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BERAKHOT 19B: THE BAVLI'S PARADIGM OF CONFRONTATIONAL DISCOURSE

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Rational Rabbis sets forth from the observation that a close reading of a variety of authentic and alleged tannaitic texts reveals a major, deep-reaching dispute about the status of, and appropriate attitude toward, what the *halakhic* authorities take to be the *halakhic* tradition in their hands.¹ Traditionalists insist that the *halakhic* tradition is at all times binding. No one, not even the Great Sanhedrin, has the authority to overturn an existing ruling. *halakha*, they hold, develops and expands by accumulation, but is never revised. Former rulings are never overturned. From a traditionalist perspective, innovation is wholly reserved for, and

¹ The book makes no attempt to pinpoint the dispute historically and is, therefore, unconcerned with the authenticity of texts that later talmudic compilations present as tannaitic. Certain bona fide tannaitic texts bear clear witness to the dispute (e.g. Mishna, Sanhedrin 11:2 versus Tosefta, Sanhedrin 7:1 and Haggiga 2:9, and Mishna versus Tosefta, *Eduyot* 1), as do several others others, presented as tannaitic by the Bavli. On the way the latter are occasionally manipulated by the Bavli to serve this purpose, see Shlomo Naeh's fascinating "Ase Libkha Hadrei Hadarim: Iyyun Nosaf be-Divrei Hazal al ha-Mahloket", in A Sagi and Z Zohar (eds.), *Renewing Jewish Commitment: The Work and Thought of David Hartman*, Hakibbutz Hameuchad, Tel Aviv 2001, vol II, pp. 851-75.

limited to, *halakhic* lacunae.² As Tosefta, *Eduyot* states forcefully, the only reason for preserving rejected minority opinions on record is to ensure that they remain forever rejected. Once a vote is taken the matter, is considered by traditionalists to be settled once and for all.

Antitraditionalists (as I have inelegantly dubbed them) maintain, by contrast, that it is the religious duty of the *halakhic* authorities of each generation not only to transmit and add to the received *halakhic* system, but to constantly review and revise it as they fit. As Mishna, *Eduyot* puts it, with forcefulness equal to that of the Tosefta, rejected minority opinions remain on record, just in case a future *Bet Din* sees fit to revise them. Both schools of thought insist that the *halakhic* tradition be taken with utmost seriousness, but differ as to what taking seriously means in this respect. For traditionalists, it is to study it carefully and abide by it without question; for antitraditionalists, it is to do so just as carefully, but with a view to exposing its defects, and, as the need arises, to putting them right. The dispute is explored and analyzed in considerable detail in the *Rational Rabbis* (pp. 51-110), with special emphasis on the Jabne stories, and is further extended in a later publication devoted to the Bet Shammai and Bet Hillel disputes.³

Rational Rabbis then turns (pp. 111-62) to discuss the amoraic level of *halakhic* discourse, found, in its most developed form, in the Bavli. Here too one finds many declarative and aggadic passages that in similar fashion explore, dramatize and meditate upon issues pertaining to the nature of Torah study and *halakhic* development. But the Bavli has much more to offer. Like the Yerushalmi, but unlike any antecedent tannaitic document, the Bavli is fashioned as an ordered series of detailed, blow-by-blow responses to an earlier, authoritative rabbinic text: the Mishna.

² Tosefta, *Sanhedrin* 7:1 puts it: the entire system is governed by the principle that *im sham'u, amru lahem* – namely, that in all cases for which a *halakhic* tradition exists, the court – even the High Court, the Great Sanhedrin situated in the Hall of Hewn Stones – is obliged to rule accordingly. See also Tosefta, *Haggiga* 2:9.

³ H. Shapira and M. Fisch, "Pulmusei ha-Batim: ha-Mahloket ha-Meta-Hilkhatit bein Bet Hillel u-Bet Shammai," *Iyyunei Mishpat*, 22 (3), pp. 461-497, 1998.

The Gemara⁴ ponders, reconstructs and renders explicit the complex lines of reasoning that supposedly led its predecessors to their conclusions, and continues vigorously from the point the prior documents leave off. The narrative forms adopted in its discursive portions resemble those of an elaborate, at times laborious, protocol, normally accompanied by a clear, dispassionate running commentary. Even if its framers had intended to produce no more than an unreflective chronicle of amoraic learning, the Bavli would still be considered a rich source for the study of early rabbinic epistemology.

The Bavli, however, hardly poses as an innocent, unassuming chronicle, nor can it be assumed to speak in one voice. It impresses one as being first and foremost a didactic work, and, therefore, an extraordinarily normative one, designed to convey a carefully crafted vision of *talmud-Torah*. The framers of the Bavli offer their reader punctilious descriptions of exemplary *batei midrash* [ed.— schools of study] in and out of session. They assume the roles of anonymous narrator and moderator, patiently indicating who and what was asked, and who and what was answered, who cited whom, whose opinion was accepted and whose rejected, and all this with a compact and extraordinarily uniform vocabulary of logical connectives and inventory of polemic moves. The reader is implicitly urged to study and ultimately to imitate the way these amoraic voices describe themselves and their forerunners as keenly negotiating with their libraries and with each other. If one seeks evidence of a talmudic theory, or theories of Torah- study *in operation*, it is here, in the Bavli's narratives of reconstructed deliberation and dispute, that we should first look.

Given the way the Bavli presents itself, as a detailed study of so vast a body of tannaitic *halakhic* writings, and given the fierce traditionalist-antitraditionalist dispute concerning the epistemic and *halakhic* standing of such legacies contained within it, it is only natural to ask how the Bavli stands with regard to the traditionalist-antitraditionalist dichotomy. To do

⁴ In what follows I shall often use the term "Gemara" as shorthand for "the anonymous latter-day framer and narrator of the passage under consideration", who shall also be referred to interchangeably as "the *s'tam*" (the unnamed redactor) or "the framer of the *sugya*."

so is to ask, first and foremost, whether, and to what extent can its first-order narratives of amoraic response to what is described therein as received tannaitic opinion be said to arguably premise one of the two antithetical positions.

In theory the differences should be visible. On a traditionalist showing, an amora will never question an authentic tannaitic tradition. He may, of course, doubt its authenticity or ponder its meaning, and, subsequently, once satisfied, may even try to work it into a broader system, but, once it is understood, he will never, ever call it into question. Given a tannaitic statement *A*, an amora inclined towards traditionalism may ask “What is meant by *A*?”, “To which cases was *A* meant to apply?”, “To which additional cases can it be said to be relevant?”, “To which broader issues may it be said to relate?”, he may ponder the consistency of *A* with other tannaitic statements, but, unlike the antitraditionalist, it is unthinkable that he will ever ask “Is *A* a true or viable edict?”. An amora so inclined might contest a colleague’s understanding of a reliable tannaitic source, but never the source itself.⁵

The kind of *sugyot* around which one would expect traditionalist and antitraditionalist redactors to differ most conspicuously are those devoted to negotiating apparent inconsistencies between tannaitic and amoraic opinions. These are cases, commonplace throughout the Bavli and

⁵ The idea that an amora will never contradict a tanna—except when relying on a different tannaitic source—was first proposed as a general rule of talmudic scholarship in the tenth-century *Iggeret Rav Sherira Gaon* (ed. B.M. Levin, Haifa, 1921), p. 30. The Bavli and Yerushalmi themselves, however, contain no general statement to this effect. What the Bavli does offer (though not the Yerushalmi) are a number of specific comments that appear to premise the idea that an amora cannot formally and directly dispute an undisputed tannaitic ruling. On five occasions in which an opinion attributed to Rav is perceived to contradict views stated explicitly by the Mishna, the Gemara explains that since Rav is considered a tanna, he may challenge a mishna (*Rav tanna u-palig*). And on one occasion the same is said of R. Hiya. (For Rav, see: Bavli, *Eruvin* 50b; *Ketubot* 8a; *Gitin* 38b; *Bava Batra* 42a; *Sanhedrin* 83b. For R. Hiya: *Bava Metzia* 5a.) Elsewhere, however, when R. Yohanan, who is nowhere granted tannaitic status by the talmud, is found to have been in clear disagreement with an explicit *beraita*, Abaye suggests that he was probably not aware of its existence, and that had he been, he would have surely changed his mind. To this the anonymous narrator adds: “but then he might still have heard it and decided that the halakha should be different” (Bavli, *Shabbat* 61a. See also Bavli, *Yoma* 43b).

Yerushalmi, in which a well- formed, articulated amoraic position is cited and then challenged by reports of seemingly contrary tannaitic opinion. For a traditionalist, the latter-day, amoraic view will always be the one rendered problematic when faced with such a challenge. Tannaim may disagree with one another (as can *amoraim* among themselves), but the only way, according to the traditionalist, that an amora can be said to contest a tanna is by aligning himself with another tanna. Hence, whenever a traditionalist cites a tannaitic source with reference to an amoraic declaration, it will always be with a view to confirming or trouble-shooting the latter.⁶ For the antitraditionalist, by contrast, confirmation or criticism may, in principle, go either way. At any one time, antitraditionalists will be as respectfully skeptical of former documents, as they are hesitant and self- doubting with regard to their own opinions and those of their peers. Still in the course of a prudently antitraditionalist study-session, the direction of questioning will normally be from new to old, from amoraic to tannaitic rather than *vice versa*. The antitraditionalist forms his own *halakhic* opinions by seriously trouble-shooting those of his predecessors. Once he has tentatively made up his mind, and hesitantly boasts a system of his own, he will naturally regard it as superior to whatever earlier systems he had critically considered in the course of its formation. From his point of view, when the two are confronted, it will

⁶ Strictly speaking, the 'great divide' established by the Bavli between the tannaitic and amoraic periods is somewhat artificial from the point of view of the avid traditionalist, who is equally committed to the reliably transmitted teachings of all preceding generations. To a significant degree the Bavli treats all generations of tannaim and all generations of *amoraim* as two extended peer- groups, members of which are 'permitted' as it were to criticize one another freely. There is seldom a problem for a fifth-generation amora, for instance, to criticize and contradict a second generation amora. There is nothing particularly antitraditionalist, however, about this curious fact. The great generational changing of the guard is experienced in and by the Bavli across the one dividing line between the two great texts it comprises: the Mishna and Gemara. The Bavli is about the reception of the Mishna by later generations. And it is in relation to this one crucial 'moment' that its philosophy of reception, interpretation and amelioration of prior texts is presented. One might say that more than the Bavli is a study of the relationship between consecutive generations of Torah learners, it is a study of the relationship between consecutive *compositions* by Torah-learners.

normally be for the earlier system to answer to the later one. One would, therefore, expect members of the two schools of thought to conduct and narrate such transgenerational confrontations very differently. However, even here, the talmudic text is far less unequivocal than we would have liked it to be. Even in the case of frontal confrontations between amoraic declaration and tannaitic verdict it is not always easy to decide which of the two texts is the framer of the *sugya* questioning by means of the other — certainly for those who, like the present author, were brought up to interpret them along traditionalist lines almost instinctively.

1. Introducing *Berakhot* 19b

The Bavli introduces such transgenerational confrontations by means of the words “*meitivi*” (a response was offered; an objection was raised) or “*eitivei*” (he offered in response; he raised the following objection).⁷ At first blush, both the meaning of the terms and the way they are found to function in the text seem to favor a traditionalist approach. The very terms *meitivi* and *eitivei* imply that in order to render a latter-day amoraic opinion problematic, it is enough to cite a tannaitic source that allegedly claims, implies or premises the contrary. The Bavli contains over eleven-hundred transgenerational confrontations, of which six-hundred-fifty or

⁷ If the amoraic statement is challenged with more than one tannaitic document, only the first of them will usually be introduced by *meitivi* or *eitivei*, while successive incongruous beraitot are presented by “*ta shema*” (come and hear) or *t’nan* (we have learnt). The main difference between objections introduced by *meitivi* and *eitivei* is that the latter describe a move in a narrated dialogue between named parties. We are told by the anonymous narrator that amora *A* responded to the ruling attributed to amora *B* by citing the following tannaitic source. In such cases, the understandings and policies regarding transgenerational incongruities may not necessarily reflect those of the narrator, who may very well be faithfully citing a dispute he himself had nothing to do with. By contrast, objections introduced by “*meitivi*” seldom aspire to describe moves performed in face-to-face dialogue at all. Here it is far more obvious that we are being addressed by the framer of the exchange, who is not merely reporting that someone or other considered the following to be an objection, but that he himself regards it as such. It is natural therefore, that a study such as the present one, in which the epistemological presuppositions of the framers of the Talmud are its main concern, will concentrate primarily on transgenerational confrontations of the *meitivi*, rather than the *eitivei* variety.

so are introduced by *meitivi*.⁸ In more than sixty of them the confrontation results in the Bavli declaring the amoraic position in question “problematic” (*teyuota*) and in about half of these, down-right refuted (a ‘double’ *teyuota*).⁹ Although the fatality rate is relatively low—lower than 5%—in the Bavli’s world of discourse, an amoraic statement is in real jeopardy when found to be discordant with a tannaitic text. The opposite, though, seems never to be the case. Nowhere is a tannaitic statement ever outwardly declared refuted or rejected as the result of a *meitivi*-type confrontation.¹⁰ When discordant amoraic and tannaitic statements are confronted, the Bavli appears to adopt a clear traditionalist stance; always deeming the former potentially at fault and liable to be rejected.

But does the inner logic of such negotiations always lend itself to the marked traditionalist idiom of the way they are narrated? Are all apparent inconsistencies between tannaitic and amoraic statements dealt with in practice as if it is obvious that the latter are always at fault? A reasonably reliable method for determining a person’s understanding of a problem is to look at the way he or she elects to solve it. It stands to reason that if an incongruity between two texts is deemed a problem for one of them, it will be the one deemed problematic that will normally be modified, limited or rejected. (In other words, it is generally the case that the remedy is applied to the wound.) And it is here that one can frequently detect a disparity

⁸ This number does not include follow-up challenges to the same statements introduced by *ta shema* or *t’nan*. For convenience as well as for reasons outlined in the previous fn., I shall refer to all such transgenerational objections as *meitivi*-type challenges, confrontations or objections.

⁹ Not every double *tyuota* is fatal. See Bavli, *Berakhot* 23b and *Eruvin* 16b where double *tyuotot* are declared on positions proposed by Shmuel and R. Papa respectively, while at the same time ruling in their favor!

