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The Talmudic Discussion on Building a Porter's Lodge and a Door for the Courtyard (bBava Batra 7b-8a)

Shulamit Valler

The beginning and middle part of the fifth *mishnah* in the first chapter of Bava Batra, deal with a tenant of a courtyard being compelled to participate with the other tenants in the cost of building a *bet sha'ar*¹ (porter's lodge) and a door for the courtyard, and the residents of a town being compelled to share in the costs of building a wall, doors, and a cross bar.

כופין אותו לבנות בית שער ודלת לחצר. רבן שמעון בן גמליאל אומר: לא כל החצרות ראויות לבית שער. כופין אותו לבנות לעיר חומה ודלתיים ובריית. רבן שמעון בן גמליאל אומר: לא כל העיירות ראויות לחומה.

[A resident of a courtyard] may be compelled [by the rest] to [contribute to] the building of a porter's lodge and a door for the courtyard. Rabban Simeon b. Gamaliel says that not all courtyards require a porter's lodge. He [a resident of a city] may be compelled to contribute to the building of a wall, folding doors, and a cross bar. Rabban Simeon b. Gamaliel says that not all towns require a wall.

- 1 According to *Rashi*, the porter's lodge is the structure where the guard sits in the shade and "drives away the public from peering into the courtyard". According to this, the porter's lodge and the door prevent damage caused by the invasion of privacy. Meiri cites this explanation and adds, "Or it is a space near the entrance so that a person entering cannot burst into the place which is being used, i.e., the courtyard." According to this, the porter's lodge and the door prevent breaking into the courtyard.

Although this *mishnah* [plural: *mishnayot*] is consistent with the general subject of the other *mishnayot* in the chapter, it differs in terms of the specific topic, and this difference is the basis of a value-oriented discussion related to it in the first *sugya* in the BT, as detailed below.

Here is a list of the *mishnayot* (Mishnah 5 is underlined):

- Mishnah 1: “If joint owners agree to make a [partition] in a courtyard...”
- Mishnah 2: “Similarly, [the joint owners who wanted to make a partition] in an orchard, in a place where it is customary to fence off, either can be compelled. But in a stretch of fields, in a place where it is usual not to fence off, neither can be compelled. ”
- “If, however, one desires to make a fence, he must withdraw a little and build on his own ground, making a facing from the outer side...”
- Mishnah 3: “If a man has fields surrounding those of another on three sides and fences the first, second, and third...”
- Mishnah 4: “If the wall of a courtyard falls in, each of the neighbors can be compelled by the other to [contribute to the cost of] rebuilding it to a height of four cubits.”
- Mishnah 5: “He [a resident of a city] may be compelled to contribute to the building of a porter’s lodge and a door to the courtyard. Rabban Simeon b. Gamaliel says that not all towns require a porter’s lodge. “He [a resident of a city] may be compelled to contribute to the building of a wall, folding doors and a cross bar. Rabban Simeon b. Gamaliel says that not all towns require a wall.”

Mishnah 6: “A courtyard should not be divided unless there will be [after the division] at least four cubits for each of the parties. A field should not be divided unless... Sacred writings, however, may not be divided even if both agree”.

Mishnayot 1-4 deal with the building of a partition or wall between joint owners of a courtyard or any other area, i.e., dividing between them the financial burden involved in building the partition or wall. Mishnah 6 deals with establishing the measurements and dimensions for dividing various areas between two partners. The subject of all of the *mishnayot* is then a partnership between two people, while Mishnah 5 deals with a broader partnership between the occupants of a courtyard or the residents of a town, and the concept of separating them from a group of people outside the courtyard or outside the town.

Moreover, Mishnah 5 presents a dispute between the Rabbis and Rabbi Simeon b. Gamaliel (hereinafter: RSbG) regarding the matter of compelling the residents of the courtyard to share in the expenses of building the porter's lodge and door, and compelling the residents of the town to contribute to covering the cost of the wall, doors, and cross bar.²

The words of RSbG about the courtyard are brought in the *baraita* that is integrated into the discussion of our *mishnah* on the *sugya* in the

- 2 From a *baraita* cited in tBava Metzia (Lieberman Ed.), 11:17., there seems to be a uniform stance regarding the obligation of all residents of the courtyard:

מי שיש לו בית בחצר אחרת בני חצר משעבדין אותו לעשות עמהן דלת , נגר , ומנעול לחצר ושאר כל הדברים אין יכולין לכופו. אם היה שרוי עמהן באותה חצר משעבדין אותו על הכל.

(“He who has a dwelling in another courtyard, the others who dwell in that courtyard may require him to share with them in the costs of making a door, bolt, and lock for the courtyard. But as to any other requirements of the courtyard, they are not able to impose upon him the requirement to share in the cost. But if he would dwell with them in that same courtyard, they do have the power to impose upon him a share [of the cost] of all which is required for the common upkeep of the courtyard.”)

This source might preserve a *halakhic* tradition that preceded the dispute between the rabbis and RSbG.

BT. In addition there is a reasoned explanation that distinguishes between a courtyard that warrants a porter's lodge, and a courtyard that does not:³

רבן שמעון בן גמליאל אומר לא כל חצרות ראויות לבית שער אלא חצר הסמוכה לרשות הרבים ראויה לבית שער ושאינה סמוכה לרשות הרבים אינה ראויה לבית שער.

Rabban Simeon b. Gamaliel says: Not all courtyards require a porter's lodge; a courtyard which abuts on a public thoroughfare, requires a lodge, but one which does not abut on a public thoroughfare, does not require such a lodge.

