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FORWARD

"Know thyself?" "But do not separate yourself from the community?" Philosophy is not your basic team sport. Even postmodernists suspicious of Enlightenment models tend to practice philosophy alone, in the kind of quiet solitude that lets them attend, for long stretches of undisturbed time, to long lines of undisturbed inference. At the same time, as exhibited in our previous issues, these postmodern philosophers tend to write about the virtues of teamwork: "relationality," for example, or "dialogue," "love," or "communities of interpretation." It is not yet clear how these virtues enter the long lines of postmodern inference. Do they enter as premises? As conclusions? Or are these virtues summoned as angels of rescue whenever postmodern-yet-modern argumentation breaks down, or falls short of its goals? The question, in sum, is how communal virtues could and should enter into the practice of postmodern Jewish philosophy.

This was one of the questions raised at the third annual meeting of the Bitnetwork, held last November during the American Academy of Religion annual meeting in Washington. As previewed in the November Newsletter of the Bitnetwork, our discussion topic was "The Semiotics of Money: Reflections on B. Talmud Perek Hazahav" (by Robert Gibbs and Peter Ochs). The Reflections stimulated hearty exchanges among the twenty-five participants including many specialists in Talmudic literature and a plan to continue the exchanges next year. Among the general questions generated by the session were: how does Talmudic study contribute to the practice of postmodern Jewish philosophy (are there models for this practice among the interpretive and dialogic methods of Talmudic study?) How do logical and philosophic models emerge from or contribute to Talmudic study (is their use always a priori or reductive, or

does postmodern Jewish philosophy offer procedures for non-reductive study of general models?)? are any of the methods of contemporary rabbinic scholarship already in dialogue with any of the methods of postmodern Jewish philosophy? As a means of responding to these and related questions, we introduce in this issue a new section of the Bitnetwork: Talmud and Postmodern Jewish Philosophy. Our first topic, "Framing Women/Constructing Exile," is a study of b. Gittin 34b-35b by Aryeh Cohen of Brandeis University. Cohen's essay will also be the topic of next year's annual meeting of the Bitnetwork (to be held in November during the 1994 Annual Meeting of the American Academy of Religion in Chicago). So that the essay will provide an occasion for communal as well as quiet study, we hope you will read it in the context of re-reading the sugya in Gittin and of preparing your own brief responses or commentaries. Please send your responses or additional commentaries to us by July 15, for inclusion in Vol 3.2 of the Bitnetwork. Our plan for the 1994 annual meeting is for Ayreh to lead us in re-reading the sugya, in light of his essay and of the responses it stimulated.

Among others, we will have to solicit responses from three of our member philosophers who have spent the last year or two studying Talmud in Jerusalem (Jacob Meskin, who returns to the States this summer; Susan Handelman, due back sometime after that; and Steven Kepnes, due back a year later). Their study is itself a philosophic event, whose consequences we need to hear about. Meanwhile, Jerusalem remains also a place of human anguish, stimulus to Adi Ophir's commentaries on politics and evil. Note with what energy and passion, and in what manner, a study of communal virtues enters into his argumentation.

This issue features the following sections:

NEW MEMBERS INTRODUCTIONS.

TALMUD AND POSTMODERN JEWISH PHILOSOPHY: "Framing Women/Constructing Exile," by Aryeh Cohen.

POLITICAL PHILOSOPHY OUT OF ISRAEL: Last edition of Adi Ophir's "Beyond Good: Evil An Outline for a Political Theory of Evil."

FUTURES.

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New Members Introductions:

Kalman Bland: "I am chiefly a medievalist who works in Jewish/Islamic philosophy, Kabbalah, and biblical commentaries. Lately my research has turned toward the topic of medieval Jewish aesthetics, especially with regard to the sense of sight and visual culture, the one our nineteenth-century authorities assured us had no existence. The October 1993 issue of the "Journal of the History of Ideas" published an article on my initial findings. I have taught Judaica at Duke since 1973, and am currently the Director of our Center for Judaic Studies. My Ph.D. was earned at Brandeis; my B.R.E., M.H.L. and "rabbi" were earned at the Jewish Theological Seminary (New York); and my B.S. in Philosophy was earned at Columbia University.

Aryeh Cohen: "I am currently writing my dissertation at Brandeis University. Its tentative title is "Rereading Talmud: Literary Theory and the Interpretation of Sugyot" (the essay in this issue is a part of that

project). I did my BA at Hebrew U. in Philosophy and Jewish Thought. That's where I was introduced to Continental Philosophy. At the same time I was studying at the Hartman Institute and thinking about how to bring Talmud into dialogue with contemporary philosophical discussions without giving it privileged status. These interests converged when I started to read more literary theory and think about Midrash and Talmud within those parameters."

Harvey Forman: "I am a member of Tiger Team Buddhist BBS. The membership here is composed of highly literate individuals, who in addition to strong interests (and practices) in buddhism (many academic buddhist/oriental philosophy lists are being gatewayed here), are also strongly interested in both classical and postmodern philosophers. I am involved with many of the postmodern philosophy lists maintained by Kent Palmer (____) (for a list, send a "lists" command to____). Most of these are now being gatewayed into Tiger Team: the Derrida list, etc."

Kris Lindbeck: "I am a doctoral student in Ancient Judaism at JTS, working on a dissertation on the accounts of Elijah's appearances in the Yerushalmi and the Bavli, with especial emphases on folklore studies, Greco-Roman or Christian parallels and what it all might have 'meant.' I find philosophical approaches to the Talmud fascinating, but the few I have looked at closely are confusing and/or anachronistic. Kadushin is a favorite, but difficult — and is not really writing about Talmud. I look at wider Jewish philosophy and philosophy in general not so much through academic eyes as through the eyes of a person of faith and, as such, I have learned as much or more about my Christian faith through Jewish thinkers, ancient and modern as through Christian ones."

Judd Maltin: "BA 1993, State University at Albany, Philosophy. A fledgeling, hoping for admission to the Hebrew U. at Jerusalem in the 1 yr. visiting scholar program (possibly MA). Spent 1 term at Oxford, Hartford College, and plans to remain in academia. Nothing published. Interests mainly: Praxiology in religious/quasi-religious systems,

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therapeutic value of philosophy, personhood/*menschlichkeit*; and in the role philosophical discourse as therapeutics plays in Tanakh, Talmud, Haggadah, and Kabbalah.”

Ira Stone: “I am a Conservative Rabbi with an interest in theology and philosophy. I am something of a self-taught follower of Levinas and have primarily been teaching Talmud and writing Talmudic ‘readings’ fashioned after Levinas. I have prepared a book manuscript of these readings and have published one of the readings (Kerem Fall 93). I will be a visiting faculty member at the Jewish Theological Seminary next spring, teaching a course called ‘The Revolt Against Modernism.’ It will focus on the reaction against modernism implicit in Rosenzweig, Scholem and Leo Strauss(!). I have also published articles, in Conservative Judaism and Judaism, on issues not directly connected to postmodern concerns. Last year my first book, *Seeking The Path To Life: Theological Meditations*, was published by Jewish Lights.”

Peter Temes: “I teach writing about social and ethical issues at Harvard University and just completed a doctorate in English and American literature at Columbia, with a dissertation on ‘Martin Luther King, Black Power, and the Idea of History.’ I’m particularly interested in practical ethics and Just War philosophy.”

Talmud and Postmodern Jewish Philosophy:

Aryeh Cohen, Brandeis University

An abridgement of A. Cohen’s original essay. As noted earlier, readers are asked to read the essay in the context of re-reading the sugya in Gittin and of preparing their own responses or commentaries. Responses will be presented in Vol 3.2 of the Bitnetwork and re-discussed at our Bitnetwork session at the 1994 Annual Meeting of the American Academy of Religion in Chicago.

Here is an exercise in analyzing a sugya b. Gittin 34b-35b within a number of different critical frameworks. The frameworks should serve to atomize moments of the sugya in order to arrest its linear progression, to force the reader into other channels or textual webs, and thus to elicit new meanings. One goal of this reading is to problematize the notion of Gemara as commentary to the Mishnah, and perhaps of commentary in general. This sugya in particular, and sugyot in general, appear to have a different agenda than the Mishnah that they are purporting to explain. A rhetoric of explanation opens up the Mishnah to concerns that are those of the sugya and not necessarily those of the Mishnah. Another goal of this reading is to problematize the source critical methodology.... I will question the idea that one can determine the layering and therefore the historical construction of a sugya. ... I will argue, further, on behalf of a literary analysis that sees tensions in a sugya as productive of meaning, rather than as the result of misinterpretation. On the positive side, finally, I will argue that it is the nature of the sugya as a literary document ... that is central to understanding what the sugya means. The defining characteristic of the sugya is thus, not its linear progression, but rather its existence in a literary world and the literary connections that tie it to that world (its web).

The Sugya: Bavli Gittin 34b-35b

Mishnah

1. A widow has no power to recover [her Ketubah] from the property of orphans save on taking an oath.
2. But they refrained from imposing an oath on her.
3. Rabban Shimon ben Gamliel made a regulation that she should take any vow which the orphans chose to impose on her and so recover her Ketubah.