¹⁰ Which is not to say that tannaitic sources are never discarded. On the contrary, the Bavli boasts an impressive array of editorial procedures by which it modifies, or declares corrupt tannaitic *halakhic* sources. These are employed, however, exclusively in the face of internal difficulties, never merely as a result of an amora thinking differently. For a detailed study of five such procedures see M. J. Yeres, “Studies in the Talmudic Emendation of Tannaitic Sources: An Analysis of Five Terms of Emendation in the Babylonian Talmud”, Doctoral Dissertation, Yeshiva University NY, 1987.

between what the Bavli says it does and what it seems actually to be doing—for as a matter of course, it is most often the tannaitic, rather than the amoraic text that ends up suffering the consequences of the *meitivi* challenge.

Contrary to the traditionalist rhetoric of *meitivi*-type objections, the ways in which they are met and dealt with in practice often attest to what appears to be a boldly antitraditionalist mindset.

In what follows I shall argue even further that the discrepancies between the form and content of many of the Bavli's narratives of transgenerational discourse are arguably contrived and deliberate; that their framers' basic attitude to these confrontations is antitraditionalist, but that, for some reason, they sought not to make this immediately apparent. The Bavli, I shall argue, in its *halakhic* discourse, contains a clear and central, if deliberately disguised, antitraditionalist voice. I do so by looking closely at what I believe is the Bavli's own paradigmatic model of such a confrontation, its textbook example as it were of a transgenerational give and take.

The confrontation in question is related in Bavli, *Berakhot* 19b-20a as part of the amoraic discussion of Mishna, *Berakhot* 3:1 which rules as follows:

One whose dead (relative) lies before him¹¹ is exempt from the recital of the *shema* and from the *tefillah* and from *tefillin* and from all precepts laid down in the Torah. With regard to the bearers of the bier and those who relieve them (in carrying it to the grave) and those who relieve them again, whether in front of the bier (having yet to carry) or behind the bier (and having done so already)—those in front of the bier, if they are still required, are exempt; but those behind the bier, even if still required, are not exempt. Both, however, are exempt from saying the *tefillah*. When they have buried the dead and returned (from the grave), if they have time to begin and finish (the *shema*) before forming a row,¹² they should

¹¹ That is to say, has not yet been buried.

¹² To comfort the mourners.

begin, but if not they should not begin. As for those who stand in the row, those on the inside¹³ are exempt, but those on the outside are not exempt.

The Mishna does not explain why active participation at a funeral entails a suspension of other religious duties. It simply states that it does, and goes on to detail to whom it applies. Now, when one religious duty takes precedence over another it is usually for a reason. What meta-*halakhic* principle is at play here? A possible candidate is the talmudic principle that a person engaged in the performance of one mitzva, is exempt from others.¹⁴ The problem is that unlike the mourner's *halakhic* duty to attend to his dead relative, one's obligation to carry the bier and to form the row (or to listen to the funeral speeches mentioned by the Tosefta) are not *mitzvot* of the Torah. They are at most rabbinic edicts that, of themselves, can hardly be thought to merit temporary suspension from major religious duties, such as *tefillin*, that are grounded in the Torah itself. The reason for the exemption seems, in this case, to have to do with a general obligation to pay respect for the dead—*mipnei kevod ha-met*. And although Mishna, *Berakhot* gives no reason for its ruling, in a parallel passage, one of the Minor Tractates does suggest quite clearly that *kevod ha-met* is the principle at play.¹⁵

¹³ If they stand two or more deep.

¹⁴ The main source for this principle, attributed to R. Yossi the Galilean, is a *beraita* cited in Bavli, Suka 26a whose formulation is strikingly similar to the Mishna under consideration here. Rashi, for one, appeals to this principle, with regard to the exemption granted to the mourner himself (Bavli, *Berakhot* 18a, V. "exempt from the recital of the *shema*"). The Tosafot, however, disagree (*loc. cit.* 17b, V "And he does not recite the blessing"). According to the Tosafot the principle at play is respect for the dead. The point of contention between them is the following: if the reason for the exemption is respect for the deceased, then one is not merely exempt from the other duties, but is actually forbidden to perform them even if he manages to find time to do so. If, however, the reason for the exemption is the mourner's engagement in other duties, he should be allowed to perform both if he is able to. The parallel passages in both Yerushalmi, *Berakhot* iii 5d and Minor Tractate, *Semahot* 10 (see next ftn.) appear to confirm the Tosafot's position.

¹⁵ Minor Tractate, *Semahot* 10 opens similarly to the Mishna here: "For as long as his dead (relative) lies before him, a mourner is exempt from the recital of the *shema* and from the tefilla and from all the precepts mentioned in the Torah", but adds that if the mourner wishes to ignore the exemption and recite the *shema* anyway, he should not "out of respect for the

But if that be the case, what of respect for the living? To what extent, one is inclined to ask, is a person supposed to defer or disobey “precepts laid down in the Torah” for fear of disgracing, embarrassing, or hurting the feelings of a living, fellow human? Does the *halakha* consider the dead and the living to be analogous in this respect? Possibly motivated by such questions, the Gemara, begins its discussion by citing the following *beraita* (which is a slightly modified rendition of the Tosefta’s version of the Mishna under consideration):

Our Rabbis taught¹⁶: The row(s) that can see inside [are] exempt, but [those] which cannot see inside [are] not exempt.

R. Yehuda said: Those who come on account of the mourner are exempt, but those who come for their own purposes are not exempt.

This additional source establishes a subtle difference between the rituals performed before and after the actual burial. Carrying the bier and attending the funeral speeches (mentioned by the Tosefta) postpone and supersede other religious duties because in performing them respect is being paid to the deceased. The *beraita*, however, implies that the exemption granted to participants in the rows formed after the burial is granted, at least according to R. Yehuda, by virtue of the respect they are paying to the living mourner. By citing the *beraita*—for which there seems to me to be no other reason—the framer of the *sugya* subtly, and surreptitiously suggests that a general tannaitic principle may be at work here, according to which the obligation to respect any human being—dead or alive—overrides other religious duties. But he does so inaudibly, sheerly by implication, without even hinting at it openly. The two

dead”. Indeed, the Mishna continues, “When the time for the recital of the *shema* arrives, the entire congregation recites (it) and he remains silent”. In other words, this source makes it quite clear that a person whose dead lies before him, will be held in violation of *kevod ha-met* if he continues to attend to his other religious duties, even though he is not currently engaged in performing any *specific* duty related to the deceased. *Kevod ha-met*, in other words, takes clear precedence, according to *Semahot*, over all other obligations.

¹⁶ Bavli, *Berakhot*, 19b. Compare Tosefta, *Berakhot* 2:10.

tannaitic texts are set side by side for the readers to reach their own conclusions as it were.

This is not to say that the notion of respect is not discussed. On the contrary, the Gemara's discussion of the Mishna focuses almost entirely on questions related to respect. But although various aspects of human dignity are discussed in some detail, the word "respect" itself is never specifically associated with the Mishna or the above-quoted *beraita*. By the time the discussion reaches its climax on fol. 19a, the issue of human dignity is already "in the air", but in a manner seemingly unrelated to the two main tannaitic documents under consideration. One has to be well-acquainted with the Mishna's two other parallels to realize that both the Mishna and *beraita* bear decisively on the question of the relative weight of the obligation of respecting human dignity in comparison to other religious duties (if for the tannaitic authorities it was indeed ever a question). If one is not aware of the parallels, the following statement, attributed to the first generation amora Rav, will not appear to be at all related to the Mishna. The less advanced student of the Talmud will in all probability pass it by without making the connection at all; associating its appearance at best with the Gemara's prior, seemingly unrelated discussion of one's obligation to respect one's Masters — a point we shall return to shortly. But for more seasoned students who are aware of the parallels, the statement attributed to Rav does more than merely relate to the Mishna. Read in conjunction with the *beraita*, as the framer of the sugya would have them do, the statement attributed to the first generation amora Rav, appears to assert the very opposite: namely, that one should always attend to one's ritual duties without delay, even at the cost of publicly disgracing oneself, or at the cost of having to act disrespectfully even towards one's Master! In other words, if the Mishna is taken to assert that respect for the dead is to override all religious duties, and if the *beraita* is supposed to imply that in this respect the dead and the living are analogous, then Rav's ruling squarely contradicts them.

R. Yehuda said in the name of Rav: If one discovers mixed kinds¹⁷ in his garment, he should take it off even in the street. What is the reason? [it says:] “There is no wisdom nor understanding nor counsel against the Lord” (Prov. 21:30); wherever a profanation of God’s name is involved no respect is paid (even) to a teacher.¹⁸

Because the framer of the *sugya* says nothing about the possible relationship that Rav’s statement might bear to the Mishna and/or to the *beraita*, it is not at all clear at the outset how he intends it to be understood. Are we to understand it as not necessarily contesting the Mishna’s ruling regarding the dead, and as insisting only that respect for the living should under no circumstances take precedence over other religious duties? For those aware of the fact that the Mishna *is* about respect for the dead, Rav’s stated position would then imply that, if the Mishna be maintained, then respect for the dead must be viewed as a unique and limited sub-category of respect that cannot be extended to the living. However, in the course of the Bavli’s immediate discussion of Rav’s statement, it swiftly becomes apparent (a) that Rav’s principle *is* understood to extend to the dead, and therefore, by implication, *does* contradict the Mishna; and (b) that the fact that it contradicts the Mishna is passed over by the framer of the *sugya* in utter silence. In fact, from the moment Rav’s principle is cited, all mention of both the Mishna and *beraita* are dropped. But although the discrepancy

¹⁷ That is to say, a prohibited mixture of linen and wool. See Lev. 19:19.

¹⁸ At first blush it is not quite clear what exactly is the claim attributed to Rav. Should the question “What is the reason?” be considered as part of Rav’s speech, or as an intervention on behalf of the *s’tam*? If the latter is the case, then the answer to it, along with the general principle concerning all profanations of God’s name, might be claimed not to be an amoraic ruling at all – in which case the argument of this entire Section would lose much of its force. The question is, of course, not what Rav actually said, but the framer of this particular *sugya* understands Rav’s statement to have been. It is clear from both the form and content of the *meitivi*-type interrogation of Rav’s ruling that follows, that Rav is attributed the entire speech. First, the term *meitivi* is exclusively reserved by the Bavli to transgenerational objections. If before the first objection is raised, the *s’tam* can be said to have grounded Rav’s assertion by means of a tannaitic principle, the term *meitivi* would have been quite inappropriate. Second, all five tannaitic sources cited in objection to Rav seem directed specifically against the latter, rather than the first part of his speech. I take it, therefore, that the entire passage is attributed to Rav and subjected, in its entirety, to the *meitivi*-type confrontations that follow.

between Rav's statement and the two tannaitic texts previously under discussion is passed over by the *stam*¹⁹ without a word, he proceeds to confront it energetically with a series of five other texts of tannaitic origin, all of which also appear to contradict it quite clearly.²⁰ And it is here that the series of *meitivi* -type confrontations I wish to discuss are conducted.

We are dealing, then, with a general amoraic assertion, placed by the framer of the *sugya* in the immediate context of two major tannaitic sources, one of them: the very Mishna under discussion, with which it is, though it is not actually said to be, clearly at variance, and which is then openly contrasted with, a series of five other, equally conflicting, tannaitic sources as follows:

Meitivi. Says the *beraita*: If they have buried the body and are returning, and there are two ways to go, one (ritually) pure and the other impure,²¹ if [the bereaved heading the procession] goes by the pure one they go with him by the pure one, and if he goes by the impure one they (and with them even the priests) go with him by the impure one, out of respect for him.²² Why (is this so)? Why not say: "There is no wisdom nor understanding nor counsel against the Lord" (and hence: wherever a profanation of God's name is involved no respect is paid to a teacher)? R.

¹⁹ In talmudic Aramaic the word *s'tam* frequently denotes an anonymous (tannaitic) *halakhic* ruling. It is now used in the secondary literature as short hand for the anonymous framer/narrator of an amoraic *sugya*. In what follows I shall refer to "the Bavli," the Gemara," "the framer of the *sugya*" and "the *s'tam*" interchangeably.

²⁰ All five of them not only register *halakhic* edicts that contradict Rav by allegedly proving that in order to show respect certain rules of the Torah are superseded, but all but one concern superseding rules of the Torah related directly to graves, graveyards and funerals. One is again left with the distinct impression, created earlier by the insertion of the Tosefta passage ahead of Rav's ruling but not easy to prove, that behind these particular tannaitic rulings lurks a general tannaitic viewpoint founded on some form of analogy between respect for the living and the dead.

²¹ Because it crosses a grave.

²² See also Minor Tractate, *Semahot* 4:14. The reason given there for joining "the people" even if they chose the impure path, is "*mipnei kevod ha-Shem*" (out respect for God!). Most commentators, however, amend the text to read: "*mipnei kevod ha-Am*" (out of respect for the people). See also Yerushalmi, *Nazir* vii 56a and below ftn. 41 and text.

Abba explained the statement to refer to a *bet ha-p'ras*²³, which is declared impure only by the rabbis (but not by the Torah itself); for R. Yehuda has said in the name of Shmuel: A man may blow in front of him (in order to scatter the small bones) in a *bet ha-p'ras* and proceed (without fear of defilement). And R. Yehuda b. Ashi also said in the name of Rav: A *bet ha-p'ras* which has been well-trodden is pure.

The apparent incongruity between the statement cited by R. Yehuda in the name of Rav and the *beraita* leveled against it is harmonized away by R. Abba (a disciple of R. Yehuda) by retaining Rav's latter-day opinion and radically limiting the tannaitic ruling of the *beraita* to the case of a *bet ha-p'ras*—a particular type of burial site which, on the authority of both R. Yehuda and Rav, does not involve the sort of impurity prohibited of priests by the Torah itself. We began with an amoraic statement in conflict with a tannaitic text, and end with harmony achieved by a significant modification of the latter's straightforward meaning. And the pattern repeats itself. The four additional tannaitic texts cited in contrast to Rav's statement, are met by precisely the same procedure. "Come and hear (another *beraita*)", continues the anonymous *stam*,

For R. Elazar b. Zadok said: We (even the priests!) used to leap over coffins containing bodies to greet Israelite kings (...) Why (is this so)? Why not say: "There is no wisdom nor understanding nor counsel against the Lord" (and hence: wherever a profanation of God's name is involved no respect is paid to a teacher)? [It is in accord with the dictum of Raba] For Raba said: It is a rule of the Torah that a 'tent'²⁴ which has a hollow space of a handbreadth (between its outside and what it contains) forms a partition against impurity, but if it has not a hollow space of a handbreadth it forms no partition against impurity.²⁵ Now most coffins do have a space of a handbreadth, but [the rabbis] decreed that those which have such a space [should form no partition] for fear that they

²³ A field or place considered impure only by Scribal injunction because the grave or graves it is known to have once contained can no longer be located. The particular type of *bet ha-p'ras* referred to here, is a grave which has been plowed over, so that bones may be scattered about.