The distinction made by RSbG between courtyards that are adjacent to the public thoroughfare and those that are not adjacent, reflects a practical view, whereas in certain other instances, when there is too great a proximity between the residents of a courtyard and the public outside that space, it is necessary to place a physical separation between them. However, he does not offer an explanation for this, and it is not clear whether his justification is the desire of the people of the courtyard to close themselves in and to isolate themselves from the populace outside, or their need to protect themselves and their property.⁴

It may be possible to understand RSbG's viewpoint from his statement in another *baraita* quoted in the *sugya*:

כופין אותו לעשות לעיר דלתים ובריה ורבן שמעון בן גמליאל אומר לא כל העיירות ראויות לחומה, אלא עיר הסמוכה לספר ראויה לחומה ושאינה סמוכה לספר אינה ראויה לחומה.

He may be compelled to contribute to the building of a wall [doors, and cross bar]. Rabban Simeon b. Gamaliel says that not all cities require a wall; a town adjoining the frontier requires a wall, but a town which does not adjoin the frontier, does not require a wall.

3 bBava Batra 7b . Subsequently, I will comment on the order of the discussion in the *gemara*.

4 See note 1 above.

According to RSbG, the obligation of the residents of a town to participate in the building of a wall is derived from the proximity of the town to a border; i.e. the extent to which the residents of that town are exposed to a security danger. The similarity between his statement on building a porter's lodge in a courtyard, and building a wall around the town, leads one to infer that the former case also expresses a perception of security needs.⁵

The Amora Rabbi La,⁶ whose words are cited in the parallel *sugya* in the JT,⁷ also thought that the reason for building a fence (wall) around the court was security-based and was intended to protect the property of the residents. However, he obscured this idea within a distinction made between the wealthy and the poor:

It is normal for someone who makes a good living to build himself a wall.

The words "It is normal [practice]" make it clear that he was not referring to the law, but rather to a description of reality. However, since his words were brought in the *sugya* as referring to the *mishnah*, one might hypothesize that the author of the *sugya* meant to state that the sages' ruling, whereby "they compel him to build a porter's lodge", applies to wealthy people only, and may have relied on RSbG's opinion, who disagreed with the sages' across-the-board ruling, although from another perspective.

5 It is noteworthy that regarding another matter relating to city walls, the sages shared RSbG's view of security needs, as may be understood from their statement in tMo'ed Katan (Lieberman), 1:7:

חומת העיר שנפרצה גודרין אותה וגדרה ונפרצה אין גודרין אותה אם היתה סמוכה לספר
סותרה ובונה כדרכה...

(A city wall which was breached, they stop it up. If they stopped it up and it was breached [again], they do not stop it up.)

6 Who is in fact R. Ila'i, the disciple of R. Johanan.

7 Bava Batra 12:4 (a,5).

R. La pointed out the reality of a connection between wealth and seclusion, which is based on the verse in Proverbs 18:11.⁸ This connection is at the root of the *sugya* in the BT that deals with the relations between the probably well to do residents of a courtyard, and the less successful people who are outside of it – a subject that is not mentioned in the *mishnah* itself even by allusion.⁹

- 8 The phrase "הון עשיר קריית עוזו" ("The rich man's wealth is his strong city"), also appears in Proverbs 10:15, but I assume that R. La was referring to Proverbs 18:11, as the second part of the phrase is "וכחומה נשגבה במשכיתו" ("And his dwelling place is fenced by a strong wall").
- 9 The author of the *sugya* in the BT might have been familiar with the words of the *Amora* R. La. Commentators and scholars were divided over the question of whether or not the *Stammaim* of Babylon were acquainted with the Eretz Israel doctrines. D. Halivni, in his book *Sources and Traditions: A Critical Commentary on the Talmud Tractate Baba Batra*, Jerusalem 2007 [Hebrew], quotes R. Yitzhak Alfasi (*Rif*) at the end of tractate Eruvin: "We rely on our gemara [the BT] because it is later, and they were more expert in the gemara of the westerners [Eretz Israel], more so than we are". According to this, the *Stammaim* were well acquainted with the JT. Yet, along with this, he writes, "The greatest scholars of the JT of the previous generation have declared with certitude that the BT did not see the JT." On this subject he quotes Ratner's commentary on tractate Sukkah (p. 79) and the words of N. Epstein, who wrote in *Introduction to the Literature of the Amoraim* (Hebrew), p. 291: "Anyone making any kind of comparison between the BT and the JT, sees at once that the BT did not know our JT, nor did the JT know the BT." Thus he cites the words of Z. Rabinowitz, who wrote in his work *Gates to the Torah of Eretz Israel* (Hebrew), p. 519: "It has been proven that the BT did not see the JT". In any event, many *sugyot* in the BT closely parallel *sugyot* in the JT, and their common basis may easily be identified. See for example the discussion by S. Y. Wald on the *sugya* in bShabbat 74a, 74b, where in note 5 he writes: "...when the starting point of the BT is based on the ending of the *sugya* in the JT". See also the discussion by S. Friedman on bGittin 82b, where he summarizes: "The *sugya* in the BT, undoubtedly close to that in the JT, also preserves the structure of dual opinions, except in the BT they do not appear as question and exchange, but rather as two alternative opinions from the outset (*Five Sugyot from the Babylonian Talmud with Interpretation* (Hebrew), Jerusalem 2002.) See also my dissertation *The Fifth Chapter: 'Af Al Pi' in tractate Ketubot; Text and Interpretation*, on the origin of bKetubot 61b.

However, the *sugya* in the JT summed up the subject by quoting one statement by R. La, while the *sugya* in the BT opened it to sharp criticism on the words of the sages in the *mishnah*, “he may be compelled to [contribute to] the building of a porter's lodge and a door for the courtyard”, which was interpreted as meaning that they recommend that the residents of a courtyard close themselves off from the populace in the public thoroughfare.

On the first paragraph in the *mishnah*, “he may be compelled to build a porter's lodge and a door for the courtyard”, where RSbG says that “not all courtyards warrant a porter's lodge”, two *sugyot* by *Stammaim* are brought. The first points to the porter's lodge as a cause of alienation between the residents of the courtyard and the outside world, and minimizes the likelihood of there being a porter's lodge that does not fall within this category. The second explains the security considerations that lay at the root of the sages' decision, “he may be compelled to build...”