Gemara

4. Why is this rule [about an oath] laid down with reference to a widow, seeing that it applies to everybody?

5. Since it is an established rule that “one who seeks to recover payment from the property of orphans cannot recover save on taking an oath”.
6. There is a special reason for the mention of a widow.
7. For it might occur to you to say that [in order to render marriage more attractive the Rabbis made a concession in her case].
8. We are told [therefore that this is not so].
9. They refrained from imposing an oath on her.
10. What was the reason [of this refusal]?
11. Shall we say it is because of that which is attributed to R. Kahana?
12. For R. Kahana said, and others say that R. Yehuda said in the name of Rab:
13. A ma’aseh of a certain man in a year of drought, who deposited a dinar of gold with a widow.
14. She put it in a jar of flour, and she baked it in a loaf, and gave it to a poor person.
15. In course of time the owner of the dinar returned came and said to her, “Give me my dinar.”
16. She said to him: “May the poison of death have benefit from one of the sons of this woman if I have derived any benefit for myself from your dinar.
17. They said: Not many days passed before one of her sons died.
18. When the Sages heard of the incident they remarked:
19. If such is the fate of one who swears truly, so much the more so for on who swears falsely.
20. What was the reason [that she was punished]? Because she had derived advantage from the place of the dinar.
21. And what does it mean “one who swears truly”? One who might be said to have sworn truly.
22. If that is the reason [why the Rabbis refrained from imposing an oath], why is this rule laid down with reference to a widow; it should apply to a divorced woman also.
23. Why has R. Zera said in the name of Samuel: This rule applies only to a widow, but to a divorced woman an oath is administered.

24. There is a special reason in the case of a widow, because she finds a justification for herself on account of the trouble she has taken on behalf of the orphans.

25. Yehuda said in the name of R. Yirmiah b. Abba: Rab and Samuel both stated:

26. This rule applied only [to an oath imposed] in the Beth Din, but outside the Beth din an oath may be imposed on a widow.

27. Is this so? Is it not a fact that Rab would not enforce payment of a ketubah [by orphans] to a widow? This is a difficulty.

28. This is the version given in Sura. This is the version given in Nehardea:

29. Yehuda said in the name of Samuel: This rule applied only [to an oath imposed] in the Beth Din, but outside the Beth din an oath may be imposed on a widow.

30. And Rab said: Even outside the Beth din an oath may not be imposed on her.

31. Rab is following his own reasoning, for Rab would not enforce payment of a ketubah to a widow.

32. Why did he not make her take a vow and so let her recover?

33. In the time of Rab, vows were treated lightly.

34. A certain woman came before R. Huna [to enforce payment of her ketubah].

35. He said to her: "What can I do for you for Rab would not enforce payment of a ketubah to a widow?"

36. She said to him: Is not the only reason the fear that perhaps I have already received part of my ketubah?

37. By the Lord of Hosts [I swear that] I have not received anything from my ketubah.

38. Huna said: Rab admits [that we enforce payment] for one who jumps forward [and takes the oath of her own accord].

39. A certain woman came before Rabba son of R. Huna [to enforce payment of her ketubah].

40. He said to her: "What can I do for you for Rab would not enforce payment of a ketubah to a widow,

41. and my father would also not enforce payment of a ketubah to a widow?"

42. She said to him: At least grant me maintenance/

43. He said: You are not entitled to maintenance either,

44. since R. Yehuda has said in the name of Samuel: If a woman claims her ketubah in the Beth din, she has no [claim to] maintenance.

45. She said to him: Turn his seat over! He gives me [the worst of] both authorities.

46. They turned his seat over and put it straight again, but even so he did not escape an illness.

47. Yehuda said to R. Yirmiah Bira'ah:

48. Impose a vow on her in the Beth din, and administer an oath to her outside the Beth din, and see that the report reaches my ears, since I desire to make this a precedent.

49. [The text above stated:] R. Zera said in the name of Samuel: This rule applies only to a widow, but to a divorced woman an oath is administered.

50. Cannot then a divorced woman recover her ketubah on [merely] making a vow? Was not [a communication] sent from there:

51. "So-and-so the daughter of So-and so received a Get from the hand of Aha b. Hedia who is also known as Ayah Mari,

52. and took vow binding herself to abstain from all produce whatsoever if she should be found to have received of her ketubah anything besides

53. a blanket, a book of the Psalms, a copy of Job and a much worn copy of Proverbs,

54. and we valued them at five maneh. When she presents herself to you, empower her to collect the rest."

55. Ashi said: The Get in that case was one given by a brother-in-law.

Sugyaetics: I employ three critical frameworks in reading this sugya: rhetorical, structural and intertextual literary analyses. Joined together, these three produce what I call "Sugyaetics": a study of the ways in which

the sugya “works,” what it “does” and how. It is the particular poetics of the sugya.

Following Stanley Fish, rhetorical literary analysis asks, “What do parts of the sugya do?” This question is asked especially at those points in the sugya when “ambiguities” or “ungrammaticalities” in the text are rendered more acute, rather than ameliorated by the interpretive tradition (as represented, for example, by Rashi and Tosafot). The question is answered by describing how various rhetorical moves inform one’s reading of the sugya. Structural literary analysis examines relations between parts of the sugya, in an attempt to move beyond the rhetoric of the linear argument. Intertextual literary analysis examines way in which this sugya is informed by other texts, or cultural constructs, or presupposes those constructions.

All three analyses are held together by the idea of sugya as narrative. There are three ways in which the sugya is narrative. First, it presents itself as having a beginning and an end, with a dialogical structure in which an answer follows a question. . . Second, the sugya is part of a number of greater or lesser cultural narratives. The greatest of these is the narrative of origins within which the laws and the life presumably governed by those laws make sense. In order for this moment of legal “history” to make sense it must be part of the larger historical narrative. The sugya is also in the matrix of other less sweeping cultural stories about men, women and their relation to institutions of law. As the late legal theorist Robert Cover said:

“No set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning. For every constitution there is an epic, for each decalogue a scripture. Once understood in the context of the narratives that give it meaning, law becomes not merely a system of rules to be observed, but a world in which we live.”

Third, the sugya generates narratives, as illustrated in the early and medieval commentaries on the Talmud. The relationships prescribed or constructed in the sugya later become part of the cultural baggage of the Halakhic tradition. The anonymous layer of the sugya (the *stam*) is the site of the tensions between conflicting interpretations of the Mishnah. One narrative strand of the sugya consists of *lo shanu* statements in our sugya, the apodictic statements of Rav and Shmuel. The other strand consists of *maasim*. The two strands exhibit conflicting ideas about the fragility of authority.

According to the *maasim*, the rabbis are reticent to move outside the limitations of an authoritative tradition; women endanger the institutions of law, and men are the law's conservative guardians. According to the *lo shanu* statements, the rabbis are freer to interpret the law innovatively. This whole discussion is embedded in the cultural narrative of exile. they refrained from imposing an oath on her. (Gemara v.9-24)

The Mishnah's declaration, "they refrained from imposing an oath on her," can be interpreted in two ways: either passively (they were restrained from administering . . . by some unidentified outside force), or actively (they stopped or no longer administered). The initial question of the sugya assumes the latter. This assumption frames the subsequent *ma'asim* as an answer to a question. The question is: what was it that brought the Rabbis to stop administering the oath to widows? The answer is that women's swearing is dangerous. What is the connection between the *ma'aseh* and the Mishnaic proclamation? A glance at the Palestinian Talmud's discussion of our Mishnah supplies an etiology of the idea. The P.T. begins its sugya with the following midrash:

At first the women would swear falsely and bury their sons, as it says: to no purpose did I smite your sons (Jer. 2:30).

The midrashic rereading of "to no purpose" (*l'shav*) as "because of oaths of no purpose (*shevuoth shav*)" is the kernel of the *ma'asim* in b. Gittin

35a. All the characters that will participate in all the ma'asim are already present in this one line: a)the women; b)the false oaths; c)the male victims. These parts become full blown characters in the ma'aseh. That this idea of women killing by oath is a prominent force in our sugya is evidenced by its relationship not only to the first ma'aseh but also to the third. This might be diagrammed as follows:

Women would swear– A widow (13)– A certain woman came...(38) and bury– May the poison of death... (16)–turn his seat over (44) their sons– one of her sons (11)– Rabba son of R. Huna (45)

While this might explain the “origin” of the idea (or possibly the trope) of dangerous swearing women, the unattributed (or stammatic) discussion following the ma'aseh (20-24) points out clearly that its connection with our mishnah is tenuous at best. The sages' statement in line 19 clears the widow of any charge of wrongdoing. This charge however is brought back and strengthened in lines 20-24. The impact of line 24 (“because she finds a justification for herself”) is to a large extent dependent on the idea of “One who might be said to have sworn truly (21).”

Sugyaetics: I claimed above that the linear progression of the sugya is not its defining characteristic. The textuality of the sugya, its existence in a literary world, and the literary connections that tie it to that world pull the reader in many different directions. I want to pursue this in two different directions: by analyzing the internal relationships of the “parts” of the sugya and analyzing the sugya's relations to other texts.

