

LASHON HA-RA (THE EVIL TONGUE) AND THE PROBLEM
OF JEWISH UNITY

By

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To Debbie: It's your turn now.

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INTRODUCTION

During the 1966 primary campaign for governor of California, candidate Ronald Reagan revealed what he called the Republican Party's eleventh commandment: "Thou shall not speak ill of any fellow Republican."¹ The rule implicitly acknowledges that Republicans have policy disagreements and political rivalries but insists that those disagreements and rivalries be suppressed, or at least not be expressed in a disparaging manner that might undermine GOP unity. Reagan was speaking less than two years after bitter verbal attacks between Rockefeller moderates and Goldwater conservatives rent the party and contributed to its landslide loss in the 1964 presidential election. He was hoping to prevent a similar internecine battle and election debacle in California. The point of the eleventh commandment was obvious: Republicans shouldn't let their differences get in the way of their political cohesion. In sociological terms, it expresses a pragmatic rather than a dogmatic view of Republican collective identity, one that tolerates a certain degree of difference within the party.

This dissertation examines a Jewish version of the Republican eleventh commandment that has been around for 2,000 years — the prohibition against *lashon ha-ra* (the evil tongue). My thesis is that *lashon ha-ra* is not merely an ethical concept governing interpersonal relations. Its primary function is to mediate what Reuven Kimelman calls "the peculiar problematic" of Jewish unity — the fundamental tension between the ideal of a universal Jewish commonwealth whose members are united in

¹ Ronald Reagan, *An American Life* (New York: Simon and Schuster, 1990), 150. Although Reagan was the first to speak publicly about the eleventh commandment, he credits the concept and wording to California Republican Party Chairman Gaylord Parkinson.

belief and practice and the messy reality that Jewish people comprise a number of divergent and sometimes contentious groups and societies.² Does Jewish unity demand that autonomy and deviancy be eliminated in order to attain the ideal? Or does it require that individuality and difference be tolerated in order to preserve the reality? While it is simplistic to think of the issue in such stark, either-or terms, it is my contention that the general approach of any Jew or group of Jew to this tension will be reflected to some extent in their attitudes toward the prohibition against *lashon ha-ra*.

Like the Republican eleventh commandment, the prohibition against *lashon ha-ra* is a prescriptive response to discourse seen as a threat to Jewish social cohesion. But even as it seeks to preserve cohesion, the prohibition inevitably establishes boundaries and divides. Prohibiting Jews from speaking badly about one another involves defining who is a Jew, which excises or marginalizes those who do not fit the definition. Thus, regardless of how broadly or narrowly the prohibition against *lashon ha-ra* is conceived, it is deeply implicated in delimiting Jewish social identity and regulating power relations among Jews. Depending how narrowly the protected group is defined, some notions of *lashon ha-ra* can even be seen as fostering division rather than cohesion.³

To explore these issues, this project examines the treatment of *lashon ha-ra* in rabbinic texts representing two very different socio-historical contexts. Part I looks at contested notions of *lashon ha-ra* in the ancient rabbinic writings in which the concept first appears. Part II looks at how the inherent tension of the concept plays out in *Sefer*

² Reuven Kimelman, "Judaism and Pluralism," *Modern Judaism* 7, no. 2 (May, 1987): 131.

³ We see this effect with the GOP's eleventh commandment. Though conservative Republicans still venerate Reagan and cite his rule as an article of faith, many use the pejorative acronym RINO (Republican in Name Only) to marginalize those in the party who are viewed as too moderate. RINO signifies someone who is no longer a real Republican and so is not protected by Reagan's rule. For some Republicans the urge to enforce ideological conformity and exert authority within the party supersedes the eleventh commandment.

Chafetz Chaim, a comprehensive legal code on *lashon ha-ra* compiled in nineteenth-century Lithuania by Rabbi Israel Meir Kagan.

My hermeneutical method is not orthodox in a theoretical sense but rather is an example of what Lévi-Strauss called “intellectual bricolage” — a pragmatic approach that borrows “tools” from different theories and is based on the view that human societies and activities are too complex to be explained neatly by a single conceptual framework.⁴ On the one hand, for example, I follow social constructivist theory, which holds that because knowledge is created collectively by society and culture, the meaning of a text is variable and depends on the specific socio-historical context in which it is read. In this study, I am trying to situate the texts in the socio-historical milieus in which they arose. On the other hand, I am open to the structuralist view that certain overarching patterns of meaning can be discerned from the interpretation of texts from different socio-historical contexts. I will argue for example, that notions of *lashon ha-ra* emphasizing its danger and the gravity of the sin tend to arise during periods of social crisis or instability or among those who feel politically or socially vulnerable.

Neither of these determinations can be achieved perfectly, of course, because interpreters are to some extent limited by their own social “situatedness” — in my case, a white, middle-aged, married Jewish-American former newspaper journalist turned academic writing in the post-modern era. This problem is especially difficult when the interpreter is dealing with historical texts that are far removed in time, place and language from his or her own circumstances. However, as Stanley Fish argues, while the intended meaning of a historical text may not be determinative, neither is it totally inaccessible.

⁴ Claude Lévi-Strauss, *The Savage Mind*, trans. Doreen Weightman and John Weightman (Chicago: The University of Chicago Press, 1966), 17-22.

That we cannot understand the rabbis or Kagan *perfectly* in their own context does not mean that we cannot understand them *at all* in their own context. In that sense, I would describe myself as a positivist.

Before delving into the texts, I want to make two further qualifications. First, Kimelman refers to the problem of Jewish unity “peculiar.” The Jewish situation is unique, he explains, because Jewish unity involves both theological and social factors. Thus differences among Jews represent not only a social threat but also a “theological scandal.”⁵ Regardless of whether the issue of Jewish unity was ever unique in this way, I would argue that in an era in which multiple social identities are common, the same tension exists today within many groups and societies. There are venerated ideals as well as social factors at the heart of the tension that Reagan’s eleventh commandment tries to address as well as debates in this country and Europe about the impact of multiculturalism. In other words, while I am exploring a Jewish concept that deals with the problem of collective identity and social unity, I do not believe the problem itself can be described as peculiarly Jewish. Therefore, my title refers only to the problem of Jewish unity.

Finally, I want to stress that in focusing on the social forces and historical circumstances that helped shape Kagan’s and the early rabbis’ approach to the issue of *lashon hara*, I am not denying or minimizing their exegetical or ethical motivations. The texts are a religious response to scripture and reflect a genuine desire to elucidate its

⁵ Kimelman, “Judaism and Pluralism,” 131.

meaning. I intend only to give “extra-textual” factors their due by showing how the early rabbis and Kagan read sacred texts “through the lens of their life experiences.”⁶

⁶ Richard Kalmin, *The Sage in Jewish Society of Late Antiquity* (London and New York: Routledge, 1999), 20-21.

PART I

**CONTESTED NOTIONS OF LASHON HA-RA
AMONG THE ANCIENT RABBIS**

Introduction

The Mishnah's lone reference to *lashon ha-ra* is an aside that comes near the end of a discussion of the penalties for several civil and criminal offenses. The editors are struck by the fact that in Deuteronomy 22 a husband who falsely accuses his wife of having not been a virgin when they married is punished more severely than a man who actually rapes or seduces an unmarried woman.¹ In a brief digression, the Mishnah observes:

Thus he who speaks [evil] with his mouth suffers more than he who commits a[n evil] deed. For so we find that the judgment was sealed against our forefathers in the wilderness only by reason of *lashon ha-ra*. As it says, "They tested me these ten times. . . ."²

From the standpoint of philosophical ethics, this digression acknowledges the power of the spoken word, pre-dating by almost two millennia J. L. Austin's speech-act theory: Words don't just say, they do.³ In this context, *lashon ha-ra* can be understood as a broad category of speech about others that includes not just slander but any remarks that are demeaning or otherwise harmful. In its contemporary usage, this is what the term often signifies. This study, however, is based on the premise that *lashon ha-ra* is not merely an ancient rebuttal to the idea expressed in that modern children's refrain about

¹ The husband who defames his wife in this way must pay her father 100 shekels in silver (Deuteronomy 22:19) while the man who rapes a maiden must pay her father 50 shekels in silver (Deuteronomy 22: 28). The Mishnah's redactors do not consider that, in addition to their fines, the lying husband is flogged and the rapist must marry the woman he attacked.

² M. Arakhin 3:5, from Herbert Danby, trans., *The Mishnah* (London: Oxford University Press, 1933). The Biblical reference is to Numbers 14: 22, the story of the spies who returned from a scouting mission and gave a negative report about the land of Canaan.

³ J. L. Austin, *How to Do Things with Words*, J.O. Urmson and Marina Sbisa, eds., 2nd ed., (Cambridge: Harvard University Press, 1975), 1-11. The idea that words "do" predates the rabbis in Jewish thought. It is evident in the Biblical formula for divine creation — "God said . . . and there was . . ." It is also reflected in the Hebrew word *davar*, which means both "word" and "thing."

the difference between sticks and stones on the one hand and words on the other. In prescribing what Jews may say or believe about one another, the concept of *lashon ha-ra* also mediates the problem of Jewish unity and is bound up in issues involving Jewish collective identity and power relations.

The first chapter of this section is taken up with a close-reading analysis of passages in the Babylonian Talmud (Bavli) and the Jerusalem Talmud (Yerushalmi) that discuss or refer to *lashon ha-ra*. This analysis shows that the concept was contested along four axes: the relative gravity of the offense, whether the offense primarily pertained to the harmful effect of the speech or the malicious intent of the speaker, whether it pertained to public or private speech, and finally the relative culpability of the listener/believer. These disagreements reveal two broad tendencies among the rabbis — one that sought to limit potentially harmful or divisive rhetoric and another that was more tolerant of it. The former is reflected in broader notions of what *lashon ha-ra* entails that are more restrictive of polemical speech. The latter is reflected in narrower notions that are less restrictive.

In the second chapter I argue that the contested notions of *lashon ha-ra* reveal tensions among the early rabbis along both ideological and sociological line. The rabbinic aversion to the rhetoric of slander associated with late Second Temple-era sectarianism was in tension with their urge to engage in polemics in order to establish their version of Judaism over those of religious competitors, both within the rabbinic movement and without. The desire to preserve the autonomy of small groups and individuals within the nascent rabbinic movement was in tension with the urge to consolidate and exert authority. I will also argue that these tensions played out differently in Roman Palestine

and Sassanian Babylonia, which helps explain why narrower, less restrictive notions of *lashon ha-ra* are muted in the Yerushalmi but find fuller voice in the Bavli.

I want to be clear, however, that the early notions of *lashon ha-ra* cannot be explained simply in terms of the different circumstances of rabbis in Babylonia and Palestine. My thesis is that Talmudic notions of *lashon ha-ra* reflect the dialectical tension identified by Kimelman regarding Jewish unity and collective identity. How the early rabbis responded to this issue depended on their socio-historical circumstances. Those who viewed Jewish society as especially vulnerable and/or who had less power within Jewish society were more concerned about and advocated greater restrictions on divisive, authoritarian rhetoric. The opposite was true of those who felt more secure and/or powerful. However, while one side of the dialectic might have dominated in a specific socio-historical context, the other was not necessarily mute. For this reason, there is always a certain tension associated with the concept of *lashon ha-ra*. Among the early rabbis, the various notions of *lashon ha-ra* embedded in the Talmuds reflect an ambivalence about a concept aimed at limiting polemical social discourse within a group for which such discourse played an important role in determining identity, status and authority.

My reading of the early rabbis is guided by the view that the redacted Talmudic texts, though providing only limited historical information about specific individuals and events, reveal more about the rabbis' motivations and their social, political and cultural milieu. As Catherine Hezser puts it, what the texts tell us about the rabbis is general and paradigmatic rather than specific and individual.⁴ My analysis also follows Hezser's view

that “in general, with regard to both traditional material and redactions, disagreement outweighs agreement.”⁵ Rabbinic tradition tends to portray the ancient sages as arriving at a consensus through an organized system of debate, and also as enforcing that consensus through a unified administrative structure. However, this post-Talmudic view of the rabbis is prescriptive, not descriptive. The contending traditions recorded in the Bavli and Yerushalmi reveal that throughout much of the Mishnaic-Talmudic period the rabbis were an unorganized, relatively powerless network of individuals and small groups who had many unresolved differences in belief and practice.

Before proceeding, I want to offer some explanations and qualifications. First, for each ruling or teaching cited in my analysis, I identify the rabbi to whom it is attributed, with his generation and locality in parentheses.⁶ For example, (T2) signifies a second-generation *tanna*, (PA1) a first-generation Palestinian *amora*, and (BA3) a third-generation Babylonian *amora*. We can’t assume, of course, that all the attributions are accurate. But because some are relevant to my argument, I have included all of them for the sake of consistency.⁷

⁴ Catherine Hezser, *The Social Structure of the Rabbinic Movement in Roman Palestine* (Atlanta: Mohr Siebeck, 1997), 155. See also the Introduction to Kalmin, *The Sage in Jewish Society of Late Antiquity*, 1-24, and Daniel Boyarin, *Dying for God: Martyrdom and the Making of Christianity and Judaism* (Stanford CA: Stanford University Press, 1999), 29-30. Boyarin argues that we should read the rabbinic texts as a historian reads fiction — not for what they tell us about the characters or events they purport to record but for what they tell us about the authors, their motivations, social practices and cultural constructions.

⁵ Hezser, *Social Structure*, 241.

⁶ For this purpose I use H.L. Strack and Günter Stemberger, *Introduction to the Talmud and the Midrash*. (Minneapolis: Fortress Press, 1992).

⁷ The *tannaim* (teachers) were rabbis who lived in Palestine from roughly 70-200 CE. Their opinions are recorded in the Mishnah and the Tosefta. The *amoraim* (repeaters) were rabbis who lived from about 200-500 CE, some in Palestine and others in Babylonia. Their discussions and opinions on the Mishnah are recorded in the two Talmuds. Only the opinions of Palestinian *amoraim* appear in the Yerushalmi while the Bavli includes those of both Babylonian and Palestinian *amoraim*.

Second, the rabbinic texts are not monographs. By interpreting a passage in terms of what it says about *lashon ha-ra*, I do not mean to imply that it is not also concerned with — perhaps even primarily concerned with — other matters. And finally, while I examine the contested aspects of *lashon ha-ra* separately, we should not think of them as either discrete or unrelated. For example, some of the passages in the Bavli that portray *lashon ha-ra* as public speech are also part of what I call the *shem ra* tradition that characterize it as lying or making false statements with malicious intent. Therefore, I will occasionally refer to some passages already cited in another context or to passages that will be explored more fully later.

CHAPTER I

THE AXES OF DISAGREEMENT

The gravity of the sin

Leaving aside for the moment questions about what *lashon ha-ra* entails, I want to begin by examining rabbinic attitudes about the gravity of the sin. To do this, I have identified passages in the Bavli and the Yerushalmi that do at least one of the following: discuss the consequences of *lashon ha-ra*, identify divine punishments for it, or compare its consequences or punishments to those of other sins. I contend these passages reveal two traditions — one that portrays *lashon ha-ra* as an especially grave sin and another that questions or qualifies this view.

The Mishnah passage, for example, depicts *lashon ha-ra* as a terrible sin, and not just because it infers that evil speech is more pernicious than an analogous evil act. It refers to the incident in Numbers in which the spies sent by Moses to scout Canaan deliver a pessimistic report, sparking panic and rebellion among the Israelites. The Biblical passage does not use the phrase *lashon ha-ra*; it says the spies spread *dibat ha-aretz* (calumnies about the land).¹ The Mishnah infers not only that the people's willingness to believe the spies' report (and by implication, the report itself) constituted *lashon ha-ra* but also that this offense prompted God to bar the generation that left Egypt from entering Canaan. To the Mishnah's redactors, for whom the loss of the land was still a relatively recent and traumatic event, such a punishment would have been viewed as

¹ Numbers 13:32.

quite severe. Thus, aside from whatever else it says about *lashon ha-ra*, the Mishnah emphasizes the gravity of the offense.

There are a number of passages in both Talmuds that do likewise:

- The lone discussion of *lashon ha-ra* in the Yerushalmi begins in Pe'ah 1:1.18 with an un-attributed teaching declaring that the sins of idolatry, illicit sexual relations, murder and *lashon ha-ra* correspond to the four supreme virtues identified in the Mishnah passage on which it comments. Those virtues are honoring one's parents, doing righteous deeds, promoting peace between a man and his *chaver* (colleague or companion) and studying Torah. Just as the Mishnah declares the righteousness of Torah study equal to the combined righteousness of the first three virtues, so Pe'ah 1:1.18 declares the sinfulness of *lashon ha-ra* equal to the combined sinfulness of the first three offenses. Thus *lashon ha-ra* is not only a greater evil than any of the three cardinal sins, it is also the negative analog of Torah study, the paramount rabbinic value. B. Arakhin 15b includes a parallel *baraita*² attributed to the academy of R. Yishmael (T3). Unlike the Yerushalmi's version, it makes no analogy to the four virtues because it is part of the commentary on a different Mishnah passage. Still, because it equates the sinfulness of *lashon ha-ra* to that of the three cardinal sins combined, this teaching belongs to the tradition that emphasizes its gravity.³

- Two teachings in b. Arakhin 15b, both attributed to R. Yochanan (PA2) speaking in the name of R. Yose ben Zimra (PA1), also emphasize the gravity of *lashon*

² A *baraita* (outside) is a teaching attributed to a *tanna* that is not included in the Mishnah. Because *tannaim* were highly esteemed, *baraitot* carried special significance in discussions among *amoraim*.

³ Parallels also appear in Tosefta Pe'ah 1:2 and in *The Fathers According to Rabbi Nathan* 40.120, both works of Roman Palestine. The latter includes several other references to *lashon hara* and uses hyperbole to emphasize its gravity. See Jonathan Wyn Schofer, *The Making of a Sage: A Study in Rabbinic Ethics*, (Madison: The University of Wisconsin Press, 2005), 137.

ha-ra. The first identifies the punishment for it as the skin disease called *tzaraas*, which is often linked to serious offenses that provoke extreme divine anger. The second equates *lashon ha-ra* to the ultimate sin of denying God. A parallel version of the second teaching appears in y. Pe'ah 1:1.20, where it is attributed to R. Yose (PA3) speaking in the name of R. Yochanan (PA2).

