כר' יהודה. If so, let one offer a sin offering on behalf of his neighbor for [eating] heleb [forbidden fat], since one brings [a sin offering] for his שוטה wife, according to R. Judah.

אלמה א"ר אלעזר הפריש חטאת חלב על חבירו לא עשה כלום. Why then did R. Eleazar say: "If a man set aside a sin-offering for heleb on his neighbor's behalf, his action is invalid?"

אשתו שוטה היכי דמי. [Now consider:] In respect to his שוטה wife, what are the circumstances?

אי דאכלא כשהיא שוטה לאו בח קרבן היא; If she ate [heleb] whilst a שוטה, she is not liable to a sacrifice;

ואי דאכלה כשהיא פקחח ונשתתית הא;

while if she ate it when sane, subsequently becoming a שוטה,

א"ר ירמיה אמר ר' אבהו אמר רבי יוחנן:

[there is the ruling of] R. Jeremiah who said in the name of R. Abbahu who said in the name of Rabbi Johanan:

אכל חלב והפריש קרבו ונשתטה וחזר ונשתפה פסול. (נדרים 17א)

One who ate heleb and then set aside an offering, became a שוטה, and then regained his sanity, it [the sacrifice] is unfit [having been once rejected, it remains so].

NIDDA 13b

שנטרפה דעתה: היינו שיטה שנטרפה דעתה? מחמת חולי. [Regarding חרומה] Or a woman who has lost her mind [Pisqa]. Is not this exactly the same as a שוטה? -- This refers to one whose mind was deranged owing to a disease.

חנו רבנן: כהן שוטה מטבילין אותו, ומאכילין אותו לערב. ומשמרין אותו שלא יישן. ישן טמא -- לא ישן טהור. Our Rabbis taught: A priest who is a שוטה may be ritually immersed and then fed with teruma in the evening, and he must be watched to prevent him from sleeping. If he falls asleep he is deemed unclean, and if he does not fall asleep he remains clean.

רבי אליעזר ברבי צדוק אומר: עושין לו כיס של עור. אמרו לו: כל שכן שמביא לידו חימום. R. Eliezer son of R. Zadok ruled: He should be provided with a leather bag. The Rabbis said to him: "Would not this cause heat all the more?"

אמר להן: לדבריכם שוטה אין לו תקנה. "According to your view," he replied, "a שוטה has no remedy."

אמרו לו: לדברינו, שוטה ישן טמא, לא ישן טהור. לדברין, שמא יראה טפה כחרדל וחבלע בכיס. "According to our view," they retorted, "only if he falls asleep is he deemed unclean, but if he does not fall asleep he remains clean. According to your view there is the possibility that he might discharge a drop of semen of the size of a mustard seed and this would be absorbed in the bag."

NIDDA 30b

מעשה בקליאופטרא מלכת אלכסנדריה שנחת יביו שפחותיה הריגה למלכות וברקן ומצאן זה וזה למ"א: A story is told of Cleopatra the queen of Alexandria

that when her handmaidens were sentenced to death by royal decree they were subjected to a test and it was found that both [a male and female embryo] were fully fashioned on the forty-first day.

אמר להו אני מביא לכם ראיה מן החורה ואחם מביאין לי
ראיה מן השוטים. (נדה ל:ב)

He [R. Ishmael] replied: I bring you proof from the Torah and you bring proof from some שוטים! ...

אמרו לו אין מביאין ראיה מן השוטים.
They [the Rabbis] replied: No one adduces proof from the שוטים.

ROSH HASHANAH 28a

שלחו ליה לאבוא דשמואל. בפאו ואכל מצה, יצא.
They sent to inform the father of Samuel: If a man is compelled by force to eat unleavened bread [on Passover], he has performed his religious duty [to abstain from unleavened products].

כפאו מאן. אילימא כפאו שד.
Compelled by whom? Shall I say, by an evil spirit?

והתניא: עתים חלים עתים שוטה -- כשהוא חלים הרי הוא כפקח לכל דבריו, כשהוא שוטה הרי הוא כשוטה לכל דבריו. (ראש השנה כח:א)

But has it not been taught, 'If a man is sometimes in his sound mind and sometimes a שוטה, when he is in his sound mind he is regarded as sane in all his particulars, and when he is a שוטה, he is regarded as a שוטה in all particulars. [And therefore we cannot speak of religious duties in connection with a שוטה person.]

SANHEDRIN 47a

אמר עולא א"ר יוחנן: אכל חלב והפריש קרבן והמיד דחו וחזר בו הואיל ונדחה ידחה:
Ulla said in R. Johanan's name: If one ate heleb [forbidden fat] and thereupon dedicated a sacrifice, abjured his faith, but subsequently returned, since it [the offering] has [once] been invalidated, it remains so.

איתמר נמי: א"ר ירמיה אמר ר' אבהו א"ר יוחנן: אכל חלב והפריש קרבן ונשתטה וחזר ונשתפה, הואיל ונדחה ידחה:
It has been stated likewise: R. Jeremiah said in the name of R. Abbahu in R. Johanan's name: If one ate heleb and thereupon dedicated a sacrifice, became a שוטה, but later recovered, since it [the sacrifice] has once been invalidated, it remains so.

וצריכא דאי אשמעינן קמייחא:

And both rulings are necessary.

