

“Verbal Wronging”: An Analysis of Speech Banned in *m. Bava Metzi’a* 4:10

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Rabbinic analysis of problematic speech is an intriguing subject, given the importance of speech as a poetic device and literary motif in the biblical tradition, the legal force of verbal utterances in rabbinic jurisprudence, and the prestige of learned oral discourse as a social practice in rabbinic culture.¹ Rabbinic tradition meticulously parses divine and human speech, and the destructive potential of the latter is amply treated.² Unfortunately, *m. B. Metzi’a* 4:10, the *locus classicus* for the mishnaic prohibition of *hônāyâ widēbārîm* (“verbal wrongdoing”), does not provide a definition of the offence.³ Instead, the mishnah offers three varied examples of verbal wrongdoing, followed by a biblical quotation which is not used in all the parallels and whose exegetical and rhetorical

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 - 2 A typical example is *m. Arak.* 3:5: “Thus the one who speaks (slander) with his mouth is more [heavily fined] than the one who commits a (nonverbal) act.” The gemara to the present mishnah (*b. B. Metzi’a* 58b) cites a baraita (a tannaitic teaching not included in the Mishnah) likening public humiliation to manslaughter.
 - 3 The form used in the most important manuscript of the Mishnah (MS Kaufmann A 50) is usually *hônāyâ* (from *ynh / hōnâ*). The form used in the *editio princeps* of the Mishnah (Naples, 1492) is *’ōnā’â*. See Lapin, *Early Rabbinic Civil Law*, 266.

functions are not self-evident. *Hônâyâ* is a verbal noun with a broad semantic range including deceit, overreaching, overcharging, underpaying, oppression, and painful insult.⁴

m. B. Metzi'a 4:10

Just as there is commercial *hônâyâ*,
so too there is verbal *hônâyâ*.

One should not say to [a vendor; lit., “to him”], “How much is this object?” if
one had no intention of purchasing.

If someone were a penitent, one should not say to him, “Remember your former deeds.”

If someone were a child of proselytes, one should not say to him, “Remember the deeds of your ancestors [lit., “fathers”].”

As it is said, “You shall not wrong a stranger or oppress him.”

(Exod. 22:20, which continues, “for you were strangers in the land of Egypt.”)⁵

I contend that “verbal wrongdoing” in *m. B. Metzi'a 4:10* is deliberately deceptive, harmful speech in commercial and non-commercial contexts. Malicious intent cannot be proved in cases of *hônâyâ widēbārîm*; it is a crime of conscience that only God can identify definitively and punish. The mishnah's selection and sequence of examples may have been modelled on a similar sequence in Lev. 19:11-18, while the biblical quotation (Exod. 22:20) seems to have several purposes — exegetical, rhetorical, and editorial-anthological — as explained below.

The analysis that follows is offered neither as an assertion of *the* authorial intent nor with a claim to being the only legitimate reading of this mishnaic pericope. It is, rather,

4 In his perceptive analysis of (predominantly) commercial fraud, Lapin notes that “oppression” is the root meaning of *hônâyâ*; given its broad range, he leaves the term untranslated. Lapin, *Early Rabbinic Civil Law*, 266. While cognizant of the complexity of the issue, I employ a few different translations faithful to the semantic range.

5 *m. B. Metzi'a 4:10*. All rabbinic text translations are my own unless otherwise indicated, and biblical references are according to the Masoretic Tradition of the Hebrew Bible and the JPS Tanakh translation; Orlinsky et al., eds. & trans., *Tanakh: A New Translation*. Mishnah citations follow standard printed editions of tractate *B. Metzi'a* in the Order on Damages. Since determining the intended (but elusive) boundaries of a scriptural quotation is crucial, I reproduce the quoted biblical text and (in parentheses) the remainder of the verse. On quotation boundaries, see Samely, *Rabbinic Interpretation*, 10 and 31-58.

a reading of what I take to be some of its discursive operations, in the context of closely parallel and related rabbinic and non-rabbinic material and other data. It represents an effort to elucidate some important aspects of this mishnah, based on a reconstruction of relevant components of the body of rabbinic discourse about verbal wrongdoing that lies behind the surviving texts.⁶ Given the interpretative complications posed by the use of identical and similar tannaitic material in different rabbinic genres, anthologies, cultural locations, and periods, it is hardly surprising that texts such as this mishnaic pericope lend themselves to different interpretations. The notion of “verbal wrongdoing” appears to have been applied at the tannaitic and amoraic literary strata to commercial and non-commercial contexts, with damage understood in economic and other (social and personal) terms. Given the intertwining of social and economic status and damage, this overlap is not surprising. The embedding of this teaching in the fourth chapter of *m. B. Metzi’a*, and possibly also the gemara in the Yerushalmi, points toward an emphasis on the economic setting in the earlier Palestinian collections. Related material in the halakhic midrashim and in the Tosefta entail a broader set of concerns. The embedding of the mishnah in the sugya within the Bavli continues to develop this emphasis on broader social and personal damage.

A Familiar, but Perplexing Mishnaic Pericope

Comparing this text to closely parallel and related versions within other rabbinic anthologies reveals some different examples of “verbal wrongdoing,” different sequences, and different biblical prooftexts. The mishnah concludes with a biblical prooftext, Exod. 22:20, that is not found in some of the parallel versions, which instead emphasize Lev. 25:14 and 25:17.⁷ The transgression itself is not explicitly defined in these versions, either. The immediate context — especially the rest of chapter four of *m. B. Metzi’a* — pertains to commercial fraud, which may involve verbal misrepresentation,⁸ but the mishnah’s second and third examples do not explicitly refer to a commercial setting, and thus “verbal wrongdoing” must be something other than verbally enacted commercial

6 Milikowsky’s lucid theoretical articulation of the distinctions between a “text,” a “document,” and the “work” behind these productions is crucial for my approach to rabbinic literature in general; Milikowsky, *Reflections*.

7 The Exodus verse is found in the following parallels: *Mek de-R. Ishmael*, ch. 18, *Midr tannaim ledevarim* 23:17, and *Eliyahu r.*, p. 106. It is not used in the parallels in *Sifra behar* 3 or 4, in *Sifre devarim* 281, or in the gemara of *b. B. Metzi’a* 58b or *y. B. Metzi’a* 4:7, 9d. It does appear at *b. B. Metzi’a* 59b.

8 *M. B. Metzi’a* 4:2 explicitly refers to keeping one’s word.

fraud.⁹ While all three examples might occur in a commercial setting, only the first of the three examples clearly fits such a context; the social setting of the other two examples is unclear. Although the potential harm resulting from each of the three instances of verbal wronging seems self-evident, this harm increases incrementally from the first to the third illustration, as does the probative difficulty. Thus, the sequence within the mishnah seems quite deliberate, even if its placement within chapter four appears somewhat disjunctive.

Seeming digressions prompted by associative linkages among topics are a common anthological feature of rabbinic literature. Although a textual parallel may clarify the seeming disjunction, one should not assume that the internal logic or the anthological context of a rabbinic teaching found in one collection is identical to the internal logic or the anthological context of other versions in other anthologies. For these and other reasons, Jacob Neusner's documentary method is both fundamentally necessary *and* insufficient.¹⁰ Although a synchronic comparison of these versions is methodologically problematic, an emerging hypothesis that the Tosefta or the Sifra may provide evidence of pre-mishnaic versions of tannaitic teachings supports the methodological step of consulting the toseftan and Sifra versions, as well as Bavli baraitas, for the purpose of elucidating the mishnah's meaning.¹¹ Nevertheless, subsequent revisions of earlier traditions, including harmonizations and errors as well as longstanding variations in largely oral transmission of tannaitic teachings, frustrate the identification of "original" versions; indeed, the search for an original version may be fruitless.¹² Consequently, I focus on the composite unit of the mishnah now in hand, while remaining attentive to its analogues.

