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“THERE WERE AMONG THEM NO SHOTIM:”
MENTAL ILLNESS IN THE LEGAL LITERATURE OF
THE RISHONIM AND IN S.Y. AGNON'S 'A SIMPLE
STORY'

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"There Were Among Them No Shotim:"

Mental Illness in the Legal Literature of the Rishonim and in S.Y. Agnon's 'A Simple Story'

The goal of this thesis was to arrive at a deeper Jewish understanding of mental illness. I conducted an in-depth examination of two models depicting and relating to this topic, one, a legal model as reflected in the Rabbinic literature of the Rishonim, and the other, a literary model as read through S.Y. Agnon's novella *A Simple Story*.

An examination of these two models of mental illness stands to benefit all those who serve in positions of religious leadership in the Jewish community as this kind of study challenges us to evaluate both our attitude towards mental illness, and the part we as Liberal Jews play in this regard in the chain of Jewish tradition. Ultimately, how we think of, relate, and what we believe about this particular kind of "otherness" among us, will tell the story of who we are.

The thesis contains an introduction and a final reflection, and three main chapters. The first chapter is the Rabbinic chapter, in which I examined the term "shoteh" through the legal literature of the Rishonim. The second chapter of this thesis is an analysis of Agnon's סיפור פשוט through the prism of mental illness. In the third chapter of this thesis I put together some educational resources based on the research and findings of the first two chapters. These materials are meant to serve as part of a larger educational framework on this topic aimed at adult learners, especially those in positions of religious leadership.

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Lastly, this is long overdue:

ותודה לאמי ואבי שהביאוני עד הלום.

INTRODUCTION

This thesis is an attempt to get at a deeper Jewish understanding of mental illness. Through a close examination of two models – one Rabbinic and the other Literary – I had initially hoped to gain a deeper insight into both the experience of mental illness, and societal responses to that illness and to the mentally ill.

I therefore opted to conduct an in-depth examination of two very different models depicting and relating to this topic, one, a legal model as reflected in the Rabbinic legal literature of the Rishonim, and the other, a literary model as read through S.Y. Agnon's novella *A Simple Story*.

The first (and longest) chapter of this thesis is the Rabbinic chapter, in which I examined the term “*shoteh*” through the legal literature of the Rishonim (ca. 11th to 15th centuries) in order to see how the law developed following the Tannaitic and Amoraic period¹. I have chosen to focus mainly on Responsa with the understanding that they would reflect the most practical aspects of topic, i.e. real problems and challenges that came up in various Jewish communities, which were then presented before scholars. I also felt it would be necessary to examine at least one Code, and opted for Maimonides' 12th century *Mishneh Torah* over another notable Code of the period – Jacob ben Asher's 14th century *Arba'a Turim* (Also: *Tur*) – because of its more accessible topical arrangement and episodic departure from Talmudic traditions which I was interested in examining.

I have divided the first chapter into three sub categories: a very short overview of Tannaitic and Amoraic materials, an extended reading of various Ashkenazic sources, and then of Sephardic sources.

I have left the term “*shoteh*” untranslated throughout this thesis, with the

¹ For an in-depth reading of earlier Rabbinic periods on this topic see: Eric Polokoff, The new in Formative Rabbinic Literature (New York: HUC Rabbinic Thesis, 1990)

understanding that during the Rishonic period it was used primarily to depict acute cases of mental illness. Where it denotes something different (such as “imbecility”), I have noted so. I have also left references to the “*shoteh*” in the original masculine form and feminine form as those appear in the sources. For the most part, when I used male English pronouns to refer to the *shoteh/shotah*, it should be understood that they apply to both men and women without distinction, except in some cases where the law concerns women specifically (as is the case, for example, of a woman menstruating), in which case I have noted the female form “*shotah*” as it appears in the original Hebrew. The term “*shotah*” then, is not to be understood as a separate or different category, but merely as a female “*shoteh*”.

The second chapter of this thesis is an analysis of Agnon's סיפור פשוט through the prism of mental illness. In this chapter I present the argument that Agnon depicts mental illness as an understandable and even justifiable way of coping with one's deeply flawed society. Through following the main character's descent into mental illness and applying the Rabbinic category of “*shtut*” to his illness, I attempted to gain a deeper and more variegated understanding of both the legal literature previously examined, and the way in which mental illness is experienced by an ill individual and the society in which he resides.

In the third chapter of this thesis I put together some educational resources based on the research and findings of the first two chapters. These materials are meant to serve as part of a larger educational framework on this topic aimed at adult learners, especially those in positions of religious leadership. The purpose of such an educational initiative would be to expand participants' purview in regard to mental illness by looking at the two models and trying to discern where we stand in relation to them and what implications they could have on our theology of mental illness (if we have one).

The final chapter is a personal reflection on the topic and the process of this thesis.

RABBINIC MODEL – THE *SHOTEH* IN THE LEGAL LITERATURE OF THE RISHONIM

Introduction

The image of the *shoteh* as examined through the halakhic literature of the Rishonim is fairly consistent. For the most part, the *shoteh* can be understood to be a deeply debilitated individual, whose lack of capacity to function in daily life renders him without agency in the Rabbinic world. However, it could equally be argued that in some cases, what strips the of agency is actually Rabbinic legislation, and not his debility. In the Rabbinic view, the *shoteh* is akin to what we today would call a severely mentally-ill individual who cannot survive outside of an institution. Since mental institutions did not exist in the rabbinic period and in the period of the Rishonim, legislation fulfilled the function of ensuring safety for both society and the *shoteh*, as well as making sure the *shoteh* remains at a certain remove from society, even though living within it.

But to understand the legal decisions of the Rishonim, it is necessary to run a quick overview in order to outline the basic legal issues that confronted their predecessors in regard to *shotim*. The Rabbinic period of the Tannaim and Ammoraim is the period in which the *Shoteh* emerges as a legal category, and the Rabbinic effort is thus concentrated on defining the category, outlining various boundaries for the *shoteh*'s activities communally as well as individually, and mandating protection to safeguard the *shoteh*.

Tannaitic and Amoraic Overview

We should begin by an explanation of what a *shoteh* is. An individual will be included in the category of *shoteh* if they behave in the following ways:

תנו רבנן: איזהו שוטה? היוצא יחידי בלילה, והלך בבית הקברות, והמקרע את כסותו. איתמר, רב הונא אמר: עד שיהו כולן בבת אחת. רבי יוחנן אמר: אפילו באחת מהן. היכי דמי? אי דעביד להו דרך שטות - אפילו בחדא נמי.

Our Rabbis taught [in a beraita]: Who is [deemed] a *shoteh*? 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. Yohanan said: Even if [he does only] one of them. What is the case? If he does them in an insane manner, even one is also [proof].¹

[...]

אמר רב פפא: אי שמיע ליה לרב הונא הא דתניא: אי זהו שוטה - זה המאבד כל מה שנותנים לו, הוה הדר ביה.

R. Papa said: If R. Huna had heard of that which is taught: Who is [deemed] a *shoteh*? One that destroys all that is given to him: he would have retracted [his previous statement that they must all be done together].²

The Tannaim thus delineate a definition which takes into account one's compulsion, odd behavior that puts the self at risk, self-destructive tendencies, and the clear expression of mental anguish. The definition of a *shoteh*, however, remains under controversy in the Talmud, as the Rabbis cannot come into agreement on what the specific behaviors are that render one a *shoteh*, and how many of the characteristics need to manifest for the individual to be classified as a *shoteh*. Later on the halakha follows Rabbi Yohanan, but at this early stage, the matter remains unresolved. It is also noteworthy to mention that the Palestinian Talmud includes all four conditions as *Simanei Shoteh*.³

The *shoteh* is not necessarily a permanent state of being. Thus, an additional legal category which is an in-between category is defined. This is the category of עתים חלים - intermittently well and ill: "if a man is sometimes in his sound mind and sometimes a *shoteh*, when he is in his sound mind he is regarded as sane for all intents and

1 תלמוד בבלי מסכת חגיגה דף ג עמוד ב

2 תלמוד בבלי מסכת חגיגה דף ד עמוד א

3 תלמוד ירושלמי מסכת תרומות פרק א דף מ טור ב - ה"א

purposes, and when he is a *shoteh*, he is regarded as a *shoteh* for all intents and purposes."⁴ The implications of this category were controversial still in the Amoraic period as we will see below, and later became prominent in many of the Rishonim's discussions in regard to family law.

As for defining boundaries for the *shoteh*'s activities, the *shoteh* (along with the deaf-mute and the minor) is exempt from all mandated religious responsibilities, both communal and individual.⁵ The Mishnah declares the terumah of the *shoteh* invalid⁶, his ritual slaughter (*shkitah*) un-kosher⁷ (although it kosher after the fact, if he was watched by someone else), a *shoteh* cannot perform a religious duty on behalf of the many since one who is himself not obligated *אֵינוֹ מוֹצִיא אֶת הָרַבִּים יְדֵי חוֹבָתָן*⁸, and he is not qualified to read the Megillah⁹, to name just a few examples. In terms of transgressing the law, the *shoteh* is not considered criminally liable, such as in the case of causing a wound to another person, although others who harm the *shoteh* are liable.¹⁰ Should someone cause a *shoteh* to be shamed, the *shoteh* is not subject to be paid for degradation (*דמי בושת*). However, if one should argue that the compensation for degradation is paid not to the *shoteh* but rather on account of the insult suffered by the family, then since being a *shoteh* by itself constitutes a degradation to them which is second to none – *אין לך בושת גדולה מזו* – they are not entitled to payment.¹¹

Despite being thus legally non-viable, the *shoteh* is nevertheless maintained to be a human being, as is evident from the following case, in which the debate conceives an individual, who finds himself traveling carrying a purse; if shabbat enters and he is still out

4 תלמוד בבלי מסכת ראש השנה דף כח עמוד א

5 תלמוד בבלי מסכת חגיגה דף ב עמוד ב - ופטורים מכל מצות האמורות בתורה

6 משנה תרומות א:א

7 משנה חולין א:א

8 משנה ראש השנה ג:ח

9 משנה מגילה ב:ד

10 משנה בבא קמא ח:ז

11 תלמוד בבלי מסכת בבא קמא דף ט עמוד ב

walking, what should he do?

יש עמו נכרי - לנכרי יהיב ליה. מאי טעמא? - חמור אתה מצווה על שביתתו, נכרי - אי אתה מצווה על שביתתו. חמור וחרש שוטה וקטן - אחמור מנח ליה, לחרש שוטה וקטן לא יהיב ליה. מאי טעמא - הני אדם, האי - לאו אדם. חרש ושוטה - לשוטה, שוטה וקטן - לשוטה.

If there is a Gentile he should give it to him: what is the reason? As for a donkey, you are under an obligation that it should rest, but as for a Gentile, you are under no obligation that he should rest. [If there] is a donkey, and a deaf-mute, *shoteh*, or minor, he must place it [his purse] on the donkey and not give it to the deaf-mute, *shoteh*, or minor. What is the reason? The latter are human beings whereas the former is not. [If he has with him] a deaf-mute and a *shoteh*: [he should give it] to the *shoteh*; [if he has with him] a *shoteh* and a minor - to the *shoteh*.¹²

In the hierarchy of donkey versus *shoteh*, the *shoteh* is deemed higher than a donkey: even though the *shoteh* is exempt from commandments and thus will not be breaking shabbat law by carrying, it is still preferable to put the purse on the donkey, because the *shoteh* (and deaf-mute and minor) are *human beings* (and thus presumably should not be abused). The *shoteh* is, however, lower in hierarchy than both the deaf-mute and the minor.¹³

To protect the *shoteh*'s interests, he is subject to guardianship since he is considered incapable of managing his own affairs. Thus in the case of a *shoteh*'s ox that gored, a guardian is appointed to argue the matter in the court for the *shoteh*.¹⁴ Furthermore, (and although the notion was contested), in the Amoraic period guardianship is expanded to include economic protection to the wife and children of the *shoteh*: "If a man became insane the court will take possession of his estate and provide food and clothing for his wife, sons and daughters, and for anything else."¹⁵

But the most relevant for our purposes are the rules concerning the *shoteh* in relation to family law, i.e. marriage and divorce. To begin with, the *shoteh*'s ability to contract a marriage is basically prohibited by the Rabbis, presumably since he cannot provide legal consent¹⁶, nor is considered able to maintain a healthy family life. A *shoteh*'s

¹² תלמוד בבלי מסכת שבת דף קנ עמוד א

¹³ For further discussion relating to this particular point in Rambam's Mishneh Torah see page 42.

¹⁴ משנה בבא קמא ד:ד

¹⁵ תלמוד בבלי מסכת כתובות דף מח עמוד א

¹⁶ תלמוד בבלי מסכת תענית דף ב עמוד ב - מה שוטה וקטן, דלאו בני דעת

kiddushim is therefore not considered kiddushin, although there is controversy whether this applies only when the two partners are *shotim*, and does not apply when concerning the kiddushin of a sound person with a *shoteh*:¹⁷ the rationale behind these marriages not being legalized by the Rabbis is especially interesting:

אמר רמי בר חמא: מאי שנא חרש וחרשת דתקינן להו רבנן נשואין, ומ"ש דשוטה ושוטה דלא תקינן להו רבנן נשואין? דתניא: שוטה וקטן שנשאו נשים ומתו - נשותיהן פטורות מן החליצה ומן היבוס! חרש וחרשת דקיימא תקנתא דרבנן - תקינן להו רבנן נשואין, שוטה ושוטה דלא קיימא תקנתא דרבנן, **דאין אדם דר עם נחש בכפיפה אחת** - לא תקינן רבנן נשואין. ומאי שנא קטן דלא תקינן רבנן נשואין, וחרש תקינן ליה רבנן נשואין? חרש דלא אתי לכלל נשואין - תקינן רבנן נשואין, קטן דאתי לכלל נשואין - לא תקינן רבנן נשואין.

Rami b. Hama stated: Where lies the difference between a deaf man or a deaf woman [and a *shoteh/shotah*] that the marriage of the former should have been legalized by the Rabbis while that of the *shoteh/shotah* was not legalized by the Rabbis? For it was taught: If a *shoteh* or a minor married, and then died, their wives are exempt from halitza and from the levirate marriage! [In the case of] a deaf man or a deaf woman, where the Rabbinical ordinance could be carried into practice, the marriage was legalized by the Rabbis: [in that of] a *shoteh/shotah*, where the Rabbinical ordinance cannot be carried into practice, since *no one could live with a serpent in the same basket*, the marriage was not legalized by the Rabbis.¹⁸

In the same vein, it is considered "kosher" for the *shotch* to write a get, but not to deliver it,¹⁹ although neither a man nor a woman in a state of *shtut* can actually divorce: "if *she* became deaf, he may divorce her; if she became a *shotah*, he may not divorce her. But if *he* became deaf or a *shotch* - he may *never* divorce her."²⁰ In the Palestinian Talmud²¹, this particular point is under controversy, concerning the previously mentioned category of the *shotch* - *עתיים חלים עתים שוטה* - the intermittent *shotch*: according to Shmuel, *חלים* is considered well, i.e. of sound mind for all intents and purposes and can therefore divorce, but according to Reish Lakish it is only when he is completely well, i.e. *כשישתפה* that he can grant a divorce. It's worth noting that the question here concerning two different stages of healing from *שטות* remained problematic for the Rishonim. In the case of a woman though,

תלמוד ירושלמי מסכת תרומות פרק א הלכה א - דתנן חרש שוטה וקטן שקידשו אין קידושיהו קידושין וכו' 17

תלמוד בבלי מסכת יבמות דף קיב עמוד ב 18

משנה גיטין ב' 19

תלמוד בבלי מסכת יבמות דף קיב עמוד ב 20

תלמוד ירושלמי מסכת תרומות פרק א דף מ טור ב - ה"א - פעמים שוטה פעמים חלים 21

of whom consent is not a requisite for, the Rabbis provide a different rationale of why a *shotah* woman cannot be divorced - שלא ינהגו בה מנהג הפקר - so that she will not be treated like a piece of ownerless property²² i.e., so that people should not take advantage of her sexually since she belongs to no one and is not capable of objecting.

Tannaitic and Amoraic legislation therefore presents us with a system that is meant to assist and protect the *shotim* – limit their liability, exempt them from religious obligations, provide them with guardianship, and give them a measure of protection in the face of a debilitating cognitive disability. If the Rabbinic system appears paternalistic, it is because it had to have been so in regard to an individual whose cognitive abilities are so severely compromised. Whether or not such a model provides for maximal inclusivity under the circumstances remains to be seen, as despite going through great lengths to ensure the safety of the *shoteh*, it should be noted that he/she is thought of as exemplifying the highest degree of degradation, as well as metaphorically referred to as a poisonous entity which is not capable of adjusting to a human home life (i.e. serpent).

If indeed it is true that in the Jewish culture mental illness can at most be pitied, and perhaps responded to, but since “[m]ental incompetence seems to be antithetical to the ideals of halakhic culture, whose paragons are the scholar [*talmid hakham*], the righteous one [*tzadik*], and the pious one [*chasid*]²³,” how truly inclusive can Rabbinic legislation be in regard to the *shoteh*? What possible religious venues exist for him/her to maintain him/herself as part of the Jewish people and the covenant with God if exempt from all communal and individual mitzvot?

In the following chapter, which will be divided between the Rishonim of Ashkenaz and Sepharad, I will be surveying, more or less thematically, the issues that faced Jewish law makers when confronted both with the reality of the *shoteh*, and with the pre-existing

22 תלמוד בבלי מסכת יבמות דף קיג עמוד ב

23 Tzvi Marx. *Disability in Jewish Law*. (London: Routledge, 2002). 107.

legislation. A detailed picture of the *shoteh* through a legal lens will thus hopefully emerge.

Rishonim – Ashkenaz

Rashi, the illustrious 12th century French scholar makes in his commentary to Bavli Hagiga 3b, a statement which becomes the benchmark for all the commentators and codifiers to follow him:

איזהו שוטה - האמור בכל מקום, שפטור מן המצות ומן העונש, ואין קנינו קנין, ואין ממכרו ממכר
A *Shoteh*, anywhere that this term is stated, is one who is exempt from commandments, and from legal retribution, and whose sale and purchase are not binding [cannot obtain ownership].²⁴

Rashi here sets a basic legal criteria regarding the *Shoteh*, since his commentary, in retrospect, has been used by later responders and codifiers as *law*, as we shall later see it re-stated by the Rambam. Rashi's language is original in regard to the Talmud; whereas there is a homiletic statement in Ketubot 20a out of which one can infer that selling property during one's *shtut* cannot be considered binding, the explicit ואין קנינו קנין, ואין ממכרו ממכר, which does appear in relation to the inebriated (Eruvin 65a), is otherwise not found in Tannaitic and Amoraic material²⁵. Rashi, who probably made this statement based on Geonic material²⁶, thus in essence sets a legal precedent.

In addition, by remarking "anywhere that this is stated," Rashi marks an additional milestone in the categorization of mental illness. From here on we are to understand that *whenever we encounter the term*, we have to think of him as lacking this basic commercial agency.

Elsewhere, in a discussion regarding minors and their vows, whether viable or not (Niddah 45b), it is stated that even if one does not know/remember in who's honor they made the vow (they were presumably too young), that vow is nonetheless valid. Rashi

24 רש"י מסכת חגיגה דף ג עמוד ב

25 It is, however, found in the Tosafists, Bava Batra 155a

26 ספר המקח והממכר שער ג הדרך השביעי עמ' כא

adds:

אפילו אמרו אין אנו יודעין כו' - גדולים הם ובכלל שוטה נמי לא מחזיקין להו דסופו לבא לכלל דעת ואין שוטה אלא המקרע כסותו והלך בבית הקברות והיוצא יחידי כלילה [...] They are adults and we do not hold them also in the category of a *shoteh*, since they will eventually come into cognition, and a *shoteh* is only he who tears off his clothes, sleeps in the cemetery, and goes out alone at night.²⁷

The designation between a *shoteh* and a minor is important specifically because these categories are so often lumped together as those which lack cognition and therefore agency. Rashi clarifies that a minor that grows up is not in the category of the *shoteh*; the *shoteh*, says Rashi, is only that one which exhibits the three signs in Hagiga 3b, a statement which later becomes a precedent to codifiers and responders. It is interesting that Rashi ignores the 4th criteria (who destroys everything they give him), as well as the other fine qualifications made in the gemara to these criteria, which is probably indicative of him considering them mere *examples* of insane behavior, rather than obligating conditions.

There is a difference between a person who is a *shoteh* and one who simply behaves strangely, even if it is for reasons we today would consider to point to mental illness. It is therefore important to note that Rashi's discussion is at times steeped in the language of evil spirits and sorcery; these are tangential to the discourse on the *shoteh*, but are not necessarily to be conflated together. Thus, when the gemara in Hagiga 3b, states "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," (i.e. – not because he is a *shoteh*) Rashi interprets it as follows:

שתשרה עליו רוח טומאה - רוח שדים, שיסייעוהו להיות מכשף.²⁸

For Rashi, spending the night in the cemetery in order to attract a demonic spirit which will

²⁷ רש"י מסכת נדה דף מה עמוד ב

²⁸ Ibid.

assist a person in becoming a sorcerer, is not considered an act of *shtut*. Similarly, when he comments on רוח רעה in Taanit 22b²⁹ he interprets the evil spirit to be of a demonic origin:

מפני רוח רעה - שנכנס בו רוח שידה, ורץ והולך, ושמה יטבע בנהר או יפול וימות.³⁰

In this case, it cannot be said that the person in whom the evil spirit has “entered” is a *shoteh*; what is clear is that this person for whom it is allowed to violate shabbat by sounding an alarm, is chased by that which is to him a very real demonic entity, one which endangers his life since by running away from it he may drown in the river or take a deadly fall. This is an one example in which we today would probably qualify this behavior – running away from / being possessed by an evil spirit – as a symptom of mental illness, whereas for the Rishonim (both Rashi³¹, and as we shall see, Rambam) it does not constitute *shtut*.

A case where the opposite is true (i.e. – categorizing someone as *shoteh* despite not actually fitting the criteria) can be found in a collection of responsa known as the Responsa of the Sages of Provence – *Shut Chakhmei Provence*, thought to be written between the years 1250 and 1350³². This particular responsum provides us with a wonderfully detailed case description brought before the responder:

תשובה לרב אדני זקני ר' מרדכי ב"ר יצחק בן קמחי נ"ע. נשאל נשאלתי על מעשה שאירע בארץ, כבחור אחד נדרוש נדרש לגרש את אשתו, ומימים קדומים נשמע שמע הבחור ההוא שחלה ממחלת השגעון השחורי, ועתה על אודות הגט אשר נתרצה לתתו על דבר זוזי דקרקישו ליה [unclear; lit. coins that] בא לפני קצת חכמים וחקרוהו על דבר מחלת שטותו, והגיד להם כי זה שתי שנים ויותר מהומות דמיונות יבהלוהו תמיד, מאנשים ידמה יהיו בבטנו תמיד ויפחידוהו, ומאתם ימשכו תמיד שלשה שנויים בפעולות, התמידים מיום החלו אלו הדמיונות לבהלו ולהפחידו והם, הרחיקו היין והבשר והשכיבת על המטות, ונותן טעם להרחקת היין והבשר כי לפי מחשבתו יגדילו חליו, ולהרחקת השכיבה על

29 על אלו מתריעין בשבת כ"ו. תנו רבנן: עיר שהקיפו נכרים או נהר, ואחד ספינה המיטרפת בים, ואחד יחיד שערך מפני נכרים או מפני לטין, ומפני רוח רעה - על כולן יחיד רשאי לטקף את עצמו בתענית.

30 רש"י מסכת תענית דף כב עמוד ב

31 It should be noted that for Rashi, as opposed to the Rambam, Ruach Ra'ah is seen in as an some kind of evil spirit, possibly as a result of Christian medieval influences. G. Winkler argues that Ru'ach Ra'ah does not always constitute something demonic in Judaism – many ancients thought of it as something akin to what we today call pathogens. Source: Gershon Winkler, Magic in the Ordinary: Recovering the Shamanic in Judaism (California: North Atlantic Books: 2003) 92.

32 Bar Ilan CD Version 12.5 – Biographies: *The Sages of Provence*.

המטות כי כהיותו שוכב על המטות ידמה כי האנשים אשר ידמה היותם תמיד בבטנו יפחידוהו, ולכן ישן ע"ג קרקע ועל גבי ספסלים, ולא נמצאת דעתו משובשת זולתי באלו הדמיונות אשר יאמי שיבהלוהו ובאלו השנויים בפעולות אשר ימשכו מאתם אשר ידמה המועילים למזיקים, אמנם שואל כענין ומשיב בשאר הדברים, זהו תוכן המעשה לפי השאלה³³ [...]

We learn here about a man who was asked to grant his wife a divorce because of his particular mental illness, the mysterious *מחלת השחורי*. The description of his symptoms reveals a fully functional man with a peculiar delusion: for over two years he lives in fear of imaginary beings (lit. people) who reside in his stomach and scare him. Because of this fear, three changes occurred in his behavior: he refrains from drinking wine and from eating meat, believing they make him sicker, as well as from lying on beds, since that's when these beings in his stomach scare him. He has therefore taken to sleeping on the ground and on benches. The description goes on to state that aside from these three changes, *his mind was not found to be disrupted*; true, he imagines beneficial things to be harmful, but in all other respects he asks and responds appropriately and to the point. Is this man then to be considered of sound mind and be allowed to grant a divorce?

The problem for the responder in determining whether or not this man is a *shoteh*, is that he does not fit the criteria of the *shoteh* as described in Hagiga 3b. Therefore, a new qualification over the previously stated conditions is introduced:

ולענין שוטה כתב הרב רבי בשם רבי"י דלא בעינן סימניו האמורים בפ"ק דחגיגה ג, ב+ אלא לגבי פטור מצות, אבל לענין גט אפי' ראינו בעינינו מעט ערוב או בדבורו או במעשיו אין כותבין על פיו³⁴ [...]

That is, the *shoteh* signs listed in the Hagiga 3b still apply, but only in regard to being exempt from mitzvot, and *not* when it comes to granting a divorce! When it concerns the latter, it would take a lot less to declare someone a *shoteh*; a bit of mixing up or confusion of speech or deeds – and a man is a *shoteh* in respect to the get; he is not considered viable in granting it.

³³ שו"ת חכמי פרובינציה חלק א סימן נו

³⁴ Ibid.

So uncomfortable, in fact, is the rabbinic authority in this case with affirming the agency of this particular man in relation to the divorce, that he goes so far as to insist that this man the man actually *fulfills* the conditions of a *shoteh* as set out in Hagiga 3b:

[...] מ"מ [מכל מקום] לענין הנדון שבפינו נראין לנו הדברים שאפי' יאמי בעל הדין לסמני שוטה בעיני בענין גט, האותות הנזכרין בזה הבחור מסמני שוטה הם, שהם היוצא יחידי בלילה שהוא אחד מסמני שוטה +חגיגה ג, ב+ ובו לבדו יוחזק בשוטה כר' יוחנן דאמר בפ"ק דחגיגה +חגיגה ג, ב+ אפי' באחד מהם, אפי' שלא נכר בו שטות אחרת לא בדבורו ולא במפעליו הרי הוא בכלל השוטים אחר שיתמיד דבר זה דרך שטות, כלומי שלא יתלה צאתו בלילה יחידי בדרך צרך דכיון הוא אמרינן [...] וראוי לכל ב"ד [בית דין] לחוש לזה ושלא ליתן גט על פיו עד שיתברר שנתרפא מחליו ודעתו מיושבת עליו ומעשיו מתוקנים, ואם נפשך לומי ולחלוק שאין שטותו של זה מבוררת כשטות היוצא יחידי, כן אנו מורין ובאין אפי' לא יהא אלא ספק שוטה אין כותבין גט על פיו, ובי דינא דמקל בכל כי האי גוונא מכניס עצמו בהתרת ספק אשת איש, אבל לפי דעתי ולפי מה שקבלתי מרבתי כל המגרש על פי שוטה זה מתיר אשת איש לעלמי ומרבה ממזרות בישראל [...] ³⁵

Even if one wanted to argue that the signs of the *shoteh* as depicted in Hagiga 3b apply to the giving of a get as well as to exemption from mitzvot, it would still mean that the man in question is not considered viable to grant a divorce since he fulfils (!) the criteria. The Rabbinic responder considers him akin to someone who goes out alone at night and persists in it *דרך שטות*, that is – in a manner of *shtut*, even though no other signs of *shtut* appear in him. Aware that this particular declaration may be subject to criticism, the responder provides a clear statement of insistence – 'if it should occur to you to disagree and say that this man's *shtut* is not like the *shtut* of the one who goes out alone at night, [know] that this is how we rule!' He also provides the rationale for his decision: it is in order to prevent *mamzerut* (presumably if the get is not legitimate, the man's wife is still married, and any children she may have with her next husband would be illegitimate).

This particular decisor is not so concerned with the interests of the individual *shoteh*, who may not even be a *shoteh*, as it is clearly stated that he is of sound mind in all other respects aside from the particular delusion, but rather with protecting society as a whole; not so much from insane individuals, but from the proliferation of illegitimate children. It should be noted though, that this is not a typical decision when it comes to the

³⁵ Ibid.

Rishoim, who usually avoid categorizing someone as *shoteh*.

Another responsum from this collection brings up the same case but in a more concentrated attempt to ascertain what signs necessitate declaring someone a *shoteh* (and in this case, lacking agency to grant a divorce).