משום דאיהו דחה נפשיה בידיה אבל האי דממילא קא דחי אימא
כישן דמי:

For had he taught us the first one only, [one might have assumed that] it was because he had rendered himself unfit [to offer a sacrifice] by his own action; but as for the latter case [insanity], where he was automatically unfitted, I might say that he is [merely] as a person who has slept [in the meantime].

ואי אשמעינן הכא משום דאין בידו לחזור אבל התם דבידו
לחזור אימא לא צריכא: (סנהדרין מנא):

Again, had he taught us only the latter, [one might have thought that] it was because it was not in his power to recover; but there [in the case of apostasy], since it was in his power to return, one might say that it does not [remain invalidated]. Both rulings are therefore necessary.

SHABBATH 104b

המסרט אל בשרו. חניא אמר להן רבי אליעזר לחכמים והלא
בן סטדא הוציא כשפים ממצרים בסריטן שעל בשרו.

He who scratches a mark on his flesh -- It was taught
R. Eliezer said to the Sages: But did not Ben Stada bring
forth witchcraft from Egypt by means of scratches upon his
flesh?

שוטה הוא ואין מביאין ראיה מן השוטים.

He was a שוטה, they answered, and proof cannot be adduced
from שוטים.

SHABBATH 153a

חמור וחרש שוטה וקטן -- אחמור מנה ליה. לחרש שוטה וקטן
לא יהיב ליה.

[If there] an ass, and a deaf-mute, שוטה, or minor, he must
place it on the ass and not give it to the deaf mute,
שוטה, or minor.

מ"ט? הני אדם, האי לאו אדם. חרש ושוטה לשוטה...

What is the reason? The latter are human beings whereas
the former is not. [In the case of] a שוטה and a minor --
to the שוטה...

SOTA 3a

חניא היה רבי מאיר אומר:
[The following is the reason:]

It has been taught: Rabbi Meir would say:

אדם עובר עבירה בסתר והקב"ה מכריז עליו בגלוי שנאמר
ועבר עליו רוח קנאה.
"A person commits a transgression in secret -- and the Holy One blessed be He proclaims it against him in public, as it is written (at Num 5:14), 'And the spirit of jealousy came upon him.'

ואין עבירה אלא לשון הכרזה שנאמר ויצו משה ויעבירו קול במחנה.
And there is no meaning for the word 'transgression' but that of 'proclaiming', as it is said (at Exodus 36:6), "And Moses gave commandment, and they caused it to be proclaimed throughout the camp."

ריש לקיש אמר אין אדם עובר עבירה אא"כ נכנס בו רוח שטות.
Resh Lakish said: A person does not commit a transgression unless a spirit of folly [acting like a שוטה] enters into him.

שנאמר איש איש כי חשטה אישחו חשטה כחיב. (סוטה ג:א)
As it is said, 'If any man's wife go aside.' Written is חשטה [tisteh, lit. "to go aside" is read as tishteh, to act like a שוטה].

SOTA 21b

היבי דמי חסיד שוטה כגון דקא טבעה איחחא בנהרא ואמר לאו
אורח ארעא לאיסתכולי בה ואצולה. (סוטה כא:ב)
What is a foolish pietist like? -- A woman is drowning in the river, and he says, 'It is improper for me to look upon her and rescue her.'

SOTA 24a-b

רבי יונתן האי איש איש מאי עבד ליה? מיבעי ליה לרבות
אשח חרש ואשח שוטה ואשח שעמום. (סוטה כד:א-ב)
What then, does R. Jonathan make of the repetition of the word 'man' [at Numbers 12:14]? He required it to include the wife of a deaf-mute man, the wife of a שוטה, and the wife of a weak-minded man.

SOTA 25a

א"ר חנינא מסורא:
R. Hanina of Sura said:

ח"ש ואלו שבית דין מקוין להן:
Come and hear: In the following cases a court of law can give warning:

מי שנחרש בעלה או נשתטה או שהיה חבוש בביית האסורין.
When the husband is a deaf-mute or has become a deaf-mute or is imprisoned.

ולא להשקותה.
Not for the purpose of making her drink bitter water [did they say this]

אמרו אלא לפסולה מכתובתה.
but rather, they said [it] in order to invalidate her marriage contract.

ש"מ בעי התראה.
Conclude from this that she does require to be warned!

ש"מ וכולהו.
The conclusion is to be drawn.

מאי טעמה?
But why did not [the other Rabbis] draw the inference from this passage?

לא אמרי מהא דלמא שאני התם דליח לה אימתה דבעל כלל.
-- [They thought] perhaps it is different in the circumstance where she had no cause at all to be afraid of her husband. [that is, in normal circumstances she would lose her marriage contract without a warning]

איבעיא להו עוברת על דת ורצה בעל לקיימה מקיימה או אינו מקיימה?
The question was asked, If a woman transgresses the ethical code and the husband desired to retain her, may he do so or may he not?

מי אמרינן בקפידא דבעל חלא רחמנא והא לא קפיד או דלמא כיון דקפיד קפיד.
Do we say that the All-Merciful depends upon the husband's objection [to her conduct], and in this case he does not object; or, perhaps, since [a husband normally] objects, he must object [and divorce her]?