It is possible that the *sugya* positioned in the second place (which is how it appears in the print edition)¹⁰ is the original *sugya* that places the *baraita* next to the *mishnah*. Then, since the *baraita* explains RSbG's

10 This is the order also in several manuscripts. But in the Escorial ms. Vatican 115, and Florence, the order is thus: first, the *mishnah* is cited, and then the *baraita* with RSbG's opinion (Escorial 203) “לא כל החצרות ראויות לבית שער” (“Not all courtyards are worthy of a porter's lodge.”), and the explanation of the *gemara*: “ורבנן?... זימנין דדחקי” (“And the rabbis? Sometimes in a crowd people force their way ...”).

After all of this, the following passage is cited: “למימרא, דבית שער מעליותא היא... דפותחת דידיה מאברא” (“This would seem to show that a porter's lodge is an improvement... the latch is on the outside”).

In the Escorial and Vatican mss., following this passage, the words of RSbG in the *mishnah* are repeated, and afterwards, the *baraita* is repeated with the words of RSbG “לא כל החצרות... אלא חצר סמוכה...” (“Not all courtyards are worthy...only a courtyard which abuts...”).

In contrast, in the Florence ms. there is no additional repetition. A synoptic table of these text versions appears in the appendix to this article.

opinion, the author of the *sugya* may have added a statement that explains the sages' opinion.

In the following section, I will discuss the *sugya* placed first in the printed edition, and quoted below:

למימרא, דבית שער מעליותא היא, והא ההוא חסידא דהוה רגיל אליהו דהוה
 משתעי בהדיה, עבד בית שער ותו לא משתעי בהדיה! לא קשיא: הא מגואי,
 הא מבראי. ואי בעית אימא: הא והא מבראי, ולא קשיא: הא דאית ליה דלת,
 הא דלית ליה דלת. אבע"א: הא והא דאית ליה דלת, ולא קשיא: הא דאית ליה
 פותחת, הא דלית ליה פותחת. אי בעית אימא: הא והא דאית ליה פותחת,
 ולא קשיא: הא דפותחת דידיה מגואי, הא דפותחת דידיה מבראי.

[To the building of a porter's lodge] This would seem to show that a porter's lodge is an improvement; Yet how can this be, seeing that there was a certain pious man with whom Elijah used to converse until he made a porter's lodge, after which he did not converse with him anymore? There is no contradiction; in the one case, we suppose the lodge to be inside [the courtyard], in the other – outside. Or if you like, I can say that in both cases we suppose the lodge to be outside, and still there is no difficulty, because in the one case there is a door, and in the other there is no door. Or, instead, we may suppose that in both cases there is a door, and still there is no difficulty, because in the one case there is a latch and the other there is no latch. Or, again, I may say that in both cases there is a latch and still there is no difficulty, because in the one case the latch is inside and in the other, outside.

I will open my discussion with two assumptions:

- A. There is a very weak connection between the Babylonian *sugya* and the *mishnah*.
- B. The *sugya* is an ideological literary work of a social reality.

A. Two points stand in evidence to the weak connection between the *sugya* and the *mishnah*:

- 1) The *sugya* does not open with a quote of a passage from the *mishnah*, but rather with a question related to values. Quoting the *mishnah* and bringing the *baraita* that relates to it are only done in the second *sugya*.
- 2) The *sugya* opens with the question “*This would seem to show that ... is an improvement; Yet how can this be?*”

Similar questions appear in three places in the BT, and in none of them is the following discussion connected to a *halakha* (law) from a *mishnah* or a *baraita*.

Thus, in *b.Megilla* 27b-28a, it is told that the disciples of R. Peridah¹¹ asked him, “in virtue of what have you reached such a good old age?”, and in his reply, he cited several practices of behavior that merited him longevity. Among these: “I have never said grace before a *kohen*”. The *gemara* poses this question about this practice:

למימרא דמעליותא היא והאמר רבי יוחנן: כל תלמיד חכם שמברך לפניו
אפילו כהן גדול עם הארץ אותו תלמיד חכם חייב מיתה...?

Is that a merit? Did not R. Johanan say that a scholar before whom a priest, even a high priest who is an ignoramus, pronounces a benediction (which properly the scholar ought to have pronounced), and the latter did not protest – deserves death.

In other words, deferring to the *kohen*, which R. Peridah thought was a desirable deviation from *halakha*, was in fact a transgression, because by waiving the honor owed to a scholar is an infraction upon the honor owed to Torah, and thus, to God.

11 Mentioned in *bMenahot* 52b, as raising an objection to R. Ami, from which we learn that he was an Eretz Israel *Amora* of the third generation.

In b. *Berachot* 54b-55a, R. Judah is quoted as enumerating three things conducive to longevity:

המאריך בתפילתו והמאריך על שולחנו והמאריך בבית הכסא.

There are three things the drawing out of which prolongs a man's days and years: the drawing out of prayer, the drawing out of a meal, and the drawing out of [easing in] a privy.

:The *gemara* asks

והמאריך בתפילתו מעליותא היא והאמר רבי חייא בר אבא אמר רבי יוחנן:
כל המאריך בתפילתו ומעיין בה סוף בא לידי כאב לב...?

But is the drawing out of prayer a merit? Has not R. Hiyya b. Abba said in the name of R. Johanan: If one draws out his prayer and expects therefore its fulfillment, he will in the end suffer vexation of heart, as it says, 'Hope deferred maketh the heart sick' (Prov. 13:12)?

And the *gemara* further asks:

והמאריך בבית הכסא מעליותא היא והתניא עשרה דברים מביאים את האדם
לידי תחתונות [טחורים]...ויש אומרים אף התולה עצמו בבית הכסא יותר
מידי?

To draw out ones 'easing in a privy' is this a good thing? Has it not been taught: Ten things bring on piles: eating the leaves of reeds... Some add, to strain oneself unduly in a privy!