[...] ברם כך דעתי נוטה לפי מה שלמדתי מרבתי ששטה שאמרו החכמי אין הולכים בו אחר מה שנראה בו מיישוב הדעת בקצת דברים, אלא אחר שאחזו אחד מימיני /ממיני/ השעמום³⁶ בלא הפסק אפי' ידבר דברים שיש בהם ממש ויעשה מעשים אין בהם זרות הרי הוחזק שטה ואין דנין מעשיו מדעת' צילתא כל עיקר, שכן מצי' שאמרו חכמים +חגיגה ג, ב, וכר' יוחנן+ ביוצא יחידי בלילה שהוא שטה מוחלט ואע"פ שלא נראה בו סימן אחר מימיני השטות, ואע"פ שיש לתלות הענין ההוא אל חולי בעל עונה ידועה ימשול עליו המקרה ההוא בלילות ויביאהו דמיונו לצאת יחידי, ועם השגת האור יסורו מחשבי רעיוני ויאור לו באור הדעת, והוי כעתים חלים עתים שטה +ראש השנה כח, א+ או כמשתק פעם ופעם נעור ושב לאיתנו, ואפי' הכי הוחזק כשטה גמור [...]³⁷

Here too the responder, as were his ashkenazic predecessors, is insistent upon declaring the man a *shoteh*. You do not, he writes, determine by following the normal behavior he seems to exhibit in some respects, but rather the fact of him being seized with *shianum* (see ft. 35). Even though he may act appropriately and behave without strangeness, he is in the category of *shoteh*, and his actions are not considered to be committed with a sound [lit. clear] mind. The case of the one who goes out alone at night in Hagiga 3b is here interpreted as the case of someone who's behavior is strange only some of the time, but is still considered to be a שטה גמור.

[...] הרי למדנו דמדבר הונא נשמע לר' יוחנן אע"פ שאנו רואים אותו מיושב בשאר דברים לענין מראית העין, אין סומכין על יפי דעתו וממעשיו נוכיח על מחשבתו שכל שיחשב ויאמי' מדעתא שגישתא הוא, ואם לענין מצות אמרו חכמים בענין שטה כל כך שכן שלענין גיטין [...] כל שכן למי שנטרפה דעתו באמת לדבר נראה שאין הולכין אחר מה שנראה בו מיישוב הדעת ולפי' [ולפיכך] לא נשנת בדיקה בשוטים ובמי שאחזו קורדיקוס +גיטין סז, ב+ שאפי' יאמי' דברים כראוי כיון שנראה בו סימן של שטות מוחלט אין סומכין על דבריו [...]³⁸

The responder again states that such a man is considered a שטה מוחלט once he exhibits a sign of שטות מוחלט. Even if some of his actions seem absolutely fine and it appears to the

³⁶ The term שעמום was sometimes used to depict mental illness. See נדרים דף פא עמוד א : "scabs [arising from the wearing of unclean garments] cause שעמומיתא - madness.

³⁷ שו"ת חכמי פרוכניצה חלק א סימן נח

³⁸ Ibid.

eye that his mind is settled, it is nonetheless to be deduced from his strange behavior that everything he thinks and says is of a disturbed mind. What the Rabbis determined in regard to mitzvot, applies all the more so to matters of granting a divorce. He goes further to state that it does no good to apply the method of questioning him to determine his clarity of mind³⁹, because he could very well say sensible things, but since he exhibited a sign of *shut*, his words cannot be trusted at all.

What is so surprising in this particular case is that at no point does it seem to matter that the man in question actually does not exhibit the signs of a *shoteh* as described in Hagiga 3b. These responders seem quite comfortable interpreting the gemara rather loosely, their argument relying on an understanding that the examples provided in it are just those – examples, and not strict symptoms. This responder renders the case description as a clear-cut case of a *shoteh*. Interestingly, he uses the term *בעותי אלוה* - *God's terror* to describe this man's predicament, indicating that this state of mind is thought of as divinely ordained:

[...] אם כן האיש הלזה אשר בעותי אלוה יערבבו עד שידמה קרב בקרבו ויברח משכיבת המטות ומאכילת הדברים הרגילים בהם בני אדם וכיוצא בזה הדבר פשוט שהוא בכלל השוטים ואין בדיקה מועלת לו כלל כמו שאמרנו, ואין מורים לזה שיגרש אשתו⁴⁰

Again, this is not a responsum which is *shoteh*-oriented so to speak, that is, one designed to protect the *shoteh*'s rights. We are not provided with a rationale for this strict categorizing of a man as a *shoteh* as in the former responsum (to prevent *mamzerut*). Instead, this responsum exemplifies a readiness to apply a broad reading of the gemara with the clear purpose of declaring the man a *shoteh* so as to prevent him from granting a divorce, perhaps (again) in an attempt to prevent *mamzerut*, perhaps out of a desire to keep people within marriage. Although this decision may not actually function to support

³⁹ As described in Gitting 70b in the case of a mute, to exclude a man seized with involuntary nodding from granting a divorce.

⁴⁰ Ibid.

the institution of marriage; presumably, once this man is considered a *shoteh*, he is stripped of his agency in all other aspects of life as well. This means he would need, for example, to have a guardian appointed to him. He would not be able to buy or sell, nor borrow money, which means he will not be able to support his wife. It is strange then, for these poskin to “stray” from the *shoteh* signs depicted in Hagiga 3b just so they could rule this man a *shoteh*. As stated before, this is not typical of other Rishonim.

Unlike what we’ve seen in the last two responsa, a responsum of the Maharik, Rabbi Joseph ben Solomon Kolon who lived in France and Italy in the 15th century, exhibits a strict adherence to the signs of *shoteh* as described in Hagiga 3b.

[...] הלא ידע מר מה שהשיב רבינו אביגדור כהן לרבינו מאיר על אודות הגט שניתן בוירצבורק כתב וז"ל אם לא הוחזק שוטה בדברים האמורים בפ"ק דחגיגה (דף ג) הרי הוא כפיקח לכל דבריו עכ"ל. והרי (ג) שאינו נחשב שוטה אלא א"כ מקרע כסותו או לן בבית הקברות או יצא בלילה יחידי כדאיתא בפ"ק דחגיגה ואם כן מחילתו מחילה כדמשמע מתוך פירש רש"י וז"ל איזהו שוטה האמור בכל מקום שפטור מן המצות ומן העונשין ואין קניינו קנין ואין ממכרו ממכר הלא בבית הקברות כולי [...] ⁴¹

In a responsum that tries to determine whether or not a woman can claim her ketubah from her husband's heirs if she no longer has the deed⁴², the Maharik mentions a responsum by rabeinu Avigdor Cohen to rabeinu Meir⁴³ regarding the Wurzburg *get*, in which the decision was rendered that unless a man is showing the signs of *shotet* as designated in Hagiga 3b, then that man is to be considered sane for all intents and purposes. The Maharik then reiterates that one cannot be considered a *shotet* unless he tears off his clothes, or sleeps in the cemetery, or goes out alone at night – a very literal reading of both the text in the gemara and Rashi on Hagiga 3b & Niddah 45b, which ignores the explicit qualification in the gemara that these acts must be committed *דרך שטות* (in a

41 שו"ת מהרי"ק סימן יט

42 The answer is that she indeed can, qualifying that it is necessary to first swear her to a statement claiming she did not spend her husband's assets, if for example he was a *shotet* and incapable of supervising her purchases.

43 This responsum is often quoted by later responders and codifiers, but always in this reference made by the Maharik; the original responsum was probably not accessible.

manner which exemplifies insanity), i.e. that a reasonable explanation cannot be given for them (such as – he went out to get some fresh air):

[...] ואם יראה בעיני כ"ת [!] דלאו דוקא הני דפ"ק דחגיגה אלא שדברו חכמים בהוה דאף על גב דמתוך לשון רבינו אביגדור לא משמע כן ויראה בעיני כ"ת שהגיע זה לשטות גדול כמו הני דפ"ק דחגיגה אז ודאי (ד) יש להשביעה סתם שלא בזוזה ⁴⁴[...]

That is, writes the Maharik, if your interpretation of the gemara is such that you consider the conditions mentioned in Hagiga 3b to be examples, and not obligating signs, even though this goes against what rabeinu Avigdor wrote, and it is your judgment that the husband has reached a *shotut* in the magnitude of those shown in Hagiga 3b, then of course the woman needs to sign a statement (see ft. 42), which for our purposes means the husband was considered a *shoteh*, despite the fact that he may not exhibit the explicit signs of Hagiga 3b.

This responsum depicts a clear, accepted way of pronouncing one a *shoteh* as transmitted by early ashkenazic authorities (rebeinu Avigdor): by the explicit signs in the gemara. And yet, we can see there still remains a lot of leeway to interpret according to the judgment of the particular decisor. Of course it is possible that the reason for this openness is that the person in question is already dead, thus, to declare him a *shoteh* would have very little practical implications, except for matters concerning his widow.

It would seem that an adherence to the gemara in regard to who is or is not a *shoteh* is dependant strictly on the desirable ruling. Thus, in a case where divorce is concerned, the Mahari Weil, a German scholar of the 15th century is very comfortable applying the category of *shoteh* (*shotah*, rather) to a women – in an attempt to prevent *gerirah*⁴⁵ – even if the woman in question does not exhibit the particular signs of *shoteh* as depicted in Hagiga 3b. In this case, the Mahari Weil is opining against the validity of a get

⁴⁴ Ibid.

⁴⁵ Gerira concerns a woman who is *נזרת אצל כל בני אדם* - i.e. who people can take sexual advantage of. See סמך אור p. 26.

given to a woman who is *שוטה חלומה* - at times ill, at times well. Apparently, it has come to his attention that some decisors permitted such a get when the woman was in a well-state. He, however, does not concur. He gives us a summary of his predecessors first, pretending not to be able to decide between them (in fact, his opinion is clear):

[...] וגם איני כדי להכריע בין דברי רבותינו גאוני עולם האחד רשב"א שאסר אפילו בדיעבד אפילו עתים שוטה ועתים חלומה כדמשמע בתשובה שאינו מהפך הגירסא. וגם לפי משמעות העדות איני כדי להכריע אם היא נקראת חלומה בכך. אע"ג שהרמב"ם התיר בדיעבד ואפילו שוטה גמורה מ"מ רבינו אפרים ורבי אביייה אסרו אפילו בדיעבד [...] ⁴⁶

To sum up, Rashba⁴⁷ forbade giving a get to a woman in such a state, the Rambam permitted the get after the fact (actually, for all intents and purposes, he permitted it even *before* the fact⁴⁸), even concerning a woman in a constant state of *shotut*, and rabeinu Efraim (12th–13th century Germany) and rabbi Avyah (most probably Ra'avyah, also a 12th–13th German scholar) forbade even after the fact. The Mahari Weil then adds his own understanding, which questions the validity of permitting the get:

דתמוה לי על דברי המתירי אבל לא באתי לסתור דבריהם כי לא הגעתי לכך רק ע"ד (על דבר) משא ומתן. ⁴⁹

The particulars of this discussion are not relevant for our intents and purposes, but what is relevant is the categorization of the woman as *shotah*, despite not exhibiting the required signs:

[...] נסתפק לי אי מתקרי ליה חלומה בכה"ג [בכי האי גוונא] אע"פ שהשיבה כהוגן כמו שמשמע בעדות הראשון מ"מ מה בכך כן דרך שוטים שלפעמים משיבים נכונה ומכל מקום שוטים הם. דודאי הא דפליגי רבי יוחנן ורב הונא פרק קמא דחגיגה איזהו נקרא שוטה היינו אף על פי שלא ראינו בו שטות אלא מקרע כסותו כו' דאטו אי אינו מקרע כסותו ואינו לן בבית הקברות ואינו יוצא יחידי בלילה ובשאר כל דרכיו הוא עושה שטות דלא נקרא שוטה אתמה? אלא ודאי הא דפליגי היינו דווקא שלא ראינו בו שום שטות אלא זה וא"ה [ואי הכי] הוי שוטה אף על פי שמשיב כהוגן [...] ⁵⁰

It is doubtful to me whether we can refer to her as "well" in this matter, even though she responded properly [...]; so what if she did?! This is a [common thing] with *shotim*, that sometimes they respond correctly and yet they are still *shotim*. Surely this controversy

שו"ת מהרי"י ווייל סימן נב 46

47 For a more detailed discussion on Rashba see the Sephardic section.

48 See p. 46

שו"ת מהרי"י ווייל סימן נב 49

50 Ibid.

between Rabbi Yochanan and Rabbi Huna in Hagiga regarding Who is a *Shoteh*, that is, one in whom we've seen no signs of *shtut* but he does tear off his clothes – does it mean that if he does not tear off his clothes, and does not sleep in the cemetery, and does not go out alone at night, but otherwise, in all other way acts by way of *shtut*, [can it be] that he is not considered a *shoteh*, I wonder? Rather, the controversy concerns the one in whom we see no signs of *shtut* but this, and if so, he is a *shoteh* even though he responds properly.

For the Mahari Weil the signs depicted in Hagiga are clearly just examples. In his interpretation the gemara leaves ample freedom to determine who is and who is not a *shoteh*. For him, protecting the woman who is a *shotah* is of the utmost importance, so much so that he can in essence ignore the talmud. Perhaps one way to understand his ruling is through the halakhic principle by which a woman is always better off being married⁵¹. It is not clear how the Mahari actually would determine the fact of her mental state, given that even if she answers correctly it doesn't seem to prove that she is well; the fact of one's *shtut* can be easily determined by this model if "in all [other] ways they act by way of *shtut*." What that *shtut* actually is, seems to be left to common sense and the observation of the many.

Another teshuvah by the Maharik, regarding *chalitzah*⁵² again demonstrates the difficulty of the rishonim in determining who is and who isn't a *shoteh*. The Maharik, who again abides by the signs of *shoteh* in Hagiga 3b, provides us with an interesting, detailed observation of a man in question who is apparently required to perform the *chalitzah*⁵³:

[...] מאחר שאין אנו רואים בו שום סימן מאותם שמנו חכמים בפ"ק דחגיגה (דף ג, ב) דהיינו יוצא כלילה יחידי ומקרקע כסותו ומאבד מה שנותני לו, ואדרב' אנו רואים בו דברים מורים על ההפך, שהולך מלובש ומצוייד בנדים בלי טינוף שהוא הפך ממקרקע כסותו, וגם בקש את אביו לתקן לו הבת שוקים מפני הצניעה, וכן יש בו דעת לשמור ונותן את [לבו] להגיד לאביו מה שהוא תועלת לדעתו, כגון הא דאמי' לו שהגוי הביא ב' רצועות למכור ונותן לב להרויח ממון, ומשמר את ממונו, ונותן אל לבו שהניח את מעותיו בתיבתו בטוריזלא, שהוא אדרבא הפך ממאבד מה שנותנים לו, וגם אינו יוצא יחידי כלילה, וגם לא הוחזק לנו בלון בבית הקברות, אע"ג דלא דעת צלות' כשאר בני אדם, מ"מ אין לנו אלא מה שאמרו חכמים [...] ⁵⁴

51 טב למיטב טן דו מליטב ארמלו - תלמוד בבלי מסכת יבמות דף קי"ח עמוד ב

52 In this case – is this man a *shoteh* and therefore not viable to perform the rite of *chalitzah* (to release his childless sister in law from her obligation to marry him after her husband's death).

53 Details which would provide more context for this question are missing.

54 שו"ת מהרי"ק החדשים סימן כ

The man in question here does not exhibit the signs of *shtut* as depicted in Hagiga 3b; on the contrary, he exhibits the exact opposite, taking care of himself, and exhibiting some financial capabilities.

We can see here that the Maharik, in a manner consistent with his former responsum, interprets the signs of Hagiga 3b not just as random signs of a man whose sanity is compromised, but as meaningful and obligating. He also sheds light on what they can teach us regarding one's mental state as they are markers of self-grooming and self-care, which is surprisingly close to our own modern way of determining the state of an individual's sanity. For the Maharik, this particular man is not considered a *shoteh* even though "his mind may not be as clear as other people's." The Maharik reveals an astute and nuanced observation of sanity and lack thereof. Sure, he contends, this particular individual is not as clear of mind as most people, but he still cannot be considered a non-agent for the purpose of *chalitzah*:

[...] בנדון הזה דאנו רואים בו הרבה דברים המורים דלכל הפחות אינו שוטה גמור, ואם אינו שוטה גמור נ"ל לע"ד [נראה לעניות דעתי] דיכול לחלוץ [...] ⁵⁵

It is interesting to explore what is meant by that compromised state of mind described as *אינו שוטה גמור* as the responsum continues:

[...] ועוד נ"ל לע"ד דלא דמי כלל מי שעושה מעשה המורה טירוף הדעת כי התם אכיל תמרי ושדי קשייתי ביה רבא, וכגון ההיא דמי שאחזו דנשתתק מחמת החולי המטרף את דעתו, וכן ההיא דלעיל שהשיב עליו רבינו אביגדור, דודאי התם איכא למיחש דדילמא הין שלו לאו הין ולאן שלו לא הוי לאו, דכיון דנטרפה דעתו אינו יודע מה מוציא מפיו ואין מדקדק כלל בדבריו, ולהכי הזיקוהו בדיקת בפירות דימות החמה ודימות הגשמים להבחין אם ישוב כהוגן על הין הין וכו', אבל מי שהוא מיושב בדעתו ומה שהוא אומר הוא אומר ביישוב הדעת, אלא שאינו מבין ענייני העולם כשאר בני אדם, מ"מ כל היכא שלא הוחזק להיות מאותן שהזכירו רז"ל בפ"ק דחגיגה נ"ל לע"ד דמעשי קיימי בכל מילין, שהרי על כרחין צריך איזה גבול ושיעור לומר באיזה ענין יחשב מבין ובאיזה ענין לא, שהרי יש מבין מעט ויש מבין הרבה, יש ממחר להבין כבר שית וכבר שבע ויש מאחר ואין הדעות שוות, והא למדת שאין לנו אלא מה שאמרו חכמים בפ"ק דחגיגה [...] ⁵⁶

And furthermore it seems to me that [this case] is not like any case in which a person commits an act which demonstrates insanity (lit. the scrambling of the mind) [here the Maharik brings several examples]; because clearly in those cases there is concern

⁵⁵ Ibid.

⁵⁶ Ibid.

whether his "yes" means "yes" and whether his "no" means "no", since due to his insanity he doesn't know what comes out of his mouth and he is not mindful of his words, and it is that person that requires an examination of sanity⁵⁷. *But he who is of sound mind, and whatever he says he says with soundness of mind, but does not understand the affairs of the world like other people*, in any case, if he is not one of those cases mentioned by the sages [in Hagiga 3b], in my opinion his acts are considered viable in every word, because indeed, *despite ourselves some boundary and some measure are necessary to determine in what case he is considered to have understanding and in what case he is not*; why, there are those who understand little and there are those who understand a lot; there are those who rush since they understand it is already six and seven O'Clock, and there are those who are late, and *all minds are not equal to each other*; and here you learn all we have to rely on is what the sages stated in Hagiga 3b.

The Maharik is fully aware of the limitations imposed on him by the talmudic discussion in Hagiga 3b, which present him with a definition of *shoteh* insufficient for the reality of the world he encounters, which is far more variegated and complex than the one described by the sages, thus requiring the finer category of *אינו שוטה גמור*. There is something moving in the Maharik's statement *שהרי על כרחין צריך איה גבול* which exemplifies a certain kind of helplessness and frustration when it comes to determining whether one's mind is healthy and whether, despite one's limitations – which in this case are not described to us (it is hard even to ascertain whether they are mental or emotional limitations) – he can live a full life under Jewish law. In the end, the decision is again rendered according to the needs of the moment, in this case, the need for the man to perform halitza:

מ"מ [מכל מקום] ראוי הוא לסמוך יותר על ההיתר דאינו נחשב שוטה כדפי' לעיל כיון דבלא זה יש למצא היתר מצד אחר⁵⁸

It is preferable to determine that the man is not a *shoteh*, because if we determine that he is, we will have to find some other way to allow him to perform the halitza.

Sometimes being included in category of *shoteh* brings with it consequences previously not thought of in Jewish law. Thus, a short responsum by the Maharil, a 14th

⁵⁷ Various examinations are listed in Gittin 70b.

⁵⁸ Ibid.

century German scholar, answers a question which raises the possibility that someone who has a son who is either a deaf-mute or a *shoteh*, has in fact not fulfilled the mitzvah of פרו ורבו. This of course, is a very problematic notion, as what it implies is that a *shoteh* is not considered a human being; could it be that someone whose child is a *shoteh* is considered to be childless?! The Maharil's response makes it clear that this is not the case:

פריה ורביה דבן חרש ושוטה לא ידעני אמאי לא קיים, וכי גרע ממי שנתגייר וקיים דקיימא לן כרבי יוחנן
+יבמות ס"ב, א+ דאמר קיים, אפילו לא נתגיירו בניו עמו [...] ⁵⁹

The Maharil cannot understand nor does he find any justification to the claim that the פריה ורביה which would produce a *shoteh* (and/or a deaf-mute) would be considered as if it did not happen. Such a case is no worse, he says, than the case of a man who converted, and is still considered to have fulfilled the mitzvah of proliferation even though his children did not convert along with him! He further explicates:

והאי סברא נמי, אי +טעם פריה ורביה משום כו'+ משום לשבת יצרה, איכא שבת ויכול לישא אשה ולהוליד בן חכם, ואי +טעם פריה ורביה משום כו'+ משום דרב אסי דמיייתי התם עד שיכלו כל הנשמות שבגוף, האי נמי נשמה יש לו ובר מצוה הוא ופקחים מוזהריי עליו [...] ⁶⁰

This holds true [if either of the following is true]: if the foundational logic/point of פרו ורבו is for *shevet yetzara* (i.e. – since God created the earth to be populated) then we can consider the goal achieved; this *shoteh* son can presumably marry a woman and have an intelligent son⁶¹. (The use of the word חכם proves that there is obviously mixing up here between *shoteh*-fool and *shoteh*-mentally ill). And if the point of פרו ורבו is to guarantee the coming of messiah (who will not come until all the embodied souls in the world have run their course, for which people need to proliferate), then here also the goal is achieved – this *shoteh* son has a soul, and he is considered subject to the mitzvot⁶² and others are

59 שו"ת מהרי"ל סימן קצו

60 Ibid.

61 This is unclear, since *shotim* cannot contract a marriage.

62 This too is unclear, as we know the *shoteh* is exempt from mitzvot – the Maharsham (19th – 20th c. scholar – שו"ת מחרשים חלק ו' סימן קמ"ו) posits that perhaps it was meant that he *could* perform mitzvot, even though he is not obligated by them.

warned not to harm him (i.e. – they are liable if they do).

This particular responsum is interesting not so much for its ruling, but for what the question posed to the responder reveals: a reality in which some doubt existed regarding the very basic humanity of the *shoteh*; there is uncertainty here as to the *shoteh*'s very existence as a being with a soul, which would make him, if it were indeed ruled to be the case, equal to an animal in the eyes of the law.

Another interesting responsum of the Maharik this time, sheds light on the way in which an insane woman – a *shotah* – was perceived. Here the Maharik answers an inquiry considering whether or not a bridegroom (חתן) is obligated to pay a fine for revoking an engagement⁶³ due to finding out the bride to be was not sane:

[...] דפשיטא שאין על החתן שום חיוב קנס מאחר שבשעת השידוכין היתה (א) פקחת ואחרי כן יצאה מדעתה ועדיין לא נתארסה לו שתוכל לומר מולך גרם מי הוא שיוכל להטיל עליו לא עונש הקנס ולא שום דבר אחר הלא הכל יודעין כוי כלה נכנסת לחופה להיות לו לעזר לבן זוגה ולבנות את ביתה בחכמת נשים ולא להרסנה באולת שבידה חיו [...] ⁶⁴

Clearly, states the Maharik, since she was sane when he first met her and only then lost her mind (lit. stepped out of her mind) he is not obligated to pay a fine at this stage, prior to אירוסין. After אירוסין it would be considered his bad luck and he would have to pay. What is especially revealing in regard to the Maharik's perception of the *shotah* is his rationale of why one can clearly not wed a *shotah*. Everyone knows, he says, that a bride enters a chuppah to be a helper to her mate, and to build her home with the wisdom of women, and not to wreck it with imbecility, god forbid!

The *shotah* here is depicted as a threatening entity; she is not only incapable, but an actual destroyer, perhaps in keeping with the Tamudic metaphor of the *shoteh* as serpent. It is also worth noting that the Maharik here struggles to prevent these kinds of

⁶³ this applies only to שידוכין and not to אירוסין in which case it would already too late.

⁶⁴ שו"ת מהרי"ק סימן קא

marriages from taking place – under no means is family life considered as a solution for the *shotim*. He further details that even in the case of אירוסין, the bridegroom is not to be forced to take the *shotah* in (i.e. – to build a home with her, enter into a marital relationship with her):

[...] אם לא תמצ' חן בעיניו דבר פשוט הוא דלא כפי' ליי לכנוס לפי הני לע"ד אלא כופין אותו לכנוס או לפטוי שלא לענן בנות ישראל וכ"ש בנדון הזה שיצא' מדעת דל' דין ולית דיין שלא נכופנו לכנוס ואפי' היתה ארוסתו גמורה ולא עוד אלא בנשוא' גמורי' התיר הרשב"א בתשו' לישא אשה אחרת היכא שיצתה מדעת [...] ⁶⁵

Even in the case of someone who turned out not to like the woman (lit. she doesn't find grace in his eyes), they do not force him to take her in; they force him to either take her in or dismiss her (with a get and her ketubah). The rationale in this case is clear – to prevent agunot – bound women – in Israel. All the more so regarding a woman who has lost her mind – no decisor will force the bridegroom to take her in. The Maharik then quotes a lengthy responsum by the Sephardic Rashba, in which he permitted a husband to marry another woman after the first wife lost her mind, to prove that this doesn't concern only אירוסין, but even marriage. Alas, that responsum can be found only in the Maharik, and not in Rashba⁶⁶;

The message however, is clear: whatever can be done to prevent what will ultimately be the marriage of a sane person to a *shoteh*, should be done. While many responsa demonstrate that Jewish law takes great measures to protect the rights of the *shotim* once within a marriage, it is clear the value of entering into and maintaining healthy family lives

⁶⁵ Ibid.

⁶⁶ It is hard to say whether the Rashba could have permitted that person to marry another woman: We do know of his negative response to Rambam's assertion (see p. 48) that a man whose wife became a *shotah* can put her aside, not support her, and marry another, but the problem there was specifically not supporting her and not providing for her medical needs, rather than the marrying of the second wife. In any case, the responsum attributed to Rashba details the case of a man whose wife seems to have lost her mind (the term *shotah* is not mentioned), and he wished to marry another but is fearful of those who will malign him because of *herem d'rabenu Gershom*. The Rashba, claiming that he has not seen that takanah, and that it has not spread in all countries (he is after all Sephardic), and that even so the Rav only fixed his takanah to prevent cases of revelry and abuse of wives, and that too only until the end of the 5th millennium, therefore permits him to marry a second wife.

takes precedence.

We have seen there is no final agreement on the signs that render one a *shoteh*.

Matters become much more complicated in the category of the intermittent *shoteh*, where no such signs exist. One of the earliest ashkenazic sources, the 13th century halakhic compendium *Sefer Or Zarua*⁶⁷, attributed to Rabbi Yitzchak ben Rabbi Moshe of Vienna (ca. 1180–1250), contains an example of just how difficult a task gaining insight into the *shoteh*'s mind was for the scholars. The responsum attempts to determine whether a woman who is at times well and at times mentally ill can divorce (i.e. if a man can divorce her):

אשיבך אשר עם לבבי על אשה שהיא עתים שוטה עתים חלומה והיא בוגרת ונשואה ואפי' נערה ונשואה לית לה תקנה להתגרש כלל לא על ידי עצמה לא ע"י אביה דא"ר יצחק דבר תורה שוטה מתגרשת מידי דהוה אפיקחת בע"כ [בעל כרחה] ומה טעם אמרו אינה מתגרשת? שלא ינהגו [בה] מנהג הפקר [...]⁶⁸

I shall answer that which is in my heart regarding a woman who is at times *shotah* and at times well, who is an adult and married; even if she were a youth and married there is no legal amendment which allows her to be divorced at all – not by herself, and not by her father [serving as a legal guardian of sorts]. (Yevamot 113b): [However] 'It was quoted by R. Yitzchak: according to the word of the Torah, a *shotah* may be divorced, since her case is similar to that of a woman of sound senses [who may be divorced] without her consent. What then is the reason why it was stated that she may not be divorced? In order that people should not treat her as *hefker* [a piece of ownerless property]’.

From this introductory paragraph we can understand the basic halakhic stance in this case:

such a woman could theoretically divorce by law of torah, but in order to protect her (after

she is no longer married) the rabbis constituted so it would no longer be possible. The Or

Zarua here then goes into a prolonged debate on whether or not the Rabbinic amendment

applies to all cases of *shotah/shoteh* or not, and then states:

[...] השתא דאיתבריר לן הלכה כר' יצחק וביודעת לשמור גיטה ואינה יודעת לשמור עצמה דאינה מתגרשת כדי שלא ינהגו בה מנהג הפקר. האי דאיתנין עלה שהיא עתים שוטה ועתים חלומה הרי כשהיא שוטה אינה יודעת לשמור עצמה ומה תועלת לה אם יודעת לשמור עצמה שבוע זאת ובשבוע אחרת ינהגו בה מנהג הפקר דהאידך נדע שהיא יודעת לשמור עצמה כמו שכתבת הלא כבר (מנהג) [מעשה] בא לפני מורי רבי שמחה בשוטה אחת (ופי') [והיתה] יודעי לשמור גיטה וכתב דלא ידענא במה יש להבחין אם יודעת לשמור עצמה. ובעבור כך דחק לומר דר' יצחק לאו דכ"ע ואנו האידך נעמוד על הדבר והאידך נדע מה

67 Bar Ilan CD Version 12.5 – Biographies: *Or Zarua*

68 ספר אור זרוע ח"א - שאלות ותשובות סימן תשעה

קרוי לשמור עצמה הואיל ועתים שוטה היא לא מתגרשה כלל⁶⁹[...]