There are two types of statement that are identifiable elements of the sugya. One is the ma'aseh, and the other is the lo shanu (“this rule applies only”). There are three of each type, although two of the lo shanu comments are ostensibly “variants” of the same comment. The relation between two of the ma'asim has already been mentioned above in passing. It would be worth pointing out the extent of the structural and linguistic similarities between all three ma'asim. First the first and the third:

I

- a) A ma'aseh of a certain man in a year of drought, who deposited a dinar of gold with a widow.
- b) She put it in a jar of flour, and she baked it in a loaf, and gave it to a poor person.
- c) In course of time the owner of the dinar returned and said to her, "Give me my dinar."
- d) She said to him: "May the poison of death have benefit from one of the sons of this woman if I have derived any benefit for myself from your dinar.
- e) They said: Not many days passed before one of her sons died.

III

- a) A certain woman came before Rabba son of R. Huna [to enforce payment of her ketubah]. and my father would also not enforce payment of a ketubah to a widow?"
- c) She said to him: Give me maintenance. He said: You are not entitled to maintenance either, since R. Yehuda has said in the name of Samuel: If a woman claims her ketubah in the Beth din, she has no [claim to] maintenance.
- d) She said to him: Turn his seat over! He gives me [the worst of] both authorities.
- e) They turned his seat over and put it straight again, but even so he did not escape an illness.

The structural similarities between the two are:

- b) legitimate grounds for compensation (i.e. the story)
- c) demand for compensation
- d) introduction of danger as a result of contradictory "legitimate" claims
- e) dangerous outcome

In addition, both involve a man and a woman (a), but, despite the changing of some parts of their roles, it is the woman who inflicts harm through her words. The relationship between the second and third ma'asim is also obvious. Both have the same introduction (ll. 33 & 38), and the same opening line of dialogue. The only differences are due to their occurring one generation after another. In both ma'asim this opening is followed by a confrontation, and while in the second ma'aseh the woman gets what she demands and there is no apparent danger to the men she only achieves her end by virtue of circumventing the proper channels. The woman's response in the second ma'aseh (l. 36) also recalls the woman's response in the first (l.15). The context of the other two ma'asim imply that there is a danger to this one too. This is further supported by the use of the phrase chaye hashem tsevaoth by the woman. The danger is that of the woman who demands, who swears, who confronts the institution of law, and who is adamantly certain of her own integrity. This is the danger of a woman's voice.

This particular framing of the ma'asim needs to be contrasted with other attempts to frame them. The Tosafists ad locum juxtapose the first ma'aseh with statements from b. Shavuot 26a and b. Nedarim 25b that pardon a person who inadvertently swears falsely. This would seem to cover our case too. For the Tosafists this is a problem that could not be reconciled by a source theory, since they saw the whole Talmud as one interconnected work. They claim to overcome this difficulty by harmonizing the various sources. Their specific answer is unimportant to us except insofar as it regards each piece of the sugya as autonomous and thus needing reconciliation with the rest of Talmud. Nevertheless, the Tosafists' question seems to support our framing of the ma'aseh, even if their answer doesn't. They quote the following ma'aseh from b. Shavuot 26a:

Someone said: a person (adam) utters an oath this excludes one who is coerced. How is this? It is like [the case of] Rav Kahana and Rav Asi. When they left Rav, one said "I swear that Rav said such" ... And the other said "I swear that Rav said such" ... When they went before Rav he agreed with

one of them. The other said to him (Rav) "And I have sworn falsely." He (Rav) said "Your heart coerced you."

The Tosafists point out that the circumstances here are closely analogous to the ones in our *ma'aseh* (Git 35a). The result however is radically different. There is no imputation of guilt at all and there is no discussion of cosmic punishment wrought by their swearing. Lieberman and Halivni see the *ma'aseh* in Gittin as an example of the principle articulated in p. Shavuot 6:5 (37a), Leviticus Rabbah 6:3 (ed. Margalioth p.135), and Pesikta Rabati (ed. Ish Shalom) 132b: "Whether innocent or guilty do not resort to an oath." They then claim that the Bavli did not accede to this principle and therefore had to resort to a misreading of the *ma'aseh* (lines 20-21) in order to claim that she actually did swear falsely. All three of these sources append the saying (as a saying) to similar versions of a *ma'aseh* that is structurally related to ours. The other *ma'aseh* involves a woman who has visited a woman friend of hers, and while there she dropped the three dinars that she had wrapped in her belt. They fall into loafs of bread that are to be baked. When she discovers her loss (upon returning home) she returns to the friend and asks for the dinars. The friend then says: "I have no knowledge of them, if I know anything about them may she [that is: herself] bury her son." Her son then dies. (In the Lev. R. and Pesikta version this recurs three times, and in the Pesikta version her original return to the friend's house is at the urging of her husband.)

Notable similarities between Gittin and the others are the following: a woman, baking bread, unwittingly swears falsely and kills her son(s). The most important similarity is that all the cases involve women. This is, of course, the kernel of the story that is found in the midrash in p. Gittin. Recognizing this fact, one sees that we are not faced with a general principal equally applied to men and women, but, rather, a series of narratives generated by a specific narrative (i.e. the midrash in p. Gittin) about women's behavior in relation to oaths (they lie, it is dangerous). Not acknowledging this, neither Halivni nor Lieberman frame this *ma'aseh* with the other *ma'asim* in the sugya in Gittin. Once we do acknowledge

the significance of the midrash, we can see that the differences between our ma'aseh and the other ma'aseh are as crucial as the similarities between our ma'aseh and the other two in the sugya in Gittin.

One might say that although the two different ma'asim are generated by the same cultural kernel, they do not necessarily share any relationship of influence on each other (nor a causal as opposed to structural relationship with the original kernel). This construction of women as dangerous to law reinforces one of themes of the maasim: the rabbis' reticence to move outside the limits of authority. The theme is illustrated in line 35, "What can I do for you, for Rab would not...?" and lines 40-41: "What can I do for you, for Rab would not . . . ? and my father would also not . . . ?" Each narrative not only describes but also enacts the rabbis' reticence. In contrast, the lo shanu statements of Rav and Shmuel in the manner of lo shanu statements generally minimize the original lemma's prohibition. By interpreting the Mishnah directing, without invoking a line of tradition as justification, these statements not only describe but also enact the rabbis' willingness to interpret innovatively.

Sugyaetics: The relationship between the parts of a sugya are not of interest to me historically, that is, in a search for the proto-sugya or to chart the history of the development of the sugya. I see all these characteristics as essentially literary. They "work off each other" or "inform each other" because of the structural similarities that bring the mind's eye to interpret them. The tradents (the specific sages to whom the traditions are attributed) are not then significant as informants about the intellectual or social life of the time in which they might have lived. They are at times significant because of the literary impact that a quoted statement has, or the play between a tradent and that tradent's role in another part of the sugya.

What, however, determines this construction of women as dangerous? To answer this we must look to the beginning of the sugya. This first part (ll. 4-8) is stammaitic. Scholarship has long since decided that these

“introductory” sugyot, often at the beginning of Tractates and chapters but also at the beginning of specific Mishnah sections are unique. Whether or not they are late additions, they do seem to play the role of “title,” that is, providing a certain framing of subsequent sugyot.

FRAMING WOMEN/CONSTRUCTING EXILE

B Gittin 34b-35a:

Gemara

4. Why [is this rule about an oath] laid down [with reference] to a widow, seeing that it applies to everybody?
5. Since it is an established rule that “one who seeks to recover payment from the property of orphans cannot recover save on taking an oath.”
6. There is a special reason for the mention of a widow.
7. For it might occur to you to say that [in order to render marriage more attractive the Rabbis made a concession in her case].
8. We are told [therefore that this is not so].

What does this part of the sugya do? Justification for the question is given in line 7. *mishum hinah* is proposed as a possible reason for Rabbinic leniency in the case of a widow. The mishnah’s specific wording is construed as precluding this possible misapplication of a ruling. What however is *mishum hinah*? The words mean “because of her grace.” The ambiguity of the English translation points out the strangeness of the phrase in the original. There are two contradictory explanations given by the traditional commentators. Rashi comments, “So that the men will find favor in the eyes of the women, so that the women will marry them.” *mishum hinah* is a precautionary measure taken to insure that women are not dissuaded from marrying for fear that they will be defrauded of their *ketubah* payment wrongfully. There is no comment in the *Tosafot*. However, on 49b the following is attributed to R. Haim: “He explained *mishum hinah* that all would want to marry her . . .” *mishum hinah* is “protective legislation” intended to persuade potential future husbands to

marry a forlorn widow by giving her some money even under questionable circumstances.