²⁴ Anything that overshadows.

²⁵ In which case the impurity it overshadows does not remain contained within it.

should be confused with those which do not have such space. Still, where respect to kings was involved they did not enforce the decree.

Come and hear (yet another *beraita*): “Great is human dignity, since it overrides negative precepts of the Torah.”²⁶ Why should it? Why not say: “There is no wisdom nor understanding nor counsel against the Lord”? Rav b. Shaba explained the *beraita* in the presence of R. Kahana to refer only to the (one, single) negative precept “thou shalt not deviate [from the sentence which they shall tell thee, to the right hand or to the left]” (Deut. 17:11)²⁷ They laughed at him: (even so) the negative precept of “thou shalt not deviate” is itself from the Torah (and, therefore, the objection still stands)! Said R. Kahana: If a great man makes a statement you should not laugh at him. All the ordinances of the rabbis were based by them on the prohibition of “thou shalt not deviate”, but where the question of [human] dignity is concerned, the rabbis permitted it.

Once again, the tannaitic text is reinterpreted so as to comply completely with Rav’s latter-day principle. (This time by two *amoraim* who functioned five generations after its alleged author.) The strategy is the same as before: to argue that Rav has really said nothing new. All have always agreed, the *stam* implies, that concerns for human dignity are powerless when the actual prohibitions of the Torah are involved. Only with respect to their own latter-day interdictions were the rabbis willing to allow considerations of respect to take precedence. With this, we are led to understand, Rav has no quarrel, and the appearance of perfect transgenerational harmony is duly, if somewhat artificially preserved.

²⁶ For other citations of this tannaitic saying see: Bavli, *Shabbat* 81b, 94b, *Eruvin* 41b, *Megila* 3b, *Menahot* 37b and Yerushalmi, *Berakhot* iii 6b. For a somewhat different rendition, see: Yerushalmi, *Nazir* vii 56a, *Kilayim* ix 32a. As for the saying itself. The Hebrew reads: “Great is human dignity *she-dohē et lo ta’ase she-ba-Torah*”. The Soncino translates: “since it overrides a negative precept of the Torah”, implying that the tanna indicates that human dignity overrides but only one negative precept, neglecting, however, to say which one. But the Hebrew wording of the saying and some of its usages elsewhere, especially in the Yerushalmi (as we shall see shortly), suggest that the saying praises human dignity for overriding not a negative precept, but any negative precept of the Torah.

²⁷ And thus rendering it applicable in practice only to Scribal decrees.

But at a deeper, more subtle level the *stam* seems to be calling his own bluff. For hard as he may try, he knows very well that his less naive readers will not ignore or forget the Mishna or Tosefta. On the contrary, the greater his effort invested in harmonizing Rav's statement with other seemingly conflicting tannaitic texts, harder felt is the total absence of a similar treatment of the Mishna and Tosefta. For those aware of their origins and original contexts, they present equally clear and authoritative cases of tannaitic rulings that sanction transgressions of "all the precepts laid down in the Torah" in the name of respect, for both the dead (Mishna) and the living (Tosefta). The conflict between Rav's ruling and the two texts becomes more and more apparent as challenges to it from other tannaitic quarters are presented and warded off. I find it extremely hard to believe that the framer of the *sugya* was unaware of his omission, and shall suggest further down that both the build-up of the tension and the fact that it is passed over in utter silence are intentional. My claim shall be that the disturbing presence of the Mishna and Tosefta, persisting ignored in the background, serves, intentionally, to subtly lay bare the unseriousness of the entire harmonization project. It is as if the *stam* was declaring: 'I do not object to the idea that Rav's ruling was in fact revolutionary, I only object to presenting it as such. And as long as the beginners remain unaware of what I'm doing, I don't mind leaving a contradicting tannaitic text unattended!' But back to the *sugya* itself.

The questioning and answering goes on. The next case is different, however, because it involves the overriding, in the name of human dignity, of a negative precept that cannot, on any count, be dismissed as involving no more than a rabbinic injunction.

Come and hear, (says the *beraita*): (It says:) "[Thou shalt not see thy brother's ox or his sheep go astray] and hide thyself from (ignore) them [thy shalt surely bring them back to thy brother]" (Deut. 22: 1, 4)—(From the positive phrasing of the negative precept we learn that) there are times when you mayest ignore them and times when thou mayest not ignore them. How so? If [the person who sees the animal] is a priest and [the animal] is in a graveyard, or if he is an elder and it is not in accordance with his dignity (to pursue or tend to the animal), or if his

own work was greater than that of his fellow²⁸ Therefore it is said “ignore”. But why so? Why not say: “There is no wisdom nor understanding nor counsel against the Lord”? The case is different there, because it says expressly: “and hide thyself from (ignore) them”.

In other words, this apparent contradiction to Rav’s principle is avoided by portraying the *beraita* as describing not a matter of principle, but a unique exception to the rule specifically required by the Torah. Why then, asks the Gemara, is it regarded an exception? Why don’t we take this particular teaching of the Torah as the basis for deriving the general rule to the conclusion, contrary to Rav, that showing respect indeed always overrides negative precepts of the Torah? Because, the Gemara answers, of the technical reason that one cannot derive a ruling concerning matters of ritual from one related merely to property. The theoretical possibility of using the tannaitic materials to construct a general system rival to the one proposed by Rav, is considered, and firmly rejected—rather unceremoniously, one must admit.

So far the four tannaitic sources brought against Rav have all dealt exclusively with respect payable to the living. Hence one could still argue that Rav’s principle was perhaps meant to be understood not to apply to respect for the dead, and, therefore, not to contradict the Mishna and its parallels. But the impression is abruptly dispelled by the fifth and final *ta shema*.

Come and hear, (says the *beraita*): (It says:) “[He shall not make himself impure for his father, or for his mother, for his brother,] or for his sister, [when they die]” (Num. 6:7) What does this teach us? Suppose he²⁹ was on his way to killing his Paschal Lamb or to circumcising his son when he heard that a near relative had died, am I to say that he should go back and defile himself? You say, he should not defile himself³⁰ Shall I say, therefore, that just as he does not defile himself for them, so he should

²⁸ In that he stood to lose more from interrupting his own work than the other for the loss of his animal.

²⁹ A nazirite who is also a priest.

³⁰ Because those things must be done at specific times and cannot be postponed.

not defile himself for a *met mitzva*? It says significantly: “or for his sister”: [only] for his sister he does not defile himself but he does defile himself for a *met mitzva*.³¹ But why should this be? Why not apply the rule: “There is no wisdom nor understanding nor counsel against the Lord”? The case is different here, because it is written expressly “or for his sister”.

Again, the apparent contradiction between Rav’s principle and the ruling recorded by the *beraita* is avoided by interpreting the latter as describing not a matter of principle, but a singular exception to the rule—Rav’s rule of course—specifically required by Scripture. In this way the last two *beraitot* are made to work in favor of Rav’s statement. Had a rule different from that of Rav been known to apply, namely, that transgressions of the Torah be permitted in order to avoid disrespect, the Torah would not have needed to issue special rulings with regard to the elderly finder of a misplaced animal or the nazirite priest. The exceptions, as it were, are taken to *prove*, rather than disprove Rav’s ruling. This is a typical and standard argument in rabbinic *midrash halakha*. The Torah does not waste its words. It should be read in ways that presuppose as far as possible a complete absence of contradiction, redundancy or arbitrariness. If the Torah goes to the trouble of explicitly stating or suggesting a particular ruling, it is, therefore, either to state an exception, and in doing so to affirm the rule, or to establish a paradigm. The latter option, as in the previous passage, is here also briefly considered and rejected, and Rav’s initial ruling is left intact.

As noted, this last objection raised against Rav’s ruling is highly significant because of the conflation it presupposes between acting respectfully towards the dead and the living, which, as we have seen, places it inevitably at variance with both the Mishna and Tosefta under consideration—of which, to repeat, not a word is said. When considered in terms of its general context, as part of the discussion of the Mishna under whose heading it is introduced, the citation of Rav’s principle and its subsequent examination constitute, it seems to me, an intriguing (if typical) case of *deliberately unannounced transgenerational dissent*. While the

³¹ A *met mitzva* is an unclaimed body to which no one else is available to attend. The term literally means “(the burial of) a dead which is a religious obligation.”

apparent incongruities it exhibits with relation to five other tannaitic sources are energetically pursued and resolved (more on their resolution immediately), the fact that Rav's position turns out to be comparably incompatible with the Mishna itself is passed over in utter silence.

2. The Logic and Rhetoric of Transgenerational Negotiation

Let us briefly review how this is achieved. The Mishna rules, without explaining why, that the mourners and active participants in a burial service are exempt "from all precepts laid down in the Torah". Parallel sources clearly indicate that the reason for the deferment is *kevod ha-met*, respect for the dead. Nowhere throughout its discussion of the Mishna does the Gemara explicitly attribute the notion of respect for the dead specifically to the Mishna's ruling, but it certainly does so implicitly³² Read thus, the implications are obvious: if respect for the dead is the reason for partaking in burial services, and if, according to the Mishna, such participation entails an exemption "from all precepts laid down in the Torah", then the Mishna inevitable premises a principle that is squarely opposed to the one attributed to Rav. Moreover, the fact that Rav's statement is eventually found to survive the *meitivi* confrontations with the five other tannaitic sources almost intact,³³ clearly suggests that, in the *stam's* opinion, the Mishna is not merely contradicted, but is actually

³² Following a brief discussion of various *halakhic* technicalities related to the Mishna's specific rulings, the Gemara, on fol. 18a, launches a lengthy, four- page discussion of various forms and aspects of the notion of respect. The opening statement expressly, if incidentally associates, by means of a clever midrashic wordplay, one's duty to partake in a funeral procession with the notion of *kavod* (by juxtaposing Prov. 19:17 and 14:31 while substituting *mela'e* (to accompany, to partake in a funeral procession) for *malve* (to make a loan) in the former.) The remark is not addressed to the Mishna explicitly, however, but for students of the text who have asked themselves this question an answer is certainly insinuated. The opening statement is attributed to "Rahva says in the name of R. Yehuda". Interestingly, an early, gaonic citation of this saying attributes it to "R. Yehuda says in the name of Rav". See: *Sheillot de-rav Ahai Gaon* (Jerusalem: Mossad Harav Kook, 1986), *Bereishit*, xiv.

³³ I say almost intact because it turns out in the end at least to exclude Scribal prohibitions, and the two Torah-based exceptions. More on this below.

superseded by Rav's ruling!³⁴ I realize that this is a bold conclusion that will come as a shock to many students of the Talmud, especially those of traditional schooling like myself. But it is unavoidable. It seems quite clear to me that the framer of the *sugya* goes to considerable lengths in order to intimate it. The *sugya*, in both its content and inner logic, clearly suggest that a substantially antitraditionalist attitude is adopted toward the Mishna on a significant matter of meta-*halakhic* principle.

Why, then, does the *stam* seem so reluctant to discuss, or even state his strategy openly? Why do the larger contours of the *sugya* read as if a major point is being made and concealed at one and the same time? It is as if the *sugya* was constructed by a confident, yet covert antitraditionalist who, for some reason, is reluctant, to articulate the basic drift of the *sugya* he is framing. It is as if the *sugya* was deliberately fashioned to ensure that only the most advanced students should get its main point.

And the same goes for the *meitivi* confrontations themselves. Here too, a closer look reveals a sharp disparity between what is said and what is being done; between the ways in which the discrepancies between Rav's statement and the five tannaitic texts are in fact negotiated, and the rhetoric with which such negotiations are usually related.

As noted at the outset, we expect traditionalists and antitraditionalists to conduct *meitivi*-type confrontations. For traditionalists, an apparent discrepancy between an amoraic and a tannaitic ruling will always, without exception, be interpreted as constituting a problem for the former. It is for the amora, or his discursive representatives, either to convincingly explain the discrepancy away, or to withdraw his statement. For traditionalists, the very word "*meitivi*" cannot mean anything but 'how is it possible for the amora in question to say what he says in view of a tannaitic source that quite clearly claims the opposite?' And although a traditionalist may on occasion end up resolving such a transgenerational

³⁴ This impression is further corroborated by the fact that it is virtually impossible to square the Mishna with Rav's ruling by the tactics applied to the five other conflicting texts. The exemption granted by the Mishna cannot be limited to Scribal edicts because it explicitly mentions *tefilin*, and for the same reason cannot be written off as stating an exception expressly proscribed by Scripture.

discrepancy by suggesting that the tannaitic source should be interpreted differently, he will never, ever initially view it as a challenge to, or criticism of the tannaitic source.

The very mark of antitraditionalism, by contrast, is that latter-day positions are frequently acquired as a result of critically rethinking, and subsequently modifying or rejecting earlier ones. Therefore, in the event of apparent discordance between an authentic and uncorrupted tannaitic ruling and an amoraic position, an antitraditionalist may very well decide to view the tannaitic ruling as the defective of the two. In which case, he will have, in theory, two options: either to declare the tannaitic source superseded in the light of the more recent amoraic edict, or to preserve it by harmonizing it with the amoraic ruling. As noted, in *meitivi*-type situations the Bavli opts exclusively for the latter. Nowhere is a tannaitic source declared refuted, rejected or superseded by virtue of an amoraic statement to the contrary.³⁵ But if that is the case, it seems near-impossible to distinguish between traditionalist and antitraditionalist framers of even *meitivi*, transgenerational confrontations. If the former permit themselves on occasion to reinterpret the tannaitic sources involved, and the latter refrain from ever explicitly rejecting them, and if members of neither school of thought actually state which of the texts involved they consider problematic, how is it ever possible to distinguish between them?