- An un-attributed teaching in y. Pe'ah 1:1.26 contends that *lashon ha-ra* kills three — the one who speaks it, the one who believes it (*ha-m'kablo* — the one who receives or accepts it) and the one about whom it is spoken. A parallel version in b. Arakhin 15b is attributed to unnamed Palestinian sources.

- Three teachings on *lashon ha-ra* in b. Arakhin 15b are attributed to Reish Lakish (PA2). The first is a play on words linking the laws regarding *tzaraas* to *motzi shem ra* (creating an evil name, the sin of the husband in Deuteronomy 22). The second depicts *lashon ha-ra* as irrational and self-destructive by comparing one who speaks it to a poisonous snake. Unlike the lion or the wolf, the snake kills without motive and often to its own detriment. The third teaching declares that the speaker of *lashon ha-ra* “piles up sins unto heaven.”

- Three teachings in b. Sotah 35a elaborate on the divine punishment meted out to the spies.⁴ The first is attributed to R. Shimon Lakish (Reish Lakish, PA2) who says that the spies suffered a distinctive death appropriate for their offense. The second, attributed to R. Chanina bar Pappa (PA3), is a grotesque description of that distinctive death: Their tongues became swollen and elongated, hanging down to their waists, with maggots moving back and forth between their mouths and their navels. The third, attributed to R.

⁴ According to Numbers 14:10, they were struck down by an unnamed plague.

Nachman bar Yitzchak (BA4), identifies the punishment as *askerah*, a croup-like disease that inflamed the airways and resulted in a slow, agonizing death by strangulation.⁵

All but one of the teachings above, even those that appear only in the Bavli, are attributed to Palestinian rabbis. By contrast, we find only a few passages in the Bavli attributed to Babylonian rabbis that describe or imply especially harsh punishments for *lashon ha-ra*. In b. Arakhin 15b, three teachings attributed to Rav Chisda (BA3) in the name of exilarch Mar Ukva (BA1) declare that the speaker of *lashon ha-ra* should be stoned, that “[God] and he cannot dwell together in the world,” and that he is punished twice, first by God in this world and then by the ministering angels of *gehinnom* in the world to come.⁶ A teaching in b. Shabbat 56b attributed to Rav Yehuda (BA2) in the name of Rav (BA1) contends that had David not believed *lashon ha-ra*, the kingdom of Israel would not have been divided and the people would not have worshiped idols and been exiled.

Both the Bavli and the Yerushalmi also include teachings that emphasize the tongue’s destructive power or, like the Mishnah, portray evil speech as more harmful than analogous evil acts. While these teachings themselves do not use the term *lashon ha-ra*, the editors cite them in their discussion of the concept, thereby emphasizing its gravity.

For example, Pe’ah 1:1.27, the last clause in the Yerushalmi’s discussion of *lashon ha-ra*, begins with an un-attributed teaching comparing the tongue to an arrow and

⁵ B. Berachot 8a describes *askerah* as the worst of the 903 types of death ordained by God, so there can be no doubt that identifying it as the plague that killed the spies emphasizes the gravity of their offense.

⁶ *Gehinnom*, a valley outside Jerusalem, is identified in the Bible as a site of child sacrifice. In rabbinic literature it became the destination of the wicked in the afterlife, not to be confused with *sheol*, a Biblical name for the abode of the dead that has a more neutral connotation.

the wounds it creates to broom-wood coals. Like an arrow, the tongue can strike anonymously from afar whereas other weapons can kill only at close range. And like broom-wood coals, which continue to burn even after they have been doused, wounds inflicted by the tongue resist amelioration.⁷ The clause ends with a teaching attributed to R. Samuel bar Nachman (PA3) which poses and answers four questions about the snake. Why does its tongue constantly dart in and out? (As a reminder that its tongue caused its downfall in Eden, the teaching says.) Why, unlike the lion or the wolf, does the snake bite without provocation or purpose? (Because God commanded that it do so as part of its punishment for the sin in Eden.)⁸ Why do its victims feel pain in all their limbs when only one limb is bitten? (Because when the “master of the tongue” speaks in one place he can kill those in distant locations.) Why is the snake found around fences? (Because in Eden it caused the fence around sin to be broken.)

Running counter to the tradition emphasizing the gravity of *lashon ha-ra* is another that either mitigates its severe punishments or associates them with other offenses, thereby diminishing the uniquely sinful status of the offense. While it would be a mistake to read these teachings as an attempt to trivialize *lashon ha-ra*, they do undercut the competing tradition’s sometimes hyperbolic descriptions of its gravity. For example, the longest discussion of *lashon ha-ra* in the Bavli begins in Arakhin 15a by

⁷ The proof text is Psalms 120: 3-4: “What can you profit, what can you gain O deceitful tongue? A warrior’s sharpened arrows, with hot broom-wood coals.” In b. Arakhin 15b, a teaching attributed to R. Yochanan (PA2) uses the same proof text to portray the tongue (which speaks) as more powerful, destructive and difficult to control than any of the other limbs (which act or do). This teaching echoes the Mishnah’s assertion that words can be more harmful than deeds, and its use in the discussion of *lashon ha-ra* reinforces the gravity of the offense.

⁸ Compare this to the version in the Balvi attributed to Reish Lakish (PA2), which likens *lashon ha-ra* to the snake’s irrational strike. In any case, the teaching appears to be of Palestinian origin and is used in both the Bavli and Yerushalmi in a context that emphasizes the gravity of *lashon ha-ra*.

questioning whether the severe punishment meted out to the wandering Israelites can be attributed solely to *lashon ha-ra*. The editors cite a teaching attributed to Rav Hamnuna (BA3). It contends that God does not exact punishment until a person has committed his or her “full measure” of sins. This teaching itself does not specifically mention the spies or the sin associated with them, but the editors employ it in this discussion to suggest that *lashon ha-ra* was merely the proverbial straw that broke the camel’s back. This argument — that the punishment meted out to the people was not solely for believing *lashon ha-ra* but rather for a string of offenses that happened to culminate with *lashon ha-ra* — tends to subvert the notion of its singular gravity.

In response the editors cite a teaching attributed to Reish Lakish (PA2) that plays on the wording of God’s angry accusation in Numbers 14: 22 — *y’nasu oti zeh eser p’amim*. The usual translation of this passage is, “They tested me these ten (or many) times.” But Reish Lakish’s teaching turns on the usual meaning of *zeh*, insisting that the people were punished specifically for “this,” meaning the incident involving the spies. Like the teaching attributed to R. Hamnuna, this one does not use the phrase *lashon ha-ra*. Still, it unequivocally supports the notion that the sin associated with the spies was so egregious that it alone resulted in the edict barring the generation that fled Egypt from entering the land. In juxtaposing this teaching and the accumulation-of-sins argument, the editors acknowledge competing traditions regarding the gravity of the offense associated with the spies.

There is evidence that these passages do not simply reflect a late Babylonian dispute or even an unequivocal editorial endorsement of the second opinion, as is sometimes the case in such point-counter point constructions. A subsequent clause in b.

Arakhin 15 a-b cites a *baraita* attributed to R. Yehuda (T3) that identifies the ten offenses committed by the wandering Israelites. Though it too does not use the term *lashon ha-ra*, this teaching echoes the argument that the severe divine decree against the people is explained by the aggregate of their sins, not by any one of them. Not only is its attribution to R. Yehuda evidence of an early tannaitic tradition de-emphasizing the seriousness of the sin associated with the spies, but also its use even after the issue ostensibly has been settled indicates a lingering ambivalence on the part of the Bavli's redactors about the relative gravity of *lashon ha-ra*.

The counter-tradition regarding the gravity of *lashon ha-ra* appears in another clause in b. Arakhin 15a. It begins with a *baraita* attributed to R. Elazar ben Parta (T2) that contends that the spies' fate is evidence of "the terrible power of *lashon ha-ra*." If one who defames trees and stones is punished so severely, it says, then "how much greater [is the punishment] for one who defames a *chaver*."⁹ Clearly this teaching belongs to the tradition emphasizing the gravity of *lashon ha-ra*.

It is followed immediately by a teaching attributed to R. Chanina bar Pappa (PA3). While agreeing that the spies did indeed "utter a terrible thing," it argues that they did not speak against the land but against God: They expressed doubt about God's power to deliver the Israelites safely into a hostile territory. Changing the subject of the spies' remarks from inanimate sticks and stones to God reverses the implication of the previous teaching. Read as an intertext and applying the same rabbinic rule of argumentation, the second teaching implies that we might expect the person who defames a *chaver* to be punished *less* severely than the spies who spoke against the one true God. Thus while it

⁹ This teaching is also found in *The Fathers According to Rabbi Nathan*, indicating that it is of Palestinian origin. It employs a type of *a fortiori* argument the rabbis called *kal v'chomer* (light and heavy).

ratchets up the gravity of the spies' offense, it has the effect of de-emphasizing the gravity of *lashon ha-ra*.

To settle the issue, the editors cite a teaching attributed to Rabbah (BA3) speaking in the name of Reish Lakish (PA2). It quotes Numbers 14: 37: "Those who spread such calumnies about the land died in a plague by the will of the Lord." This scripture is proof, the teaching concludes, that the spies sinned by slandering the Promised Land, not by committing blasphemy. Underlying this discussion about whether the spies slandered God or the land, however, is the more important issue regarding the gravity of *lashon ha-ra*.¹⁰

Another disagreement about the punishment for *lashon ha-ra* arises in b. Arakhin 16a, where a teaching attributed to R. Anani bar Sasson (BA3) asserts that *lashon ha-ra* is one of eight sins for which a specific part of the priestly garb atones.¹¹ The editors note that this teaching conflicts with others that link *lashon ha-ra* to *tzaraas*. According to R. Anani, the severe divine punishment of *tzaraas* is preempted by the atoning power of the priestly garb.

We should not conclude, of course, that this teaching trivializes *lashon ha-ra*. Naming it as one of the sins for which the priestly garb atones indicates a special concern about improper speech.¹² But by mitigating the severe punishment for *lashon ha-ra*, it portrays the offense as relatively less consequential than does the tradition that cites

¹⁰ As we will see below, the teaching by Reish Lakish also relates to the question of whether *lashon hara* pertains to public or private speech.

¹¹ Specifically, the *me'ilim* atone for *lashon ha-ra*. It is appropriate that the sound of these small gold bells along the hem of the priestly vest atones for "emitting the sound" of evil speech. This teaching also appears in b. Zevachim 88b.

¹² The other sins for which various parts of the priestly garb atone are bloodshed, sexual immorality, arrogance, evil thoughts, injustice, idolatry and immodesty. Taken as a whole, they comprise the antithesis of what the rabbis considered the ideal moral character.

tzaraas as the punishment for *lashon ha-ra*. This is clearly how the Bavli's editors see it, for they resolve the contradiction by ruling that the priestly garb atones only for *lashon ha-ra* that is ineffective — that is, does not demean or otherwise harm someone. On the other hand, the speaker whose words result in actual harm will be afflicted with the punishment of *tzaraas*.

The tradition de-emphasizing the gravity of *lashon ha-ra* is not as apparent in the Yerushalmi. As I will argue later, this can be explained by the different social and political circumstances of rabbis in Palestine and Babylonia, particularly at the time of the Yerushalmi's redaction. Even so, there is evidence that this tendency is not exclusively Babylonian. As noted above, the teaching in the Bavli questioning whether the divine punishment meted out to the wandering Israelites can be attributed solely to the incident of the spies appears to have tannaitic origins. Likewise, the teaching that the spies spoke against God, not the land, is attributed to a third-generation Palestinian *amora*.

There also is evidence of the counter-tradition among Palestinians in the Yerushalmi itself. In y. Pe'ah 1:1.13, a teaching attributed to R. Samuel bar Nachman (PA3) speaking in the name of R. Jonathan (PA1) argues that it is permissible to speak *lashon ha-ra* against a *ba'al machloket* — someone who routinely cause public disputes or controversies. Its scriptural proof text is the story beginning in 1 Kings 1:14 in which Nathan and Bathsheba inform the aging King David that one of his sons, Adonijah, is trying to usurp the throne that David had promised to Solomon, his son by Bathsheba. Not only does this teaching diminish the gravity of *lashon ha-ra* by citing an exemption,

but also in this case the exemption pertains to speech about those who disturb social order by resisting divinely established authority.

We find a similar exemption in b. Mo-ed Katan 16a that explicitly applies to speech about those who resist rabbinic authority. In considering a situation in which a defendant responds disrespectfully to an agent of the *beit din* (rabbinic court) bearing a summons to appear before it, the editors rule that the agent can bring this negative report to the court without fear of speaking *lishna bisha* (the Aramaic synonym for *lashon ha-ra*). As proof they cite the incident in Numbers 16: 12-15 in which Moses is told about the defiant and insulting refusal of Dathan and Aviram to appear before him to answer charges that they were collaborating in Korach's insurrection. The implication of this discussion is clear: The prohibition against making a derogatory or harmful report is outweighed by the need to preserve the authority of the rabbinic court to enforce religious law.¹³

We should also consider a clause in b. Arakhin 15b. While it does not use the term *lashon ha-ra*, it is inserted into a long discussion of the issue. It begins with an exegesis of Proverbs 18:21 attributed to R. Chama (PA2): "Death and life are in the hand of the tongue." Chama's teaching is taken up with a hyperbolic description of the tongue's destructive power reminiscent of the passages in the Yerushalmi mentioned above. Citing several proof texts, it describes the tongue as more deadly than the hand — although both can kill from close range, the tongue can also kill anonymously from afar like an arrow. Yet even this comparison does not adequately describe the tongue's deadly

¹³ Unlike the spies' report to the Israelites in the Bible, the agent's report to the *beit din* is true. And because it implies that his remarks might be considered *lishna bisha* under different circumstances, this passage indicates that *lashon ha-ra* pertains to truthful speech. However, because the primary purpose of this teaching is to carve out an exemption to protect rabbinic authority, I have discussed it in the section dealing with the gravity of the offense.

power. While the arrow has a killing range of 40 to 50 cubits, the tongue can strike from any distance, no matter how great. The clause ends on a different note, however.

Wondering why the biblical verse refers to both death and life, the editors explain: to support the teaching of Rava (BA4), who said, “He who desires life can attain it through the tongue and he who desires death can attain it through the tongue.”

While their intent is to emphasize the power of the spoken word, the Bavli’s editors have done so by stitching together two teachings that are in tension with each other. The first is Palestinian. It emphasizes the tongue’s destructive power by focusing solely on its potential to harm or kill. The second is Babylonian. It subtly qualifies that view by giving equal weight to the tongue’s potential to sustain life.

A similar tension is at the heart of a lengthy discussion in b. Shabbat 33a that begins with R. Elazar’s (T4) assertion that *askerah* occurs “on account of *lashon ha-ra*.” As we have seen, teachings that describe *askerah* as the punishment meted out to the spies are part of the tradition emphasizing the gravity of *lashon ha-ra*. But the editors immediately express doubt about whether *lashon ha-ra* could be the sole cause for such a terrible disease. Did R. Elazar mean that *askerah* occurs “[only] on account of *lashon ha-ra*,” they wonder, or did he mean “even on account of *lashon hara*?”

To settle the issue the editors cite a *baraita* in which three *tannaim* discuss why the deadly disease culminates with symptoms affecting the mouth. R. Judah contends that *askerah* occurs on account of *lashon ha-ra*. He argues that the course of the disease reflects the fact that the offense becomes a *fait accompli* only when the mouth utters the evil words. R. Elazar — the very same R. Elazar to whom the teaching under discussion is attributed — links *askerah* to the sin of eating non-kosher food. Because the mouth

consumes improper food, it is the appropriate site of the disease's terrible end stage.¹⁴ R. Shimon ben Yochai associates *askerah* with still another sin — neglecting Torah study. The disease ends in the mouth because it is the mouth that fails to articulate words of Torah. After a long discussion about why those who are not required to study Torah also get *askerah* (they interfere with or prevent Torah study by those of whom it is required), the editors conclude that the disease is indeed caused “even by *lashon ha-ra*.” In effect they find that *lashon ha-ra* is not the sole or even primary cause of this terrible punishment. Neglecting Torah study is.

Certainly this story should be read primarily as an effort to elevate the importance of Torah study. And as in other examples of this tradition, it would be a mistake to assume that the teachings attributed to Shimon and Elazar were meant to trivialize *lashon ha-ra*. Indeed the editors' conclusion that the punishment for *lashon ha-ra* is the same as that for neglecting Torah study dovetails with the aforementioned Palestinian teaching that portrays the former as the negative analog of the latter.

Nevertheless, this clause, like the one that wrestles with the issue of whether the tongue is a source of life or death, recognizes a certain tension between *lashon ha-ra* (evil speech) and neglect of Torah study (evil silence). Avoiding one wrong sometimes leads to the other. By insisting that *lashon ha-ra* causes *askerah*, R. Judah's teaching emphasizes the importance of avoiding evil speech. By ruling that neglect of Torah study causes *askerah*, R. Shimon's emphasizes the importance of avoiding evil silence. The

¹⁴ The editors, believing this is not a sufficiently serious offense to warrant such a terrible punishment, interject themselves into the debate and assert that R. Elazar must have meant to say that *askerah* is the punishment for eating food that has not been properly tithed. The effect is to dismiss this explanation and focus the debate on the other two possible causes: *lashon hara* (speaking) and neglect of Torah study (not speaking).

editors' determination that neglect of Torah study is the main cause of *askerah* gives primacy to the imperative of Torah study — rabbinic discourse.