In the sources cited above, the *gemara* does not challenge a *halakha*, but rather a behavior that is perceived as positive even though in fact it is not.

In the third place, bTa'anit 3b, a short *baraita* is brought, which states: "העבים והרוחות שניות למטר" - The clouds and the winds are secondary to rain.

According to *Rashi*, "secondary to rain" means that they are almost as beneficial as rain itself. This *baraita* is explained, either by Ulla or by

R. Judah, according to whom the *baraita* is speaking of the clouds and winds that appear after the rain.

The *gemara* poses a question to this explanation:

למימרא דמעליותא היא והכתיב (דברים כ"ח): 'יתן ה' את מטר ארצך אבק
ועפר' ואמר עולא ואיתימא רב יהודה זיקא דבתר מיטרא?

Can we then say that these are beneficial? Is it not written “The Lord will make the rain of thy land powder and dust?” (Deut. 28:24) and on this Ulla or, some say, R. Judah commented, [this refers to] the wind following the rain?

In this case, the question “Can we then say these are beneficial?”, is asked about a natural phenomenon.

It would then appear that it is only in the *sugya* in *Bava Batra*, that the question, “Can we say it is beneficial...?”, is connected to the *mishnah* and is quoted there to point out the flaw in the statement presented in it.

B. There are several points that reinforce the assumption that our *sugya* is an independent literary work, aimed at promoting a social idea.¹²

1) The *sugya* introduces a narrative tradition wherein Elijah stopped speaking with a person because the latter acted upon the law without exercising his own value judgment. This tradition is very similar to the tradition cited in *yTerumot*, and it may have been based on it:¹³

12 Although it is possible that the stammaitic *sugya* is not an independent literary work, but rather a scholastic discussion based on amoraic statements cited in both the Yerushalmi and the Bavly *sugyot*.

It is reasonable to assume that the *Stammaim*, having read all the tanaïtic and amoraic material on the obligation of the townspeople to assist the poor, then succeeded in developing a theory about how the porter's lodge itself is consistent with that notion.

13 *yTerumot* 8:4; also quoted with several changes in *Bereshit Rabbah* (Albeck Ed.) 94, 26:

עולא בר קושב תבעתיה מלכותא ערק ואזל ליה ללוד גבי רבי יהושע בן לוי אתון ואקפון מדינתא אמרו להן אין לית אתון יהבין ליה לן אנן מחרבין מדינתא סלק גביה רבי יהושע בן לוי ופייסיה ויהביה לון והוה אליהו זכור לטוב יליף מיתגלי עלוי ולא איתגלי וצם כמה צומין ואיתגלי עלוי אמר ליה ולמסורות אני נגלה אמר ליה ולא משנה עשיתי אמר ליה וזו משנת החסידים.

Ulla the son of Qoshev was wanted by the government. He fled and went to R. Joshua b. Levi in Lydda. They came and surrounded the city. They told him: If you do not hand him over to us, we will destroy the city. R. Joshua b. Levi went to him [Ulla] and persuaded him and handed him over to them. Elijah of blessed memory used to appear to R. Joshua b. Levi and [then] he did not appear. [R. Joshua b. Levi] fasted for several days and Elijah appeared. He said to him, "Do I appear to traitors [those who hand fellow Jews over to the authorities]?"

עולא בן קישר תבעתיה מלכותא קם וערק לגבי רבי יהושע בן לוי ללוד שדר פרדיסקי בתריה, איטפל ליה רבי יהושע בן לוי ופייסיה ואמר ליה מוטל /מוטב/ דלקטיל ההוא גברא ולא ליענשי ציבורא על ידיה, איפייס ליה ויהבי ניהליה, הוה קא משתעי אליהו בהדיה כיון דעביד הכי לא אתא לגביה צם עלוי תלתין יומין ואתחזי ליה, אמר ליה מ"ט אפגר מר, א"ל וכי חבר אני למוסרת א"ל ולא מתניתא היא סיע /סיעה/ של בני אדם וכו' אמר וכי משנת חסידים היא מיבעי להאי מלתא מתעבדא על ידי אחרני ולא על ידך.

Ulla the son of Qosher was wanted by the government. He fled and went to R. Joshua b. Levi in Lydda. They sent soldiers after him. R. Joshua argued with him and urged him to surrender, saying, "Better that you should be executed rather than that the whole community should be punished on account of you", and persuaded him and handed him over to them. Elijah of blessed memory used to appear to R. Joshua b. Levi, but when he acted thus, Elijah ceased to visit him. The rabbi fasted thirty days, after which Elijah came to him, and he asked him, "Why did you absent yourself?" "Am I then the companion of informers?", Elijah retorted. "But is this not a law in Mishnah: 'If a company of people,' etc.?" "And is that a teaching for the pious?", he retorted. "This should have been done through others and not through you." [tr. S.V.]

He said to him, “Did I not follow the law in the *mishnah*?” And [Elijah] said to him, “Is this the *mishnah* of the pious?”

According to this tradition, Elijah punished R. Joshua b. Levi and ceased to speak to him because he had delivered Ulla to the authorities in order to save the rest of the populace. When R. Joshua b. Levi argued that he had acted on the ruling of an explicit *mishnah*, Elijah replied that this law was not the *mishnah* of pious people. The main point of this narrative tradition then is to distinguish between the *mishnah* and the *mishnah* of the pious, and it seems that similarly this is the main point of introducing the tradition in our *sugya*, although this is not stated explicitly.

It is therefore possible that a well-known tradition differentiating between a *mishnah* and a *mishnat hassidim* (*mishnah* of the pious – who are expected to act kindlier than the letter of the law requires) was integrated into our *sugya* by the *Stammaim*, because it served the intent of revealing the negative meaning associated to the porter's lodge by the *mishnah*, and to caution against adopting this practice.¹⁴

The assumption, that the *Stamma* adapted it to a known narrative tradition, is reinforced by its design as a short, incisive, and precise, yet inverted parallel structure that is applied to an anonymous pious man:

ההוא חסידא דהוה רגיל אליהו דהוה משתעי בהדיה, עבד בית שער ותו לא
משתעי בהדיה.