At least with regard to the very last point—that of expressly pointing to the text considered by the framer of the *sugya* to be the one open to question—the *sugya* in *Berakhot*, quite typical as it is, does have something quite unique to offer. Unlike any other *meitivi*-type confrontation known to me, the anonymous *stam* repeatedly and explicitly states his difficulty. “Why is this so?”, he asks of each of the five tannaitic sources supposedly

³⁵ This in itself constitutes a serious problem for any antitraditionalist interpretation of talmudic discourse. How can anyone who appears never to discard an earlier source be at all considered an antitraditionalist? At this point, suffice it to say that there is a difference between being, or acting as an antitraditionalist, and describing, or relating to oneself as one. The passage we are dealing with from Bavli, *Berakhot*, as we have already seen, seems to offer a good example of an *unreported* antitraditionalist move, in which the Gemara clearly sides with an amoraic opinion that appears to contradict the very Mishna it is discussing.

leveled against Rav, why isn't the rule attributed to Rav—that 'There is no wisdom nor understanding nor counsel against the Lord'—also applied here?³⁶ Each of the tannaitic texts, in other words, seems to be expressly questioned by the *stam* in the light of Rav's ruling, rather than vice versa. Here, the *stam* can be understood to be directing queries against what seems to be a coherent tannaitic program, rather than a series of objections to an amoraic statement leveled from different tannaitic quarters. Given Rav's general ruling, he puzzles, what are we to make of these tannaitic texts? Of course, there are ways to render the *stam's* question along customary traditionalist lines. Still, when taken in conjunction with the other remarkable features of this *sugya*, such traditionalist renderings of the *stam's* wholly unique articulation will sound increasingly unconvincing.³⁷

The five tannaitic texts confronted by Rav's principle represent four genres of *halakhic* literature. They include a specific tannaitic ruling (to accompany the mourner, even when he chooses an unclean way, "out of

³⁶ Of all the *eitivvei* confrontations recorded by the Bavli, only three explicitly address the question to the tannaitic source under consideration, and do so in exactly the same words as does the *s'tam* in *Berakhot* 19b. See Bavli, *Eruvin* 50a; *Hulin* 123b and 124a. To recall, as opposed to confrontations of the *meitivvi* variety, *eitivvei* transgenerational challenges are polemic moves attributed to specific, named parties rather than to the anonymous *s'tam* (see fn. 7 above). As explained above, these *sugyot* are less telling of the attitudes of their framers than those in which it is they who perform the questioning.

³⁷ Two such readings come to mind immediately. One is to understand the *s'tam's* queries as queries regarding Rav's interpretation of the five tannaitic texts. Their premise being that an amora could not have contradicted explicit tannaitic rulings, and that whenever he seems to do so, he must have read them differently. Thus construed the *s'tam* is asking how *would Rav account for the fact* that his principle was apparently not applied in these cases? One good reason for doubting such an interpretation is that two of the three non-midrashic tannaitic sources are reinterpreted on the authority of *amoraim* who functioned much later than Rav. It seems quite clear that the *s'tam's* questions are directed at the tannaitic sources themselves rather than at Rav's possible understanding of them. A different, and far more plausible traditionalist reading of the *s'tam's* repeated question, was urged upon me privately by Daniel Boyarin. On such a reading the question "Why is this so?" is understood as a form of *modus tollens* argumentation: If Rav's principle is true, why is it ignored by the tannaitic rulings – it follows, therefore, that it cannot be true. This is a perfectly reasonable construal of the question when the five *meitivvi* confrontations are treated in isolation. As we shall see, such a reading loses much of its force when placed in a slightly wider interpretative context.

respect for him"); a reliable tannaitic record of apparently uncontested precedent (that of priests leaping over coffins containing bodies in order to show respect for kings); a tannaitic statement of a general meta-*halakhic* principle ("Great is human dignity, since it overrides negative precepts of the Torah"); and two evidently undisputed tannaitic *midrashei halakha* (that a person need not disgrace himself in order to return another person's lost animal, and that nazirites, even if they are High Priests, are obliged to defile themselves for the sake of attending to a *met mitzva*). Read, as the framer of the *sugya* initially intended us to understand them, and taken together with the Mishna and Tosefta, as the wider reaches of the *sugya* imply that we should, the five texts leveled against Rav's ruling clearly attest to the existence and wide application of a general tannaitic meta-*halakhic* principle, quite at odds with that of Rav, according to which considerations related to the respect and dignity of both the dead and the living generally take precedence over other religious duties, including precepts of the Torah itself.

The *sugya*, however, is not about the formation of Rav's principle. It is not about the reasons that Rav and his generation might have had for departing from the opinion of their predecessors, or for adopting the views they had come to accept. *Meitivi* confrontations are not about the *dynamics* of halakhic development. They function as rearguard mop-ups of transgenerational incongruities. That is why they are so important for our present concerns. For the framer of the *sugya*, Rav's principle is a given, as are the five tannaitic sources with which it is confronted (and the Mishna and Tosefta with which confrontation is so cannily avoided). But he appears to have decided to deal with the crisis by a curious and incoherent combination of a traditionalist and antitraditionalist strategies. On the one hand, he seems to have decided in advance that none of the tannaitic texts explicitly confronted will be actually discarded or even outwardly modified in the process. On the other hand, he seems also to have decided that Rav's position will be retained as it stands come what may. The only way he can achieve both objectives concurrently is by reinterpreting all the tannaitic materials involved in ways that render them inoffensive to Rav's position. He thus succeeds in avoiding both

extreme purist responses. Despite the apparently conclusive tannaitic evidence against it, Rav's opinion is not declared refuted as is sometimes the outcome of *meitivi* confrontations. On the other hand, despite the decision to retain the amoraic ruling, the confrontations and their resolution succeed in carrying no overt antitraditionalist overtones. And yet from a purely *halakhic* point of view, it is Rav ruling that carries the day in the face of obvious and principled tannaitic opposition. The supposedly "middle way" adopted by the *stam* enables him to enjoy the best of both worlds: to avoid all explicit involvement in the traditionalist/antitraditionalist dispute, and at the same time to remain an antitraditionalist while sounding as if he isn't.

The *stam* succeeds in performing a bold antitraditionalist move—just how bold we shall see immediately—but to do so with little chance of it ever being comprehended as such, except by the most well-versed and attentive of his readers. This in itself does not yet make this particular *sugya* unique. On the contrary, in this respect it is quite typical of its kind. Its uniqueness resides, in my opinion, in the way it subtly gives the game away while playing it. Unlike any other *meitivi*-type confrontation I have studied, this particular *sugya* strikes me as being self-consciously and uniquely paradigmatic. It appears to have been deliberately set up with a view to drawing attention to, and partly dispelling the confusion created by the type of double-talk it so nicely exemplifies. It does so by a variety of means: substantial, contextual, rhetorical—all cunningly aimed at only the most advanced level of readership. But to appreciate both the extent of its antitraditionalism and the almost didactic quality of its self-exposure we need to look briefly again at the ways the incongruities between Rav's ruling and the five tannaitic texts are harmonized away—especially the third.

Harmonization of the first three is achieved by marginally (and surreptitiously) limiting Rav's ruling to transgressions of scriptural religious duties, while radically limiting the tannaitic sources to scribal edicts only. In this respect, it is surely the third *beraita* that undergoes the most radical reinterpretation. The third *beraita* states quite explicitly that care for human dignity is so great that "it overrides negative precepts of

the Torah". No, explains Rav b. Shaba, causing his colleagues to snicker, not "negative precepts of the Torah" in general, but only one such precept—namely, the Torah's negative commandment not to disobey such Scribal decrees of the kind that indeed lack Scriptural status! The radicalism, some might even say the sheer *chutzpah*, of the Bavli's proposed interpretation of this particular tannaitic principle—indeed the radicalism that permeates the entire *sugya*—becomes even more apparent when one looks at earlier employments of the very same principle by the Yerushalmi. The Bavli, I should add immediately, in keeping with its reading here, does in fact apply it consistently only to Scribal decrees.³⁸

3. Yerushalmi and Bavli Compared

The Yerushalmi cites and discusses slightly different versions of the principle on three separate occasions. On two of them it is introduced in the course of discussing the first of the five *beraitot* confronted with Rav by the Bavli. "What is meant by requiring a priest to defile himself out of respect for the many?"³⁹ asks Yerushalmi, *Berakhot* iii 6b and *Nazir* vii 56a,

We have learnt (in the *beraita*): If there were two (equally) suited ways, one long and pure, and the other shorter but impure, if the majority take the long one, he should take the long one, and if not, he should take the short one (with them) out of respect for the majority.

Notice, that, unlike the Bavli's version of the *beraita*, the setting here is not necessarily that of a burial service. In fact, to the embarrassment of several commentators, the Yerushalmi's version does not even indicate that the priest and his colleagues were at all on their way to perform a religious

³⁸ The principle is cited and applied five times in the Bavli – *Shabbat* 81b, 94b, *Eruvin* 41b, *Megila* 3b, *Menahot* 37b – in order to justify infringements upon a variety of decrees in the name of respect for others. In all five cases the decrees involved are undeniably Scribal.

³⁹ The term here is *kevod ha-rabim*—the dignity of the many, or the majority—rather than *kevod ha-beriyot*—human dignity (lit. the dignity of people). Despite the verbal difference the two phrases are synonymous. See below ftn. 41.

duty⁴⁰ The issue for the Yerushalmi appears simply to be that of permitting a priest to defile himself in order to avoid hurting the feelings of his co-travelers, regardless for the reasons or destination of their joint excursion. But of what level of impurity are we speaking? “So far”, the Yerushalmi goes on to ask, “have we spoken only of impurity due to Scribal decree?”,

Does [the same principle] also apply to impurity prohibited by the words of the Torah? It (does, and) follows from the saying of R. Zeira: “Great is the dignity of the many, since it temporarily overrides (a) negative precept[s].”⁴¹ Ada said, (therefore, a priest should follow the many along the impure path) even in the case of impurity prohibited by the words of the Torah.

Although the saying, attributed by the Yerushalmi to R. Zeira, does not ever explicitly say, as does the version cited by the Bavli, that the negative precept(s) in question are indeed those *of the Torah*, it is understood throughout the Yerushalmi, without exception,⁴² to mean precisely that! In other words, when Rav b. Shaba is reputed by the Bavli to have “explained the dictum in the presence of R. Kahana” two generations later, he may not have been merely ignoring the *theoretical possibility* that the text might actually mean what it says, but may have been overlooking the *fact*,

⁴⁰ Several commentators on the Yerushalmi, clearly uncomfortable with the idea that a priest may be allowed to defile himself merely in order not to offend the people he is walking with, have tended to amend the *beraita* by supplying ulterior religious motives for the excursion. See, for example, comments by both the *Pnei Moshe* and *Mar’eh Panim* (both attributed to the eighteenth-century R. Moshe Margalit d. 1881) and *Perush me-Ba’al Sefer Haredim* (attributed to the sixteenth-century R. Eliezer Azkari d. 1601). To recall, the version cited by the Bavli reads: “If they have buried the body and are returning, and there are two ways open to them etc.”

⁴¹ The term “human dignity” (*kevod ha-briyot*) employed in the Bavli’s version and “dignity of the many” (*kevod ha-rabim*) used here are interchangeable (see above, fn. 39) and possibly owe their origin to a scribal error. In any event, the version recapitulated almost *verbatim* in Yerushalmi, *Nazir* vii 56a, uses *kevod ha- briyot*. There is no question that the meta-*halakhic* principle attributed by the Yerushalmi on all three occasions to R. Zeira is the same as the one confronted with that of Rav by Bavli, *Berakhot* 19b.

⁴² As we shall see shortly, the third mention of R. Zeira’s principle in the Yerushalmi occurs in connection with the case most intimately associated with Rav’s ruling, namely, that of discovering mixed kinds in public. As one would expect, commentators committed to harmonizing the two *talmudim*, have done their utmost to interpret that occurrence of R. Zeira’s principle in keeping with that of the Bavli.

possibly willingly, that, at least in Palestinian *halakhic* discourse, the dictum was indeed thus read. If anything, the Yerushalmi bears clear and incontestable witness to the existence⁴³ of a school of thought, apparently associated among second and third-generation *amoraim* with R. Zeira and R. Ada, who, as a matter of (literary) fact, read the dictum, and apparently acted upon it, very differently from what Rav b. Shaba would have us believe.

But the Yerushalmi has more to offer that is relevant to the Bavli's *meitivi*-type negotiation of Rav's principle than its very different reading of this particular dictum. On the very question of the discovery of mixed kinds in public, the case offered by Rav as a paradigmatic example of his principle, Yerushalmi, *Kilayim* ix 32a records a debate that further emphasizes just how strained are the Bavli's relentless attempts to harmonize Rav's teaching with everything that supposedly went before it. The relevant passage reads as follows:

One who was walking in the market-place and found himself wearing mixed kinds. Two *amoraim* (debated the issue). One said that it is prohibited (and therefore the garment must be removed immediately). The other said that it is permitted (for him to go on wearing the garment until he can remove it in the privacy of his home). The one who said that it is prohibited maintains that [wearing mixed kinds] is (a transgression of) a law of the Torah. The one who said it is permitted accords with R. Zeira who said that great is human dignity that temporarily overrides a negative commandment.

Seeking to harmonize this passage with the one in Bavli, *Berakhot*, traditional commentators explain the dispute recorded here as if it were no more than a factual disagreement⁴⁴ The amora who prohibits and demands the removal of the garment, they explain, is of the opinion that

⁴³ Throughout the book, I use terms such as "existence and "matter of fact" in the literary, and not necessarily in the historical sense of the terms. Within the world of talmudic discourse, its *persona dramatis* and its history, as they are constructed by the Yerushalmi, such a faction identifies itself by name and by offering a direct answer to an explicit question. Whether such a faction, holding these views ever existed is another matter entirely.

⁴⁴ Cf. R. Moshe Margalit's *Mar'eh Ha-Panim*.

the mixed kinds in question are of the sort prohibited by the Torah. His colleague, on the other hand, believes that the mixed kinds in question are of the sort prohibited only by Scribal decree, and therefore does not demand the removal of the garment in the market-place. This, they add, is in accord with R. Zeira's principle, which, in keeping with its rendition by the Bavli, supposedly allows (only) transgressions of Scribal decrees in order not to offend the public or disgrace oneself. Although such a reading of the debate succeeds in squaring it with the Bavli's version of Rav's allegedly uncontested view on the matter, it does little justice to the text of the Yerushalmi. On such a showing, the debate claimed by the Yerushalmi to have obtained between the two *amoraim* is in truth no debate at all. Both disputants agree that the sort of mixed kinds prohibited by the Torah must be removed the moment they are discovered, regardless of where one happens to be at the time, and that in the case of mixed kinds prohibited only by Scribal decree, one may postpone their removal in order to avoid inflicting, or suffering public disgrace. By reading the Yerushalmi thus, two related objectives are achieved. First, Rav's ruling regarding the discovery of mixed kinds in public—and, subsequently, his view on the entire question of human dignity—remains uncontested in keeping with the Bavli's keen efforts. Second, and again in keeping with the Bavli's program, the realm of application of R. Zeira's principle is conveniently limited to Scribal decrees. But as much as the framer of Bavli, *Berakhot* 19b might have liked Yerushalmi, *Kilayim* to comply with his agenda, such a reading of the latter is implausible. For one thing, the Yerushalmi states quite clearly that on the *question* of the discovery of mixed kinds in the market-place—Rav's question—two Sages *differed*. As is often the case in the Yerushalmi, the text that follows is not as lucidly and as carefully redacted as we would have liked it be. Still, to interpret even the Yerushalmi as announcing a difference of opinion only to mean that in truth the two Sages merely differed in their *understanding of the question* is to do real violence to the text. And in view of the Yerushalmi's other two references of R. Zeira's principle, to limit its application here exclusively to Scribal decrees is to render the Yerushalmi's various appeals to the principle mutually inconsistent.