As Howard Apothaker observes in a discussion of the Sifra parallel to this mishnah, Neusner long ago brought to our attention the apparently disjointed flow of this particular section of the Mishnah.¹³ Neusner's observations that the second and third examples "are cases not of fraud but of mere churlishness" and that only the first example

9 It is also worth noting that *m. B. Metzi'a* 4:10 is the only mishnah in chapter four which has an explicit biblical proof-text.

10 Neusner usefully argues that the editorial strategies of each rabbinic collection should be factored into analyses of particular traditions appearing in multiple anthologies. For an early formulation of Neusner's documentary approach, see *The Documentary Foundation*, ix-xv. For a more nuanced formulation, see his "Defining Rabbinic Literature," 131-46.

11 See Hauptman, *Rereading the Mishnah*; cf. Elman, *Authority and Tradition*. For the *Sifra*, see R. Reichman, *Mishnah und Sifra*; Hezser, "Classical Rabbinic Literature," 132.

12 See Jaffee, 'Torah in the Mouth,' 124; and Alexander, *Transmitting Mishnah*, 6-7. For an important, nuanced approach to textual criticism in the field of rabbinic literature, see Milikowsky, "Reflections."

13 Neusner, *A History of the Mishnaic Law of Damages*, 2:53; Apothaker, *Sifra, Dibbura deSinai*, 383.

“is directly relevant” (to the subject of fraud) highlight the difficulty of explaining the logical connection among the three examples.¹⁴ It is this difficulty that prompts the present discussion.

Explaining this mishnah (*m. B. Metzi’a* 4:10) is important for another reason. This particular mishnah came to serve as the redactional foundation for the widely treated sugya containing the Bavli’s version of the famous “Oven of Akhnai” narrative, a foundational tale narrating, *inter alia*, the banning of r. Eliezer b. Hyrcanos in the course of a legal dispute.¹⁵ In that fantastical tale r. Eliezer’s hurt feelings — in spite of r. Aqiva’s considerable efforts to spare them when delivering the news of the banning — erupt destructively, resulting in the supernatural destruction of crops and, ultimately, in the death of his brother-in-law, Rabban Gamaliel.¹⁶ Jeffrey Rubenstein claims that verbal wrongdoing is the “explicit interpretive key” to the Oven of Akhnai narrative in that the mishnah “articulates the prohibition [against verbal wrongdoing] and provides several examples.”¹⁷ In two very astute treatments of the talmudic sugya, he discusses verbal wrongdoing at some length, without analysing the mishnah’s structure or its examples with the same scrupulous attention to detail that he brings to other moments in the sugya.¹⁸ The learned and penetrating analysis of the Oven of Akhnai narrative in Devora Steinmetz’s recent discussion of the phenomenology of the “inter-agadic” networks in the Bavli does not treat extensively the nature of the sugya’s mishnaic *incipit* regarding verbal wrongdoing.¹⁹

Various scholars have advanced our understanding of this mishnah, but important differences on key issues remain. Although Rubenstein reads *m. B. Metzi’a* 4:10 as a

14 Neusner, *A History of the Mishnaic Law of Damages*, 2:62.

15 In contrast, the Yerushalmi’s elliptical version of the Akhnai narrative is found in a very different redactional context: a sugya in *y. Mo’ed Qatan* 3:1, 81c-d treating aspects of banning, among other topics. The mishnah there (*m. Mo’ed Qatan* 3:1) includes those released from bans among those who may cut their hair during the intermediate days of a festival. The complexity of the Oven of Akhnai narrative has spawned a vast body of scholarship. The story depicts a legal dispute in which the sage Eliezer is outvoted in a decision concerning the purification of an oven. His supernatural feats (suggesting divine support) fail to sway his colleagues, and when he still refuses to yield, he is banned and a series of calamities ensues.

16 Rabban Gamaliel II is the leader under whose authority Eliezer is banned; r. Eliezer is married to Gamaliel’s sister.

17 Rubenstein, *The Culture of the Babylonian Talmud*, 71; Rubenstein, *Talmudic Stories*, 34-63. Cf. Steinmetz, “Agada Unbound.”

18 Of course, the Akhnai narrative, rather than the mishnah, is his principal focus in both contexts. Cf. Rubenstein, *Talmudic Stories*, 35-36, and Rubenstein, *The Culture of the Babylonian Talmud*, 71-73.

19 This is understandable, as Steinmetz’s focus in “Agada Unbound” is on other issues.

statement about verbal wrongdoing, he does not restrict the second and third examples to a commercial setting.²⁰ In contrast, whereas the mishnah explicitly moves from the subject of commercial to verbal fraud, Borowitz and Schwartz's otherwise sensitive discussion of *'ōnā'at dēbārīm* defines "fraudulent representation" as "deceit in the marketplace," and they provide examples only of commercial fraud.²¹ While the mishnah's redactional context appears to frame verbal *hōnāyâ* in a commercial setting, the tannaitic and amoraic sources point to a broader notion of a particularly problematic type of misleading speech in various social contexts.²² Citing the third example in this mishnah as a prohibition warning "the native Jew against harming or shaming the proselyte in any way" (even though the third example actually refers to a descendant of proselytes, rather than to a proselyte), Bernard Bamberger adds that this has "legal import" but "is not susceptible of legal control," thus pointing in the direction of crimes of conscience.²³ Howard Apothaker describes the mishnah's examples of verbal wrongdoing as "matters of conscience" punishable only by God; nevertheless, his otherwise very perceptive discussion does not explain the mishnah's choice of examples or its sequence.²⁴

The Sifra on Leviticus in four locations²⁵ as well as two talmudic sugyot (including the one containing this mishna),²⁶ the toseftan parallel,²⁷ and possibly the Yerushalmi (*y. B. Metzi'a* 4:7, 9d) all support the interpretation of verbal wrongdoing as a crime of conscience. Rashi's comments on *b. B. Metzi'a* 58b and on *b. Qidd.* 32b point in the same direction.²⁸ As I explain below, the tannaitic traditions suggest that verbal wrongdoing must be malicious; therefore, if verbal wrongdoing is the explicit interpretive key to the aggadah,

20 Rubenstein, *The Culture of the Babylonian Talmud*, 71 and 182 n. 11. Neusner's approach here is similar; Neusner, *A History of the Mishnaic Law of Damages – Part Two: Baba Mesia*, 2:62.

21 Of course, their ambitious volume necessarily reduces to a particular category moral concepts applicable also to other categories. My quibble here is that the moral complexity of this particular concept requires further elucidation. Borowitz and Schwartz, *The Jewish Moral Virtues*, 33.

22 The gemara in the Yerushalmi (*y. B. Metzi'a* 4:7, 9d) does not directly address this part of the mishnah; rather, it treats deceptive and potentially misleading non-verbal commercial practices.

23 Bamberger, *Proselytism in the Talmudic Period*, 158.

24 However, Apothaker's principal focus is the parallel in *Sifra* rather than the mishnaic version. Apothaker, *Sifra, Dibbura deSinai*, 100 and 384. My analysis has benefited considerably from Apothaker's insightful discussion.

25 *Sifra Dibbura deSinai BeHar* 3:4 and 6:6; and *Qedoshim* 2:2 and 3:7.