In these times, when it became clear to us that the halakha follows R. Yitzchak, but in respect to a woman who can take care of her letter of divorce, but cannot take care of herself – she *cannot* be divorced so that people should not treat her as hefker. [In regard to] the woman that we discussed, who is at times *shotah* and at times well, obviously, when she is a *shotah* she cannot take care of herself, and what good does it do her [i.e. being allowed to divorce] if she can take care of herself one week, but the following week people will treat her as hefker? How will we know that she is able to take care of herself? As you have stated, a case was presented before your teacher R. Simcha regarding a *shotah* that could take care of her letter of divorce, and he wrote that he did not know how to discern whether she can take care of herself. And that is the reason why he was pressed to decide that R. Yitzchak's rule does not apply in all cases. And as for us, how will we assess the matter, and how will we know what constitutes “taking care of oneself” given that she is sometimes *shotah*? [therefore] she should not be divorced at all.

As noted, in theory, this woman could be divorced (if she could take care of both her letter of divorce and of herself). In practice – the Rabbis make it impossible in order to protect her. We thus gain insight into the difficulty to assess one's sanity (in this case, a woman's), or more accurately – to determine whether one can care for oneself to a sufficient degree so that she can be declared “well” and someone may divorce her. It is the fickle nature of mental-illness perceived here by the Rabbis, which makes this case so tricky; it is relatively easy to figure out whether she can take care of her letter of divorce, less so of herself. And even if she seems to be able to take care of herself now, who can guarantee that she will be able to do so in the future? There is a lack of available assessment criteria in regard to the mentally-ill, which this responder (as well as in the name of R. Simcha) – a legal decisor and not a doctor – clearly admits to. He is therefore forced to rule that the intermittent *shotah* can not divorce.

Another example of an in between state, albeit very different, is a case in which one's ability to be considered legally non-viable because of a loss of sanity was not due to a chronic case of mental illness; sometimes, as we learn here, a person will be referred to as insane because of other circumstances. Such is the case of a dying patient (שכיב מרע) as

69 Ibid.

described by the following responsum of the RoSh, a 13th – 14th century scholar, from

Germany and then later, Spain⁷⁰:

[...] ולא בררת אם בשעה שנתנו לה הגט חזר לדעתו ונשתפה, או שמא היה מטורף בשעה שנתנו לה הגט; לכן אני צריך לברר לך כל הצדדין. אם היה מטורף בשעת נתינת הגט ליד האשה, לית דין צריך בשש דאינו גט, דבעינן [שרצינו] שיהא שפוי בדעתו בשעת נתינת הגט. כדתנן בפרק מי שאלחזו (סז): נשתתק, ואמרו לו: נכתוב גט לאשתך, והרכין בראשו, בודקין אותו שלשה פעמים, אם אמר על הן, הן, ועל לאו, לאו, הרי אלו יכתבו ויתנו. כ"ש [כל שכן] זה, שנטרפה דעתו והיה נטוי למות, ומת, שאינו גט. אלא אפילו חזר דעתו ונשתפה בשעת נתינת הגט, כיון שבשעת כתיבה וחתימה היתה דעתו מטורפת, אינו גט [...] ⁷¹

In response to a question posed to him regarding witnesses signing a get of someone on his death bed, the RoSh reprimands the questioner – you did not make sure that he was sane during the time the get was given to the woman, he says. If the man was insane during the time when the get was given to the woman, then it is clear as day that this does not qualify as a get (לית דין צריך בשש – lit. 'this bread needs no spicing' the matter is obvious, no need to add). We want him to be sane when giving the get, writes the RoSh, and then quotes the appropriate Talmudic source to prove his point.

It is important to note that this is not a case of a *shoteh*; rather a mentally-sane individual who, on his death bed, is of an unclear mind due to the throws of death. The language used here is the same as when concerning cases of mental illness – מטורף, נשתפה, שפוי, דעתו מטורפת. It makes no difference that the person in this case is not a שוטה, because for all intents and purposes he falls under the category of עתים חלים עתים שוטה as the RoSh further makes clear:

[...] וכתב ר"י בעל תוספת ⁷² ז"ל: וצריך לזהר בש"מ = בשכיב מרע = שצוה לכתוב וליתן גט, שתהא דעתו מיושבת עליו אף בשעת כתיבה, משום דחולה פעמים דעתו מטורפת עליו, ועתים חלים עתים שוטה [...] וזה הש"מ = השכיב מרע =, יראה שתקיף עליו החולי הרבה, והיה נטוי למות; הלכך, אפילו היה שפוי בשעת נתינה, כיון דבשעת כתיבה וחתימה היה מטורף, אינו גט, וזקוקה ליבם [...] ⁷³

70 I have chosen to include the RoSh (Rabeinu Asher ben Yechiel) in the Ashkenazic segment even though he spent the latter part of his life in Spain, since he is heir to the ashkenazic tosfist tradition which he exemplifies in his rulings and discussions.

71 שו"ת הרא"ש כלל מה סימן יח

72 R. Itzhak from Dampierre, 12th century tosfist.

73 Ibid.

It is clear then that the category of *shtut* is applied to individuals in cases that do not only involve the symptoms of *shtut* as described in Hagiga 3b. When a particular behavior is observed that exemplifies a certain lack of clarity, either emotional or mental or both – it is unclear which here, the category of *shtut* is applied, perhaps precisely because it is the quickest way to enable the Rabbis to deny a person's agency when such an action is felt to be necessary. The state of slipping-away which is part of the natural process of dying is thus “lumped in” with the unhealthy state of a mind deteriorated due to mental illness.

It has been noted previously that the law goes through great lengths to protect a woman who is mentally ill and cannot take care of herself. Precautions are taken to make sure she cannot be divorced and therefore left to her own (limited) devices. When, however, it comes to protecting a woman, this time healthy, from a mentally-ill husband, matters are quite different, as evident from another responsum by the RoSh:

שאלה: ומה שהיא טוענת שבעלה מטורף, וטפשות מתוספת עליו מידי יום יום, ושואלת שיגרשנה טרם יטרף ותהיה עגונה לעולם, וגם שמא תלד בנים ולא יוכל לזונה. ואביה היה עני ומחמת דחקו השיאה לו, וכסבורה היתה יכולה לקבל ואינה יכולה לקבל, כי מטורף הוא לגמרי, ויראה פן יהרגנה בכעסו, כי כאשר מרגזים אותו, מכה והורג וזורק ובוטט ונושך. וראובן משיב: הכרת בו מקודם, לכן וסברת וקבלת, גם אינו מטורף, אך אינו בקי בטיב העולם, ולא יגרשך אלא אם תחזירי הספרים, או כסף ערכם, ואז יגרשך. איני רואה מתוך טענותם דברים שיהיה ראוי לכופו עליהם לגרש; כי אין להוסיף על מה שמנו חז"ל בפרק המדיר (עז): ואלו שכופין אותו להוציא: מוכה שחין ובעל פוליוס והמקמץ והמצרף נחשת ובורסקי. ועוד שנינו התם: האיש שנולדו בו מומין, אין כופין אותו להוציא. לכן אין לכופו לגרש; אך תפייסנו שיגרש, או תקבלנו ותזון מנכסיו.⁷⁴

Question: and what in regard to her claim, that her husband is insane, and he becomes more foolish every day, and she is asking that he divorce her before he becomes completely insane and she will become *agunah* forever, and she might also have children and he will not be able to support her. And it is because of her father's poverty that he [her father] wed her to him, and she thought she could endure him, but she cannot endure him, because he is completely insane, and she is fearful that he might kill her in his anger, because when he becomes angry, he hits, and kills [unclear what is meant by “kills”] and kicks and bites. And Reuven answers [perhaps a dayyan which she approached in the matter?]: 'you recognized [his situation] before [you married him], and you accepted it. Even if he was not insane, but rather not proficient in the ways of the world, he will not divorce you, unless you return the books [?] or their worth, and then he can divorce you.' I do not see anything in their claim which would make it so that they could compel him to divorce her: for we cannot add to what the wise ones enumerated in the Mishnah (Ketubot

7:10) – 'the following are compelled to divorce [their wives]: a man who is afflicted with boils, or has a polypus, or gathers [objectionable matter], or is a coppersmith, or a tanner [all foul-smelling labors]. And it was also taught there: 'a man in whom bodily defects have arisen cannot be compelled to divorce [his wife].' Therefore, we do not compel him to divorce. But she should pacify him so that he would divorce her, or she can endure him and live off his assets.

The RoSh presents himself as bound by particular halakhic stipulation that would not allow for the legal authorities to compel such a man – who is not only mentally ill but also clearly dangerous and violent in his illness – to divorce his wife. It is certainly ironic that the law is capable of granting protection to a woman who is a *shotah*, to prevent a situation in which people may take advantage of her, and yet completely neglects to protect a married woman from a mentally ill husband, who because of his illness puts her in grave danger. It is also noteworthy that the RoSh's Sephardic contemporary, the Rashba⁷⁵, responding in the opposite situation (a man who requests to divorce his *shotah* wife), may have ruled, as demonstrated previously (see p. 25 ft. 66) that the man in this situation could marry another woman over the one who lost her mind. While the Rashba did not, admittedly, permit him to divorce her, the lack of equity between men and women is, though not surprising, quite glaring and disturbing.

It was not only in Spain though (to note the responsum attributed to the Rashba) that the matter of marrying another woman where the first became a *shotah* was discussed. The question whether or not it was permitted to break Cherem Rabeinu Gershom⁷⁶ in the case of a *shotah* wife remained controversial even in Ashkenaz, the very birthplace of Rabeinu Gershom's legal amendment. We learn from a 15th century responsum of the Maharil that the RoSh was not in complete agreement with the Maharam (Germany, 13th century), his Ashkenazic predecessor (by a slight margin):

[...] כי כן כתב כמדומה מהר"ם [...] וז"ל [וזו לשונו] על השוטה התיירו כל רבותינו להתיר חרם רבינו

75 The RoSh and the Rashba were personally acquainted; the Rashba is believed to have helped the Rosh's family escape Germany and move to Spain.

76 The prohibition against marrying more than one woman, instituted in the year 1000.

גרשום ע"י ק' ת"ח מגי מדינות אע"פ שהם מלכות אחת ושפה אחת, רק שתהיה בטוחה ממונותיה ומכתובתה ופרנסתה לדעת רבותינו [...] עכ"ל [עד כאן לשונו]. והרא"ש השיב [...] אם אין ידו משגת יעשה עתה כאשר תשיג ידו והמותר יבטיחנה בשטרות שלא תתעגן [שלא יתעגן] עכ"ל [...]⁷⁷

In the case of a wife who is a *shotah* it was possible to break the cherem and allow a man to marry another wife if the matter could be approved by 100 scholars in 3 states, as long as her sustenance was guaranteed. And while admittedly this seems to be a *heiter* which in practice would become an *issur* – because it would be very hard to find a hundred scholars to agree, just by sheer burden of the effort of tracking them down, not to mention to get them to agree – the RoSh's lenient stipulation is interesting; even if the husband cannot fully support his (first) wife, he should do as much as he can, and give her a bill as a guarantee, so that he would not become an agun (a bound man). The bound woman, as we've seen in the RoSh's former answer, is less of a concern, despite being at risk where the guiding principal was that a woman could pacify and persuade a mentally ill husband to divorce her, and if she can't – basically learn to make do.

In summary, a lack of consistency is evident in regard to who is a *shotah*, as well as in terms of the rulings regarding divorce of a *shotah* spouse. These inconsistencies exemplify the difficulties encountered by the Ashkenzic Rishonim – mainly, in trying to discern how Tannaitic and Amoraic law ought to be interpreted and adapted to correspond to the challenges arising from day to day life with mentally ill individuals.

Rishonim – Sepharad

Most of this segment will be dedicated to Maimonides, (henceforth – the Rambam. Rabbi Moshe ben Maimon), the 12th century Sephardic luminary and for our purposes author of the Mishneh Torah, the first comprehensive and systematic code of Jewish Law. A few words about the Rambam's codificatory effort may be in order. Seeking (arguably) to write the definitive, single source for Jewish law, the Rabmbam wrote his code in clear Mishnaic

⁷⁷ שו"ת מהרי"ל החדשות סימן רב

Hebrew using a distinct style which is accessible and concise. As such, he did not include any halakhic sources for his decisions, which both perplexed and angered scholars in generations after him, finding it hard to locate the sources of any given *pesika*. It is therefore sometimes impossible to understand how exactly he comes to a particular conclusion, and in extreme cases leaves us to assume it was based of sources no longer known to us, or upon observations of particular practices in his community. In any case, I have attempted to point to the sources of most of the halakhot here below, so as to see where the Rambam offers *chidushim* and where he is in line with transmitted tradition.

The Rambam's single most quoted paragraph regarding the *shoteh* is found in *Hilchot Edut*, the Laws of Giving Testimony, in which he in essence defines the category of *shoteh*:

השוטה פסול לעדות מן התורה לפי שאינו בן מצות, ולא שוטה שהוא מהלך ערום ומשבר כלים וזורק אבנים בלבד, אלא כל מי שנטרפה דעתו ונמצאת דעתו משובשת תמיד בדבר מן הדברים אע"פ שהוא מדבר ושואל כענין בשאר דברים הרי זה פסול ובכלל שוטים יחשב, הנכפה בעת כפייתו פסול ובעת שהוא בריא כשר, ואחד הנכפה מזמן לזמן או הנכפה תמיד בלא עת קבוע, והוא שלא תהיה דעתו משובשת תמיד שהרי יש שם נכפים שגם בעת בריאותם דעתם מטרפת עליהם, וצריך להתיישב בעדות הנכפין הרבה.

The *shoteh* is unacceptable as a witness by law of torah, since he is not subject to the commandments. By *Shoteh* it is meant not only one who walks around naked, breaks things and throws stones, but anyone whose mind has become disturbed and it is found that his mind is constantly confused in some matter, even though in regard to other matters he speaks to the point and asks pertinent questions, he is disqualified and is considered in the category of *shotim*. The *nikhpah* [usually thought to mean the epileptic], during a fit is disqualified, and when in good health is acceptable. And one whose fits occur infrequently or intermittently, granted that his mind is not constantly disordered, since some *nikhpim* even when they are well their mind is disturbed, and we should take careful deliberations in regard to the testimony of the *nikhpim*.⁷⁸

The Rambam thus delineates his basic definition of the *shoteh*, which, in accordance with the Tannaitic and Amoraic conception, regards the *shoteh* as someone who is not bound by commandments. The Rambam's language is interesting though; rather than saying the *shoteh* is exempt from the commandments, he uses the term *אינו בן מצות*, literally meaning

⁷⁸ משנה תורה הלכות עדות פרק ט הלכה ט 78

“he is not a son of the commandments” (the opposite of *בר מצוה*⁷⁹), thus, at least in terms of language, relegating the *shoteh* to a sub-status of the covenantal relationship, or to the status of a minor.

Noteworthy also is the fact that the Rambam clearly changes the definitions of “who is a *shoteh*” found in the Bavli Hagiga 3b, substituting them by behaviors that are clearly meant to be used as *examples* of the way a mentally ill person behaves – walks around naked, breaks things and throws stones. Similarly to Rashi (and the Maharik and Mahari Weil who were later scholars), the Rambam understood the behaviors described in Hagiga 3b not as obligating signs⁸⁰, but rather as mere examples, and not the only ones possible either; rather, anyone whose mind has become disturbed can be considered a *shoteh*. Himself a physician who probably came across many patients suffering from mental illness, the Rambam knew that the manifestation of *shtut* cannot be limited to the affective signs in Hagiga 3b alone.

Less relevant to our case are the *nikhpim*; they are interesting in that they are people whose mind is disturbed only some of the time due to a known cause (when they are in the throws of a seizure), thus shedding light on the category of the *shotim*, for which the confused mind is a chronic state of being, and probably not the result of an identifiable condition.

Of paramount importance is also the halakha immediately following:

הפתאים ביותר שאין מכירים דברים שסותרין זה את זה ולא יבינו עניני הדבר כדרך שמבינין שאר עם הארץ, וכן המבוהלים והנחפזים בדעתם והמשתגעים ביותר הרי אלו בכלל השוטים, ודבר זה לפי (מה) שיראה הדיין שאי אפשר לכון הדעת בכתב.

The intellectually deficient who cannot recognize contradictions and cannot understand things as all people do, as well as those who are extremely agitated and frantic [lit. rushed] and who are extremely maddened, they are considered in the category of *shotim*. In this matter discretionary power is granted to the judge because it is impossible to lay

79 In the 14th century this phrase will have been used by the Ashkenzic Maharil, see p. 23.

80 The Maharik, for example, considered them obligating, see p. 17.

down written rules concerning this subject.⁸¹

From this halakha we learn that the category of *shtut* is in theory very wide; it can apply to those who are cognitively deficient to the point that they are unable to function in the world, as well as to those whose behavior is agitated to such an extent that they are presumably noticeably disturbed. Most importantly, and this is where the Rambam strays from most of the poskim that came before and after him, since it is impossible to put down clear rules regarding this issue, since one's mental illness can manifest in myriad ways, discretionary power is thus granted to each and every dayyan, to decide according to his better judgment whether any particular person is to be considered a *shoteh* or not. Such a statement is typical of the Rambam, in that it has no precedent in the legal literature.

Before delving into the Mishneh Torah and turning to the legal implications of being included in the category of the *shoteh*, we stand to gain more insight into the Rambam's conception of mental illness by looking at a source which is not a legal code, but rather a commentary – the Rambam's Commentary to the Mishnah written in Judeo-Arabic – that he started at the age of 18 (or 23 according to other sources) and finished when he was 30.

In the Mishnaic tractate Bekhorot, the Rambam interprets a few of the defects listed in the Mishnah that disqualify a priest from serving in the Temple. He writes:

ונכפה - שם הנופל, ונקרא כן מפני שהוא נופל שלא לרצונו בעת הכפיון. ורוח קצרית - מתנצאות המרה השחורה כמבולבלי החושים והמשועממים שכבר הביאתם התגברות המרה השחורה לידי הפסד פעולות הגוף וכוחותיו.

The *Nikhpah* – that is what the epileptic [lit. he who falls] is referred to because he falls down to the ground involuntarily during a seizure. And a *Ruach Kitzrit* – one of the consequences of the black bile, as in the case of those whose senses are confused, and who are meshuamamim⁸² and who were brought to a diminishing of the body's action and strength because of the strengthening of black bile.⁸³

According to modern standards, the description here is basically that of mental illness,

81 משנה תורה הלכות עדות פרק ט הלכה י

82 Sometimes referred to in order to depict mental illness; see p. 15 ft. 36.

83 פיהמיש למכיס בכורות פרק שביעי ה

caused interestingly, by some physiological imbalance – התגברות המרה השחורה. What is a typical medieval reference to “black bile” is not used by other rishonim (unless they are quoting the Rambam), and in the Rambam's case can probably be explained, again, by his medical background. Mental illness and physical illness are inextricably linked for the Rambam, a holistic point of view which for some time now has gained favor in the medical sciences from the 20th century and onward.

A further delineations of a mental illness is found in the Rambam's commentary to tractate Shabbat, in a discussion regarding for whom it is permitted, because he is afraid of the רוח רעה, to put out the Shabbat candles:

רוח רעה - קורין לכל מיני אלמאלנכיליאת ויש מהן מין שהחולה בורח ויוצא מגדרו כשרואה אור או כשהוא נמצא בין בני אדם, וימצא נחת רוח ותשקוט נפשו בחושך ובבדידות ובמקומות השוממין, וזה מצוי הרבה בבעלי המרה.

Ruach Ra'ah – this is what various al'malencholiat [unclear, but sounds a lot like “melancholies”⁸⁴] are referred to, some of which cause the patient to run away and lose his composure either when he is exposed to light, or when he is in the company of people, and yet he will find peace of mind in darkness and in solitude and in desolate places – something which is prevalent in those with [excessive] bile.⁸⁵

This again is an astute description of what sounds a lot like either depression or an acute phobia. It is important to note that unlike Rashi's view, in no way is the רוח רעה thought of as a supernatural entity which possesses an individual; rather it is a mental state which is for all intents and purposes – an illness, caused by excessive bile, i.e. again, some kind of imbalance.

Whether when confronted with the above cases the Rambam would have categorized them as *shotim* or not is anybody's guess, but their mention is quite telling nonetheless; it attests to the Rambam's immense sophistication in medical classification and may also account for his refusal to “lay down the law” definitively in regard to

84 If indeed the Rambam meant “melancholies,” it is worth noting that “melan” is a prefix meaning dark or black – from the greek *melas* (black), and that “choler” is one of the four humors of ancient medieval physiology thought to cause anger and bad temper when in excess. (From: MedicineNet.com)

85 פיהמ"ש לרמב"ם שבת פרק שני ה'

determining who qualifies as a *shoteh*, preferring to grant each dayyan freedom to decide according to their own opinion and special circumstances.

As we have seen⁸⁶, the *shoteh* is exempt from criminal liability in case he harms another, which the Rambam will later codify in the Mishneh Torah. Interestingly, we find a statement in the his Commentary to the Mishnah, which neither gets codified nor is there any mention of it in the code at all. Commenting on tractate Bava Kama, specifically on the law which exempts *shotim* (as well as deaf-mutes and minors) from criminal liability, the Rambam adds:

כל זה פשוט, אבל יש לדיין להכותם מכה רבה כדי למנוע הנזקים מבני אדם.

This goes without saying, but the judge ought to impose grave sanctions against them [lit. give them a great blow] in order to prevent them from causing harm to other people.⁸⁷

The law would clearly render it impossible to find the *shoteh* criminally liable, which does not mean that there should not exist, nevertheless, some degree of societal protection.

Some sanctions ought to be set in order that these individuals be warded off, though *not* punished. It is unknown what the Rambam meant by *מכה רבה*⁸⁸, but the fact that this

comment did not make its way into the legal code⁸⁹, despite other precedents of the

Rambam breaking rank with previous legal standings (such as in the case of *סימני שוטה* or by granting judicial freedom to the dayyan), is quite telling. Perhaps the Rambam changed his mind, perhaps he did not want to create a legal precedent which may justify

unnecessary cruelty; in any case, this remains a mere note in his commentary.

The halakhot concerning the *shoteh* as codified in the Rambam's Mishneh Torah

⁸⁶ See p. 6.

⁸⁷ פיהם"ש לרמב"ם כבא קמא פרק שמיני ד'

⁸⁸ That is, whether it refers to a literal beating or whether it is merely a metaphorical expression denoting a precautionary measure. J. Bazak, for example, translates this to mean that "the courts are entitled (or are bound) to impose sanctions against them..." Source: Jacob Bazak, "Maimonides on Criminal Responsibility and Mental Illness," *Maimonides As Codifier of Jewish Law*, ed. Nahum Rakover (Jerusalem: The Library of Jewish Law, 1987) 178.

⁸⁹ Not as such in regard to *shotim*, although in Sanhedrin 24:4 it is stated that the courts may order lashings in cases where those are not mandated by law in order to preserve the law of Torah; cautionary measures are the prerogative of the court.

follow, for the most part, the legal principles set out by the Tannaim and Amoraim. As stated before, the Rambam is unique in the way he organizes them according to a clear system with a guiding theological overview, making the law both wonderfully accessible and very hard to trace back to its origins.

The material found in the code largely falls within the private/family realm, or within the public realm, or within the religious realm, which conflates them both.

In the second category, we find in *Hilchot Deot*, which delineate the proper Godly way to behave in the world, the following:

לא ילך תלמיד חכם בקומה זקופה וגרון נטוי כענין שנאמר ותלכנה נטויות גרון ומשקרות עינים, ולא יהלך עקב בצד גודל בנחת כמו הנשים וגסי הרוח כענין שנאמר הלך וטפוף תלכנה וברגליהם תעכסנה, ולא ירוץ ברשות הרבים כמנהג משוגעים [...] ⁹⁰

A Torah scholar should walk erect, with a stretched out head, as it was said: "and they walked with necks outstretched and flashing eyes" (Isaiah 3:16). He should not walk heel-to-toe leisurely as women and the haughty do, as it was said "walking and mincing as they go, tinkling with their feet" (Isaiah 3:16). Nor should he run in public in the way of the insane.⁹⁰

The key here is public behavior. As part of the proper etiquette which scholars should abide by, they need to be able to discern what is or is not a proper way to behave in public.

Thus, we discover a footnote about the way משוגעים - the insane - act: they run around in public, thus exemplifying a lack of proper self-control and an inability to appear dignified.

This is an interesting statement about the lack of propriety that is part and parcel of being mentally ill; acting in a way which may be perceived as the way an insane person might act constitutes a serious faux-pas for the scholar, and we may also assume, quite obviously, that a mentally ill person cannot be a *talmid chacham*.

Again in the public realm, in the category of a *shoteh's* halakhic standing via the community, In *Hilchot Mekhira* which detail the laws of Commerce, the Rambam states clearly:

⁹⁰ משנה תורה הלכות דעות פרק ה הלכה ח

השוטה אין מקחו ואין ממכרו ממכר, ואין מתנותיו קיימות, ובית דין מעמידים אפוטרופוס לשוטים כדרך שמעמידין לקטנים.

The *shoteh's* sale or purchase, as well as the presents they give, do not stand [they are not considered binding or effective]. The court must appoint a guardian for the *shotim*, as it would for a minor.⁹¹

For this halakha the Rambam, as a side comment, does not use the language of the Talmud (although it can be inferred to be a Talmudic law from an instance depicted there), but rather the language of Rashi, whom, as we've seen, himself used the language of the Geonim⁹². In any case, the law relating to ownership, selling and gift giving by the *shoteh* is that none of them are considered valid unless managed by a legal guardian. The stages of development here are interesting; it isn't as if one could not argue for lack of ownership using the Talmud alone, but it would make it more difficult. The Rambam's codification makes it a cut-and-dry fact of legal truth, thus as if creating a new (both protective and limiting) reality for the *shoteh* where previously one may not have existed.

In the Laws of Entitlements and Gifts, *Hilchot Zekhiyah U'matanah*, we gain more insight into the state of mind required to attain property:

קטן שנותנין לו צרור וזורקו אגוז ונטלו זוכה לעצמו ואינו זוכה לאחרים, פחות מזה לא זכה לעצמו ולא לאחרים, וכן השוטה אינו זוכה לא לו ולא לאחרים, והמזכה לשוטה על ידי בן דעת⁹³ זכה [...]

A minor who is given a stone and he throws it away, but when he is given a nut he keeps it [is considered to have reached the state of understanding] so that he can acquire [property] on his own behalf, but not on behalf of others. If he has less understanding than that, he cannot acquire neither for himself nor for others, and similarly the *shoteh* cannot acquire property neither for himself nor for others, and if someone gave property to a *shoteh* through the agency of a person of sound mind/understanding, the *shoteh* can acquire.⁹⁴

The *shoteh* here is portrayed as someone who lacks the most basic understanding in

91 משנה תורה הלכות מכירה פרק כט הלכה ד

92 See p. 10 ft. 26.

93 This is a Talmudic term, which can be found, for example, in Bava Metzia 36a: "It has been stated: If one bailee entrusted [his bailment] to another bailee Rab said: He is not liable; R. Johanan maintained: He is liable. Abaye said: According to Rab's ruling, not only if a gratuitous bailee entrusted [the bailment] to a paid bailee, thereby enhancing its care; but even if a paid bailee entrusted [it] to an unpaid one, thus weakening its care, he is still not responsible. Why? Because he entrusted it to בן דעת – an understanding being."

94 משנה תורה הלכות זכיה ומתנה פרק ד הלכה ז

regard to what is valuable and what is not. As such, the provision which allows him to attain ownership through the agency of another is a great protective measure. But unlike the minor, who when he shows some understanding is permitted to acquire assets, the *shoteh*, once categorized as a *shoteh*, even though he may in theory be perfectly lucid in some respects, can never attain property. Through contrast with the *בן דעת* we learn: a *shoteh* has no understanding, none at all.

There is, however, an intermediate case. Again in the laws governing Commerce, *Hilchot Mekhirah*, in the category of the intermittent *shoteh* who is at times well, at times ill, we learn, as we saw in the Talmud, that it is possible for the mentally ill to be considered fully legally viable when in the well-state. One's mental illness is not tattooed on his forehead for all eternity; rather, behavior is what counts:

מי שהוא עת שוטה ועת שפוי כגון אלו הנכפין, בעת שהוא שפוי כל מעשיו קיימין וזוכה לעצמו ולאחרים ככל בן דעת, וצריכין העדים לחקור הדבר היטב שמא בסוף שטותו או בתחלת שטותו עשה מה שעשה.
One who is at times well and at times ill, such as in the case of the *nikhpim*, at the time when he is well, all of his financial undertakings [lit. all of their actions] stand; he can acquire for himself and for others like any other person who has *daat*. The witnesses should examine the matter carefully to determine whether the transaction took place in the beginning of his *shtut*, or near its end.⁹⁵

The novelty here is not the bottom line of the law, but rather what we learn about the *shotim* by use of the example of the *nikhpim*. *Shtut* then does not have to be a constant state of being; rather, the Rambam's qualification of *shtut* is completely affective – behavior, again, is what counts. In that sense, mental illness is not a category in of itself, but rather a state of being; it all depends on whether or not at a given time one's mind is capable of sanity or not.

The Rambam's use of the word שפוי is unusual, as the Talmudic terms in use thus far were *חלים* or *ישתנה*, details which will figure greatly in the debate concerning when

⁹⁵ משנה תורה הלכות מכירה פרק כט הלכה ה

exactly an intermittent *shoteh* is considered well enough to grant a divorce⁹⁶. It is unclear what exactly is meant by שפוי, nor how it may be measured; the witnesses, we are told, need to examine carefully whether the act of acquisition was performed at the onset of an episode of *shtut*, or near its end. What difference it makes or how one is to determine his sanity remains unclear⁹⁷.

The issue of being in a state of *shtut* while one is *nikhpah* (supposedly in the throws of a seizure), would mean one lacks not only cognition, but also כונה - the proper religious intention to fulfill the mitzvah, thus invalidating it, as we learn from the following halakha, in a chapter which outlines the laws of eating matzah on passover:

אכל מצה בלא כונה כגון שאנסוהו גוים או לסטים לאכול יצא ידי חובתו, אכל כזית מצה והוא נכפה בעת שטותו ואחר כך נתרפא חייב לאכול אחר שנתרפא, לפי שאותה אכילה היתה בשעה שהיה פטור מכל המצוות.