The compelling conclusion is that where the Bavli goes to incredible lengths to present a harmonious transgenerational front united around Rav's principle, the Yerushalmi does not display the slightest uneasiness about presenting the field as deeply divided twice over. According to the Yerushalmi, not only was the position, attributed by the Bavli to Rav, directly disputed in its time, but its adversaries are said to have justified their move by appealing to no other than R. Zeira's dictum. Again, the Yerushalmi bears witness to the "real" existence of a very different understanding of this dictum than the strained interpretation provided by the Bavli. This time, however, it is not merely read differently than in the Bavli, but is employed as an argument against the very position to which the Bavli would have it conform!

In view of these earlier sources, it seems rather unlikely that Bavli, *Berakhot* 19b could have been framed in genuine unawareness of there being real opposition to Rav. On the other hand, the *sugya*, especially that part of it devoted to Rav's ruling, by no means gives the impression of being confused, or poorly edited. There is a distinctly contrived, structured, I would even say didactic air about the entire text. The *stam* appears to know exactly what is at stake, where he is going, and why he is going there. (Such hunches, of course, are hard to demonstrate, let alone prove. But they do make good methodological sense. We are always liable to miss something of importance by attributing ignorance, innocence, sloppiness or confusion to the texts we seek to understand before serious attempts at more charitable readings have proved to fail). Assuming, then, that the Bavli is aware of the fact that attitudes toward human dignity different from Rav's, such as those recorded by the Yerushalmi, may well have originally motivated the tannaitic texts it considers, and that Rav himself had knowingly formed his views in defiance of these earlier systems of thought, what was to be achieved by such a far-fetched, and, to an extent false, exercise in transgenerational harmonizing? Why is the Bavli so eager to conceal disagreement where the Yerushalmi seems quite content to display it? All the more so if, according to the Yerushalmi, Rav's position remained contested among *amoraim*!

One obvious difference between the Yerushalmi and the Bavli on the question of the discovery of mixed kinds in public, is the former's apparent disinterest in resolving it and making a ruling. On this particular question the Yerushalmi's objective is no more than to describe and explain the two rival positions. The Bavli, on the other hand, has apparently not only decided to resolve the issue, but to do so in favor of an amora facing substantial tannaitic opposition and apparently enjoying no known tannaitic support. This perhaps explains the great effort invested by the Bavli in making the tannaitic texts *seem* to have anticipated Rav's latter-day point of view. But while the two *talmudim* do so differ in their approaches of the question of mixed kinds, their differences can hardly account for the Bavli's feigned traditionalism. There are at least two good reasons for not accepting the Bavli's obvious desire to resolve the issue as a viable explanation of its equally obvious efforts to conceal the opposition. First, traditionalists and antitraditionalists maintain mutually exclusive positions. Hence one of two: had the *sugya* been framed by a traditionalist, the *halakha* should not have been ruled in accord with Rav's view in the first place; and had it been framed by an antitraditionalist, the feigned traditionalism would have hardly been called for. Why perform what looks like a decidedly bold antitraditionalist move while doing your utmost to sound as if you're not?

Secondly, although, in the case of the mixed kinds, the Yerushalmi does no more than to note and explain the two conflicting views, there are several other cases of transgenerational confrontation in which the Yerushalmi not only decides the issue, but does so by ruling against the tannaitic sources in favor of amoraic opinions.⁴⁵ In all these cases, however, and this is the important point, quite unlike the Bavli, the Yerushalmi makes no effort at all to cover up its tracks. The differences

⁴⁵ In all, there are seven such rulings in the Yerushalmi. Two in favor of a position attributed to Rav – Yerushalmi, *Kilayim* ix 32a, *Erubin* viii 25c; three in favor of the views of R. Shim'on b. Lakish – *Hagiga* ii 78c, and twice in *Gitin* vii 48c; one in favor of Shmuel – *Horayot* i 45d; and one in favor of R. Yossi b. Hanina – *Nida* iii 50c. Significantly, all four are *amoraim* of the first and second generation. More significantly, the latter three are never granted the special transitional tannaitic status granted to Rav on occasion by the Bavli (see below fn. 59).

between the ways each of the two *talmudim* presents these negotiations is quite striking.

It is significant perhaps that the most clear and detailed *meitivi*-type negotiation of this sort that the Yerushalmi has to offer, is contained in none other than tractate *Kilayim* ix 32a in the passage immediately preceding its account of the case of mixed kinds. Here too, as in Bavli, *Berakhot* 19b, the amoraic position under consideration is one of Rav's oft-quoted rulings, and here too it is confronted by a series of tannaitic texts that appear clearly to assert the opposite. But apart from that, the two *sugyot*—each of them absolutely typical of its kind—are worlds apart. Despite the special transitional status granted to Rav by the Bavli (more on this below), the difference between the two amoraic redactions remains stunning.

For one thing the Yerushalmi does not, as a rule, announce the transgenerational incongruities it discusses by a loaded term like the Bavli's "*meitivi*". The introduction of an apparently contradicting tannaitic source is not described as an "objection" to the amoraic position under consideration. The term used to set forth each of the two-hundred-thirty or so transgenerational confrontations conducted throughout the Yerushalmi is completely neutral in this respect: "*matnita* (or *matnitin*) *pliga de...*"—which is simply to declare that "(the following) tannaitic text ('*Mishna*') disagrees with...". The difference, as we shall see, is more than verbal, the Yerushalmi in truth seems to assume nothing in advance.

The *halakhic* principle attributed to Rav and discussed in *Kilayim* ix 32a is: "All that is prohibited for appearance's sake is also forbidden when done privately"⁴⁶ Six different tannaitic texts are then introduced in quick succession:

⁴⁶ See also Yerushalmi, *Eruvin* viii 25b. The same ruling, likewise attributed to Rav, is cited by the Bavli and also confronted with some of the same tannaitic material in: Bavli, *Shabbat* 64b (twice) and 146b, *Beitza* 9a and *Avoda Zara* 12a- b. As we shall see, the Bavli's treatment of these materials is, again, very different.

(The following) [tannaitic source]⁴⁷ disagrees with Rav: One should not use linen that is dyed black⁴⁸ to make a visible hem, but it is permitted (to use such black tinted linen) in pillows and bed-covers.⁴⁹ A(nother) [tannaitic source]⁵⁰ (that) disagrees with Rav: Should one's coins fall and scatter in front of an idol, one should not stoop down to repossess them in order not to appear to be bowing to the idol, but, if no one is present, it is permitted.

A(nother) [tannaitic source]⁵¹ (that) disagrees with Rav: One should not touch one's mouth to a public fountain fashioned as a face (of a false deity) in order not to appear to be kissing it, but if no one is present, it is permitted.

(Yet) a(nother) [tannaitic source]⁵² (that) disagrees with Rav: One should not prepare a hole in the ground to receive the blood of a slaughtered beast, but in confines of one's home it is permitted. He should not do so in public (in the market place) in order not to appear a heretic.⁵³

A(nother) [tannaitic source]⁵⁴ (that) disagrees with Rav: It is permitted (on the Sabbath) to lay out (in one's yard, garments that were drenched by the rain in order to dry) in the sun, but not within view of passersby.

A(nother) [tannaitic source]⁵⁵ (that) disagrees with Rav: One should not pour water on the Sabbath (from one's yard) into the street (even)

⁴⁷ The source is Tosefta, *Kilayim* 5:24.

⁴⁸ In his commentary to Tosefta, *Kilayim* 5:24, Saul Lieberman explains that because wool was frequently dyed black, a linen garment with a visible black hem would look like mixed kinds and is therefore prohibited for appearances' sake.

⁴⁹ Presumably, because they are only used in the privacy of one's home.

⁵⁰ The source is Tosefta, *Avoda Zara* 7:3. But compare Bavli, *Avoda Zara* 12a.

⁵¹ See previous ftn.

⁵² The source is Mishna, *Hulin* 2:9. The Bavli, however, passes it over without noting its discrepancy with Rav's ruling. The Tosafot (Bavli, *Hulin* 41a), who tend normally to harmonize as far as possible all seemingly conflicting talmudic texts, are forced to admit that the two *talmudim* probably disagree about the precise meaning of this mishna.

⁵³ Apparently collecting blood in this manner was practiced by heretics at the time. Interestingly, the original Mishna has Sadducees for heretics (*minim*).

⁵⁴ But compare Bavli, *Shabbat* 64b-65a.

⁵⁵ The first, unproblematic part of the *beraita* is Mishna, *Eruvin* 8:10, the additional last clause is a *beraita* cited again in Yerushalmi, viii 25b.

through a four-cubit deep drain⁵⁶ (...) (However) R. Kapara has taught that if no one is present, it is permitted.

No attempt is made to explain the discrepancies away, or to seek for minority views among the tannaitic sources that might conform to Rav's position. Despite the fact that in this *sugya*, unlike that of the mixed kinds, the Yerushalmi is working toward an *halakhic* decision, it shows not the slightest inclination to harmonize the texts under consideration, gloss their differences, or somehow argue them away. And even if the Yerushalmi does presuppose Rav's special license to contest tannaitic opinion, it makes no mention of it, and certainly refrains from rejecting Rav's, obviously, minority view in favor of the uncontested tannaitic evidence mounted so clearly against it. Rather, the Yerushalmi sums up the situation in one, short and potent sentence, declaring simply and unceremoniously that:

All of these (beraitot) are in disagreement with Rav, and (therefore?)⁵⁷ have no standing!⁵⁸

⁵⁶ Just as it is prohibited to transport goods from one domain to another on the Sabbath, so one is not allowed to pour water from one's yard into the street. The halakha, however, calculates the amount of water normally disposed of per day as the amount contained in a four-cubit deep drain. With such a drain, water pouring in at one end would in fact not reach the other (but would 'push out' other water that was there prior to the Sabbath). None the less, it prohibited for appearances' sake.

⁵⁷ Here, the precise formulation of the Yerushalmi is: "All these (*mishnayot*) contradict Rav, and they have no existence" (*ve-let lehon kiyyum*). The "and" is ambiguous and could be taken to denote a conjunction or conditional with equal viability. The formulation of the same proposition in *Eruvin* 35b is somewhat less ambiguous: "And Bar Kapra taught that if no one is present it is permitted. This contradicts Rav and has no validity (existence), for Rav says: "All that is prohibited for appearance's sake etc.". The implication is that Bar Kapra's ruling is null and void *because* Rav thought differently.

⁵⁸ The precise wording of this recurring Yerushalmi formulation is *ve-let lahon kiyyum*: and they have no existence, basis, ground. In modern parlance we would say: they are declared null and void. There is, however, a tendency among some philologists to soften the blow as it were. Thus, for example, M. Sokoloff, *Dictionary of Jewish Palestinian Aramaic* (Ramat Gan: Bar Ilan, 1990) renders the phrase: "and they have no answer". I find his translation wanting because it takes the absence of *kiyyum* to be a feature not of the six tannaitic sources but of the contradiction between them and the ruling attributed to Rav – in which case the sentence

This is a matter very different from the special privilege of *disputing* tannaitic opinion, granted to Rav by the Bavli on occasion.⁵⁹ It is no longer a question of simply acknowledging Rav's license to think differently from his predecessors, but of the framer of the *sugya* ruling in his favor *in the face of* wide and varied tannaitic opposition. To this end the Yerushalmi appears to have no qualms about declaring *bona fide* tannaitic sources null and void. Once these earlier documents are found to contradict Rav's ruling it is not the fate of *our understanding of them*⁶⁰ that seems to be at stake, but the fate of *the documents themselves!* And this is not the only case. On six other occasions the Yerushalmi concludes such *meitivi*-type confrontations with the same formula, similarly dismissing the tannaitic sources in question in favor of the *amoraic* positions under consideration. The Bavli never resolves a transgenerational conflict of views by outwardly rejecting a tannaitic source. Still, despite the great pains to which the Bavli goes to retain a strict traditionalist frame of discourse, we are left by both *talmudim* with the same *halakhic* conclusions!

To fully appreciate the discursive difference between the two *talmudim* in this respect, let us look briefly at the way the very same principle of Rav's—that "All that is prohibited for appearance's sake is also forbidden when done privately"—is dealt with in the Bavli. The principle, similarly attributed to Rav and similarly confronted with similar versions of the same tannaitic sources, is cited and discussed by

should have been in the singular: "All of these (beraitot) are in disagreement with Rav, and it has no answer".

⁵⁹ The idea that *Rav tanna u-palig*, that he enjoys transitional tannaitic status and may therefore dispute a mishna, is applied throughout the Bavli on five occasions. The Yerushalmi, on the other hand, makes no mention of such a principle as far as I can tell. However, even in the Bavli Rav special status is referred to only as a last resort. Thus, for example, on four separate occasions positions attributed to Rav are declared problematic by the Bavli as a result of *meitivi* challenges to them from tannaitic sources. (The talmudic term is *teyuota de-Rav*.) In none of these cases is the problem resolved by resorting to Rav's alleged license to dispute tannaitic authority, and the difficulty is dealt with by other means. See Bavli, *Shabbat* 40a; *Bava Metzia* 107a; *Menahot* 5a; *Bekhorot* 55a.

⁶⁰ See above ftn. 58.

the Bavli on four separate occasions⁶¹ Where the Yerushalmi permits itself to dismiss as groundless the tannaitic rulings that contradict Rav, the Bavli manages to retain them, never to overstep the conservative limits of a strictly traditionalist discursive framework, and yet to achieve the very same. In all four cases, just as in *Berakhot* 19b, the tannaitic texts are reinterpreted so as to comply with Rav's view. The Bavli's rhetoric here is so different from that of the Yerushalmi that it does not even seem fit to employ the *meitivi* format. Thus in Bavli, *Avoda Zara* 12a, to take but one example, the mention of Rav's principle is initially prompted by a *beraita* that is concerned with prohibitions for appearances' sake per se.

Our Rabbis taught: It is forbidden to enter a city in which idolatrous worship is taking place therein, or to go from there to another city; this is the opinion of R. Meir. But the Sages say, only when the road leads solely to that city is it forbidden; if, however, the road does not lead exclusively to that place, it is permitted.⁶²

Both parties hence agree that it is forbidden to appear as if one is on one's way to participate, or from participating in idolatrous worship. R. Meir adopts a stricter view than the Sages in cases where there is more than one plausible interpretation of a person's behavior. But all agree on the principle of the matter. The question of whether or not actions forbidden for appearances' sake are allowed when performed privately is not raised by the *beraita*, nor do the dispute and ruling recorded by it bear on the question in any way. As for the issue of prohibition due to appearances, the Bavli goes on to cite three additional tannaitic rulings. And it is here that Rav's views on the matter appear to be contradicted.