26 *b. B. Metzi'a* 58b and *b. Qidd.* 32b: s.v. *dābār hammāsūr lallēb*.

27 *b. B. Metzi'a* 3:25.

28 s.v. *dābār hammāsūr lallēb*.

the Akhnai narrative may thematize the problems of *unintentional* verbal wrongdoing and of intentional but unprovable verbal wrongdoing (in the technical sense of the mishnah). Perhaps the embedding of the mishnah in this particular sugya has obscured its earlier, tannaitic point.

From Commercial Fraud to General Verbal Wronging

This mishnah is a deceptively simple literary and pedagogical composition, in which each of three illustrative cases increasingly complicates a seemingly straightforward topic. It contains bipartite and tripartite structures facilitating oral transmission. Both the introductory formulation and the closing scriptural proof-text are explicitly bipartite; hence these elements book-end a tripartite section. Somewhat unusually for the Mishnah (albeit certainly not exceptionally), it concludes by citing a scriptural proof-text, the use of which I analyse below. As is usually the case in the Mishnah, its formulations are unattributed.²⁹

The pericope at *m. B. Metzi’a* 4:10 connects analogically the nature and prohibition of fraud in commercial transactions, which is the subject of the preceding (and subsequent) mishnaic units, to harmful speech *per se*. A broader application of wrongful speech to non-commercial social interactions is more developed in the related versions, particularly in the Tosefta, Sifra, and Bavli, which include offensively discouraging would-be proselytes and offering hurtful words of consolation to mourners.

The mishnah begins with a standard linguistic comparative formula to link the subjects of commercial and verbal wrongdoing or fraud — “just as . . . so too” *kěšēm še* [. . .] *kāk*. This formula provides a topical and logical transition to verbal wrongdoing.³⁰ The primary position of the first example may be due in part to the fact that it overlaps the domains of, and provides a smooth transition between, commercial fraud and the particularly thorny transgression of verbal *hônāyâ*. The three examples of verbal wrongdoing entail a semantic shift in the usage of the term *hônāyâ* from (commercial) fraud *per se* to verbal harm, deception, or offence which is impossible to verify.

29 On closely parallel versions of this tannaitic teaching attributed to r. Judah (probably the fourth generation *tanna* Judah b. Ilai) or, in a different topical context in *b. Pes* 112b, to r. Ishmael b. r. Jose (the fifth generation *tanna* close to the house of r. Judah I), see below.

30 The tosefta not only compares these two kinds of fraud, but asserts (without attribution) that verbal fraud is worse. It bases this assessment on Lev. 25:17, on which see below. The related baraita in the Bavli (*b. B. Metzi’a* 58b) attributes this comparative assessment to r. Yohanan in r. Simeon b. Yohai’s name.

The First Example: Verbal Wronging in the Marketplace

In the modern Mediterranean context, a negotiation, once initiated, is customarily concluded through compromise by both parties. Biblical narratives about negotiated transactions depict a similar practice: after some negotiation, a sale is transacted.³¹ An aborted transaction in a small-scale, subsistence market, in which similar items were being offered for sale in the vicinity with comparably low profit margins, might damage a would-be seller. A price enquiry by a purchaser who failed to make a purchase would raise questions in the minds of nearby witnesses about the value of the goods, the integrity of the seller, the fairness of the price, the seller's willingness to compromise (in a more loosely regulated market), and so on. Thus, the insincere query about the price of an item — a case of verbal *hônāyâ* — might very well suggest to onlookers that the merchant was culpable in a matter of commercial fraud. The seriousness of the matter is made clear by the legal discussion of cancelled sales in chapter four of the mishnaic tractate *B. Metzi'a*.³²

Moreover, the seller, whose time and attention were occupied by the insincere purchaser, might in the meantime have lost the opportunity to conclude profitable sales to genuinely interested buyers in a crowded market. Ze'ev Safrai suggests that in Roman Palestine, market rates were relatively well established, and that since a deviation of more than one-sixth is one measure of pricing fraud, the laws of commercial fraud are based on an assumption of fairly stable prices. Safrai counsels caution regarding reliance on prices reported in talmudic literature, but also contends that prices were probably "rigid" except during periods reflecting seasonal variations, special circumstances like fairs, and periods of anarchy, such as those in the third century.³³ Daniel Sperber's analysis of prices in Roman Palestine suggests that prices were relatively stable in the first two centuries.³⁴

31 See Gen. 23.

32 In the city of Lydda, r. Tarfon had proposed raising the fraud deviation to one-third of the going rate but extending to a full day the period within which a dissatisfied buyer could return an item (allowing time to show the item to another merchant or a relative). The deviation rate change favoured sellers, and the time extension favoured buyers; the Mishnah rejected both variations (*m. B. Metzi'a* 4:3).

33 See *m. B. Metzi'a* 4.3. Safrai, *The Economy of Roman Palestine*, esp. 433-34. Cf. Rosenfeld and Menirav, "Methods of Pricing and Price Regulation," and Rosenfeld and Menirav, "Fraud."

34 The Mishnah's publication may have preceded the inflationary fluidity of the third century. Diocletian's currency and price reforms are dated to 295-301. Even in the first two centuries, local prices varied significantly: Egyptian wheat cost only half as much as Palestinian wheat, and even assuming a 10% transportation

If prices did fluctuate significantly, a deflationary catalyst at one stall might destabilize prices and social relations elsewhere in the market. It might cause damage to a marginally profitable merchant, who may have needlessly lowered his prices in reaction to a seemingly dissatisfied buyer. The impact on other merchants would conceivably be damaging as well. If a seller were an employee rather than the owner of the stall, the employer would be likely to assume that a sincere buyer was treated rudely or inequitably by an unsuccessful salesperson. In addition, a vendor might suspect bad faith on the part of the potential purchaser. If the vendor were an itinerant or a sojourner (*gēr*) in a market, misunderstandings or disputes could easily ensue. The fraudulent price query might be associated with professional resellers, an especially despised presence in a market.³⁵

Thus, this first case is one in which commercial and social damage — which is virtually impossible to prove or calculate — might easily be caused by insincere albeit not transparently malicious speech. Crucially, the fraudulent intent of such speech is virtually impossible to ascertain (as is the damage which may be caused by it), since even sincere would-be buyers do not always close a sale. The importance of intention may explain the Bavli’s version of the baraita, in which r. Judah condemns asking about a price *when one has no money*.³⁶ The disambiguating variation — “when one has no money” — clarifies that a deceitful price query occurs when the question cannot possibly lead to a purchase no matter what the response. Another disambiguating variation is found in the Sifra, Tosefta, and Bavli versions: the deceptive questioner not only asks the price, but also eyes the article. Such an elaborate, even studied performance of deception would raise expectations even higher than an insincere query alone.

cost, the price variations were significant; Sperber, *Roman Palestine*, 127. Rosenfeld and Menirav note that price competition would have protected buyers’ interests more efficiently in larger, urban markets, such as Sepphoris, Tiberias, or Caesarea, than in smaller settlements, where “the fraud laws were extremely important”; Rosenfeld and Menirav, “Fraud,” 621-22.

35 Lapin notes Cicero’s characterization of the professional reseller as dirty or dishonourable (*sordidus*); for Cicero, resellers “would not be successful unless they were to lie very much.” Cicero, *De Officiis*, 1:150-51. Lapin, *Early Rabbinic Civil Law*, 142.