ח"ש ואלו שביית דין מקנין להו מי שנחרש בעלה או נשתטה או שהיה חבוש בביית הארוסין.
Come and hear: In the following cases a court of law can give warning: when the husband is a deaf-mute or has become a deaf-mute or is imprisoned.

ואי אמרת רצה בעל לקיימה מקיימה עבדי ב"ד מידי דדלמא לאניחא ליה לבעל סתמא דמילתא כיון דעוברת על דת היא מינח ניהא ליה.

Should you maintain that if the husband desired to retain her he may do so, can the court of law do something of which the husband may not approve? As a general rule, when a woman transgresses the ethical code, [the husband] is agreeable [to the warning].

איבעיא להו בעל שמחל על קינויו קינויו מחול או אינו מחול.
The question was asked, if a husband retracted his warning, is the warning retracted or not?

מי אמרינן בקינוי דבעל חלא רחמנא ובעל הא מחיל ליה לקינויו.
Do we say that the All-Merciful depends upon the husband's warning and here the husband retracted it;

או דלמא כיון דקני ליה מעיקרא לא מצי מחיל ליה.
or perhaps since he already gave a warning he is unable to withdraw it?

ח"ש ואלו שב"ד מקנין להן:
Come and hear: In the following cases a court of law can give warning:

מי שנתחרש בעלה או נשחטה או שהיה חבוש בבית האסורין.
When the husband is a deaf-mute or has become a prisoner or is imprisoned.

ואי אמר בעל שמחל על קינויו קינויו מחול עבדינן מיד.
דאי בעל מחיל ליה.
Should you maintain that if a husband retracted his warning his warning is retracted, can we perform an action which the husband may come and retract!

סחמא דמלחא אדם מסכים על דעת ב"ד.
As a general rule, a man agrees with the opinion of the court of law.

ח"ש ומסורין לו שני ת"ח שמא יבא עליה בדרך.
Come and hear: And they assign to him two disciples of the Sages lest he cohabit with her on the journey.

ואי אמר בעל שמחל על קינויו קינויו מחול לחילה לקינויה ולבעול.
Should you maintain that if a husband retracted his warning the warning is retracted, let him then withdraw it and cohabit with her!

מ"ש חלמידי חכמים דגמירי דאי בעי למיבעל אמרי ליה אחליה לקינויך ובעלה.
Why are disciples of the Sages specified? Because they are learned men, so that if he wishes to cohabit with her, they

say to him, "Withdraw your warning and cohabit with her."

YEBAMOTH 110b

והתנן: נחרשה יוציא נשחטית לא יוציא. נחרש הוא אי
נשחטה לא יוציא עולמית. (יבמות ק"ב)
Surely, we learned: If she became deaf, he may divorce her;
if she became a שוטה, he may not divorce her. But if he
became deaf or a שוטה he may never divorce her.

YEBAMOTH 112b

אמר רמי בר חמא: מאי שנא חרש וחרשת דחקינו להו רבנן
נשואין? ומ"ש דשוטה ושוטה גלא תקינו להו רבנן נשואין?
Rami b. Hama stated: Wherein lies the difference between a
male deaf-mute or a female deaf-mute [and a שוטה] that the
marriage of the former should have been legalized by the
Rabbis while that of the שוטה or שוטה was not legalized by
the Rabbis?

דתנא: שוטה וקטן שנשאו שנשים ומחו נשותיהן פטורין מן
החליצה ומן היבום.
For it was taught: If a שוטה or a minor married and then
died, their wives are exempt from halisa and from levirate
marriage.

חרש וחרשת דקיימא חקנתא דרבנן תקינו להו רבנן נשואין.
[In the case of] a deaf man or woman, where the rabbinical
ordinance can be carried into practice [that is, they
could lead a happy life] the marriage was legalized by the
Rabbis;

שוטה ושוטה דלא קיימא חקנתא דרבנן דאין אדם דר אם נחש
בכפיפה אחת לא תקונו רבנן נשואין.

[But in that of] a שוטה or שוטה, where the rabbinical
ordinance cannot be put into practice, since no one can
live with a serpent in the same basket, the marriage was
not legalized by the Rabbis.

YEBAMOTH 113b

נשחטית וכו':
And she became a שוטה.

א"ר יצחק דבר חורה שוטה מחגרשת מיד' דהוה אפקח בעל כרחה.
R. Isaac said: "It is (a word) [a ruling] from the Torah
that a שוטה may be divorced since her case is similar to
that of a woman of sound mind who may be divorced against
her will."

ומה טעם אמרו אינה מגורשת שלא ינהגו בה מנהג הפקר.
 "What is the reason that they said she [the שוטה] cannot be divorced? So that others will not treat her [wantonly] as a piece of ownerless property."

היכי דמי?
 What kind is to be understood?

אלימה דיודעת לשמור גיטה ויודעת לשמור עצמה מי נהגי בה מנהג הפקר.

If it is suggested of a woman who knows how to guard her (גיט) bill of divorce and knows how to guard herself -- who would treat her as if she were ownerless property?

אלא דאין יודעת לשמור לא גיטא ולא עצמה דבר תורה שוטה מחגרשת.
 But a woman who is unable to know how to guard her (גיט) bill of divorce and does not know how to guard herself -- is it (a word of) [a ruling] from the Torah that a שוטה can be divorced?