One who eats matzah without kavannah such as if gentiles or thieves forced him to eat it, has fulfilled his religious obligation. One who eats matzah k'zait [a tiny portion the size of an olive] while he is *nikhpah* in his *shtut* [in the throws of a seizure], and who later recovers, must eat another k'zait portion, since during the first time he ate he was not under the obligation to perform mitzvot.⁹⁸

The Rambam's assertion that mitzvot ought to require כונה is not something to be taken for granted; while there is a discussion about whether or not מצות צריכות כונה in the Talmud⁹⁹, it is not an agreed upon religious requirement¹⁰⁰ (although it could be deduced from another instance in the Talmud where it is argued in Hulin 12b that intention to perform *shkhitah* may be necessary for it to be *shkita*, and the Tosafot there as well argue that the *Shoteh's shkita* is not kosher because it lacks *kavannah*). כונה is to be understood an added layer to the religious act which is an inseparable part of the Rambam's philosophical gestalt. In this case, although not directly stated, we can assume that there is lack of kavannah in one who

96 See Rashba p. 54-6.

97 In the 17th century, Joshua Falk, writing a commentary on Joseph Karo's Shulchan Aruch included the following comment regarding this matter: הרמב"ם וכתב סוף שטותו או תחלת שטותו קשה מה לי סוף שטותו או תחלת שטותו

98 משנה תורה הלכות חמץ ומצה פרק ו הלכה ג

99 תלמוד בבלי מסכת פסחים דף קיד עמוד ב

100 The 14th century Spanish scholar Jacob Ben Asher, author of the Ar'baa Turim, wrote in this regard: ואני יודע אם הוא נוסק דמצות צריכות כונה

is in a temporary state of *shtut* as in the case of one who has an epileptic fit. This has far-reaching implications with regard to those who are constant *shotim*. Seemingly, of course, none of this is an issue for the *shotim* given that they are exempt from commandments (which is the stated reason of why one in the throws of a seizure has not fulfilled his obligation), but at a closer look we learn here they are basically denied even a basic religiosity in which one can yearn and direct himself towards a greater goal by performing a mitzvah. When responsibility is one of the major ways (if not the major way) to communicate with God in Judaism, what happens if one is denied the ability or permission to even draw near it?

For better or worse then, responsibility is denied to *shotim*. Sometimes it is clearly for the better. Thus, in the category of the *shoteh's* halakhic standing via society, in regard to criminal liability, in *Hilchot Chovel U'mazik* – the Laws of Injury – the Rambam's codification is in keeping with his legal predecessors:

חרש שוטה וקטן פגיעתן רעה, החובל בהן חייב והן שחבלו באחרים פטורין, אע"פ שנתפתח החרש ונשתפה השוטה והגדיל הקטן אינם חייבין לשלם, שבשעה שחבלו לא היו בני דעת.

Damages suffered by a deaf-mute, a *shoteh*, and a minor are undesirable [lit. their damages are bad/negative]; one who injures them is liable, but if they injure others they are not liable. Even though the deaf-mute gains the ability to speak and hear, the *shoteh's* condition ameliorates [נשתפה]¹⁰¹ and the minor comes of age, they are not obligated to pay, since at the time of causing the damages/injuries they did not have cognition/understanding.¹⁰²

The language here is right out of the Mishnah, except for the previously non-existent justification which the Rambam adds – because they lacked *da'at* (cognition or understanding) during the act. The idea of the *shoteh* lacking *da'at* is not new, nor is the fact of their exemption from criminal liability; but the Rambam's attaching the two here together is a novelty.

Implied in the notions that the *shoteh* lacks *da'at* as well as the capacity for

¹⁰¹ The exact meaning of נשתפה is never clear.

¹⁰² משנה תורה הלכות חובל ומזיק פרק ד הלכה כ

kavannah, is the idea that the *shoteh* cannot participate in basic Jewish practice and hence his covenantal relationship with God is put into question¹⁰³. And yet a *shoteh* does have some place, as a human being, within the “*daat & kavannah*” based Jewish covenant. We gain some insight into this issue through the following in Hilchot Shabbat – the Laws of Shabbat¹⁰⁴:

היה עמו חרש שוטה וקטן מניח כיסו על החמור ואינו נותנו לאחד מהן מפני שהן אדם מישראל, היה עמו חרש ושוטה ואין עמו בהמה נותנו לשוטה, שוטה וקטן נותנו לשוטה, חרש וקטן נותנו לאי זה מהן שירצה [...]

[Even though] one is accompanied by a deaf-mute, a *shoteh*, and a minor, he should place [his purse] on the donkey and not give it to one of them since they are *adam m'Israel*. If he is accompanied by a deaf-mute and a *shoteh*, and there is no animal with him, he should give it to the *shoteh*. If he is accompanied by a deaf-mute and a *shoteh*, he should give it to the *shoteh*. Accompanied by a deaf-mute and a minor, he may give it to whomever he desires.¹⁰⁵

As stated previously when reviewing the Talmudic sources in tractate Shabbat 153a, the case in point is that of a person on a journey, who is carrying a purse with him when it gets dark (i.e. shabbat enters), and so is therefore no longer allowed to carry it. In the theoretical case here, when he has an animal with him, as well as a deaf-mute, *shoteh* and a minor, the law is that he should place the purse on the donkey first and not on one of them (as mentioned, this is not obvious, as there is an obligation to let animals rest on shabbat¹⁰⁶). The justification provided is of special interest here – because they are members of the people Israel. This is different than the original justification in tractate Shabbat – *הני אדם* - for they are human beings. It is unclear to what this change of language can be attributed – *וצריך עין*! The rest of the halakha follows the Talmud pretty accurately, setting the hierarchy – the *shoteh* is at the bottom of the ladder, lower than the deaf-mute and the minor.

103 I am expressing a modern understanding of “covenant” here, as the Rabbinic covenant was expressed and marked by Brit-Mila, so in that sense the *shotim* are certainly equal participants in it.

104 For the Talmudic discussion in this regard see page 7.

105 משנה תורה הלכות שבת פרק כ הלכה ז

106 משנה תורה הלכות שבת פרק ו הלכה טו - מפני שאנו מצווים על שכיתת בהמה ועבד

The issue to keep in mind here is violation of shabbat – if there is an obligation to let an animal rest on shabbat, and the *shoteh* is exempt from mitzvot – all mitzvot, then clearly the purse should be placed on the *shoteh*. And yet the implications of ruling thus in terms of taking advantage of the *shotim* (and of course, deaf-mutes and minors too) were clearly unacceptable to the Amoraim, who therefore stated the purse should be placed on the donkey; it, as opposed to them, is not a human being.

Why then does the Rambam change the original אדם to אדם מישראל? Of what possible consequence is the *shoteh*'s membership as one of the Jewish people? We have seen before that not only is the *shoteh* exempt from mitzvot, but also, by implication, possibly incapable of participating in basic Jewish practice through kavannah. Could it be then, that by stating אדם מישראל¹⁰⁷ the Rambam alludes to the possibility that the *shoteh*, despite not being כר מצוה can nevertheless have some kind of binding place within the God-Israel relationship? What kind of place would that be? We receive no explanations or answers here, nor about the hierarchy which places the *shoteh* lower (in cognition and therefore obligation) than the deaf-mute and the minor.

In matters governing personal status, for the most part, the *shotim*'s restrictions are codified quite predictably. In *Hilchot Ishut* – the Laws governing Personal Status we find a very clear, unambiguous codification of the legal impermissibility to contract marriage:

[...] אבל השוטה שקידש פקחת או פקח שקידש שוטה אין כאן קידושין כלל לא מדברי תורה ולא מדברי סופרים.

But the *shoteh* who marries [lit. sanctifies] a sane woman or a sane man who marries a *shotah*, this is no kiddushin here – neither from torah nor from the Rabbis.¹⁰⁸

Comparing the case of the deaf-mute whose kiddushin are valid, not from Torah but by Rabbinic authority, the Rambam then contrasts with the opposite case; the marriage of a *shoteh* to a sane woman and vice versa are by no means valid. The Rambam thus ignores

¹⁰⁷ Jacob Ben Asher in the Tur (אורח חיים סימן רס"ז) would later change this language to אדם כמותו.

¹⁰⁸ משנה תורה הלכות אישות פרק ד הלכה ט

the variant opinion expressed in the Yerushalmi¹⁰⁹ in which Rabbi Ishmael, the son of Rabbi Yochanan Ben Broka stated this only applies to the case of two *shotim* marrying, and not a *shoteh/shotah* and a sane person, in which case the kiddushin are valid. The Rambam's stance here is clear: such marriages are clearly problematic and should not be permitted to exist to begin with.

Just to make sure the point was understood, in a halakha regarding the sum of a ketubah for various women who are debilitated, we learn:

בתולה שהיא בוגרת או סומה או אילנית כתובתן מאתים, אבל החרשת והשוטה לא תיקנו להן חכמים כתובה, השוטה לא תיקנו לה נישואין כלל, והחרשת אע"פ שיש לה נישואין מדבריהם לא תיקנו לה כתובה כדי שלא ימנעו מלשאת אותה (...) [..]

A virgin who is older, or blind, or cannot have children – their ketubah is 200, but for the deaf-mute and the *shotah* the Rabbis constituted no ketubah, regarding the *shotah*, they did not constitute marriage for her at all, and the deaf-mute, even though she can contract a marriage by Rabbinic law, they did not constitute a ketubah for her so people would not avoid marrying her.¹¹⁰

Quite obviously, the reason that the *shotah* has no ketubah, is because she cannot contract a marriage at all, a point which is driven home again and again. As opposed to the deaf-mute, the marriage of whom this ordinance wishes to encourage, and for whom hope for healing exists (if she regains her hearing, her previously no-ketubah is upgraded to a 100), the *shotah* is not expected to recover; no such stipulation exists for her marriage – it is simply considered too risky, even though we could argue that there ought to be a ketubah stipulation for her as well, since the intermediate category of עתים שוטה עתים חלומה exists for the *shotah* just as it does for the *shoteh*.

Being limited in the realm of family life then, is one of the major consequences of being included in the category of *shoteh*. But even though not allowed to marry (or divorce), there will clearly be cases of *shotim* within married relationships, given that people can become *shotim* after the wedding. As such, the laws ought to delineate

¹⁰⁹ See page 8 ft. 17.

¹¹⁰ משנה תורה הלכות אישות פרק יא הלכה ד

boundaries for them. An example of this can be found in *Hilchot Isurei Bi'aa* – the Laws of Forbidden Sexual Relationships:

הסומא בודקת עצמה ומראה לחבירתה, אבל החרשת והשוטה צריכות פקחות לבדוק אותן ולקבוע להן וסתות ואח"כ יהיו מותרות לבעליהן.

A blind woman should conduct her own examination [of her discharges], and then show her friends. But a deaf-mute and a *shotah* must be inspected by mentally capable women in order to determine their periods. Afterwards they will they be permitted to their husbands.¹¹¹

The Rambam here codifies the Talmudic tractate Niddah¹¹², in a segment that relates to the obligation to be ritually pure in order to eat *terumah*. While not revolutionary in its content – the assertion that a *shotah* can be corrected by a woman of sound mind so that she can then eat *terumah* appears yet in the Mishnah, codifying it within family law is obviously of great consequences to both husband and wife. Their conjugal life have thus become subject to the approval of an outside source: a fact which can be oppressive, as well having the potential to protect the married *shotah* who can, in theory, be taken advantage of sexually within a marriage without the ability to refuse.

Granting sexual consent within a marriage appears to be a problematic area in legislation¹¹³, and all the more so regarding *shotim*. Outside a marital framework, when rape is concerned, we learn that when a *shotah* is seduced or raped, her case is different than that of a healthy woman. We've seen before that the man-*shoteh* is not entitled to receive payment for degradation;¹¹⁴ the same applies to a woman *shotah*. Maimonides codifies from the words of the Tannaim¹¹⁵:

כבר הודענו הבנות שאין להן קנס ועשר הן, הבוגרת, והממאנת, והמגורשת, והאילונית, והשוטה, והחרשת, והגיורת, והשבויה, והמשוחררת, והיוצא עליה שם רע, ושאר הבנות יש להן קנס.

111 משנה תורה הלכות איסורי ביאה פרק ח הלכה טו

112 תלמוד בבלי מסכת נדה דף יג עמוד ב

113 Thus for example, we find in Nedarim 20b: "A woman once came before Rabbi and said, Rabbi! I set a table before my husband, but he overturned it (i.e. Had unnatural sexual relations with me). Rabbi replied: My daughter! the Torah permitted you to him: what then can I do for you? A woman once came before Rab and complained. Rabbi! I set a table before my husband, but he overturned it. Rab replied: How does it differ from a fish? (i.e. that can be cooked or fried or roasted – according to the preference of the cook).

114 See page 6 ft. 11.

115 תלמוד בבלי כתובות דף לו עמוד א

We have already enumerated the girls for whom no fine needs to be paid; there are 10: the older woman, the one who dissolves her marriage through refusal [to have conjugal relations], one who was divorced, an eylonit, a *shotah*, a deaf-mute, a convert, a girl who had been taken captive, a freed slave, and one whose reputation is tarnished. For the rest of the girls a fine needs to be paid.¹¹⁶

From the very next halakha we also learn that every girl for whom it was not required to pay the fine (compensation), it was also not required that degradation and damages be paid, that is, except for the *shotah* (and *bogeret* and *memanenet*):

כיצד? האונס את הבוגרת ואת הממאנת אע"פ שאין להן קנס יש להן בושת ופגם וצער, והאונס שוטה או חרשת משלם צער בלבד, אבל המפתה את כולן פטור מכלום.

How so? If a man raped an older woman and the refuser, even though they receive no compensation they are entitled to [payments for] degradation, and damages and pain; but he who rapes a *shotah* or a deaf-mute pays for pain only, and he who seduces either one of them is not liable at all.¹¹⁷

Clearly, since the *shotah* is already damaged and cannot contract a marriage, a fine needs not be paid her. The law does acknowledge that she suffers pain and is therefore qualified to receive damages and pain, but not surprisingly, a woman who is not of sound mind is not considered, at least in the eyes of the law, to qualify as someone who endures shame for rape. It would logically follow that *shotah* (and the deaf-mute) cannot be seduced either – since they lack the cognition to consent, so that their seduction would constitute rape, and the seducer would be liable, but that is not the case in the eyes of the law.

As for the man-*shoteh* (in regard to all matters of offense done to him), he too as we've seen before, is not entitled to be paid for degradation¹¹⁸.

Back to the realm of marital relationships, we have seen from Talmud¹¹⁹ that divorce is not a possibility in the case of *shotim*.

Concerning the healthy man who becomes a *shoteh*, as we would expect in accordance with the Talmud, the Rambam writes in *Hilchot Gerushin* – the Laws of Divorce:

116 משנה תורה הלכות נערה בתולה פרק ב הלכה ט

117 משנה תורה הלכות נערה בתולה פרק ב הלכה יא

118 משנה תורה הלכות חובל ומויק פרק ג הלכה ד - המבייש את השוטה פטור

119 See page 8.

מי שנשא כשהוא פקח ונתחרש ואין צריך לומר נשתטה אינו מוציא לעולם עד שיבריא [...]

If one married while *pikeach* and then became a deaf-mute, and needless to say if he became a *shotah*, he cannot ever divorce his wife, until he regains his health.¹²⁰

Concerning the woman who becomes a *shotah* things get more interesting :

מי שנתחרשה אשתו הרי זה מגרשה בגט ותהיה גרושה, אבל אם נשתטית אינו מוציאה עד שתבריא, ודבר זה תקנת חכמים הוא כדי שלא תהא הפקר לפרוצין שהרי אינה יכולה לשמור את עצמה, לפיכך מניחה ונושא אחרת ומאכילה ומשקה משלה ואין מחייבין אותו בשאר כסות ועונה שאין כח בבן דעת לדור עם השוטים בבית אחד, ואינו חייב לרפאותה ולא לפדותה, ואם גירשה הרי זו מגורשת ומוציאה מביתו ואינו חייב לחזור ולהטפל בה.

If one's wife becomes a deaf-mute, he may divorce her with a get and the divorce will be valid; but if she becomes a *shotah*, he may not divorce her until she regains her health, and this was ordained by the sages so that she will not be *hefker* to immoral people, since she cannot take care of herself; therefore he will desist from her and marry another woman; and he should provide a place for her, provide her with food and drink from her own resources, and he will not be obligated to provide her with sustenance, garments, and conjugal rights, since there is no way [lit. strength] for a person of sound mind to live with the *shotim* in one household, and he is not obligated to provide her with medical treatment, nor to redeem her [if she is taken captive] and if he divorces her, the divorce is valid, and he can remove her from his home, and is no longer obligated to care for her.¹²¹

The Rambam's ruling here is different from all that we have seen before. Acknowledging that a man indeed cannot divorce his *shotah* wife until she's well (what exactly is meant by *תבריא* is never clear), the Rambam, finding the situation of an *agun* (bound) man intolerable, rules against *herem d'rabenu gershom*, stating that a man can literally put his *shotah* wife aside, and marry another wife! Since that *shotah* cannot be left to her own devices, the husband should provide her with a place to live, and support her from *her own* resources (!). So while indeed there is no divorce here and the law is maintained, for all intents and purposes this man and the *shotah* are not exactly married either, since he is no longer held to his marital obligations to her. It is unclear how the Rambam came to the conclusion that if he does indeed divorce her, the divorce is valid, which is a blatant contradiction of Talmudic law. Especially peculiar here, in light of the Rambam's medical background, is his assertion that the man is not obligated to provide for his *shotah* wife's medical treatments.

And indeed, questioning responses were soon to follow. The 12th century Rabad,

120 משנה תורה הלכות גירושין פרק ב הלכה יז

121 משנה תורה הלכות גירושין פרק י הלכה כג

Rabbi Abraham David of Posquieres, Provence, who was famous for his critique of the

Rambam's Mishneh Torah (in his *Hagahot HaRabad*), wrote:

ואינו חייב לרפאותה. א"א [אומר אברהם] ואם בת רפואה היא למה לא יתחייב לרפאותה וכמה יש שמשטות מכח חולי וחוזרות ומתרפאות.
ואם גרשה הרי זו מגורשת וכו'. א"א והוא שידעת לשמור גיטה.

"He is not obligated to provide her with medical treatment": says Abraham [i.e. says I], and if she is curable, why wouldn't he be obligated to provide her with medical treatment? How many women become *shotot* because of a [physical] illness and then regain their health?! "And if he divorces her, the divorce is valid": says Abraham, this applies only to the woman who can take care of her letter of divorce.¹²²

The RamaH, the 12th-13 century Meir Ben Todros HaLevi Abulafia from Spain, also

disagreed¹²³; he wrote that the husband actually is obligated in her sustenance, because

even if he divorced her he would be obligated in her sustenance (מזונות), and all other

conditions enumerated in her ketubah, all except conjugal rights. Since if the law was that

he was *patur*, then מה הועילו חכמים בתקנתו? (that a *shotah* wife cannot be divorced). In

addition, regarding the Rambam's ruling that the divorce is valid, Abulafia replies that since

the Rabbinic ordinance was that he cannot divorce a *shotah*, he can neither divorce her, nor

make her situation worse than she who was divorced. And if she is not divorced, then

clearly her husband is obligated in her sustenance.

Rashba, the 13th - 14th Sephardic Rabbi Shlomo Ben Aderet¹²⁴ also rules in

contradiction to the Rambam in his responsum¹²⁵ that a man who married a healthy woman

who then becomes a *shotah*, is indeed obligated in her sustenance, and he is clearly also

obligated to pay her medical expenses. The case would be different if he married a *shotah*

knowingly (a purely theoretical case since such marriages were not legalized), in which

case he would not be obligated. The Rashba rules - וחייב הוא לזון את אשתו, חולה כבריאה -

the only case in which he would have been considered פטור would be if he divorced her,

122 השנת הראב"ד - משנה תורה הלכות גירושין פרק י הלכה כג

123 Found in - טור אבן העזר סימן קט -

124 More of Rashba's responsa on p 54 and on.

125 שו"ת הרשב"א חלק ב סימן שכב

but since she is a *shotah*, he cannot divorce her, and therefore must pay.

What seems to be a blatant disregard of the *shotah* on behalf of the Rambam is curious, and further inquiry in this matter is needed to see whether or not this is a part of a general tendency of less-than-favorable rulings towards women, or just a single incident.

וצריך עיון!

In regard to Yibbum and the *shotah*, the Rambam codifies the law from a baraita¹²⁶:

ואלו שמתלבמות ולא חולצות, החרשת והשוטה והקטנה לפי שאין בהן דעת לקרות ולהבין [...] These are the [women] who may enter a levirate marriage but may not perform the rite of *halitza* – the deaf-mute, the *shotah* and the minor, since they do not have the cognition to read and to understand.¹²⁷

It seems strange that a *shotah* whose husband died can enter into a levirate marriage, since she is not otherwise marriageable; not only that, but she cannot participate in the rite that would release her from such a marriage – the *halitza* – since she is considered to lack the cognition not only to understand its intricacies, but also to read the documents involved. The Rambam does not change the Tannaitic law nor its language, which perhaps attests to the practical irrelevance of this law, already in his days, or to the fact that in the eyes of the law, maintaining the name of the deceased in the world, being Torah law, takes precedence over not entering into a *shotah*/healthy man union.

When the man [who dies] is himself a *shotah*, his wife is exempt from entering a levirate marriage and from performing the rite of *halitza*:

ואלו שהן פטורות מן החליצה ומן היבום, אשת סריס חמה ואנדרוגינוס ואשת השוטה ואשת הקטן ואילונית ומי שהיא ערוה, שני +דברים כ"ה ו' ולא ימחה שמו מישראל פרט לסריס חמה ואנדרוגינוס ששם מחוי הואילו אינן ראויין לילד מתחלת ברייתן הרי הן כמין בפני עצמו, והיה הבכור אשר תלד פרט לאילונית שאינה ראויה לילד מתחלת ברייתה, +דברים כ"ה ה' לא תהיה אשת המת פרט לאשת שוטה וקטן מפני שאין להם אישות כלל, ולקחה לו לאשה פרט לערוה שאין לו בה ליקוחין.

The following are not obligated to perform either *halitza* or *yibbum*: the wife of the *saris chama* [one whose been made a eunuch by nature, not man], the wife of the androgynous, the wife of the *shotah*, and the minor, and an *eylonit*, and a woman who is forbidden because of *arrayot* [illicit sexual relations]. The rationale for this is as follows: it was written [Deut 25:6]: “[the point of *yibbum*] is so that the name of [the deceased] not be

¹²⁶ תוספתא מסכת יבמות פרק ב הלכה ה

¹²⁷ משנה תורה הלכות יבום וחליצה פרק ו הלכה ו

obliterated from Israel.” This excludes the *saris chama*, and to the androgynous, whose names are already obliterated, since by their nature they are unfit to father children; they are a species in of themselves. [Deut 25:6 cont.] “and the first born that she bears” this excludes the *eylonit* who by her nature is not fit to bear a child. [Deut 25:6 cont.] “the wife of the deceased...” this excludes the wife of a *shoteh* and the wife of a minor, since marriage was not constituted for them. [Deut 25:5] “and he will take her as a wife” this excludes the woman who is forbidden to him because of *arayot*.¹²⁸

Again, codifying a mixture of Tannaitic laws, the Rambam clarifies that the wife of a man who was a *shoteh* does not need to enter into the levirate marriage. His rationale is interesting though; unlike the eunuch, the androgynous, and the *eylonit* who were “disqualified” by nature from having their names endure in the world (or from having children), the *shoteh* is “disqualified” by Rabbinic ordinance that precludes *shotim* from marrying (clearly, she could produce healthy descendants). It seems strange, again, that this reasoning did not apply to the previous halakha in order to prevent *shotot* from entering into marriage with their healthy brother in laws.

Lastly, the Rambam codifies the following:

[...] אבל חרש שוטה וקטן שחלצו וכל החולץ למי שהיא פטורה מן החליצה ומן היבום אינה חליצה.
When a *halitza* is performed by a deaf-mute, a *shoteh* or a minor, or should anyone perform *halitza* with a woman who is exempt from *halitza* and *yibbum*, the *halitza* is of no consequence.¹²⁹

Though we are not provided with a rationale here, this falls under the usual rationale that the *shoteh* lacks the cognition and understanding to perform this rite.

To move away from family law into the public realm, we learn that for the Rambam too, providing protection to the *shoteh* and aid in managing his financial affairs is of utmost importance. The Rambam codifies the portion from tractate Ketubot determining that economic protection be granted the wife and children of a man who becomes *shoteh*¹³⁰ in

Hilchot Nachalot – the Laws of Inheritance:

128 משנה תורה הלכות יבום וחליצה פרק ו הלכה ח

129 משנה תורה הלכות יבום וחליצה פרק ד הלכה טו

130 See page 7 ft. 15.

קטן שהגדיל אפילו היה אוכל ושותה יותר מדאי ומפסיד והולך בדרך רעה אין בית דין מונעין ממנו ממנו ואין מעמידין לו אפוטרופוס, אלא אם כן צוה אביו או מורישו שלא יתנו לו אלא אם כן יהיה כשר ומצליח או שלא יתנו לו עד זמן מרובה, והשוטה והחרש הרי הן כקטנים ומעמידין להן אפוטרופוס.

A minor who comes of age, even if he eats and drinks excessively and ruins [his estate] and follows a bad path, the court does not withhold his property from him nor do they appoint a guardian over him, unless his father, or whomever left him the property ordered that he not be given it unless he conducts himself appropriately [lit. kosher] and is successful or that it not be given to him until later. The *shoteh* and the deaf-mute are considered as minors, and the court appoints a guardian over them.¹³¹

[...] וכן מי שנשתטה בית דין יורדין לנכסיו ומוכרין וזנין אשתו ובניו ובנותיו שהן בני שש שנים או פחות ומפרנסין אותן.

Also, if a person becomes a *shoteh*, the court takes possession of his estate and the sell [of it] to provide food for his wife and his sons and his daughters that are six years old or younger and support them.¹³²

ומי שנשתטה או שנתחרש בית דין פוסקין עליו צדקה אם היה ראוי.

If a person becomes a *shoteh* or a deaf-mute, the court levies tzeddakah against his property if he has the means.¹³³

Differentiating between reckless behavior of a minor who came of age and between *shtut* is significant as well as telling in regard to who can or cannot be considered incapable of managing his own affairs. In theory, one could make an argument that this minor qualifies as a *shoteh* under the provision of *לוי כל מה שנותנים לו*, but for the Rambam this is clearly not the case (not to mention that he has his own criteria to determine a state of *shtut*).

It is important to note that the Rambam does not codify the Amoraic addition that economic protection be granted the wife and children of a man who became a *shoteh* as is, but rather with an added condition – the children need to be below six years of age.

The novelty here is in terms of tzeddakah being levied on behalf of the *shoteh* (against his property, with the assumption that if he was capable, he would give tzeddakah), which in all probability has less to do with the *shoteh* and more to do with the utmost importance Maimonides places on giving tzeddakah.

131 משנה תורה הלכות נחלות פרק י הלכה ח

132 משנה תורה הלכות נחלות פרק יב הלכה יז

133 משנה תורה הלכות נחלות פרק יא הלכה יא

Overall, providing responsible financial support to the *shoteh* who is incapable of managing his own affairs is one of the more impressive legislative pieces of Jewish law regarding the *shoteh*. While this opens the door, in extreme cases, to abuse of the *shoteh's* assets by unscrupulous guardians, surely this is better than leaving the *shoteh* without any protection or guardianship.

Lastly, it is important to stress again that not all mental-illness equals *shtut*, thus meriting the special legal protections and prohibitions that are the lot of the *shoteh*. This can be demonstrated through one law relating to Temple worship, all of which the Rambam codifies in *Mishneh Torah*, even though no longer relevant in his day. In *Hilchot Bi'at HaMikdash*, the Laws of Entrance into the Sanctuary, the Rambam enumerates all the בעלי מומין - priests with defects – that are therefore disqualified from entrance into the sanctuary. To be sure, there are 140 of them, including the toothless and flat-footed. One example pertaining to the *shoteh* is:

ועוד יש שם באדם ארבעה מומין אחרים ואלו הן: החרש, השוטה, והנכפה אפילו לימים רבים, מי שרוח רעה מבעתו תמיד או בעתים ידועים.

There are yet four more defects affecting a person, and they are: the deaf-mute, the *shoteh*, the *nikhpah* even if only on rare occasions, he who is seized by an evil spirit either continuously or at certain times.¹³⁴

Interestingly, the רוח רעה here is not the same as *shtut*; we learned from his Commentary to the Mishna that the Rambam interpreted it as some kind of melancholic behavior which causes one to draw away from light and human company¹³⁵. This kind of behavior, which today would clearly be defined as mental illness, does not fall under the category of the *shoteh* for the Rambam¹³⁶, it does however, preclude a priest from entering the temple.

One more example which illustrates that our modern definition of mental illness

134 משנה תורה הלכות ביאת המקדש פרק ח הלכה טו

135 See page 35.

136 Although both appear in the Mishnah in separate locations, the Rambam could theoretically lump them together.

does not always correspond to the legal category of *shtut*, can be found in *Hilchot*

Sanhedrin, in a discussion of capital punishment. We learn:

[...] גזירת הכתוב היא שאין ממיתין בית דין, ולא מלקין את האדם, בהודית פיו, אלא על פי שני עדים. וזה שהרג יהושע עכן ודויד לגר עמלקי, בהודית פיהם--הוראת שעה הייתה, או דין מלכות היה. אבל הסנהדרין--אין ממיתין ולא מלקין, המודה בעבירה, שמא נטרפה דעתו בדבר זה, שמא מן העמלין מרי נפש המחכים למוות: שהן תמיד תוקעין החרבות בבטנם, ומשליכין עצמן מעל הגגות; כך זה יבוא ויאמר דבר שלא עשה, כדי שייהרג. וכללו של דבר, גזירת מלך היא.

