



Yesterday I was privileged to receive a beautiful, powerful, and challenging response from Miriam Gedwiser to my essay on [Tzniut](#). I hope to share a version of that essay, and the ongoing dialogue it stimulated, in the future. But for this week I will limit myself to discussing one Talmudic passage Miriam called my attention to, (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 זבנין ליה?! כ"ש הכא דאיכא תרת!

There was a particular deaf (and mute, and therefore, in the time of the Talmud, presumptively incompetent for most legal purposes)) person 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:

אמר רבא: הא דאמר שמואל מליח הרי הוא כרותח (וכו') - לא אמרן אלא שלא נאכל מחמת מלחו, אבל נאכל מחמת מלחו - לא.

ההוא בר גוזלא דנפל לכדא דכמכאה- שרייא רב חנינא בריה דרבא מפשרוניה.

אמר רבא: מאן חכים למישרא מילתא כי הא? אי לאו רב חנינא בריה דרבא מפשרוניה, דגברא רבה הוא.

אמר לך: כי אמר שמואל מליח הרי הוא כרותח - שאין נאכל מחמת מלחו, האי נאכל מחמת מלחו.

והני מילי - חי, אבל צלי - בעי קליפ'. ולא אמרן אלא דלית ביה פילי, אבל אית ביה פילי - אסור. ואי מתובל

בתבלי - אסור

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 Rava of Pashronya 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 that it could 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:

הווא יתום ויתומה דאתו לקמיה דרבא.
אמר להו רבא: העלו ליתום בשביל יתומה.
אמרי ליה רבנן לרבא: והא מר הוא דאמר: ממקרקעי ולא ממטלטלי, בין למזוני, בין לכתובה, ובין לפרנסה!
אמר להו: אילו רצה שפחה לשמשו, מי לא יהבינן ליה? כל שכן הכא דאיכא תרתי.

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 dependents 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. But the point in both cases is that the legal 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 legal and actual rationales diverge.)

But as I pointed out last week, rhetoric has consequences. Rav Malkhiyu and Rava solve their immediate cases, but they run the risk that observers, and now readers, will mistake the legal 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.

Shabbat shalom
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