There was a pious man with whom Elijah was accustomed to converse. He made a porter's lodge and Elijah no longer conversed with him.¹⁵

14 It is possible, of course, that the Elijah anecdote is amoraic, and was already added to the *sugya* in the amoraic period. Later, the *Stammaim* may have read the *mishnah* together with it and the rest of the tannaitic and amoraic material, and explained the anecdote as they did.

15 The first story: “Both Abbuha b. Ihi and Minjamin b. Ihi [showed consideration for their waiter] the one giving [him a portion] of every kind of dish, while the other gave [him a portion] of one kind only. With the former, Elijah conversed, with the latter he did not.”

- 2) Following the question, “Can we then say these are beneficial?”, the *sugya* posts a series of alternative answers, which are composed in a cadenced, uniform style, and designed to emphasize the distinction between a positive porter’s lodge and a negative one.

The first answer creates a doubt about the negative and the positive porter’s lodge over which *Rashba* and *Raavad* were in dispute. *Rashba* explained: “From the outside, it is bad”, whereas *Raavad* wrote: “From the inside is not the way of piety”.¹⁶ These two possible interpretations are extensions to all of the answers, because they are all subordinate to the first answer. *Rashba* commented: “Even if it is outside, sometimes it is an improvement, when there is no door and even when there is a door, it is an improvement where there is no latch [it is not locked] and even if it has a latch, sometimes it is an improvement when there is a latch on the outside.

Raavad, on the other hand, wrote: “On the outside it is also an improvement, *especially* when it has no door, or when it has a door but has no latch, or when it has a latch and the latch is on the outside so whoever wants to, can open it”.

The *Tosafot* (“ve’i”, Bava Batra 7b) points out that there is another version, besides the one brought to us in the print version, of the second answer. In this version, it says: “And if you like I can say in both cases we suppose the lodge to be inside and there is no contradiction...”, and the *Tosafot* states that this way, the arrangement of the answers is acceptable.¹⁷

The second story: “[It was related of] two pious men, and others say of R. Mari and R. Pinehas the sons of R. Hisda, that one of them gave [a share to his waiter] first, while the other gave him last. With the one who gave [the waiter his share] first, Elijah conversed; however, with the one, who gave his waiter last, Elijah did not converse.” bKetubot 61a.

16 *Shita Mekubetzet, Bava Batra 7b.*

17 The version “in both cases, inside” is not found in the manuscripts or printed editions, except for the Vatican ms.115, where the word 'מגווא' (inside) appears in

According to their way of thinking, whereby the lodge is a positive thing if it is on the outside, the version before us (“and if you say it is on the outside, there is no contradiction...”) creates an inconsistency within the answers. The second answer begins with a description of a positive reality – “the lodge is outside” – which might turn negative if the lodge has a door, while all of the other answers begin with a description of a negative reality – “there is a door”, and “the door has a latch” – which can become positive: “it has no latch”, and “the latch is on the outside”.

According to *Rashba*, who opined that “on the outside is bad”, one can understand the logic in the arrangement of the answers, even according to the version of the second answer in the printed edition before us: “and if you say it is on the outside, there is no contradiction...”

According to this method, all of the answers begin with a description of a negative reality that can become positive: “... in both cases on the outside” – is negative, but “it has no door” – the negative becomes positive.

“... in both cases there is a door” – is negative, but “the door has no latch” – the negative becomes positive.

“... in both cases there is a latch” – is negative, but “the latch is on the outside” – the negative becomes positive.

However, the problem is that according to this method, there is an inconsistency between the first answer (“one is on the inside, one is on the outside”), which begins with a description of a positive reality (“it is on the inside”) and ends with a negative reality (“it is on the outside”), and between all of the other questions, which open by describing a negative reality.

It appears that the attempt by the commentators to find consistency in the various stages of the *sugya* failed *because priority was given to stylistic* uniformity. Therefore, any suggestion of a contradiction begins

parentheses and afterwards, in brackets 'מאבראי' (outside), indicating that the copyist had doubts.

with the word that ends the suggested resolution in the previous statement. Furthermore, the last proposed resolution is phrased in precise parallel to the first one:

It's no contradiction: one is inside, one is outside.

And if you say, both were outside, it's no contradiction: one had a door, one didn't have a door.

And if you say, both had a door, it's no contradiction. One had a latch, and one didn't have a latch.

And if you say, in both cases there is a latch, it's no contradiction: in one case, the latch is inside and in the other, the latch is outside.

The stylistic uniformity creates rhythmic and symmetrical repetitions of one idea, and the hierarchical arrangement of the items leads to a very precise definition of the porter's lodge", to which the *mishnah* refers as "an improvement".

To conclude our discussion about the Bavli *sugya*: The lack of direct reference to the *mishnah*; the use of a certain question, which usually does not address *halakha*; the possibility that the argument within the question is an adaptation of an Eretz Israel tradition, which was done to criticize our *mishnah*, as opposed to *mishnat hasidim*; and the use of stylistic devices in the answer – all of these contribute to the hypothesis that our *sugya* is a creation of the later *Stammaim*,¹⁸ and has an ideological intent.¹⁹

- 18 D. Halivni is of the opinion that there were three levels of *Stammaim*, and that the third level, which comes after the first two, is characterized by the fact that "there is no mention at all of the words of the Amoraim, and it is entirely tammaitic". In Halivni's opinion, it emerges that the whole *sugya* was removed from the period of the Amoraim, and was much later (Halivni, *Sources and Traditions to Bava Batra*, pp. 10-11). Halivni also wrote (idem, p. 19) that the expression 'איבעית אימא' [if you choose, I may say] belongs to the special language of the *Stammaim*, and this language, which contains many expressions and terms that are not prevalent in