Malicious intent vs. harmful effect

To begin the examination of rabbinic notions of the nature of *lashon ha-ra*, let's return to the Mishnah and the Biblical example it cites. Numbers 13:32 tells us that the spies *yotzi-u debat ha-aretz* (spread a calumny about the land), specifically that it destroyed those who lived there and was filled with fearsome giants to whom the Israelite scouts seemed as insignificant as grasshoppers. The Mishnah associates this paradigmatic example of *lashon ha-ra* with the offense of the husband in Deuteronomy 22 who, having grown tired of his wife, seeks to rid himself of her by falsely accusing her of having been sexually promiscuous before marriage, a capital offense. He is said to *sam la alilot d'varim v'hotzi aliha shem ra* (make up stories about her and create an evil name for her). According to the Mishnah, then, *lashon ha-ra* is slander. Not only are the reports clearly demeaning or harmful but also the speakers lie, making clear their malicious intent.¹⁵

In this section I will identify three broad Talmudic traditions regarding these elements. One follows the Mishnah in portraying *lashon ha-ra* as factually false speech that is not just demeaning or harmful but also malicious. Another depicts it as speech that, while true or at least factually neutral, is still malicious as well as unambiguously

¹⁵ While contemporary readers might view the spies' report as an honest, well-intended but mistaken opinion rather than a malicious lie, that is not the sense of the Biblical Hebrew or how the rabbis would have understood it. See *Tanakh*, 2nd ed., (Philadelphia: The Jewish Publication Society, 1999), Genesis 37: 2, Numbers 13: 32 and 14: 36-37, Jeremiah 20: 10, Ezekiel 36: 3, Psalms 31: 13, and Proverbs 10:18 and 25:10. *Dibah* is translated variously as calumny, an evil report, slander, derision, infamy and the whispering of plotters or informers. In each case it refers to malicious speech that intentionally defames, discredits or endangers someone. In most cases it also connotes a lie or false belief. See also Marcus Jastrow, *A Dictionary of the Targumim, Talmud Bavli, Yerushalmi, and the Midrashic Literature* (Peabody MA: Hendrickson Publishers, 2005), 276. In early rabbinic literature, *dibah* signifies an evil report or calumny.

demeaning or harmful. Still another tradition portrays *lashon ha-ra* as speech that seems innocuous in content or intent (or both) yet is harmful or potentially harmful in its effect. Of course, the latter traditions should not be read as disputing the idea that slander is a sin. Rather, by focusing on the potential effect of speech that is not patently false or malicious, they portray *lashon ha-ra* as a category of speech different from — or at least broader than — slander. In that sense they can be said to more strictly regulate speech.

I will also present evidence that, in general, these stricter, expansive notions of *lashon ha-ra* are more predominant in the Yerushalmi, and that even when they appear in the Bavli, they are usually associated with Palestinian rabbis. What's more, the Bavli not only gives greater voice to the narrower notion of *lashon ha-ra* as slander but also includes teachings that question or resist the broader notions.

We have already seen several teachings in the Bavli that, like the Mishnah, portray *lashon ha-ra* as slander by associating it with *motzi shem ra*, the sin of the husband in Deuteronomy 22. The most compelling example is the *baraita* in b. Arakhin 15a attributed to R. Elazar ben Parta (T2) that describes the punishment meted out to the spies as evidence of the “the terrible power of *lashon ha-ra*,” If one who defames (*ha-motzi shem ra*) sticks and stones is punished so severely, it says, how much more harshly would one be punished for defaming (*ha-motzi shem ra*) one's colleague. Here the quintessential example of *lashon ha-ra* — the spies' report about the land — is described with the Hebrew phrase associated with the slanderous accusations of the husband in Deuteronomy. Indeed this teaching appears to treat the concepts of *lashon ha-ra* and *motzi shem ra* as synonyms.

A number of other teachings in the Bavli, while they do not use the phrase *motzi shem ra*, also portray *lashon ha-ra* as speaking falsely and maliciously. We have already looked at the teaching in b. Shabbat 33a supporting the view that *askerah* results from *lashon hara*. It cites Psalms 63:12 as a proof text — “the mouths of liars will be stopped (*yisakher*).” By making a pun on the punishments of *askerah* and *yisakher*, this teaching links the offenses with which they are associated, *lashon ha-ra* and lying. The editors attribute this teaching to Rava (BA4), although they note that some claim it came from R. Yehoshua ben Levi (PA1).

A teaching in b. Pesachim 87b attributed to R. Yochanan (PA2) contends that Jeroboam, one of Israel’s most notorious kings, nevertheless deserved some merit because he did not accept *lashon ha-ra*. It cites the story in Amos 7:11 in which Amaziah, the high priest, sends a report to Jeroboam accusing Amos of conspiring against the king and prophesying that he will be overthrown and “die by the sword.” Amaziah’s report, which portrays the prophet as a traitorous critic of the king, is unambiguously malicious, derogatory and harmful. What’s more, the rabbis would have understood Amaziah’s report to be false: In Amos 7:9, the prophet tells him only that the *house* of Jeroboam eventually will fall, not that the king himself will lose the throne and die violently.¹⁶

In b. Sanhedrin 103a, a teaching attributed to Rav Chisda (BA3) says there are four kinds of sinners that do not receive the divine presence — scoffers, liars, flatterers

¹⁶ Hersh Goldwurm, gen. ed., *Talmud Bavli*, Schottenstein ed., (Brooklyn: Masorah Publications, 1997-2001), Pesachim 87b, note 30. In addition, 1 Kings 15 says that God kept his promise to preserve Jeroboam on the throne of Israel for the sake of David, and 2 Chronicles 13:20 says that while Jeroboam suffered serious military defeats during his reign, he was never overthrown. He was “struck down” by the hand of God, not by the swords of men.

and those who speak *lashon ha-ra*. While it doesn't describe *lashon hara* or give an example, this teaching does imply something about its nature by grouping it with other kinds of speech that are malicious, intentionally false or deceptive, or both.

We also should consider a dispute in b. Sotah 35a that begins with a teaching attributed to Rava (BA4) characterizing the spies' report not as a false statement of fact but rather as a misinterpretation.¹⁷ Everywhere the spies went, it says, a Canaanite leader would die. They saw this as evidence that the land "devours its people." However, God had caused the deaths so that the Canaanites would be too pre-occupied to notice the spies or interfere with their mission. According to Rava, God "intended it (the Canaanite deaths) for good but they (the spies) interpreted it for bad."

This is followed by an opposing view attributed to Rav Mesharshia (BA4), who notes that the spies not only said that they felt like "grasshoppers" (that is, insignificant) in comparison to the *nephilim*, the giant inhabitants of Canaan, but also added, "And so we were in their eyes." This proves the spies were liars, Mesharshia concludes, because while they undoubtedly knew their own thoughts, they could not have known what the *nephilim* were thinking. The editors resolve the dispute in favor of Rava: The spies were not lying. While hiding in cedar trees, they overheard the Canaanites speaking about "men who are like grasshoppers in the trees."

This discussion is not about whether to rehabilitate the spies by portraying them as misguided rather than ill intentioned. Regardless of whether the spies lied or misinterpreted the evidence, the rabbis would have viewed a negative report about the land that God had promised to the Israelites as patently malicious and sinful. Instead I

¹⁷ Although this passage does not mention *lashon ha-ra* explicitly, it follows another that does. And in addressing the nature of the spies' sin, it clearly has implications for the meaning of *lashon ha-ra*.

would argue that this disagreement has implications for what kind of speech constitutes *lashon ha-ra*, the spies' offense. In Rava's view, one can commit *lashon ha-ra* not only by lying but also by expressing a malicious opinion or belief. Mesharshia's teaching represents a narrower view that *lashon ha-ra* involves lying about the facts. Regardless of what we think of the editors' somewhat contrived decision in favor of Rava, Mesharshia's opinion is evidence of a Babylonian tradition that not only identified *lashon hara* as slander but also contested efforts to broaden its meaning.

By contrast, the *shem ra* teachings are absent from the Yerushalmi, and only one of its eleven clauses dealing with *lashon ha-ra* explicitly portrays it as a lie or false statement. Y. Pe'ah 1:1.19 seeks to identify the unspecified "evil reports" Joseph makes about his brothers in Genesis 37:2.¹⁸ The clause consists of three explanations, each attributed to a different third-generation *tanna* and followed by an exegesis attributed to R. Judah b. Pazzi (PA4).¹⁹

According to the first explanation, Joseph told his father that his brothers had torn the flesh from a living animal and eaten it. R. Judah's exegesis cites Genesis 37:31 — "they ritually slaughtered a he-goat and dipped his coat in its blood." Not only does this Biblical passage "testify on their behalf (i.e. prove that Joseph's report is false)," so does a subsequent event in Joseph's life: Because he falsely accused his brothers of tearing the flesh from live animals, his father was duped into believing he was torn apart by wild

¹⁸ The scriptural text is confusing. It says, "And Joseph brought their evil reports to their father," implying that he was repeating to Jacob the slanderous comments his brothers were making about each other. It is more commonly read as "Joseph brought evil reports about them to their father." At any rate, whether he originated the reports or merely repeated them, he was guilty of slander.

¹⁹ The term *lashon ha-ra* does not appear in this clause. Instead it uses the same word — *dibah* — associated with the spies' slanderous report about the land. Thus we cannot use it to ascribe a notion of *lashon ha-ra* as slander to either the third-generation tannaitic descriptions of Joseph's reports or the fourth-generation amoraic exegesis, only to the redactors who inserted the teachings into the discussion of *lashon ha-ra*.

beasts. Likewise, because Joseph falsely accused his brothers of treating their father's handmaidens like slaves, he himself was sold into slavery. And because he falsely accused his brothers of "casting their eyes" on local girls, Joseph became the object of unwanted sexual advances from Potiphar's wife.

This example notwithstanding, the predominant view in the Yerushalmi is that *lashon ha-ra* is not a lie but rather truthful — or at least factually neutral speech — that nevertheless clearly denigrates or endangers someone. It is often portrayed as the malicious report of an informant or traitor to an authority figure. For example, a teaching in y. Pe'ah 1:1.25 attributed to R. Abba b. Kahana (PA3) contends that King David's generation, though it refrained from idol worship, was preoccupied with deadly wars on account of informants. It then describes the Biblical characters Do-eg and Achitophel as having been "eager for *lashon ha-ra*." Do-eg was chief herdsman for King Saul during the period when the king became convinced that David was plotting a coup against him. In 1 Samuel 22:9-10, Saul complains to his courtiers that no one will tell him who is abetting his nemesis. Do-eg steps forward to inform the king that David recently visited the high priest Achimelech, who provided him with food and arms.²⁰ We know from 1 Samuel 21:4-10 that this report reflects actual events that Do-eg had recently witnessed.

Achitophel was a trusted advisor who betrayed King David by allying himself with Absalom, David's traitorous son, and urging him to launch an immediate attack against his father. The editors certainly would have been aware that 2 Samuel 17 portrays Achitophel as councilor *par excellence* and describes his advice to Absalom as *to vah*

²⁰ Achimelech's aid was significant in a symbolic sense: The food he provided David and his men was consecrated show bread and the weapon was the sword of Goliath, which had been stored at Nob, where Achimelech officiated.

(good, in the sense of being strategically sound). Indeed, that's why God has to intervene and cause Absalom to reject it. So the malicious reports of Do-eg and Achitophel are both true, the former in the factual sense and the latter in the strategic sense.²¹

We should also recall the teaching in *y. Pe'ah* 1:1.23 that explains the circumstances under which *lashon ha-ra* is permissible. The scriptural proof text is the Biblical story in which Bathsheba and Nathan warn King David of Adonijah's plot to usurp the throne. What makes their negative report permissible — what distinguishes it from those of Do-eg and Achitophel — is that it serves a righteous purpose. They are trying to prevent Adonijah from obstructing the divine plan for the transfer of authority over the people of Israel. Nevertheless, all three teachings depict *lashon ha-ra* as truthful reports to a figure of authority that are unambiguously derogatory or harmful and clearly intended to discredit or endanger the subject.

That is not the case in a pair of stories in *y. Pe'ah* 1:1.24, the first of which is about a group of Jewish linen workers who are summoned by authorities for mandatory labor at an imperial linen works. Absent from the group is one bar Chovetz. During a discussion about what they should eat, one member of the group suggests *chov'tzin*.²²

The innocuous comment calls attention to the fact that bar Chovetz is missing, prompting

²¹ It can be argued that while Do-eg did not lie, he misled Saul by omitting a key fact — that David had secured aid from Achimelech under false pretenses. (David told the priest that Saul had sent him on an urgent secret meeting, leaving him no time to gather food and arms.) For a number of alternative readings, see Joseph Lozovyy, *Saul, Do-eg, Nabal and the "Son of Jesse": Readings in I Samuel 16-25* (Ph.D. diss., University of Edinburgh, 2006), 32-34 and 129 ff. Do-eg saw Achimelech provide aid to David but did not hear the conversation between them. Thus he told the truth as he saw it. Alternatively, he overheard the conversation but recognized it as a ruse to give the priest cover for aiding David. In this scenario, Do-eg omitted misleading information in order to make the truth clear. In any case, the issue is ambiguous. Some rabbinic texts describe Do-eg's report as truthful and others as misleading. They are unanimous, however, in portraying it as malicious and sinful.

²² Although *chov'tzin* obviously refers to a kind of food, the word's meaning is obscure. Roger Brooks translates it as "something beaten" and Heinrich Guggenheimer as "cheese." Some traditional rabbinic sources identify it as a legume.

authorities to send for him. According to the Yerushalmi's editors, R. Yochanan (PA2) described this as an example of *lashon hara* spoken *b'hatznei'a* (western Aramaic for "in private"). Given that the speaker addresses his remarks to a group of tradesmen in a public setting, the usual translation of *b'hatznei'a* seems inappropriate. Roger Brooks suggests that in this context it should be read as "indirectly" or "by innuendo."²³

The second story involves a city councilor in Sepphoris named Yochanan (not the renowned Palestinian *amora* mentioned earlier) who fails to show up at a city council meeting as required. One person in attendance remarks, "Let us visit Rav Yochanan today," thereby alerting those in charge of the assembly to his absence. According to the editors, Reish Lakish (PA2) described this as *lashon hara b'zedek*. Again, however, the common meaning of *b'zedek* — "justly" or "in righteousness" — doesn't seem to fit the circumstances. Brooks translates it as "explicitly." In contrast to the speaker in the first story, this one refers to Yochanan by name. Others suggest "in *false* righteousness." Although the speaker piously suggests that he and his companions at the meeting do a good deed — visit Yochanan — his real intent is to call attention to their colleague's absence.²⁴

In any case, falseness — at least in the factual sense — is not an element in these examples of *lashon ha-ra*.²⁵ More important, the content of the remarks is not obviously

²³ Roger Brooks, trans., *Yerushalmi Pe'ah. The Talmud of the Land of Israel: A Preliminary Translation and Explanation*, vol. 2 (Chicago: The University of Chicago Press, 1990), 66.

²⁴ *Ibid.*, 67, note 110. The second interpretation is supported by what can be read as a false compliment: The story introduces Yochanan without an honorific but the speaker, apparently feigning deference or being sarcastic, refers to him as "Rav Yochanan."

²⁵ One might argue that the speakers are "false" in the sense that they have disguised their malicious intent behind seemingly innocuous statements. Even that reading, however, would reflect a different — or at least

negative and the intent of the speakers is not unambiguously malicious. Indeed the point of these teachings seems to be that even apparently benign speech can be *lashon ha-ra* if it has the effect of discrediting or endangering someone. This reading is reinforced by a cryptic passage introducing the two stories. R. Yochanan is asked what qualifies as *lashon ha-ra*. His response: *ha-omro v-ha-yodo*. Literally, this means “the one who speaks it and the one who knows it.” Given the context of the stories that follow, Brooks suggests, “The one who says it [so that] someone knows it.”²⁶ Though the remarks seem innocuous and the speakers’ intentions are unclear, the words nevertheless result in harm to bar Chovetz and Yochanan. Their effect qualifies them as *lashon ha-ra*. This notion is broader and more restrictive of speech than those that portray *lashon ha-ra* as patently malicious and harmful comments, regardless of whether they are true or false.

Notions of *lashon ha-ra* as truthful or innocuous speech are also found in the Bavli, but most of them are attributed to or associated with Palestinian rabbis, and many are disputed or qualified. In b. Sotah 35a, during an extended discussion about the incident of the spies, the editors note that before lying about the land they reported a truth about it — that it flowed with milk and honey. To explain this, the editors cite a teaching attributed to R. Yochanan (PA2) speaking in the name of R. Meir (T3): “*Lashon ha-ra*

broader — notion of *lashon hara* than the tradition that portrays it as a clearly derogatory and malicious statement that misrepresents the facts.

²⁶ Brooks, *Yerushalmi Pe'ah*, 66. Guggenheimer translates Yochanan’s statement as “the one who speaks it and the one who accepts it,” but this is problematic. When referring to those who believe *lashon hara*, the rabbinic texts use the root *kuf-bet-lamed* (to accept or receive), never *yud-dalet-ayin* (to know, recognize or find out). What’s more, the stories that follow clearly focus on the sin of the speaker, not those who accept it.

which has no truth at its beginning will not endure in the end.”²⁷ Yochanon’s statement is ambiguous, but it seems to portray *lashon ha-ra* as a malicious admixture of truth and falseness, the former aimed at making the latter believable.²⁸

In b. Pesachim 118a, a teaching attributed to Rav Sheishet (PA3) speaking in the name of R. Elazar (T3) identifies three kinds of people who should be “thrown to the dogs” — those who speak *lashon ha-ra*, those who accept *lashon ha-ra* and those who bear false witness. Though we can’t be sure this teaching intends to portray *lashon ha-ra* as truthful or factually neutral speech, it does distinguish *lashon ha-ra* from false testimony while still implying malicious intent.²⁹

The Bavli explicitly depicts *lashon hara* as truthful speech in an un-attributed two-part story in Bava Batra 164b. In the first part, Rabbi (Judah ha-Nasi, T4, the purported codifier of the Mishnah) expresses displeasure with the preparation of a sealed document. When his son, R. Shimon, tells him that the scribe Yehuda Chayata prepared it, Rabbi rebukes him for speaking *lashon ha-ra*. In the second part, Rabbi is pleased about the penmanship of a section of scripture he has just read. When R. Shimon tells him that Yehuda Chayata copied it, his father again warns him not to speak *lashon ha-ra*. There is no suggestion that R. Shimon is lying or mistaken in either exchange. Indeed the reader assumes that his remarks are truthful, accurate and, at least in the second instance

²⁷ The verb is *mitkayeim*. It normally means to live or exist but is better translated here as “endures.” See Isidore Epstein, supervising ed., *The Babylonian Talmud*, Sotah 35a, Quincentenary ed. (London: The Soncino Press, 1978), 171.

