

תלמוד בבלי מסכת סנהדרין דף עא עמוד א

משנה.

היה אביו רוצה ואמו אינה רוצה, אביו אינו רוצה ואמו רוצה - אינו נעשה בן סורר ומורה, עד שיהיו שניהם רוצין.
רבי יהודה אומר:

אם לא היתה אמו ראויה לאביו - אינו נעשה בן סורר ומורה.

גמרא.

מאי "אינה ראויה"?

אילימא חייבי כריתות וחייבי מיתות בית דין, סוף סוף אביו - אביו נינהו, ואמיה - אמיה נינהו?! אלא:

בשוה לאביו קאמר.

תניא נמי הכי:

רבי יהודה אומר:

אם לא היתה אמו שוה לאביו בקול ובמראה ובקומה - אינו נעשה בן סורר ומורה.

מאי טעמא?

דאמר קרא: "איננו שמע בקלנו" - מדקול בעינן שוין, מראה וקומה נמי בעינן שוין.

כמאן אזלא הא דתניא:

בן סורר ומורה לא היה ולא עתיד להיות, ולמה נכתב? דרוש וקבל שכר.

כמאן? כרבי יהודה.

איבעית אימא:

רבי שמעון היא,

דתניא:

אמר רבי שמעון:

וכי מפני שאכל זה תרטימר בשר ושתה חצי לוג יין האיטלקי אביו ואמו מוציאין אותו לסקלו?!
אלא לא היה ולא עתיד להיות, ולמה נכתב? דרוש וקבל שכר.

אמר רבי יונתן: אני ראיתיו, וישבתי על קברו.

כמאן אזלא הא דתניא:

עיר הנדחת לא היתה ולא עתידה להיות, ולמה נכתבה? דרוש וקבל שכר.

כמאן? כרבי אליעזר,

דתניא:

רבי אליעזר אומר:

כל עיר שיש בה אפילו מזוזה אחת - אינה נעשית עיר הנדחת.

מאי טעמא?

אמר קרא: (דברים י"ג) "ואת כל שללה תקבץ אל תוך רחבה ושרפת באש" -

וכיון דאי איכא מזוזה לא אפשר,

דכתיב (דברים י"ב) "לא תעשון כן לה' אלהיכם".

אמר רבי יונתן: אני ראיתיה, וישבתי על תילה.

כמאן אזלא הא דתניא:

בית המנוגע לא היה ולא עתיד להיות, ולמה נכתב? דרוש וקבל שכר.

כמאן? כרבי אלעזר ברבי שמעון,

דתנן:

רבי אלעזר ברבי שמעון אומר:

לעולם אין הבית טמא עד שיראה כשתי גריסין על שתי אבנים, בשתי כתלים, בקרן זוית, ארכו כשני גריסין ורחבו

כגריס.

מאי טעמא דרבי אלעזר ברבי שמעון?

כתיב "קיר" וכתיב "קיר" -

איזהו קיר שהוא כקירות? הוי אומר זה קרן זוית.

תניא:

אמר רבי אלעזר ברבי צדוק:

מקום היה בתחום עזה, והיו קורין אותו חורבתא סגירתא.

אמר רבי שמעון איש כפר עכו:

פעם אחת הלכתי לגליל וראיתי מקום שמציינין אותו, ואמרו: אבנים מנוגעות פינו לשם.

Talmud Sanhedrin 101a

Mishnah

If his father wishes it but his mother does not, or his father does not wish it but his mother does – the son cannot not be made a “wayward and rebellious son”, until both of them wish it.

Rabbi Yehudah says:

If his mother was not fit for his father – he cannot be made a “wayward and rebellious son”,

Talmud

What is intended by “not fit”?

If you suggest that it refers to partners whose relationship carries the penalties of *karet* or of execution, bottom line, his father is his father, and his mother is his mother (so why should their child not be subject to this law)?!

Rather:

It means “equivalent to his father”.

