

Shamma Friedman

Benjamin and Minna Revees Chair Lecture

Thank you Ismar for your kind and generous words.

Dear Colleagues, friends and loved ones

As you may have seen on the invitation, I have been associated with this Seminary for over 45 years. It is an honor and pleasure for me that the seminary and its chancellor, my good friend and colleague of as *many* years, Dr Ismar Schorsch, have seen fit to appoint me as the first incumbent of the Benjamin and Minna *Revees* Chair in Talmud and Rabbinics at the Jewish Theological Seminary of America.

I am happy to occupy this chair, but I don't intend to lean back on it. The inauguration of an academic chair is symbolic of a *beginning*, and that is exactly where I *feel* vis a vis the study of talmudic literature. Most of my ideas and interest in talmud studies have more to do with the future than with the past.

An academic chair can also be called cathedra, from the Greek and Latin cathedra, 'chair', 'the office of a teacher'. The midrash Echa Rabba describes the dispersal of the people of Jerusalem after the *destruction* in this way:

שרתי במדינות. ר' הונא בשם ר' יוסי אמר, כל מקום שהיה ירושלמי הולך היו מציעין לו קתדרא ומושיבין אותו עליה, בשביל לשמוע חכמתו

Wherever a Jerusalemite would arrive, they would offer him a *katedra* and seat him upon it, in order to hear his wisdom.

I am proud to be here today, not only as a member of the seminary faculty, but also as a Jerusalemite, at the 56th anniversary of the independence which sought and seeks to leave all our destructions in the past, and create a vibrant Jewish society and culture in which the *talmud* can play a part, the Talmud that I began to study *here* at the feet of Saul Lieberman of blessed memory.

As a colleague I do not have any wisdom that I wish to preach to you, but as a student of the talmud I have set of programmatics that I long to bring to your attention.

I have never been able to adequately define my own *passion* for the study of talmud. The fascination of talmud studies is no longer a well kept secret, and requires no demonstration. It is sought after by wider and more diverse audiences than ever before. My *own* fascination is best expressed through what I wish to *do* in this area.

In the early 70's I presented a seminar on talmud teaching to Israeli high school principals based on my own teaching experience. At that time, Talmud *teaching* was in crisis. This was my message to them:

Some people are born teachers. Others may be mediocre in terms of natural abilities as a teacher like myself. Sometimes I completely lose control over the students. They are yelling away and I can't get in a word edgewise. But, listen carefully, they are *shouting* about the talmud sugya that we're studying! Now the question is: How do you do that? What is the teaching methodology calculated to capture attention.

I address these questions partly in response to a most stimulating lecture by Dr Barry Holtz right here as he inaugurated *his* seminary chair in education, and my thesis is the same as his: academic research generates the excitement of discovery that carries over to create intellectual stimulation in teaching, not only on the graduate level, but in high school teaching also. If the instructor is engaged in creative *personal* research of the subject being taught, the classroom situation follows through.

We're back at the seminar with the principals. I *simply* had to tell them how to do that. How do you research the sugya before you teach it? Follow these steps:

One. Delineate the sugya and its internal literary structure on paper.

Two. Graphically distinguish the tannaitic, amoraic, and anonymous editorial layer and determine the interplay of *meaning* from one to the other. That eliminates any sense of forced or artificial thinking, that is most incorrectly associated with the Talmud. There is a *simple meaning* to the separate statements, and there is a simple meaning to the new creation the sugya makes out of them.

Three. Distill this through the corpus of traditional interpretation, meaning *all* rishonim and selected ahronim, especially pne yehoshu, Or Sameach, and Mirkevet Hamishneh.

Four. Examine the manuscript readings of the talmud, best presented synoptically for the whole sugya in horizontal lines, to see what bearing *they* have on the above analysis.