²⁸ Ibid. See also Goldwurm, *Talmud Bavli*, Sotah 35a.

²⁹ This teaching, which appears in b. Makhut 23a in another context, also deals with the relative culpability of the listener/believer.

and possibly the first, not even malicious. Yet the story portrays both of the statements, one derogatory and the other laudatory, as *lashon ha-ra*.

To explain how even an innocuous or positive *truthful* comment about someone can be *lashon ha-ra*, the editors cite a teaching attributed to Rav Dimi, a fourth generation Babylonian *amora* who, according to the literature, traveled extensively in Palestine: “A person should never speak about his friend’s good qualities, for this may lead to comments about his bad qualities.”³⁰ Again, the assumption is that such statements about a friend’s good qualities are true and not malicious. It is their unintended consequences (or, in this case, potential consequences) that determine whether they are *lashon ha-ra*.

Like the Yerushalmi’s two-part story about bar Chovetz and Yochanon, this teaching represents a tradition that sought to expand the concept of *lashon ha-ra* to include remarks that, although apparently benign in their content and/or intent, were potentially demeaning or harmful in their effect. However ethically and politically astute this view, it does not go unchallenged in the Bavli. In b. Arakhin 15b the editors discuss “what constitutes *lishna bisha*.” They first cite Rava (BA4) speaking in the name of Rabbah (BA3), who gives an example: telling someone “there is a fire in so-and-so’s house.” Rava seems to be arguing that this innocuous and presumably true statement might cause some people to conclude that so-and-so is a glutton because he always has food cooking in his home. Or it might cause some people to infer that so-and-so is a

³⁰ Rav Dimi’s teaching also appears in b. Arakhin 16a as part of the Bavli’s long discussion about *lashon ha-ra*. It’s not clear if the compliment is forbidden because it might evoke a negative comment from a listener or because it might cause the speaker himself to add a negative qualifying comment.

wealthy and especially gracious host who can be taken advantage of.³¹ Rava's noted rival, Abaye (BA4), objects: The speaker is merely stating a neutral fact. How can this be *lishna bisha*?

The editors resolve the dispute by modifying Rava's example. The speaker must "produce (verbalize) *lishna bisha*" by saying, "Where else can one find a fire but in so-and-so's house where there is [always] meat and fish." In other words, a truthful statement of fact is *lashon ha-ra* only when the malicious intent and potentially derogatory or harmful content is explicit, or at least can be reasonably inferred.

Regardless of what we think about the resolution of this debate, it appears that the editors were trying to reconcile traditions that disagreed about the extent to which seemingly innocuous remarks qualified as *lashon ha-ra*. Rava's opinion represents a broader notion of *lashon hara* that seeks to proscribe speech even if it is not overtly negative or malicious. The tradition represented by Abaye resists — or at least finds problematic — the idea that these kinds of comments constitute such a serious sin. According to this argument, speech should be restricted only if it is clearly demeaning/harmful and malicious.³²

The editors express similar reservations in response to a two-part clause in b. Bava Batra 164b immediately following the story about Rabbi and his son. The first teaching, attributed to Rav Amram (BA3) in the name of Rav (BA1), contends that there are three sins which everyone commits "every day" — having sinful thoughts, failing to

³¹ Goldwurm, *Talmud Bavli*, Arakhin 15b, notes 58-61.

³² It is also possible that this clause pertains to another of the contested aspects of *lashon ha-ra* — the culpability of the listener/believer. Rava's position emphasizes the responsibility of the speaker. Abaye's implies that the speaker should not be held responsible for the unintended inferences or actions of the listener/believer.

pray earnestly and speaking *lashon ha-ra*. A supporting teaching attributed to Rav Yehuda (T3) contends that most people are guilty of thievery, a minority of sexual immorality and everyone of *lashon ha-ra*. The editors are fully aware of what's at stake in such teachings. How can such a terrible sin be universal and ubiquitous, they wonder. They conclude that Rav Amram and Rav Yehuda must have been referring not to *lashon ha-ra* but rather to *avak lashon ha-ra* (literally, the dust of *lashon ha-ra*).

This is the only reference to *avak lashon ha-ra* in the Bavli. It refers not only to the ubiquitous but unidentified speech acts mentioned by Rav Amram and Rav Yehuda but also to the routine and benign comments cited in the preceding passage involving Rabbi and Rav Dimi. In the view of the Bavli's editors, speech that is not obviously malicious or harmful appears to constitute a less serious sub-category of *lashon hara*. This editorial comment, like the resolution of the debate between Rava and Abaye, represents a nod to a tradition that contests the extent to which *lashon hara* pertains to truthful speech, especially innocuous or positive remarks that are not clearly malicious.

We can contrast this view with that in y. Peah 1:1.22, which consists of two teachings, each beginning with the phrase, "Come and see how *kasheh* (severe) is *avak lashon hara* (the consequences of *lashon hara*) that even scripture records *divrei badai* (false words or lies) in order to preserve peace . . ." ³³

The first teaching, attributed to R. Hanina (PA2), is based on Genesis 18:12-13. When God informs Sarah that she will have a son, she laughs skeptically, noting that she is past her child-bearing years and Abraham is an old man. But in recounting Sarah's

³³ Brooks, *Yerushalmi Pe'ah*, p. 65. He translates the line as: "Come and see how terrible is the dust kicked up by an act of slander. For the following verses of scripture must resort to a white lie in order to preserve peace. . ." Slander is problematic here, however, because it connotes a lie while the point of the clause is that sometimes one must lie in order to avoid the consequences of telling the whole truth or remaining silent.

comments during a conversation with Abraham, God omits the fact that she doubted her husband's virility. According to this teaching, God fudged the truth so that Abraham would not resent or become angry with his wife.

The second teaching, attributed to Rabban Shimon b. Gamliel (T3), cites Genesis 50: 16-17. After the death of their father, Joseph's brothers worry that their powerful sibling might now be emboldened to take revenge on them. To preserve their rapprochement with Joseph, they send a message to him in Egypt claiming — falsely — that their father's dying wish was for him to forgive his brothers.

Clearly this clause belongs to the tradition that emphasizes the gravity of *lashon hara*. It also identifies the dire consequence of the offense — the disruption of peaceful relations among close companions. But we should take note of a key difference between the first teaching and its parallels, none of which use the phrase *lashon ha-ra*. Instead they begin, "Come and see how important it is to bring about peace."³⁴ Read as an intertext to these parallels, Pe'ah 1:1.22 does more than just emphasize the gravity of *lashon hara* and the importance of preserving peaceful relations. In arguing that one must lie, or at least withhold the full truth, in order to avoid the dire consequences of *lashon hara*, this clause implies that being false is not an essential element of the offense. Indeed the point seems to be that in these cases, telling the whole truth (or remaining silent) would have been a terrible sin. Whereas in the Bavli, *avak lashon ha-ra* is a less serious category of sinful speech that encompasses routine or unintentionally harmful remarks, in

³⁴ Brooks, *Yersushalmi Pe'ah*, p. 65, notes 108 and 109. The parallels to the first teaching are in b. Yev. 65b, b. B.M. 87a, Gen. Rab. 48: 18, Lev. Rab. 9: 9 and Num. Rab. 11: 7. Parallels to the second are in Gen. Rab. 100: 8 and Deut. Rab. 5: 15.

the *Yerushalmi* the term signifies speech acts that are so sinful that one must lie or tell only a partial truth in order to avoid them.

Public speech or private speech

There is another similarity between the two Biblical incidents cited in the Mishnah about *lashon ha-ra*. Numbers 13:26 tells us that the spies made their report not just to Moses and Aaron but to “the whole Israelite people” in what was clearly some kind of formal gathering. The Mishnah makes an analogy between the incident of the spies and the hypothetical case in Deuteronomy 22 of the husband who accuses his wife of having not been a virgin when they married. Like the spies, the husband commits his sin in a public forum: His accusation is brought before a court, where his wife’s parents have an opportunity to present evidence — the stained linens from the marriage bed — proving that their daughter was a virgin on her wedding night. In the Mishnah’s view, then, *lashon ha-ra* involves a public speech act — words spoken in an official or public setting with the understanding that they will be widely disseminated and discussed. In the Bavli, this notion is reflected in the tradition that uses the term *shem ra* and thereby follows the Mishnah in linking *lashon ha-ra* to the unambiguously false public accusations of the husband in Deuteronomy.

Another tradition in the Bavli, however, depicts *lashon ha-ra* as a sin that occurs out of public view. It uses Psalms 101:5 as a proof text: “He who speaks evil about his neighbor *ba-seiter* (in secret), him I will cut down.” We have already mentioned, for example, three teachings attributed to Rav Chisda (BA3) that emphasize the gravity of *lashon ha-ra*. Two of them cite Psalms 101:5 as a proof text, thereby depicting it as a

private or surreptitious sin.³⁵ In b. Ta'anit 7B, a teaching attributed to R. Shimon ben Pazi (PA3) uses a different proof text for the same effect. In arguing that rain is withheld “only because of those who speak *lashon ha-ra*,” it cites Proverbs 25:23: “A north wind produces rain, and *l'shon sater* (a hidden tongue or secret speech) a glowering face.”

We can also include in this tradition the teaching in b. Arakhin 15b attributed to R. Yochanan (PA2) that identifies *tzaraas* as the punishment for *lashon ha-ra*. It does so by citing Psalms 101:5 and playing on the words *tzaraas* and *atzmitz* (cut down). It is noteworthy that this teaching is followed immediately by another attributed to R. Yochanan's nemesis, Reish Lakish (PA2), which also makes a pun. But as we saw in the first section, this pun plays on the words *tzaraas* and *motzi shem ra*, the public speech of the husband in Deuteronomy. Thus, while both belong to the tradition emphasizing the gravity of *lashon ha-ra*, the teachings attributed by the Bavli to these famous Palestinian rivals use puns to stake out competing notions about what the offense entails. The first, by citing Psalms 101:5, is part of the *ba-seiter* tradition that depicts *lashon ha-ra* as secret or private speech. The second belongs to the *shem ra* tradition that portrays it as public speech.

Although the *shem ra* and *ba-seiter* traditions are absent from the Yerushalmi, the examples and descriptions it offers of *lashon ha-ra* nevertheless vary in regard to whether the offense involves public or private speech. The Biblical incidents referenced in y. Pe'ah 1:1.25 are unambiguously public speech acts. When Do-eg makes his report to Saul, the king is standing on a ridge, spear in hand, “with all his courtiers in attendance upon him.” And not only did Achitophel advise “Absalom and the elders of Israel” to attack David immediately, his advice, like the spies' report, was conveyed to “all the

³⁵ One of Rav Chisda's teachings also appears in b. Sotah 5A.

people of Israel.” Compare these settings to the one in y. Pe’ah 1:1.23, the passage that explains the circumstances under which *lashon ha-ra* is permissible. The scriptural proof text (1 Kings 1: 14-32) indicates not only that the incident occurred in the private setting of King David’s bedchamber but that Bathsheba and Nathan made their reports to the aging King separately so they would be more effective.³⁶

Y. Pe’ah 1:1.21 begins with a teaching attributed to Rabbi Ishmael (T2) that equates *lashon hara* to *r’chilut* (gossip or tale bearing).³⁷ It depicts *lashon ha-ra* not as words spoken in a public setting or official forum but rather as private, unofficial exchanges between individuals. This view is re-enforced by a supporting teaching attributed to Rabbi Nehemiah (T3). Making a double pun, it warns against being a *rocheil* (peddler) who “carries *devarim* (things or words) from this person to that person and *devarim* from that person to this person.” The singular subjects and verbs explicitly depict these as private, one-on-one exchanges.

As the examples here and in the previous sections indicate, the Yerushalmi typically portrays *lashon ha-ra* as one person speaking to another about a third person (or persons). Sometimes these exchanges occur in a public setting, sometimes in private. The question we must consider is how significant the public/private distinctions were to Palestinian rabbis. While we can’t go so far as to conclude that they were merely incidental — as I have noted, many of the *shem ra* and *ba-seiter* teachings found in the Bavli are attributed to Palestinian sources — it does seem justified to conclude that the public/private issue was less important to the editors of Yerushalmi than to the editors of

³⁶ Abishag, David’s Shunammite concubine, was attending him, but this hardly qualifies the remarks as public.

³⁷ The proof text is Leviticus. 19: 16: “Do not walk around *rachil* (gossiping or tale bearing) among your people.”

the Bavli. The former never specifically address it while the latter not only juxtapose the *shem ra* and *ba-seiter* traditions, they attempt to resolve the tension between them just as they do the conflict regarding the gravity of *lashon ha-ra*.

Immediately after the clause in b. Arakhin 16a that reconciles the contradiction about whether *tzaraas* or the priestly garb atones for *lashon ha-ra*, the redactors of the Bavli raise another difficulty. They cite a pair of *baraitas* that argue that the burning of incense by the high priest atones for *lashon ha-ra*. One of them, attributed to the academy of R. Yishmael (T3), reasons: “Let something offered *ba-chashai* (in secret or private) atone for a sin that is committed *ba-chashai*.”³⁸ The problem, of course, is that we have just learned that the priestly garb atones for *lashon ha-ra*. The editors reconcile this contradiction by explaining that the burning of incense by the high priest in the seclusion of the holy of holies atones for *lashon ha-ra* spoken *b'tzinah* (eastern Aramaic: in private) while the priestly garb atones for *lashon ha-ra* spoken *b'parhesia* (eastern Aramaic: in public). In doing so, they confirm the existence of competing notions about whether *lashon ha-ra* pertains to public or private speech.

We should also note that *lashon ha-ra b'zinah* has a different meaning here than its western Aramaic equivalent does in the Yersuhalmi. The Bavli's editors use the term to distinguish sinful words spoken in private or secret from those spoken in public. On the other hand, the remark in y. Pe'ah 1:1.24 described as *lashon ha-ra b'hatznei'a* occurs in a public setting and is heard by many people. The Yerushalmi uses the term to denote a public speech act in which the speaker's malicious intent, the harmful content of his remarks or both are private in the sense that they are not explicit.

³⁸ These two *baraitas* also appear word for word in b. Yoma 44a during a discussion about the procedures for the burning of the incense and its atoning power.

The culpability of the listener/believer

Thus far we have looked at similarities between the two Biblical incidents referred to in the Mishnah dealing with *lashon ha-ra*. Now I would like to consider an important difference. The sin of the husband in Deuteronomy involves speaking while the sin of the Israelites involves listening and believing. On an ethical level, one might consider this an astute observation about the relationship between the speaker and the listener/believer. A person cannot be persuaded to believe something derogatory or harmful about another unless it is first expressed. And harmful words spoken about another will not be effective unless someone listens to and believes them. Because it focuses on the punishment of the people rather than the spies, the Mishnah appears to emphasize the culpability of those who, as the rabbis typically put it, *m'kabeil* (accept or receive) *lashon ha-ra*.³⁹

A number of passages in the Talmuds acknowledge the role of listener/believer in the sin of *lashon ha-ra*. The brief description of *lashon ha-ra* in the teaching attributed to R. Yochanan (PA2) that introduces y. Pe'ah 1:1.24 — “speaking so that another knows” — recognizes the roles of the speaker and the listener. So too does the aforementioned teaching attributed to Yochanan in b. Sotah 35a — *lashon ha-ra* which does not begin with an element of truth will not endure in the end. The same idea is implicit in the ruling by the editors of the Bavli that *tzaraas* atones for *lashon hara* that is effective — that is, believed by someone — while the priestly garments atone for *lashon ha-ra* that is

³⁹ The Hebrew word with the root *kuf-bet-lamed* is usually translated as “receive” or “accept” and implies some agency on the part of the person who hears *lashon ha-ra*. Obviously this includes believing it. In some cases it might also include listening to *lashon ha-ra*, in the sense of considering it. For this reason I refer to the listener/believer.

ineffective. Still, these teachings do not follow the Mishnah in explicitly imputing *culpability* to the listener/believer.

There is, however, a Talmudic tradition that does. In arguing that anyone who speaks or accepts *lashon ha-ra* should be thrown to the dogs, the teaching in b. Pesachim 118a attributed to Rav Sheishet (PA3) implies that the speaker and listener/believer are equally complicit in the sin. Similarly, an un-attributed teaching in y. Pe'ah 1:1.26 explains why *lashon ha-ra* is called “the three-[pronged weapon]” — because it kills not just the speaker and the person who is spoken about, but also the one who accepts it.⁴⁰ Here again the speaker and listener/believer seem to be equally complicit in that they share the same fate. Also part of the tradition emphasizing the culpability of the listener/believer are the aforementioned teachings that cite the dire consequences of King David’s acceptance of *lashon ha-ra* and the beneficial consequences of King Jeroboam’s refusal to do so.⁴¹ It is noteworthy that only one of these four teachings has a Babylonian source — and that source, Rav (BA1), is said to have spent years training in Palestine. We should not think of this tradition as opposing the view that speaking *lashon ha-ra* is a sin. Rather, it represents an expansive notion of *lashon ha-ra* that extends culpability to the listener/believer as well as the speaker.

There is a counter-tradition, however, that finds this view problematic. Significantly, it appears only in the Bavli, although some of the sources are Palestinian. A lengthy clause in b. Shabbat 56a-b, for example, discusses an incident in 2 Samuel 16 in which King David, who has fled Jerusalem during the rebellion of his son Absalom, is

⁴⁰ As noted above, a parallel attributed to unnamed Palestinian sources appears in b. Arakhin 15b.