Corroboration for this hypothesis may be found in the fact that the manuscript contains many changes and, according to S. Friedman, this is one of the indications of a later text.²⁰

The *sugya* presents criticism of the sages' ruling in the *mishnah*, i.e., that a resident of the courtyard "may be compelled to the building of a porter's lodge and a door". And yet, to challenge the ruling of the sages, it would have been sufficient to accept the opinion of RSbG in his dispute with the sages, on the basis of the principle that, "Wherever Rabban Simeon b. Gamaliel taught in our *mishnah*, the *halakha* is in agreement with his ruling, except [in the cases of] 'guarantor', 'zidon', and the 'latter proof'".²¹ However, in several places the *gemara* said that there were *Amoraim* who disagreed with this principle, and E.B. Halivni proved that these were actually the words of *Stammaim* who interpreted the *Amoraim* in this way, and that there is no proof that the *Amoraim* themselves disputed the principle.²² In any case, the author of our *sugya* does not restrict the words of the sages in the *mishnah* according to RSbG's opinion. Furthermore, the second *sugya* based on the *baraita* that explains RSbG's reasoning – not only does it not reject or limit the opinion of the sages, but it even explains its rationale: "זימנין דדחקי בני רשות הרבים ועיילו ואתו" ("...sometimes in a crowd people force their way and come in").

amoraic text, provides strong evidence that the *Stammaim* were not the contemporaries of the *Amoraim* but rather operated later.

- 19 Even if we assume that the *Stammaim* based the *sugya* on tannaitic and amoraic material, we must admit that it was they who developed the theory as to how the porter's lodge of the *mishnah* is consistent with the idea of openness towards the populace in the public thoroughfare.
- 20 S.Y. Friedman, "The Chapter 'Ha'isha Rabba' in the Babylonian Talmud with a General Introduction on Interpreting the *Sugya* (Hebrew), Jerusalem-New York, 1978.
- 21 bBava Batra 174a and similarly yBava Batra 10:4 (17:4).
- 22 E.B. Halivni, *Rules for Deciding Halakha in the Talmud*, Lod, 1998, pp. 17–26 (Hebrew).

It would appear therefore that what motivated the *Stammaim* was not an objection to the actual act of compelling the courtyard's residents to participate in building a porter's lodge.²³ Rather, they directed the discussion of the sages' opinion to a new channel, in order to present their value-centered proof, which is totally different from what the *mishnah* is based upon. The *mishnah* posits as a given the right of the courtyard residents to privacy and protection for their property, and discussed their sharing the financial burden involved in guaranteeing it. The *Stammaim* who redacted the *sugya* challenged the right to privacy and set up against it the obligation to be open. Moreover, versus the need for cooperation between the members of the exclusive courtyard community, the author of the *sugya* placed the need for cooperation between the courtyard residents and the larger community residing outside. He used the words of the sages in the *mishnah* as a starting point that enabled him to present a viewpoint that rejected a vision of the private home or private courtyard as an enclosed and sealed fortress, and advocated openness towards the populace in the public thoroughfare. Thus, he turned the porter's lodge in the aforementioned *mishnah* into a test case representing a social ideology.

Although the *sugya* generally rejects the act of closing oneself in from the outside world, and does not mention openness specifically toward the needy and weak, some of the *Rishonim* did interpret it in this manner. Rabbenu Gershom and *Rashi* both interpreted the fact that Elijah stopped speaking with the pious man who built the porter's lodge because it "stops" the voice of the needy who cry out to the homeowner.²⁴ *Rashba* wrote, "...on the outside is bad because the *poor man who is begging door to door* cannot reach the front door and his voice will not be heard".²⁵ Meiri wrote:²⁶ "A porter's lodge is what the

23 A. Albeck, in *Monetary Laws in the Talmud*, Jerusalem-Tel Aviv 1983 (Hebrew), pp. 506-10, explains at length the legal basis for the words of the sages in the *mishnah*.

24 Rabbenu Gershom and *Rashi*, ad. loc.

25 *Shita Mekubetzet* on bBava Batra 7b.

mishnah wrote about, that the residents of the courtyard compel each other to participate – and that is specifically when there is no sense at all of any wrongdoing involved. But there is a sense of wrongdoing when the porter's lodge is made so that the *needy* cannot enter and they call from outside but their voice cannot be heard”.

Previously we saw that in the tanaitic sources, building a porter's lodge for a courtyard is perceived as a practical matter motivated by security needs. The concern of the *mishnah* is not the porter's lodge as a structure, but rather the idea of compelling the partners against their will to do that which is an accepted practice.²⁷ Even the words of R. La, which are cited in the *sugya* in the JT, and which deal with the building itself, do not go beyond the practical aspect.

R. La differentiated between building a porter's lodge for the rich, as opposed to the poor, but he did not make a statement concerning values.

Considering the neutral position presented by the Eretz Israel sources, the fact that the *sugya* in the BT is concerned with the subject of values, is both noteworthy and worth elaboration. According to Y. Gafni²⁸, “any discussion in the BT which reveals a deviation from, a change to, or disregard of, the Eretz Israel versions reflected in these traditions [traditions from the tanaitic period – S.V.] probably indicates a different reality faced by the Babylonian sages”. As an example of such a discussion, he brought our *sugya*, and wrote: “A prime example of this is the discussion in the BT into all the traditions that raise the sense of a municipal affiliation and responsibility, both in the *mishnah* and in the *baraita*”, and he further wrote that at times the BT “diverts the discussion from matters of daily procedure to theoretical issues”.

26 *Beit Habehira* on bBava Batra 7b s.v.

27 Albeck (see footnote 23).

28 Y. Gafni, *The Jews of Babylon during the Talmudic Period*, Jerusalem 1991(Hebrew), pp. 104-5.

Indeed, a perusal of the *sugyot* in the BT on Mishnah 5 reveals such a diversion, for the *gemara* attached to all parts of the *mishnah*, *baraitot*, sayings, homilies, and stories that relate to social justice.

