

## ויקרא פרק ד פסוק יג

ואם כל עדת ישראל ישגו ונעלם דבר מעיני הקהיל ועשו אחת מכל מצות יקוק אשר לא תעשינה ואשמו:

If the entire *edah* of Israel errs, and a matter is concealed from the eyes of the *kahal*, and they do one of all the mitzvot of Hashem which must not be done, and they realize their guilt -

### אור החיים ויקרא ד:יג

ואם כל עדת גוי -

בתורת כהנים דרשו:

"עדת" - זו סנהדרין;

נאמר כאן "עדת", ונאמר להלן וכו'.

"עדת ישראל" - דרשו העדה המיוודת שבישראל שהוא של ע"א;

"ישגו" - יכול היו המיוודים חייבים על שוגט מעשה? תלמוד לומר "ישגו ונעלם דבר" - לא אינם חiyavim אלא על העולם דבר עם שוגט המעשה,

ואמרו עוד (שם): הורו בית דין ועשו, יכול היו חiyavon? תלמוד לומר "הקהל ועשו" - ההוראה תלויה בבית דין והמעשה תלויה בקהל.

עד כאן:

ובדרך רמז ירצה:

שם ישגו העדה ויתטו מזרק היישר, גם סנהדרי ישראל, תורתם תהיה נעלמת מהם, לצד שלא השגיחו על העדה ה לישר המתקשים, כי החטא يولיד חטא אחר.

וזא ולמד מההוראה אבי בלא נטילת רשות מרבו, שוגט באותה ההוראה והרגיש כי דין גרמה, וכדאיתא בסנהדרין (ה):

### Eliyahu Munk Translation (1995)

The word *עדת*, "community of", is taken in by *Torat Kohanim* as referring to the Sanhedrin, the Jewish Supreme Court. The word *עדת* in this verse and the word *עדת* in Numbers 35:24-25 both are a reference to the Sanhedrin of 71 sages. The word *ישראל* is presumed to mean the Court which is unique to<sup>1</sup> Israel, i.e. the court comprising 71 judges.

The word *ישגו* teaches that the legislation introduced here applies only if the Court erred in its judgment. If the members of the Court themselves acted upon their faulty judgment this is still no reason to apply the legislation stated in this paragraph seeing that the Torah writes *הקהל ועשו*, "and the community did accordingly"<sup>2</sup>. Thus far the *Torat Kohanim*.

A moral-ethical approach to this verse considers the word *ישגו* as referring to Israeli society committing moral errors and departing from Jewish norms<sup>3</sup>. As a result of such conduct it would follow that the Jewish Supreme Court will also hand down faulty judgments as the judges and their Torah knowledge reflect the level of the people whom they represent<sup>4</sup>. They are to blame for the people straying as they had not used their authority in controlling public morals. It has been their duty to discipline the individuals who were responsible for a trend away from traditional Jewish values.<sup>5</sup> We have the example of Abbaye in Gittin<sup>6</sup> 60, who erred in a ruling as he had not first obtained permission from his teacher to issue a ruling.<sup>7</sup> We have been told this<sup>8</sup> specifically in Sanhedrin 5.

<sup>1</sup> "On" as opposed to "in" may have been a typographical error.

<sup>2</sup> This fails to make clear that the words are being read across phrases.

<sup>3</sup> "Committing moral errors and departing from Jewish norms" is a quite expansive translation, and "Israeli" seems excessively contemporary

<sup>4</sup> The original says nothing about reflecting the level, either causally or qualitatively.

<sup>5</sup> The last sentence, so far as I can tell, is pure translator's invention.

<sup>6</sup> I think he means Ketubot, as I can find nothing relevant in Gittin

<sup>7</sup> How does the evidence relate to his thesis?

## **My Translation**

“If the entire *adat* etc.” –

In Torat Kohanim they derived via midrash halakhah:

“*adat*” – this refers to a Sanhedrin:

It uses the term “*edah*” here, and later on etc.

“*adat Yisroel*” – they derived “the *edah* that is unique in Israel”, meaning one of 71;

“*yishgu*” – might it be that the unique ones are liable for a *shgagah* of action? To correct this Scripture writes “*yishgu* and the matter was concealed” – meaning that they are liable only when a matter is concealed and there is a *shgagah* of action.