והא אמר דבי רבי ינאי ונחן בידה
 And surely it was stated in the School of Rabbi Jannai [according to the text from Exodus] "'and he places it into her hand.'

מי שיש לה לגרש עצמה יצתה זו שאין לה יד לגרש עצמה.
 [This means] into the hand of one who can accept her divorce. This woman [a שוטה] however, is excluded because she is incapable of accepting her divorce.

וחנא דבי רבי ישמעאל:
 It was further taught in the School of Rabbi Ishmael:

ושלחה מביחו מי שמשלחה ואינה חוזרת יצתה זו שמשלחה וחוזרת לא.

[As the Biblical text continues] "'And he sends her out of his house.' Only a woman who, when he sends her out, does not return. But this woman [a שוטה] is excluded since she returns even if he sends her out."

צריכא דיודעת לשמור גיטא ואינה יודעת לשמור עצמה.
 This was necessary concerning a woman who is capable of preserving her bill of divorce, yet who is unable to take proper care of herself.

דבר תורה שוטה מחגרשת דהא יודעת לשמור גיטה.
 [Therefore] it is a (word of) [ruling from] the Torah that a שוטה may well be divorced for, surely, she is capable of preserving her bill of divorce.

ואמור רבנן לא ליפקא שלא ינהגו בה מנהג הפקר.
Yet the Rabbis made a rule that she shall not be [divorced, that-is] dismissed so that other people will not treat her [wantonly] as a piece of ownerless property.

אמר אביי דיקא נמי דקחני גבי דידה נשמטיח לא יוציא וגבי דידה לא יוציא עולמית.

Abaye said: "This may also be supported by deduction. For in respect of her it is stated, 'If she became a שוטה he may not divorce her.' While in respect of him [it is said], 'he may never divorce her.'

מאי שנא הכא דקחני עולמית ומאי שנא התם דלא קחני עולמית.
"In what respect does the man differ that the [statement provided] is 'never'; while in respect of the woman [the word] 'never' is not mentioned?

אלא שמע מינה הא דאורייתא הא דרבנן. (יבמות ק"ג:ב)
"The inference, then is that (one) [the first] is Pentateuchally derived, and (one) [the other] is Rabbinical."

YEBAMOTH 113b

א"ר יוחנן בן נורי כו':

R. Johanan b. Nuri said, etc.

איבעיא להו רבי יוחנן בן נורי:

The question was raised concerning Rabbi Johanan b. Nuri's ruling:

איש פשיטא ליה ואשה קמיבעיא ליה או דלמא אשה פשיטא ליה ואיש קמיבעיא ליה?

Was he certain about the man and his question related to that of the woman -- or was he was certain about the woman and his question related to that of the man?

ח"ש מדקאמרו ליה ושלם לרצונה והאיש אינו מוציא אלא לרצונו.

Come and hear: Since they replied to him [R. Johanan b. Nuri] that, ('A man who gives a divorce is not like a woman who is divorced') for a woman may be divorced either with her consent or without it; but a man can only give a divorce of his own free will. [It may therefore be inferred that his question related to the man.]

ש"מ אשה קמיבעיא ליה.

On the contrary! [Since they said to him: "The other also is in a similar position"] It may be inferred that his

question is related to the woman!

אלא ר' יוחנן בן נורי לדבריהם קאמר להו
But [actually] R. Johanan b. Nuri was addressing [them in
light] of their own statement.

לדידי כי היכי דאיש לא מצי מגרש אשה נמי לא מיגרשא.
[He said] "According to my view, as well as a man is
incapable of giving a divorce, so too is a woman incapable
of receiving a divorce;

אלא לדירכו מאי שנא אשה ומאי שנה איש?
"But according to your view, why should there be a
difference between a man and a woman?"

אמרו ליה אינו דומה האיש המגרש לאשה המתגרשת. (יבמות ק"ג:ב)
They replied: "A man who gives a divorce is not like a
woman who is divorced."

ZEBAHIM 12b

אמר עולא אמר רבי יוחנן:
Ulla said in Rabbi Johanan's name:

אכל חלב והפריש קרבן והמיר דח והור בו הואיל ונדחה ידחה.
If one ate heleb and set aside a sacrifice, then
apostatized, yet subsequently retracted, since it was [once]
rejected, it will remain so.

איחמר נמי אמר ר' ירמיה אמר רבי אבהו אמר רבי יוחנן
It was likewise stated [by an Amora], R. Jeremiah said in
R. Abbahu's name that R. Johanan said:

אכל חלב והפריש קרבן ונשתטה והור ונשתפה הואיל ונדחה ידחה.
If a one ate heleb, set aside an offering, and then became
a שוטה, and later regained his sanity, since it [the
offering] was [once] rejected it will remain so.

וצריכי דאי אשמעינן קמייתא משום דהוא דחי נפשיה בידים
אבל חכא דממילא אידחי כישן דמי.
Now both rulings are necessary. Because had he informed us
of the first only, [you might have thought] the reason is
that he had disqualified himself [to offer this sacrifice]
by his own hands; but in the latter case he was
involuntarily disqualified for he is as one who fell
asleep.

ואי אשמעינן חכא משום דאין בידו לחזור אבל חכא דיש בידו
לחזור אימא לא צריכא. (זבחים י"ב:ב)
And if he had informed us of the latter case only, you

might think the reason is because his recovery is not dependent on himself; but in the former case [apostasy] it is not so, since he can retract. [Therefore both cases are necessary].