36 See *b. B. Metzi’a* 58b; cf. *b. Pesah*. 112b. The example of the fraudulent price query is also attributed to r. Judah in *t. B. Metzi’a* 3:25 and *Sifra behar* 4:2. This probably refers to r. Judah b. Ilai, a fourth generation *tanna* and one of r. Aqiva’s last five students. Renowned for his piety, his fairness, and his good relations with gentiles, including Romans, Judah is the most frequently named sage in the Sifra and Tosefta. See Strack and Stemberger, *Introduction to the Talmud and Midrash*, 84-85, and Margalioth, *Encyclopedia of Talmudic and Geonic Sages*, 1:397-403.

Thus, in the first example, which clearly pertains to a deceptive query in a commercial context, the deception is verbally enacted, and because the act is easily misconstrued by the addressee and witnesses, the deception constitutes a crime of conscience. Rather than a necessarily commercial context for the wrongful statements, it is these characteristics — a verbal performance of the deceptive act, the difficulty of proving malicious intent, and the potential but incalculable damage to the addressee — which are the reasons why this example is grouped here with the next two examples. Unless verbal wrongs against the penitent and the descendant of proselytes are also definitely rooted in commerce — a possibility, given the location of this mishnah in a literary context treating commercial fraud — this disjunction is consistent with a stylistic difference between the first example and the two subsequent examples: in the first example, the addressee is an unspecified “him” (*lô*, implicitly referring to a vendor), whereas the next two cases explicitly identify the addressees as a penitent and a descendant of proselytes, respectively.³⁷ This stylistic dissimilarity, in combination with the disambiguating variations on the first example noted above (namely, lack of money and eyeing the item), points to a redactional combination in this mishnah of material previously circulating in different form(s).

Support for the claim that only the first of these three examples should be understood as necessarily rooted in a commercial setting, that the essential logical link among the three is not commercial fraud, and that the three examples may have had other associations (in the Babylonian context, at least) can be found in *b. Pesahim* 112b. In that tractate the fraudulent price query appears as the second in a series of three mnemonically grouped prohibitions conveyed to Rabbi by r. Ishmael b. r. Jose.³⁸ The other two warnings are not to litigate against three parties (lest two witnesses lie convincingly in defence of a third liar) and to refrain from marital intercourse with one’s wife on the first night after her post-menstrual ritual immersion (lest she not be completely past her menstrual period). Intriguingly, for *b. Pesahim* 112b, the problematic link among these three proscribed behaviours is the potential for damaging oneself rather than commercial fraud or the risk of damaging someone else.³⁹ This strengthens my impression that

37 In the toseftan parallel, most smoothly in the Erfurt MS and in the *editio princeps*, an insulting statement about the would-be proselyte has a public audience. Lieberman, *Tosefta ki-feshutah*, [Vol. 10] *Nezikin*, 79.

38 The latter is a fifth generation *tanna*; r. Judah b. Ilai, to whom the teaching about false price queries is attributed in several versions, is a fourth generation *tanna*.

39 As *m. B. Metzi'a* 4:4 makes clear, a charge of fraud may be brought against both the seller and the buyer. This explains why an insincere price query exposes the buyer to the risk of self-injury.

the logical connection among the three examples in *m. B. Metzi’a* 4:10 is the potential damage caused by undetectably deceptive speech that cannot be proved to be malicious (except by God), rather than the fact that all three exemplify both commercial *and* verbal wrongdoing.

It is, of course, reasonable to assume that a vendor’s commercial interests and dignity would be harmed by speech that implicitly undermined his or her integrity. Perhaps the second and third cases exemplify verbal wrongdoing carried out by unscrupulous or merely insensitive hagglers hoping for a better price. A buyer might seem to be impugning a seller’s character by referring to past transgressions, indirectly questioning the sincerity of his or her repentance, or casting aspersions on the identity and integrity of a vendor who was a descendant of proselytes. For example, the disparaging remarks might imply that the goods were not properly tithed by an insincere penitent or by a Jew with recent alien ancestry. The possibility that economic damage may ensue could explain the grouping of the mishnah’s three cases, but it does not explain why these precise examples are classified as “verbal wrongdoing,” nor does it explain the particular sequence of the mishnah’s cases.

Strategic positioning of the three illustrations in the mishnah is indicated by the fact that in none of the other, related versions does the price enquiry example come first. It comes last in the Sifra and in the Bavli’s version of the baraita and appears in the penultimate position in the Tosefta. The sequence and content in the Sifra are virtually identical to the Bavli’s version of the baraita: the Bavli adds the example of oppressing the prospective proselyte immediately following the example of recalling the misdeeds of the descendant of proselytes. The toseftan parallel lacks the reference to the misdeeds of the ancestors of a descendant of proselytes. Instead, immediately following the example of a disingenuous price enquiry, it presents a subtle, exegetically rich polemic prohibiting the oppression of proselytes.⁴⁰ The toseftan sequence neatly presents two pairs of examples; in each pairing, only the first example is explicitly set in a commercial context. This sequence corresponds to that in the topical analogy statement introducing the baraita and the Mishnah.

40 The citations include 1 Sam. 10:12, Prov. 30:4, and Prov. 19:14. For readings of this mishnah in the context of painful insult, see Bamberger, *Proselytism in the Talmudic Period*, 158-59, and Porton, *The Stranger within Your Gates*, 26 n. 235.

The Exegetical Connection

The choice of a particular biblical excerpt in a given version of a tannaitic teaching with several related or parallel versions often reflects the exegetical context or collection into which it has been placed. *Sifra* roots its discussion in Lev. 25:14 and 25:17.⁴¹ *Sifre* on Deuteronomy grounds its treatment of wronging the proselyte in Deut. 24:17⁴² whereas the *Mekilta de-r. Ishmael* on Exodus not surprisingly cites Exod. 22:20, as does the *mishnah*.⁴³

The exegetical basis for the *mishnah*'s use of Exod. 22:20 may be the seeming redundancy in the verse,⁴⁴ which prohibits wronging the sojourner (*lô tôné*) and oppressing the stranger (*wēlô tillhāšennû*). The use of these two verbs provides an exegetical opening on the basis of the interpretative principle of the economy of scriptural language: that is, the Torah need not have expressed the same point twice, and therefore two legal issues are indicated. Thus, the verse forms an *inclusio*, paralleling the rhetorical pattern in the opening, non-scriptural statement of this *mishnah*.

Another reason for the use of the verse in the *mishnah* may be verbal congruity between the root of the word *hônāyâ* and the first of the two verbs in Exod. 22:20a: “wrong” *tônê*. After all, the *Mekilta de-r. Simeon bar Yohai* reads each of the two verbs in this verse to denote both types of wronging.⁴⁵ In his careful discussion of parallels between *m. B. Metzi'a* 4:10 and *Sifra behar* 3:4 and 4:1-2, Howard Apothaker notes that the *mishnah* here draws a topical analogy between commercial and verbal fraud, rather than justifying its prohibition of two kinds of wronging by appeal to an exegesis of the apparent superfluity of Lev. 25:14 and 25:17.⁴⁶ The *mishnah*'s initially unjustified topical analogy here is not unusual: of nearly three dozen cases of topical analogy in the *Mishnah* using this same formula (“just as . . . so too”), the majority do not explicitly provide scriptural support. Apothaker reasonably suggests a connection between

41 *Sifra Dibbura deSinai BeHar* 3:4,9; 4:1,2. In ch. 4:2 of *BeHar*, Job 4:6-7 is cited almost precisely as it used in *t. B. Metzi'a* 3:25 in order to illustrate a problematic consoling comment. Apothaker, *Sifra, Dibbura deSinai*, 91, 95, 99, and 100.