⁴¹ The first, in Shabbat 56b, is attributed to Rav Yehuda (BA2) in the name of Rav (BA1). The second, in Pesachim 87b, is attributed to R. Yochanan (PA2).

approached by the servant of Saul's grandson, Mephiboshet. When David asks about Mephiboshet, the servant responds that his master remains in Jerusalem in anticipation of being restored to his grandfather's throne. The implication is that Mephiboshet is disloyal to David, or at least eager to see him deposed.

A ruling attributed to Rav (BA1) argues that David's response to the servant — “everything that belongs to Mephiboshet now belongs to you” — proves that he believed this derogatory report and was, therefore, guilty of accepting *lashon ha-ra*. But that view is disputed in a teaching attributed to Samuel (BA1), who argues that David did not violate the prohibition against *lashon ha-ra* because he had previously observed “recognizable signs” — that is, independent evidence — of Mephiboshet's disloyalty.⁴²

The key to understanding this discussion is that the anonymous editors are unambiguous in portraying Mephiboshet as a bad character who was disloyal not just to David but also to God. In other words, they leave no doubt that the servant's report was true. The issue at stake, then, is whether believing such a truthful derogatory report is sinful. (In this respect, it also has implications for the issue of whether *lashon ha-ra* pertains to truthful speech.) Rav's teaching that David accepted *lashon ha-ra* represents a strict view of the listener/believer's culpability in that it characterizes accepting a negative report as *lashon ha-ra* regardless of the circumstances. Samuel's teaching that David did not accept *lashon ha-ra* mitigates the listener's culpability by taking into account factors such as independent evidence and the trustworthiness of the speaker.

Here we should recall the disagreement in b. Arakhin 15b between Rava and Abaye (both BA4) about whether an innocuous true statement — “There is a fire in so-

⁴² According to this view, David's independent knowledge was confirmed when he returned to Jerusalem. Instead of joyfully welcoming the king's return, Mephiboshet appeared before him looking unkempt and then became disrespectful upon hearing that the king had given way his property.

and-so's house" — constitutes *lashon ha-ra*. Like the dispute in b. Shabbat 56 a-b, this one juxtaposes expansive and narrow notions of *lashon ha-ra*, only here they are presented in respect to the speaker. In describing a neutral statement of fact as *lashon ha-ra*, the teaching attributed to Rava emphasizes the speaker's responsibility for the bad effects of even innocuous true statements. The teaching attributed to Abaye, however, seeks to mitigate the speaker's responsibility by arguing that other factors — intent, content and facticity — must be considered.

The most explicit effort to mitigate the sin of the listener/believer is in b. Niddah 61a, which includes a *baraita* that mentions "the pit into which Ishmael threw all the bodies of those he killed *b'yad* (through) Gedaliah." The reference is to Jeremiah 41: 9, the story of Gedaliah ben Achikam, who was appointed by King Nebuchadnezzar to govern the Jews who remained in the Holy Land after the destruction of the first Temple. Gedaliah refused to believe a warning from Yochanon ben Kareiach that Ishmael ben Netaniah intended to assassinate him. Subsequently Ishmael killed Gedaliah and more than 100 others, and then threw their bodies into a large pit.

The Bavli's editors wonder: Why does scripture blame Gedaliah for the mass murder? Answering their own question, they explain: "Since he should have heeded Yochanon (ben Kareiach's) advice but did not, it is as though he killed them." Furthermore, they note, this incident supports a teaching by Rava (BA4): "*Lishna bisha* — although one should not accept it, one should be mindful of it." This teaching distinguishes between believing that a negative report is true and suspecting that it might be.

The editors then relate an un-attributed story that traces this principle back to an important *tanna*, R. Tarfon. When a group of reputed murderers comes to Tarfon and ask that he hide them from authorities, the rabbi faces a dilemma. If he believes the reports that these Jews are murderers and doesn't hide them, then authorities might find and execute them. But if he refuses to believe the reports and hides them, then he might be committing the sin of protecting murderers. (In the process, he also might open himself and others up to government charges that they abetted criminals.) Citing the same principle later taught by Rava, Tarfon opts to suspect that the reports are true and tells the men to hide themselves.

Of course, the distinction between believing and merely suspecting is open to debate — and has been the subject of much rabbinic commentary. Regardless of where the line is drawn, however, this passage represents a tradition that contends that one may, at least under certain circumstances, listen to and act on derogatory information about fellow Jews. By doing so, it mitigates the culpability of the listener/believer.

CHAPTER II

RABBINIC NOTIONS OF *LASHON HA-RA* IN SOCIO-HISTORICAL CONTEXT

Competing ideological motivations

I begin this chapter by examining the contested notions of *lashon ha-ra* discussed above in the context of two competing ideological motivations among the early rabbis. The first was their desire to repudiate sectarian rhetoric, which they associated with the Great Revolt of 66 CE and the ensuing Roman persecutions. The second was their desire to establish a stable Jewish identity in a post-Temple world in which Jewish identity was highly variable and uncertain.

We should be careful not to overstate the extent of Jewish sectarianism at the end of the Second-Temple era. As others have observed, Josephus is our primary source on the subject, and his assessment is ambiguous. In *Jewish Antiquities* he emphasizes the differences and animus among various Jewish sects before and during the Great Revolt. In *Against Apion*, however, he writes of the “remarkable unity” of Jewish society, describing it as having “perfect uniformity in habits and customs.” Although the latter is an apologetic that no doubt exaggerates Jewish conformity and solidarity, it indicates that Jews retained a sense of solidarity even in the face of the sectarian rivalries described in

the former.¹ To the extent that this was true, it was likely due to the fact that as much as 95 percent of the Jewish population of Palestine was not affiliated with a sect.²

Still, because the sects were comprised mainly of Jewish society's religious and political elite, their influence far exceeded their numbers, and sectarianism "set the tone of Jewish life as a whole" in the period leading up to the war with Rome.³ The Great Revolt cannot be explained simply in terms of a persistent Jewish longing for independence aggravated by Roman oppression. Beginning in 63 BCE, when Pompey's army marched into Jerusalem and ended the monarchy in response to a Jewish civil war, Rome's increasing intrusion into Palestinian affairs over the next century was to a great extent the result of social and political unrest incubated in an atmosphere of Jewish sectarianism. The rebellion of 66 CE was at times as much a war among Jews as a war between Jews and Romans.

One characteristic of late Second Temple-era sectarianism was what Luke Johnson calls the hellenistic rhetoric of slander. Adherents of rival philosophical traditions employed "stereotyped polemics" to identify their opponents and stake out truth claims. These invectives were intended not so much to present facts as to establish boundaries between Us and Them — those who advocated the correct way of thinking and living and those who advocated incorrect ways. Many Jews perceived Judaism as a philosophy in this sense, arguing not just with non-Jews but also among themselves about

¹ Daniel Boyarin, *Borderlines* (Philadelphia: University of Pennsylvania Press, 2004), 53. The direct quotes from Josephus are his translations.

² Albert L. Baumgarten, "Ancient Jewish Sectarianism," *Judaism* 47, no. 4 (1998): 387.

³ *Ibid.*

its nature, values and worth. So it is not surprising that in promoting and defending their ideas about Judaism, Jews engaged in the rhetoric of slander.⁴

Philo, Josephus and the author of the Book of Wisdom (of Solomon) were among the Hellenized diaspora Jews who employed it against both gentiles and other Jews.⁵ And while textual material is scarce, we also have evidence of such rhetoric within the Jewish society of Palestine. In the sectarian documents found at Qumran, for example, “the rule of thumb is that you cannot say enough bad things about outsiders.”⁶ The so-called *Community Rule* (1QS) refers to other Jews as “men of the lot of Satan” whose lives are marked by “greed and slackness . . . wickedness and lies, haughtiness and pride, falseness and deceit, cruelty and abundant evil . . .” The Qumran *War Scroll* (1QM) describes these wicked Jews as “the ungodly of the covenant” and counts them among the forces of evil — the Sons of Darkness — with whom their righteous community will do battle in the imminent apocalypse.⁷

There is also evidence of the rhetoric of slander among Jews in the New Testament disputes between Jesus and his followers and their adversaries. In John’s account of the great controversy in Jerusalem during the Feast of Tabernacles, for example, Jesus the Essene rebuts the Pharisees’ claim that they are the descendants of Abraham, saying, “Your father is the devil and you choose to carry out your father’s

⁴ Luke T. Johnson, “The New Testament’s Anti-Jewish Slander and the Conventions of Ancient Polemic,” *Journal of Biblical Literature*, 108, no. 3 (1989): 429-430 and 434.

⁵ *Ibid.*, 434-437. As Johnson observes, Josephus castigates Justus of Tiberias, a Jew who reviewed *Jewish Wars*, as “a charlatan, a demagogue and a deceiver.” He also describes the Sicarii, a murderous Jewish sect, as “impostors and brigands . . . slaves, the dregs of society, and the bastard scum of the nation,” and he refers to the Zealots, another Jewish sect, as “iron-hearted men” who were “blinded by fate” and would inevitably suffer divine punishment for profaning the Temple.

⁶ *Ibid.*, 439.

⁷ *Ibid.*, 439-440. The translations are Johnson’s.

desires. He was a murderer from the beginning and is not rooted in the truth.” In response, the Pharisees mock Jesus, saying, “Are we not right in saying that you are a Samaritan; and that you are possessed.”⁸

Whether this exchange actually occurred is beside the point. The account is important for what it tells us about Jewish sectarian rhetoric in the first century. Those hearing or reading it are not likely to have thought that Jesus really believed the Pharisees were Satan’s offspring or that the Pharisees really believed this trouble-making Essene was a demonic Samaritan. (They had, in fact, just acknowledged that he was a Galilean.) Instead, this is an example of “the time-honored practice of name-calling.”⁹ The invectives that Jesus and his antagonists hurl at one another are tropes intended to marginalize or exclude their Jewish opponents as deviant and aligned with evil.

A well-known story in b. Gittin 55b-56a provides insight into how some rabbis viewed sectarianism and the rhetoric associated with it. The story purports to explain how the destruction of the Second Temple came about “as a result of a Kamza and a bar Kamza.” The former is a friend of a prominent Jerusalemite and the latter his enemy. The man plans a party to which his servant mistakenly invites bar Kamza instead of Kamza. Upon seeing his enemy at the party, the host becomes incensed, accuses him of “telling tales about me” and orders him to leave. Desperate to avoid the shame of being evicted from the party, bar Kamza offers to pay first for what he eats and drinks, then for half the party, then for the entire party. Each time the host refuses and finally “takes him by the hand and throws him out.”

⁸ John 8: 44-48, from Donald Ebor, ed., *The New English Bible* (New York: Oxford University Press 1971).

⁹ Adele Reinhartz, “The Gospel of John: How ‘the Jews’ Became Part of the Plot,” in *Jesus, Judaism and Christian Anti-Judaism: Reading the New Testament after the Holocaust*, eds. Paula Fredriksen and Adele Reinhartz (Louisville and London: Westminster John Knox Press, 2002), 108.

Assuming that those who witnessed this affront without intervening are on the side of his enemy, the humiliated bar Kamza decides to “inform on them.” He tells Roman authorities that the Jews of Jerusalem are plotting a rebellion and suggests that the government test their loyalty by sending them a calf to be sacrificed in honor of the emperor. They select a healthy calf, but bar Kamza secretly blemishes it, making it unsuitable for sacrifice. At the Temple, some Jewish leaders want to sacrifice the calf anyway to preserve good relations with Rome, but R. Zechariah ben Avkolus objects because doing so would amount to an official sanction of improper sacrifices. Using similar reasoning, he also vetoes a proposal to kill bar Kamza. The blemished calf is refused, and the Great Revolt ensues. Thus, concludes R. Yochanan (PA2), to whom the story is attributed, “The *anvetanuto* of R. Zechariah ben Avkolus destroyed our temple, burned our sanctuary and exiled us from our land.”¹⁰

Anvetanuto is problematic in this context. The story seems to criticize R. Zechariah for exhibiting a legal punctiliousness that is blind to the crisis at hand. But as Richard Kalmin points out, such a reading contradicts the usual meaning of *anvetanuto* in early rabbinic literature, where it typically is translated as humility, modesty, patience or forbearance.¹¹

A parallel in Lamentations Rabbah 3:4 includes several important differences that help clear up the problem.¹² First, the parallel takes notice that “R. Zechariah was there (at

¹⁰ Though no doubt apocryphal, the story of Kamza and bar Kamza might be loosely based on actual events. According to Josephus, the revolt against Rome began when the temple priests refused a sacrifice to the emperor.

¹¹ Richard Kalmin, *Jewish Babylonia between Persia and Roman Palestine* (Oxford and New York: Oxford University Press, 2006), 43-50.

¹² I am using Paul Mandel’s translation of a version found in the Cairo Genizah. It is free of additions and corruptions based on the Bavli that appear in most printed editions of Lamentations Rabbah. In this version,

the party). He could have protested [bar Kamzora's treatment] but didn't." Second, bar Kamzora's first act when he comes before the Roman ruler is to accuse the temple priests of eating the sacrifices he sends them instead of offering them on the altar. The ruler rebukes him, saying, "You say *mila bisha* (Aramaic: an evil thing) about them because you want to create a *shem bish* (Aramaic: bad name) for them."¹³ Finally, in the scene at the temple, no one suggests killing bar Kamzora. The only dispute is whether to sacrifice the blemished calf, and it is an unnamed priest, not R. Zechariah, who forbids it. The story concludes: "Therefore, people say the temple was destroyed on account of [bar] Kamza and [bar] Kamzora. Said R. Yose bar R. Abun (PA5), 'The *anvetanuto* of R. Zechariah bar Avkolus burned the temple.'"

This version explicitly portrays bar Kamzora as trying to slander other Jews. What's more, the government official's assumption that bar Kamzora has come before him to denigrate his Jewish enemies implies that such behavior is routine. In this context, where the only mention of R. Zechariah before the final line is the pointed criticism of his silence at the party, the reference to his *anvetanuto* makes more sense: He was too timid or fearful of offending the host to protest bar Kamzora's public humiliation. Thus some translations have suggested that *anvetanuto* be read as "lack of self-confidence or "desire to please others."¹⁴

the man's friend is bar Kamza and his enemy is bar Kamzora. See Paul Mandel, "The Loss of Center: Changing Attitudes Towards the Temple in Aggadic Literature," *Harvard Theological Review* 99, no. 1 (January, 2006): 26.

¹³ Mandel, "The Loss of Center," p. 29. *Mila bisha* appears to signify an untrue statement intended to embarrass or insult. Thus the ruler rebukes bar Kamzora for trying to slander his fellow Jews, using the Aramaic equivalent of *motzi shem ra*.

¹⁴ Kalmin, *Jewish Babylonia between Persia and Roman Palestine*, 45. See also Mandel, "The Loss of Center," 27, where it is translated as "timidity." As Kalmin notes, however, even these translations are not

Mandel argues that the references to R. Zechariah are later additions to an original Palestinian version, now lost, in which he is absent.¹⁵ Even if he is correct, the story still reads as a criticism of sectarianism and sectarian rhetoric at the time of the Great Revolt: Upper class Jewish society was so divided that a host could love one man while loathing his namesake. (Interestingly, this sectarianism makes no sense to the servant, the one common Jew in this story. He is unable to distinguish friend from foe.) The destructive discourse among the Jewish elite — which included public humiliation, slander and informing on one another — brought down the wrath of Rome upon Jerusalem and the Jewish people. In some versions of this story, there appears to be pointed criticism of religious leaders who timidly acquiesced to this discourse instead of condemning it.

There is further textual evidence that some early rabbis understood the kind of rhetoric referenced in the story of Kamza and bar Kamza to be *lashon ha-ra*. A teaching in b. Yoma 9b contends that the Second Temple was destroyed on account of *sinat chinam* (baseless hatred). The passage concludes that because the First Temple was destroyed on account of the three cardinal sins (idolatry, sexual sin and murder), *sinat chinam* is equal to all of them combined. We have already identified teachings in both the Yerushalmi and the Bavli that make the same claim about *lashon ha-ra*. This indicates

without their difficulties. In virtually all its other uses in rabbinic literature, *avetanuto* carries a positive connotation, not a negative one as it seems to here.

¹⁵ Mandel, “The Loss of Center,” p. 28. He notes that the reference to R. Zechariah being at the party is the only Hebrew line in an otherwise Aramaic text, and that the final line attributed to R. Yose about Zechariah’s *avetanuto* is taken verbatim from an unrelated *halakhic* midrash in the Tosefta (t. Shabbat 17: 6). He concludes that a later Palestinian redactor added this line at the end of the *aggadic* midrash about the Temple’s destruction and, so that this addition would make sense, incorporated R. Zechariah into the story by having him attend the party at which bar Kamzora is humiliated. In the Bavli’s version, R. Zechariah remains part of the story but only as the official who forbids the sacrifice and the murder of bar Kamza. Kalmin contends this is evidence of how the Bavli rabbinizes its sources more than Palestinian texts, even to the extent of portraying rabbis as flawed if not villainous. Regardless, this does not diminish my argument that one of the story’s themes is a condemnation of sectarianism and the rhetoric associated with it.

the existence of a tradition that associated *lashon ha-ra* with *sinat chinam* and connected them to the destruction of the Second Temple.¹⁶ In the context of this tradition, one can read the tale of Kamza and bar Kamza as a dramatization of how *sinat chinam* and *lashon ha-ra* — sectarian hatred and the divisive rhetoric associated with it — led to the destruction of the Jerusalem.