APPENDIX 5

UNITS FROM THE JERUSALEM TALMUD -- סוגיות מן הירושלמי

J. TERUMOTH I:1

סימני שוטה -- היוצא בלילה והלן בביית הקברות והמקרה אח
כסותו והמאבד מה שנותנין לו.

These are the signs of a שוטה. (1) A person who goes out (alone) at night and (2) a person who sleeps in a cemetery and (3) a person who rips his clothing and (4) a person who destroys what is given to him.

א"ר חונא והא שיהא כוליה בן. דלא כן אני אומר היוצא
בלילה קיניטרוקוס.

Rabbi Huna said: "This (type of person, a שוטה) must exhibit all of them. For otherwise I could claim that a person who goes out at night is a werewolf.

הלן בביית קברות מקטיר לשדים. המקרה אח כסותו סוליקוס.
המאבד מה שנותנין לו קודייקוס.

"[So too] a person who sleeps in a cemetery could be offering incense to spirits. A person who tears his clothes could be seeing visions. A person who destroys what is given to him could be delirious."

רבי יוחנן אמר אפילו אחת מהן. אמר רבי אבון מסתברא מה
דאמר יוחנן אפי' אחת מהן ובלבד.

Rabbi Johanan said: "A person (is a שוטה) if even only one of them (suffices)." R. Bun said: "R. Johanan's statement that even only one of them alone (suffices) is logical."

במאבד מה שנותנין לו אפילו שוטה שבשוטים אין מאבד כל
מה שנותנין לו.

"With regard to a person who destroys that which is given to him, even the greatest of שוטים does not destroy everything given to him.

קונדיקוס קורדייקוס אין בו אחת מכל אילו.

A delirious person does not evidence any of these."

מהו קורדייקוס. א"ר יוסי המים.

Who is a delirious person? R. Jose says: one who is confused in the mind.

אחא עובדא קומי ר' יוסי בחד טרסיי דהוון יהבון ליה
סימוק גו אכום והוא לעי אכום גו סימוק אמר דו הוא קורדייקוס
שאמרו חכמים.

A case came before R. Jose concerning an individual

from Tarsus. They gave him red meat after dark wine and he would cease raving and dark wine after red meat and he would cease raving. He said that this is the [type of] delirious person of whom the Sages spoke.

פעמים שוטה חלום הרי הוא כפיקח לכל דבר. בשעה שהוא שוטה הרי הוא כשוטה לכל דבריו. ובשעה שהוא חלום הרי הוא כפיקח לכל דבר.

Sometimes he is a שוטה and sometimes he is sane (dreaming), it is as if he is of sound mind in all respects. At the time he is a שוטה he is considered a שוטה in all respects. At the time he is sane, it is as if he is of sound mind in all respects.

אתא עובדא קומי שמואל אמר כד הוא חלים יתן גט. ושמואל כר"ש לקיש.

A matter came before Samuel. He said, "when [the שוטה] is lucid (quiet), he may give a bill of divorce [גט]. And Samuel appears to agree with Resh Lakish.

דריש לקיש אמר לכשישתפה רובה דשמואל מן דר"ש בן לקיש דחוא אמר כד דו חלים יתן גט וחחלימיני והחייני. (ירושלמי: חרומות א:א)

For Resh Lakish said, "when he becomes sane." In fact, however, Samuel's ruling is more permissive than Resh Lakish's insofar as he may give the bill of divorce when lucid [though still a שוטה and not recovered]. (Proof that this is so may be deduced from the verse in Isaiah 38:16) [this implies being strengthened before being fully cured].

APPENDIX 6

MIDRASHIM FROM MIDRASH RABBA-- מדרשים ממדרש רבה

NUMBERS RABBA 19:8

שאל גוי אחד את רבן יוחנן בן זכאי. דברים אלו, שאחם עושים, נראים כמין כשפים! אחם מביאים פרה ושורפים אותה וכוחשים אותה ונוטלים את אפרה. ואחד מכם מטמא למח, מזים עליו שמים ושלש טפות, ואחם אומרים לו. טהרה.

An idolater asked of R. Johanan b. Zakai: "These rites that you perform look like a kind of witchcraft!? You bring a heifer, burn it, pound it, and take its ashes. If one of you is defiled by a dead body you sprinkle upon him two or three drops and you say to him, 'You are clean!'"

אמר לו: לא נכנסה בך רוח חזויה מימך? אמר לו לאו. ראי' אדם, שנכנסה בו רוח חזויה? אמר לו: הן. אמר לו: ומה אחם עושים לו? אמר לו: מביאים עקרים ומעשנים תחתיו ומרביצים עליו מים, והיא בורחת. אמר לו: ישמעו אינך מה שאחם מוציא מפ'ך! (במדבר רבה פ' י"ח)

R. Johanan asked him: "Has the demon of madness ever possessed you?" "No," he replied. "Have you ever seen a man possessed by this demon of madness?" "Yes," he said. "And what do you do in such a case?" "We bring roots and make them smoke under him, then we sprinkle water upon the demon and it flees," he [the non-Jew] replied. R. Johanan said to him, "Let your ears hear what you utter with your mouth!..."