Five. The talmud is not simply the *page* before me. It's *all* the statements *parallel* to those in this sugya throughout the entire talmudic corpus: mishna tosefta, bavli, yerushalmi, and midrashim. View these parallels in vertical synopsis and you'll gain access to one of the most rewarding developmental dramas of talmudic literature. A passage that starts as a midrash, becomes a tosefta, becomes a baraita in the bavli and yerushalmi, and perhaps is summarized in the mishna. This sequence exhibits an evolutionary progression of form and content from one stage to the next. The process informs the historian of historical development, and *chases* fundamentalism, which reads the talmud only for the literal meaning of the words on the page.

Six. All of this must be done in the light of existing academic talmud scholarship, that innovative modern discipline which completes the tripartite division: rishonim ahronim and *mekhhkar*, academic scholarship. You must concentrate upon the work of the two *colossi* of modern academic scholarship, Yaakov Nahum Epstein, and Saul Lieberman, but without skipping any other modern scholar of the last 150 years, who have, in their combined effort, revolutionized the face of talmud study.

Seven. All pertinent material in cognate disciplines must be culled, such as ancient comparative *law* religion and literature, linguistics and realia.

If you immerse yourselves in these areas when you prepare the sugya, you'll have plenty things to make it interesting for students.

Oh, they said,

Delineate, distinguish, Distill, synopsise horizontally and vertically, while reading reshonim aharonim, Epstein and Lieberman, check Mesopotamian law, classical literature, Syriac, philology, botany, and who knows what?

We can't do it.

How wrong could I have been? It was ridiculous of me to think that they could. Not only that, I probably made more enemies than friends, for they correctly had me pegged as an ivory tower academic who took all week and more preparing for the six hours *they* taught in one day.

It was not their job anyhow. This work must be done by academic specialists, and *then* it can be used in each and every of the many contexts in which the Talmud is studied. A scholarly edition with commentary must be prepared for the Babylonian talmud patterned after what Lieberman did for the Tosefta. And it must be teamwork, for no individual can approach the type of tasks undertaken by the colossi of the past. It must serve not only teaching, but all forms of talmud *study*, and all the *fields* of Jewish studies and other humanities touching upon law, religion, literature and folklore of antiquity.

At this point, more than three decades later, such a collaborative project exists, and its modest beginnings are under way. But first materials had to be prepared, because, in the seventies, with few aids at the fingertips, even a team could not undertake such work.

In 1983 the Seminary's Lieberman Institute launched its computerized aids to talmud study: full text of all the manuscripts, fragments, and first printed editions of the Babylonian Talmud, to be enhanced *today* by *zoomable* digital images of all existing ancient fragments of talmud text; and a page by page computerized bibliography to hundreds of works, modern and traditional, touching upon passages of the talmud.

The availability of electronic access and sophisticated search of talmud manuscripts, and putting the detailed bibliography of all talmud scholarship right on the page, enables the entire discipline to address a basic agenda still largely unfulfilled after 150 years of modern Talmud study. Namely, critical editions with scholarly commentary of the entire corpus. The nexus of technology, research and education can increase *human* capacity for achievement.

It takes about 3 to 9 hours to teach an average sugya. For this evening I chose to touch upon a few points limited to the seventh category mentioned earlier: cultural contacts with the ancient world.

The first point I had planned to deal with concerns unraveling the famous talmudic paradox about false witnesses:

לא הרגו נהרגין הרגו אינן נהרגין

If they have not slain they are slain; but if they have slain they are not slain

However, in light of the fact that I have already added a methodological introduction, and in order not to exceed my time limit, I will address two points, instead of the three originally planned. These will be drawn from the area of legal redress for injury to persons.

There are five payments that must be made to the victim of physical assault according to the mishna. These are: injury, pain, medical costs, lost work, and shame. Well suppose the attacker volunteers to provide the medical treatment personally, in order to avoid paying outside medical expenses.

אסייך אנא

I'll treat you myself. The victim has the right to reject this offer with the counter claim:

דמית עלי כאריא ארבא

I consider you as dangerous as a *lion* lying in wait. I'll *never* allow you to get your hands on me again. Certainly not in the guise of my physician.

