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A ZEN KOAN, A SPECULATIVE EMENDATION, AND... THE LAWS OF YICHUD?

By Rabbi Aryeh Klapper

On Kiddushin 80b, Rabbi Yochanan in the name of Rabbi Yishmael states:

בן מתייחד עם אמו,
ואסור להתייחד עם כל עריות שבטורה

A son may be in *yichud* (seclusion) with his mother,
but it is forbidden to be in *yichud* with any of the other *arayot* in
the Torah.

Human males and animals are *arayot* (a category of people with whom sex is forbidden) for other human males. Nonetheless, Mishnah Kiddushin 82a records a possible dispute as to whether *yichud* applies to them.

ר' יהודה אומר:
לא ירעה רווק בהמה,
ולא יישנו שני רווקין בטלית אחת;
וחכמים מתירים.

Rabbi Yehudah says:

An unmarried man must not shepherd animals,
and two unmarried men must not sleep in one *talit*;
but the Sages permit.

Possibly Rabbi Yehudah would not go so far as to ban *yichud* for males with males or animals, or perhaps he would forbid it only to unmarried men. Regardless, the Sages in a beraita (ibid) articulate a clear rationale for excluding any prohibition of male-male *yichud*:

אמרו לו רבי יהודה:
לא נחשדו ישראל על משכב זכור ולא על הבהמה.
They said to Rabbi Yehudah:

Male Jews are not suspected regarding sex with a male nor with an animal.

It follows that the Sages do not ban even unmarried men from *yichud* with each other or with an animal.

Rambam offers an apparently essentialist explanation of the Sages' principle in his Commentary to Mishnah Sanhedrin 7:4.

לפי שהעם הזה הטהור
לא תתקפהו תאותו לשני מעשים אלו
שהם מחוץ לדרך הטבע.

Because this *tahor* nation
is not subject to being overpowered by its desire for these two
actions
that are outside the natural path.

However, his Commentary to Mishnah Kiddushin 4:11 makes clear that even if these desires aren't naturally overpowering for Jews, sincere Jews may be susceptible to them.

ואסור לבר ישראל להתייחד עם ערוה מן העריות
חוץ מן הבהמה והזכור,

לפי שכלל הוא אצלנו לא נחשדו ישראל על משכב זכור ועל הבהמה.
והמדקקים מן החכמים היו מתרחקים מכל יחוד
ואפילו יחוד בהמה

על אף גודל טהרתם עליהם השלום

It is forbidden for a Jewish man to be in *yichud* with anyone who is
an *ervah* among the *arayot* to him
except for the animal and the male,

because we have a principle that (male) Jews are not suspect
regarding sex with a male or with an animal.

The meticulous among the sages would distance themselves from
all *yichud*,

even *yichud* with an animal,
despite their ob'm great *taharah*.

Moreover, Rambam may have reconsidered, because in Hilkhot Issurei Biah 22:2 there is no essentialist rhetoric nor mention of "naturalness", and "the meticulous of the sages" become "greats of the sages":

לא נחשדו ישראל על משכב זכור ועל הבהמה,
לפיכך אין אסור להתייחד עמהן,

ואם נתרחק אפילו מייחוד זכור ובהמה - הרי זה משובח,
וגדולי החכמים היו מרחיקין הבהמה כדי שלא יתייחדו עמה.

Male Jews are not suspected regarding sex with a male nor with an animal.

Therefore it is not forbidden (for a Jewish male) to be in *yichud*
with them.

But if he distances himself even from *yichud* with a male or an
animal - he is praiseworthy
and greats of the sages would distance animals so as not to be in
yichud with them.

Possibly Rambam moved away more generally from essentializing differences between Jews and nonJews. I have another difference between the Commentary and the Mishneh Torah in mind, and I welcome any evidence you can provide for or against this hypothesis.

The editors of the Frankel Edition of Rambam note that several manuscripts and printings of Mishneh Torah make no mention of avoiding *yichud* with other males:

ואם נתרחק אפילו מייחוד בהמה - הרי זה משובח

But if he distances himself even from *yichud* with an animal - he is praiseworthy.

and that this seems to have been the text of Maggid Mishneh, Sefer Mitzvot Gedolot, and Tur. I will add Meiri to that list.

The Frankel editors note, in support of this version, that Rambam's claim about "greats of the sages" relates only to animals. Indeed, his source for that claim, Talmud Kiddushin 80b, only includes anecdotes about avoiding *yichud* with animals.

אביי מכלליה מכולה דברא;

רב ששת מעבר ליה מצרא;
 רב חנן מנהרדעא איקלע לרב כהנא לפום נהרא.
 חזייה דיתיב וקא גרס וקיימא בהמה קמיה, אמר ליה:
 לא סבר לה מר "אפילו עם בהמה"?!
 אמר ליה:
 לאו אדעתא.