If a splinter has got into his foot while in front of an idol, he should not bend down to extract it, because he may appear as bowing to the idol; but

⁶¹ Bavli, *Shabbat* 64b (twice) and 146b, *Beitza* 9a and *Avoda Zara* 12a-b.

⁶² Because the person would then not necessarily appear to be going to, or to have come from, the place of forbidden worship.

if he is not seen⁶³ it is permitted. If his coins got scattered in front of an idol he should not bend to retrieve them, for he may be taken as bowing to the idol; but if he is not seen it is permitted. If there is a spring flowing in front of an idol he should not bend down and drink, because he may appear to be bowing to the idol; but if he is not seen it is permitted.

Not surprisingly, Rav's principle makes its appearance in the *sugya* apropos the second, qualifying clause of the beraitot, in which permission is granted if and when one is "not seen". "What is meant by 'not being seen'?" asks the *stam*,

Shall we say (that it means) that he is not being observed? Surely (not, because) R. Yehuda stated in the name of Rav that whatever the Sages prohibited for appearances' sake is also forbidden in one's innermost chambers! It can only mean that it is permitted if (by bending) he does not *seem to be bowing* to the idol.

The Bavli's response to the seeming contradiction between the three beraitot and Rav's ruling, is not to declare any of the sources involved invalid, but, as in *Berakhot* 19b, to harmonize all by reinterpreting the three tannaitic ones. What they *really* mean, explains the *stam*, is that a person standing in the vicinity of an idol is permitted to retrieve his fallen coins, kneel to drink, etc., not when his actions happens to go unobserved, but only when he is able to do so without appearing to be bowing! This feat of harmonization is achieved without the Bavli having to declare Rav's ruling even *prima facie* problematic. The *meitivi* format is not employed because the tannaitic sources—as the Bavli quotes them—require very little interpretive effort in order to cohere with Rav's latter-day position.

Significantly, the original Tosefta includes *two* rather than one qualifying clause. It is prohibited to appear as if one is bowing to an idol, "but", continues the Tosefta, "if he should crouch down (to retrieve his coins or drink) with his back turned (to the idol), or if he is in a place where he is not seen, it is permitted". Indeed the Tosefta permits one to stoop in the presence of an idol in two separate cases: if one does so without

⁶³ The Hebrew phrase is: "*im eino nir'e*," which is ambiguous, as the Bavli will be quick to point out, translating equally well as "if he is not seen" and "if he does not *seem* (to be bowing).

seeming to be bowing, or if one does so without being *seen* to bow. Focusing exclusively on Rav's edict, the Yerushalmi, understandably only cites the latter⁶⁴ and is therefore forced to make a choice. The Bavli, on the other hand, avoids the confrontation entirely by running together the Tosefta's two qualifications,⁶⁵ and pooh-poohing the very suggestion that Rav might have defied a *bona fide*, uncontested tannaitic ruling. But by sounding less radical the Bavli does not achieve less than the Yerushalmi. As in *Berakhot*, here too Rav's view is retained lock, stock and barrel, the seemingly discordant tannaitic sources are rendered inoffensive by a stroke of creative interpretative reformulation, and, once more, a significant *halakhic* revision is *achieved* without the Bavli having to *sound* as if it is.

4. Antitraditionalism for the Advanced

Such is the framers of the Bavli's way of negotiating across the great amoraic-tannaitic divide: free, as any antitraditionalist would be, to align themselves with whichever position they see fit, yet, at the same time, careful, very careful to harmonize the texts involved whenever ruling in favor of the latter-day position. In this sense Bavli, *Berakhot* 19b is absolutely typical. What makes it in my opinion also absolutely unique is the way in which a lesson appears to have been made out of it. In *Berakhot* 19b the framer of the *sugya* is engaged in more than the negotiation of yet another *meitivi* confrontation. Here, as nowhere else I know, I suggest that the *stam* has chosen inaudibly to address his better-versed readerships in order to all but outwardly declare his antitraditionalism, but to do so

⁶⁴ In doing so the Yerushalmi reformulates the conditional clause so as to avoid any misunderstanding, in place of the Tosefta's *u-be-makom she-eino nir'e* (and where he is not seen), the Yerushalmi submits *im haya be-makom tzanua* (if he was in a secluded place). Thus construed, Rav's view flatly contradicts these earlier teachings which, as we have seen, are subsequently dismissed.

⁶⁵ The Bavli achieves this by a subtle change of phrase substituting for the Tosefta's *u-be-makom she-eino nir'e* (and in a place where he is not seen) the ambiguous phrase: *ve-im eino nir'e* (if he is not seen).

without ever missing a beat of his carefully crafted traditionalist way of speaking. I would even suggest further, that it is here perhaps that the framers of the Bavli also make their stand in what appears to have been a significant disagreement with their Palestinian counterparts about the appropriate ways of conveying and passing down their shared vision of *talmud-Torah*.

If one is willing to entertain the possibility—as a provisional working hypothesis, for which, however, to the best of my knowledge there exists no independent evidence—that the framer of this particular *sugya* was writing with some knowledge of the Yerushalmi’s treatment of at least some of the relevant material, then it is even less plausible that he was engaged in a straightforward traditionalist exercise. Thus for example, had he been seeking for no more than to ward off alleged tannaitic challenges to Rav’s ruling, it would have made much better sense for him, for instance, to have cited the Yerushalmi’s version of R. Zeira’s dictum than the one he does. The version attributed to R. Zeira speaks sufficiently vaguely of consideration for human dignity overriding “negative precept[s]” without actually saying “of the Torah”. In this manner it would have been much easier to limit it, as the Bavli labors hard to argue, exclusively to rabbinic edicts. But no. Defiantly, or so it seems, the *stam* confronts Rav’s affirmation, that care for the dignity of even one’s own teacher is powerless to override a transgression of God’s word (name), with a tannaitic formulation that *prima facie* could not have been more explicit in stating the very opposite—so great are considerations of human dignity, the tanna asserts, that it overrides the (all?) negative precepts of *the Torah*. Rather than employ a less offensive version such as R. Zeira’s—assuming, of course that such a version was available to the Bavli redactor—or fall back on the special license granted by the Bavli to Rav that allows him to contest tannaitic opinion, the *stam* chooses to challenge us, his readers, with a bold, almost reckless, display of hermeneutic freedom. ‘Look how far one can go’, he seems to exclaim, ‘see how much can be achieved without appearing to violate the polite traditionalist rules of transgenerational discourse’. ‘Even as we speak’, he seems to whisper inaudibly to all those capable or willing to hear, ‘most of my readers

remain quite oblivious to what we are really up to'. So far-fetched is Rav b. Shaba's rendition of the *beraita*, that the *stam*, fully aware of how far he has allowed himself to go, has the members of that academy of old snigger along with the most attentive of his present-day students.

Intriguing as it may seem, and plausible as it might sound, the idea that the Bavli's engagement with its tannaitic heritage was even partly conducted in willful disagreement with that of the Yerushalmi, is one for which the present author lacks both the knowledge and training to seriously pursue. The differences in style, temperament and idiom between the ways in which the transgenerational divide is negotiated by the two *talmudim* speak for themselves, and, in my opinion, are worthy of further study. And they are certainly relevant to the task of laying bare the Bavli's treatment of *meitivi*-type confrontations in general. But in order to appreciate the uniqueness of *Berakhot* 19b one need not even be aware of the Yerushalmi's different way of doing things, or, if aware, need not necessarily agree with my account of the Yerushalmi, let alone assume that the Bavli was consciously reacting to it. Whether or not the *sugya* in hand was intended to score points in a wider, second-order debate with the *stam*'s former Palestinian counterparts is irrelevant to assessing my claim that this particular set of transgenerational confrontations was (also?) constructed with a view to giving away the Bavli's game to its better-trained readers. The evidence for this is, as it should be, wholly internal.

As we have seen, although Rav's ruling is keenly confronted with five different, seemingly contradicting tannaitic sources, the framer of the *sugya* does much to suggest, though without actually saying so, that it is also contradicted by the Mishna under discussion and the *beraita* apropos of which it was quoted. The Gemara more than insinuates, but nowhere states openly that it understands the exemptions from major religious duties granted by the Mishna and *beraita* are due to considerations of human dignity—in which case, the better-versed reader gradually realizes, they too are in worrying violation of Rav's later ruling. Once it is noticed that the Mishna and *beraita* should have also been confronted with Rav, the confrontations that are considered and resolved only add to the

confusion. This is because the ways in which they are resolved are irrelevant to the Mishna and *beraita*; neither of which can be said to involve transgressions of only rabbinic edicts. The increasingly felt tension between the three texts, lingering unmentioned and unresolved in the background, serves, deliberately in my opinion, to invalidate the air of harmony created by the *meitivi* confrontations that are negotiated.

It is difficult to explain to someone who has not studied the Bavli closely just how odd this is. It is highly uncommon for the Gemara to miss or overlook such a clear discrepancy between a text that it has deliberately introduced and is closely scrutinizing and the very Mishna under consideration—especially if the text is attributed to an amora! Had the Mishna (or the *beraita*) explicitly mentioned the notions of respect or dignity, such an oversight would have been inconceivable. On the other hand, the closer one studies the *sugya* it appears less and less conceivable that the Gemara could have understood the Mishna's ruling as motivated by anything but considerations of respect and human dignity! Given the specific rulings of the Mishna and *beraita*, what was the point of citing Rav's edict in the first place, if not to confront the three texts? and yet their mutual incongruity is passed over in incredible silence. Perhaps, one inevitably finds oneself asking, there are texts, such as the five mentioned, that can be somehow squared with Rav's views, but there are others, among them clearly the Mishna itself, that, by the end of the day, remain in opposition to Rav despite their obvious priority? In which case perhaps the name of the game is not, as the Bavli normally has us believe, harmony at all costs? Perhaps, regardless of the way the five *meitivi* queries were resolved, Rav and other leading amoraic authorities are not strictly required to follow in the footsteps of their predecessors in all matters? Perhaps the *halakha* admits not only to innovation, but also to revolution? Perhaps the Bavli's rhetoric of transgenerational harmony is merely rhetoric? In the very act of harmonizing away *meitivi*-type objections in the normal manner, the *stam* seems to be indicating, quite strongly, that he shouldn't be taken seriously. Rav's move is revolutionary, he all but says out loud, for it knowingly contradicts the entire tannaitic tradition represented by the Mishna and Tosefta, and if the harmonization of the

other five texts seems to you affected and strained, well, you are quite right!

The second unusual feature of the *meitivi* confrontations of *Berakhot* 19b is the absolutely unique manner in which they are introduced. As noted previously, nowhere else in the Bavli does a *meitivi*-type objection come accompanied by a running commentary in which the *stam* explains which of the two texts he finds puzzling, and why. *meitivi*-type confrontations are elsewhere always introduced by the exact same format:

Amora A says X; “*meitivi*”: tannaitic authority (B) implies the negation of X.

The *stam*’s only “original” contribution of his own at this stage (apart from juxtaposing the two sources) is the word “*meitivi*” itself. Given their obvious incongruity, the problem it constitutes is apparently considered to be self-explanatory. Self-evident or not, what the problem *is*, however, will crucially depend on the point of view of whoever raises it. For a dedicated traditionalist the difficulty generated by a transgenerational incongruity will always be one and the same: how was it possible for amora A to say X if an authoritative tannaitic source appears to imply not-X? In order to merit inclusion within the system of halakha latter-day rulings must be shown (a) to fully cohere with all former rulings, and (b) to legislate for cases, situations or circumstances for which no former ruling is known to apply. In the event of an apparent transgenerational incongruity, it will always be the amoraic ruling that comes as a surprise, never be the tannaitic source.

But if one’s meta-*halakhic* point of departure is antitraditionalist, such texts are allowed to contradict one another, and, in a truly antitraditionalist world of discourse, they frequently will. Antitraditionalists allow for *halakhic* change, and view *halakhic* development in revisionary, rather than cumulatory terms. Antitraditionalist also require of the mandatory *halakhic* system that it be at all times consistent, but they do *not* require that the demand for consistency extend to all authoritative rulings ever made. For the prudent antitraditionalist, casting about for transgenerational contradictions is

more a form of bookkeeping, a check-listing of which rulings are in and which are out, that normally privileges the more recent. But even the most avid antitraditionalists will never advocate *halakhic* change for the sake of sheer novelty. Antitraditionalists are more than willing to accept *halakhic* reform, even *halakhic* revolution, but they have to have good reasons for doing so. It follows, therefore, that when an antitraditionalist presents a transgenerational inconsistency between two rulings *as a problem*, the ruling he will be challenging will be the one for which he sees relatively less reason *regardless of its formal priority*.

If asked to fully spell out their questions, traditionalists and antitraditionalists will elaborate very differently on *meitivi*-type confrontations. For the former, to repeat, the question will always reduce to: how was it possible for amora *A* to say *X* if an authoritative tannaitic source appears to imply the exact opposite? Since it was obviously *possible* for this to happen, a slightly more sophisticated traditionalist formulation of the question would be: because it is unthinkable for amora *A* to have knowingly contradicted the tannaitic source in hand, we must assume that he had read it differently—if so, how? Since a traditionalist's obligation to bona fide tannaitic rulings is unconditional, he will never seriously question the tannaitic sources motives for stating what it states.

None of this applies to the antitraditionalist. The *only* real difficulties an antitraditionalist would encounter in the course of a *meitivi*-type confrontation, would be to do with motives and reasons. And since for him latter-day positions are expected to be outcomes of serious trouble-shooting of earlier ones, it is only natural that the earlier, tannaitic source will frequently turn out to be the more puzzling of the two. If asked to spell out the difficulty perceived in a *meitivi*-type confrontation, an antitraditionalist will, therefore, most probably describe it thus: amora *A* claims that the *halakha* should be *X* for reason *R*. Curiously, the tannaitic text in hand implies the negation of *X*. Why, as seems to be the case, did the tannaitic authors not think of *R* or deem *R* inappropriate? Only an avid antitraditionalist will be able to seriously formulate a *meitivi*-type query in this fashion. *And this is precisely the way the framer of Berakhot 19b scrupulously describes the puzzlement entailed by each of the five meitivi-type*

confrontations he conducts. Of each of the five beraitot he asks the same: “Why (is this so)?” Why doesn’t the beraita say as does Rav that “There is no wisdom nor understanding nor counsel against the Lord” (and hence: wherever a profanation of God’s name is involved no respect is paid (even) to a teacher)?” Unless we interpret the *stam*’s formula as a rhetorical, somewhat sarcastic challenge to Rav—a reading I find highly inappropriate—It is hard *not* to read it as a clear, if fleeting revealing of antitraditionalist bias.