כאריא ארבא

like a lion in ambush. This fits the situation perfectly. The attacker has mauled the victim like a lion. There are however two very small problems. The sentence is Aramaic, but ארבא aleph resh bet, 'to lie in wait', occurs *only* in Hebrew but *not* in Aramaic. And a claims formula such as this is always idiomatically and elegantly worded, and mixing Aramaic and Hebrew is bad form.

Another problem. A very early geniza fragment of extraordinary linguistic exactness and a quote in halakhot pesuqot have an *extra vav*: ארבא ואריא עלי דמית you are to me like a lion *and* lying in wait. But that's impossible. "And" cannot join a noun and a verb. It looks like two nouns. A lion and an 'erba'. But what's an erba? No such noun was listed in any of the pre Sokoloff talmudic dictionaries. In such a case I always go to a Syriac dictionary, in that Syriac is a related Aramaic dialect. Walla! Eureka! "erba" means *lamb*. You are to me like "The lion and the lamb"!

This style is immediately reminiscent of the title of a fable, even Aesop's fables. The tortoise and the hare, and many others, with the word "and" connecting two animal names. Clearly a literary reference is intended. To

get medical treatment from you is like the lion and the lamb. On the basis of this discovery Sokoloff introduced the word “erba”, lamb, in his new talmudic dictionary.

But what about the fable? There *is* a fable in the Aesop collection where a cowherd loses a calf, and takes a vow that he would sacrifice a lamb to regain the calf. But when he finds a lion eating the calf, he vows a bull if he could only escape from the lion.

It is the *cowherd*, and not the lamb, who must escape from the lion. Never the less, the fable is indeed the source of our claims formula.

The fables of Aesop, who lived in Greece in the 6th cent BCE were well known in the ancient world since the first century CE. and eventually circulated in the Middle East in a Syriac version, first published, in Hebrew characters by Berl Goldberg in Berlin 1845. In Syriac the title of this fable is *ra'ya*, '*erba wearya* – the shepherd, the lamb, and the lion. In this version, the animals are *sheep* and not cows, the cowherd is converted into a *shepherd*, a lamb is lost, and a lamb is vowed as a sacrifice, first in order to find the *lost* animal and then to get the shepherd out of the clutches of the lion. Aesop's fable is *ferteitched und ferbessert* in Syriac. Not really *ferbessert*, because the switch in animals which *regularly* took place as these fables moved from locale to locale and culture to culture, removed the economic logic of upping the sacrifice from lamb to bull to meet the situation where the shepherd wanted to save *himself* from the lion. However, it is clearly the same story.

The Syriac title is *ra'ya*, '*erba wearya* the shepherd, the *lamb* and the *lion*, and the last two words, '*erba wearya*, “the lamb and the lion”, are used in our sugya (in reverse order), to refer to the well-known tale. *damit alai kearya ve-erba* –should be translated “to be in your power would be like the *shepherd* in the fable ‘the lion and the lamb’. “The shepherd” himself (*ra'ya*) appears in the Syriac title, but is left out of the abbreviated title cited in the sugya. None-the-less, the Talmud is referring specifically to the *shepherd*, the hero of the story, whose plight in escaping from the lion's jaws provides the intended symbolism of the attacker and his victim.

An *extra vav* leads us to the cultural roots of a phrase incorporated by the talmud in a legal formula. It is the title of a fable which arrived from ancient Greece via a contemporary Syriac digest.

At that point I went lion hunting. It turns out that talmudic literature is permeated by Aesop's fables, in both Babylonian and Palestinian sources. In the Palestinian sources they most probably came directly from the Greek.