It is, of course, impossible to decide between these two interpretations, and this is just the point. The fact that mishum hinah is such an obvious site of conflicting interpretations points to its “ungrammaticality” and that what it does is far different than what it means. In the next line the claim is seemingly dismissed out of hand. However, I would claim that the figure, “For it might occur to you to say. . . . We are told [therefore that this is not so]” is a way of introducing a concept under erasure (to borrow a term from Derrida). This means that introducing mishum hinah creates a textual web within which the rest of the sugya operates. This is what the first five lines do: they set up the connection “widow =hen” without arguing for it. The connection is granted as obvious. What is not granted is merely the appropriateness of applying it in this situation to justify a legal leniency. Although it is not accepted as legal reasoning, it still has rhetorical power. The term hen is a significant one in a discussion of what a good woman is in the Book of Ben Sirah. There is a list (Chap. 26 ed. Kahane p. 54), similar to the one found in Proverbs 31 of the attributes of the “good woman” and the “bad woman”:

13. A wife’s charm (hen) delights her husband, and her skill puts fat on his bones.

14. A silent wife is a gift of the Lord, and there is nothing so precious as a disciplined soul.

15. A modest wife adds charm to charm (hen al hen) and no balance can weigh the value of a chaste soul. []

27. A loud voiced and garrulous wife is regarded as a war trumpet for putting the enemy to flight. (RSV).

The salient point is that a woman of hen is silent (machrishah), unassuming (=modest) (boshah), and passive (=“chaste”) (moshelet b’nafshah). On the other hand, the woman who has a voice is considered a war trumpet for putting the enemy to flight. This is the construction of woman that is

determining the reading in our sugya. This is what was introduced under erasure in line 7-8. These are also the very characteristics that are seen in our sugya as problematic. The women are neither silent (line 16), nor unassuming (41-44) nor passive (36). Within the cultural and textual web formed by both the midrash and Ben Sirah list, it is easy to understand where the danger and fear come from.

Sugyaetics/narrative: Let us take a moment to analyze the literary power of the first ma'aseh. In setting up the narrative, the reader is introduced to three sympathetic characters, in trying times. First, there is a man who deposits a dinar with a widow in/because of the years of drought. The widow herself is caring in both accepting the dinar and giving the bread she baked to a poor person. The poor person then leaves the scene. The fact that the dinar is now with the poor person foretells a tragic ending. The ma'aseh itself "claims" to be about the depositor. The significant action however, is performed by the widow, while the tragedy strikes her son, and we know that the son is stricken by way of the anonymous "they said" (17) rather than the omniscient narrator who tells the rest of the tale. The confrontation is doubly poignant since it not only involves a lack of communication (the answer in line 16 doesn't really answer the question in line 15), but also confounds our expectations of what should happen to a person who feeds the hungry in years of drought. Rather than being rewarded, the widow is tragically punished, and it is the very act of nurturing/feeding that brings about the tragic death. At this point of tragedy, the narration switches from an omniscient narrator to the fallible, anonymous, "they." The sages interpret this change as a result of the widow's oath. The context for the failed expectations and the interpretive function of the fallible narrator (i.e. "they"), might be the narrative's struggle with the fact that proper action does not cause proper reward. The phrase: *shanat b'tseret* (year of drought) (line 13) appears only once in the Hebrew Bible, Jeremiah 17:8:

He shall be like a tree planted by waters, sending forth its roots by a stream: It does not sense the coming of heat, its leaves are ever fresh; It has no care in a year of drought, it does not cease to yield fruit. (NJPS)

This is part of a promise of divine salvation in times of trouble. The contrast with the *ma'aseh* is obvious. Not only does the woman have faith in God, but she also does good in the year of drought by giving bread to the poor. She does not, however, receive divine protection for her goodness; instead, her nurturing brings death.

There is intertextual evidence that the context of the *ma'aseh* is exile. The year of drought in Jeremiah is a metaphor for times of trouble, and exile is the trouble for the Rabbis. The seemingly desperate attempts to interpret this anomalous series of actions (lines 19-23) may all belong to an attempt to retell the community's narrative of origins, within which there is a coherent line of authority and of causality in the world. From this vantage point, the oppositional nature of the *maasim* and the overtones of danger take on new significance. If the authority of law is to be upheld, whatever opposes or undermines faith in its stability and its basis in tradition is dangerous. Within this binary opposition, men are cast in the role of the conservative guardians of tradition, while women are the opposition. Both are locked into their roles (cf. line 39-40). There is a palpable danger that the system will be overthrown. "The system" is the last vestige of the pre-exilic covenantal relationship.

It is not surprising that a halakhic discussion of the collection of *ketubah* money is embedded in the cultural narrative of exile. Marriage and divorce have been the traditional site of metaphorical conflict between God and Israel. Isaiah (50:1) and Jeremiah (3:8) both use the Deuteronomic divorce laws (24:1-4) in their discussion of the covenantal relationship. Similarly, the Rabbis use the divorce scene, and the dispute over support (i.e. the *ketubah* payment) as a, if not the, significant site for the discussion of the covenantal relationship. Engagement, marriage, separation and divorce are at the heart of Rabbinic mythology. A clear example of this,

with direct bearing on our sugya is the following midrash from Eichah Rabba:

Another interpretation of “She is become like a widow” (Lam. 1:1).... The Rabbis said: It is like a king who became angry at his consory. He wrote her a bill of divorce and gave it to her, but then he returned, and grabbed it from her. Whenever she wished to marry someone else, the king said to her: Where is the bill of divorce with which I divorced you? And whenever she claimed support from him, he said to her: I have already divorced you. Similarly, whenever Israel wishes to worship idolatry, the Holy One of Blessing says to them: “Where is the bill of divorce of your mother whom I have dismissed?” (Isa. 50:1) And whenever they ask Him to perform a miracle for them, He tells them: I have already cast you off, as it is written, “I cast her off and handed her a bill of divorce” (Jer. 3:8).

Stressing the indefiniteness of the “as a widow” and not a widow, the midrash articulates the existential fears of the exilic situation. Is the covenant broken and irreparable (“divorce”) or is there still hope? What is the obligation to the law when there is no obvious recompense?

From this perspective, it is not surprising that the legal discussions that parallel and, in our sugya, partake of the language and images of the “theological” discussions are so fraught with danger and violent emotion. This construction of Rabbinic society (the *maasim*) meets the other narrative strand (the *lo shanu* statements) in the statement attributed to R. Yehuda. His ruling seems to subvert the need for a static legal structure to insure the line of authority. To the contrary, he wants to assert authority by legislating. He declares that the students of Rav are wrong: that one must do whatever is required in order to assure that the woman gets her *ketuba*.

The sugya, however, does not end here. Within the narrative context, R. Yehuda’s demand that he hear that his decree is itself fulfilled by the rereading of the *lo shanu* statement from above (22) in light of the

narrative in lines 51-56. The message that is sent “from there”(51) seems to accord with R. Yehuda’s ruling. She swore and should collect the rest of the ketuba payment. The last line of the sugya subverts this move. The statement attributed to R. Ashi denies the force of the Palestinian ruling and narrows it to one specific case. Once again, however, a significant moment in the sugya is a site of conflicting interpretations. Rashi and Tosafot are at odds about how to reread the ma’aseh according to R. Ashi’s statement. The force of R. Ashi’s remark, however, is to bring the sugya back to the point before R. Yehuda. This is the moment of tension that renders divorce a site of legal/theological discourse. The sugya ends without a bottom line, and we never hear the voice that will confirm R. Yehuda’s ruling.

Narrative/Afterlife of the Sugya/Sugyaetics

We have ended up, after all, with a somewhat linear narrative following a nonlinear reading of the sugya. We have seen how the sugya is a narrative and partakes of the larger cultural narratives. In addition, the sugya generates narratives. This is seen in the early and medieval commentaries on the Talmud. The relationships prescribed in the sugya later become part of the cultural baggage of the Halakhic tradition. The afterlife of mishum hina is a good example of this. The central moment of this sugya the crisis of authority is an issue that repeats itself throughout the sugyot in this chapter. On close reading, most of the sugyot are about the authority of the institutions of law. It is in creating that authority through interpretation that the relationships between men and women, and between men, women and the institutions of law are created.

APPENDIX: DAVID WEISS HALIVNI ON OUR SUGYA

Halivni frames the sugya in terms of the debate about whether or not one who swears truthfully is punished. He claims that the Bavli, as opposed to the Yerushalmi (and other Palestinian sources e.g. Lev. Rabbah, Pes. Rabbati), cannot abide the claim that one who swears truthfully is punished anyway. Or to put it in another light, in the Palestinian sources all swearing is viewed disparagingly and those who indulge in this type

of activity are punished. This, according to Halivni, is the reason that the Bavli was forced to “misinterpret” the ma’aseh and claim that the woman actually did swear falsely in some way. As Halivni says:

“According to this one must explain the ma’aseh in its simple sense (k’peshuto), that the widow swore truthfully and even so she was punished, for even one who swears truthfully is punished.” (p. 537 my trans.)

With this explanation, Halivni attempts to explain the ungrammaticality of the claim that she was punished for swearing falsely because she had profited by saving the flour which would have had to fill the space of the dinar. Halivni accomplishes this by framing this sugya with other sugyot that concern the debate over whether or not one who swears truthfully is punished. We argued above that there were significant differences between the maasim in Lev. Rabbah, p. Shavuot, Pesikta Rabbati and the ma’aseh in our sugya. Halivni, however, also sees a connection with a statement and ma’aseh in Tanhuma (Buber) in which two thousand cities are wiped out for swearing falsely, at the end of which is the same statement as is found in our sugya : “If such is the fate of one who swears truly, so much the more so for one who swears falsely.” I will argue that the ma’aseh quoted in this Tanhuma (and its parallels) is different enough from our maasim as to problematize Halivni’s framing.