In addition to the clear antitraditionalist gist and content of the *stam*’s comments, it is the insistent, case-by-case, chant-like repetition of identical interrogative formulae that serves to create the distinct impression of a schoolroom example I spoke of above. If one studies *Berakhot* 19b attentively, with some knowledge of similar *sugyot*, one has the distinct feeling of being patiently, very patiently taught to what a *meitivi* objection amounts, and how to pose it. The lesson, however, is completely lost on two kinds of reader: the less knowledgeable students who simply fail to register both the uniqueness and significance of the *stam*’s explicatory remarks, and the quicker, better informed readers who, perhaps because of their former experience with *meitivi*-type queries, no longer bother to pause and think between question and answer despite the *stam*’s patient prompting. Reluctant to give the game away too obviously, or so it seems, the *stam* does not allow the antitraditionalism of his didactic interventions to linger long enough to really sink in. Although the problems generated by each of the beraitot are explicated as only an antitraditionalist could describe them, *they are each immediately resolved, or rather harmonized out of existence, in ways only a dedicated traditionalist would deem fit*. In other words, with regard to the *meitivi* confrontations themselves, the framer of *Berakhot* 19b flashes his antitraditionalism repeatedly, but each time only for the briefest of moments between posing the question and proposing an answer, never long enough for it to have a real effect. By the time each of the questions has been answered, all trace of whatever antitraditionalism was allowed to briefly make its appearance in the course of presenting them, has been effectively obliterated.

Indeed, had the unusual formulation of the five questions been my only evidence, my case would have been exceedingly unconvincing, if not

downright silly. But it is not. There is much more to the *sugya* than meets the eye. We have already seen how Rav's ruling remains conspicuously *unharmonized* with both the Mishna and Tosefta. If it would be out of character for a traditionalist seriously to entertain the thought that, or wonder in all seriousness why, a tannaitic authority had failed to employ a line of reasoning successfully applied by an amora, it would be downright unthinkable for a traditionalist construction of a *sugya* such as this to leave two such major transgenerational contradictions untreated. On the other hand, the way the *sugya* responds to the five questions, nicely corroborates such a reading. From an antitraditionalist perspective, however, the exact opposite is true. It is equally unthinkable that a hard-nosed antitraditionalist would invest such effort in harmonizing away the five transgenerational incongruities. On the other hand, the unresolved tension between Rav's ruling and the two tannaitic texts, not to say the non-ironic expression of puzzlement regarding the motivation for the rulings registered in the beraitot, would be the natural response for a narrator writing from an unabashed antitraditionalist perspective.

The situation is not symmetrical, however. The assumptions that a traditionalist or an antitraditionalist could have framed the *sugya* are not equally improbable. Only the former option is genuinely inconceivable. The only way the *sugya* could be attributed to a prudent traditionalist is by writing off his failure to attend to the inconsistency between Rav's ruling and the two tannaitic sources as an incredible oversight, and by reading his declaration of surprise at the five tannaitic rulings as expressions of sarcasm addressed to Rav—both of which seem so out of character as to count as almost conclusive grounds for rejecting them. By contrast, all one needs to assume in order to sustain an antitraditionalist rendition of the *sugya*, is that the harmonization of the five beraitot with Rav's later ruling is not performed with utmost seriousness; that the *sugya* is contrived in this respect ironically to lay bare the hollowness and sheer formality of the Bavli's feigned traditionalism in this type of confrontation. From an antitraditionalist perspective, the *sugya* under consideration is a masterly crafted attempt subtly to expose, to a small and select readership, the policy and program that ground an entire class of similar units of

talmudic discourse. By contrast, those who prefer to take the traditionalist format literally, are forced to explain the *sugya*, ad hoc, as a fantastic case of careless editing. But even that is not the whole story. Two additional features of this remarkable *sugya* serve, in my opinion, to tip the balance decisively in favor of the antitraditionalist option. The first concerns the passage preceding, and leading up to the discussion of Rav's ruling, the second concerns the passage immediately succeeding it.

5. Giving away the Game, or The Gentle Art of Inaudible Instruction

Rav's dictum that "wherever a profanation of God's name is involved no respect is paid (even) to a teacher" is not the first mention of respect for teachers, *kevod la-rav* or *kevod ha-rav*, that occurs in the *sugya*. The issue is raised a page earlier in a relatively long and rather strange discussion of a claim made by another first generation amora, R. Yehoshua b. Levi who is quoted as claiming that "In twenty-four places (it is taught that) the *bet din* excommunicates a person for (reasons to do with) respect to a teacher—and we learn them all in our Mishna". Despite its vague phrasing, all commentators without exception take R. Yehoshua b. Levi to be claiming that, as Rashi puts it, on twenty-four occasions the Sages are reported by the Mishna to have excommunicated individuals for acting disrespectfully towards their teachers. The matter, however, may not be as simple as it sounds. In all, five incidents of rabbinic excommunication are cited. The fact that none of the cases mentioned seem to have anything to do with disrespect for teachers is puzzling in itself. But the strangest, and in my opinion, the most interesting aspect of the discussion, is the fact that at least two of the cases cited imply the exact opposite—namely, that individuals were excommunicated by Sages for being *too* respectful of their teachers! Alongside the actual excommunication of one Elazar b. Hanokh—for opposing the ritual washing of hands decreed by the rabbis—and would-be banning of Honi ha-Ma'agel and Todos of Rome—the former for the petulant manner of his pleading with the Almighty, and the latter for permitting his community to eat on Passover a kid roasted in

a way that resembled too closely the Temple ritual—we find mentioned the two great antitraditionalist tannaitic legends of excommunication I discuss in earlier chapters of the book⁶⁶—that of Akavia b. Mehalal’el and that of R. Eliezer b. Hyrqanus.⁶⁷ Neither of which is told in any detail. They are briefly alluded to, assuming, so it seems, that the reader is well-acquainted with the material.

As in the discussion of Rav’s principle that follows almost immediately, here too, I shall argue, one encounters a surface impression that not only contradicts a more sophisticated reading of the text, but seems to have been deliberately constructed in order to conceal it. To begin at the most explicit and seemingly obvious level. What we appear to be told by R. Yehoshua b. Levi is of a firm, and uncontested tannaitic tradition, widely attested to by the Mishna, that so valorizes the honor and respect due to teachers as to deem those who fail in this respect liable to be banned. The discussion that follows seeks to corroborate both of R. Yehoshua b. Levi’s claims: (a) that such a tannaitic tradition exists, and (b) that evidence for it is found not only in *beraitot*, but also in the Mishna itself. Still keeping to initial, superficial impressions, the discussion seems to yield whatever it was intended to yield. The details, at this level of reading, are unimportant. What matters is that (a) and (b) are not outwardly disputed, and Mishnaic evidence of such a policy seems to be produced to the *stam*’s satisfaction. The only aspect of R. Yehoshua b. Levi’s claim that is contested is the number of relevant examples to be found in the Mishna. Rather than twenty-four these turn out to be only three, or at most not to exceed five. But that is beside the point. The idea that the Mishna maintains that disrespectful behavior toward a teacher is sufficient reason for excommunication goes unchallenged, and by implication, undisputed. Less than a page later, Rav will, of course, claim that the value laid on the respect due even to one’s teachers is nevertheless outranked by the value laid on fully and promptly carrying out one’s religious duties. At the cursory level of having to treat one’s mentors

⁶⁶ Pp. 76-88.

⁶⁷ Mishna, *Eduyot* 5:6-7 and Bavli, *Bava Metzia* 59a-b respectively.

politely the two claims jar somewhat, but do not contradict each other. One stresses the value of respecting one's Master while the other explicates its limits. But in talmudic culture, *kevod ha-rav* means more than courtesy.

In talmudic culture, the very term 'respect for teachers' refers first and foremost to respect for their *teachings*. A disciple who issues an edict or even pronounces a particular low-level ruling in the vicinity of his still functioning Master, we are told in several places—not surprisingly perhaps, always apropos a story about the arch-traditionalist R. Eliezer b. Hyrkanus—is punishable by death, even if his ruling coincides with his master's opinion and is perfectly correct⁶⁸ To openly *disagree* with one's teacher is even worse. "To dispute one's teacher" says R. Hisda, "is like disputing the Almighty," to which R. Hanina b. R. Papa adds: "To even think of doing so, is as if one was thinking of contesting the Almighty"⁶⁹ All this is not as blatantly traditionalist as it sounds. Once a person ends his studentship, we are told elsewhere, and becomes a *talmid-haver*—a recognized fellow academician in his own right—he is no longer expected to follow his former Master to the letter, or to belittle himself to such an extent in his presence⁷⁰ Still, when applied to the special realm of *kevod ha-rav*, the realm of a person's duties regarding the *teachings* of his master, the incongruity between the position attributed by R. Yehoshua b. Levi to the Mishna and that attributed to Rav becomes far more pronounced. Bearing this connotation of *kevod ha-rav* in mind, Rav's ruling acquires an additional and new aspect: if one is convinced that a profanation of God's

⁶⁸ The tannaitic origin of this saying is the *Sifra* to Lev. 10:1, where, as in all its later citations, it comes accompanied with a typical story about a student of R. Eliezer b. Hyrkanus who apparently issued *halakhic* rulings not far from his master's place of residence. Hearing of this, Eliezer predicted that he would not last the weekend, and indeed by the end of the Sabbath he was dead. see also Bavli, *Eruvin* 63a; Yerushalmi, *Shvi'it* vi 36c and *Gittin* i 43c. Such arrogance does not merit capital punishment, of course, but is only punishable by death by the Hand of God.

⁶⁹ Bavli, *Sanhedrin* 100a. For a useful anthology of talmudic and post-talmudic sources related to these issues see H. Ben-Menahem, N. Hecht. Sh. Wosner (eds.) *Controversy and Dialogue in Halakhic Sources* (Hebrew) (Tel-Aviv: Alfil, 1991), Vol. I, Ch. 11.

⁷⁰ Cf. Bavli, *Berakhot* 27b and Minor Tractate *Kalla Rabati* 2:15.

name is in the making, Rav's principle now implies, one is expected no longer to pay respect to one's teacher's *teachings*. While R. Yehoshua b. Levi appears to be claiming in the name of the Mishna that those who contradict their mentors are liable to be excommunicated, when dully generalized Rav's principle implies that if one truly believes his masters to be wrong, and liable, as a result, to cause a "profanation of God's name", one is *required* to set aside all considerations of honor and respect, and to speak one's mind. Interestingly, elsewhere in the Bavli Rav's ruling is explicitly employed to mean just that.⁷¹

Read thus, Rav's principle is rendered more than the mere *outcome* of a covert antitraditionalist move; more than a curiously veiled, surreptitious *halakhic* breaking with the past. It now reads, also, or perhaps even mainly, as an all but open *declaration* of antitraditionalism itself! Not only is one obliged to publicly strip if thought to be wearing mixed kinds even in the presence of one's teacher, but, Rav now seems strongly to suggest, one is required outwardly to contest one's teacher's teachings and rulings if they are genuinely thought to be inappropriate. The implication is that just as one is encouraged constantly to check all garments for mixed kinds with a view to taking action whenever thought necessary, one is likewise encouraged critically to scrutinize everything one learns with a view similarly to speaking one's mind whenever thought necessary—even in public, even to the embarrassment of one's teachers. Even great teachers are fallible and capable, therefore, in *both* their conduct and their teaching, of unwittingly causing the Divine Name to be profaned. And if teachers are believed to be fallible, so are their students. Hence, individuals taking action on the grounds of Rav's principle should willy-nilly regard their own views and decisions to act, equally liable to be mistaken, and should, therefore act cautiously, keep an open mind, and be willing to hear whatever criticism comes their way. It is most significant, in my opinion, that closely following the discussion of Rav's principle the *stam* presents the story of R. Ada b. Ahava who mistook a

⁷¹ For the clearest statement of this principle see Bavli, *Shevu'ot* 31a. For an explicit employment of Rav's principle to justify it, see Bavli, *Eruvin* 63a.

heathen for an Israelite and tore from her head an improper headgear, only to be humbled by a high fine of four-hundred *Zuzim*.⁷²

In short, if Rav's principle can be said to sustain such a reading—and Bavli, *Eruvin* 63a apparently presumes that it does⁷³—then it clearly implies, if not actually proclaims all the main elements of antitraditionalism. Needless to say, according to R. Yehoshua b. Levi “our Mishna” appears to suggest the opposite. If one is in real danger of excommunication, who would never even consider publicly stripping or contradicting a teacher! Viewed thus, the Mishna implies that society cannot tolerate challenges to the authority of its teachers. Taking the place of a teacher, let alone actually defying his teachings, even for the best of causes may result in untimely death by the hands of Heaven and/or banishment by the hands of the courts. Regarding one's master's teachings—as opposed to his attire or conduct—the implications are centrally traditionalist. At the most superficial level, then, before studying the discussion of R. Yehoshua b. Levi's claim in depth, the passage devoted to it by the *stam* would seem to give rise to yet another set of tensions between the ruling attributed to Rav and the alleged policies of the Mishna. While Rav's words are confronted with a series of seemingly

⁷² Bavli, *Berakhot* 20a. The lesson is made explicit by a pun. After being fined R. Ada is said to have asked the woman her name. “*Matun*,” she replied. “*Matun, Matun*,” he muttered, “is worth four-hundred *Zuzim*.” “*Matun*” is, on the one hand, Hebrew for deliberate, moderate, measured, and, on the other, resembles the word for two-hundred in Aramaic. “Had I been more cautious,” he mused, “I would have saved having to pay”. The lesson, then, is not to refrain from ripping off a person's inappropriate attire, or from contradicting one's master's rulings, but not to be zealous about it; to think twice, consider alternatives, and always take a second look.