The folklorists know this well, and it has long been researched by such Jewish scholars with an eye to ancient cultural roots of talmudic lore as Azaria de Rossi, Yaakov Reifman, Yehuda Leib Gordon, and Hans Lewy. Lieberman's masterful chapter on Greek Proverbs in talmudic literature educated many a contemporary talmudist with its brilliant array. Aesop is not mentioned there but he is mentioned *en passant* in the chapter on oaths and vows. Clearly Lieberman credits the reader with knowing about the pervasiveness of Aesop in the talmud. I rediscovered this thanks to the more subtle allusion to this genre in "the lion and the lamb".

Perhaps one of the more explicit talmudic parallels to Aesop could be mentioned here. The story of the middle aged man with two wives, the young one who pulled out his gray hairs and the older one his black, is recounted in bBQ 60b and Aesop par 52. The interesting thing is that the motto of the story, "he became bald from here and from there", נמצא קרח ממצא ומכאן entered the general talmudic rhetoric to such a degree that it is used for *anyone* who loses out on two alternatives.

Thus a phrase from the aesopian fables became *part and parcel* of the talmudic dialectic.

Hellenistic culture served the aggada well. However, halakha, the talmudic legal norms, often goes back to Mesopotamian antecedents, legal systems that flourished in Babylonia thousands of years before talmudic culture, and were preserved in cuneiform writing in the form of ancient law codes, that of Hammurabi (18th century BCE) deservedly the best known.

We mentioned earlier five payments due a victim of assault:

נוק צער ריפוי שבת בושת

Injury, pain, medical costs, lost work, and shame. We shall now concentrate upon the last: בושת shame, indignity, or disgrace. Perhaps this is the most interesting of the five categories. We will discuss three points on which 'disgrace' differs from the other categories of payment for bodily injury. In each of these there is a specific connection with

cuneiform law. These three areas involve the question of intention, literary form of the laws, and social stratification.

In the code of Hammurabi retaliation for bodily injury is punitive, and the *unintentional* perpetrator is exempt.

206: If an aristocrat has struck a(nother) aristocrat in a brawl and has inflicted an injury on him, he shall swear, "I did not strike him *deliberately*" and is exempt from retaliation, but is merely required to pay the physician.

According to *tannaitic* law one pays for all categories of assault whether intentional or accidental, *except* for disgrace. For the other categories you pay whether you injured the victim on purpose or by accident. For disgrace you pay only if you did it on purpose.

one is liable for paying 'disgrace' says the mishna, only when acting with intention (mBQ 8 1).

This exemption, at least in the stage of the law quoted, cannot be explained by the *impossibility* (objective or subjective) of causing disgrace unintentionally. It *is* possible to shame someone unintentionally, but if you do it you're exempt. Therefore it would appear that some type of *prior* juridical principle is operating. We have already noted that in ancient Near Eastern Law, injury was dealt with punitively, and therefore could apply only for intentional acts.

One of the outstanding *literary* features of Ancient Near Eastern laws of bodily damage is the price list. The laws of Eshnunna state:

If a man bit the nose of a man and severed (it) - he shall weigh out 1 mina silver. An eye- 1 mina; a tooth -1/2 mina; an ear – 1/2 mina. A slap in the face - he shall weigh out 10 shekels of silver (, *42).

Even in Hammurabi's code, where *talio* – physical retaliation - takes the place of monetary penalty, disgrace are still treated through fixed tariff:

If a member of the aristocracy has struck the cheek of a(nother) member of the aristocracy who is of the *same* rank as himself, he shall pay one mina of silver (*203).

This literary form, a list of tariffs for specified injuries, survived in talmudic law, *specifically* for disgrace, namely, the inflicting of indignity. The Mishna legislates:

If a man punched someone he must pay a *sela*. If he slapped him he must pay him 200 *zuz*. If [he struck him] with the back of his hand he must pay him 400 *zuz*. If he tore his ear, plucked out his hair, spat and his spittle touched him, or pulled his cloak from off him, or uncovered a woman's hair in the street, he must pay 400 *zuz* (mBQ 8 6).