NUMBERS RABBA 9:9

שמעו נה המורים. מהו המורים? שיטות הרבה יש בו. המורים -- סרבנים. המורים -- שוטים, שכן בכרכי הים קורים לשוטה מורוס. המורים -- מלמדים את מלמדיהם. המורים -- [המורים] חצים. וימצאהו המורים אנשים בקשת. (במדבר רבה פ' ט"ז)

"Hear now, you rebels!" (Num 20:10) 'HaMorim' bears many interpretations: It may mean 'rebels'; it may mean שוטים [by the name] 'morim'; it may signify teachers' trying to teach their instructors; it may denote 'archers' as in the texts, "And the archers overtook him" (I Sam 31:3 and I Chron 10:3).

NUMBERS RABBA 9:26

אשר חשחה אישה תחת אישה. להביא את מי שנחתרש בעלה או שנשחטה או שחיה חבוש בבית הארוסים, שביח דין מקנאים להם לפסולן מכתובתן. (במדבר רבה פ' ט"ז)

"When a wife... goes astray." This is to include one whose husband has become deaf, or insane, or was imprisoned; for in such cases the court may warn the wives on their behalf, and disqualify them from receiving their marriage settlement.

NUMBERS RABBA 9:28

דבר אחר: איש איש לרבות חרש, שטוה ואשח שעמום, ושהלך בעלה למדינת הים ושהיה חבוש בביית האסורים, שביית דין מקנאים להן לפסלן מכתבתן. (במדבר ל"ה פ' ט:כח)

Another interpretation: The expression, "A man, a man" is intended to include the wife of a deaf-mute or a madman, the wife of a שטוה, and one whose husband has gone abroad or imprisoned; for in such cases the court can warn them in order to disqualify the wives from obtaining their marriage settlement.

SONG OF SONGS RABBA 4:7

חני רשב"י בשעה שעמדו ישראל לפני הר סיני ואמרו כל אשר דבר הי נעשה ונשמע. אותה שעה לא היה בהם לא זבים ולא מצורעין ולא חגרין ולא סומין. לא אלמין ולא חרשין. לא שוטים ולא שממין. לא טפשיין ולא חלוקי לב.

"Thou art all fair my love." (Song of Songs 4:7) R. Simeon b. Yohai taught: "When Israel stood before Mount Sinai and said, 'All that the Lord has spoken will we do and obey (Ex. 24:7),' at that moment there were among them neither persons with issue nor lepers nor lame nor blind, no dumb and no deaf, no שוטים nor demented ones, no dullards and no doubters."

על אותה שעה נאמר כולך יפה רעיתי. כוין שחטאו לא היו ימים קלים. והיו גם זבים ומצורעים חגרין וסומין. אלמים חרשים שוטים וטפשיים. האותה שעה נאמר וישלך מן המחנה כל צרוע וכל זב. (שיר השרים ד:ז)

"With reference to that moment it says, 'Thou art all fair my beloved.' After they sinned not many days passed before there were among them persons with issue and lepers, lame and blind, dumb and deaf, שוטים and dullards. Then the order was given, 'Let them put out of the camp ever leper, and every one that has an issue.' (Num. 5:2)"

APPENDIX 7
RELATED REFERENCES IN THE MINOR TRACTATES

MASEKKETH KALLAH 50b

אמר רבי יוחנן ארבעה דברים סחו ל' מלאכי השרת ואלו הן.
 חגרים, סומים, אלמים, חרשים. חגרים מפני מה מפני שהופכים את
 שולחנם ועושים כמעשה בהמות. סומים מפני מה מפני ש מסתכלין
 באותו מקום. חרשים מפני מה מפני שנושקים בואחו מקום.
 R. Johanan said: The Ministering Angels told me four
 things and they are related to the lame, the blind, the
 dumb and the deaf. Why [are children born] lame? Because
 [their parents] overturned the table ["unnatural acts"]
 and behaved like animals. Why blind? Because they gaze
 at 'that place'. Why deaf? Because they converse during
 cohabitation. Why dumb? Because they kiss 'that place'.

וחכמים אומרים [אין הלכה כרבי יוחנן אלא] כל מה שאדם
 רוצה לעשות באשתו [עושה כי אין הדבר דומה אלא למי שלקח בשר
 מטבח רצה אוכלו צלי רצה אוכלו מבושל רצה אוכלו ע"ג גחלים].
 (מסכת כלה נ:ב)

The Sages say the the law is not in agreement with
 R. Johanan, but a man may do with his wife as he desires;
 because the matter can be best compared to a man who
 purchased meat from the butcher: if he wishes he eats it
 raw, if he wishes he eats it boiled, if he wishes he eats
 it roasted over coals.

MASEKKETH KALLAH RABBATHI 52a

ברייחא. המשמש מטתו מיושב אחוזתו דלריא. מאי תקנתיה
 ירק של קוצים. הוא למטה והיא למעלה הרי זו דרך עזות שמא
 הוליד הפכפכן. היא למטה והוא למעלה הרי זו דרך ביאה. שמשו
 שניהם כאחת הרי זו דרך עקש. (מסכת כלה רבתי נ:א)

Baraitha. If one has intercourse sitting he will be
 subject to diarrhea. What is the remedy for it? Crocus
 of thorns. If he is below and she above, this is an
 indecent practice [and there is a danger] of the child
 being fickle-minded; she below and he above is the
 [normal] way of intercourse; if they have intercourse as
 one it is a form of perversion.