The repudiation of the sectarian rhetoric of slander no doubt served ideological ends in that it was a rejection of the hellenistic mode of social discourse in favor one that was uniquely Jewish. It also can be understood as a pragmatic political response to the role such rhetoric had played in the tumultuous first century events that culminated in the loss of Jewish independence and exile. The bar Kochba rebellion (132-135 CE), which resulted in even greater destruction and persecution, would have reinforced the negative perception of sectarianism and its rhetoric.¹⁷

The association of sectarian rhetoric with disunity, social instability and political oppression accounts for specific Talmudic depictions of those who speak *lashon ha-ra* as disrupting peaceful relations, betraying or informing on others, or speaking about someone in a way that comprises his position with an authority figure. It also helps explain notions of *lashon ha-ra* that I have characterized as expansive — the traditions

¹⁶ A number of latter rabbinic commentaries make the same connection, including *Sefer Chafetz Chaim*. A passage in b. Yoma 9b is even more explicit in associating destructive rhetoric with *sinat chinam*. Referring to the presence of *sinat chinam* during the First-Temple period, a teaching attributed to R. Eleazer (T2) says, “This refers to those who eat and drink together and then stab each other with the daggers of their tongues.”

¹⁷ The revolt led by the messianic figure bar Kochba did more than sharpen the theological divide between Jews who considered Jesus the messiah and those who didn’t. It was a time of heightened sectarian divisions among Jews in general. The letters of bar Kochba discovered in the 1960s indicate that he was an autocratic leader whose war of redemption was rejected by many Jews and who sometimes had to threaten putative allies into carrying out his orders. Talmudic passages that criticize the otherwise venerated R. Akiva for proclaiming bar Kochba the messiah indicate that the rabbis were bitterly divided in their assessment of this messianic figure.

that emphasize its gravity and the culpability of the listener/believer, or that portray it not just as slander but as any speech, even seemingly innocuous truthful speech, that demeans or harms another Jew.

Such notions of *lashon ha-ra* conform to what Shaye Cohen describes as some early rabbis' vision of a plural Jewish society "which tolerates disputes without producing sects," one in which "the dominant ethic is not exclusivity but elasticity."¹⁸ In contrast to the hellenistic rhetoric of slander, the strict prohibition of *lashon ha-ra* reflected a preference for a mode of social discourse in which disagreement and difference did not signify categorical separation. Or as Kimelman might put it, emphasis on the prohibition against *lashon ha-ra* reflects a willingness to accept difference and autonomy as the necessary cost of preserving the unity and stability of *klal yisrael*.¹⁹

Regardless of how strong this pluralistic impulse may have been, however, we shouldn't assume that it went unchallenged or even that it always predominated among the early rabbis. Jewish identity was especially uncertain during late antiquity,²⁰ more so after the destruction of the Temple, the center of Jewish practice and authority. Even the boundaries of the rabbinic movement itself were amorphous. We know from epigraphic evidence that, in addition to the sages whose texts we read today, there were other religious teachers who were called "rabbis" by their Jewish students and adherents but

¹⁸ Shaye Cohen, "The Significance of Yavneh: Pharisees, Rabbis and the End of Jewish Sectarianism," Accessed Aug. 31, 2011 at the Center for Online Judaic Studies. http://cojs.org/cojswiki/The_Significance_of_Yavneh:_Pharisees,_Rabbis,_and_the_End_of_Jewish_Sectarianism,_Shaye_J.D._Cohen,_Hebrew_Union_College_Annual_55. Originally published in the *Hebrew Union College Annual* 55 (Cincinnati: HUC Press, 1984).

¹⁹ Kimelman, "Judaism and Pluralism," 131.

²⁰ Shaye Cohen, *The Beginnings of Judaism: Boundaries, Varieties, Uncertainties*, Berkeley (Los Angeles and London: University of California Press, 1999), 1-10. He says that Jewish identity was elusive for two reasons: There was no single definition of "Jew" in late antiquity, and there were few empirical or objective criteria by which to determine who was a Jew.

who likely were more accepting of Greco-Roman culture.²¹ A major enterprise of the early literary rabbis was to *reduce* variations of belief and practice — to sharpen the boundary between Us and Them²² — in order to bring more certainty to Jewish collective identity and their own movement. To some extent this meant rejecting certain beliefs and practices along with those who advocated them.

Consider, for example, the rabbinic attitude toward Jesus and his followers. Peter Schäfer contends that rabbinic texts dating well into the third century treat Jesus followers as a deviant Jewish sect and reveal a “well-designed attack against what the rabbis experienced as the reality of the Jewish-Christian message.”²³ Daniel Boyarin argues that rabbinic Judaism “constituted itself and its authority vis-à-vis other forms of late antique Judaism in part by defining itself over and against early Christianity. This suggests the rabbis were reading Christianity as a Jewish heresy, and thus a part of Judaism, until well into late antiquity.”²⁴ This does not mean that all or even most Christians saw themselves as a Jewish sect, only that some rabbis did.

We can get an idea of how some rabbis spoke about this sect from brief excerpts from two contemporaneous texts, one rabbinic and the other Christian. The first is a

²¹ Hezser, *Social Structure*, 121-122. She argues that the figures in early rabbinic literature were not an exclusive group but rather a “sub-set of rabbis whose statements and stories were chosen by editors of the respective documents.” While we know little about the other rabbis who lost out to the literary rabbis, it is likely they were more open toward certain aspects of Greco-Roman culture. See also Hezser, *Social Structure*, 488-489 where she contends that there were no clear boundaries between the rabbis on the one hand and Jewish scribes, priests and judges on the other. The literary rabbis emphasized the importance of Torah scholarship in order to distinguish themselves as superior to these rivals, who may have been those often referred to as unlearned.

²² Cohen, *The Beginnings of Judaism*, 341-344.

²³ Peter Schäfer, *Jesus in the Talmud*, (Princeton and Oxford: Princeton University Press, 2007), 48.

²⁴ Boyarin, *Dying for God: Martyrdom and the Making of Christianity and Judaism* (Stanford CA: Stanford University Press, 1999), 25. Two pages earlier, he argues that some rabbis viewed Jesus followers as a “deviant Judaism” and that the slow separation of rabbinic Judaism and Christianity was not complete until the sixth century.

baraita in b. Sanhedrin 43a that dates to the late second or early third century. This Palestinian text refers to the death of “Yeshu,” who “practiced sorcery, seduced Israel and led them away from God.” About Yeshu, the *baraita* says, “nothing favorable could be found.”²⁵ The other text is by Tertullian, who wrote it in the late second century. In it he anticipates Jesus’s return and imagines himself mocking those who slandered the messiah and now face eternal damnation: “This is your carpenter’s son, your harlot’s son, your Sabbath-breaker, your Samaritan, your demon-possessed,” he gloats.²⁶

The rabbinic text portrays Yeshu much like the bad kings in the *Tanakh* (Hebrew Bible) — an insider who causes the people to stray. To at least some rabbis, then, this was an internal dispute over a common scripture and tradition. More important, these texts indicate that the rabbis were not shy about using rhetoric that branded their Jewish religious rivals as deviants. Tertullian appears to list epithets typically used to delegitimize Jesus and his followers.

To use Kimelman’s terms, such texts indicate that there was a strong counter-tendency among the rabbis to reject difference and enforce uniformity within *klal yisrael*.²⁷ This tendency resulted in a greater willingness to employ the kind of speech

²⁵ Schäfer, *Jesus in the Talmud*, 1-14. Some scholars contend that Yeshu and similar characters in the rabbinic texts do not refer to Jesus of Nazareth because the details of their lives do not conform to those of the figure in the New Testament. One Talmudic account, for instance, describes Yeshu as a Jew with connections to Roman officials who was arrested for inciting others to renounce Judaism and then stoned to death on Passover eve along with five disciples. Even if this character and others do represent Jesus, the discrepancies with New Testament accounts indicate that the rabbis didn’t know much about Jesus and his followers and weren’t concerned about them. Schäfer argues persuasively, however, that such discrepancies are part of a deliberate rabbinic counter-narrative indicating just the opposite — a thorough knowledge of and ferocious polemical response to the foundational Christian story and theology. Furthermore, the rabbis’ polemic was not just against Jesus but his followers as well. This response is muted in the *Yerushalmi* because at the time of its redaction, Christians had gained political power in Palestine..

²⁶ Tertullian, *De Spectaculis*, 100.30.

²⁷ Kimelman, “Judaism and Pluralism,” 131-135. He notes that the Mishnah and the Tosefta give very different portrayals of the competition between the houses of Hillel and Shammai. The latter describes the

that excised or marginalized Jews who did not conform to the literary rabbis' ideas about Jewish belief and practice. It helps account for notions of *lashon ha-ra* that we might characterize as less restrictive — the traditions that undercut its gravity, that insist that it involves lying or patently malicious speech (or at least question the extent to which it pertains to truthful or innocuous speech), or that mitigate the culpability of the listener/believer.

Social dynamics

In addition to conflicting political and ideological concerns, I want to consider how social dynamics help explain the contested notions of *lashon ha-ra* among the early rabbis. Hezser describes the early rabbinic movement in Palestine as a small, loosely connected network of personal alliances characterized by “regulated conflicts” among individual rabbis or small groups of rabbis. Because this social network had no independent institutions or formal hierarchies that conferred authority, rabbis generally gained status and wielded influence through kinship relations as well as their personal charisma, knowledge and intelligence, including their ability to persuade through social discourse. Their authority also tended to be highly localized.²⁸

This social structure inhibited the centralization of power and instead fostered the independence and free-lance authority of individuals and small groups. Thus, we find rabbinic teachings like y. Shab. 19.1.16, which advises the person who doesn't like one

rivalry as vigorous but respectful while the Mishnah portrays it as having erupted into violent conflict. These two sources indicate that tolerance of difference was variable among the early Palestinian rabbis.

²⁸ Hezser, *Social Structure*, 155-156, 252-253 and 455 ff. See also Richard Kalmin, *Sages, Stories, Authors and Editors in Rabbinic Babylonia*, Brown Judaic Studies No. 300 (Atlanta: Scholars Press, 1994), 15. He describes the Babylonian rabbinic movement as similarly “diverse” and “decentralized” and lacking institutional structure.

rabbi's ruling to consult another.²⁹ A concept like *lashon ha-ra* would have helped preserve solidarity within a social network in which authority was so widely dispersed.

But we should also consider what countervailing social forces were at work. First, while authority may have been dispersed within the rabbinic movement, it would not have been evenly dispersed. Even in social networks without hierarchies and institutions, individuals and groups at the center have more links to others in the group than those at the periphery, which generally translates into greater influence and power.³⁰ Second, some rabbis achieved status and influence not through kinship relations and personal charisma but on the basis of their class, wealth and connections to non-rabbinic institutions. These factors would have tended to concentrate power rather than disperse it, or at least to create power differentials that could be exploited.³¹ Finally, the stakes involved in rabbinic power and power differentials would likely have been magnified as the movement's influence in Jewish society grew during the Mishnaic-Talmudic period.³²

²⁹ Hezser, *Social Structure*, 359.

³⁰ Ibid., 239. See also John-Paul Hatala, "Social Network Analysis in Human Resource Development: A New Methodology," *Human Resource Development Review* 5, no. 1 (2006): 52.

³¹ Hezser, *Social Structure*, 406-417. She argues, for instance, that there was no patriarchy in the sense of an official position recognized by all or most Palestinian rabbis. Judah ha-Nasi, often cited as the first patriarch, was in all likelihood merely a wealthy, knowledgeable and charismatic rabbi of high social status. Respect for him probably was wide but not universal or official. And while there may have been other rabbis who were similarly influential, efforts to reconstruct an unbroken line of succession are speculative at best, indicating that the rabbinic tradition of an official patriarchal office and dynasty is an idealization.

³² This point does not require that we accept an idealized view of rabbinic hegemony, only that we believe that the movement, which began on the margins of Jewish society, became increasingly visible and influential during the Talmudic period. The texts provide some evidence for this. See Hezser, *Social Structure*, 394-395. She notes that both Talmuds contain more stories about groups approaching rabbis than the Mishnah. Such stories "give the impression of growing rabbinic authority in amoraic time." In addition, while tannaitic texts idealize rabbinic authority as having been widely accepted, amoraic texts include many stories in which rabbis are insulted or their opinions are portrayed as unpopular. That *amoraim* were confident enough to give a more realistic picture of rabbinic interaction with non-rabbis is "likely to reflect something of a real change" in their activity and influence within the larger Jewish society.

Here I would like to consider Naomi Janowitz's study of the *min* in early rabbinic literature. The term is commonly translated as "heretic," but Janowitz notes that the rabbis apply it to such a wide variety of characters and for such a wide variety of behavior and beliefs that the *min* has no discernible identity. It is "little more than a foil against whom the rabbi can then pose himself as something else." This indicates that for the early rabbis, the epithet had as much to do with establishing and aggregating status and power as with creating and defending specific ideas and practices. In the *min* "we see not the presenting of a fixed doctrine, but the indexing of the rabbi as the one in charge."³³

For my purposes, Janowitz makes two important points. First, *min* is used in rabbinic literature to describe other rabbis as well as non-rabbis. Thus, to the extent that the epithet was a tool for aggregating power, rabbis employed it among themselves as well as against non-rabbinic Jews. Second, the language used to denounce *minim* in the rabbinic texts "is some of the strongest available, calling their books magic and questioning the parentage of their children."³⁴

The fact that some rabbis were willing to use demeaning rhetoric to marginalize opponents and aggregate power to themselves allows us to read some notable Mishnaic-Talmudic confrontations in a new light. In b. Rosh Hashannah 24b-25a, Rabban Gamliel II humiliates R. Yehoshua ben Chananiah in a dispute about a calendar ruling. Only after Yehoshua acquiesces to Gamliel's authority does the latter restore solidarity and accept

³³ Naomi Janowitz, "Rabbis and their Opponents: The Construction of the 'Min' in Rabbinic Anecdotes," *Journal of Early Christian Studies* 6, no. 3 (1998): 452 and 460.

³⁴ *Ibid.*, 452.

him as “my teacher and my disciple.”³⁵ B. Shabbat 108a tells the story of the initial meeting between the influential Babylonian *amora* Mar Samuel and Rav, a noted sage who was returning to Babylonia after years of training in Palestine to become the head of another academy. After sending an emissary to check out his potential rival, the wary Samuel invites Rav to a sumptuous dinner but then refuses to tell him where the privy is. Suffering great stomach distress, Rav curses Samuel’s male children and successfully prays for their deaths. In Baba Metzia 84a, Yochanan swaps bitter insults with his brother-in-law and protege-turned-rival, Reish Lakish, after the latter disputes the former’s ruling on a minor legal point. The feud eventually results in the untimely deaths of both sages.³⁶

Regardless of whether these stories recount actual events and historical figures, they indicate not only that the struggle for status and authority was an important subtext of legal disputes and rivalries among rabbinic contemporaries but also that these power struggles involved the kind of invective that can be described as *lashon ha-ra*. This conclusion is supported by Kalmin’s finding that both tannaitic and amoraic texts routinely portray rabbis expressing personal hostility toward contemporaries but not toward more distant predecessors.

³⁵ The fact that the literature says Yehoshua’s allies temporarily deposed Gamliel from his position as head of the Sanhedrin for this and other insults further indicates that the confrontation was less a legal dispute than a power struggle. Indeed Gamliel appears to have been quite interested in aggregating authority. Rabbinic texts say he also ordered that the prayer condemning *minim* be inserted into the *amidah*, excommunicated his brother-in-law, R. Eliezer ben Hyrcanus, for allegedly consorting with Jesus followers, and issued bans against R. Meir and R. Nathan.

³⁶ A number of scholars have described the unflattering story about Reish Lakish and Yochanan, both noted Palestinian *amoraim*, as a Babylonian critique of Palestinian rabbis. Even so, it supports the evidence noted below that Palestinian rabbis had more contact with non-rabbis and that public invective was more common among Palestinian rabbis. This kind of speech may have been one of the intended criticisms.

Contemporaries and near-contemporaries express not only anger or surprise in response to specific statements or actions but also the conviction that a particular sage is fundamentally flawed or inadequate. The accusation will be made, for example, that a rabbi's traditions are untrustworthy, that he violates *halakhah*, that his premature death was punishment for his failure to show proper respect toward great scholars . . . Such commentaries, which strike at the core of a rabbi's character, appear primarily aimed at contemporaries and near contemporaries.”³⁷

The fact that rabbis directed derogatory language primarily at contemporaries indicates that its purpose had as much to do with power relations as with clarifying legal or ideological issues. It also reflects a certain predilection for acquiring and exercising authority through rhetoric that demeaned or marginalized other rabbis. The tendency to use such rhetoric would have resulted in narrower notions of *lashon ha-ra* that were more tolerant of harsh polemical speech.

We should not think of the rabbis as divided into two camps, one eschewing divisive, sectarian rhetoric and the other embracing it, one rejecting the use of authoritarian language and the other eager for it. It is more productive to think in terms of a dialectic tension between opposing rabbinic impulses — to tolerate difference or to insist on uniform belief and practice, to respect the autonomy of individuals and small groups or to aggregate and exert authority.

In this context we also should consider how rabbinic literature treats *am ha-aretz* (people of the land), a term that refers to “the majority of Jews who are uneducated or

³⁷ Kalmin, *Sages, Stories, Authors, and Editors*, 145-146. Likewise, rabbis are portrayed expressing reverence for contemporaries or near contemporaries much more often than for distant predecessors. Because this phenomenon occurs consistently across early rabbinic genres, Kalmin concludes that the rivalries and alliances it portrays were not invented by later editors and that specific expressions of condemnation or praise are roughly contemporaneous with their attributions.

resistant to rabbinic custom,” i.e. non-rabbis.³⁸ While *am ha-aretz* are routinely criticized for their lack of Torah knowledge and improper behavior, and while they are portrayed as distinct from and inferior to rabbis and their followers, Sacha Stern argues that the treatment of these non-rabbis in rabbinic texts is quite variable and sometimes contradictory.³⁹

Some passages emphasize the affinity of *am ha-aretz* to non-Jews and express extreme scorn and hatred for them. This indicates that, at least for some rabbis, the distinction between themselves and the *am ha-aretz* “extended as far as excluding the latter, in some way, from the distinctive category of Israel.”⁴⁰ Other passages, however, treat the *am ha-aretz* more sympathetically, depicting them as flawed but still indispensable members of the people of Israel.⁴¹

While some scholars have explained such contradictions in terms of a lessening of rabbinic hostility toward non-rabbis over time, Stern says they are better understood as representing a conflicted attitude among the rabbis toward non-rabbinic Jews:

It is the same R. Yohanan who urges that an *am haAretz* be “torn like a fish” (in b. Pesachim 49b) but who is upset at the suggestion (in b. Ketuvim 111b) that the *amei haAretz* have no share in the world to come. Clearly

³⁸ Charlotte E. Fonrobert and Martin S. Jaffee, eds., *The Cambridge Companion to the Talmud and Rabbinic Literature* (Cambridge and New York: Cambridge University Press, 2007), xvii.