A tariff list for damages already found in the Yerushalmi (BQ 8 6, 6c) is cited in the Bavli as an introduction to a question:

R. Hisda sent the following message to R. Nahman: "It was said: 'one who kicks someone with the knees must pay three (*selas*); with the foot, five; one who strikes the other with his fist, thirteen' -- what is the fine if one strikes someone with the handle of a hoe or with the iron of the hoe?"

Thus tariff lists for indignities is still being composed and added to in the amoraic period.

Disgrace payments resemble cuneiform law in that they are imposed only when the act was *intentional*, and are presented in the literary form of *price lists*. If you do such and such you pay such and such.

In fact, the talmud and the ancient near eastern codes even have the same *joke* about the person who didn't have the correct change to pay, so he hit him again. The insulting slap on the cheek, which pervades Mesopotamian and talmudic literature with a fine attached, is part of the *Jewish background* in early Christian writings: 'turn the other cheek' in the sermon on the mount.

The third characteristic of 'disgrace' is the surprising fact that the ancient class distinction for payments of damages, so familiar from Hammurabi, survived in talmudic law for '*disgrace*' alone. Hammurabi's code reads:

196 If an aristocrat has destroyed the eye of a member of the aristocracy, they shall destroy *his* eye.

197: If he has broken a(nother) aristocrat's bone, they shall break his bone.

198: *If* he has destroyed the eye of a *commoner* or broken the bone

of a *commoner*, he shall pay one mina of silver.

202: If an aristocrat has struck the cheek of an aristocrat who is *superior* to him, he shall be beaten *sixty (times)* with an oxtail whip in the assembly.

Not *כנו יכנו* forty lashes of the torah, but *ששים יכנו* sixty lashes.

203: If a member of the aristocracy has struck the cheek of a(nother) member of the aristocracy who is of the *same* rank as himself, he shall pay one mina of silver.

204: If a *commoner* has struck the cheek of a(nother) commoner, he shall pay ten shekels of silver.

Payment or retaliation on the *sliding* scale of social distinction was the salient feature of Hammurabi's code. Many scholars during recent decades have pointed out that the *aristocratic* level in Hammurabi was applied by the *torah* to all citizens, thus eliminating distinction by social class for all free Israelites. "You shall have one standard for stranger and citizen alike: for I the LORD am your God" (Lev. 24, 22).

To this we must add: the earlier system of social differentiation, famous from Hammurabi's code, *survived* in tannaitic law for *boshet* alone. Thus the mishna says:

Disgrace is appraised with consideration of the station and rank of the one who causes it as well as the station and the rank of the one who suffers it (mBQ 8 1).

הכל לפי המבייש והמתבייש

If a bum throws a snowball and knocks off a rich man's top hat, he is grievously disgraced; if the tables are turned, and the rich guy plays a trick on an indigent fellow citizen, it's considered not so bad.

Similarly the Tosefta rules:

There is a *difference* if one is disgraced by an aristocrat or a plebeian; there is a difference between a great person suffering disgrace and a lowly person suffering disgrace; the son of the great being disgraced and the son of the lowly being disgraced (tBQ 9 12).

אינו דומה המתבייש מן היקיר למתבייש מן הפגום ואינו דומה גדול המתבייש לקטן המתבייש בן גדולים המתבייש לבן קטנים המתבייש

The emphasis upon social status as a determination of the level of payment presents an astounding similarity to the Code of Hammurabi. The concentration in this passage of *terms* for social differentiation based on wealth is unprecedented in talmudic literature.

“The son of the great” (*ben g^edolim*) appears to be an exact functional equivalent of *mâr awīlim* in Hammurabi, and “the son of the lowly” of *mâr muškēnim*, terms which pervade the Hammurabi passages on damages. “The son of the great” occurs in a limited number of passages in the talmudic-midrashic corpus for the wealthy and aristocrat. As to “the son of the lowly” (*ben q^eṭanim*), I am unable to find *any* other occurrence.