It is a decree from scripture that the court does not execute a person or have him lashed by his own admission, but rather by the testimony of two witnesses. Joshua's execution of Achan [Joshua 7] and David's execution of the Amalekite convert [2 Sam 15] because of their own statement was an immediate directive or a royal fiat. But the Sanhedrin, they do not execute nor do they lash he who admits to a crime, lest his mind may be maddened over this matter; perhaps he is one of those with bitterness of soul who await death – who are always piercing themselves with swords and throwing themselves off rooftops. Such a person could come and admit to doing something he didn't so he would be put to death. The general principle [disqualification by own admission] is a degree of the King [divine decree].¹³⁷

Execution was not relevant by the Rambam's time since the Sanhedrin's "four modes of execution" were abolished after the destruction of the Temple¹³⁸, but what is relevant is using what seem to be chronically depressed and suicidal individuals as the explanation of why one should not be executed by his own admission. Like in the case of the *רוח רעה*, these individuals, who by modern definitions would surely have been considered to suffer from mental illness (as they would for certain Ashkenazic rishonim), are not considered *shotim* (or they would not be liable at all).

In sum, it can be said that Rambam's codification in regard to the *shoteh*, for the most part – though not all – follows tradition. His greatest achievement is making the law accessible, clear and unambiguous. And yet perhaps the biggest "problem" in regard to inferring the law from the Mishneh Torah, is that while obligations and prohibitions are made very clear, the basic definition of who is a *shoteh* remains amorphous and in the hand of any individual dayyan.

To paint a more variegated picture of Sephardic legislation regarding the *shoteh*, a

¹³⁷ משנה תורה הלכות סנהדרין פרק יח הלכה ו'

¹³⁸ תלמוד בבלי מסכת סנהדרין דף לו עמוד ב'

few other sources, which are not legal codes, ought to be looked at. Below are several post-Rambam Sephardic responsa which merit examination in relation to the *shoteh*.

The Ribash, Rabbi Isaac Ben Sheshet Perfet, a 14th century scholar from Barcelona and then Algiers, allows us to deduce a sharper definition of a *shoteh* in contrasting him to one who is mentally deficient, but clearly sane. In a responsum regarding whether or not a particular orphan (Reuven) should be given his inheritance by the person currently serving as a guardian over it (Elazar), the Ribash writes:

דבר ברור הוא: שאם ראובן היתום, הוא בן י"ג שנה ויום אחד, והביא שתי שערות; שמעתה הוא גדול, שמוציאין הנכסים מרשות אלעזר, ומוסרין אותם ליתום...
 וכ"ש [וכל שכן] בנדון זה, שאינו אפטרופוס גמור; אלא מדעת היתום, שסמך אצלו. ואף אם זה היתום הוא טפש, ובלתי יודע בטיב משא ומתן; אעפ"כ אין מונעין אותו מנכסיו, כיון שהוא גדול. שאין ב"ד ממנין אפטרופוס לטפשים, כי אם לשוטים.¹³⁹

Clearly, writes the Ribash, if the orphan has come of age, he is entitled to his inheritance; it is unclear whether the question posed included some concern regarding this orphan's mental state or not, but the Ribash nonetheless replies that even if this young man is a bit on the dumb side and does not understand the nature of business negotiation, his inheritance is not to be withheld from him: *the courts do not appoint a guardian over idiots, but rather over shotim*.

The Ribash then goes on to enumerate the signs of the *shoteh*, and interestingly enumerated those mentioned in the Bavli only, ignoring those of the Rambam. He also does not quote the Rambam in the Laws of Entitlements and Gifts¹⁴⁰, which specifically delineated the amount of understanding required for a minor come of age in comparison to a *shoteh* so he would be able to attain property.

In regard to the category of the intermittent *shoteh*, the difficulty in determining whether or not his divorce is valid and when, a responsum of the Rashba¹⁴¹ teaches us that

¹³⁹ שו"ת הריב"ש סימן תסח

¹⁴⁰ See page 38.

¹⁴¹ See p. 58 for biographic details.

the matter is nearly impossible to determine.

שאלת: הא דאמר רבא: עתים חלים ועתים שוטה, הרי הוא כפקח לכל דבריו, קי"ל כוותיה [מוסכמת עלינו כמותו]. ואם גירש בשעה שהוא חלים, גיטו גט! או לא קי"ל כוותיה, ואין גיטו גט, עד שישתפה!¹⁴²

The question posed to Rashba here regards the difficult issue of the *shoteh's* divorce. Of course, while in a state of *shtut*, he cannot divorce; the question posed here is since when a *shoteh* in the חלים state is considered sane for all intents and purposes, does that mean he can divorce when he is חלים or do we have to wait until he ישתפה?

The questioner then goes into a prolonged discussion reviewing various halakhic sources concerning this particular situation. From his question then, it is possible to discern three states of improvement in the *shoteh's* condition: חלים / ישתפה / יבריא. While חלים and ישתפה are considered temporary improvements (it would seem that חלים is possibly the calming of acute symptoms whereas ישתפה is an improvement that lasts a few days at least), apparently יבריא (which is the Rambam's term¹⁴³) refers to the patient being completely healed.

The Rashba's answer further conflates the three different terms, reviews the history of their different (and sometimes contradictory) usages in the two Talmudim, and finally determines that when in the חלים state the man is considered well for all intents and purposes, and can give a get, which is to say – when in doubt, it is best to declare a man sane rather than insane. This tendency to lean in the direction of sanity is for the purpose of granting a divorce is not shared across the board, as for example, can be demonstrated by the opposite decision made by the Rashba's Ashkenazic contemporaries in the Responsa of the Sages of Provence¹⁴⁴, which could be due to different importance placed upon staying within a marriage in Sepharad versus Ashkenaz. Again would seem that

¹⁴² שו"ת הרשב"א חלק ד סימן רא

¹⁴³ See p. 47.

¹⁴⁴ See pp. 12-13 – even though that is not a case of עתים חלים עתים שפוי

circumstances more than anything definite in the law itself determine whether a man will be declared *shoteh* or sane.

But Rashba is not a lenient decisor in regard to *shtut*, necessarily, as will be demonstrated through the following case. In another of Rashba's responsa we find an unusual "remedy" for *shtut*: *laughter*. The question posed:

שאלה: אחד שנשבע עד"ר = על דעת רבים =, שלא ישחוק בשום שחוק שיש בו מעות, ונשתטה. ואח"כ נשתפה מקצת, ולפעמים חוזר לשטותו. ויום אחד צחקו לפניו, ומצא מנוח וירוח לו. אם מתירים לו מחמת כך, או לא?¹⁴⁵

The case is brought before Rashba of a man who has taken a vow not to laugh (unclear what *שיש בו מעות* means), and then became a *shoteh*, who sometimes improves and sometimes returns to a state of *shtut*. And yet, one day as people laughed before him, he discovered that he was healed by the laughter – his *shtut* presumably disappeared. In this case, would it be permissible to release him from the vow he took not to laugh?

In his response, the Rashba discusses the mishnaic chapter regarding whom it is permitted to put out a light for during Shabbat. The guiding principle here is trying to discover if the case in question constituted *סכנה*, (he regards this case of the laughing man as falling under the mishnaic *רוח רעה* in which case it would be permitted in the first place). His final answer is undecided whether or not the case of someone who becomes *shoteh* constitutes danger enough that would permit this man to be released from his vow; perhaps he just found a reason to laugh, his mind not at all being settled back to health by it:

אלא שאני מסופק: שמא עילה מצא לשחוק, ולא תתיישב דעתו בכך.¹⁴⁶

It is unclear whether there is or is not a final psak in this case, but the Rama, about two hundred years later, determines in the Ashkenazic gloss to Joseph Karo's Shulchan Aruch

¹⁴⁵ שו"ת הרשב"א המיוחסות לרמב"ן סימן רפא

¹⁴⁶ Ibid.

of the 16th century, that the man ought to be released from his vow¹⁴⁷.

Another example of a non-lenient psak of the Rashba in regard to the *shoteh* involves further limiting of the *shoteh*'s agency. In yet another responsum of his we find that there can potentially be a problem regarding the *shoteh* baking matzah for passover:

שאלת מה שייסד הפייט באזהרות הפסח -
 "נמנע שלא ילוש חרש שוטה וקטן וגר שכפר.
 וכל האוכל מצה על ידיהם יבוש ויחפר
 ואף על פי שאתה ישראל בר דעה ושפר (במדבר ט"ו)
 כי דבר ה' בזה ואת מצותו הפר".

אם הלכה כן ואפילו במצה של מצוה? כי לא מצאתי כן בשום מקום שיהא אסור ללוש חרש שוטה וקטן.

Quoting a few lines from a piyyut, relating in rhyme a prohibition against eating matzah prepared by deaf-mute, *shoteh*, minor and a heretical convert, the questioner poses the question whether or not this is indeed halakhically based. The piyyut is in and of itself quite interesting; while possibly attesting to a social bias against the *shoteh* (and the other three categories), it also reflects a stringent bent in ritual observance. At first glance the Rashba's answer seems to refute the basic assumption of this piyyut:

אין אדם יוצא במצה שלשה נכרי ואפילו ישראל עומד על גביו ומזהירו שיכוין לשם מצה לפי שאין הגוי עושה אלא על דעת עצמו ולא על דעתנו. אבל בחרש שוטה וקטן יש לדון להקל ולהחמיר בכל דבר שצריך כונה אם כונתם כונה ואפילו בישראל עומד על גביו. דתנן בגיטין פרק המביא תניין (דף כ"ב ב) הכל כשרין לכתוב את הגט אפילו חרש שוטה וקטן. ואמרין עלה בגמרא והא לאו בני דעה נינהו! אמר רב הונא והוא שהיה גדול עומד על גביו. אמר ליה רב נחמן אלא מעתה נכרי וישראל עומד על גביו הכי נמי דכשר? וכי תימא הכי נמי והתניא נכרי פסול דנכרי לדעתיה דנפשיה עביד! אלמא שמעינן מהא דגט שצריך כתיבה לשמה חרש שוטה וקטן כשרין לו בשגדול עומד על גביהן אבל נכרי לעולם לא.¹⁴⁸

The Rashba brings in the case of a matzah prepared (lit. kneaded) by a gentile as comparison; even if a Jew stands by him and directs his intention (i.e. so that they would be pointed towards the mitzvah of matzah) – the gentile's intentions cannot be attuned thus as he is different from "us" and follows his own ideas, and the matzah then, is not kosher. Will the same apply to matzah prepared by a *shoteh*? The matter is not simple. The Rashba then further details the Amoraic discussion over the Mishnah הגט לכתוב את החרש, in

רמא - שולחן ערוך יורה דעה סימן רכח סעיף טו 147

שו"ת הרשב"א חלק א סימן טו 148

which the bottom line is that the *shoteh* can write the get if someone stands by him correcting him (it's the signature, not the writing, which makes it valid after all), but the gentile cannot thus write a get – he is not Jewish. If this were the only problem, it would be conceivable that a *shoteh* can prepare this matzah of mitzvah. It is not.

The Rashbam then discusses the case of a *shkhita* by a *shoteh*, which is not considered kosher, but in retrospect if someone stood by – will be. The Rashba's language is interesting here:

לרבנן שחיטתן פסולה דהא לית להו כונה. אלמא עמידת גדול על גביהן לא מהניא. דהא התם אחרים רואין אותן ואפילו הכי למאן דבעיא כונה בחולין בשחיטה שחיטתן פסולה דלאו בני דעה לכוין לשחיטה נינהו.¹⁴⁹

For the Rabbis, he writes, the *shoteh's shkhita* is not kosher because they lack proper kavannah to aim for the mitzvah of *shkhita*. In truth, the language of the Gemara says something different – it is simply stated that they may somehow יקלקלו בשחיטתן¹⁵⁰ the concept of necessary *kavannah*, although mentioned in the Talmud and by the Tosafists (Hulin 12b), in the sense of an all encompassing requirement belongs only to the Rambam! The idea, then, that a mitzvah is incomplete without proper kavannah has spread and now attains further legal implications for the *shoteh*. A distinction, originating in the Tosafot, is then made between those who are merely seen by others, and those who עומדים על גביהן the latter making it possible to adjust or encourage their kavannah properly. The Rashba then discusses the issues of the get and *halitzah*, attempting to discern whether it is kavannah which is the determining factor in each, seeking to draw a separation between the deaf-mute, minor and the *shoteh*. He then comes to the conclusion that when kavannah is needed, and cannot be proven (by contrast, correct writing of the get *can* be proven) we must deduce it isn't kosher:

¹⁴⁹ Ibid.

¹⁵⁰ תלמוד בבלי מסכת חליץ דף א עמוד א

ולפי דבריהם במצה דמצוה חרש שוטה וקטן פסולין לה שהרי צריכה שימור לשם מצה ואילו אין בני דעת. ואם היו אחרים עומדים על גביהן ומלמדין אותן בחרש וקטן דאית להו דעתא קלישתא ואינן שוטים גמורים יוצאין בה. אבל בשוטה אין יוצאין בה. ואם הדברים כן גם הפייט אפשר שייסד כן בשאין אחרים עומדין על גביהן אלא שרואין אותן כשהן לשין ולא קלקלו בלישתן ואפייתן.

And according to their words [all previous Talmudic discussions] the deaf-mute, *shoteh* and minor are disqualified from preparing the matzah of mitzvah, because there needs to be proper attention to make it a matzah, and they do not have da'at; and if others stood by them and taught them, in the case of a deaf-mute and a minor whose mind is not diminished, and they are not complete *shotim* – they are considered to have fulfilled it [the mitzvah]; but the *shoteh* is not considered to have fulfilled it. And if this is how things stand, it is possible that the writer of the piyyut may have instituted thus – which applies when others aren't standing over them [i.e. over the deaf-mute and the minor] , to supervise their kneading to make sure they did not do something wrong in their kneading and baking.¹⁵¹

This is a unique case where the law was actually re-stated on account of a piyyut, which was, as stated before, probably just an expression of extra-piety, but has now become the basis of legalization further limiting the *shoteh's* agency. It is also worth noting that the entire discussion is based on Talmudic and Tosafistic sources – lacking completely in “real world” observation to determine whether or not the *shoteh* is indeed capable of preparing matzah with the appropriate intention.

Lastly, another example of more detailed legislation which further limits the *shoteh's* agency is depicted below. We have already seen that the *shoteh* is not liable for criminal damages, and not owing anything even after healing from his *shtut*. As an expansion of that, we learn in a responsa by an early Spanish scholar – the 12th – 13th century Rabbi Shmuel Ben Itzhak, author of *Sefer Hatruma*, that the *shoteh* is not eligible to receive – nor obligated to return – a loan:

למדנו שהאשה והעבד בני דעת בשעת ההיזק משלמין לאחר זמן אבל חרש שוטה וקטן דלאו בני דעת נינהו בשעת נזק אפילו לאחר זמן פטורין דהא לא קתני במשנתנו זמן חיוב להם. [...] אבל חרשים אף על גב דלגבי חבלה פטרינן להו לעול' לגבי הלוא' נמי אם נתרפאו ומודו שלוו מחייבי לשלם מיד אי אית להו מאי דפרעי [...] אבל שוטים כיון שאינן בעסקי משא ומתן ואף מעמידין להם אפטורפוס לכל דבריו אף שנתרפאו אין חייבין לשל' שהמלו' אותם הניח מעותיו על קרן הצבי ואפי' הלוהו והעירו שלקח השוטי מעותיו ואכל בהן פטור דמעיקרא אבדה מדעת הוא ואין צ"ל שאין משביעין אותן לכשיתרפאו ולא אמ' בחרש שהוא חייב אא מפני שהוא בעסקי משא ומתן כדאמר' חרש רומז ונרמז במטלטלין אבל שוטה לא ודברי ה"ר משה ז"ל מוכיחין כן בשוטה שאינו בהלואה [...] ¹⁵²

¹⁵¹ Ibid.

¹⁵² ספר התרומה-שער לו

The case of a deaf-mute here is different from that of a *shoteh* – if they healed and admitted to borrowing money, they have to pay it back. Not so the *shoteh*, whose financial matters are taken care of by a guardian. Even if they were to be healed, they are not obligated to pay back the loan – and the justification here is interesting – because whoever lent them money it is as if he placed it on the horn of a deer (knowing that the deer would run and the money would therefore be lost). It would stand to reason to use the justification *אין ממכרו ממכר* but instead the explanation opens a window to what must have been a real-life situation of *shotim* financially interacting in the world. Even if the *shoteh* took his money and bought food with it, he is exempt from paying it back – it is a loss made consciously by whomever lent it. The *shoteh* being not *בר הלואה* makes perfect sense within the context of not being able (nor free) to manage his financial affairs but as stated, there is a recognition here of a reality in which that may not have always been the case, especially since the *shotim* were never locked up and lived within communities.

Conclusion

The halakhic model of relating to the *shoteh* as reflected through this representative sample of Rishonic codes and responsa is characterized by an over-arching pragmatism the purpose of which is both to enable the *shoteh* to live within society, as well as to allow society to live safely and fairly with *shotim* in its midst.

That being said, in order to enable the *shoteh* to “live” within society, rather than be locked up or sent away¹⁵³, he/she must be subject to utter paternalism; the *shoteh* is so heavily regulated that most societal life aspects, taken for granted by healthy individuals, such as buying and selling, marriage or even fulfilling mitzvot, are denied him/her. This then merits the question – does the Rabbinic model provide utmost inclusiveness, or does

¹⁵³ Lock up is never an option or a recommendation in Jewish law.

this it favor the orderly maintenance of healthy society which at times (and maybe rightfully so) comes at the expense of the *shotim*?

So while clearly, for the most part, the term "*shoteh*" is applied to someone whose understanding and abilities to care for both self and others are greatly limited, there are some cases in which one must wonder whether it isn't legislation that limits the *shoteh* and not his own disability. Such is the case, for example, of the man who imagined people living in his stomach: in all other respects he was quite sane and capable, yet still declared a *shoteh* and stripped of legal agency¹⁵⁴.

This leads to the following major issue in regard to the halakhic model of dealing with *shtut*: notably, consensus is never truly reached over the definition of who actually is a *shoteh*. The controversy of the Amoraic period concerns the particular signs by which one can be defined as a *shoteh*, and the controversy of the Rishonic period is centered over trying to determine whether the signs set by the Amoraim are obligating conditions or merely examples. The matter is never fully decided as law makers find it difficult to enter into individuals' consciousness in order to discern madness from sanity, a problem which is evident especially in the case of the intermittent *shoteh*.

Men and women, it should be noted, are not equal in the way they are treated by the law, even when the law is the same for both genders. Thus, while gender equality exists in the sense that both sane men and sane women will find themselves bound to a *shoteh/shotah* spouse since *shotim* cannot divorce, in the case of a woman - this is a situation she will simply have to contend with, whereas the man is permitted by some scholars to marry another woman in her stead, and in one very controversial ruling by the Rambam, even to divorce his *shotah* wife¹⁵⁵.

In terms of discerning the quality of relationships of society towards *shotim*, there

154 See pp. 12-13, Responsa of the Sages of Provence.

155 See p. 47.

is little evidence of the existence of shame in the Rishonic sources, nor are there any intimations of social bias against *shotim*. We do know, for example, from the Talmud that being a *shoteh* is considered a degradation second to none¹⁵⁶ – but interestingly this notion does not fully play out or get developed in later material¹⁵⁷. The most “offensive” statements attesting to some kind of negative societal responses towards *shotim* are limited to a responsum in which a *shotah* wife is referred to as capable of destroying a home with her imbecility, and to another responsum in which it is questionable if someone who had a *shoteh* son is considered to have fulfilled the mitzvah of *pru u'rvu* – thus implying that the *shoteh*'s humanity is questionable. But even those two examples make sense within the legal framework and do not seem to reflect an exclusionary societal attitude towards *shotim*.

The legal sources are, however, lacking in one very important area. They do not provide a theological framework through which to view the *shoteh*. This is, of course, by no means the function nor the purpose of the law, so in that sense this is a lacuna which is unfairly brought up. But the following sample questions regarding the *shoteh*, which the legal model does not address, certainly merit attention: What greater meaning can be derived out of the fact mental illness? How are we, both the healthy and the sick, to understand it? How are we to put it in a larger context? What does God want from *shotim*? What can *shotim* expect from God? What is the *shoteh*'s place – religiously speaking – within the Jewish people? In other words, when the *shotim* and *shotot* stood at the foot of mount Sinai, did they have a part to play in the spiritual history of the Jewish people, or are we to follow the midrash in believing that “in that moment [on mount Sinai] there were among them [...] no *shotim*?”¹⁵⁸

156 See p. 6 ft. 11.

157 The Rambam codified very factually that *shotim* are not entitled to payment for shame, no explanation provided.

158 ויקרא רבה (וילנא) פרשה יח ד"ה

LITERARY MODEL – A READING OF S.Y. AGNON'S A SIMPLE STORY

If a person is trying to escape out of prison, is he insane? If that very person, perceiving the walls surrounding his prison to be slippery and steep, tries to climb his way out, spitting and screaming for effort, will the strange gestures and odd sounds he produces render him mad in the eyes of others? For Hirshl Horovitz of Agnon's *Sippur Pashut* (A Simple Story), the city of Szybusz and all that is in it constitute a dark prison cell. For Hirshl Horovitz the only way to escape its constraints is through insanity. That being said, there is nothing feigned or put upon in Hirshl's insanity; on the contrary, he has a full-fledged nervous breakdown that would categorize him a *shoteh* by all Rabbinic authorities, lax and stringent alike. But the circumstances that lead to his mental breakdown present the reader with a model which raises more questions than answers with regard to mental illness. Is it someone's fault? Is it an illness that can be healed? And more importantly – in a world which is inherently flawed, could mental illness be a legitimate and even justifiable way of coping with one's surrounding?

Hirshl's troubles begin with his name, or rather – with how ill-suited he is to carry a name such as Hirshl – in Hebrew *Tzvi*: a deer, a swift and graceful animal. Hirshl, alas, is anything but fast and free; his only admirable trait being that he does what he is told¹. Dependent, passive and shackled, he lacks many positive traits: the courage to act upon his love for Bluma Nacht, the strength to assert himself in society and in business, and worst of all, the self assurance (or even self-knowledge), to defy his overbearing mother. One might say that the Yiddish diminutive *Hirshl* (as opposed to *Hirsh*) had already diminished all of his deer-like qualities.

Tzirl, Hirshl's mother, is a force to be reckoned with and a prime example of everything that is wrong in the world of this tale. A well-off woman whose primary

1 13 - ק. עושה כל מה שאנחותיו אומרים

concern is money, she is nonetheless too cheap to pay her relative Bluma for her household work, an act which the narrator, tongue constantly in cheek, informs us is merely sensible, generous even, given Tzirl's kindness in letting Bluma "learn" the art of household chores. Tzirl is at times nasty and even brutal such as when she screams violently at the maid who left her key in the lock, a relatively insignificant little mishap.² This kind of emotional overreacting is within the acceptable and appropriate since Tzirl is the master and the servant is a servant. Tzirl lacks control over her impulses and her temper, but as long as the outlet for her aggression and repressed hatred cannot protest, she can get away with it. Her lack of impulse control is also evident in the way Tzirl consumes food, or rather, in the way she devours it - צירל באה לכלל שנים שכל עיקרה של - אשה אינו אלא מאכל ומשתה³ - she is gluttonous, indulging herself in a grotesque manner as a means of self-medication as well as self expression. In respect to love and marriage her world view, that she passes down to her son, is limited and utilitarian, almost devoid of human emotion:

כל זמן שאדם פנוי הולך הוא אחר לבו וכיוון שמגעת שעתו לישא אשה מניח כל אהבהבותיו, שאלמלא כן אין לעולם קיום. אוי לעולם שהבריות הולכים אחר לבם!⁴

A bachelor can be free to follow his heart, but what would the world come to if he didn't put his romances aside when the time came to get married? A fine place it would be if everyone followed their hearts!^{5,6}

Tzirl, whose first name means *precious jewel* but sounds more like a medley of

disconsonant sounds screechy to the human ear⁷, has a plan for her son which involves

2 הוצאת שוקן: ירושלים ותל אביב. שיי ענן - סיפור פשוט p. 58. All references are taken from this specified edition. (1993)

3 p. 22

4 p. 40

5 S. Y. Agnon, *A Simple Story*, trans. Hillel Halkin (New York: Schocken Books, 1985) 46. [From now on will be referred to as "Halkin"]

6 A note on the English translation: in the writing of this paper, I have used the original Hebrew. Thus, any comments and interpretations were inferred from the Hebrew and may not be understood if one should read the English translation alone. I have used Halkin's translation even though I find it does not always abide by the original meaning nor by the accurate "feel and taste" of the original. Specifically, it tends to be grammatically clearer where the Hebrew is not, and to smooth over certain linguistic idiosyncrasies, especially in the scenes depicting Hirshl's disturbed frame of mind. At times, certain words or whole meanings are simply edited out.

7 A million apologies to my wonderful Thesis advisor, who disagrees profusely with this particular

social prestige and appropriate wealth. When she therefore sees that he has his eyes set on Bluma, who is poor and does not belong to the right social milieu, she intervenes and brings in Mina Ziemlich as a prospective wife for Hirshl. Mina's last name "Ziemlich" – meaning *seemly* and *pretty* – assures us that she will indeed be an appropriately representational wife. Interestingly, Tzirl's choice of words when she refers to her son's finding favor in Bluma is that of the rabbinic term נשתטה, which is used in the legal literature to denote one who has become insane: עיניו בעניה זו⁸ she says, just as one would find in a legal code: מי שנשתטה בית דין יורדין לנכסיו ומוכרין וזנין אשתו.⁹

Tzirl's implements her plan not only for financial reasons, but also to avert a fate of insanity she is fearful awaits her son. Mental illness runs in the family on account of a curse believed to have been put upon one of her ancestors for angering a *chasid*, weaving like an insidious thread that connects one generation to the next. Insanity is Tzirl's greatest fear, herself having to contend with a lower-class groom for having been tainted with it, and the irony by which her efforts to thwart it in her son actually end up causing it, is one of many such ironies in this tale. Insanity is greatly feared both for the embarrassment and discomfort it causes the relatives of the mentally ill and also (arguably less so) for the pain and suffering it causes the afflicted patient himself. This tale's version thus interprets the Talmud's statement that the *shoteh* is a degradation to the family second to none in a particularly astute manner:

כל הצרות משחירות פני בעליהן, חוץ מצרת השגעון שבעליה אינו מרגיש בה, אבל קרוביו וקרובי קרוביו מרגישים בה ביותר. כל הצרות כשהן הולכות הן משתכחות, חוץ מצרת השגעון שהיא יללה לדורות. מפרנסים את העצלנים ועושים מדור לחשוכי מרפא. מה שאין כן חולה רוח שבורחים ממנו ומאיימים בו את התינוקות והתינוקות מתאכזרים עליו ויורדים עמו לחייו.¹⁰

Of all life's misfortunes, madness may have been the only one to which the afflicted person was himself insensible; to his family and relations, however, the blow was doubly cruel, for

interpretation of mine.

8 p. 30

9 משנה תורה הלכות נזירות פרק יב הלכה יז

10 p. 17

not only were other troubles gotten over and forgotten while this one was passed down from one generation to the next, but, while other chronic patients could be put in special wards run by chronic idlers, nobody wanted to care for a madman: on the contrary, people either fled at the sight of him or else tormented him and turned him into a bogeyman to scare their children.¹¹

Indeed, if you have a shoteh in your family in the world of Szybusz, אין לך בושת גדולה מזו.¹²

One model of mental illness in this story is provided by Tzirl's brother then, who – nameless throughout the book – could have been just like everyone else, as Tzirl laments, if it weren't for לימודים החיצוניים¹³. Whether the brother was considered insane for leaving the Jewish fold, of whether the very pursuit of intellectual learning in itself constitutes madness for Tzirl and her family is unclear: most likely, the real insanity ensued because of their efforts to curtail it. The reader is left to discover his compassionate family did everything possible to “help” this brother – tore the books, exiled him, until he escaped for a secluded life in the woods away from human surrounding where he eventually died. The image of the curious individual who, seeking knowledge and understanding, is made mad by the “remedy” provided him by a restrictive society and its conservative small-mindedness serves as the background upon which Hirshl's insanity will 'grow' and 'flourish'. For Tzirl, as much as it seemingly is to be avoided, the curse of mental illness only serves as an excuse to push her son towards a life of commerce working in her store: while there was a chance he would be redeemed by a life dedicated to the study of torah, it was not to be, a fate which Tzirl does not argue with – כשאר כל הנשים כיבדה אף היא את התורה ולומדיה, אלא – So while the curse is some form of punishment from above, redemption through a life of piety is not similarly ordained: in this world, 'meant-to-be' is only acceptable when it suits people's plans, piety being

11 Halkin p. 18-9

12 תלמוד בבלי מסכת בבא קמא דף פו עמוד ב

13 p. 14

14 p. 15

only skin deep. Divine intervention can be lauded, just as long as it doesn't get in the way.