The pericopae in full is as follows:

Our sages said, he is not even allowed to swear about the truth. Why? Our sages taught, an Israelite should not be promiscuous with vows or laughter, nor in misleading his fellow [concerning] an oath saying it is not an oath. A maaseh, at har hamelech [Hill of the King]. There were 2000 cities and all of them were destroyed on [account of] a true oath. If such is the fate of one who swears truly, so much the more so for one who swears falsely. In what manner do they do it? A person would say to his fellow: “on oath [shevuah] that I am going to such and such place and I

will eat and drink.” And they would go and do [what they had sworn] and fulfill their oaths. For such it is said: if a person incurs guilt, etc. (Lev. 5.1).

The differences between the ma’aseh in Tanhuma and ours are glaring. First, in the original telling, it is not clear who is swearing, or what is being sworn. Second in the interpretation (following the question ketzad) there is no confrontation, there is no legal action, there is no story about a specific incident involving a specific person, but rather a generalized incident involving thousands. The question that must be answered therefore is what is the more appropriate frame.

It seems to me that the mishum hinah discussion determines the reading of this sugya towards the frame that I have proffered. Halivni’s reading does not take cognizance of the specificity of our ma’aseh (and the ones in Lev. Rab., Pes. Rabbati) i.e. that it is about women. Further, the kernel of the ma’aseh in p. Gittin, supports this framing. The fear here is not of swearing but of women swearing. This difference also comes to light in Halivni’s further comments on the sugya.

And here, this difference between the Bavli and the Yerushalmi also affects the explanation of the mishnah; according to the Bavli nimnau mil’hashbia, for perhaps she would swear falsely and be punished. And for the Yerushalmi nimnau mil’hashbia for one is punished even for swearing truthfully. However, the point – in both the Bavli and the Yerushalmi – is that she swears and in doing so she harms, not that she is punished. This is the crux of the difference between my reading and Halivni’s. As I see the significance of the Midrash in the Yerushalmi on Jer. 2:30, dangerous swearers are always gendered female. Furthermore, neither Talmud is worried that she be punished, but that she harm.

At the heart of the issue separating between the two readings is whether the Bavli’s frame is that of the principle that one is punished for swearing falsely; or whether it is the problem that seems to be structurally at the

heart of all the maasim in our sugya and is the “title” of our sugya: women swearing. In this light the Bavli’s question, why was she punished, does not proceed from an assumption that there are innocent swearers, but rather that there are no innocent women swearers. This is why the stam in the Bavli must misread in Bloom’s sense, rather than misinterpret the ma’aseh. For the Bavli, the woman, by definition as a woman dangerous when swearing cannot be innocent.

NOTES:

* This is part of a larger project of reading halakhic sugyot in Bavli Gittin (my dissertation). The overall goals of the project are (1) to develop a literary methodology for interpreting sugyot;; that is to develop a sugyaetics or poetics of the sugya; (2) to analyse the construction of women and men in Talmudic divorce law, within the frame of feminist insights into that kind of construction; (3) to explore the use of get as metaphor for exile in midrash, and its effect, if any, on the halakhic sugyot; (4) to finish and get my PhD. I would like to thank the participants of the Brandeis Doctoral and Postdoctoral Seminar on Early Judaism and Christianity directed by Reuven Kimelman and Bernadette Brooten for their very helpful comments on an earlier draft of this paper, and especially Denise Kimber Buell for her very thoughtful and insightful response to that paper.

1. cf. Roland Barthes, *S/Z: An Essay*, trans. Richard Miller, (Hill and Wang, New York, 1974). pp. 14-15: “We shall not set forth the criticism of a text, or a criticism of this text; we shall propose the semantic substance (divided but not distributed) of several kinds of criticism (psychological, psychoanalytical, thematic, historical, structural); it will then be up to each kind of criticism (if it should so desire) to come into play, to make its voice heard, which is the hearing of one of the voices of the text.”

2. The term sugya is itself a conflicted site of scholarly interpretation. For this reason, I have adopted a somewhat circular definition of sugya. Asugya is that text which appears upon reflection to cohere as a unit with

internal connections, especially literary connections. This definition is circular since it begs the question why reflect on this unit and not one larger or smaller. Other, seemingly empirical modes of marking a sugya the two dots that signify its ending or the quotation of another line from the mishnah to be discussed have their own problems. The two dots are a late and variable addition, as anybody who has checked Sridei HaBavli against our printed editions and the MSS can attest. The quotation of a new line of the Mishnah is equally tricky, since a) new discussions are often started without quoting new lines of the Mishnah, b) discussions of the Mishnah are not always in the order that the Mishnah is written arguing for the editorial use of these quotations, c) in other areas of Rabbinic literature e.g. midrash, or even in the Bavli's own midrash collections (e.g. the end of chap. 1 of b Megillah) lemmata of themselves do not end or begin discussions.

3. Is There a Text in This Class?: The Authority of Interpretive Communities, (Harvard University Press, Cambridge, MA, 1980). See especially p. 25 where Fish claims that the meaning of the sentence is attained by an analysis of what the sentence does, even though there might be no informational content to the meaning.

4. Robert M. Cover, "Nomos and Narrative", Harvard Law Review, vol. 97, Nov. 1983, (The Harvard Law Review Association, 1983), pp.4-5.

5. A ma'aseh is a story or a precedent, but it is also defined by a specific form, i.e. short verbal phrases mostly connected by conjunctions.

6. In Frank Kermode's understanding of "structural" thinking, there is a "fabula" which underlies a narrative. In this fabula, all the characters of the narrative are present as "functions". In this way Kermode compares the relation between the betrayal story in Mark and in the other synoptics. The relationship here is not one of dependence or influence in the traditional sense. cf. Frank Kermode, *The Genesis Of Secrecy: On the*

Interpretation of Narrative, (Harvard University Press, Cambridge, MA, 1979) p. 78ff esp. p 83.

7. cf Shamma Friedman, *Perek Haisha Rabah Babavli*," in H. Z. Dimitrovski ed., vol. 1, (Jewish Theological Seminary, New York, 1978) pp. 331-339. In his comments on the second and third sugyot, Friedman's method is to distinguish between the "original" and later layers of sugyot by form critical methods. While I agree with the importance of these methods, the use I put them to is not for a redaction history, but rather a literary and rhetorical analysis.

8. cf the reading of Rabbi Menahem Hame'iri, who cites this last line as a proof that Rabbah b. R. Hunah's opinion was not accepted since he was punished. This reading is generated by Mei'ri's obvious empathy with the woman's claim of unfairness. *Bet Habehirah al masechet Gittin* (Jerusalem, 1977) pp.149-150.

9. That the connection between the two ma'asim had been perceived at an early date is indirectly testified to by the printed editions of the first ma'aseh. Line 15 (or c) in the printed editions reads: *hav li dinari in Aramaic*. All the MSS have the Hebrew version, however the Aramaic, it seems to me represents a reading of the sugya which understood a connection between the two ma'asim.

10. This illustrates what those in Critical Legal Studies refer to as the central paradox: the necessity to have public proof of the private. The woman intuits that this impossible proof is being demanded (proof that she never profited from her ketubah [nehaniti as in line 16]) and she therefore forcefully crosses the line from private to public. cf. Clare Dalton, "An Essay in the Deconstruction of Contract Doctrine", in Sanford Levinson and Steven Mailloux ed. *Interpreting Law and Literature: A Hermeneutic Reader*, (Northwestern University Press, Evanston, IL, 1988) esp. pp. 292-293, and the critique by Joan Williams in "Critical Legal

Studies: The Death of Transcendence and the Rise of the New Langdells", New York University Law Review 62 (June 1987) pp.429-496.

11. There are only two occurrences of *hai hashem tseva'oth* (line 36) in our Hebrew Bible: IKings 18:15 and IIKings 3:14. They are connected thematically in several ways. The first is spoken by Elijah, and the second by Elijah's pupil Elisha. Elisha's relation to Elijah is noted in the story itself (IIKings 3:11) by one of the servants of the King of Israel, as a recommendation of Elisha. Second, both are part of confrontation narratives between the prophets and the king(s) of their times. Third, both narratives have to do with drought, and the power of the prophet to alleviate that drought. The only occurrences of this phrase in Rabbinic literature (Numbers Rabbah 21:6, Deut. Rabbah 10:3, Tanhuma (Buber) Pinhas 5, Pesikta Rabbati 5 [ed. Ish Shalom 15b]), as far as I was able to ascertain, are quotations of one of these two verses.

12. Lev. 5:4.

13. TK Zeraim pt. II on Tos. Bikkurim (p.835-6); and cf Greek in Jewish Palestine, p.124 and n.74 where Lieberman shows that the saying has a Greek equivalent from the same time (Righteous or unrighteous, flea an oath; Maximus Planudes).