MASEKKETH SOPHRIM 35b

הלכה יג: ס"ת שנכתבו צוקי או מסור או גר או עבד או
 שוטה וא קחן אל יקרא הו. זה הכלל: כל הכותבו מוציא את הרבים
 יד' חובתן. (מסכת סופרים לה:ב)

Rule 13. A scroll of the Torah that was written by a
 Sadducee, an informer, a proselyte, a slave, a woman, a
 שוטה, or a minor may not be used for the lection. This is

the rule: Whosoever cannot act in religious matters on behalf of the public is not permitted to write a scroll of the Torah.

MASEKKETH SOPHRIM 40b

הלכה יח: במגילה בכל כשרין לקרות את המגילה חוץ מחרש
שוטה וקטן. ר' יהודה מכשרין בקטן. (מסכת סופרים מ:ב)

Rule 18. As regards the scroll of Esther, all are qualified to read except a deaf person, a שוטה and a minor. R. Judah declared a minor to be qualified...

TA = Rabbi's generation or even earlier and later

NAME	DESCRIPTION
ABAYE	Abi. Disciple of R. Papa lived in Sura
ABAYE H. KAHALAH	
ELIZAR H. HANOKH	
MAH H. H. H. H.	
MAH H. H.	
RAB	Abi. at the time of R. Papa
WABA	Abi. H. Mahanah disciple of R. Papa lived in Sura
MAHRI	Abi. Judah H. H. H. disciple of the Master
R. ANAN	Abi. Disciple of R. Johanan
R. ANA H. JACOB	Abi.
R. ANA H. H. H.	Abi.
R. ANIDA	Abi.
R. ASMI	Abi. Disciple of R. Papa lived in Sura
R. BUN	Abi. (R. Abin I. or Tabai)

APPENDIX 8
GENERATION, LOCATION AND DISCIPLE GROUPS
OF ALL RABBIS NOTED

CODE

- T = A Tanna (arguments appear in the Mishnah and/or
 Tosephta and/or in מן'ן'ן in the Talmud)
 A = An Amora (arguments appear only in the Talmud)
 I = An Amora residing in Israel
 B = An Amora residing in Babylonia
 # = Generation within the Tannaim or Amoraim
 TA = Border generation between Tannaim and Amoraim

NAME**DESCRIPTION**

ABAYE	AB4. Disciple of R. Judah and R. Joseph
AKABIAH B. MAHALEL	T1
ELIEZER B. HANOKH	T?
MAR. B. RAV ASHI	AB7
MAR UKBA	AB1
RAB	(Abba Arikha); AB1
RABA	Raba b. Nahmani; AB3. Disciple of R. Judah, lived in Pumbedita
RABBI	Rabbi Judah HaNasi; T6. Editor of the Mishnah
R. ABBAHU	AI3. Disciple of R. Johanan
R. AHA B. JACOB	AB3
R. AHA OF DIFTI	AB6-7
R. AKIBA	T4
R. ASHI	AB6. Disciple of R. Papa, lived in Sura
R. BUN	AI4. (R. Abin I, or Tabin)

R. ELEAZAR B. AZARIAH	T4
R. ELEAZAR B. ZADOQ	T3 or T5
R. ELIEZER	R. Eliezer b. Hyrcanus; T3. Disciple of Rabban Johanan b. Zakai
R. HAMA	AB5 or R. Hama b. Gumya; AB2
R. HANINA B. PAPA	AI3
R. HISDA	AB3. Disciple of R. Huna
R. HUNA	AB2 (not R. Huna b. Abin, AI4). Disciple of Rab.
R. ISAAC	R. Isaac of Nappaha; AI2
R. ISHMAEL	R. Ishmael b. Elisha; T4
R. ISHMAEL	R. Ishmael son of R. Johanan b. Baroka; T5
RABBI JACOB	T4
RABBI JANNAI	AI1. Teacher of R. Johanan
R. JEREMIAH	AI3-4
R. JOHANAN	R. Johanan b. Napaha; AI2
R. JOHANAN B. NURI	T4
R. JOHANAN B. ZAKAI	T2
R. JONATHAN	T5
R. JOSE	Rabbi Jose b. Halaphta; T5. Disciple of R. Akiba
R. JOSEPH	R. Joseph b. Hiya; AB3
R. JOSHUA	R. Joshua b. Hananiah; T3
R. JUDAH	R. Judah b. Ilai; T5. Disciple of R. Akiba
R. JUDAH B. NEKOSA	T6

R. LEVI R. Levi b. Sisi; TA
 QUICK REFERENCE OF RABBINIC COMMENTS CONCERNING THE NAME
 R. MEIR T5. Disciple of R. Akiba
 R. NAHMAN B. ISH PRATI AB?
 R. NEHUNIAH B. HAKAHANE T3
 R. PAPA AB5. Disciple of Raba
 R. SHILA TA
 R. SIMEON R. Simeon b. Yohai; T5.
 Disciple of R. Akiba
 R. GAMALIEL R. Rabban Gamaliel II of Yavneh;
 T3
 RABBAN SIMEON B. GAMALIEL T2 or T5. Nasi, leading
 authority of his day
 RABINA AB6
 RAMI B. HAMA AB4
 RESH LAKISH Shimon b. Lakish; AI2
 SAMUEL AB2. Disciple of Abba, his
 father.
 SUMKHOS T6. Disciple of R. Meir
 ULLA Ulla b. Ishmael; AI2-3