‘Aristocrat’ (*yaqīr*) is found as a term of social distinction in *cultic* settings in second temple Jerusalem. יקירי ירושלים The word *pagūm* (translated here ‘plebeian’) has the *general* meaning of ‘damaged’, ‘imperfect’, ‘spoiled’ and comes closest to signifying a class of *persons* in laws of prohibited marriages,

כל מקום שיש קדושין ויש עבירה הולד הולך אחר הפגום

Besides this we never hear of a group of people *within* the community who are פגומים, second class.

The remarkable concentration of all of these *social* terms in one passage is unparalleled. Their application denoting social stratification as a basis for setting the level of payment for ‘disgrace’ can only be explained as a *remnant* of the ancient Near Eastern norms as expressed in the Code of Hammurabi, foreign and jarring in its current rabbinic setting.

Legal redress for bodily injury based on a sliding scale of differentiation by social class was dramatically reformed by the Torah. Scholars viewed this reform as embodying a *complete elimination* of the caste system for free Israelites. But we have seen that *rabbinic* law maintained the ancient stratification in the case of payments of ‘disgrace’. This left the final stage of democratization to Rabbi Akiva, as is recounted by the Mishna:

This is the general rule (for payments of ‘disgrace’): all is in accordance with a person's honor.

הכל לפי כבודו

R. Akiva said: Even the poorest in Israel are looked upon as freemen who have lost their possessions, for they are the sons of Abraham, Isaac, and Jacob (mBQ 8 6).

אפילו עניים שבישראל רואין אותם כאילו הם בני חורין שירדו מנכסיהם
שהם בני אברהם יצחק ויעקב

R. Akiva's statement contains an acknowledgement of the law *quo ante*, a legal fiction to overcome it, and an ideological justification for the entire step. Indeed, says Rabbi Akiva, the *existing* law stipulates that the poor receive *less* for 'disgrace' inflicted upon them. *Our* poor, however, can be considered as being inherently aristocrats (*bne ĥorin*) who are suffering temporary financial reverses.

That's a legal fiction in *two* senses. *Our* financial reverses may not be temporary.

The use of the term *bne ĥorin* for aristocrats is unique here in the talmudic corpus, the usual meaning being 'free persons', as in the Passover Haggadah. *bne ĥorin* in the sense of 'nobility' reflects the biblical *ĥori*, and is close to Koh 10 17/

אַשְׁרֵיךְ אֶרֶץ שְׂמֵלֶכֶךָ בֶן חוֹרִים

Happy art thou o land whose king is of noble birth.

Here too, the *lack* of rabbinic caste terminology underscores the fact that the concept had largely receded. Here it is preserved by an archaic phrase in an anachronistic legal framework, now put to rest by R. Akiva.

The democratic principle stated in terms of *common* equal descent from the patriarchs is reminiscent of mBM 7 1 and is *as* stirring a milestone in the history of democracy as mSanh 4 5: "[but a single man was created] for the sake of peace among mankind, that none should say to his fellow, 'My father was greater than thy father'".

Rabbinic *boshet* is the quintessence of Mesopotamian injury payments and a direct juridical carry-over from the ancient Near East. Tannaitic *boshet* is similar to assault rules in cuneiform law in being conditional upon intentionality, couched in lists of tariffs for specific actions, and

awarded on a sliding scale of social class. This third characteristic, entrenched as it was, was found reprehensible by Rabbi Akiva, who declared that all Israelites are nobility, as they *all* are the children of Abraham, Isaac, and Jacob.

We have touched upon just one aspect of the methods of studying talmudic literature, cultural contacts with the ancient world. I find the others no less interesting and they contain an inner *beauty*, and much inherent value of their own.

When a jaded colleague recently asked me what fascinated me in the study of the talmud I knew he would have no patience for a longer demonstration so I decided to answer with one word: esthetics. It succeeded in catching him quite by surprise.

The thesis is that content and form alike are creations of beauty, capturing our attention.