But to what extent is divine intervention itself a form of madness? The Rabbinic *Bat-Kol*, for example, which in the Talmud denotes a higher (though at times inconvenient) truth, is here subverted to “confirm” a reality which is clearly anything but divinely ordained. In the engagement scene between Hirshl and Mina, Hirshl, depicted as both impulsive and uncertain of himself, acts upon the “wishes” of a *Bat Kol* which serves as justification for him to do exactly what he does not wish to do – marry Mina:

לא כמות שחשב הירשל חשבו עליו מלמעלה. ארבעים יום קודם יצירתו כבר יצתה בת קול ואמרה בת גדליה להירשל. קם ונטל ידה של מינה ואחז בה כמה שאחז. דבקה ידה בידו ואור חדש האיר את עיניה, זה האור שהיה גנוז בה מיום שאמרה בת קול בת גדליה להירשל ועכשיו חזר והאיר בה. מה רצה הירשל בשעה שנטל את ידה?¹⁵

Yet Providence had other plans. Indeed, when Hirshl was still a twinkle in his mother's eye an angel in heaven [lit. *Bat Kol*] had proclaimed, “Hirshl the son of Boruch Meir to Mina the daughter of Gedalia.” And so, when Hirshl finally stood up, he was holding Mina's hand. It clung to his. Her eyes were bright with the light that had been waiting to shine forth from the day of that angelic proclamation. What made Hirshl take Mina's hand?¹⁶

The Rabbinic *Bat Kol* here is introduced as the ultimate Godly match maker, setting this union still in the womb. And yet the engagement just “happens”; just as it was decided by others, it is also announced by others. The couple is not described to be active at all throughout the scene, neither proposing nor accepting, and we are left to wonder, since the description of the *Bat Kol* is reminiscent of the voices one hears in one's head that harbinger loss of sanity, to what extent is the famous rabbinic *Bat Kol* itself a sign of impending madness? We know that the heavenly voice does not necessarily get the final word in halakhic matters¹⁷, so it certainly needn't get the final word in the matchmaking business. But the underlying question remains: to what extent is religious tradition in its entirety here suddenly rendered – at the risk of sounding anachronistic – merely a scene from “one flew over the cuckoo's nest”?

¹⁵ p. 51-2

¹⁶ Halkin p. 59

¹⁷ Bava Metzia 59a – Rabbi Yehushua famously objects to the heavenly voice dictating matters of halakha by stating “it is not in heaven” (לא בשמים היא).

And who is to say that sanity is even desired, necessarily? A look at another model of mental illness, that of the eccentric grandfather, may suggest otherwise. Tzirl's father, depicted as a slightly strange being by Heller, one of the wedding guests, is one of the few humane characters in the story:

אדם תמוה היה במקצת, לא שמח בין השמחים ולא בכה בין הבוכים ולא נשא עיניו בבני אדם ולא הכניס רעים אל ביתו, אבל היה מרבה לו יונים בשובך שעל גג ביתו והיה מטפל בהם והוגה להם חיבה. פעם אחת ראיתי עולה בסולם להביא מים ומזון ליונים ונפלה יונה מן הגג. ריחמתי עליו מפני שזקן היה והיה קשה לו לירד ולעלות. אמרתי הריני מביא לו את היונה ואינו צריך לטרוח, אלא המתנתי עד שיאמר לי. לסוף לא יכולתי לעמוד בשתיקתי ואמרתי לו אפשר אטול את היונה ואביאה למר? נתן בי עיני ולא החזיר לי דבר וירד ונטל את היונה וסידר את כנפיה ועלה עמה.¹⁸

A strange man that was. He never seemed to enjoy life much, but he never complained to anyone either, and in fact he had little use for people. I don't think he had a real friend in the world. All he care about were the pigeons he kept on his roof. You should have seen with what love he took care of them. Once, while I was watching him climb a ladder to bring them food and water, one of them fell off the roof. I felt sorry for the old man having to climb all the way back down for it, and so I stood there waiting for him to ask me to bring it up to him. Well, he didn't, so finally I asked him if he'd like me to. He didn't even bother to answer. He just looked at me, climbed down the ladder, picked up the bird, smoothed out its feathers, and climbed back up with it.¹⁹

While Heller waits, supposedly out of politeness, the grandfather, wordless, picks the pigeon up himself, his silence an accusation to the man who just stands there and doesn't pity the living creature laying on the ground. The symbol of peace and innocence, the יונה, is fallen to the ground and the only person who cares for it, is ironically the "other"; the strange and eccentric grandfather. In a world where outward manners outweigh compassion and where the symbol of peace is left fallen on the ground, kindness would easily be interpreted as strange, and strangeness which is so easily extended to insanity, seems more desirable by the minute. If those who are declared insane are actually the sanest, what does it say about everybody else?

Tzirl, for that matter, who is officially the "sane" representative of her family, is neither particularly kind (to say the least), nor, for that matter, would she "pass" a rabbinic

18 סיפור פשוט p. 88-9

19 Halkin p. 103

sanity inspection²⁰. In a scene depicting the difficulty she has finding the right maid who cooks to her tastes, we find that she has a hard time discerning what time of year it is when not provided with the "right" foods:

אפילו הבריאה שינתה את תפקידה. יושבים לסעוד ואי אתה יודע אם קיץ הוא אם חורף, אם אביב אם סתיו. בראשונה כל מי שאוכל לביבות של דובדבניות יודע שהוא קיץ, של גריסין יודע שהוא חורף. ועכשיו היום רוטב וגריסין ומחר גריסין ורוטב, בחורף כן בקיץ כן. בשבת כן ובחול כן. מיום שבאה [בלומה] חזר העולם לתפקודו²¹ {...}

Nature itself has gone awry, so that you had no idea anymore whether it was summer, winter, spring, or fall. Once upon a time a body eating cherry blintzes had known it was summer and one eating kasha cakes had known it was not, whereas now it was kasha and gravy, or else gravy and kasha, all year long, in hot weather and cold, on Sabbaths no less than on weekdays. Since the day of Blume's arrival, however, nature had resumed its proper course [...]²²

The implication here is striking, given that according to rabbinic law the one who cannot discern the correct time of year is considered a *shoteh* and his agency is stripped away from him²³. And yet Tzirl is presented as anything *but* stripped of power, always poised to order the lives of everyone around her to her heart's desire, second only to God in her choice of Hirshl's marriage partner:

אבל אלוקים בשמים וצירל וטויבר על הארץ עשו שישא [הירשל] את מינה ולא ישא את בלומה.²⁴
But God in heaven and Tsirl and Yona Toyber on earth had seen to it that he wound up with Mina.²⁵

Poor Hirshl is surrounded on all fronts. At home he must contend with a mother whose will must be done and a father who doesn't interfere, driving him to marriage with a woman he does not love and who bores him. Society is depicted as having a meddling influence but is equally insensitive and uncaring, like the gentleman who tossed a lit cigarette distractedly in Hirshl's face, who then raises his glass to the newly engaged and

20 Gittin 70b – In order to discern whether a man is sane or not in the summer season he should be asked whether he would like fruit of the rainy season, and vice versa, to see if he has a good grasp of reality.

21 סיפור פשוט p. 22

22 Halkin p. 26

23 See for example the responsum of the Maharik p. 21 – ולהכי הזקיקוהו בדיקת בפירות דימות החמה ודימות הנשמים להבחין אם ישוב כהוגן

24 p. 186

25 Halkin p. 220

toasts them, all of a sudden kind:

כך דרך בני אדם, זכית - מטריחים עצמם עליך אפילו להציץ לתוך לבך, לא זכית - אינם משגיחים אפילו בפניך.²⁶

But such is human nature: when things go our way even our minds interest others, while when they do not no one will give us the time of day.²⁷

His town, Szybusz, which is the literary pen-name of Agnon's birth town of Buczacz²⁸, which in Hebrew means *disruption or error* (שיבוש) is a place where everything seems fine, but is perpetually wrong or malformed. Indeed there is something inherently wrong in Szybusz, built as it is on top of so many graves, that it is questionable whether a *Kohen* can reside there.²⁹ While the dead may be able to rest in peace in Szybusz, the living aren't always so lucky, as Hirshl's descent (or perhaps, ascent?) into mental illness demonstrates.

Tracking down the stages of Hirshl's transition to insanity offers a fascinating tour of the mental landscape replete with peaks and lows, high velocity interactions and pits of depressing passivity. To begin with, even before his full breakdown Hirshl doesn't have a good grip on reality. Thus he cannot comprehend why Bluma leaves his parents' home – the thought that she may need a place to live, food and drink, simply does not occur to him³⁰. He is convinced that she is the one who ought to “do” something because she now lives in what he perceives to be a place of wonder and romance – the house of Mazal and Tirtza who married against societal expectations³¹. Being so morbidly passive, his fantasies soon take over.

Because he is a person who is socially ill-at-ease, he cannot find comfort in the company of others and therefore withdraws further and further into a private internal

26 p. 56-7

27 Halkin p. 65

28 Jeffrey M. Green in “A Simple Story” / *The Jewish Reader*, January 2003. p. 3

29 ס. 81 סיפור פשוט

30 p. 43

31 From *בדמי ימיה*. The mention of that relationship, while romantic to Hirshl, can hardly serve as an example of “happiness ever after,” bringing to mind the situation of Tirtza living the life meant for her mother, instead of her own.

world, as is the case of the Hanukkah party in which he finds himself apart from the card game, unable to speak to anyone, alone and humiliated. The situation quickly invokes a menacing hallucination in his mind – לבסוף נתעלמו אף הקלפים ומיני פרצופים שחורים ואדומים – ³²That is, until he is “saved” by Mina, which he therefore then finds himself engaged to.

But the engagement seems like an act detached from Hirshl, and ironically, an act of connection to another propels him into a state of greater disconnection; he immediately becomes distracted and disconnected – יושב כאדם שנכנס לרשות שאינה שלו ³³. The latter is an astute description of alienation from one's self and surrounding, a marker of an unhealthy state of mind in which one is in essence being internally deported.

Hirshl's mood tends to change almost at the speed of light; one minute he feels trapped, imagines that maybe he is not really engaged, that maybe he can run away to America³⁴; he confuses the two of them, Mina and Bluma, finds that Mina does not interest him, but as he's talking to Mina his mother walks in, and he suddenly imagines that she Mina is his heart's desire and his mother has come to set them apart. He therefore clings to her³⁵. Hirshl seems destined to relive a fantasy of breaking free; in that sense everyone plays minor roles in the internal drama which he constructs in his head, and which he never seems to be able to “play out” to the desired end.

At his wedding, Hirshl thinks about his uncle that went mad and his odd grandfather, which as a literary device drops a clue the size of a house at the reader's feet in terms of what is to come. Yet the scene directly before this one almost makes us yearn for them in comparison; in it, everyone pores over the 'poetry' in rhyme of the paternal

³² p. 49 סיפור פשוט

³³ p. 53

³⁴ p. 60

³⁵ p. 66

uncle in America – which is better than getting any fancy card written on gilded paper, supposedly. The uncle's (bad!) limerick³⁶ adequately portrays the main agent and mover in this world – money. When everyone gathers around to analyze it, displaying their superficiality and inability to discern quality from show, it is impossible not to wonder whether pondering one's cloistered and outsider relatives isn't an acceptable alternative to participation.

Once married Hirshl's moods continue to be volatile and his behavior inconsistent. Inside the house, the relationship does not provide comfort. Hirshl cannot stand the smell of his wife's perfume and conceives of her as a foreign being – כשהגביה הירשל עיניו מן – הקערה הרגיש במינה, בהשקפה ראשונה תמה מה זו עושה כאן³⁷. But in terms of other social relationships a change occurs in him: twice within the span of one page we are told that הירשל נעשה כבריה חדשה³⁸: all of a sudden the previously withdrawn Hirshl becomes social, entertains, opens up to people and even befriends Mina's close friend Sophia. But he cannot find happiness within the marriage. He shares with Mina the story of his uncle's madness (which she, unsurprisingly was previously unaware of), which Hirshl has already modified into a story of feigned madness in order to get out of a loveless shiduch. Then, in an extreme display of marital tactlessness he says so to his wife אילו הצליח דודי היה נחשב³⁹. He then shares with Mina the story of another man who, in an attempt to get out of an unhappy marriage feigned madness by putting teffilin on his cat, which worked, allowing him to divorce and live happily ever after with a new wife. Of course, according to Jewish law such a divorce would not be possible (since *shotim* cannot divorce), a fact of which Hirshl is completely unaware of because he had not been

36 p. 89

37 p. 99

38 p. 105

39 p. 109

allowed to study Torah! But what seems to be the strangest thing about this rather ruthless scene is that Mina doesn't seem perturbed by Hirshl's obvious hints; at least the text does not speak of it. It is easier to just continue on, ignoring the can of worms that sits open on the dinner table.

Soon enough, the grace period is over and Hirshl is fed up with his guests. With Mina, there is some improvement, but Hirshl's moods are so changeable that even physical reality and sensory perception become unstable for him:

אף הירשל טבע משונה טבע בו היוצר, לכעוס היום על דבר ששמח אתמול. לפני חצי שנה ויותר שישבה מינה בבית סופיה ושמעה אותו מדבר היה מכיט בפני מינה והיה שמח והיום הוא מכיט בה ואינו שמח. כל הבטה והבטה שלו קשה מחברתה. במבט ראשון ראה את פניה לבנות כמוכין [פוך] ובמבט שני כמוכין שנתכרכמו.⁴⁰

It was uncanny too how Hirshl could be annoyed by what so recently had given him such pleasure. Barely half a year ago, when he sat talking to Mina in Sophia's house, it had made him glad just to look at her, whereas now the opposite was true. In fact, looking at her was becoming harder and harder. Sometimes her face seemed as white as cotton wool to him; other times still cotton-woolish but crimson.⁴¹

Hirshl's obsession with Bluma worsens even though he hasn't seen her since she left his parents' house. An aspect of magical thinking⁴², so typical to mental illness, is evident in him as his thinking is focused constantly on her in an attempt to bring her in the store by the power of his thoughts. His parents, seeing that something is wrong try in various ways to better his situation – not one of the ways consisting in actually talking to him – and thus send him to the country, encourage him to spend time with the Zionist group, all of which Hirshl responds to with more passivity. He does what he's told, goes where he's pointed at. Even with his friends we are told – מימיו לא עבר הירשל על דברי חבריו. –⁴³ In effect, Hirshl has no agency even before he succumbs fully to his illness – a de-facto *shoteh* without the diagnosis.

40 p. 112

41 Halkin p. 131

42 The belief that one can see into the future, read other people's minds and influence their actions with his own thinking is a symptom of a Schizotypal personality disorder (Mental Health America – nmha.org)

43 p. 114

Ironically, it is one of Tzirl's cures which places Hirshl straight in the heart of the halakhic definition for the *shoteh*. After he withdraws from the Zionist group as well, and seems to fold more and more inward with every passing day, Tzirl, following wise people's advice, encourages him to take walks: יש אדם שדעתו נינוחית דוקא כשהוא מטייל יחידי בגנים. She sends him out in the evening time, and he, who less than ever before seems to have a will of his own, simply walks in the direction he is directed at, aimlessly, without point or purpose, thus finally qualifying as a *shoteh* – he 'who walks out alone at night.'

In his walks, Hirshl finds himself frequenting the Mazal house where the object of his obsession, Bluma resides. He encircles the house like a hawk hovering over its prey, wishing Bluma would come to the window, imagining the light he sees in a window is Bluma's to which the narrator, shrugging, comments – יוצא והתדיין עם אדם שליבו שבור⁴⁵. At this point though Hirshl's heartbreak seems to be a mere excuse for his deranged behavior; there is so much else that's wrong. Are we witnessing heartbreak or insanity? For that matter, is heartbreak a form of insanity? Perhaps those upon which the Talmudic precedence was set, the sad and confused souls who walked out alone at night, were merely broken hearted souls? Whatever the case, Agnon's compassion for his anguished character is obvious and quite moving: עצוב עצוב הלב, עצוב ומבוייש⁴⁶ he tells us in a soulful depiction of acute mental pain.

Reality and dream further blur in Hirshl's mind, as in an exchange with Mina, where Hirshl confesses his love for Bluma. The narrator sets the scene so skilfully that it is impossible for the reader to discern whether the exchange is real, or actually imagined as turns out to be the case. The obsession with Bluma worsens and Hirshl's morbid passivity

44 p. 117

45 p. 125

46 p. 125

suddenly "turns" into fate: ⁴⁷אלוקים בשמים יודע מפני מה לא זכה הירשל לישא את בלומה - we are told; but whenever God in the heavens is evoked in this tale, we can know for certain that there is a very good human reason why things turn out the way they do.

Hirshl's state of mind further deteriorates: he becomes paranoid ⁴⁸כל מי שהביט בהירשל, eats less and less and sleeps almost not at all. His wife's voice bothers him, to put it mildly - ⁴⁹קשה קולה בלילה כקול יתד שתוקעים בקיר של חמר - and as his insomnia worsens, his mind truly begins to go. The rooster is depicted as his enemy, and Hirshl's fantasies turn violent as he imagines he kills it, thus perhaps symbolically attempting to reclaim some of his lost masculinity, which ironically would cause him, if acted upon, to lose the last threads of his human agency.

If Hirshl is to be "reclaimed" he must withdraw from this world in any way that is available to him: he thus conjures up again his heroes and role models, his uncle gone mad, and his peculiar grandfather who put a jar on his head instead of tefillin, he fantasizes about his own escape, and it seems indeed that the way he goes is the only way there is to assert freedom:

צפרים וחיות טמנו עצמן ושרצים ורמשים אינם מראים פניהם לחוץ, חוץ מאדם אחד שמהלך לו יחידי ביער, מפני שאין לו מקום אחר בעולם. ומנו [מי הוא], זה אחי אמו של הירשל שהגלוהו אבותיו מביתם, מפני שיצא חוץ לשורה.⁵⁰

The birds and beasts of the forest hid as best they could, and not even a bug showed its face. One man alone was out on such a night, because he had no home to call his own. Who was he? Why, Hirshl's uncle, who had been banished by his parents for disobedience.⁵¹

In the woods he would be free, have some comfort away from this life he feels bound to

lead - ⁵²לא כשאר בני אדם שבדו להם בתים וחנויות ולקוחות ונשים - everything in the world

becomes made up to him. Nothing remains real but his hallucinations, which only worsen

47 p. 129

48 p. 130

49 p. 131

50 p. 133

51 Halkin p. 157

52 p. 133

with the drugs he receives from the doctor to help him sleep and yet only exacerbate his insomnia. In one of these hallucinations, a mouse climbs out of the coffee sack: ופתח הירשל את השק וקפץ העכבר לפיו של הירשל וסגר הירשל את פיו ונשתייר העכבר בפנים כשהוא מכשכש בזנבו⁵³. Since he has taken to drinking more and more coffee, he is "jumping out of his skin;" again, like a halakhic *shoteh*, who walks out alone at night, but no longer to see Bluma:

כבר פסק מלשכב בתחילת הלילה ושוב נוהג הוא לטייל. לא כבראשונה ולא במקומות הראשונים. כל הליכותיו של הירשל להפקיע עצמו ממיטתו שאינה קולטת עצמותיו ואינה נותנת לו מנוחה. כבר נתיאש הירשל מן השינה. כל עיקרו של הירשל לקצר את עונת השכיבה.⁵⁴

He had given up going to bed early and resumed his habit of late walks, though he no longer took them to the same place. Their one purpose was to keep him out of bed, which was the least restful place he could imagine. He had despaired of ever being able to sleep and wished only to make the nights as short as possible.⁵⁵

He is filled with rage and disgust towards his wife, and while trying to hide it can no longer hide his scattered, racing thoughts: he cannot recall what she tells him, answers strangely, and babbles sentences that seem to lack context. Agnon masterfully depicts these internal workings of a deranged mind, as can be seen in the following internal dialog:

הביט הירשל בהתפעלות משונה במינה, כאדם ששומע דבר חידוש ומתפעל. שוב האירו עיניו באור מופלא ואמר, את קמה מינה, את קמה? מבטיח אני לך מינה שאומר לנערה כל מה שפקדת עלי, אלא תמיה אני מה ראית להשכים. בין כך ובין כך איני מחסר דבר מכל מה שאמרת. אף על פי ששכחתי תחילה. עכשיו אני שוכח, הרי אני אומר איני שוכח ולבסוף שכחתי את העיקר. הולך אדם להתפלל ושכח טליתו ותפיליו. הואיל ובשכחה אנו מדברים אומר לך דבר שנזכרתי. זה שקורא קוקוריקו אינו נותן לי לישון. כמדומני שהגיעה שעתו שנפטר ממנו. כיצד, מביאים אותו אצל השוחט והשוחט עושה חיק חיק ושוב אינו צורח. הירשל הראה בצוארו ושחק.⁵⁶

Hirshl regarded her with a queer animation, as if he had heard an intriguing piece of news. His eyes gleamed with an extraordinary light and he said, "You are up, Mina? You really are? I swear I'll tell the girl, though I must say it surprises me to see you up so early. Not that that's any reason not to tell her exactly what you said. I may have forgotten once, but I won't forget again. Just look at me, though, promising you not to forget when I nearly forgot to take my prayer shawl to synagogue with me! And while we're on the subject of forgetting, let me tell you something I just remembered. Mr. Concoo kept me up all night again. I do believe it's time we got rid of him. Don't you think we might take him to the throat-slitter? He just had to go whist and there's no more cock-a-doodle-doo."

53 p. 138

54 p. 139

55 Halkin p. 165

56 p. 141

Hirshl ran a finger over his throat and laughed.⁵⁷

At last his behavior is strange enough to alert even the somewhat dense Mina, perhaps because he expresses a death wish – הלוואי – he advises Mina. This “ideation” sheds light on the Rabbinic characteristic of *shoteh* as one who sleeps in the cemetery – הלן בבית – one who does so is not only acting strangely. Rather, his whole hold on life is slipping as he prefers to sleep in the place of eternal rest. Given this enormous emotional storm that envelops Hirshl, Mina's description of him seems ridiculously understated: כל שיחתו היתה משונה⁵⁸. Insistent as always in referring to her husband by his German name, Mina thus “cements” his alienation with her European pretentiousness: he cannot even be called by his own name in his own home. Meanwhile Hirshl's mood swings become more and more rapid: on the way out of the house he is happy, but as he reaches the synagogue his emotional symptoms worsen and become physical:

עד שהוא מתפלל נדעזע ראשו כאילו הטיחו פתאום בכותל. לא יצתה שעה קלה עד שחזר ונדעזע כאילו נתלש ממקומו. שחה והביט למטה ומישמש בראשו שמא פרחא [תפילין] של ראש ונפלה לארץ. כשהוקל לו קצת שלשל טליתו על פניו וחזר למקום שהפסיק, אלף דברים עלו בדעתו, רצה לעמוד על אחד מהם לא זכר.⁶⁰

Midway through the service he felt a jolt in his head as if it had been banged against a wall. A moment later he felt another jolt as if it were being blown right off. He bent to look at the floor, then felt his forehead to see if his tefillin had been knocked to the ground. As soon as he could pull himself together, he drew his prayer shawl over his head and resumed his prayers. A thousand thoughts raced through his mind, but he was unable to concentrate on even one.⁶¹

What the decisors had a difficult time understanding – i.e. what goes on inside the insane mind⁶² – Agnon not only understands but also illustrates beautifully and

57 Halkin p. 167

58 p. 142

59 p. 142

60 p. 143

61 Halkin p. 170

62 writes the Or Zaruah, unable to discern whether a woman is sane or insane; see p. 26.

compassionately, as he describes Hirshl standing in the synagogue, losing himself:

נשמטה השעוה מידו ולא הרגיש והיה לש את עצמו. כשהרגיש בדבר נבהל. הרי שהיה לש את עצמו ולא חשש, שמא אצבעותיו קהו, שמא מת. תפס בראשו ואמר וכי המתים חוששים בראשם. מכל מקום טוב שלא צעקתי, שאיני יודע אם הייתי צועק כבן אדם או קורא כתרנגול, מה היו הבריות אומרים, דעתו של זה נטרפה. בוא וראה אדם צועק - מרחמים עליו, קורא קוקוריקו אינו קרוי שוטה, למה, לפי שהוא משמש בקולו, ואילו נבח ככלב כלום היו אומרים עליו שהוא מטורף? אמת שאין דרכו של תרנגול להיות נובח ככלב, כשם שאין דרכי אני לקרות כתרנגול. אשרי שאני צועק כבן אדם ואיני קורא כגבר.⁶³

After a while he stuck his hand in his pocket to knead the wax there unseen, and when it slipped from his fingers he continued kneading himself. The discovery that he was squeezing his own flesh without feeling it alarmed him. Had his fingers gone numb or was he dead? He gripped his head with both hands and thought, I can't be dead as long as my head hurts. I'm glad I'm not screaming, because if I was I might crow like a rooster and seem crazy. Perhaps someone can tell me why it is that a man's a poor devil when he screams like a man and crazy [original: a *shoteh*] when he crows like a rooster, but a rooster that crows isn't crazy at all, it's just talking rooster talk. I suppose that a rooster barking like a dog would be as crazy as me crowing like a rooster. It's a good thing I'm screaming like a man then and not going cock-a-doodle-doo.⁶⁴

And then, light-hearted and light-footed, since he has finally managed to escape,

i.e. to lose all touch with reality, Hirshl goes out alone to the woods. Imagining the trees to

be ministers and dignitaries and trying to slip under their radar, he throws off his shoes -

thus completing the final condition of being a *shoteh*: מקרע את כסותו. Illusion and reality

seem to exchange in Hirshl's mind rapidly, his unraveling heartbreaking and desperate,

precisely because there is still some part of him sane enough to know he has lost control -

פתאום טפח הירשל בראשו וצעק, אני אינני משוגע, אני אינני משוגע. Of course insisting you are

not insane is often a clear sign of madness:

משונים היו מעשיו של הירשל, אבל מחשבותיו היו צלולות. יודע היה שאין נעל כיסוי לראש ושהגיע זמנו לחזור לביתו, לא כזקנה של אמא שהניח קיתון במקום תפילין ולא כאחיה של אמא שקיפח את חייו ביער, אם כן למה אינו חוזר לעיר, מפני שאבד לו כובעו ואין דרך בני אדם לילך בחמה ללא כובע.⁶⁵

As bizarrely as he was acting, Hirshl had his wits about him. He knew that, unlike his mother's grandfather who wore a chamberpot on his head, he could not make a hat out of a shoe, and that, unlike his maternal uncle who ran off to the forest for good, he would have to go home in the end. Why didn't he, then? Because he had lost his hat, and one did not go hatless in the hot sun.⁶⁷

63 p. 144

64 Halkin p. 171

65 p. 145

66 p. 145

67 Halkin p. 173

In such an intimate way we become one with Hirshl's loss of sanity; what the Rabbinic sources cannot explain to us, here we not only read and understand but also feel, tourists as we are inside Hirshl's mind as he desperately tries to cling to some external vestige of being a man in the civilized world, a man who still knows not walk in the sun without a hat.

When he is found he is non-responsive, crowing like a rooster and foaming at the mouth. Desperately he cries – אני איני תרנגול, אני איני תרנגול⁶⁸, the irony being that he has already been slaughtered long ago; only now, when he has finally broken free and asserted himself in the only way possible for him to respond and voice his protest (or rather – plea) against it.

At this, Hirshl finally becomes unmanageable, his illness no longer something which can be ignored, and he is led by carriage to a doctor in Lemberg who specializes in helping the mentally ill. Predictably, when riding with her utterly catatonic son in the carriage, Tzirl is saddened, not on account of Hirshl though, but because she must leave her store. Again we must wonder who the truly crazy one is who is being led to the doctor.

Much like the gradual descent into madness, which then quickens, so is Hirshl's healing process – slow at first, then quicker. As implied by his name, Langsam which means “slowly” in German, the doctor's methods involve slowly prodding the patient into conversation. Dr. Langsam, understanding that he is trying to heal a wounded spirit, knows well that there is no point in consulting Hirshl's parents regarding the patient – אחד אם מכליעים את האמת ואחד אם אין מכליעים אותה אין מועילים כאן כלום⁶⁹ - which in the case of the Horovitz family is especially true.

At last, a compassionate being sees Hirshl as a human being without applying any particular agenda to him: no prospective wealth to marry into, no money to be made. The

68 p. 147

69 p. 150

doctor is the first person in the story who seems to truly accept, care for and not demand that Hirshl become anything other than who he is, which perhaps, in of itself, is a cure.

[...] העיקר שלא יחבשו את החולה בבית המשוגעים ושלא יחזירוהו מיד לעירו, שבבית המשוגעים אפילו בריא עלול להשתגע ובעירו תינזקות זורקים בו אבנים וקוראים לו משוגע ושוב אינו חוזר לבריאותו. ענוה והכנעה ועצבות שלושה סימנים אלו שנצטיירו בפניו של הירשל משכו לבו של הרופא הזקן אחריו לאהבו.⁷⁰

What was crucial, he explained to Hirshl's parents, was to keep their son out of the lunatic asylum and away from Szybusz – out of the asylum because it could make even a sane man crazy, and away from Szybusz because he would never get well if children there called him names and threw stones at him. The combination of meekness, resignation, and sadness that he saw in Hirshl's face made the old doctor take an instant liking to him.⁷¹

The doctor applies a combination of drugs and talk therapy to Hirshl – לנגזם לא כחן – את שכלו של הירשל ולא בדקו על ידי חידות, אלא מה היה לנגזם עושה, היה יושב עמו ומספר עמו לעורר לבו⁷², and Hirshl, who finally feels acknowledged, responds favorably. Notably though, the Doctor regales Hirshl with tales of his own home town – ארבעים שנה יצאו מיום שיצא לנגזם – as if by narrating a different town, a different civilization which is not Hirshl's autobiographical one, he can convince him to see (and then tell) anew his own failed story of life within society. In any case, the Doctor's care works, and slowly but surely Hirshl returns to normal sleep, his behavior calms, his internal thoughts quiet down, and his obsession to Bluma also subsides. He does, however, suffer a bit of a relapse when the prospect of returning to Szybusz comes up after the birth of his son. Szybusz is like a prison to him – מפילו הזכרת שמו מצערתו⁷⁴ And even though it could easily be argued that Szybusz is the malfunctioned entity and not Hirshl – all of its ailments nonetheless reveal themselves in him alone, and he is the one who feels malfunctioned as his pain returns again: מוטל הוא על מיטתו כשעון הנפגם, שאינו נשמע לזמן, עיניו שקועות בחוריהן,

70 p. 150

71 Halkin p. 178

72 p. 154

73 p. 154

74 p. 163

אבל השינה אינה נחקקת בהם⁷⁵. When grieving over having to go back to an unhealthy,

unwanted situation, is it any wonder that Hirshl's internal clock yearns only to tick to its own rhythm?