14. Sources and Traditions: Nashim p.536-538.

15. Some of the differences are equally notable: in Gittin there is a legal transaction which starts the narrative (*hapakid*), and (as noted by Halivni) the woman in Gittin swears that she never benefitted from the money, which is ambiguously true, while in the other *ma'aseh* she swears that she knows nothing of the money, which is more obviously true.

16. see Stephen Greenblatt, "Shakespeare and the Exorcists," After Strange Texts: The Role of Theory in the Study of Literature, ed. Gregory S. Jay & David L. Miller (1985, University of Alabama Press, Alabama) for a cogent

critique of the traditional concept of influence, and his argument for the idea of cultural negotiation.

17. cf Hayden White, *Tropics of Discourse* (Johns Hopkins University Press, Baltimore and London, 1978) pp.1-25.

18. Acc. to Jastrow. He gets himself embroiled in the whole problematic that interests us here by presenting what is essentially Tosafot's opinion as the 'authoritative' meaning of the phrase, and then adds Rashi's opinion in brackets at the end as "oth. opin.". (cf. Hebrew Aramaic Dictionary *hen & hina*)

19. And consistently throughout the Bavli. Rashi (Rabbi Shlomo ben Isaac, 1040-1105) is rather forceful in his position, see e.g. his comment on b. Ketubot 97b commenting on the statement "a divorcee also needs *hen*": "for [*mishum hinah*] is a rabbinic ordinance [*takkanat hachamim*] and not [done] for the love of the husband, therefore what difference would it make to me if she was loved or hated [by her husband]." (and cf. Tosafot there, too, s.v. *almanah*)

20. The Tosafot are a collection of commentaries on the Talmud produced in France and Germany from the twelfth to the fourteenth century. The early Tosafists were students of Rashi's.

21. Probably Hayyim ben Hananel Ha-Kohen; French Tosafist; second half of the twelfth century.

22. It is like writing "he is not sick" rather than writing "he is well". The effect of the former is to introduce sickness into the discussion, as if the person had written he is sick.

23. As opposed to e.g. b BK 106a where analogous legal situations do not lead to analogous cultural ramifications.

24. E.g. Isaiah 58;8-14.

25. Cf. Isaiah 58:8; Proverbs 31:15,20.

26. On narration see Shlomith Rimmon-Kenan, *Narrative Fiction: Contemporary Poetics*, (Methuen, London and New York, 1983) esp. pp.86-108.

27. For equally "loaded" uses of the phrase shanat b'tseret in maasim see: b Ber. 18b; b Yeb. 15b; (b Ket. 10b); b B.B. 8a, 11a; b Hulin 94a.

28. Cf Jeremiah 17:7

29. Cf..also Jer. 17:3,4 which explicitly lists exile as the trouble.

30. On Narratives of origins see Kermode, *The Sense of an Ending*, and more recently, and in relation to the Rabbis, see Daniel Boyarin, "Diaspora: Generation and the Ground of Jewish Identity," *Critical Inquiry* 19:4 (Summer 1993), pp. 693-725 (esp.718-723).

31. David Biale argues this point on a more universal scale within Rabbinic literature. *Eros and the Jews: from Biblical Israel to Contemporary America*, (Basic Books, 1992) p.48.

32. Line 45, takes on this significance, within this frame. (cf. Hagai 2:24; Targum on Deut. 17:18.) Melech is the term used to describe the term of the exilarch in the Letter of R. Sherirah Gaon.

33. Michael Fishbane, *Biblical Interpretation in Ancient Israel*, (Clarendon Press, Oxford, 1985) pp. 307-312.

34. In addition to the following midrash cf: Sifri Deut. (Ha'azinu) #306 (ed. Finkelstein p.330; b San. 105a; Exodus Rabbah 31:10; Tanhuma Mishpatim 11; Numbers Rabbah 1:5; Tanhuma Vayeshev 4; Tanhuma (and Tan.

Buber) Numbers 5; Midrash Psalms (Shoher Tov) 139:1 (ed. Buber p.527). This partial list shows that divorce as a site of the existential tensions of the exile is a motif common to most layers of Rabbinic discourse.

35. For an analysis of this text, and a critical apparatus for the text, see David Stern, *Parables in Midrash: Narrative and Exegesis in Rabbinic Literature*, (Harvard University Press, Cambridge, MA, 1991) esp. pp.99-101. The text I am using is the one labeled Ashkenaz in *Parables*, p. 257. It is in Buber's edition of *Eichah Rabbah* p. 46, with some differences. The translation is basically Stern's, p. 99.

36. Line 49, especially the phrase *d'eavid bah maaseh* is ambiguous. All the commentators understand it to mean that the woman should collect as Samuel ruled. On a literary level, however, it connects the statement back to the first *maaseh* and perhaps recognizes that it was really a *maaseh baisha*.

37. Cf. Barthes' discussion of the proairetic code (that is the code which Barthes uses to analyse actions and their consequences, including questions and their digressions and answers) in *Roland Barthes, S/Z: An Essay*, trans. Richard Miller, (Hill and Wang, New York, 1974) esp. p. 19.

38. Saul Lieberman, "*sefer maasim, sefer psakim*," has shown that the word *maseh* in many contexts has the meaning of *psak*, that is legal decision.

39. Alfasi (10th century Babylonian author of the work *Halahot*,) quotes only the *lo shanu* line of our *sugya*. This may not seem remarkable, since the common opinion is that Alfasi is only interested in the Halakhic bottom line. What is remarkable is that, in order to achieve a bottom line Alfasi also rearranges the *lo shanu* statements. In the *Halachot*, Samuel's statement as quoted by R. Zeira (line 23 & 50) appears only after R. Yehuda's statement. Neither R. Ashi's statement nor the *ma'aseh* before it are quoted. That Alfasi had to rearrange the *sugya* in this fashion in order

to have a linear reading which arrived at a "bottom line" halakhic ruling, indirectly supports our understanding of the sugya as it stands as not having a bottom line. For a partisan review of the Halakhic tradition of commentary up to his time, see Menahem HaMei'ri.

40. mishum hinah becomes a prominent part of discussions about the viability of woman's claim on her ketubah money and the mechanics of collecting that money (the level of rigour in examining the witnesses, e.g.). Mishum hinah is played off against other principles which revolve around many of the same cultural issues: i.e. "more than a man wants to marry, a woman wants to be married", "a man doesn't want his wife to be embarrassed by having to appear before a court". See e.g. Responsa of R. Shlomo b. Adret Part 5:90; Responsa of Mahram of Rottenburg part 4:362; Responsa of R. Moshe Isserles 9:13.

41. P Shavuot 5:6 37a; parallels in Lev. Rabbah 6:3, Pesikta Rabbati 113b. noted by Halivni on p. 537.

42. It is interesting to note (though not necessarily relevant) that the destruction of cities on Har Hamelech is recorded in bGittin 57b. There, however, the number is 6000, and there is no mention of swearing truthfully or falsely.

Political Philosophy Out of Israel: Adi Ophir's "Beyond Good: Evil An Outline for a Political Theory of Evil."

This is the last of a series of excerpts from Ophir's essay, versions of which first appeared in TEORIA-VE-BIKORET (Theory and Criticism) and in THE PHILOSOPHICAL FORUM XXI.1-2 (1989-90). Initial excerpts appear in Vol 2.1 of the Bitnetwork. Responses from David Novak and Jonathan Boyarin appear in Vol 2.2.

. . . We are now in a position to identify a necessary (though not a sufficient) condition for a just society: only a society in which no-one

suffers more than his necessary lot is a truly just society. In other words, in a just society all superfluous suffering that can be prevented by means of a different distribution of evils is indeed actually prevented But even in this utopian picture there is no return to a theory of justice based only on the distribution of goods. In a “positive” theory of justice of that kind, the spheres of goods were the sole basis to which the principles of justice applied, as a mechanism that was supposed to mend an equilibrium that had been upset. But a social model which represents only spheres of goods, as if only these were the objects of struggle and distribution in society, belongs to the utopian horizon intended by all moral politics, and not to the actual basis from which it springs. A moral politics can intend such a horizon only when it explicitly acknowledges the spheres of its own discourse and action, the field in which goods and evils exist in a continuous process of production and distribution.

This picture too is over-simplified: it does not exploit the theoretical possibilities that open up with the reversal of perspectives (from good to evil, from goods to evils). Evils are not distributed just any way to anyone, but are allocated to each person according to her status in the various spheres of action. It is possible that a person will agree to suffer in one sphere more evils that he deserves, in return for compensation in another sphere. A poor man will agree (rationally) to suffer more than her necessary lot if she knows (or believes the prevailing ideology which claims) that she is paying a temporary price that is necessary for the stability of the economy, which is a necessary condition for the improvement of her condition in the future. And perhaps she will agree to suffer for less than this. . . . A just society has to make it possible for everyone to convert a preventable suffering that is distributed in one sphere into evils from another sphere, or into the suffering of someone else who willingly participates in the other’s suffering. . . . From a moral point of view, the conversion of an evil cannot serve as a substitute for attempts to reduce or prevent it, but in practice this is frequently the prevailing situation. After the definition of tyranny by Walzer (1985, 19), we can offer the following distinction: in an unjust society the conversion

of superfluous suffering takes the place of social and political attempts to reduce such suffering (a just distribution of the burden of military service, for example, instead of a real effort to end the war situation; the cultivation or organizations of volunteers to assist the "deprived," for example, instead of a re-distribution of social wealth). And in a really evil society the possibility of converting suffering among the spheres is most limited; the person enduring superfluous suffering is limited not only in his attempts to find social arrangements that will reduce his suffering, but also in his efforts to make contact with someone who will agree to convert his suffering until the trouble passes (a black who is prevented from seeking assistance from whites, for example, or a Jew who is unable to receive help from Gentiles). From this we can derive a possible definition for a (social) condition of radical evil: this is the situation in which the channels for the conversion of suffering of part of the population are systematically eliminated by a regime which increases such suffering systematically.