42 Finkelstein, *Sifre on Deuteronomy*, 297-98. Following usual rabbinic practice, Hammer reads *gēr* here as proselyte; Hammer, *Sifre: A Tannaitic Commentary*, 272.

43 Lauterbach, *Mekhilta De-Rabbi Ishmael*, 2:451.

44 Apothaker, *Sifra, Dibbura deSinai*, 383-84.

45 Nelson, *Mekhilta De-Rabbi Shimon Bar Yohai*, ch. 75:1, p. 349.

46 The distinction between (scripturally) “unjustified” discourse typical of the *Mishnah*, and *midrash halakha*, which is quintessentially (explicitly) scripturally “justificatory” discourse, is derived from Halivni, *Midrash, Mishnah, and Gemara*, 1-8.

the hermeneutical operation behind Sifra’s exegesis of the apparent superfluity in Lev. 25:14 and 25:17, on the one hand, and the mishnah’s possible grounding of its topical analogy on the basis of an apparent superfluity in Exod. 22:20. A mishnah need not explicitly quote a biblical text to allude to it. Moreover, as Apothaker points out, this exegetical approach to apparent superfluities is a typical rabbinic move, and verbs using the root *ynh* are found in both cases.⁴⁷ In addition, he suggests that the three mishnaic cases, like those in the parallel versions, are crimes of conscience that are punished by God.⁴⁸ Apothaker’s careful analysis does not, however, address the logic of the mishnah’s sequence. It is to this issue that I turn below, following some additional remarks about the mishnah’s exegetical dimension.

It may well be that interpretations of near redundancy in Lev. 25:14 and 25:17, which are well attested in several related texts (but not explicitly noted here), were assumed by this mishnah’s transmitters or redactors. It is interesting, however, that neither the Mishnah nor the Mekilta parallels, which *do* employ the verse from Exodus, contain the statement that “verbal wrongdoing is worse” than commercial wrongdoing. This statement is found in the Tosefta and in the Bavli, both of which explicitly cite the reference, in Lev. 25:17, to fearing God (not used in Lev. 25:14, which is therefore “assigned” to commercial fraud) as proof that verbal fraud is worse. Neusner translates the tosefta’s use of *wē’ôd mērubbâ* as “more abundant,” but the tosefta’s exegesis of Lev. 25:17, the gemara in the Bavli, and the Bavli’s use of the formula *gādôl* [...] *min* (“a greater [transgression] than”), indicate that severity rather than ubiquity is the tosefta’s point.⁴⁹

Alternatively, it is possible that the prohibition of two types of wrongdoing in the mishnah did not require reference to Lev. 25:14 and 25:17. While Exod. 22:24–26 explicitly prohibits economic oppression of the poor, Exod. 22:21–23 only implicitly prohibits economic oppression of widows and orphans. One may surmise, therefore, that the seemingly redundant prohibition of “wronging” and “oppressing” the stranger in Exod. 22:20 is being read in this mishnah as a warning against two categories of transgressive behaviour: economic or commercial oppression, as in Exod. 22:24–26, and, at most, implicitly economic oppression, as in Exod. 22:21–23.

47 Apothaker, *Sifra, Dibbura deSinai*, 100, 384.

48 Apothaker, *Sifra, Dibbura deSinai*, 100.

49 Neusner, *The Tosefta*, 2:1042. Cf. Lieberman, who cites corroborative traditions in *m. Arak.* 3:5 and *t. Arak.* 2:10, as well as the baraita paralleling *t. B. Metzi’a* 3:25 at *b. B. Metzi’a* 58b; Lieberman, *Tosefta Ki-Feshutah: Beur Arokh La-Tosefta*, [Vol. 10] *Nezikin*, 79.

An additional basis for the use of this verse may be that in both cases (in Exod. 22:21-26) the aggrieved parties, who are being maliciously oppressed, are without juridical recourse. Their only recourse is the judgement of the Deity. Likewise, for the three victims of verbal oppression in the mishnah, there is no legally probative offence for which the alleged victimizer can be prosecuted or sued in a court in Roman Palestine. Just as in the case of the oppression of the *gēr*, verbal wronging is a crime of conscience. The only means of redress for the victim is divine judgement, as in the case of the oppressed Hebrews in Egypt and the wronged and oppressed widows, orphans, and impoverished debtors in Exod. 22:21-26.

Perhaps the mishnah does not utilize Lev. 25:14 and 25:17 because they were not seen to be needed as support for a prohibition of two kinds of wronging, and the mishnah does not explicitly indicate that verbal wronging is worse. As I argue below, what the mishnah finds particularly problematic about the three examples of verbal wronging may be the probative complexity of demonstrating malice, whereas the talmudic sugya into which this mishna has been embedded seems to emphasize the lasting (and incalculable) consequences even of hurtful statements which are merely careless. The three examples in the mishnah demonstrate that verbal wronging is easily concealed. It seems crucial that the conclusion of the verse in Exod. 22:20 invokes the memory of bondage in Egypt, for which God was the avenger (as in cases of concealed crimes of conscience).

The verse from Exodus seems most directly applicable to the third case, that of the proselyte (*gēr*), by virtue of the fact that the word *gēr* possessed a double signification in the rabbinic lexicon. This double signification is preserved within the verse itself. That is, although rabbinic interpreters generally read the term *gēr* as a signifier for “proselyte,” the midrashic key to this verse is the rabbinic reading of *gēr* in two senses in this verse: “proselyte” in 20a and “sojourner” in 20b.⁵⁰ This double signification is also made possible by Abraham’s reference to himself as a “resident stranger,” or *gēr wētōšāb* (Gen. 23:4), and by the familiar characterization of Abraham and Sarah as the first proselytes. Equally important was biblical Israel’s narrative of its origins as (eventually) oppressed

50 “Stranger” in the sense of “sojourner” should not be confused with “foreigner,” *nokri*. As Lorberbaum and Zohar explain, “A stranger who sojourns among Israelites is called *ger* in the Bible, sometimes *toshav*, ‘resident,’ and sometimes *ger toshav*, ‘resident alien.’” In Rabbinic usage, *gēr* refers to a convert to Judaism and *gēr tōšāb* to a resident gentile who has not converted; Lorberbaum and Zohar, “The Terminology of Membership,” xxvi.

sojourners in Egypt. Just as biblical legislation emphasized that the *gēr* (sojourner) should not be confused with either the foreigner (*nokrî*) or the native-born Israelite (*‘ezrālî*), this mishnah teaches that the descendant of *gērîm* (here, proselytes) should not be oppressed by being reminded of his alien ancestry.⁵¹

Thus, there are several possible reasons for the transmitters of this mishnah to have concluded it with the reference to Exod. 22:20: verbal congruity with the double signification of the word *gēr* as sojourner and proselyte; transitional notions of Jewishness between *ethnos* and ethno-religion; allusion to Abraham’s and Israel’s associations with sojourners and parties to the Covenant; associations of exegetical readings of apparent superfluity in Lev. 25:14 and 25:17 with similarly apparent superfluity in the use of two verbs signifying vexing in Exod. 22:20; and allusions to God’s role as avenger of the victims of crimes of conscience. The logical link among these three cases is the intentional deception, as will be shown below.