His parents' response to his illness, after all was focused only on *their* shame; after they deposit their son at the doctor's, they can only think of this צרה that fell upon them as due to the curse that has rested on Tzirl's family, they themselves have no hand in it, aside from being terribly shamed by it: כפופי קומה ונמוכי רוח נכנסו לעיר. מכל רחוב ומכל פינה צווחה: כן קירקר כצפרדע⁷⁶. Thus, when everyone seems to think of Hirshl's madness as a ploy to trick an especially stringent draft board and get out of serving in the army, Hirshl's parent's are more than happy to cooperate. The conspiracy of ignoring mental illness is complete, taking place over all levels of society. The patient is driven away and the illness will be acknowledged neither inside nor outside the home; the shame, as it was written, is just too great – אין לך בושת⁷⁷. גדולה מזו⁷⁸.

So maybe the doctor's healing, effective as it may be, isn't real healing at all, but rather a training method which will enable Hirshl to move to the other side of shame, to be able to stand outside of it and point fingers like any other "normal" member of society. When the Doctor sees that Hirshl has lapsed, it is likely he knows what the problem is, that it is due to the prospect of going back to Szybusz, but still he looks away – הרופא ראה ועשה – as if what he is trying to do is train Hirshl to do the same. Hirshl's healing then, constitutes his ability to go back and withstand the deeply flawed world from whence he came, and since he will never be able to live within it as a free, self-assertive

75 p. 163

76 p. 152

77 תלמוד בבלי מסכת בבא קמא דף פז עמוד ב

78 p. 163

individual, to be able to look away.

It works. We are told he no longer thinks of his grandfather and uncle:

מיום שנכנס לבית ההבראה לא הירחר עליהם ולא נראו לו בחלום. ודאי כבר מצאו תיקונם ואינם טועים בעולם התוהו, אף הירשל מצא את תיקונו ומבריא והולך, הלואי שאשתו ובנו היו מבראים.⁷⁹

He himself no longer thought about his mother's brother and grandfather. Since coming to the sanatorium he had not even dreamed of them. Perhaps they had purged their souls in limbo and did not have to wander about there anymore and haunt him. He too felt purged and fit. He hoped his wife and son were well too.⁸⁰

One is left to wonder what kind of *tikkun* it is exactly that Hirshl found, and what type of healing he wishes for here for his wife and son – in body or in soul.

Who is in need of healing and who ought to offer forgiveness is never fully clear, a notion which is demonstrated when Baruch Meir rides the train to bring Hirshel back to Szybusz, on the first night of *Selichot*. Baruch Meir suddenly finds himself feeling terribly sad for not being able to attend services:

שאל ברוך מאיר את עצמו, מה זה שאני עצוב כל כך? אבל שוב לא היה עצב, אלא בושה גדולה האדימה את פניו, כמי שפלטוהו מחוץ למחנה ישראל בשעה שכל ישראל עומדים לפני אביהם שבשמים בתפילה ובתחנונים.⁸¹

A great sadness descended over Boruch Meir [...] And even as he told himself this the feeling of sadness yielded to one of shame that brought a blush to his face. The thought of sitting in a railroad car when so many Jews were begging God for forgiveness made him feel like an outcast.⁸²

It is only when Baruch Meir is in a liminal state on the road, away from the hold of "we" – the town and people of Szybusz – that he comes closest to understanding his son's experience. He comes close, but does not really understand, nor will forgiveness be asked, either from God or from Hirshl, and regardless of Baruch Meir's obtuseness, it is doubtful whether the "sane" can ever truly understand what it is like to be excluded from *makhaneh Israel*.

Hirshl Horovitz, the identified patient⁸³ of Szybusz, returns home, not exactly a

⁷⁹ p. 166

⁸⁰ Halkin p. 196

⁸¹ p. 168

⁸² Halkin p. 199

⁸³ Withing Family Systems Theory the *Identified Patient* is the family member in whom the family's symptom

"new" person; not exactly his old self either. At first he has a difficult time contemplating fatherhood, but then comes to adjust, and in one of the more astute self-observations of any character in the story, he understands and articulates his own tragedy, as well as the limitations of the world he resides in:

אומר הירשל בלבו מה אדם צריך, קצת שמחה. אני איני שמח, אבל תינוק זה צריך שישמח. אני ילדות שלי לא היתה ברוכה, אבל תינוק זה ילדותו צריכה להיות מבורכת, והרי אם אין אהבה אין ברכה, אם אין אהבה בין איש לאשתו אין ברכה על בניהם.⁸⁴

All that a man really needs, Hirshl thought, is a little joy in his life. If I can't be happy myself, at least my son can be. And while I never had the childhood I wanted, at least I can see to it that he does. But what happiness could there be without love, and what child would want a childhood in which its parents did not love each other?

Despite occasional lapses into strange thinking, Hirshl is no longer a *shoteh* who walks alone at night; he now takes his walks in the day time, ⁸⁵כשאר בני האדם on Saturday afternoons, and doesn't wander to the part of town where Akavia Mazal's house stands, with Bluma inside. He adjusts to a life which consists of working in the store and residing with his wife. Yet he does still think about Bluma, wondering whether she'd marry him if his wife would die and taking to refer to his son as a poor orphan, which rightly horrifies his wife. The problem is easily solved by identifying a new patient, the baby Meshulam, and sending him away to the village to be raised by his maternal grandparents.

Meshulam is the perfect new scape goat: ailing and named after a living relative (Baruch Meir's brother from America), since he could not be named after his other dead and unnamed uncle gone mad, baby Meshulam carries the shame of the past in him. The root of his name, מ.ש.ל.ם suggests he is expected both to be perfect and to serve as payment of sorts – a kind of ransom for an original sin, unnamed and unspoken of.

Once this reminder of shame and insanity is gone, Hirshl is finally healed and even comes to love Mina. He has truly been "fixed up" to be a worthy member of the disrupted

has emerged or is most obvious.

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85 p. 175

Szybusz – now he is *משוכש* in the acceptable way, just like everyone else. The reminders of the sordid madness are never to be looked at again. Only the blind beggar playing a song in the snow may be able to see what lies beneath the surface, and Hirshl, who has completely succumbed to his bourgeois life, knows this; he both fears it and admires it and therefore tosses the beggar a large coin, a sum greater than what is usually given, either to express his silent admiration or to keep him quiet.

Hirshl, the deer who couldn't run, may have been a *shoteh* to begin with – devoid of agency, bound and infantilized – but his healing from *shtut* constitutes an even more profound madness in the eyes of the narrator of this tale. Thus, this model of portraying mental illness indeed raises more questions than answers. Is mental illness someone's fault? Yes, but no one seems to “pay” for it but a blameless baby. Is it an illness that can be healed? Yes, but only if one is willing to lose that which he is most attached to – his sovereign self. And finally – in a world which is inherently flawed, can mental illness be a legitimate and even justifiable way of coping with one's surrounding? To quote the narrator of this tale, *רק אלוקים בשמים יודע*.

EDUCATIONAL MATERIALS

Overview:

This educational segment is meant to be used as part of an adult education lesson (or a group of lessons) about mental illness, and it is aimed especially at people serving in religious leadership positions (although it could be taught at any adult education setting as well).

The segment is divided in two parts that have two major goals, respectively: 1. to introduce and acquaint participants with halakhic texts regarding the *shoteh*, and 2. to help participants begin to conceive of a theology of mental illness.

Ideally, any lesson plan would include segments from both parts so that both goals can be addressed in a single lesson, but the materials are arranged in a manner that would allow to pick and choose according to interest and need. For the same purpose I have opted not to construct whole lesson plans, in hope that materials could easily be “pulled out” and integrated in any lesson plan on the topic which may include a variety of learning opportunities such as a movie viewing, a presentation by a mental health professional, etc.

The overarching rationale for this educational segment is to assist religious leaders in contemplating the issue of mental illness in the Jewish community, both in terms of practice and in terms of theology (which ought to inform every aspect of practice).

Part 1: A Halakhic Perspective, pp. 86–98

Part 2: A Theological Perspective, pp. 99–106

Part 1:

This part is meant to provide participants with a taste of Jewish Law in regard to the *Shoteh*. Most of the materials provided here are Rishonic (12th – 15th century), although some Talmudic materials are included in order to provide some needed background.

Core Concept:

The halakhic model of relating to the *shoteh* has the potential to inform our liberal perspective in relation to mental illness.

Essential Questions:

- Does the halakhic model achieve a good balance between protecting the rights of the *shoteh* and protecting society from the *shoteh*?
- Is the halakhic model inclusive or quite the opposite, causing further exclusion of *shotim*?
- What religious place are *shotim* allocated within the Jewish community as well as in relation to God according to this model?
- What aspects of the halakhic model can be applied to our own modern, liberal practice of Judaism?

Plan:

Following are three case studies adapted from modern Reform Responsa which are to be discussed in a group setting (no more than 7 people per group).

Each case is followed by a few of legal texts which are to assist the group in answering the question presented in their specific case study.

Study questions are provided after every case.

Time frame: each case should ideally discussed for about 1 hour, to achieve maximal understanding of the rabbinic text.

Important: Inform participants that they are to think as Reform/liberal Jews, and to reach a decision based on the sources provided them *as well as* their own judgment, as the point of the exercise is to become acquainted with the traditional sources, but also to see where we, as liberal Jews, stand in relation to our inherited tradition. Lastly, take heed: not everything will be clear; the sources can be quite dense and the picture provided here is partial. Enjoy the exploration!

Case #1:

Dear Colleagues:

A woman in my congregation, married to a Jewish man, has been coming to me to study for conversion to Judaism. Her own religious background is quite mixed, and she feels no particular attachment to any other faith.

She has some knowledge of Judaism, and has been reading and studying with me for about six months. I believe she is sincere about wanting to convert to Judaism, although some of the motivation undoubtedly comes from her in-laws. In my opinion, however, she is not mentally stable.

The first thing she told me when we met was that she was a borderline personality who had been sexually abused by both of her parents. In the fairly brief time I have known her she has been on the verge of divorce twice, stated that her husband was abusing her, changed therapists, and asked if she could bring her dog into the sanctuary with her for emotional solace in a new environment. She often makes very dramatic statements, only to back away from them later. From everything I have been able to learn, she is quite clearly a borderline personality, a well-recognized diagnosis of significant mental illness. She is not, however, insane or incapable of making decisions for herself.

May I reject her as a candidate for conversion on grounds of her mental illness?¹ (Rabbi Wondering, Port Whence, OH)

Questions:

1. Before you read the attached sources that will help you come to a decision, consider your own intuitive reaction to the question presented here.
 - In your opinion, can this woman be rejected as a candidate for conversion? Why yes or why no?
 - Write your answer down before going any further.
2. Read the following sources carefully in an attempt to define "who is a *shoteh*." Note that according to Jewish law *shotim* cannot be accepted as a candidates for conversion since it is not possible to stipulate/make conditions for them, as they are exempt from mitzvot.² Your task would therefore be to determine whether the woman in question is or is not a *shotah*.
3. Reflect, after having reached a decision, whether it concurs with the traditional sources. If so – which sources? As Reform Jews, in what way did you find these sources were helpful to you in reaching a decision? In what ways were they problematic for you?

1

תנו רבנן: איזהו שוטה? היוצא יחידי בלילה, והלך בבית הקברות, והמקרע את כסותו.

1 Conversion of a Person Suffering From Mental Illness: CCAR Responsa 5758.7

2 The origin of this Halakha is Geonic: ספר הלכות גדולות סימן ח עמוד קכ

איתמר, רב הונא אמר: עד שיהו כולן בבת אחת. רבי יוחנן אמר: אפילו באחת מהן. היכי דמי? אי דעביד להו דרך שטות - אפילו בחדא נמי.

Our Rabbis taught [in a beraita]: Who is [deemed] a *shoteh*? 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. Yohanan said: Even if [he does only] one of them. What is the case? If he does them in an insane manner, even one is also [proof]. (Bavli Hagiga 3b)

[...]

אמר רב פפא: אי שמיע ליה לרב הונא הא דתניא: אי זהו שוטה - זה המאבד כל מה שנותנים לו, הוה הדר ביה.

R. Papa said: If R. Huna had heard of that which is taught: Who is [deemed] a *shoteh*? One that destroys all that is given to him; he would have retracted [his previous statement that they must all be done together]. (Bavli Hagiga 4a)

2

השוטה פסול לעדות מן התורה לפי שאינו בן מצות, ולא שוטה שהוא מהלך ערום ומשבר כלים וזורק אבנים בלבד, אלא כל מי שנטרפה דעתו ונמצאת דעתו משובשת תמיד בדבר מן הדברים אע"פ שהוא מדבר ושואל כענין בשאר דברים הרי זה פסול ובכלל שוטים יחשב, הנכפה בעת כפייתו פסול ובעת שהוא בריא כשר, ואחד הנכפה מזמן לזמן או הנכפה תמיד בלא עת קבוע, והוא שלא תהיה דעתו משובשת תמיד שהרי יש שם נכפים שגם בעת בריאותם דעתם מטרפת עליהם, וצריך להתיישב בעדות הנכפין הרבה.

The *shoteh* is unacceptable as a witness by law of torah, since he is not subject to the commandments. By *shoteh* it is meant not only one who walks around naked, breaks things and throws stones, but anyone whose mind has become disturbed and it is found that his mind is constantly confused in some matter, even though in regard to other matters he speaks to the point and asks pertinent questions, he is disqualified and is considered in the category of *shotim*. The *nikhpah* [usually thought to mean the epileptic], during a fit is disqualified, and when in good health is acceptable. And one whose fits occur infrequently or intermittently, granted that his mind is not constantly disordered, since some *nikhpim* even when they are well their mind is disturbed, and we should take careful deliberations in regard to the testimony of the *nikhpim*. (Rambam, Mishneh Torah, Edut 9:9)

3

הפתאים ביותר שאין מכירים דברים שסותרין זה את זה ולא יבינו עניני הדבר כדרך שמבינין שאר עם הארץ, וכן המבוהלים והנחפזים בדעתם והמשתגעים ביותר הרי אלו בכלל השוטים, ודבר זה לפי (מה) שיראה הדיין שאי אפשר לכון הדעת בכתב.

The intellectually deficient who cannot recognize contradictions and cannot understand things as all people do, as well as those who are

extremely agitated and frantic [lit. rushed] and who are extremely maddened, they are considered in the category of *shotim*. In this matter discretionary power is granted to the judge because it is impossible to lay down written rules concerning this subject. (Rambam, Mishneh Torah, Edut 9:10)

4

Context: the responder is opining against the validity of a *get* given to a woman who is עתים שוטה עתים חלומה - at times ill, at times well (an intermittent *shotah* - she has lucid intervals). *Shotim*, according to Jewish Law, cannot contract a marriage, nor can they divorce. Apparently, it has come to the responder's attention that some decisors permitted such a *get* when the woman was in a well-state. Even though she has been tested and was found to respond to the point, he does not concur.

[...] נסתפק לי אי מתקרי ליה חלומה בכה"ג [בכי האי גוונא] אע"פ שהשיבה כהוגן כמו שמשמע בעדות הראשון מ"מ מה בכך כן דרך שוטים שלפעמים משיבים נכונה ומכל מקום שוטים הם. דודאי הא דפליגי רבי יוחנן ורב הונא פרק קמא דחגיגה איזהו נקרא שוטה היינו אף על פי שלא ראינו בו שטות אלא מקרע כסותו כו' דאטו אי אינו מקרע כסותו ואינו לן בבית הקברות ואינו יוצא יחידי בלילה ובשאר כל דרכיו הוא עושה שטות דלא נקרא שוטה אתמה? אלא ודאי הא דפליגי היינו דווקא שלא ראינו בו שום שטות אלא זה וא"ה [ואי הכי] הוי שוטה אף על פי שמשביב כהוגן [...]

It is doubtful to me whether we can refer to her as "well" in this matter, even though she responded properly [...]; so what if she did?! This is a [common thing] with *shotim*, that sometimes they respond correctly and yet they are still *shotim*. Surely this controversy between Rabbi Yochanan and Rabbi Huna in Hagiga regarding Who is a *shoteh*, that is, one in whom we've seen no signs of *shtut* but he does tear off his clothes - does it mean that if he does not tear off his clothes, and does not sleep in the cemetery, and does not go out alone at night, but otherwise, in all other way acts by way of *shtut*, [can it be] that he is not considered a *shoteh*, I wonder? Rather, the controversy concerns the one in whom we see no signs of *shtut* but this, and if so, he is a *shoteh* even though he responds properly. (Responsa of the Mahari Weil, Siman 52) - 15th century Germany.

5

Context: here the responder (Maharik) opines regarding a man who was required to perform the rite of Halitzah. According to Jewish Law, *shotim* cannot perform the rite of Halitzah, and given that the man in question exhibits certain signs that put his sanity in question, the Maharik therefore tries to determine whether he is indeed in the category of *shoteh* or not.

[...] ועוד נר' לע"ד דלא דמי כלל מי שעושה מעשה המורה טירוף הדעת כי התם דהוה

אכיל תמרי ושדי קשיית' ביה רבא, וכגון ההיא דמי שאחזו דנשתתק מחמת החולי המטרף את דעתו, וכן ההיא דלעיל שהשיב עליו רבינו אביגדור, דודאי התם איכא למיחש דדילמא הין שלו לאו הין ולאן שלו לא הוי לאו, דכיון דנטרפה דעתו אינו יודע מה מוציא מפיו ואין מדקדק כלל בדבריו, ולהכי הזקיקוהו בדיקת בפירות דימות החמה ודימות הגשמים להבחין אם ישוב כהוגן על הין הין וכו', אבל מי שהוא מיושב בדעתו ומה שהוא אומר הוא אומר ביישוב הדעת, אלא שאינו מבין ענייני העולם כשאר בני אדם, מ"מ כל היכא שלא הוחזק להיות מאותן שהזכירו רז"ל בפ"ק דחגיגה נר' לע"ד דמעשי קיימי בכל מילין, שהרי על כרחין צריך איזה גבול ושיעור לומר באיזה ענין יחשב מבין ובאיזה ענין לא, שהרי יש מבין מעט ויש מבין הרבה, יש ממחר להבין כבר שית וכבר שבע ויש מאחר ואין הדעות שוות, והא למדת שאין לנו אלא מה שאמרו חכמים בפ"ק דחגיגה [...]

And furthermore it seems to me that [this case] is not like any case in which a person commits an act which demonstrates insanity (lit. the scrambling of the mind) [here the Maharik brings several examples]; because clearly in those cases there is concern whether his "yes" means "yes" and whether his "no" means "no", since due to his insanity he doesn't know what comes out of his mouth and he is not mindful of his words, and it is that person that requires an examination of sanity³. *But he who is of sound mind, and whatever he says he says with soundness of mind, but does not understand the affairs of the world like other people*, in any case, if he is not one of those cases mentioned by the sages [in Hagiga 3b], in my opinion his acts are considered viable in every word, because indeed. *despite ourselves some boundary and some measure are necessary to determine in what case he is considered to have understanding and in what case he is not*; why, there are those who understand little and there are those who who understand a lot; there are those who rush since they understand it is already six and seven O'Clock, and there are those who are late, and *all minds are not equal to each other*; and here you learn all we have to rely on is what the sages stated in Hagiga 3b. (New Responsa of the Maharik, Siman 20) - 15th century, France and Italy.

3 Various examinations are listed in Gittin 70b.

Case #2

The following letter was received from a rabbi in England:

I should be obliged to you if you could give me an opinion concerning the giving of a Get to a Jewish woman whose husband has been confined in a lunatic asylum for more than ten years, and cannot recover sanity, according to the diagnosis of the medical superintendent. The woman would only consider herself free to marry again if she could receive a *Get*, and her husband is quite incapable of doing so. The parties were married in Poland according to the Jewish rite, and not before a secular registrar, as the case would be in England.⁴

Can this woman be divorced from her husband? (Rabbi Posh, UK)

Questions:

1. Before you read the attached sources that will help you come to a decision, consider your own intuitive reaction and/or previous knowledge to the question presented here.
-In your opinion, can this woman be divorced from her husband? Why yes or why no?
-Write your answer down before going any further.
2. Read the following sources carefully in an attempt to understand the law in regard to marriage and divorce involving *shotim*. Pay attention to matters of equality of man and women in the eyes of the law (or lack thereof). Would the case be different if the tables were turned (i.e. a sane man was seeking to divorce his insane wife)? What other options would exist for him in this case?
3. Reflect, after having reached a decision, what you've learned from the traditional sources in regard to divorce of *shotim*. Do you feel that the rights of the *shotim* and the rights of the healthy receive equal consideration? In case of a conflict, whose rights should be given more consideration in your opinion and why? Is your opinion concurrent with the law?

1

פקח שנשא פקחת ונתחרשה, אם רצה - יוציא, ואם רצה יקיים, נשתטית - לא יוציא, נתחרש הוא או נשתטה - אינו מוציאה עולמית.

If a hearing man wed a hearing woman and she became deaf, he may divorce her; if she became a *shotah*, he may not divorce her. But if *he* became deaf or a *shotah* – he may *never* divorce her. (Bavli Yevamot 112b)

נשתטית וכו'. א"ר יצחק: דבר תורה שוטה מתגרשת, מידי דהוה אפקחת בעל כרכה, ומה טעם אמרו אינה מגורשת! שלא ינהגו בה מנהג הפקר.

If she became a *shotah*, etc. R. Isaac stated: According to the word of Torah a *shotah* may be divorced, since her case is similar to that of a woman of sound sense [who may be divorced] without her consent. What then is the reason why it was stated that she may not be divorced? – In

4 Divorce of An Insane Husband, CCAR Responsa. ARR Vol. XXIX, 1919 pp. 88-94.

order that people should not treat her as a piece of ownerless property [take sexual advantage of her]. (Bavli Yevamot 113b)

2

אשיבך אשר עם לבבי על אשה שהיא עתים שוטה עתים חלומה והיא בוגרת ונשואה ואפי' נערה ונשואה לית לה תקנה להתגרש כלל לא על ידי עצמה לא ע"י אביה דא"ר יצחק דבר תורה שוטה מתגרשת מידי דהוה אפיקחת בע"כ [בעל כרחה] ומה טעם אמרו אינה [...]

I shall answer that which is in my heart regarding a woman who is at times *shotah* and at times well, who is an adult and married; even if she were a youth and married there is no legal amendment which allows her to be divorced at all – not by herself, and not by her father [serving as a legal guardian of sorts]. (Yevamot 113b): [However] 'It was quoted by R. Yitzchak: according to the word of the Torah, a *shotah* may be divorced, since her case is similar to that of a woman of sound senses [who may be divorced] without her consent. What then is the reason why it was stated that she may not be divorced? In order that people should not treat her as *hefker* [a piece of ownerless property]'. (Sefer Or Zaruah, part 1, Siman Tav, Shin, Ayin, Het) – 13th century ashkenaz.

3

שאלה: ומה שהיא טוענת שבעלה מטורף, וטפשות מתוספת עליו מידי יום יום, ושואלת שיגרשנה טרם יטרף ותהיה עגונה לעולם, וגם שמא תלד בנים ולא יוכל לזונה. ואביה היה עני ומחמת דחקו השיאה לו, וכסבורה היתה יכולה לקבל ואינה יכולה לקבל, כי מטורף הוא לגמרי, ויראה פן יהרגנה בכעסו, כי כאשר מרגזים אותו, מכה והורג וזורק ובוטט ונושך. וראובן משיב: הכרת בו מקודם, לכן וסברת וקבלת; גם אינו מטורף, אך אינו בקי בטיב העולם, ולא יגרשך אלא אם תחזירי הספרים, או כסף ערכם, ואז יגרשך. איני רואה מתוך טענותם דברים שיהיה ראוי לכופו עליהם לגרש; כי אין להוסיף על מה שמנו חז"ל בפרק המדיר (עז): ואלו שכופין אותו להוציא: מוכה שחין ובעל פוליפוס והמקמץ והמצרף נחשת ובורסקי. ועוד שנינו התם: האיש שנולדו בו מומין, אין כופין אותו להוציא. לכן אין לכופו לגרש; אך תפייסנו שיגרש, או תקבלנו ותזון מנכסיו.

Question: and what in regard to her claim, that her husband is insane, and he becomes more foolish every day, and she is asking that he divorce her before he becomes completely insane and she will become *agunah* forever, and she might also have children and he will not be able to support her. And it is because of her father's poverty that he [her father] wed her to him, and she thought she could endure him, but she cannot endure him, because he is completely insane, and she is fearful that he might kill her in his anger, because when he becomes angry, he hits, and kills [unclear what is meant by "kills"] and kicks and bites. And Reuven answers [perhaps a dayyan which she approached in the matter?]: 'you recognized [his situation] before [you married him], and you accepted it. Even if he was not insane, but rather not proficient in the ways of the

world, he will not divorce you, unless you return the books [?] or their worth, and then he can divorce you.' I do not see anything in their claim which would make it so that they could compel him to divorce her; for we cannot add to what the wise ones enumerated in the Mishnah (Ketubot 7:10) - 'the following are compelled to divorce [their wives]: a man who is afflicted with boils, or has a polypus, or gathers [objectionable matter], or is a coppersmith, or a tanner [all foul-smelling labors]. And it was also taught there: 'a man in whom bodily defects have arisen cannot be compelled to divorce [his wife].' Therefore, we do not compel him to divorce. But she should pacify him so that he would divorce her, or she can endure him and live off his assets. (Responsa of the RoSh, Klal 43, Siman 3) 13th-14th century, Germany and later Spain.

4

מי שנשא כשהוא פקח ונתחרש ואין צריך לומר נשתטה אינו מוציא לעולם עד שיבריא [...] If one married while *pikach* (healthy, sane) and then became a deaf-mute, and needless to say if he became a *shoteh*, he cannot ever divorce his wife, until he regains his health. (Rambam, Mishneh Torah, Gerushin 2:17)

5

מי שנתחרשה אשתו הרי זה מגרשה בגט ותהיה גרושה, אבל אם נשתטית אינו מוציאה עד שתבריא, ודבר זה תקנת חכמים הוא כדי שלא תהא הפקר לפרוצין שהרי אינה יכולה לשמור את עצמה, לפיכך מניחה ונושא אחרת ומאכילה ומשקה משלה ואין מחייבין אותו בשאר כסות ועונה שאין כח בנן דעת לדור עם השוטים בבית אחד, ואינו חייב לרפאותה ולא לפדותה, ואם גירשה הרי זו מגורשת ומוציאה מביתו ואינו חייב לחזור ולהטפל בה.

If one's wife becomes a deaf-mute, he may divorce her with a get and the divorce will be valid; but if she becomes a *shotah*, he may not divorce her until she regains her health, and this was ordained by the sages so that she will not be hefker to immoral people, since she cannot take care of herself; therefore he will desist from her and marry another woman; and he should provide a place for her, provide her with food and drink from her own resources, and he will not be obligated to provide her with sustenance, garments, and conjugal rights, since there is no way [lit. strength] for a person of sound mind to live with the *shotim* in one household, and he is not obligated to provide her with medical treatment, nor to redeem her [if she is taken captive] and if he divorces her, the divorce is valid, and he can remove her from his home, and is no longer obligated to care for her. (Rambam, Mishneh Torah, Gerushin 10:23)

6

[...] כי כן כתב כמדומה מהר"ם [...] וז"ל [וזה לשונו] על השוטה התירו כל רבותינו להתיר חרם רבינו גרשום ע"י קי' ת"ח מגי' מדינות אע"פ שהם מלכות אחת ושפה אחת, רק שתהיה

בטוחה ממזונותיה ומכתובתה ופרנסתה לדעת רבותינו [...] עכ"ל [עד כאן לשונו]. והרא"ש השיב [...] אם אין ידו משגת יעשה עתה כאשר תשיג ידו והמותר יבטיחנה בשטרות שלא תתעגן [שלא יתעגן] עכ"ל [...]

The following is attributed to the Maharam: "in regard to a *shotah*, all of our authorities permitted to undo *herem d'rabbenu gershom* (prohibition against marrying more than one wife) providing approval by 100 sages in 3 different states [...] as long her [the wife's] support payments and her ketubah and her sustenance is guaranteed in the opinions of our sages." And the RoSh stated: "if he cannot afford to support her as needed he should do as much as he is capable of, and the rest should be given to her as guarantee in bonds, so as to prevent him from becoming a bound man [i.e. an *agun*]." (New Responsa of the Maharil, Siman 202) – 15th century, Germany.

Case #3

Dear Colleagues;

A long-time member of the congregation, who has been a board member and served on a number of committees over the years, has expressed interest in serving as president of the congregation. He has been known to be a long-time sufferer of bi-polar disorder, which for the most part has been kept under check with drug treatment. However, there have been a couple of episodes in the past in which he went off his meds resulting in some irresponsible decision-making as well as very unpleasant committee dealings and noticeable discord within the congregation. Luckily, because this man's fiscal responsibilities were limited to the committees on which he served, there was no significant financial damage.

It is important to note that the person in question is a highly qualified and responsible professional in his field, whose insight and organizational skills would greatly benefit the congregation if he were to serve as president. He is fully functional when on his drug regimen, but since it is not possible to predict that he will stay on them indefinitely, and since his responsibilities in the role of president could potentially greatly influence the congregation (the president has access to some accounts without board approval), his nomination has been called into question by certain people in the congregation. We do not wish to discriminate on the basis of mental illness, and wonder whether Jewish tradition could shed a light on this particular dilemma.

Would this man be allowed to serve as president of the congregation according to your opinion and Jewish Law?⁵ (Rabbi Tense, East Pressureville, MD)

Questions:

1. Before you read the attached sources that will help you come to a decision, consider your own intuitive reaction to the question presented here.
-In your opinion, can this man serve as president of the congregation? Why yes or why no?
-Write your answer down before going any further.
2. Read the following sources carefully in an attempt to understand the law in regard to agency of the *shoteh*. Pay attention to matters of possible liability; according to Jewish law, who has ultimate responsibility?
3. Reflect, after having reached a decision, what you've learned from the traditional sources in regard to the agency of *shotim*, financially and otherwise. Was your initial decision concurrent with the Law? Were Jewish Law to be applied in today's world, what would be the implications, both for the mentally ill and for the rest of society?