The passage, “[A resident of a courtyard] may be compelled [by the rest] to [contribute to] the building of a porter's lodge and a door for the courtyard ... and a cross bar. Rabban Simeon b. Gamaliel says that not all towns require a wall”, is attached to Eretz Israel and Babylonian traditions that deal with social responsibility, which is reflected in the exemption of various sectors of the population from participating in the burden of taxes and giving to the poor.

The passage, “How long must a man reside in a town to be counted as one of the townsmen? Twelve months. If, however, he buys a house there, he is at once reckoned as one of the townsmen”, is connected with *baraitot*, sayings, and stories about the redemption of captives, and in particular, about charity and funds for the needy.

It seems that the *mishnah* which discusses social partnership (in the courtyard and the town) from a legal standpoint has created an opportunity to attach to itself an anthology of materials that deal with the issue from an ethical-moral perspective. The first *sugya* is a preface of sorts to this collection, which makes an abrupt shift in what is said in the *mishnah*, moving it to the ethical plane.

The subject of the *mishnah*, the obligation to participate in the building of a porter's lodge, is redirected to another subject – the building of a porter's lodge in such a way so as to comply with the obligation to participate with the populace outside the courtyard.

The discussion of the structure termed ‘porter's lodge’ serves as the transition from the *mishnah* to an anthology that deals completely with this populace, and particularly with the poor and needy amongst it (which caused several *Rishonim* to interpret the conceptual focus of the first *sugya* – an overall openness toward the general public as openness toward the poor who go door to door collecting alms.

The first *sugya*, which is intended to reject the concept of closing oneself off in a private courtyard and to oblige one to be open to the

public outside one's private yard, i.e. to one's fellow townspeople, reveals a viewpoint that advocates being connected to the people of one's own town. According to Gafni, this perception was prevalent in Jewish society in Babylon, as he wrote: "In many areas, the Jew [in Babylon – S.V.] was very conscious of his local affiliation... Demonstrations of local patriotism may not only show the importance of the person's place of residence as an expression of the quality of his family lineage but also, to a large extent, reflect his sense of integration and profound belonging to the place".²⁹

It seems to me that both the opening *sugya* – the subject of our discussion – and the collection of traditions and discussions on social justice connected with Mishnah 5, apart from an emotional connection to a place, also reflect a more profound ideology that attributes great importance to social involvement and shared responsibility.

In an article written many years ago, E. E. Urbach analyzed what he termed "the sages' doctrine of charity", and explained the difference between the Christian doctrine of charity and that of the sages, in that Christianity did not aim to change the structure of society – that charity was not intended to do away with poverty, but rather to offer salvation to the charitable – whereas the sages sought to alter the status of the poor.³⁰ Although Urbach links his view to the Eretz Israel reality, the principle may be applied – the view of poverty as a necessary evil, which man must strive to abolish – and, hence, one may attribute the importance of social openness and commitment to Jewish society in Babylon as well. It is possible that this attitude was intensified in Babylon due to the conditions of life and the social structure, which differed from life in Eretz Israel. M. Beer wrote that the "Babylonian sages lived among many ethnic groups with a feudal or semi-feudal structure, much more so than their brothers in Eretz Israel". In his opinion, in Babylonian society, even

29 Ibid, pp. 117-25. See also the extensive explanation cited there of the reasons for, and implications of, the local patriotism that was prevalent among the Jews of Babylon, in his opinion.

30 E. E. Urbach, "Political and Social Tendencies in Talmudic Concepts of Charity", *Zion* XVI (1951) (Hebrew), pp. 1-27.

within Jewish society there, a person's social status and importance were determined by the magnitude of his wealth, and that accounts for the words of the Babylonian *Amoraim* on the subject of poverty as a state which "nothing is more difficult or evil".³¹

It would seem to me that the economic and class gaps within Jewish society in Babylon heightened the recognition of the importance of the need to make a deliberate social effort to eradicate poverty, and that this was reflected, among other ways, in a radical opposition to one closing oneself off, or insularity from the general public, the idea that lies at the basis of the stammaitic *sugya* discussed here.

31 Beer, Moshe. *The Babylonian Amoraim: Aspects of Economic Life*, Ramat Gan 1974 (Hebrew), pp. 341-46.

Appendix: A Synoptic Chart of Manuscripts

| Vatican | Paris | Munich | Hamburg | Florence | Escoarial |
|--|---|---|---|--|---|
| מתני' כופין אתו לבנות בית שער | מתני' כופין אותו לבנות בית שער | כופין אותו לבנות בית שער | מתני' כופין אותו לבנות בית שער | כל המשנה רבן שמעון בן גמלי' אומ'. | מתני' כופין אותו לבנות בית שער |
| תנו רבנן כופין אותו לבנות בית שער ודלת לחצר רבן שמעון בן גמליאל אומ' לא כל החצירות צריכות בית שער אלא חצר הסמוכה לרשות הרבים אינה צריכה בית שער ושאינה סמוכה לרשות הרבים אינה צריכה בית שער ורבנן אמרי זימנין דדחקי בני רשות הרבים ועיילי להתם למימרא דבית שער מעליותא היא והא ההוא דהוה [חסידא] | תנו רבנן כופין אותו לבנות בית שער ודלת לחצר רבן שמעון בן גמליאל אומ' לא כל החצירות צריכות בית שער אלא חצר הסמוכה לרשות הרבים אינה צריכה בית שער ושאינה סמוכה לרשות הרבים אינה צריכה בית שער ורבנן אמרי זימנין דדחקי בני רשות הרבים ועיילי להתם למימרא דבית שער מעליותא היא והא ההוא חסידא | כופין אותו לבנות בית שער למימור' (ב) דבי' שע' מעליות' הו' והא ההו' חסידא | מתני' כופין אותו לבנות בית שער למימרא דבית שער מעליותא היא והא ההוא חסידא | רבן שמעון בן גמלי' חנא ----- ----- רבן שמעון בן גמלי' או' לא כל החצירות ראיות לבית שער אלא חצר הסמוכה לרשות הרבי' ראיה לבית שער ושאינה סמוכה לרשות הרבי' אינה ראיה לבית שער ורבנן זימנין דדחקי בה רבים ועיילי טובא למימרא דבית שער מעליותא הוא והא ההוא חסיד | תנו רבנן כופין אותו לבנות בית שער ודלת לחצר רבן גמליאל אמ' לא כל החצירות צריכות בית שער אלא חצר הסמוכה לרשות הרבים צריכא בית שער ושאינה סמוכה אינה צריכה בית שער ורבנן זימנין דדחקי בני רשות הרבים ועיילי להתם למימרא דבית שער מעליותא והא ההוא חסידא חסידא |