The Forensic Challenges Posed by Suspected Verbal *hônāyâ*

It has long been noted that it is impossible for human beings to judge crimes of conscience.⁵² As Baruch Schwartz explains, the phrase “you shall fear your God” occurs “when compliance is a matter of conscience, rather than legal enforcement.”⁵³ He observes that matters of conscience are transgressions which only God can judge; the victims “may never know how they have been used.”⁵⁴ In addition to the importance of honour and shame in rabbinic culture, verbal wrongdoing was particularly problematic for the *tannaim* on account of its forensic complexity.⁵⁵ Only God can judge whether discourse

51 In *Mekilta de-r. Shimon bar yohai*, both verbs are read to signify both commercial and verbal wrongdoing. The Bavli attributes the observation that verbal wrongdoing is worse to r. Yohanan in the name of Simeon b. Yohai. The reference, in the Exodus verse, to Israel’s having been strangers in Egypt is interpreted to teach that “if you harass him for being a convert, I will harass you for being strangers in Egypt.” The text at *Masekhta de-neziqin* 75:1 is taken from the critical edition and translation in Nelson, *Mekhilta De-Rabbi Shimon Bar Yohai*, 349. Rabbinic tradition generally reads the term *gēr* (“sojourner” in Lev. 19:34) to signify “proselyte.” Philo likewise applies Lev. 19:33-34 and Deut. 10:18-19 to proselytes, following the Septuagint’s translation of biblical *gērîm* as *προσῆλυτοι*; Philo, *De specialibus legibus*, 1.9.52. Feldman, *Jew and Gentile*, 338.

52 Schwartz, “Leviticus,” 254.

53 Schwartz, “Leviticus,” 254. Cf. Lev. 19:14 and 32; Lev. 25:17, 36, and 43.

54 Schwartz does not explicitly connect these biblical crimes to the mishnah, nor does he refer explicitly here to “verbal wrongdoing,” although he may well have it in mind. Schwartz, “Leviticus,” 253-54.

55 For the term *tannaim*, see the Appendix.

is intentionally hurtful and, therefore, whether such potentially damaging remarks constitute verbal wrongdoing.⁵⁶

Although he does not analyse this text in his astute study of intention in talmudic law, Michael Higger notes the particular importance of intention as a legal factor in cases of humiliation: “In cases of civil wrongs, a wrongful act done to a person or to the property of another, carries with it legal liability, irrespective of the intention with which the act was done.”⁵⁷ The legal principle is *ādām mû’ād lē ‘ôlām*, that is, “that a human is responsible for all his acts” — including, to varying degrees of culpability, unintentional acts.⁵⁸ Higger demonstrates the sophistication of tannaitic analyses of intentionality, as well as subsequent development of this legal concept. Higger compares the (later) talmudic view of humiliation to blood-shedding or partial homicide, “where intent of the act is sufficient to constitute a crime.”⁵⁹ Given the legal significance of humiliation, as well as the forensic importance of intention, it is clear that ascertaining intention in cases of crimes of conscience such as verbal humiliation would have been both necessary and unattainable. The Tosefta’s and the Sifra’s lengthier sets of different types of examples underscore the virtual impossibility of determining (except by God) whether verbal wrong has been committed. The related traditions in the Tosefta and Sifra present two examples of verbal wrongdoing not found in the mishnaic version. In both cases it would be almost impossible to prove that the speaker’s offensive statement was deliberately deceptive or intentionally harmful. In the first example, one is warned against knowingly misdirecting donkey-drivers, the longshoremen and truckers of the ancient Mediterranean world, who are seeking wine and oil, to a merchant who has never sold such items.⁶⁰ The second example is a case of an ostensible expression of consolation which, however, wounds the mourner.

In *b. B. Bat.* 91a there are two baraitas indicating that wine and oil are necessities for survival, on which it is forbidden to make a profit, and that the prices of these items

56 See Rashi on Isaiah 49:26, Lev. 25:14, *b. B. Metzi’a* 58b, and *b. Qidd.* 32b. His comments (inferentially at Isaiah 49:26 and explicitly in the other contexts) suggest that *dābār hammāsūr lālēb* (“a hidden thought,” in this case proving malicious intentions) is discerned and punished by God. For this reason Lev. 25:17 uses the phrase “you shall fear your God.”

57 *b. B. Qama* 26a, 27a, 28b, 85b; *b. Sanh* 72b, 77a; *Mek.* Exod. 21:24 and 21:28; *b. Git.* 53a. Higger, “Intention in Talmudic Law,” 24–25.

58 Higger, “Intention in Talmudic Law,” 62.

59 Higger, “Intention in Talmudic Law,” 27.

60 See *m. Demai* 4:7. Regarding donkey-drivers’ solidarity and their *collegia* (guilds) as well as rabbinic comments on them, including disparagements of their morals, regular rates etc; see Baron, *A Social and Religious History of the Jews*, 2:261 and 2:417 n. 37. Cf. Safrai, *The Economy of Roman Palestine*, 234–37.

are dangerously low, endangering the survival of those who produce and sell them. Another baraita at *b. B. Bat.* 90b-91a suggests a difference of opinion regarding the legitimacy of selling these necessities for export, given the critical domestic need for them; Rabbi permits such exports from Palestine to Syria.⁶¹ These baraitas suggest an economic situation in which the provision of such goods to donkey-drivers, who would have been the principal conveyers of such goods over inland trade routes and to ports for overseas markets, would have been controversial. Some local merchants known to sell these goods would conceivably refuse to make them available to donkey-drivers, whose purchases might be for distant markets. Having been assured (falsely) by a local resident that these basic foodstuffs can be obtained from a particular vendor who has, in fact, never carried such items, the donkey-drivers will suspect that the merchant, regardless of his assurances that he does not carry such goods, is simply refusing to sell to them. *Sifra behar* 4:2 suggests that the person who excuses his deliberate misdirection of donkey-drivers as “fair counsel” — that is, an honest mistake — should know that it is a matter of conscience, a clear allusion to crimes of conscience punishable only by God.⁶²

In the toseftan parallel to *t. B. Metzi’a* 3:25, a more disingenuous case immediately follows the example of misdirecting donkey-drivers. This baraita cites the case of a gently phrased, but grossly insensitive remark to someone in mental anguish. The speaker feigns giving comfort to someone who is plagued by misfortune, including one who has buried his children. The remarks cite Job 4:6-7, using words implying that the bereaved addressee (or, perhaps, his deceased children) were sinners. Just as in the disambiguating variants in the first example of verbal wrongdoing in the mishnah, a clarifying comment follows the tosefta’s example, suggesting that the insensitive words of ostensible consolation might easily appear to have been uttered gently. This is undoubtedly the most vicious — and perhaps the least provable — example of verbal wrongdoing in all the textual parallels and variants.

Explaining the Sequence of Examples

All three remarks in the mishnah are misleading and potentially damaging, and on the surface it is impossible to determine whether they are malicious. The subtlety of some

61 As noted above, “Rabbi” refers to Judah I (d. c.217), the traditional editor of the Mishnah. This is a different figure than the ubiquitous r. Judah b. Ilai.

62 The rendering “fair counsel” is in Apothaker, *Sifra, Dibbura deSinai*, 100.

of the cases is more discernible in the other, longer versions, but the elegant, incremental progression of the level of complexity, subtlety, and personal offence in the three mishnaic examples is not found in the parallels, except possibly in the toseftan parallel, which is closest to the mishnaic version in terms of the offensive trajectory. There the examples of verbal wronging cut incrementally closer to the rabbinic cultural bone, as it were, peaking at disparagement of a proselyte's claim on Torah and Jewish identity, which approximates the Mishnah's trajectory. But the mishnah is subtler, inasmuch as it addresses the case of the *descendant* of proselytes.