⁵ Hypothetical case.

איזהו שוטה - האמור בכל מקום, שפטור מן המצות ומן העונש, ואין קנינו קנין, ואין ממכרו ממכר

A *Shoteh*, anywhere that this term is stated, is one who is exempt from commandments, and from legal retribution, and whose sale and purchase are not binding [cannot obtain ownership]. (Rashi: Bavli Hagiga 3b)

2

השוטה אין מקחו מקח ואין ממכרו ממכר, ואין מתנותיו קיימות, ובית דין מעמידים אפוטרופוס לשוטים כדרך שמעמידין לקטנים.

The *shoteh's* sale or purchase, as well as the presents they give, do not stand [they are not considered binding or effective]. The court must appoint a guardian for the *shotim*, as it would for a minor. (Rambam, Mishneh Torah, Mekhira 29:4)

3

עתיים חלים עתים שוטה, כשהוא חלים - הרי הוא כפיקח לכל דבריו, כשהוא שוטה - הרי הוא כשוטה לכל דבריו.

If a man is sometimes in his sound mind and sometimes a *shoteh*, when he is in his sound mind he is regarded as sane for all intents and purposes, and when he is a *shoteh*, he is regarded as a *shoteh* for all intents and purposes." (Bavli Rosh Hashanah 28a)

4

מי שהוא עת שוטה ועת שפוי כגון אלו הנכפין, בעת שהוא שפוי כל מעשיו קיימין וזוכה לעצמו ולאחרים ככל בן דעת, וצריכין העדים לחקור הדבר היטב שמא בסוף שטותו או בתחלת שטותו עשה מה שעשה.

One who is at times a *shoteh* and at times of sound mind, such as in the case of the *nikhpim* [epileptic], at the time when he is well, all of his financial undertakings [lit. all of their actions] stand; he can acquire for himself and for others like any other person who has *daat*. The witnesses should examine the matter carefully to determine whether the transaction took place in the beginning of his *shtut*, or near its end. (Rambam, Mishneh Torah, Mekhira 29:5)

5

חרש שוטה וקטן פגיעתן רעה, החובל בהן חייב והן שחבלו באחרים פטורין, אע"פ שנתפתח החרש ונשתפה השוטה והגדיל הקטן אינם חייבין לשלם, שבשעה שחבלו לא היו בני דעת.

Damages suffered by a deaf-mute, a *shoteh*, and a minor are undesirable [lit. their damages are bad/negative]; one who injures them is liable, but if they injure others they are not liable. Even though the deaf-mute gains the ability to speak and hear, the *shoteh's* condition ameliorates [נשתפה] and the minor comes of age, they are not obligated to pay, since at the time of causing the damages/injuries they did not have

cognition/understanding. (Rambam, Mishneh Torah, Chovel U'mezik 4:20)

6

קטן שהגדיל אפילו היה אוכל ושותה יותר מדאי ומפסיד והולך בדרך רעה אין בית דין מונעין ממנו ממנו ואין מעמידין לו אפוטרופוס, אלא אם כן צוה אביו או מורישו שלא יתנו לו אלא אם כן יהיה כשר ומצליח או שלא יתנו לו עד זמן מרובה, והשוטה והחרש הרי הן כקטנים ומעמידין להן אפוטרופוס.

A minor who comes of age, even if he eats and drinks excessively and ruins [his estate] and follows a bad path, the court does not withhold his property from him nor do they appoint a guardian over him, unless his father, or whomever left him the property ordered that he not be given it unless he conducts himself appropriately [lit. kosher] and is successful or that it not be given to him until later. The *shoteh* and the deaf-mute are considered as minors, and the court appoints a guardian over them. (Rambam, Mishneh Torah, Nahalot 10:8)

7

[...] וכן מי שנשתטה בית דין יורדין לנכסיו ומוכרין וזנין אשתו ובניו ובנותיו שהן בני שש שנים או פחות ומפרנסין אותן.

Also, if a person becomes a *shoteh*, the court takes possession of his estate and the sell [of it] to provide food for his wife and his sons and his daughters that are six years old or younger and support them. (Rambam, Mishneh Torah, Nahalot 12:17)

8

ומי שנשתטה או שנתחרש בית דין פוסקין עליו צדקה אם היה ראוי.

If a person becomes a *shoteh* or a deaf-mute, the court levies *tsedakah* against his property if he has the means. (Rambam, Mishneh Torah, Nahalot 11:11)

9

למדנו שהאשה והעבד בני דעת בשעת ההיזק משלמין לאחר זמן אבל חרש שוטה וקטן דלאו בני דעת ניהו בשעת נזק אפילו לאחר זמן פטורין דהא לא קתני במשנתנו זמן חיוב להם. [...] אבל חרשים אף על גב דלגבי חבלה פטרינן להו לעולי לגבי הלוא' נמי אם נתרפאו ומודו שלוו מחייבי לשלם מיד אי אית להו מאי דפרעי [...] אבל שוטים כיון שאינן בעסקי משא ומתן ואף מעמידין להם אפוטרופוס לכל דבריו אף שנתרפאו אין חייבין לשלם שהמלוי אותם הניח מעותיו על קרן הצבי ואפ"י הלוהו והעירו שלקח השוטי מעותיו ואכל בהן פטור דמעיקרא אבדה מדעת הוא ואין צ"ל שאין משביעין אותן לכשיתרפאו ולא אמי בחרש שהוא חייב אא מפני שהוא בעסקי משא ומתן כדאמר' חרש רומז ונרמז במטלטלין אבל שוטה לא ודברי ה"ר משה ז"ל מוכיחין כן בשוטה שאינו בהלואה [...]

We learned that the woman and the slave were *b'nei da'at* [had cognition] during the time they caused the damage, and therefore must pay damages after a certain time period. But a deaf-mute, a *shoteh* and a minor who

were not b'nei da'at during the time they caused the damage, are exempt from payment even after a period of time, as the mishnah did not rule a time period for them to pay. But the deaf-mute, even though they are exempt in regard to damages forever, in regard to a loan, if they were to heal [regain their hearing], and admit to having borrowed the money, they are obligated to pay it back immediately [...] But shotim, since they do not partake in the business of negotiation and a guardian is appointed to them to manage all their affairs, even if they were to heal, they are not obligated to pay back the loan, because whoever lent them money it is as if he placed it on the horn of a deer (knowing that the deer would run and the money would therefore be lost). And even if he lent [a *shoteh*] money, and was told that the *shoteh* took the money and bought food with it [i.e. used it sensibly, attesting to having understanding], the *shoteh* is still exempt; this is considered a conscious loss [on behalf of the lender]. Needless to say one cannot make them swear that when they heal they will pay it back [...] And the words of Rabbi Moshe [?] prove that the *shoteh* is not eligible to receive a loan. (Sefer HaTeruma, Shaar 36) – Spain, 12th – 13th century.

Part 2:

This part is meant to assist participants in beginning to form a theology of mental illness. The materials provided here consist of quotes from S. Y. Agnon's novella *A Simple Story*, as well as segments from interviews conducted with three reform Rabbis who have been working in congregations for 15-25 years.

Ideally, the discussions in this part should take place after reading Agnon's *A Simple Story*, or the chapter in this thesis about it, so it can serve as the basis for the discussion. Even though we will not be discussing the story directly here, many of the insights gained through examining Agnon's model of depicting mental illness can be of aid to us in constructing a theology. Thus, for example, a close reading of the story reveals that mental illness is presented as an understandable escape from a deeply flawed society. Mental illness thus functions as form of critique of society, insofar as a good (albeit weak and passive) man cannot live sanely within the confines of that family and community; it is an illness that is a direct consequence of familial and societal mistreatment of those within its midst. In what way then could these insights inform my theology as a religious professional? The following segment, however, was planned with the assumption participants are not familiar with the story.

Note though, that the main goal of this segment is to spark meaningful conversation, from which theology can begin to form, the first steps of which consist of questioning, or rather, of examining what kinds of questions we *should* ask ourselves. Some of the questions presented here appear to be concerned with a sociology of mental illness rather than with a theology of mental illness. All questions, however, are meant to be considered in a way that will conceptualize the way we live, think, and construct meaning of the world through a "God-like" lens (whatever the term may mean to different people), and as such are religious questions. Answers may or may not ensue, but the exploration will be underway.

Core Concept:

A theology of mental-illness is a necessity for religious leaders.

Essential Questions:

- What do I believe to be the place of the mentally ill within society?
- What space do they occupy religiously?
- What is my role as a religious leader in regard to the mentally ill?
- What is the role of the community I lead in regard to the mentally ill?
- What does "help" mean in a religious context?
- What is the role of shame in the religious story of mental illness?

Plan:

Following are four segments that serve as mini-units contextually, each one to be discussed by a group (no more than 7 people per group).

Participants are to read the texts and attempt to answer the questions following them, relying both on the texts and their own experience.

Time frame: each segment could be discussed for 30 minutes to an hour, depending on the participants' level of cooperation.

Important: The questions in this segment are intentionally open ended and could be taken in many directions. Encourage participants to take notes on the texts as they are reading them, and to notice initial reactions (agree, disagree etc.) before attempting to answer the questions.

1. What is within the realm of the Religious? Or "who cures crazy people"?

From: *A Simple Story* by Agnon

Another patient of the doctor's, who came from a long line of Hasidic holy men, was named Rabbi Zanvil. His father and brothers were well-known rabbis, and he too had attracted a camp of followers; yet being by nature an unworldly recluse, he had refused all their honors, stopped eating and drinking, and begun speaking of himself as though he were already dead and no longer living in this world. Indeed, anyone coming to ask him for his blessing was accused by him of practicing necromancy. This, however, only attracted more disciples, who were convinced that such abnegation was for the greater glory of God. After giving up food and drink Rabbi Zanvil next renounced sex with his wife and all the other commandments, citing the statement in the tractate of Niddah that the dead are absolved of their debts. At first, when rumors started that he was not in his right mind, attempts were made to hush the matter up; but as his case seemed more and more hopeless, he was brought to Dr. Langsam in the end. Of course, he might just as well have been taken to Rabbi Shloymeleh of Sassov, the son of the tzaddik of Olesk, a great wonder-worker like his father and every bit as good an exorcist. Rabbi Zanvil's father, however, had been feuding with Rabbi Shloymeleh for years and wanted his son to see a proper doctor in order to prove to the world that doctors could cure crazy people too (p. 185).

"Spiritual Counseling I think by and large is intended for people who do not have mental illnesses, they may have depressive episodes, they may have other things, but by and large Rabbis are not properly equipped and should *know* that they're not properly equipped, to deal with real pathologies [...] Spiritual Counseling is for the average congregant who is coming to you to deal with bereavement, to deal with marital troubles, to deal with mid-life crisis, to deal with the question of why I'm here – the emptiness, with adulteries, to deal with angry children... that we should be here for." (Congregational Rabbi)

Discussion Questions:

- What do you believe to be the role of religious leadership in regard to the mentally ill both within and outside a congregational framework?
- Does and should religion play a role in an individual's struggle with mental illness, or – since we tend to think in terms of illness and disease and of health and sickness, – is mental health something that should be left to the physicians and mental health professionals?
- What is the model by which we, as religious leaders, conceive of ourselves in relation to

the mentally ill? Are we Exorcists? Healers? Counselors? Comforters?

- Should we hope for healing, or for something completely different? (e.g. profound insight that can only come from having experienced illness)
- Is there a difference between the role you would like to play as a religious leader in regard to mental illness, and the role assigned to you by technical limitations (existing expectations, lack of proper training, etc)?

2. What will we see? Who are the "they" – the mentally ill? What could it mean?

From: *A Simple Story* by Agnon

A strange man that was. He never seemed to enjoy life much, but he never complained to anyone either, and in fact he had little use for people. I don't think he had a real friend in the world. All he cared about were the pigeons he kept on his roof. You should have seen with what love he took care of them. Once, while I was watching him climb a ladder to bring them food and water, one of them fell off the roof. I felt sorry for the old man having to climb all the way back down for it, and so I stood there waiting for him to ask me to bring it up to him. Well, he didn't, so finally I asked him if he'd like me to. He didn't even bother to answer. He just looked at me, climbed down the ladder, picked up the bird, smoothed out its feathers, and climbed back up with it (p. 103).

"We have a member of the congregation who is definitely suffering from a pretty severe form of paranoid dementia. She is aging, she is already in her upper 80's, the family doesn't want to deal with it, I've actually been on the phone with her physician, and what do you do? I mean, it's a true paranoia, for a period of time we tried to service the needs of our extremely senior population, here in the synagogue we actually had a half-day a week clinical social worker, we lost half of that population and we've also lost our social worker, but my job with that congregant was not to try to convince her that her delusions were delusions; she really believed that the congregation was saying things about the sexual escapades of an 88 year old woman. And talking behind her back..." (Congregational Rabbi)

"One of our local vagrants passer-bys who is not Jewish, he's clearly someone who's schizophrenic, he takes meds, I've known him since I came, he's been thrown out of every church and synagogue in the neighborhood, I am the only clergy member who is consistently nice and polite to him. Firm, but polite. On the theory that you never know what a 'lomed vov'nik' looks like, and we should be polite to people. I

can always tell when he's on his meds or not on his meds. We have a guard who occasionally lets him in if I okay it, and generally tells him he's not welcome, politely if I have my way, unless it's service time in which case anyone can walk into this building for services if they're properly attired and well behaved. A lot of people don't like that and wish I would say something different than that... [They think] that he's a trouble-maker and that he has no business being here and shouldn't be allowed in.

We had a guy for the last two weeks, sort of strangely attired, heavy winter coat when it's kind of moderate out, unshaven, tall fellow, he's Jewish, I know him, I think his wife passed away from cancer a number of years ago; sort of the sort of person you would slide away from on the pew if he sat down next to you." (Congregational Rabbi)

Discussion Questions:

- As a spiritual leader, how do I see the mentally ill theologically?
- What is my religious obligation towards them?
- How does the fact of their illness affect my being? How does it change me?
- What does my choice of language say about my theological stance?
- How do I act, and are my actions informed by my theology?
- How do I theologize my response? For example, if I act with reticence or reluctance, how do I understand my response in a larger context, as part of a religious story?

3. What about the "we"? Should there be a communal response to mental illness?

From: *A Simple Story* by Agnon:

Often when Hirshl was sitting there [in the sanatorium] he saw an old man scratching at the ground and talking to himself. This was Pinchas Hartelben, who had owned a house and property in Borislav, where one night he had seen the earth open up and swallow his wife and children. Not knowing that this land, which seemed accursed like Sodom and Gomorrah, was in fact floating on underground deposits of oil, he went and sold it for a song to a man who was soon a millionaire, while he himself was left practically indigent. Eventually he took up to wandering from place to place, scrabbling for oil in the dirt with his fingers, and talking to his dead wife and sons, "Just wait," he would tell them. "Soon I'll discover a whole bunch of oil wells and you and I will be rolling in gold." He was already an old man when some people who had pity on him sent him to Dr. Langsam. (p. 184-85)

"[The synagogue] is not a clinic [...] It is a place of refuge, a place of

support, community, the counter culture, the place where ideally if you behave, you won't have as much mental illness because a lot of that stuff is the result of anomie and lack of relationship, loneliness. Why do people get lonely? They don't have people to relate to. I mean in my own life, times that I've been depressed... lack of spiritual [...] relationships, lack of purpose, lack of people [who] care, so if we really are to fulfill our Utopian vision of what the synagogue should be, which we certainly, I don't think, *are*, but we're trying to work to that, then you'd have less mental illness." (Congregational Rabbi)

"In all the great three monotheistic faiths, your responsibility starts – yourself, your family, clan, community. That's how it works. Sometimes the synagogue wants to substitute for the lack of what the family's doing. Families today are – there's heavy denial, people don't want to hear things, and they're overwhelmed. So what they do is they say – unless I hear something – and sometimes the synagogue wants to step in and repair the breach, and it's always a positive impulse but it's not always the right step because we cannot possibly become a substitute for family. It is impossible. On a structural level synagogue is a community it's not a family, they do different things, they operate differently. What do you do if the family has abandoned part of its responsibility? God help you. [...]

As much as we love our people and might be tempted to [serve as substitute for negligent families], it would be the wrong choice, methodologically and in every other way. Which is tough, because – you can't fix everything that's broken. And that recognition is a very important part for any of the helping profession, is recognizing we are here to help but we may not actually be able to actually fix, even when we can see what it is that needs to be done to make the fix, cause we're not cause we're not other people, we're ourselves." (Congregational Rabbi)

"We have a part time social worker, we work in partnership – we've developed something with a caring committee, we have partnership with [Jewish Family Services], for 4 hours a week we have a social worker, we get a grant from the state actually; a part comes out of our pocket, and a part comes out of the [Jewish Family Services]. So we put the social worker here, and the theory is that people are more likely to present here than going to a clinic [...] I think there have been a number of situations where people have come here who may not have gone to clinics. The other advantage to the congregants is that it's free, they get free therapy. Service of the synagogue. And she's got a case load, she comes in, she's busy all four hours [...] The maximum, if I

had all the money in the world, I'd have a social worker here full time. To do groups, I mean there's an infinite amount of outreach that can be done, visitation, bereavement groups, family groups, it'd be great to have a group worker and also someone who could do clinical work." (Congregational Rabbi)

Discussion Questions:

- What is the spiritual commitment of a given community to its members (however they may be defined)?
- If social workers "do" groups, what do we as religious communities do?
- What do we believe to be the role of the "us" in relating to the mentally ill?
- Do we believe we have a religious responsibility as leaders to urge our communities to involve themselves in taking care of mentally ill members?
- In an era where maintaining proper boundaries is of utmost importance, and with the understanding that we are not therapists, how do we understand our religious commitment to help the mentally ill? What exactly would "help" mean?
- What are the boundaries, existing and ideal, that separate us from and unite us with others in helping professions?

4. What is the impact of shame? Or – what will people say?

From: *A Simple Story* by Agnon:

Of all life's misfortunes, madness may have been the only one to which the afflicted person was himself insensible; to his family and relations, however, the blow was doubly cruel, for not only were other troubles gotten over and forgotten while this one was passed down from one generation to the next, but, while other chronic patients could be put in special wards run by chronic idlers, nobody wanted to care for a madman: on the contrary, people either fled at the sight of him or else tormented him and turned him into a bogeyman to scare their children. (p. 18-19)
[...]

Boruch Meir and Tsirl returned disconsolately to Szybusz. As long as they were occupied with Hirshl [their son], there had been no time to feel their disgrace; now that they were homeward bound without him, the full extent of it began to dawn on them [...]

Boruch Meir and Tsirl crept abjectly into town. Every street and streetcorner bespoke their ignominy. Here Hirshl had been led home from the forest. Here he had crowed like a rooster. Here he had quacked like a duck. Here he had croaked like a frog. (p. 179)

"I have a young man I'm working with, he has – functionally – a birth

defect, but it has an impact on his mental functioning. You know, that's not something we announce out loud, and it's not... you wouldn't say he's... he's not a kid you'd identify as mentally [ill] but it does affect how he processes the environment he's in. These are things that people obviously are very reluctant – what parent wants to have that information shared at a staff meeting of the synagogue? I don't discuss that. This is information between me and the family. So when I talk with the people who tutor the youngster I have to then translate the information into a useful form and also withhold the information that's unnecessary..." (Congregational Rabbi)

"Would the community accept someone who's bipolar, or will someone who's bipolar feel comfortable being part of the community and sharing their bipolarity? They'd probably be stigmatized. Yeah. [...] I know who's bipolar, there's some members of the congregation who are bipolar, but I know that, I don't think they know that out there. [Only in that it] comes out is in their behavior in the community. Which... makes it... rocky.

And then parents who have kids who've been diagnosed as bipolar and they're... what role the synagogue plays in supporting them or in just allowing them to share their story [?] We have one family, their child was just diagnosed with this; college kid, and he's under psychiatric care [...] but at least, you know, the parents were able to share this, talk about it.

Q: With you, or [with other members of the community]?–

A: With me." (Congregational Rabbi)

Discussion Questions:

- What place does shame occupy within our theological framing of mental illness?
- What place should *shame* occupy?
- The stigma with regard to mental illness is powerfully negative. Do we believe we have a role, as religious leaders, in changing that stigma?
- Should we encourage individuals who suffer from mental illness and family members to speak out, in hope of helping others?

REFLECTION

תני ר' שמעון בן יוחאי: בשעה שעמדו ישראל על הר סיני ואמרו כל
 אשר דבר ה' נעשה ונשמע (שמות כד), באותה שעה לא [היו] בהן [...] שוטים.

In the moment when Israel stood on Mount Sinai and said,
 "All that God has spoken we will do and we will
 hear" (Exodus 24:7), in that moment there were among them
 [...] no *shotim*.¹

This thesis emerged out of a desire to better understand mental illness in a Jewish context. Initially, I wanted to see, as a person living in the era of psychopharmacology, whether Rabbinic sources could help me conceptualize mental illness in a way that modern psychiatry could not. After spending a while delving into the Rabbinic material, I was left with more questions than answers on the topic and felt that I needed another textual perspective, albeit an inherently different one, which would balance my point of view. I therefore set out to do a close reading of S.Y. Agnon's *סיפור פשוט* - *a Simple Story*, specifically through the lens of mental illness.

I now find it strangely difficult to reflect on this thesis, which may be due to the fact that I did not find what I expected to find. To be sure, the Rabbinic sources provided me with an impressive model of dealing with the mentally ill – a model set up to keep the mentally ill within society, to safe-guard them and ensure their rights, and, when needed, to protect society from them. The law attempts to strike a balance between protecting the rights of *shotim* and protecting society from *shotim*, and while I find that balance to be maintained for the most part, I am also struck by some very troubling implications of the law as reflected through this particular legal perspective of the Rishonim.

Before referring to those, it should be noted that the term *shoteh* emerged in my research as describing those individuals who are severely incapacitated by mental illness,

¹ ויקרא רבה (וילנא) פרשה יח ד"ה ד תני ר' שמעון בן יוחאי: בשעה שעמדו ישראל על הר סיני ואמרו נשמע ונעשה (שמות כד) כל אשר דבר ה' נעשה ונשמע, באותה שעה לא היה בהן זב ומצורע.

תני ר' שמעון בן יוחאי: בשעה שעמדו ישראל על הר סיני ואמרו נשמע ונעשה (שמות כד) כל אשר דבר ה' נעשה ונשמע, באותה שעה לא היה בהן זב ומצורע ולא חינוך ולא סומים ולא אילמים ולא שוטים.

and thus does not always correspond with our modern-day definition of mental illness which includes "milder" illnesses (milder forms of depression, for example). As such, I find *shoteh* to be only partially relevant to us as a category, and while it is tempting to use the term *shoteh* for any case involving mental illness, or to refer to mental illness as *shtut*, it would be inaccurate to do so.

I found the most challenging aspect of the legal model to be directly connected to its greatest strength, which is the very fact of it being an inclusive model, a model for living *within* society, and not outside of it (i.e. institutionalized) as we are accustomed to thinking of today in regard to severely mentally ill patients. The problem is that in order for inclusivity of the mentally ill to be achieved, it is also necessary to make sure that no harm will be done to them, nor to others, which can only be done by keeping the *shotim* under tight control. In other words, *shotim* are completely devoid of agency, conceived of as perpetual children in the eyes of the law. This may be very practical when it comes to financial affairs, for example, over which a guardian is to be appointed. It may even be admirable as piece of legislation in being able to make sure no one will be able to take advantage of a *shoteh*, and that a *shoteh* will not fall victim to his own inability to apply good judgment. But it is also problematic in more ways than one. I will not discuss issues of the moral right of a given society to curb the rights of some of its members, as my point of view is clearly influenced by living in an era so profoundly different from the Middle Ages that it would make such a discussion completely moot. I am, however, interested in raising a point which has to do with the importance agency has for healing.

I am recalling specifically the summer I spent as a chaplain in the psychiatric wards of Bellevue hospital. Each and every one of the patients in those wards was severely incapacitated by mental illness; all would certainly qualify as *shotim* if the legal definition was to be applied to them. What comes to mind most clearly is the one event of the day

which was absolutely sacred for these people: the arrival of Candy Man. Candy Man was the name they applied to the young vendor who would come in pushing a trolley packed with all various kinds of snacks. Every day, the nurses would unlock the doors of the ward, and in would come the most important person in the world. It was impossible to miss the enthusiasm and excitement that followed this daily ritual, or the absolute importance with which it was treated. Every single person would line up to buy something from Candy Man, and most notably, some patients who had already bought something for themselves, would give 25 or 50 cents out of their own pocket just so they could stand in line and get something, anything, just so they could participate in the act of purchasing. From these incidents I learned how important it is to be able to maintain some sense of "real" personhood for those individuals shut away in psychiatric wards, already denied so much because of their debilitating illness and subsequent lock-up. The act of purchasing and then owning that which was desired was so important precisely because it meant that these people still had agency, and agency denotes humanity.

From this little incident I hope to illustrate the difficulty which stems from a close examination of the legal sources of the *Rishonim*, given that they present us with a model in which *shotim* cannot buy or sell, are not eligible for loans, cannot marry or divorce, and most important for our purposes – are exempt from *mitzvot*. While it is understandable and even justifiable that the law limits *shotim's* financial agency thus, or that they should not be considered capable of consenting to contract a marriage, nevertheless, the "blanket category" of *shtut* means that they will not be able, as we've seen, to knead matzah dough, or to perform *shkhitah*, not would they be able by extension (we can assume), to light shabbat candles, be *shlichei tzibbur*, or even have an *aliyah*. They *could*, of course perform all of the above, but according to the black letter of the law, their acts would not count as religious acts. It could be argued therefore, that while the Rabbinic model thus denies

agency from *Shotim* in order to protect them, it also substantially hinders their healing by “inflicting” upon them further debilitation, making their disability worse than it is.

The essence of Jewishness as reflected through these texts seems so centered around cognition, the Rabbinic model so focused on perfection, academic and ritualistic, that one has to wonder whether, like the midrash quoted above, no room can be found for those who are emotionally/mentally debilitated: whether, aside from being pitied and paternalized, there is no other way in which they can be apprehended or understood. They are simply “not there”, as the midrash would have us think, existing non-entities. They are אדם, the gemara tells us. They are even אדם מישראל, the Rambam adds. But what does that mean? What does it feel like when denied all those rights and responsibilities that make one “a person of Israel”? On the actual experience of being mentally ill, the legal sources say very little.

In order to discover more about the actual experience of mental illness then, I turned to Agnon's *סיפור פשוט*, which was very helpful to me in that it truly breathed life into the rigid legal categories making them relevant and understandable. I finally understood, for example, when the main character in the story, Hirshl, expresses a wish to sleep forever, why it is that the Rabbis define a *shoteh* (among other definitions) as “one who sleeps in the cemetery.” To be sure, I thought initially, that is a strange act, but does it really denote insanity? Only after reading Agnon did I understand the symbolic importance of this act as marking an individual's gradual disengagement from the world of the living, so much so, that he wishes to join the world of the dead.

Agnon certainly satisfied my “why” – detailing Hirshl's world in such a way that descent into mental illness almost seems like a relief from the constraints of life, as well as the “how” – narrating the inside thoughts and the outside appearances of a mind that

succumbs to mental illness. A fascinating landscape of the dark places in the human soul, Agnon's portrayal of the town of Szybusz and Hirshl within it was tremendously instructive in respect to what it feels like to be a *shoteh* – misunderstood and unheard.

Most notably though, despite the fact that the Jewish model of relating to the *shoteh*² is an inclusive one, Hirshl is sent away, a fortunate thing really, as it is the only thing that will allow him to heal. So while Agnon's novella clearly reads like a critique of a stifling, insensitive society, I wondered at times whether it isn't also a covert critique of the rabbinic model of *shut* and its dangers, since clearly, real inclusiveness of the *shoteh* in this society (and perhaps all societies?) is not possible, and could actually be damaging. Nothing could be worse for Hirshl than to remain in Szybusz, where “nobody want[s] to take care of a madman³,” where he would have been someone people fled from or tormented, a source of embarrassment and shame for his family.

Agnon's novella exposes the crucial role played by shame in the life of *shotim* and all those involved with them, an element which is glaringly missing from the legal material. The gemara does teach us that for the family, having a *shoteh* as one of its members is “a degradation second to none;⁴” but the Rishonic materials do not pick up on this theme nor develop it. Was it a bias that simply did not exist in Jewish families living in the Middle Ages? Highly doubtful. Dealing with shame was not, however, a concern for legal scholars of that period at least in so far as the legal sources in this thesis reflect.

To sum up, the most important thing I learned from the process of researching and writing this thesis, was that what I really needed was not only more information, as I had thought when I drafted my thesis proposal, but rather a system through which I would be able to conceptualize mental illness theologically. The education chapter of this thesis is an

² As reflected by the legal sources

³ S. Y. Agnon, *A Simple Story*, trans. Hillel Halkin (New York: Schocken Books, 1985) 18–19

⁴ תלמוד בבלי מסכת בבא קמא דף פו עמוד ב

initial attempt to tackle that need. I did not find in either of the models I examined – the Rabbinic or the literary – a “ready-made” system which would be adequate to my needs. In that sense this thesis was successful: I now know what I was looking for and what needs to be done in order for me to be able to further continue my exploration of this topic.

I believe that an examination of these two very different models of mental illness stands to benefit all those who serve in positions of religious leadership in the Jewish community. Even if neither of them is a model that is applicable to our needs, one that we can easily adopt and put into practice, still, delving into this type of study expands our purview considerably in that it challenges us to evaluate both our attitude towards mental illness, and the part we as Liberal Jews play in this regard in the chain of Jewish tradition. How we think of, relate, and what we believe about this particular kind of “otherness” among us, will ultimately tell the story of who we are.