

Are Wives Maids? Distinguishing Legal Rationales from Social Policy

SBM alumna Miram Gedwiser's beautiful, powerful, and challenging response from to my essay on [Tzniut](#) calls attention to the following passage from Yebamot 113a).

ההוא חרש
– דהוה בשבבותיה דרב מלכיו –
אנסביה איתתא וכתב לה ארבע מאה זוזי מנכסיה.
אמר רבא: מאן חכים כרב מלכיו, דגברא רבה הוא!
קסבר:
אילו רצה שפחה לשמשו, מי לא זבנינן ליה!?
כ"ש הכא דאיכא תרת!

There was a particular person who was deaf
(and mute, and therefore, in the time of the Talmud, presumptively incompetent for most legal purposes)
who lived in the neighborhood of Rav Malkhiyu
(who served as either an explicit or implicit trustee for the deafmute's property) –
he married a woman to him, and wrote her 400 zuz from (the deafmute's) property.

Said Rava: Who is as wise as Rav Malkhiyu, who is a great man!

He held:

Had (the deafmute) wished a maid to serve him, would we not have acquired this for him!

All the more so here, **where there are two**

(grounds for seeing the money as being spent in the deafmute's best interest!)

What are the two grounds? A plausible initial reading is that R. Malkhiyu conceives of wives as maids who also provide sexual services.

I wish to argue, however, that this is a serious misreading. Here's why.

The Talmud records Rava as making five statements of the form "who is as wise as Rabbi X". (The form is apparently unique to Rava). Here is one of the five:

On Pesachim 76a, Rav Chinena son of Rava of Pashronya permits eating a bird that fell into *kutcha*, a salty dairy liquid. The problem is that Shmuel said that salty liquids are to be considered as boiling for the purposes of kashrut, so the bird should be considered to have been cooked in milk. Rava praises Rav Chinena as uniquely capable of permitting this. The rationale offered is that Shmuel's position only applied to liquids that were so salty as to be unpotable, whereas *kutcha* is potable.

Here we need to note that

- a) just before this story is cited, Rava is cited as offering the same interpretation of Shmuel's position and

- b) after the rationale for Rav Chinena, the *stama d'gemara* adds that the permission would not stand if the bird had previously been cooked, or if it had been flavored.

The point is that Rav Chinena must have done something more than pasken like a particular position to earn Rava's high praise. What he did was reach a proper result – preventing a substantial economic loss - in the teeth of the apparent law, by carving out an exception – an exception radical enough that the Talmud promptly limits it by carving out exceptions to the exception.

Now in our case too, the praise is earned for the creative circumvention of a rule so as to achieve the proper result. The rule is that the possessions of an incompetent can only be used for his or her tangible benefit. Rav Malkhiyu found a way to conceive of marriage as a tangible benefit. If a wife were really a maid plus benefits, and marriage simply a longterm contract for services, we would not need Rav Malkhiyu to permit it, or praise him uniquely for doing so. Rather, marriage is more than that, and Rav Malkhiyu's greatness is in realizing that it can nonetheless be conceived of in purely pragmatic terms for the purpose of this law.

Furthermore, I suspect that the "benefits" Rav Malkhiyu has in mind here are not sexual. Why? On Ketubot 51a, we find the following:

ההוא יתום ויתומה דאתו לקמיה דרבא.

אמר להו רבא: העלו ליתום בשביל יתומה.

אמרי ליה רבנן לרבא: והאמר הוא דאמר: ממקרקעי ולא ממטלטלי, בין למזוני, בין לכתובה, ובין לפרנסה?
אמר להו: אילו רצה שפחה לשמשו, מי לא יהיבין ליה? כל שכן הכא דאיכא תרת.

An orphan brother and sister came before Rava – (both underage, and with the inheritance belonging to the brother, and with insufficient income from real estate to support the sister).

Rava said regarding them: Give additional support to the brother for the sake of the sister.

The Rabbis said to Rava: But are you not the one who banned using portable property to support the dependants of an estate?

He said to them: If (the brother) wished a maid to serve him, would we not have acquired this for him!

All the more so here, **where there are two** (grounds for seeing the money as being spent in the brother's best interest!)

Now it is clear that sisters are not inherently maids, and that the additional benefits they provide are not sexual. My suspicion is that Rava here was applying what he had learned from Rav Malkhiyu, and he found yet another way to use entrusted property for a proper but legally problematic purpose.

In both cases the formal rationale is not the true rationale. The deafmute should be able to marry for reasons having nothing to do with services, and the sister should be supported even if she does nothing for the brother.

(See also Bava Batra 8a, where Rabbah imposes a tax on the wealthy estate of underage orphans. When Abbayay challenges him, he asserts that paying the tax will maintain the social

prestige of the orphans, and is therefore in their interest. My sense is that there as well the formal and actual rationales diverge.)

But rhetoric has consequences. Rav Malkhiyu and Rava solve their immediate cases, but they run the risk that observers, and now readers, will mistake the formal rationale for the actual, and believe that wives, and sisters, are only maids plus. It is our responsibility to prevent this from happening, and it is not clear that we are meeting that responsibility.

This for now – I hope to engage more comprehensively with Miriam's essay in the near future.