They said further: Might it be that if the beit din both ruled and acted, that they would be liable? So Scripture writes: “the congregation, and they did” – the ruling depends on the beit din, and the action on the congregation.

In the manner of hinting this intends:

That if the *edah* errs and strays from the straight path, then the Sanhedrin of Israel too, their Torah will be concealed from them, because they have not overseen the *edah* of Hashem to straighten the crooked, because one sin generates another sin.

Go and learn from the ruling of Abbayay without obtaining authority/permission from his teacher – he erred in that ruling and perceived that this had caused it, and this as we find in Sanhedrin.

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<sup>8</sup> We are not told anything relevant about Abbaye on Sanhedrin 5, only that one must not rule without one's teachers' authorization.

## **Talmud Ketubot 60a-b**

A beraita:

A nursing woman whose husband died within 24 months (of the nursing child's birth) – she must not become betrothed nor marry, in the opinion of Rabbi Meir; But Rabbi Yehudah permits after 18 months.

Said Rabbi Natan bar Yosef: These are the very words of Beit Shammai; those are the very words of Beit Hillel, for Beit Shammai say 24 months, and Beit Hillel say 18 months.

Said Rabban Shimon ben Gamliel: I will determine –

According to one who holds 24 months – she may marry after 21 months;

According to one who holds 18 months – she may marry after 15 months,

Because the milk does not spoil until 3 months (into a new pregnancy).

Ulla said: The law is like Rabbi Yehudah,

and Mar Ukva said: Rabbi Chanina permitted me to marry (a nursing widow) after 15 months.

Abbayay's sharecropper came before him.

He said to him: May I betroth (a nursing widow) after 15 months?

Abbayay said to him:

- 1) In a dispute between Rabbi Meir and Rabbi Yehudah, the law is like Rabbi Yehudah;

In a dispute between Beit Shammai and Beit Hillel, the law is like Beit Hillel, and Ulla said that the law is like Rabbi Yehudah, and Mar Ukva said: Rabbi Chanina permitted me to marry (a nursing widow) after 15 months.

When Abbayay came before Rav Yosef, Rav Yosef said to him:

Rav and Shmuel both said: she must wait until 24 months after the day of birth, and the day of betrothal does not count as the last day of the 24<sup>th</sup> month.

Abbayay ran after the sharecropper for 3 parasangs – Some say a parasang in sand – but did not overtake him.

Said Abbayay: This instantiates the Rabbis' statement that one should not permit even an egg in dairy in the place of one's teacher – not because it seems defiant, but rather because you will not speak well in the matter, as I had learned that statement of Rav and Shmuel, and even so I did not speak well in the matter.

## تلמוד בבלי מסכת כתובות ס. - פ:

תנו רבנן

מינקת שמת בעלה בתוך עשרים וארבעה חדש הרי זו לא תתרס ולא תינשא  
עד עשרים וארבעה חדש דברי רבי מאיר  
ור' יהודה מתיר בשמונה עשר חדש

אמר רבי נתן בר יוסף הן הן דברי בית שמאי הן הן דברי בית החדש  
שבית שמאי אומרים עשרים וארבעה חדש ובית הלל אומרים שמונה עשר חדש אמר  
רבן שמעון בן גמליאל אני אכريع

לדברי האומר עשרים וארבעה מותרת לינשא בעשרים ואחד חדש  
לדברי האומר בשמונה עשר חדש מותרת להנשא בחמשה עשר חדש  
לפי שאין החלב נעכר אלא לאחר שלשה חדשים

אמר עולא הלכה כרבי יהודה  
ואמר מר עוקבא לי התיר רבי חנינה לשאת לאחר חמישה עשר חדש  
אריסיה דאבי אתה לקמיה דאבי

אמר ליה מהו ליאرس בחמשה עשר חדש  
אמר ליה

חדא דר"מ ורבו יהודה הלכה כרבי יהודה  
ועוד בית שמאי ובית הלל הלכה כבית הלל  
ואמר עולא הלכה כרבי יהודה

ואמר מר עוקבא לי התיר רבי חנינה לשאת לאחר חמישה עשר חדש כל שכן דעת ליארס  
כי אתה לקמיה דרב יוסף א"ל

רב ושמואל דאמרי תרויהו צריכה להמתין עשרים וארבעה חדש חוץ מיום שנולד בו וחוץ  
מיום שנתארסה בו  
רתט בתיריה תלתא פרסי ואמרי לה פרסא בחלא ולא אדריכיה