The following beraita also supports this interpretation:

Rabbi Yehudah said:

If his mother was not equivalent to his father in voice, in appearance, and in height – he cannot be made a “wayward and rebellious son”.

What is the rationale?

Scripture said “He does not heed our voice” – (since “voice” is singular, we derive that their voices must be equivalent, and) since we require their voices to be equivalent, it follows that their appearance and height must also be equivalent.

With which position does the following beraita accord:

“The ‘wayward and rebellious son’ was not and will not be, so why was it written?

Derosh and receive reward.”?

With which position? With Rabbi Yehudah (as the conditions of equivalence he sets will never be met in reality)”.

Alternatively:

With Rabbi Shim’on,

as we learned in a beraita:

“Said Rabbi Shim’on:

Is it the case that because this one ate a *tartimar* of meat and drank half a *log* of wine that his mother and father will take him out to be stoned?! Rather, he was not and will not be, so why was it written? *Derosh* and receive reward.

Said Rabbi Yonatan: I have seen him, and I sat on his grave.

With which position does the following beraita accord:

“The seduced-to-idolatry city was not and will not be, so why was it written? *Derosh* and receive reward.”?

With which position? With Rabbi Eliezer,

as we learned in a beraita:

“Rabbi Eliezer says:

Any city that has in it even one *mezuzah* – cannot be made a seduced-to-idolatry city.”

What is the rationale?

Scripture said “and all its spoils you must gather to the center of its plaza and burn it in fire”,

and if there is a *mezuzah* this is not possible,

as Scripture says: “Do not do the same (destroy) to Hashem your G-d”.

Said Rabbi Yonatan: I have seen it, and I sat on its tell.

With which position does the following beraita accord:

“The plagued house was not and will not be, so why was it written? *Derosh* and receive reward.”?

With which position? With Rabbi El’azar son of Rabbi Shim’on,

as we learned in a Mishnah:

“Said Rabbi El’azar son of Rabbi Shim’on:

For sure the (plague) house is not declared *tamei* until he sees (plague) the size of two beans on two stones that are on two walls in a corner, two beans long and one bean wide.

What is the rationale of Rabbi El’azar son of Rabbi Shim’on?

Scripture writes “wall” and “walls” –

What wall is like wall? A corner.

A beraita:

Said Rabbi Eliezer son of Rabbi Tzadok:

There was a place in the bounds of Gaza which they called “the shut-in (i.e. plagued house) ruin”.

Said Rabbi Shim’on man of the town of Acre:

One time I went to Galilee and I saw a place that they mark (as tame), and they said “Plagued stones were removed to there”.

The Talmudic position that some Biblical legislation never was or will be out into practice has had great appeal to two highly divergent ideologies in modernity.

The first, exemplified by the Rav's exposition of the mindset of Halakhic Man, is the ideology of Brisk, which sees the study of halakhic texts at the highest religious level as utterly unrelated to practical guidance. The existence of a category of laws that in principle have no practical import, but were given at Sinai solely to be studied, seems clear confirmation of the value of such study.

The second, academically championed by Professor Moshe Halbertal, sees the impracticality of these laws as the product of rabbinic interpretation, and takes the Talmudic statement as a bold assertion of the right of "rabbinic nullification". This assertion is then taken as authorization for bold attempts to transform contemporary Halakhah by constructing formal means of evading precedent.

I have often pointed out that this position, whatever its theological implications, does not seem to have been popular or influential prior to the twentieth century. Among the rishonim regarding ben sorer umoreh, for example, to my knowledge only Rav Menachem Recanati explicitly affirms the position that it is purely theoretical. Ramban mentions the possibility, and other than that, it seems to have faded into obscurity. Rambam, for example, rules without comment against Rabbi Yehudah. The beraitot in our sugya do each appear in our Tosefta, in their respective masekhtot, but no trace of this is evident in the Yerushalmi or the Sifrei, and indeed many other rabbinic statements would be nonsensical if they held this position; for example, the midrash which asserts that the plagued house was a blessing, as the Jews would discover hidden Canaanite treasures when demolishing these houses, and the Mishnah which derives from here G-d's capacity to predict human behavior on the basis of psychology.