³⁹ Sacha Stern, *Jewish Identity in Early Rabbinic Writing* (New York: Brill, 1994), 119.

⁴⁰ Ibid., 114. One of the best known is the discussion in b. Pesachim 49b in which R. Elazar (T2) asserts that one may stab an *am ha-aretz* when the Day of Atonement falls on the Sabbath. In the same discussion, an un-attributed *baraita* warns that a man should not marry his daughter to an *am ha-aretz* because the union will produce children who are “ugly and unacceptable.” Another warns against marrying the daughters of *am ha-aretz* because “they are reptiles and their wives are vermin, and regarding their daughters, scripture says, ‘Cursed is one who sleeps with a beast.’”

⁴¹ Ibid., 119. He notes that b. Hulin 92a likens *am ha-aretz* to the leaves of a grapevine that protect the fruit (rabbis): “Let the clusters pray for the leaves, for without the leaves, the clusters would not last.” Similar comparisons can be found in Lev. Rab. 36.2, Num. Rab. 3.1 and Song of Solomon Rab. 6.11.

the Talmud considers that it was possible for the rabbis to entertain both notions simultaneously.”⁴²

I would argue that the same tension that gave rise to conflicted rabbinic attitudes toward *am ha-aretz* is reflected in the contested notions of *lashon ha-ra*. We have already looked at the teaching in Arakhin 15a attributed to R. Elazar ben Parta (T2) about the “terrible power of *lashon ha-ra*.” If the spies were punished so severely for defaming the Holy Land, it concludes, one can expect an even greater punishment for defaming a *chaver*. Although commonly translated as “friend” or “companion,” *chaver* has a narrower meaning in early rabbinic literature. The term signifies an associate or a colleague in a circle of masters and disciples, and it is often used to distinguish rabbis from *am ha'aretz*.⁴³ Thus while this teaching emphasizes the gravity of *lashon ha-ra*, we must consider the likelihood that it does so only in regard to rabbinic Jews, possibly even one's own rabbinic circle, in contradistinction to *am ha-aretz*.

By way of contrast, we have examined several teachings in the Bavli that cite Psalm 101:5 as a proof text: “Whoever speaks evil about his *rei'a* in secret I will cut down.” Translated variously as neighbor, friend or associate, *rei'a* carries a broader connotation than *chaver* and probably includes non-rabbis.⁴⁴ In addition, a teaching in b. Arakhin 15b attributed to R. Chama (PA2) explicitly discusses the prohibition against *lashon ha-ra* in regard to rabbis and *am ha-aretz*. It contends that for rabbinic sages the remedy for *lashon ha-ra* is Torah study while the remedy for *am ha-aretz* is to “become

⁴² Ibid., 120.

⁴³ Fonrobert and Jaffee, *Cambridge Companion*, xviii, and Stern, *Jewish Identity*, 114.

⁴⁴ Marcus, Jastrow, *A Dictionary of the Targumim, Talmud Bavli, Yerushalmi, and the Midrashic Literature* (Peabody MA: Hendrickson Publishers, 2005), 1475.

humble.” In other words, rabbis must continue to speak while non-rabbis must be silent and listen.⁴⁵ While this teaching privileges rabbis vis-à-vis *am ha-aretz*, it nevertheless includes both within the group protected from *lashon ha-ra*.

Accounting for differences between the Bavli and the Yerushalmi

My analysis shows that broad notions of *lashon ha-ra* — the traditions that emphasize its gravity and the culpability of the listener/believer and that depict it as including truthful, even innocuous speech — predominate in the Yerushalmi. Although it would be misleading to suggest that the Bavli does not also condemn *lashon ha-ra*, it gives fuller expression to the counter traditions that express narrower notions of the offense and that are less restrictive of negative speech.

To understand this difference we should keep in mind that the early rabbinic concept of *lashon ha-ra* was prescriptive, not descriptive. It was a response to the threat posed by divisive polemical rhetoric in the context of certain historical and social circumstances — political oppression, social instability and/or a relatively weak position within Jewish society. Where such circumstances were more prevalent and of greater concern, we can expect there to have been a greater emphasis on the danger of *lashon ha-ra*. Where such circumstances were less prevalent we can expect there to have been less emphasis on the danger of *lashon ha-ra*. The circumstances of rabbis in Palestine and Babylonia differed in just this way.

⁴⁵ This is followed by a teaching attributed to R. Acha bar Rav Chanina (PA3) that portrays *lashon ha-ra* as a more serious offense. Once it is committed, the sin cannot be remedied. Thus one must avoid committing it. Still, his preventativeives are identical to R. Chama’s remedies. Rabbis should engage in Torah study while *am ha-eratz* must humble themselves. The prohibition applies to both groups.

If we consider the position of Jews in late antiquity, life was certainly more precarious and uncertain for those in Palestine. Although Persian Jews were not immune from political oppression and persecution, especially after the Sassanians came to power in the third century, imperial might was a greater concern for Jews in Palestine, where the two great Roman wars occurred. Given these historical circumstances, it's not surprising that Palestinian rabbis were more wary of internal polemical rhetoric that might destabilize Jewish society, exacerbate Jewish political vulnerability or put Jews in danger with authorities.

We should also recall that the Yerushalmi was redacted in the mid-fourth century not long after Constantine became the first Roman emperor to embrace Christianity. This was an important political development that empowered one of the literary rabbis' chief religious rivals while increasing their own political vulnerability. Not only does this development account for why the rabbinic polemic against Christianity is muted in the Yerushalmi,⁴⁶ it also helps explain why lenient Palestinian teachings regarding *lashon hara* found in the Bavli are largely absent from the Yerushalmi.

Likewise, if we consider the rabbis status vis-à-vis other Jews, we find that those in Palestine "occupied a relatively weak position in Jewish society and depended on non-rabbis for support and social advancement."⁴⁷ In terms of power relations among Jews, Palestinian rabbis were more vulnerable than their Persian counterparts, who occupied a higher position in Babylonian Jewish society. For this reason, Palestinian rabbis were quite concerned about their image and position among non-rabbinic Jews

⁴⁶ Schäfer, *Jesus in the Talmud*, 8-10.

⁴⁷ Kalmin, *The Sage in Jewish Society*, 10.

whereas Babylonian rabbis, because of their higher social status, were less concerned about “keeping up appearances and depicting themselves positively and felt freer to give their bickering homiletical expression.”⁴⁸

The structure of Jewish societies in Babylonia and Palestine also were different, much like the larger Persian and Roman societies in which they existed. Social relations among Palestinian Jews were less rigid than those among Jews in Babylonia, where a caste-like social hierarchy resulted in less contact and movement among classes. Thus, while Babylonian rabbis were largely removed from the daily lives of non-rabbis and content to make their pronouncements on important social and political issues “in the privacy of their own study houses,” Palestinian rabbis interacted more with non-rabbinic Jews and often delivered their opinions in public with the hope of gaining their influence and support.⁴⁹ In short, Palestinian rabbis, because they were more dependent on and had more interactions with non-rabbis, were more concerned about the potential impact of divisive rhetoric. Babylonian rabbis, because they were relatively more secure within Jewish society and did not expect their discourse to be widely disseminated beyond their study houses, were less concerned about the impact of such rhetoric on their relationship with other Jews.

A similar dynamic was at work within the rabbinic movements themselves. Kalmin argues that the paucity of “dispute dialogues” in the Bavli among noted Babylonian rabbis such as Rava and Abaye is just one of several textual indications that Babylonian rabbis of equal status had fewer face-to-face confrontations with each other,

⁴⁸ Ibid., 108.

⁴⁹ Richard Kalmin, *Jewish Babylonia Between Persia and Palestine* (Oxford and New York: Oxford University Press, 2006), 8.

preferring to remain in their study houses with their students. (Dispute dialogues do not merely juxtapose contradictory opinions; they also include dialogue in which the disputants are portrayed as discussing their differences.) The fact that dispute dialogues between noted Palestinian *amoraim* such as Yochanan and Reish Lakish are more common indicates that Palestinian rabbis of equal status had more frequent confrontations.⁵⁰

A key point here is that Babylonian rabbinic discourse was “inner directed”⁵¹ — perhaps not private in the sense of an interpersonal conversation but certainly intended for a limited audience. It appears that efforts by Babylonian rabbis to exert authority were “private” in the same sense — that is, contained within small, already well-defined hierarchies consisting of students and protégés. From this it is reasonable to conclude that Babylonian rabbis were, in general, less concerned about rabbis outside their circles infringing on their authority.

The inner-directed nature of Babylonian discourse also helps us understand why the Bavli is concerned about the public/private distinction regarding *lashon ha-ra* while the Yerushalmi is not. In the Babylonian context, the *ba-seiter* teachings and others that depict *lashon ha-ra* as private speech represent a tradition that applies the prohibition to the rabbis’ own inner-directed discourse. The *shem ra* teachings and others that depict *lashon ha-ra* as public speech represent a tradition that applies *lashon ha-ra* to non-rabbinic discourse. (This does not preclude the possibility that the *shem ra* tradition also was intended to criticize the public nature of Palestinian rabbinic discourse.)

⁵⁰ Kalmin, *Sages, Stories, Authors, and Editors*, 96 ff. His point is not that the dialogues themselves are historically accurate but that they reflect a historical reality about direct contact or lack of it between rabbinic disputants in general.

⁵¹ Kalmin, *Jewish Babylonia*, 15.

It is worth noting that all of the Babylonian rabbis cited in regard to the public/private issue are third- or fourth-generation *amoraim*, who lived roughly from the early to the late fourth century. Indeed, more than three quarters of the Babylonian rabbis cited in all the Bavli's discussions of *lashon ha-ra* are from these two generations. Kalmin argues that the mid-fourth century is the point at which Babylonian rabbis became "receptive to Palestinian literature and modes of behavior."⁵² If this included a greater willingness to take rabbinic discourse outside the privacy of the study house and into the public sphere, where interactions with other rabbis and non-rabbinic Jews were more likely, then it makes sense not only that *lashon ha-ra* would become a more significant issue for Babylonian rabbis at this point but also that discussions of it would reflect tension about the distinction between the old private discourse and the new public discourse.

With this in mind, let's look more closely at the aforementioned passage in b. Arakhin 15b-16a that follows the editorial query about what constitutes *lishna bisha*. It begins with a purported disagreement between Rabbah (BA3) and Abaye (BA4):

Rabbah: Anything said [about a person] in his presence is not *lishna bisha*.

Abaye: [But in that case] it is all the more impudence and *lishna bisha*.

Rabbah, citing R. Jose (T3): I have never said a word [about someone] and looked behind me [to see if he was there.]

If we read this discussion in the context of Babylonian rabbis negotiating the transition from the private, "inner directed" discourse of their individual study houses to more frequent contact with other rabbinic circles and non-rabbinic Jews, Abaye's statement asserts that one must be even more careful to guard against *lashon ha-ra* in

⁵² Ibid., 4.

these direct exchanges. To the modern ear, Rabbah's rejoinder seems to assert a commendable ethical principle: A person should not be two-faced and say something negative about another behind his back — that is, in the privacy of the study house — that he would not say to his face. But given Rabbah's initial comment, I would argue that his teaching is aimed not at urging his fellow Babylonian rabbis to be circumspect in private but rather at giving them permission to speak forthrightly in public: Don't be afraid to say to a person's face — that is, in public — what you say in private. According to this view, the fact that Babylonian rabbis were having more contact with one another (and non-rabbinic Jews) was not grounds for restricting their discourse.

The passage that follows is attributed to Rabbah bar Rav Huna (BA3, a contemporary of the Rabbah cited above). It says, "Anything said in the presence of three is not *lishna bisha* [because] your rabbinic colleague (*chaver*) has a colleague and your colleague's colleague has a colleague." This passage uses the word *chaver* and appears to privilege rabbinic discourse, which typically occurred in groups of three or more. According to this view, the study house is a special zone where one is allowed to speak without having to worry about the prohibition against *lashon hara*.

Significantly, however, the argument continues by recognizing that rabbinic discourse is no longer "inner directed." Contact among rabbinic Jews has reached the point where something said in the privacy of one study house will inevitably reach others — that is become widely known or public. In effect, it argues that rabbinic Jews comprise one big, public study house in which discourse is exempt from the prohibition against *lashon hara*. Thus, one can speak freely in his own study house without having to worry

about being accused of denigrating a fellow rabbinic Jew in another study house behind his back.

The next passage contains the two previously cited *baraitot* attributed to Rav Dimi, a fourth-generation Palestinian *amora* who traveled extensively in Babylonia. The first asserts that even blessing a friend (*re'a*) loudly — that is, in public — is *lashon ha-ra*. As an example, it cites the visitor who extols the hospitality of his host in a marketplace. Inevitably someone who hears the praise will take advantage of the host. While this teaching can be read as a warning against obsequiousness or insincere flattery, it nonetheless emphasizes the potential harm of public speech and advocates restricting it, even if it is not malicious or overtly harmful. Significantly, the example refers to a non-rabbinic public setting — a marketplace — and to speech about a *re'a*, which could include non-rabbis. The second *baraita* warns against talking about the good qualities of one's *chaver* lest it spark a discussion of his faults. This teaching, then, concerns speech about a fellow rabbinic Jew, possibly in the context of Torah study. Read as a single unit, these teachings represent a more expansive view of *lashon hara* than did the two previous passages. The prohibition against *lashon ha-ra* applies to remarks about both rabbis and non-rabbis and to discourse in both the study house and non-rabbinic settings.

Conclusion to Part I

In the preceding chapters I identified two broad Talmudic traditions regarding *lashon ha-ra*. One portrays it as an especially grave sin and applies the prohibition against it more strictly. I argued that this tradition arose as a response to sectarian rhetoric associated with the Roman wars, the destruction of the temple and the loss of nationhood.

Representing an approach to the problem of Jewish unity that tolerates difference and autonomy, it seeks to inhibit verbal attacks against those who are different or who act independently. The textual evidence indicates that it was more prevalent among rabbis who were felt socially or politically vulnerable.

The other tradition sought to mitigate the gravity of *lashon ha-ra* and to apply the prohibition against it more leniently. This tradition is an expression of the tendency to preserve Jewish unity by enforcing conformity and consolidating power through verbal attacks on those perceived to be deviant or independent. It was more prevalent among rabbis whose social and political situations were relatively more secure.

Having shown how the problem of Jewish unity helps account for the contested notions of *lashon ha-ra* in early rabbinic literature, I now turn now to nineteenth century Lithuania and Rabbi Israel Meir Kagan's *Sefer Chafetz Chaim*.

PART II

***SEFER CHAFETZ CHAIM: NEGOTIATING THE INHERENT TENSION
IN THE CONCEPT OF LASHON HA-RA***

Introduction

In the previous two chapters, I explained the contested notions of *lashon ha-ra* in early rabbinic literature as a reflection of the inherent tension in the idea of a united Jewish people. My goal in Part II is to show how the same tension is at work in *Sefer Chafetz Chaim*, the first published work of Lithuanian Rabbi Yisrael Meir Kagan.

In this chapter I will present textual evidence that Kagan wrote *Sefer Chafetz Chaim* in response to rancorous public discourse among traditional Jews, especially the way they were speaking about religious and civil authorities. In Chapter IV, I will argue that this discourse reflected the erosion of social cohesion and diffusion of communal authority among Lithuanian Jews under Russian rule during the nineteenth century. Like the early rabbis who sought to suppress sectarian rhetoric, Kagan was responding to a social reality that he viewed as a profound threat to Jewish unity.

But also like the early rabbis, his concern about rancorous rhetoric among his fellow Jews was mitigated by competing considerations. While his primary aim in *Sefer Chafetz Chaim* is to suppress discourse that alienated Jews from one another, he nevertheless permits and even encourages it for certain purposes. Chief among these is to establish and maintain the boundaries of Jewish society. To that end, Chapter V will identify which Jews Kagan argues are not protected by the prohibition against *lashon ha-ra* because they are no longer members in good standing of *klal yisrael*, the idealized community of Israel. This will give us an idea of where he stood in the contemporary debate about the Jewish collective identity.

Chapter VI, on the other hand, will examine the exceptions in which, according to Kagan, it is permissible to speak negatively about those within *klal yisrael*. Here we will

see that his concern about divisive, authoritarian discourse is in tension with certain ideological, ethical and pragmatic considerations — defending rabbis and their authority, protecting individuals from harm or injustice, and permitting the exchange of information necessary for conducting routine affairs, especially those involving commerce and personal finance. Many of the leniencies Kagan cites hinge on the distinctions we saw in the early rabbinic notions of *lashon ha-ra*, particularly the speaker's intent and whether the remarks are public or private.

My analysis of *Sefer Chafetz Chaim* follows a trend that challenges the paradigmatic explanation of modern Jewish history primarily as a conflict between traditionalism on the one hand and enlightenment ideology and the politics of emancipation and assimilation on the other. Johnathan Frankel has described the paradigm as reductionist.¹ It tends to portray West European Jews as embracing emancipation and assimilation, willing to modify (or compromise, depending on one's viewpoint) their religious/national distinctiveness in return for a place in the larger society. On the other hand, the paradigm explains the history of East European Jews in terms of their rejection of enlightenment ideology and their resistance to assimilation. It tends to portray them as clinging faithfully (or stubbornly, depending on one's viewpoint) to traditional religious ideas, practices and authority.