אמר אבי

האי מילתא דאמור רבנן אפילו ביעתא בכotta לא לישרי איניש במקום רביה - לא משום  
דמיהזוי כאפקירותא, אלא משום דלא מסתיעא מילתא למימרא, דהא أنا הו גמירנא ליה להא  
רב ושמואל,afi הци לא מסתיעא לי מילתא למימר

Many years ago, I gave a weekly (sparely attended – thank you Seth and Yechiel:) shiur entitled “Why I don’t know pshat in this Yerushalmi sugya, but I can prove to you no one else did either”. This week’s dvar Torah is along that line – I don’t understand the Or haChayyim that is the base text, but I’m fairly sure that the standard translation didn’t either, as demonstrated in my notes above and commentary below. As Dan Rabinowitz at the Seforim blog has drastically panned the commentary on Or HaChaim published by Mossad haRav Kook, a proper treatment of his work may still be a desideratum.

Let’s begin with Vayikra 4:13, which sets out the conditions under which a specific sin-offering must be brought. This sacrifice becomes known as the “par he’elem davar shel tzibbur”.

“If the entire *edah* of Israel errs, and a matter is concealed from the eyes of the *kahal*, and they do one of all the mitzvot of Hashem which must not be done, and they realize their guilt”. The midrash Halakhah understands this as referring to a case in which the majority of the Jewish community sins on the basis of a ruling by the Great Sanhedrin (This establishes definitively that the Great Sanhedrin can err in matters of Halakhah, and presumably this is true kal vachomer of contemporary poskim or rabbinic collectives). Formally, the derivation is based on what might be called a slant-drash, a reading that connects words across phrases – thus “*yishgu v’neelam*”, and more peculiarly, “*hakahal v’asu*”. My suspicion, though, is that the underlying issue is the redundancy of the two opening phrases – if they erred, is it not clear that something was concealed from them? - and the switch from *edah* to *kahal*. To resolve these issues the midrash postulates a difference between intellectual error and subsequent misleading of others, and a difference between *edah*=Sanhedrin and *kahal*=community. It’s not clear to me in the end whether *yishgu* refers to the ruling or the action.

Or haChayyim cites this much without comment. He then adds, however, a comment “b’derekh remez”. Rabbi Munk translates this consistently as “In a moral/ethical approach”, but I have a quibble with that – it suggests that Or haChayyim excludes the moral/ethical when reading ordinarily. Remez is a mode of reading which looks at subtext rather than text – it is not a content genre - although it may well be that Or HaChayyim records his readings via this method only when they are edifying.

The specific content of his reading appears to be a claim that the causal connection between the court’s mistaken ruling and the community’s mistaken action goes both ways – halakhically, the action must be based on the ruling to trigger this sacrifice, but metaphysically, mistaken rulings of the Sanhedrin result from communal sins, as they are responsible to prevent such sins, and if they do not, “sin causes sin”. In this reading the first phrase refers to active sin, and the second to mistaken hora’ah.

The Munk translation argues that this means that the Court reflects the spiritual level of its constituents. But that seems to me to miss the key argument, which is that a court which fails in its administrative and executive functions will eventually fail judicially as well. He does not mean, laaniyut da’ati, that the sin of the community causes the error, but rather that the court’s failure to adequately direct the community is a sin that will eventually cause judicial error as well. Perhaps he means that a Torah which is never practically tested will inevitably become distorted.

Or haChayyim then claims that his moral is evident from a story about Abbayay ruling without his teacher's permission. He offers no location, and the translation says Gittin 60b, but this appears to be a typo, and Ketubot 60 should be substituted. In the story found there, Abbayay acknowledges that he erred in issuing a lenient ruling allowing the remarriage of a nursing widow 15 months after her child was born, and attributes this error to having ruled (leniently; his statement may not apply to machmir rulings) in the presence of his teacher. He does not explain why this caused him to err, other than excluding the possibility that the issue is apparent disrespect (which would apply equally to stringent rulings). Or haChayyim, without presenting evidence, assumes that obtaining formal authority from his teacher would resolve this issue, and connects this story to the obligation to gain such authority recorded on Sanhedrin 5.

My question is: How does the story about Abbayay, even read as Or haChayyim wishes, demonstrate his thesis that failure to properly administer justice leads to judicial error? I look forward to your suggestions.

Shabbat Shalom

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