I also point out regularly that because Rabbi Yonatan was likely a Cohen, as many achronim point out, and therefore should not have been sitting on individual or mass graves, and furthermore would otherwise seem to have taken an unhealthy interest in sites of obscure halakhic executions, that his statements are best understood as hyperbolic – "I'm as sure he existed as if I had seen him..." Why would he have been so certain? Likely because he was ideologically opposed to the idea that Biblical law could have been, or been declared, never relevant to practice. Thus it is fair to ask whether, even if these statements carry the implications attributed to them, they stand in the mainstream of the tradition.

I want to talk briefly here, however, about the claim of rabbinic nullification. It seems to me that such a claim has to deal not merely with the legal but with the literary data – in other words, they cannot simply assert that the pshat of these laws is self-evidently practical, and thus the claim that they are not practical is sufficient to prove intentional nullification, and as the likeliest motivation for nullification in our day is ethical, Chazal's motivation for this interpretation must also have been ethical discomfort. Rather, they must account for the way the claim of non-implementation is presented in the Talmudic sugya, which seems to me really the only source for the claim.

It seems to me evident that the plagued-house is not and never was an ethical problem. Thus the ethical postulate needs to explain what other motivation Chazal deemed sufficient basis for nullification, and then show that it could not have motivated ben sorer umoreh and ir hanidachat as well.

It also seems to me evident that the Talmud seeks to present the position of non-implementation as a consequence rather than as a cause of interpretation. In other words, the Talmud *prima facie* claims that the rabbis read the words and derived from them legal interpretations in their usual fashion. Some of them then looked at those interpretations, and, while finding them literarily compelling, noted that they would prevent the law from ever being implemented, and were okay with that. Others were not, although whether they chose therefore to reject the interpretations, or rather to make a faith claim that the interpretations would not utterly rule out implementation, is unclear.

Proof of an ethical motivation for deliberately interpreting in a fashion that led to non-implementation, then, requires evidence that these results could not have been reached by the normal canons of interpretation. There does not seem to me any such evidence regarding the *bayit menuga* or the *ir hanidachat*. However, I note that I cannot find any rationale, or analogy, elsewhere in rabbinic literature (see *Menachot* 95b for a very different use of the same literary structure) to the claim that “since the voices must be equivalent, the appearance and height must be as well”, and that “fitness” with regard to partners elsewhere in rabbinic literature always refers to halakhic fitness, the *hava amina* that the Talmud here disregards rather casually. Anyone who can provide either an explanation or an analogy is encouraged to contact me.

Time does not permit playing out here the many historical challenges that can also be raised against the thesis of ethical motivation for interpretation here. I also can only mention in passing the need to distinguish the theological from the ethical—in other words, even if one were to acknowledge that a particular effort was made to interpret *ben sorer umoreh* and *ir hanidachat* out of existence, it might be because they violated not a sense of what would be right or wrong, but rather a sense of the proper role of human courts. Perhaps, for example, they agreed that it would be best to preemptively execute murderers as children, but thought that human courts could never act on any basis other than inalienable free will.

Note finally that Josephus records that Herod in fact tried to have his sons executed as *banim soreim umorerim*. Rabbi Yitzchak Sassoon told me in the name of his father that the *pshat* of *ben sorer umoreh* referred to a political situation, such as Herod’s, rather than private families. Perhaps the hyperbolic rabbinic rhetoric was a response to attempted abuses, along the lines of Avraham Korman z”l’s suggestion that the rabbis gave up capital jurisdiction rather than allow the Romans to compel them into executing Jews who executed other Jews who collaborated with the Romans.

A final note – other than the primary translated text, I’m working entirely from memory of very old *shiur* prep this week, so I apologize for and appreciate notice of all errors.

Shabbat Shalom

Aryeh Klapper