Abbayay would remove (animals) from the entire field (when he was alone).

Rav Sheshet would move (animal) to the other side of a fence.
 Rav Chanan of Nehardea visited Rav Kehana at the mouth of the river.

He saw that he was sitting and learning with an animal nearby, and said to him:

Doesn't Mar hold "even with an animal"?!?

He responded:

It wasn't on my mind.

Moreover, if Rav Kehana was in *yichud* with the animal when Rav Chanan arrived, it follows that Rav Chanan was in *yichud* with Rav Kehana, and yet that seems not to have been on either of their minds! This seems to me dispositive evidence that the sages distanced themselves from *yichud* with animals but not from *yichud* with each other.

Or perhaps only some sages distanced themselves. One can read Rav Kehana's dialogue with Rav Chanan along the lines of the Zen koan in which two monks meet a beautiful woman at a river-crossing too deep for her to wade. One of them carries her across. A few miles later, the other monk asks him: "Should you have done that?" The first monk replies: "I put her down as soon as we got across. Are you still carrying her?"

On the other hand, Piskei RIAZ seems to go further than any version of Rambam in using these stories to establish normative practice.

יש מן החכמים שהיו נזהרין מלהתייחד אפילו עם בנותיהן, ואפי' עם הבהמה.
 ונראה בעיניי שכך היא שטת התלמוד.
 וכן לא יישנו שני רווקים בטלית אחת,
 כמבואר בקונטרס הראיית הראי' י"א.

Some of the sages were careful not to be in *yichud* even . . . even with an animal.

It seems to me that this is also the line of the Talmud.

So too, two unmarried men must not sleep in one garment, as is made clear in the Kuntres HaRaayot #11.

RIAZ seems to hold that in practice we rule like Rabbi Yehudah, although I'm not certain what normative/legal force he assigns to "the line of the Talmud". (The Kuntres HaRaayot to Kiddushin so far as I know is not extant.)

Regardless, Beit Yosef EH 24:1 cites our printed version of Rambam. Furthermore, Beit Yosef appears to believe that the difference between versions isn't meaningful, because he concludes

וכך הם דברי רבינו

and the words of our master (Tur) are the same

when Tur (EH 24) actually writes:

ישראל לא נחשדו על משכב זכור ועל משכב בהמה
 לפיכך מותר להתייחד עמהן
 והמחמיר עצמו שלא להתייחד אפילו עם בהמה ולא עם אביו –
 ה"ז משובח

Male Jews are not suspected regarding sex with a male nor with an animal.

Therefore it is permitted (for male Jews) to be in *yichud* with them but one who is stringent on themselves not to be in *yichud* even with an animal nor with his father – he is praiseworthy,

Possibly Beit Yosef derived a general prohibition via *kal vachomer* from Tur's apparent ban against *yichud* with one's father. However, the line in Tur establishing that ban is extremely puzzling. BaCH comments:

ורבינו כתב "ולא עם אביו" לאורויי
 דאפילו תרתי לגריעותא, זכר ואביו –
 אפ"ה ה"ז משובח
 ולא ידעתי מנין לו:

Our master wrote "nor with his father" to teach us that even if there are two weakening factors, being male and his father –

nonetheless one who avoids *yichud* is praiseworthy – but I don't know where he got this from.

I share BaCH's puzzlement. Pesachim 51a cites a beraita which forbids bathing with one's father and several other relatives, but this cannot be Beit Yosef's source, as it explicitly permits bathing with all other males, and therefore seems to be an issue of *kevod*/honoring rather than of sexuality. Another beraita on Pesachim 51a records that some places specifically forbade brothers from bathing together, and Rashi explains this as a specific concern about homosexual behavior. But that beraita does not mention a similar concern about fathers and sons. Note that Shmuel (Shabbat 65a) forbade his daughters from sharing a bed even though this was acceptable behavior for unrelated women (see e.g. Mishnah Niddah 9:5).

I have not found any subsequent figure who relates to Tur other than by citing BaCH. It is tempting to suggest emending the text of Tur from

ולא עם אביו
 and not with his father

to

ולא עם אחיו
 and not with his brother,

Even without such a speculative flight, however, Beit Yosef is connecting a possibly incorrect text of Rambam with a Tur that has no source and really no explanation. Perhaps it should not be surprising that R. Caro's summation in Shulkhan Arukh EH 24 concludes with yet another claim about male-male *yichud* that has no precedent that I (or B'er HaGolah) can find.

I hope soon to address that claim, and its complicated reception history, in the context of an effort to produce concrete halakhic guidance on contemporary issues of *yichud*. Readers are encouraged to send me cases and questions that interest them, or examples that you think have been badly or well decided by others.

Shabbat shalom!