⁷³ *Eruvin* 63a tells of Ravina, disciple of R. Ashi, who, in the presence of his teacher, noticed a person publicly violating a rabbinic injunction (by tying his ass to the trunk of a palm on the Sabbath). Rather than wait for his master to respond, Ravina is said to have shouted to the man, and getting no reaction from him declared him excommunicated. “In doing so was I acting disrespectfully to you?”, he asked R. Ashi. No, answered his teacher, in these cases we say: “There is no wisdom nor understanding nor counsel against the Lord”; wherever a profanation of God's name is involved no respect is paid (even) to a teacher”. (Interestingly, according to *Berakhot* 19b, Rav's principle may *not* be expected to apply to such cases of a rabbinic prohibition. See also Bavli, *Moed Katan* 17a.

contradicting *beraitot*, and the apparent contradiction between his ruling and the specific ruling of the Mishna in relation to which it is cited hovers seemingly unperceived in the background, the *stam* appears to be doing his best to prove that the Mishna, *in particular* and as a whole, *beraitot* notwithstanding,⁷⁴ is not party to the antitraditionalism suggested by Rav's principle. Here, though, the tension is no longer contained within the tolerable limits of a specific incongruity between specific *halakhic* rulings. If until now Rav's ruling had seemed at most to be in disagreement with the particular edict recorded in the particular Mishna under consideration, he now is seen to be contesting the Mishna's general meta-*halakhic*, second-order principle according to which such discordancy is itself improper!

The way in which a cursory reading of one passage seems to amplify a considerably deeper understanding of the one that follows is interesting, perhaps even elegant, but it is also slightly worrying. It is worrying because by presenting the antitraditionalism residing in Rav's principle and surreptitiously revealed in the *meitivi*-type confrontations it undergoes, as *opposed* to the Mishna's general outlook, the *stam*'s position is debilitated rather than bolstered. If, as I suspect, the framer of the *sugya* contrives quietly to draw attention to the extent of his own antitraditionalist commitment, it is hard to imagine what he intended to achieve by citing and discussing the words of R. Yehoshua b. Levi *simpliciter*. If indeed this was his intention, it would have been far more effective for him to raise and discuss a less obviously traditionalist pronouncement of the Mishna's point of view.

But then why should we compare a superficial reading of one unit of discourse with a far more subtle and deeper reading of the one that

⁷⁴ On the citation of the incident concerning the Passover feast introduced by Todos of Rome, the *s'tam* remarks that R. Yehoshua referred specifically to "our Mishna," and this particular incident is related only in a *beraita*. "Are there no such cases in the Mishna itself", he asks, clearly implying the greater significance of the Mishna in comparison to other tannaitic sources. In view of the fact that a page later the Gemara will tacitly discriminate again between the Mishna and *beraitot*, allowing the former to be contradicted by Rav while fastidiously harmonizing Rav with the latter, I find this remark highly significant.

follows it? It makes far more sense to maintain an even level of reading for both passages. Read superficially, the *meitivi* discussion of Rav's principle, I have argued all along, is as traditionalist as they come. The entire discussion is geared on such a showing to prove that Rav's ruling conveyed absolutely nothing new—or so it seems. At such a cursory level of reading it is almost certain that the tension between Rav's ruling and the Mishna would also go unnoticed. At this level of reading, then, the two passages mesh nicely—with the traditionalism implied by R. Yehoshua b. Levi's claim effectively grounding that of the blissful harmony allegedly sought and found between the ruling of his amoraic colleague and the entire tannaitic tradition that went before it. A closer look, however, not only changes our perception of the discussion of Rav completely as we have seen, but also that of R. Yehoshua b. Levi.

In its discussion of R. Yehoshua b. Levi's assertion the Gemara cites five examples of actual and would-be bans issued by tannaitic authorities, of which, it claims, only four are mentioned in the Mishna itself. The claim is true. The excommunications of Akavia b. Mehalal'el and Elazar b. Hanokh are related in Mishna, *Eduyot* 5:6-7, the threat to excommunicate Honi ha-Ma'agel is noted in Mishna, *Ta'anit* 3:8, and the dispute associated with the banishment of R. Eliezer b. Hyrkanus is mentioned in Mishna, *Kelim* 5:10 and *Eduyot* 7:7. On the other hand, the threat we find in Tosefta *Beitza* 2:15, to banish Todos of Rome for permitting his congregation to eat kids roasted in their entirety on Passover, is nowhere mentioned in the Mishna. Despite this, I believe this fifth case, unmentioned by the Mishna, may be a key to the entire passage.

Although the threat to Todos is not noted by the Mishna, the issue of eating this type of roasted kid on Passover is mentioned twice. Both Mishna, *Beitza* 2:7 and *Eduyot* 3:11 report that Raban Gamliel held to the view that kids prepared in this fashion can be eaten outside the Temple on Passover night. His, we are told, was a minority opinion, however, that was voted down by a majority of his Jabne colleagues. As far as the Mishna is concerned—and the question in point is the Mishna's view on these matters—there was nothing *prima facie* wrong in Raban Gamliel believing that a full roast be permitted on Passover, or in his announcing his belief,

or in his arguing the case with his colleagues. The Mishna does not give the Sages' reasons for voting against Raban Gamliel's proposal, but we may assume, following the Tosefta's remarks with regard to Todos, that the issue at stake was probably a desire not to emulate the Temple rituals too closely outside the Temple Compound. The point *is* that Raban Gamliel is not reprimanded for adopting the more liberal approach, but, as is commonplace in any Great *Bet Din* or bet *midrash*, is merely voted down. Todos, on the other hand, is not reported to have merely opined that such a dish was permitted on Passover, but to have issued a ruling to the effect. Because of this he was threatened by excommunication. If dignity and respect can at all be said to be involved here, it is respect for the current *halakhic* authority, the majority of one's peers, and not that of one's present or former teachers. Had Raban Gamliel refused to accept the ruling of his colleagues, we may safely assume that he would have been called to task. And, as in the case of R. Eliezer b. Hyrqanus or that of Akavia b. Mehalal'el, the opinions of his former teachers would have had nothing to do with it!

This I believe is the intended import of at least three of the four incidents found by the Gemara to be of the Mishna itself. The case of Honi ha-Ma'agel is the exception. His sin is that of "arrogance against the Most High," as A. Cohen puts it.⁷⁵ The other three—Akavia, R. Eliezer and Elazar b. Hanokh—were banished for arrogantly opposing, not the Almighty, but the *halakhic* authorities of their day. The point is that the *halakhic* authorities of their day were *not their teachers or mentors, but the majority of their colleagues!* Those acquainted with the original stories well know that the banishing of Akavia and R. Eliezer was the result of them having followed the received teachings of their masters *too closely!* How could it be that the two most vividly antitraditionalist legends in the entire talmudic corpus are recruited here as confirmation of the Mishna's alleged traditionalism?! The answer, I have indicated (and flesh out further in the

⁷⁵ The Babylonian Talmud: Tractate Berakot – Translated into English for the First Time, with Introduction, Commentary, Glossary and Indices by The Rev. A. Cohen (Cambridge: Cambridge University Press, 1921), p. 125, fn. 3.

book⁷⁶), is that, again, the *stam* has ingeniously constructed a *sugya* that speaks deliberately in two distinct and disharmonious voices, addressed to two distinct readerships; two voices that mesh remarkably well with the two equally discordant voices that, I have suggested, typify the *meitivi*-discussion of Rav's principle that follows closely in its wake. Talk of a tannaitic policy of banning for reasons of *kevod ha-rav*, as we have seen, introduces the kind of formal, yet hollow traditionalist superstructure, similar to the rhetoric of *meitivi*-confrontations, through which those acquainted with the material can hardly fail to see. It is precisely the type of self-refuting 'Doublespeak' that distinguishes the advanced students from the beginners.

The final point I wish to make regarding the antitraditionalist subtext of *Berakhot* 19b concerns the culmination of the *sugya*. Here there is no longer need for subtlety or knowledge of other texts. For a brief moment, the *stam* seems to throw all caution to the wind, and to announce his meta-*halakhic* preferences for all to hear. He does so in the form of a dialogue between R. Papa and Abaye that constitutes one of the boldest amoraic statements of antitraditionalism of which I am aware. The dialogue, I believe, speaks for itself.

Asked R. Papa of Abaye: "In what were our predecessors different from us that miracles occurred for them though for us they do not? Could it be a question of learning? (Surely not.) In the days of R. Yehuda (for example) all they learnt (knew) was (the Order of) *Nezikin*, whereas we study (know) all six Orders— (Indeed) when R. Yehuda used to reach (the mishna in) *Uktzin*⁷⁷ (concerning) "If a woman presses vegetables in a pot"⁷⁸ —and some say (it was when he reached the one concerning) "Olives pressed with their leaves are ritually clean"⁷⁹ —he would say 'I see here (a complexity of the same order as) the disputations of (my

⁷⁶ Pp. 156-8.

⁷⁷ Tractate *Uktzin* of Order *Tahorot* is notorious for its complexity, as are the disputations between Rav and Shmuel, R. Yehuda's teachers. For the former See Bavli, *Horayot* 13b.

⁷⁸ This refers not to *Uktzin* but to Mishna *Tahorot* 2:1, also of Order *Tahorot*.

⁷⁹ Mishna, *Uktzin* 2:1.

teachers) Rav and Shmuel' (but was unable to explain it himself). We (by contrast, are able to) study *Uktzin* in thirteen different ways⁸⁰ Yet R. Yehuda would only have to remove one of his shoes for rain to begin to fall,⁸¹ while we can afflict our souls and cry and cry and no one listens! He said to him: (it is not a matter of learning, rather) our predecessors jeopardized their lives for the sanctification of the Name, and we do not.⁸²

The previously noted story of R. Ada b. Ahava's unfortunate mistake and four-hundred *Zuzim* fine is then presented presumably as an example of how former Sages would risk all for the sanctification of the Name, *kiddush ha-shem*.

On the one hand, R. Papa's statement conveys far more than an antitraditionalist would ever need. In order to justify the adoption of a critical attitude towards the knowledge and teachings of former generations, it quite sufficient to assume that all humans are fallible, that circumstances can change in ways that are liable to defy the most canny foresight, that even if the quality of learning of later generations is less than that of their predecessors they may still be considered dwarfs standing on the shoulders of giants. More than it may be considered a justification of antitraditionalism, R. Papa's bold assessment of the vast superiority of the knowledge and learning of his own generation in comparison to that of R. Yehuda constitutes a flat refutation of traditionalism. If it is true, it leaves no room at all for the type of commitment to former learning necessarily premised by traditionalism, and seemingly presupposed in the rhetoric of standard-*meitivi*-type confrontations.

On the other hand, the *stam* still succeeds in remaining ambiguous with regard to one crucial aspect. Forceful as it is, R. Papa's declaration is still not enough to prevent a traditionalist rendition of *meitivi*-type

⁸⁰ Or by thirteen different methods. The implication is the same: our command of the world of learning is far superior to that of the generation of R. Yehuda.

⁸¹ On occasions of mourning and public and private fasting one always removes one's shoes. At times of drought R. Yehuda, then, despite his inferior learning, would only have to make the first sign of self-humiliation for his plea to be answered.

⁸² The entire exchange appears almost *verbatim* in Bavli, *Ta'anit* 24b and *Sanhedrin* 106b.

challenges completely, for the simple reason that he cautiously limits his assessment to the amoraic period. Traditionalists can still claim — and I can personally attest to the fact that many of them do! — that even if R. Papa and Abaye were right about the standard of their amoraic predecessors, it is unthinkable to even consider disputing a tannaitic ruling, let alone criticize the quality of *their* learning. Those who failed to take note of the unnoted incongruity between Rav's ruling and the Mishna and Tosefta, who passed by the *stam's* tedious running commentary to the five *meitivi* confrontations, who ignored the discrepancy between R. Yehoshua b. Levi b. Levi's generalization and its alleged instances, will also, in all probability, read R. Papa's exchange with Abaye for its moral conclusion rather than for its epistemological premise. Despite the bold, and seemingly unequivocal message conveyed by R. Papa's statement, the antithetical, two-tier meaning of the *sugya* as a whole is retained to the very end.

As I said at the outset, the significance of the *meitivi* confrontations of *Berakhot* 19b is enormous precisely because *qua* *meitivi* confrontations they are wholly and totally typical. The five tannaitic challenges to Rav's ruling and their subsequent resolutions are so commonplace that, when studied, they are normally skimmed through with ease. They are not a parody of their kind in any obvious sense. Even the sniggers earned by Rav b. Shaba's far-fetched attempt to harmonize Rav's ruling with the tannaitic principle associated by the Yerushalmi with R. Zeira, are not immediately taken by the reader as having anything at all to do with the idea of transgenerational harmonizing per se. The ways in which the five *meitivi* challenges are resolved by the *stam* do not appear to ridicule such solutions. On the contrary, the force and subtlety of the *stam's* ironical exposition of their real meaning owes much to the fact that, of themselves, they are entirely credible and wholly representative of the Bavli's vast stock of similar negotiations. This is why I suggest that *Berakhot* 19b should be seen as a paradigm rather than a parody; as an extraordinarily constructed *sugya* that contrives to explain rather than satirize the class of *meitivi*-type, transgenerational negotiations. Viewed thus, *Berakhot* 19b is seen as an instructive, explanatory effort on behalf of one of the framers

of the Bavli's many other *sugyot* of its kind, rather than that of an antagonistic critic. It is, I urge, the work of an antitraditionalist doing his best to explain the Bavli's antitraditionalist project, rather than that of an antitraditionalist aspiring to ridicule a traditionalist one.

All of this, however, is ingenuously concealed. There is little chance that innocent beginners will be deprived of their innocence by studying *Berakhot* 19b in its immediate context, any more than practiced, committed traditionalists are liable to be forced to rethink their former commitments. The *stam*, as we have seen, has skillfully provided the former with blinkers and the latter with a convenient safety-net, in the form of a largely plausible, if somewhat disconnected, surface rhetoric that serves intriguingly well to mask the accumulating evidence of his own unmistakable antitraditionalism from the eyes of those who should not, or those who can, but desire not to appreciate it. I doubt, however, that he would have mindfully catered for the latter. When it comes to the inheritance of former authoritative documents of the type to which the Bavli and Yerushalmi are almost wholly devoted, traditionalists and antitraditionalist are too bitterly opposed to be expected to write and edit their works with a view considerably to accommodate their adversaries. The *stam's* ambiguity cannot be attributed, in my opinion, to a desire to provide the traditionalist with an honorable way out. The fact that in retrospect it is seen to do so is beside the point. His ambiguous double-talk, I have suggested all along, seems intentionally to be catering to the beginner rather than to the opposition.

So much for *Berakhot* 19b. The more convincing one finds my reading of this incredible *sugya*, the more pressing becomes the inevitable why-question: namely, why bother? What could the *stam* be hoping to achieve by thus misguiding the novices? The final chapter of *Rational Rabbis* proposes a rather elaborate explanation with which I am no longer completely happy. At the TR session in November I shall set forth a somewhat different, and possibly supplementary approach I have been working on since the publication of *Rational Rabbis*. The paper, not yet

published, is in Hebrew, and can be obtained (along with any other part of the book or subsequent publications) by contacting me at fisch@post.tau.ac.il

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