Baruch Schwartz observes a progression in the transgressions in Lev. 19:11-18 "from the crimes most difficult to conceal to those which can never be proven and whose victims have no remedy whatsoever, leaving detection and punishment in the hands of God alone."⁶³ The concept of "crimes of conscience" implicit in Lev. 19:11-18, together with the rhetorical and logical pattern of increasing probative difficulty noted by Schwartz, may have provided a model for the concept of "verbal wronging" and for the pattern of three examples in *m. B. Metzi'a* 4:10.⁶⁴ Just as in the examples of transgressions in Lev. 19, the probative difficulty of the mishnah's examples of verbal wronging — the impossibility of proving the speaker's malicious intentions — increases as the series of three examples progresses. In addition, the transgressions proscribed in Lev. 19 progress from economic abuse that is relatively difficult to conceal (perhaps related to the mishnah's first example), to tale-bearing (perhaps related to the mishnah's second example), to grudge-bearing (perhaps related to the mishnah's third example). Each transgression in Lev. 19 is increasingly more difficult to detect, and the phrase "I the Lord am your God" points to the Deity's role as judge and avenger.

The Mishnah's Second Example: The Penitent

The pattern of incremental progression found in the mishnah's series of three examples is not found in the parallels in Sifra and only partially in the Tosefta. This difference may help to explain the mishnah's selection and its sequence. In the first example, any number of plausible excuses could be provided by a malicious or thoughtless person posing a disingenuous price query. Similarly, in the second case, the speaker might protest that his or her words cannot have harmed the genuine penitent, as the penitent's transgressive past is behind him or her. But the references to this past may cause

⁶³ Schwartz, "Leviticus," 253.

⁶⁴ Schwartz, "Leviticus," 253-54.

shame, embarrassment, economic loss, and a degradation in social status. The information may not have been public, and witnesses may subsequently shun the addressee. Revealing a penitent’s past may cause substantial, unforeseen, undetectable, and incalculable damage. Whether the utterance is malicious or careless cannot be discerned with certainty by anyone but the Deity.

The Mishna’s Third Example: The Descendant of Proselytes

The third case seems even more far-fetched; that is, one might be inclined to think that referring to the actions of the ancestors of the descendant of *gērîm* should not trouble the proselyte, let alone the descendant of proselytes. But like the penitent whose past is revealed, disclosure of or reference to the (implicitly problematic) behaviour of a person’s proselyte parents prior to *their* entry into the Covenant undermines the status of all proselytes present and future. Given abundant evidence in rabbinic literature, including at the tannaitic layer, of anxiety and controversy regarding the authenticity and efficacy of conversion, this is no idle concern.⁶⁵

A careless speaker could come to the conclusion that such a statement is fair game or harmless; if malicious, however, the statement is deeply troubling. The addressee *is* biologically a child of *gērîm*, and his ancestors might well be associated with transgressive behaviour. Nevertheless, the *gēr*, and all the more so the descendant of *gērîm*, is also a descendant of Abraham, the first *gēr*, and thereby of Israel, once mistreated *gērîm* in Egypt. The third example implies that the addressee’s status as a Jew is questionable. Since the addressee is a descendant of *gērîm*, using the technical term *’ābôt* (“fathers” or “ancestors”) to refer to the addressee’s ancestors (and their presumably negative actions) implicitly challenges both the addressee’s spiritual genealogy as a descendant of Abraham and the authenticity of his proselyte ancestors’ conversion.⁶⁶ Complicating this case is that the statement may be a deliberate attack on the legitimacy of a Jew’s status, or it may be a careless formulation in the context of an otherwise perfectly legitimate recollection of Egyptian oppression of Hebrews in prayers and in various biblical passages. The speaker’s motives are easily disguised in this case.

In addition, the comment in this third example might well lead to unforeseen harm (if the remark is made innocently) or to calculated damage (if it is uttered

65 Regarding fluidity in notions of Jewish identity in this period, see Cohen, *The Beginnings of Jewishness*, and Boyarin, *Border Lines*.

66 Rabbinic literature reports debates regarding the question whether, like native-born Jews, proselytes could refer to the patriarchs as their fathers in their prayers.

maliciously) as the status of the addressee might be degraded in the eyes of witnesses. The addressee (or witnesses) might conclude that his status, like that of his ancestors, remains that of a proselyte, which, in the mishnaic hierarchy, is a social classification below even that of the lowly *nātîn* (a caste of Temple servants) and only above the emancipated slave.⁶⁷ Another concern may be that, perhaps like the penitent in the second example, the addressee in the third case might be tempted to revert. As Josephus remarks in *Against Apion* 2.123, not all proselytes remain within the fold.⁶⁸

Indications of ambivalence and controversy regarding the status of proselytes can be seen in a variety of sources in the Hellenistic and early Roman periods, from Philo and Josephus to rabbinic authorities.⁶⁹ As Louis Feldman observes, although biblical legislation (Deut. 17:15) barred the non-native born from the monarchy, Philo insists that proselytes were to receive all the privileges of native-born Jews.⁷⁰ At the very least, Philo reads narrowly the repeated biblical statement that “there shall be one law for you and the *gēr*” (e.g., Num. 15:15). Biblical legislation provides ample evidence of a more complicated understanding of this issue.⁷¹ For the late Second Temple period, the Qumran text 4 Q *Florilegium* (4QFl) on 2 Sam. 7 imagines the exclusion of *gērîm* from the eschatological Temple. Some modern scholars understand *gērîm* here to refer to the biblical category of resident aliens, while others read *gērîm* in 4QFl as a reference to proselytes. Christine Hayes subscribes to the former view, reading “resident alien” in that text but noting that although the *Florilegium* text implies that “the blemish of profane seed can never be overcome,” the Temple Scroll does not.⁷²

67 See *m. Hor* 3:8.

68 Josephus, *Against Apion*, 2.123. Feldman cites various rabbinic traditions registering similar concerns; Feldman, *Jew and Gentile*, 338.

69 See Bamberger, *Proselytism in the Talmudic Period*; Feldman, *Jew and Gentile*, 338-41; Porton, *The Stranger within Your Gates*; Walzer et al., *The Jewish Political Tradition* 2:231-77; and Novak, “Gentiles in Rabbinic Thought.”

70 Philo, *De specialibus legibus*, 1.9.52. Following the Septuagint, Philo reads biblical *gērîm* as proselytes *προσήλυτοι* and emphasizes the importance of respecting and welcoming them. See Feldman, *Jew and Gentile*, 338. Regarding the biblical *gēr*, including the suggestion that Second Isaiah (e.g., Isaiah 56:7) provides “the first glimmer of a new status for the *gēr*” (that is, as proselyte), see Milgrom, “The ‘Ger,’” 401.

71 See Milgrom, “The ‘Ger.’”

72 Hayes, *Gentile Impurities*, 62 and 240 n. 44. For a contrary reading of this point in 4QFl, see Baumgarten, “Exclusions from the Temple,” 215-25. For the fourfold classification in *t. Qidd.* 5:1 (priests, levites, Israelites, and proselytes), see Feldman, *Jew and Gentile*, 340 and 569 n. 188. The Mishnah states that priests may not marry proselytes (*m. Yebam.* 6:5), whereas the Bavli states that, while children of prohibited unions may not marry native-born Israelites, they may marry proselytes (*b. Yebam.* 79b).