The conversion of suffering makes possible an entire spectrum of social and political behaviors, from oppression to dedication, and the very existence of social-political partnership. People cause each other suffering in a systematic manner, in institutionalized practices of social interaction. The partnership in the framework of which suffering is distributed does not rest on power relations alone, because even in the most repressive society several channels for the conversion of suffering remain open. It is also impossible to dissociate this partnership from a moral, utopian horizon, because any given arrangement of the distribution of suffering includes superfluous suffering the conversion of which can be arranged and the reduction of which can be struggled for. The good remains transcendent, divine perhaps, if there is a God worthy of it, and goods are no more than its dubious representation. Evil, in contrast, is a frequently changing form of human partnership. A theory of political morality in general and a social criticism in particular have to determine this form as the framework of their discussion; a political act which has a moral claim has to determine radical evil as an anchor for its criteria and the reduction of superfluous suffering as the horizon of its intentionality.

Radical evil, in contrast to the Supreme Good, is not an abstract theoretical structure, but an actual possibility of social reality which has already been realized here and there. Such a practice of the distribution of suffering characterized the condition of the Jews under the Nazi regime during the forties. This does not mean that such a situation does not characterize other regimes, or that other regimes are necessarily similar to the Nazi regime. But instead of deriving the concept of radical evil from an interpretation of the phenomenon of Nazism, I propose (after Arendt and others, cf. Bruner 1990) that we understand radical evil as in principle a structure of social power relations, of which Nazism was a paradigmatic actualization, not the only one, not absolute, and not the last. In the modern world, forms of administration have developed by means of which a regime is capable of directing the lives of huge populations while constantly observing each one of the mass of individuals within them, down to the last intimate details of his life and of intervening in this life at any moment it wishes to and from whatever aspect it chooses (Foucault, 1979, Part IV). In such a world, where Orwell is a historian, not a prophet, and 1984 occurs almost every year in this or that region of the world, the regime that is founded on such forms of administration has actually unlimited possibilities of producing suffering and of blocking the channels for its conversion. But when we speak of the administration of life, of rule over a population, and of the ability to observe individuals and intervene in their lives, there is no modern regime, be it the most free and democratic, which does not rest upon moderate versions of certain crucial aspects of these forms of administration. Such a perception of radical evil and its potential presence in modern society generates an important conclusion: there is a continuity between injustice and radical evil, both on the conceptual level and in the social reality that the concepts are supposed to characterize. The distinction between evil and injustice (which is no less essential than the distinction between good and justice) is preserved but receives a new significance. Evil is not only consistent with injustice, but can also be described as injustice of a particular type, taken to an extreme. Evil (social evil) is the acme of (social) injustice; while

social injustice contains a potential of radical evil. To know a society as unjust is to understand the way in which it is different from a society that embodies radical evil, but may under certain conceivable conditions deteriorate and become a society of that kind ...

* * * *

The perspective that posits an image of radical evil on the horizon of political action gives the social contract a new meaning: ... suffering that is distributed by a regime that systematically blocks channels for its conversion is a suffering that cannot be justified in any way; the struggle to eliminate such suffering is a categorical imperative of political action. Suffering whose conversion is disallowed by societal arrangements is suffering that is unjustifiable in principle. One can and should draw an unequivocal line between unjustified suffering and suffering that is unjustifiable-in-principle. A valid social contract cannot include an agreement about suffering that is unjustifiable-in-principle; it is based on a recognition of the need to eliminate it. A social contract cannot include an agreement that blocks possibilities for the conversion of suffering; its whole purpose is to give validity to arrangements for the conversion and distribution of suffering. Unconvertible – and therefore unjustifiable – suffering, together with suffering that one tries to eliminate, constitute – negatively – the outer boundary of a valid social contract. A consensus on unjustifiable suffering is a condition for the validity of the contract, with its two facets that I presented above, and it appears implicitly in all its formulations in the history of thought, from Glaucon in Plato's Republic through Hobbes to Rawls. This agreement determines that there are social ways of causing and distributing suffering and a social form of bearing suffering that must not be given legitimization under any circumstances ... Such a consensus is a necessary condition for the possibility of a human community as a moral community. A consensus of this kind finds explicit expression only when it is deviated from, and when such a deviation occurs it constitutes an opportunity to reinterpret and reaffirm it. Generally the expression given this moral consensus is not formulated in

ordered arguments, for the agreement is the basis of the moral-political discourse, the common ground that make dialogue possible. What is involved is a common moral sensibility, a shared sensibility with regard to radical evil.

The moral sensibility with regard to radical evil determines the sphere that is justifiable, and cannot itself face the test of justification. The sphere that is justifiable is the sphere to which the social contract applies: its boundary is the boundary of civic discussion; beyond it the civil struggles end and there is a state of war. It is possible to claim that the homeless person bears an unjustified but not unjustifiable suffering, and that therefore the social contract and the political obligations derived from it do apply to him. It would appear that this claim is made today by most if not all of those involved in the social conflicts surrounding the homeless in Israel. To claim this is to claim that the suffering of the homeless person is not being eliminated at present only because it is perceived, wrongly, as a lesser evil, in order not to cause a greater suffering that would result from an intervention that would undermine the foundations of the social order, or so as not to miss out on a rare opportunity to improve the condition of the society, or out of solidarity with a defined group within the population. To claim this also means to claim that there are opportunities open to the homeless person to convert his suffering, and nevertheless, the conversion arrangements are unjust because the perception of the existing arrangement as the least of evils is mistaken. But it is also possible to claim that the suffering of the homeless person is unjustifiable in principle, and that whoever accepts the conversion arrangements with regard to his suffering and does not seriously struggle to eliminate it does not share his basic moral sensibility ... It is possible that in another year or two this will be the claim of the Israeli homeless person who will remain homeless even after the emergency plans and the "special reorganization" are put into effect; it is possible that this is the claim of the homeless in New York today. My argument does not propose a procedure to decide between these two possible claims, since there is no such procedure; it proposes the necessary conditions for the justification of revolt.

In the case of the homeless, a justification of this kind may seem unreasonable: in America society as in Israeli society it is difficult to imagine a systematic attempt to block the conversion of suffering or an open declaration that it is not right to ease the suffering of the homeless. Not so in the case of the Palestinian who revolts. It is not difficult to conceive of a description of reality according to which the Israeli regime systematically blocks certain arrangements that are meant to make possible the conversion of suffering in the Palestinian society, and systematically thwarts efforts to remove this suffering. The Palestinian is not invited at all to join the Israeli political partnership as an equal, or to negotiate with it over his political rights, and hence the Palestinian revolt is self-evidently justified. But when a description of this kind is given, a boundary appears between two moral sensibilities within Israeli society, between which there is no possibility of compromise: one sensibility will see the present suffering of the Palestinians as justified or unjustified but in any case justifiable, while the other will refuse in principle to justify it. This boundary is the boundary of the argument in the framework of the Israelis' political partnership. Whoever has crossed it (from justifiable to unjustifiable) has cut loose from the agreement on which this partnership is based and has no sufficient reason to obey the regime that spreads a suffering that is unjustifiable in principle.

If until now he has avoided disobedience, he has done this for pragmatic reasons, primarily because he is too weak, too much a coward, and his only interest in such a step is a moral interest. Or perhaps he has avoided disobedience out of other moral considerations, for example, because he is afraid that the evils that such a step might cause will cause greater suffering than that which the refusal is likely to prevent. This is not the framework in which to explore other reasons why so many Israelis might stop short of disobedience . . . These reasons would presumably be occasional and accidental with regard to the principle of social partnership and not reasons that concern the moral principle itself of collaborating

with the occupation regime. The Israeli who accepts a description of the stated kind of the condition of the Palestinian has a reason to disobey.

* * * *

What is presently on the agenda – and this is the basic moral question that is now on the agenda, all the rest is like background noise, the output of the endless verbiage produced by the political arena – are the borders of the Israeli social partnership, the fine line between unjustified evil and unjustifiable evil, the decision between obedience and revolt.