APPENDIX 9

QUICK REFERENCE OF RABBINIC COMMENTS CONCERNING THE שוטה

TANNAIM

AQABIAH B. MAHELEL

Better to be labelled a שוטה than to sacrifice one's principles

RABBI

שוטה are sometimes subject to damages for Degradation

RABBI AKIBA

R. Akiba that the thirteen rules do not apply to a שוטה

A שוטה-like person possessed by a לוח לטה can move only four cubits when past the Sabbath limit

R. GAMALIEL &
R. ELEAZAR B. AZARIA

A שוטה-like person possessed by a לוח לטה can move around even when past the Sabbath limit

R. ISHMAEL

One who seeks office is arrogant, wicked and a שוטה

R. ISHMAEL SON OF
R. JOHANAN B. BAROKA

Proof derived from the Pentateuch is the antithesis of proof derived from מ'ט'ט

RABBI JACOB

A שוטה is liable for half of the damages caused by his goring ox

R. JOHANAN B. ZAKAI

מ'ט'ט have insipid and incorrect understandings of Scripture

R. JOHANAN B. NURI

A שוטה incapable of receiving a Pentateuchally-mandated divorce

R. JONATHAN

The wives of the deaf-mute, weak-minded and שוטה are eligible as suspects for the bitter waters

R. JOSE

A שוטה needs a guardian

before evidence can be presented that would harm him economically

A confused person should be made to feel comfortable, even if that necessitates suspending legal precedents

R. JOSHUA

A חטף-like person possessed by a למה למה can move only four cubits when past the Sabbath limit

R. JUDAH NEKOSA

Supports Sumkhos that a חטף's ox may be warned after the second goring

R. MEIR

A חטף's father must bring proof that she was of sound mind prior to the marriage

חטף is not subject to damages for Degradation

Supports R. Akiba that the thirteen rules do not apply to a חטף

A change in the status of a חטף changes the status of its goring ox

R. ELEAZAR B. ZADOK

A חטף-priest must pass a strict test before eating his priestly portion

R. SIMEON B. YOHAI

There were no חטף at Sinai

R. SIMEON B. GAMALIEL

Mad animals are not accepted as sacrifices

SUMKOS

A חטף's ox may be warned after the second goring

TANNAIM-AMORAIM

R. LEVI

An otherwise person of sound mind who is dying can make acquisition on the Sabbath

AMORAIM OF ISRAEL

R. ABBAHU

Supports R. Johanan that temporarily being a גטלש permanently invalidates a specifically dedicated sacrifice

R. BUN

Supports R. Johanan's position that a גטלש must only exhibit one גטלש-like presentation because even the worst גטלש does not destroy everything he has

R. ISAAC

A גטלש may be divorced like any other woman is inferred by the Pentateuch

R. JEREMIAH

Supports R. Abbahu and R. Johanan that temporarily being a גטלש permanently invalidates a specifically dedicated sacrifice

R. JOHANAN

Temporary apostasy permanently invalidates a specifically dedicated sacrifice; so too, temporarily being a גטלש permanently invalidates a specifically dedicated sacrifice

Only גטלש and minors, both of whom lack understanding/cognition, prophesize

In order to be defined a גטלש, one need only exhibit one גטלש-like presentation

Have to treat a "spirit of madness" and because the גטלש has no control over his

RAMI B. HAMA

The Rabbis legislated against marriage to a גטלש on account of their instability

RESH LAKISH

Equates the גט with transgression

So long as a גט is behaving as sane, he may give a bill of divorce

ULLA

Supports R. Johanan that temporary apostasy permanently invalidates a specifically dedicated sacrifice

AMORAIM OF BABYLONIA

ABAYE

While the גט may be divorced like all other women in accordance with the Pentateuch, the Rabbis legislated she may not be divorced when she lacks understanding/cognition

MAR UKBA

A rabbinic court of law may take control in order to provide support to a גט's dependents

RABA

If a גט's ox gores, guardians are appointed so its owner may be warned by the court of law the next time

RABINA

Supports R. Ashi's contention that the rabbinic court of law may not take entire control of a גט's estate

R. ASHI

A rabbinic court of law may not take entire control of a גט's estate

The גט is unlike one who goes abroad because the גט has no control over his "absence"

When witnesses give conflicting testimony to

PRIMARY SOURCES

R. JOSEPH

whether one is a הוֹטוֹ , the הוֹטוֹ is permitted to engage in acquisitions

A change in the status of a הוֹטוֹ does not change the status of its goring ox

R. HISDA

Supports Mar Ukba's contention a rabbinic court of law may take possession in order to distribute a הוֹטוֹ 's entire estate

R. HUNA

In order to be defined a הוֹטוֹ , one must simultaneously exhibit all of the הוֹטוֹ -like presentation

R. PAPA

R. Huna would have accepted the definition of a הוֹטוֹ as "One who destroys all that is given to him" had he heard its formulation

SAMUEL

So long as a הוֹטוֹ behaves in a quiet manner, he may give a bill of divorce

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