The (double) semantic range of the term *gēr* for the rabbis (“proselyte” and “sojourner”) — corresponds to the tensions and seeming contradictions in rabbinic attitudes regarding the proselyte’s status as (converted) Jew. Nevertheless, oppression of the *gēr* — read doubly by the rabbis as sojourner and proselyte, even as they interpreted the biblical term *gēr* as a signifier for proselyte — by a Jew would constitute a betrayal of the originary narratives of Abraham’s conversion, the Exodus, and the Sinaitic Covenant. This is underscored by the motive clause in the second half of *Exod. 22:20*, which invokes Israel’s foundational past as *gērîm* in Egypt.

Conclusions

Alienating conflicts among rabbis seem to have generated a substantial body of material in the Bavli. Jeffrey Rubenstein has demonstrated the extent to which public humiliation was a feature and a particular concern of the mature Babylonian talmudic academy.⁷³ R. Aqiva’s elaborate but fruitless attempt to avoid hurting r. Eliezer’s feelings in the Akhnai narrative (*b. B. Metzi’a* 59b) demonstrates the wisdom of Aqiva’s expression of doubt in *Sifre devarim* 1 as to whether anyone in his generation knows how to rebuke someone (presumably without humiliating the addressee).⁷⁴ Even when motivated by seemingly noble intentions, and even when the speaker exercises great care, words can wound. The mishna on verbal *hônāyâ* — disingenuous, damaging utterances by speakers whose true intentions can be ascertained only by the Divine — provides an exceptionally dramatic foundation for a talmudic sugya about destructive discourse in the talmudic academy, perhaps precisely because it pushes one to weigh one’s words and intentions with the utmost care.

The mishnah’s structure of doublets and triplets lends itself to memorization and oral recitation. The opening statement and the closing proof-text are doublets, bracketing a series of three cases. In each case the discussion of damaging speech becomes incrementally more complex.

Regarding judges, see *m. Sanh.* 4:2; regarding marriage restrictions, see, e.g., *m. Yebam.* 5:5, *m. Qidd.* 4:7. For a detailed analysis of rabbinic perspectives regarding proselytes as “newborn children” and of the various rabbinic legal traditions differentiating native-born Jews from proselytes regarding, for instance, eligibility to judge capital cases, marriage restrictions, and other differences see Porton, *The Stranger within Your Gates*, 166-76 and 193-220.

73 Rubenstein, *The Culture of the Babylonian Talmud*.

74 My interpretation of Aqiva’s statement in the *Sifre* passage follows both Finkelstein and Hammer. Finkelstein, *Sifre on Deuteronomy*, 3; Hammer, *Sifre: A Tannaitic Commentary*, 390.

This mishnaic pericope is grounded in a culture in which words are fundamentally important. Verbal wrongdoing may foster a misleading and profoundly false representation of the integrity, status, and identity of the person to whom the words are addressed, in addition to causing significant economic damage. Only God can determine whether malice motivated the remarks. This explains why parallel versions of this mishnah seem to support more explicitly a reading of verbal *hônāyâ* as a crime of conscience. The selection of these three cases, and the incremental difficulty of the mishnah's examples, may have been modelled after the crimes of conscience in Lev. 19:11-18. The biblical text concluding the mishnah seems to apply only to the third case, given the common references to the *gēr*, which can mean both "stranger" and "proselyte." Invoking Exod. 22:20 in this mishnah, however, provides an exegetical basis for a somewhat disjunctive pericope moving from commercial to verbal *hônāyâ* (corresponding to the two verbs in the quoted passage). The Exodus passage also alludes to the doubly significant, culturally loaded term *gērîm*, whose redeemer and covenantal partner is God. It points to God as the judge of crimes of conscience such as verbal *hônāyâ*. Finally, it underscores the moral outrage and the profound probative conundrum of malicious, deceptive oppression of the proximate "other," explicitly including vendors, penitents, and descendants of proselytes.

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Appendix: A Brief Introduction to Terminology for Non-Specialists

The identification "*m. B. Metzi'a 4:10*" signifies the tenth paragraph of the fourth chapter of the mishnaic tractate *Bava Metzi'a* ("Middle Gate"). *B. Metzi'a* is a tractate on aspects of civil law in the **Mishnah** (c. early 3rd century CE). *B. Metzi'a* is the second tractate in the fourth of the Mishnah's six Orders; the fourth Order is called *Nēziqîn* ("Damages" or "Torts"). The Mishnah is the pre-eminent, canonical collection of classical rabbinic legal tradition putatively edited by the Roman-recognized leader of occupied

Palestinian Jewry, Judah I. The pre-eminently authoritative **Babylonian Talmud** (also **Bavli**), largely redacted in present-day Iraq perhaps by the early 7th century CE (but subsequently further modified), is organized around the frame of the Mishnah’s six Orders. A smaller **Palestinian Talmud** (also **Yerushalmi**) was edited until as late as the early 5th century CE. A basic talmudic study unit, called a **sûgyâ**, consists of two principal parts: a unit of **mishnah** and a unit of **gëmārâ**. Mishnah (in upper case) refers to the collection as a whole; mishnah (in lower case) signifies an individual pericope (a paragraph unit) of the Mishnah. The rabbinic sages from c.70 CE until c.200 CE in Roman-occupied Palestine, whose teachings are cited in the Mishnah, are called **tannâ’im** (“repeaters”; sg. **tannâ’**). When a tannaitic teaching appears outside the Mishnah in other anthologies it is called a **bārāitâ’** (“outside”). The earliest baraita collection (redacted c. 3rd century CE) is called the **Tosefta**; **tosefta** (in lower case) refers to an individual unit. Although the extant edition of the Tosefta probably was edited after the Mishnah, the Tosefta may contain versions (or derivatives of versions) of tannaitic traditions predating the Mishnah’s versions of those traditions. Palestinian Jewish sages of roughly the 3rd to 6th century and “Babylonian” Jewish sages in Sassanian Persia of roughly the 3rd to 6th century are called **’āmôrâ’im** (“speakers”; sg. **’āmôrâ’**). The *sugya* that opens with this particular unit of mishnah runs from page 58b to 59b in *b. Bava Metzi’a*. **Sifra** is concerned with Leviticus; **Sifre**, with Numbers and Deuteronomy. **Qidd** is the tractate *Qiddushin*, and *m. Sanh*, the mishnah tractate *Sanhedrin*.

The order *Nezikin* (or *Neziqin*) now consists of 10 tractates. At an earlier stage the first three “Gates” tractates probably constituted one large tractate of 30 chapters. Two important manuscripts, MS Kaufmann A 50 (Library of the Hungarian Academy of Sciences, Budapest, 11th to 13th C.) and MS Parma (Biblioteca Palatina, De Rossi 138, probably 11th C.), attest to this fact.⁷⁵ Lieberman’s Tosefta edition is based principally on the Vienna MS (National Library Vienna, Hebr. 20, Catalogue Schwarz No. 46). I use standard abbreviations, e.g., r. = rabbi; m. = Mishnah; t. = Tosefta; *B. Metzi’a* = tractate *B. Metzi’a*; *b.* = Bavli (Babylonian Talmud) or, in a personal name, “son of”; y. = Yerushalmi. I employ SBL transliteration style for most Hebrew and Aramaic terms and texts, but for terms such as tanna and baraita I use a popular style.

75 On the dating of these manuscripts, see Strack and Stemberger, *Introduction to the Talmud and Midrash*, 158. See also Lapin, *Early Rabbinic Civil Law*. On *Nezikin* generally, see Strack and Stemberger, *Introduction to the Talmud and Midrash*, 133-34.

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