In this decision, the ordered arguments and the intellectual wealth of the tradition are brought in to support, cultivate and shape an existing moral sensibility, or to puncture a moral sensibility flawed with doubts, but these cannot replace one moral sensibility by another or establish one and undermine the other once and for all. A moral sensibility is born from innumerable connections and influences, but first and foremost from the intensity of a person's experience of suffering and the ways in which he has been exposed to the suffering of others. The learned arguments generally arrive too late, and perhaps in too small doses, to a moral sensibility that has already been formed. A philosophical discourse at its best can only sharpen a continuous process of exposure to the suffering of others and can illuminate this suffering in a new light. To recognize the practices of distribution of suffering in the society, to identify the modes of conversion of suffering, to point out unjustifiable suffering none of these can be derived from an a priori consideration, but must be extracted from an interpretative analysis of social reality; on this matter neither the philosophical analysis nor the interpretative dialogue with the tradition has any particular advantage. Many writers and artists, in poetry and fiction, in journalism and film, sometimes in the visual arts, deal with the exposure of evil, and they too ... have no special skill in this matter. The writers of placards and the speakers at street-corners, sometimes the stone-throwers and other violators of law and order are likely in the right context ... to articulate an outcry of pain that will expose the presence of

an evil. The graffiti-smearers and the philosophers are perhaps at the two ends of a spectrum of differences between levels of linguistic and conceptual complexity, of breadths of associative field and wealth of affinities to other cultural products, but between the two there is no difference in principle in the level of sensibility to the presence of suffering, and if there is a certain difference, it is not clear that it is in the philosopher's favor. The crucial question is not in what genre of writing one can represent evil more truthfully, persuasively or effectively (poetry or analytical philosophy, for example) or from which social position (representative of a stratum that is discriminated against or of the cultural elite). The crucial question is how to represent, in the language of the culture of the majority (or of the ruling class), at the heart of the hegemony's ideological discourse, evils that that discourse does not acknowledge as actual evils and for the production and distribution of which that majority that does not acknowledge its responsibility.

One of the ideological roles of a ruling class or group is the production and dissemination of representations of the social reality in which evils cannot be identified as products of the social-political order. Evils have no objective existence; when it is impossible to ignore them they are perceived in terms of the negation of goods; they do not belong to the defined spheres of social activity; they undergo a "naturalization," are perceived as the hand of fate, accident, force-majeure, a flaw of birth, the evil character of the individual: in brief, they are attributed to factors outside the political system's sphere of control. It is possible to interpret the critique of ideology from Marx to the thinkers of the Frankfurt School, and also the works of Foucault on the lunatic asylums, hospitals and prisons as a non-systematic attempt to "de-naturalize" evil in modern Western society. When a political regime disseminates evil and distributes sufferings in so open and blatant a manner that it becomes impossible to ignore the political context of the evil, justificatory narratives somehow appear, describing an imminent utopia or a catastrophe that must be prevented at all costs. These narratives portray the evil for which the regime is responsible as the least of evils, an uncondemnable necessity that

is justified by a greater danger or a greater hope that awaits at the gate. The evil is permitted because what is involved is a threat to existence (whose, precisely?), or redemption, or liberation, or, at least, the defense of sanctified values (whose, precisely?) ... In opposition to these attempts at justification, there also appear more or less systematic efforts, by the victim or by those who identify with him, to deconstruct the narratives as attempts by those who are responsible for the dissemination of the evils to justify a social and political order of which they themselves are the chief beneficiaries. Deconstructions of this kind appear, for example, in the critique of ideology of the Frankfurt School, or of the Marxists (e.g., Jameson 1981) or the feminists (e.g., Hartsock 1983; Nicholson 1986), or also in works of "minor literature" (see Hever 1990) that have cultural parallels in film (Spike Lee) or in theater (The San Francisco Mime Troupe).

... To illustrate one way in which hegemonic discourse may make contact with an alternative discourse on evils, I will describe aspects of contemporary Israeli culture that are connected to the Israeli response to Palestinian suffering. Since the articles written by Achad Ha'am after his visits in this country in 1891, Zionist discourse has continued to confront the evils produced and disseminated by the Zionist settlement project among the Arab inhabitants of the country (Gorny 1985). After the establishment of the state of Israel, with the emergence of a refugee problem and a military administration, the public and literary treatment of Palestinian suffering became more intensive and conscious. The canon of Hebrew literature began to receive, with honor, attempts to represent, in the cultural language of the majority, the evils suffered by natives who turned into enemies, became a minority and then become subjects under an occupying regime (in prose, e.g., Hirbet Hizeh, Facing the Forests, The Smile of the Kid, and in poetry, Alterman, Zach, Rabikovich and Laor). These were attempts to touch the suffering of the other, to understand the particular moods and the general social order that caused this superfluous, preventable, suffering, and, at least in thought if not in action, to open ways to reduce this suffering. But the confrontation of the

Israeli Jew with the suffering of the Palestinian Arab is almost always linked, if only through hints, with ... Jewish suffering and with a Zionist narrative, a "master narrative" that justifies the Palestinian suffering, or at least some part of it. This is how things are, even when we speak of the sharpest of Israeli critiques that have been directed at this narrative in its various versions. In one way or another the writers attest to their affiliation with the national collective; they want to speak in the name of this collective or against it, but either way they draw their literary and moral authority from their very link to the Zionist narrative and from the precise character of this link.

Today, the confrontation with Palestinian suffering occurs in a horrific political situation. The very attempt to describe this situation, even to point to it, requires taking a stand with regard to the collective profile, the social mechanisms, and the cultural masks of this evil. The means that have been taken by the Israeli government to suppress the Intifada have accelerated the processes that are gnawing away at the democratic underpinnings of the Israeli regime. Many moral restraints that had previously limited the state's use of force have been put aside recently; loud voices call openly, even within the Israeli parliament, for a Jewish species of apartheid. The Jewish fear-neurosis seems, as of now, in the Summer 1990, to be victorious. This fear-neurosis, nourished by ancient roots and a terrible chain of modern traumas, is stronger right now than the alliance between Zionist pragmatism and universalistic moral interests (an alliance which, even if it did not manage to draw Israeli policy towards a reconciliation with the Palestinians, was able until recently to keep the question of Eretz-Israel/Palestine and open one, at least on the formal level). Perhaps things will yet change. But, now, at any rate, it appears that a long heritage of dread of the other, the Gentile, has joined with a power-oriented bravado within a weak political structure that has a limited capacity of decision-making. Together they produce and distribute various forms of evil among the Palestinian population subject to the occupation regime.

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POSTSCRIPT FROM ADI OPHIR:

The third volume of "Theoria ve-Bikoret" (Theory and Criticism) which I edit has recently been published. It may be of interest to bitnet members. It is a Hebrew bi-annual, published by the Van Leer Jerusalem Foundation and Hakibutz Hameuchad and edited collectively by a group of relatively young intellectuals (The Group for Theory and Criticism). The journal is semi-academic, interdisciplinary, trying to foreground theoretical and critical issues in the study of Israeli Culture and Society and to promote (sometimes to invent) Hebrew critical theory, both modern and post. The journal is labeled "leftist" and "postmodern" by some of its critics, though the terms are used here, as everywhere else I assume, rather vaguely, and not always with justification. English abstracts supplement the Hebrew papers.

The third issue contains papers (by Azmi Bishara and Yoav Peled) on the Palestinian minority in Israel (the "Israeli Arabs"), on power/knowledge in Israeli orientalist discourse (Gil Eyal), a feminist theory of reading as a woman (Orly Lubin), a review of the revisionist wave among historians of the State of Israel (Ilan Pappé), a critique of Israeli sociology in light of its interpretation of the Six Day War (Peled and Levi), an essay on Horkheimer's "The Jews and Europe"" and its relevance today (Moshe Zuckerman), and a presentation of the concrete utopia of the artist Avital Geva, the greenhouse, which will be presented this year in the Israeli pavilion at the Venice Biennale (Gideon Ofrat).

Previous issues include papers on Hebrew literature, Israeli art, and the question of the "modernization" of North-African Jews in Israel. In the coming issue there will be papers on memory, the Talmudic discourse, intellectual responses to the holocaust, Hebrew poetry and art, and more. Most provocatively in the Israeli context will probably be an essay by the historian Amnon Raz- Krakotzkin which offers a rehabilitation of exile and offers the state and consciousness of exile as a viable cultural option for Israeli Jews and the best moral stance available for them in the Israeli-Palestinian conflict.

If you would like to subscribe to the journal or order separate issues for your own or for your institution's library, please write to: Theoria ve-Bikoret, The Van Leer Jerusalem Foundation, P.O.B. 4070, Jerusalem 91040. The price for a single issue is \$14 and \$25 for a one year subscription (postage included). Submission of papers is welcome. Since our resources for translation are limited we may have to ask for some help from the authors.

FUTURES

DIALOGUES IN POSTMODERN JEWISH PHILOSOPHY:

In Vol 2.1, we redacted dialogues among a small group of NETWORK members, and we'll return to that format in future issues. Meanwhile, folks may want to join that dialogue network, initiated and managed by NORBERT SAMUELSON. Just email to him at "_____".

TALMUD AND POSTMODERN JEWISH PHILOSOPHY. Please remember, responses to Aryeh Cohen's essay are due here by July 15.

NEW WORDS: The NETWORK is happy to receive your writings, reviews, news items, responses, letters, and editorial ideas and free will offerings (such as offering to edit an issue or sub-issue!). Just send them in!