| | | | | | |
|--|---|---|---|---|---|
| דהוה אליהו משתעי בהדיה ועבד בית שער לביתיה ולא אישתעי אליהו בהדי. לא קשיא הא מגואי הא מבראי ואיבעי אימ' הא והא מבראי | דהוה מישתעי אליהו בהדיה עבד ליה בית שער לביתיה ולא אשתעי אליהו בהדיה לא קשיא הא מגואי הא מבראי ואיבעיתנימא הא והא מאבראי | דהוה משתעי אליהו בהדיה בני' ב"שע' לביתני' ולא אישתעי אליהו בהדי' לא קשי' הא מגואי הא מאבראי ואיב' אי' הא והא מאבראי' | דהוה משתעי אליהו בהדיה ועבד ליה בית שער לביתיה ולא אשתעיה אליהו בהדיה לא קשיא הא מגואי והא מאבראי ואיבעית אימ' הא והא מאבראי | דקא מישתעי אליהו בהדי בנה בית שער לביתיה ולא מישתעי אליהו בהדיה לא קשיא הא מגואי הא מבראי ואיב' אימ' הא והא מבראי | דהוה אליהו משתעי בהדיה ועבד בית שער לביתיה ולא אישתעי אליהו בהדי. לא קשיא הא מגואי הא מבראי ואיבעי אימ' הא והא מבראי |
| הא דעביד ליה דלת הא דלא עביד ליה דלת ואי' אי' הא והא דלא עביד ליה דלת ולא קשיא הא דאית ליה פותרת הא דלית ליה פותרת ואיבעי אימא הא והא דאית ליה פותרת ולא קשיא הא דפותרת דידיה מגואי הא דפותרת דידיה מאבראי מתני' רב שמ' בן | ולא קשיא הא דאית ליה דלת הא דלית בה דלת ואיבעיתנימא הא והא דאית ביה דלת הא דאית ביה פותרת והא דלית ביה פותרת ואיב' חימ' הא והא דאית ביה פותרת ולא קשי' הא דפותרת דידה מגואי הא דפותרת דידיה מאבראי רשב"ג | ולא קשי' הא דאית לי' דלית הא דלית לי' דלית ואיב' אי' הא והא דאית ליה דלת ולא קשיא הא דאית ליה פותרת' הא דלית לי' פותרת' ואי' אי' הא והא דאית לי' פותרת' ולא קשי' הא דפותרת' דידי' מגואי הא דפותרת' דידיה מאבראי רשב"ג | ולא קשיא הא דעבד ליה דלת והא דלא עבד ליה דלת ואיב' אימ' הא והא דעבד ליה דלת ולא קשיא הא דעבד ליה פותרת והא דלא עבד ליה פותרת ואיבעי אימ' הא והא דעבד ליה פותרת ולא קשי' הא דפותרת דידיה מגואי והא דפותרת דידיה מאבראי רבן שמעון בן | הא דאית ליה דלת הא דלית ליה דלת ואיב' אימ' הא והא דאית ליה דלת הא דאית ליה פותרת הא דלית ליה פותרת ואיב' אמ' הא והא דאית ליה פותרת ולא קשיא הא דפותרת דידיה מבראי הא דפותרת דידיה מתנאי רבן שמעון בן | |

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|-----------------------------|--|-----------------------------|---|-----------------------------|-------------------------------|
| גמליאל וכו' | אומ' לא כל החצרות | או' | גמל' או' וכו' | לא כל חצות | גמליאל או' |
| תניא רבן שמעון בן גמליאל | תניא רשב"ג: אומ' לא כל החצרות ראויות לבי' שער | תני רשב"ג או' | תניא רבן שמעון בן גמל' או' לא כל חצירי' צריכו' לבי' שע' אל' חצר | ראויות לבית שער אלא | ראויות לבית שער אלא שער |
| חצר הסמוכה לרשות | אלא סמוכ' לרשו' | | הסמוכ' לרה"ד ראוי' | סמוכה לרשות | סמוכה לרשות |
| הרבים צריכא בית שער | הרבי' ראויה לבית שער | | לבי' שער ושאינ' סמוכ' לרה"ד | הרבים ראויה לבי' שער | הרבים ראויה לבית שער |
| ושיאנה סמוכה לרשות הרבים | ושיאנה סמוכה לרשות הרבי' | | אינ' ראוי' לבי' שער | ושיאנה סמוכה לרשות הרבים | ושיאנה סמוכה לרשות הרבים |
| אינה צריכה בית שער | אינה ראויה לבית שער | | ורבנן | אינה ראויה לבית שער | אינה ראויה לבית שער |
| ורבנן זימנין דדחקי | ורבנן זימנין דדחקי | ורבנ' זימני' דדחקי | ורבנן זימנין דדחקי | ורבנן זימנין דדחקי | ורבנן זימנין דדחקי |
| בה רבים ועיילי (בע) להתם | בני רשות הרבים ועיילי התם | בני רשו' הר' ועיילי טוב' | בני רשות הרבים ועיילי | בני רשות הרבים ועיילי | בני רשות הרבים ועיילי להתם |