The historiography of Frankel and others problematizes the paradigmatic explanation of Judaism's encounter with modernity. While not ignoring or discounting the effect of the *haskalah* (the Jewish enlightenment) among East European Jews, it focuses on a number of economic and social factors not directly related to enlightenment

¹ Johnathan Frankel, "Assimilation and the Jews of Nineteenth-Century Europe: Towards a New Historiography?" in *Assimilation and Community: The Jews in Nineteenth-Century Europe*, eds. Johnathan Frankel and Steven J. Zipperstein (Cambridge: Cambridge University Press, 1992), 16 ff.

ideology or emancipation politics that altered traditional Jewish life in the eighteenth and nineteenth centuries. In doing so, it challenges perceptions about solidarity among East European Jews and the cohesiveness of their society.

Background on Kagan's life and literary output

Kagan was born in 1838 in the small Belarussian town of Zhetl, but his family moved to Vilna when he was ten. There he studied at a yeshiva under Rabbi Jacob Barit, a prominent traditional scholar who nevertheless had a “fair knowledge” of science and modern languages — including Russian and German — and was an influential representative of Jewish interests before the Russian government.² Thus, while Kagan had a traditional Lithuanian religious education, he was mentored during his formative years in a relatively sophisticated milieu that encouraged engagement in public affairs and with non-Jewish society.

When he was seventeen, Kagan moved to Radin, a village located in present-day Belarus about fifty miles south of the Vilna. Except for travel and a brief period during World War I when he fled to Russia, Kagan spent the rest of his life in Radin. After marrying, he served briefly as a communal rabbi, operated a grocery store with his wife and then started a yeshiva in Radin. Eventually he turned the operation of the yeshiva over to others and supported himself through his writing. He published more than twenty books and became “one of the major rabbinical authorities of the late nineteenth and

² Louis Ginzberg and Herman Rosenthal, “Jacob Barit,” [Jewishencyclopedia.com](http://www.jewishencyclopedia.com), accessed Sept. 11, 2011, www.jewishencyclopedia.com/view.jsp?artid=293&letter=B&search=Barit. Barit advised Sir Moses Montefiore during his tour of Russia in 1846, was a member of the Jewish delegation that met with Tsar Nicholas I in 1852 on the issue of Jewish military conscription and, most important, was a key figure on the Vilna Commission, the body appointed by the Russian government in the late 1860s to investigate Jewish communal authorities in Lithuania.

twentieth centuries.” Though he avoided political controversy, Kagan was engaged in Jewish public affairs throughout his life. In 1912 he played a prominent if largely symbolic role in the founding of the East European orthodox political party *Agudat Yisrael*. Twelve years later he helped establish *Va’ad ha-Yeshivot*, a council to support traditional religious education throughout Eastern Europe. Beyond that, “he continued to respond to current events and wrote open letters to the Jewish press” until shortly before his death in 1933.³

The six-volume *Mishnah Berura* (1884-1907) — a commentary on the section of Joseph Caro’s *Shulchan Arukh* dealing with the laws on prayer, the synagogue and holidays — is often cited as Kagan’s most important work. It remains a popular halakhic authority among Orthodox Jews. However, *Sefer Chafetz Chaim* (1873), his first published work, was the one of three books dealing with interpersonal relations that established his reputation among East European Jews as a “paragon of piety” who was widely admired for his modesty and virtue.⁴ According to the custom in which prominent rabbis are known by the title of their first commentary, Kagan commonly is referred to as the Chafetz Chaim. His notoriety among Jews today stems in large part from the fact that a foundation by that name has made his works — principally those dealing with *lashon ha-ra* and other issues of speech — the centerpiece of a movement to promote good character and proper relations among Jews.⁵

³ Benjamin Brown, “Yisrael Me’ir ha-Kohen,” *The YIVO Encyclopedia of Jews in Eastern Europe*, accessed Sept. 6, 2011, www.yivoencyclopedia.org/article.aspx/Yisrael_Meir_ha-Kohen.

⁴ Ibid. The others are *Shmirat ha-Lashon* (1876), a short compilation of moral and aggadic writings that elucidate the laws of *lashon ha-ra* explained in *Sefer Chafetz Chaim*, and *Ahavat Chesed* (1888), a commentary on the laws governing personal relations pertaining to money and property.

⁵ The Chafetz Chaim Heritage Foundation based in Monsey, N.Y., is the organizational force behind the contemporary *shmirat ha-lashon* movement. The movement is primarily an ultra-Orthodox Jewish

However, it should be stressed that *Sefer Chafetz Chaim* is not a work of *musar*, the traditional Jewish ethical literature that deals with personal virtue and character development. Rather it is a legal code that “attempts to bring the prohibitions concerning slander, libel, and gossip, which had normally been addressed in the context of moral and ethical literature, into the realm of Jewish law, governed by clearly defined rules.”⁶ Kagan himself asserts in the preface: “Know my brother reader that even the small points found herein [are supported by a legal argument]. So it will be apparent to everyone that I did not base this book on attributes of piety (*midot chasidut*) but only on the law (*rak al tzad ha-din*).”⁷

Structure and content of *Sefer Chafetz Chaim*

My intent is to explore the social and historical factors that influenced Kagan’s approach to the concepts of *lashon ha-ra* and *r’khillut* rather than to offer a complete explanation of the law as Kagan presents it. Before proceeding, however, it will be useful

phenomenon that began in the late 1980s, although it also has raised awareness of Kagan and the concept of *lashon ha-ra* among all streams of Judaism.

⁶ Brown, “Yisrael Me’ir ha-Kohen,” www.yivoencyclopedia.org/article.aspx/Yisrael_Meir_ha-Kohen.

⁷ Israel Meir Kagan, *Sefer Chafetz Chaim* (Vilna: 1873), Preface: 9; Yediyah Levy, trans., *Sefer Chafetz Chaim* (Nanuet NY: Feldheim Publishers, 2008), 1: 25. Kagan makes the same point in the next paragraph when he assures readers that “each and every word in this book is written exactly according to the law.” Other comments in the Preface also indicate that Kagan envisioned *Sefer Chafetz Chaim* as a legal code. For instance, while he refers to *lashon ha-ra* as a destructive *midah* (attribute or character trait), he describes it as “very much unlike” other character flaws such as anger, cruelty and cynicism in that the Torah carries an explicit prohibition against it. (Leviticus 19:16 — “Do not go about as a tale bearer among your people.”) His point is that refraining from *lashon ha-ra* is a matter of law, not merely of good character. See also Kagan, Preface (h): 10; Levy, 1: 27 where he defends his frequent references to *Sha’arei Teshuva*, a commentary by the thirteenth-century Spanish Rabbi Yonah Gerondi (Rabbeinu Yonah). Although *Sha’arei Teshuva* is a work of *musar*, Kagan assures readers that “everything he [Gerondi] wrote was carefully taken from the perspective of the law, especially his rules on *lashon ha-ra*.” At any rate, Kagan explains, his own opinions seldom rely solely on *Sha’arei Teshuvah* and are all supported by appropriate halakhic sources.

to provide some definitions and explanations as well as a synopsis of the structure and content of the book.

My analysis is based on the first edition of *Sefer Chafetz Chaim* (Vilna, 1873), although I occasionally cite the second edition (Warsaw, 1877). All references will be to the first edition except where noted. In addition to the Preface, Introduction and Appendix, *Sefer Chafetz Chaim* has nineteen chapters and an addendum. The first ten chapters deal with *lashon ha-ra*, the last nine and the addendum with *r'khillut*. As is customary in rabbinic literature, the clauses in each chapter are numbered for reference. In addition, *Sefer Chafetz Chaim* is divided into two parts. The first is called *mekor ha-chaim* (the source of life). Kagan describes it as a brief summary of the law (*ha-halakhah b'kitzur*). The much longer second part is called *be'er mayim chaim* (spring of the waters of life). In it Kagan presents more complex legal arguments based on traditional rabbinic sources. The two parts appear together on the same page in the format of a text with footnotes. There also are dozens of *hagahot* (elaborations) throughout both *mekor ha-chaim* and the *be'er mayim chaim*.

Because the part in which a passage appears occasionally is important for my argument, my citations will refer to it as well as the chapter, clause and page. “Kagan, 1.1: 37,” for example, refers to the first clause of the first chapter of the *mekor ha-chaim*, which is on page 37. “Kagan, 1.1.1: 37-38” refers to the first note in the *be'er mayim chaim* accompanying the same clause, which is on pages 37-38. An “(h)” indicates the citation is from a *hagahah*.⁸ In addition, each citation will refer to the corresponding

⁸ Kagan numbers the chapters dealing with *r'khillut* separately from those on *lashon ha-ra*. I will use his system, although I will add an “R” to the chapters on *r'khillut* in order to avoid confusion. For example, “Kagan, 1.1” will refer to the first clause of the first chapter in the section on *lashon ha-ra* and “Kagan,

volume and page of Yedidya Levy's four-volume English translation of the 1877 edition, which includes the original Hebrew on facing pages. Although I have used Levy as a guide, the translations are my own except where noted.

The first thing we can say about Kagan's approach to *lashon ha-ra* is that he portrays it an egregious sin. The Preface and Introduction — which together comprise almost twenty percent of the book — emphasize its grave metaphysical effects and existential consequences for the Jewish people. For example, Kagan cites the *Zohar*, the foundational book of Jewish mysticism, in arguing that the sin of *lashon ha-ra* prevents words of Torah and prayers from reaching heaven, thereby strengthening the “great complainer (*m'katreig*) against *klal yisrael*.” This not only results in “the slaughter of many [Jews] in many nations” but also causes destruction in “all of the [heavenly] worlds.”⁹ He also cites the passage in b. Arakhin 15b that attributes the destruction of the Second Temple to *lashon ha-ra*.

While these arguments and others have a clear foundation in rabbinic literature, there are some innovative elements in the Preface and Introduction that ratchet up the dire implications of this sin. For example, not only does Kagan agree that *lashon ha-ra* caused the exile, but he also contends that the Jewish people must rectify the sin before God fulfills his promise to redeem them.

If we search and investigate our ways for the sins that are the essential cause of our long exile, we will find many. But the sin of the tongue is the worst for many reasons. First, it is known that it was the cause of our exile as is explained in [the Bavli and the Yerushalmi]. If that is the case, then how can the redemption come if there is no attempt to rectify this sin?

R1.1” to the first clause of the first chapter of the section on *r'khillut*. “Kagan, A.1” will refer to the first clause of the addendum.

⁹ Kagan, Preface: 8; Levy, 1: 11, 13 and 15. Levy translates *m'katreig* as the “heavenly prosecutor.”

Because this sin is such a terrible defect that it caused us to be exiled from our land, surely it prevents us from returning to our land.¹⁰

In the next paragraph he says, “It is incumbent on us to rectify this sin before the redemption.” And the last sentence of the Preface expresses the hope that *Sefer Chafetz Chaim* will help Jewish society turn away from *lashon ha-ra*. “And by the merit of this, the redeemer will come to Zion soon in our time.”¹¹

The gravity of *lashon ha-ra* is also the focus of the twenty-five-page Introduction, most of which is devoted to explaining how those who speak and believe *lashon ha-ra* violate as many as 31 *laveen* and *aseen* and invoke upon themselves three Torah curses.¹² Rabbinic literature does identify a legal basis for the prohibition against *lashon ha-ra* in the Torah, specifically the commandment in Leviticus 19: 16: “Do not go about as a tale bearer among your people.” Previous commentators have linked the prohibition to other Torah commandments as well.¹³ However, Kagan’s discussion of *lashon ha-ra* in the context of so many commandments and curses goes far beyond anything in rabbinic literature.

In many cases, his legal arguments refer to sources that do not mention *lashon ha-ra* in connection with the commandments being discussed. For example, he argues that someone who speaks *lashon ha-ra* and thereby causes a fellow Jew to lose his livelihood

¹⁰ Kagan, Preface: 7; Levy, 1: 7 and 9.

¹¹ Kagan, Preface: 10; Levy, 1: 33.

¹² *Aseen* and *laveen* (singular *asah* and *lav*, literally, “do” and “don’t”) refer respectively to positive Torah commandments (observe the Sabbath, for example) and negative Torah commandments (the prohibition against eating pork, for example). According to rabbinic tradition, the Torah contains 365 *laveen* and 248 *aseen* for a total of 613 *mitzvot* (holy obligations).

¹³ Kagan cites sources, for example, that discuss *lashon ha-ra* specifically in the context of Exodus 23:1 (“Do not carry a false report”) and Leviticus 22:32 (“Do not profane my holy name”).

violates the *asah* in Leviticus 25: 35-36 that requires a Jew to support his impoverished kinsman. “How much more so are we commanded not to cause someone to lose his livelihood (by speaking *lashon ha-ra*),” Kagan argues. The sources he cites — Maimonides and the *Shulkhan Aruch* — discuss this *asah* in the context of giving charity and making loans to those in need, not the prohibition against *lashon ha-ra*.¹⁴ Elsewhere Kagan says that speaking *lashon ha-ra* violates the *lav* in Leviticus 19:14: “Do not place a stumbling block before the blind.” The rationale is that the person who speaks *lashon ha-ra* causes those who listen to violate the prohibition against believing it. Yet the sources he cites — the Bavli and Maimonides — discuss this commandment only in the context of asking a fellow Jew for a loan with interest, thereby causing him to violate the commandment against usury.¹⁵

I am not suggesting that these arguments are strained or unreasonable from the standpoint of rabbinic hermeneutics. Kagan follows accepted rabbinic exegetical rules that permit making such connections between Torah commandments. Rather my point is that associating the prohibition against *lashon ha-ra* with so many other Torah commandments is unprecedented in rabbinic literature and represents an effort to emphasize its gravity. Indeed, in Kagan’s view even these 31 commandments do not tell the whole story about the terrible implications of *lashon ha-ra* and *r’khillut*. A careful analysis reveals that violating this prohibition results in transgressions of “all of the

¹⁴ Kagan, Introduction (*asah* 4): 28; Levy, 1: 221, 223 and 225.

¹⁵ Kagan, Introduction (*lav* 4): 15-16; Levy, 1:137-143.

laveen and *aseen* having to do with relationships among individuals and most of those dealing with an individual's relationship with God.”¹⁶

However, as was the case with the early rabbinic texts, *Sefer Chafetz Chaim* occasionally mitigates the gravity and consequences of *lashon ha-ra*. Although the Preface and Introduction clearly are intended to emphasize the seriousness of the sin, Kagan also distinguishes between “masters of *lashon ha-ra*” (*ba'alei lashon ha-ra*) and those who “stumble in this regard occasionally” (*nichshal bazeh lifrakim*). It is only the former to whom b. Arakhin 15b refers when it says that their offense is equivalent to the three cardinal sins of murder, sexual sin and idol worship and caused the destruction of the temple. “They (*ba'alei lashon ha-ra*) are punished accordingly and do not experience God's presence.” On the other hand, the punishment for speaking *lashon ha-ra* occasionally is no more severe than for the occasional violation of any other Torah commandment.¹⁷ Indeed Kagan says he hopes one benefit of codifying the laws on *lashon ha-ra* will be to prevent those who merely speak it occasionally from becoming *ba'alei lashon ha-ra*.

Elsewhere he explains that the prohibition against *lashon ha-ra* applies “even to someone who related something disgraceful about a fellow Jew incidentally (*b'mikreh*)” — i.e. without intending to denigrate or harm him.

But if, God forbid, he becomes accustomed to this sin [so that he commits it] all the time (*bitmidut*), like those people who routinely sit together and

¹⁶ Kagan, Introduction: 11; Levy, 1: 39.

¹⁷ Kagan, Preface (h): 10; Levy, 1: 31. Although b. Arakhin 15b does not make this distinction, subsequent commentators have. In this clause, Kagan cites Rabbeinu Yonah in *Sha'are Teshuvah* and Maimonides in *Hilchot De'ot*. See also Kagan, 1.4: 39; Levy, 1: 299, where Kagan says *rishonim* (medieval authorities) determined that b. Arakhin 15b refers to those who have “become accustomed to committing this sin all the time and do not guard themselves from it because it has become second nature to them.”

say, “Someone did this and someone’s ancestors did that,” or “I heard this about so-and-so,” and the remarks are disparaging, the rabbis of the Talmud call people like this *ba’alei lashon ha-ra*. They are punished much more severely [than those who speak *lashon ha-ra b’mikreh*] because they maliciously violate God’s Torah.¹⁸

Clearly Kagan’s purpose in these passages is to emphasize the sinfulness of inveterate speakers of *lashon ha-ra* who relish denigrating their fellow Jews. In doing so, however, he also mitigates the sinfulness of those who speak *lashon ha-ra* only occasionally (*lifrakim*) and/or without malicious intent (*b’mikreh*). He is not excusing occasional or accidental speakers. They are sinful. But they are not nearly as sinful as *ba’alei lashon ha-ra*.

More important, they are not nearly as destructive to Jewish society. “Everyone who speaks *lashon ha-ra* magnifies [the effect of] sin in heaven . . . From this we can see the enormity of the destruction that *ba-alei ha-lashon* wreak on *klal yisrael*.”¹⁹ His primary point here is not that every instance of *lashon ha-ra* has negative repercussions for the Jewish people. Rather it is to explain why those who speak *lashon ha-ra* habitually have a much greater negative impact on Jewish society than those who do so only occasionally.

The second thing we can say about *Sefer Chafetz Chaim* is that it does not ban denigrating or harmful speech in all instances but rather seeks to establish the limits of such speech. The prohibition against *lashon ha-ra* applies to speech about Jews, but it does not apply to speech about all Jews. We will look at where Kagan draws this line in Chapter V, but for now it is enough to say that in some cases it is even a *mitzvah* — a

¹⁸ Kagan, 1.3: 38; Levy, 1: 297.

¹⁹ Kagan, Preface: 8; Levy, 1: 13.

holy obligation — to denigrate a Jew who is no longer *amitekha* (your colleague). What’s more, negative or harmful speech is not entirely forbidden even about those who are *amitekha*. It is permitted in certain circumstances in order to achieve a *toelet* (legitimate benefit) — for example, to prevent or recover damages resulting from an interpersonal offense. We will examine these exceptions in Chapter VI.

Finally, we should consider some definitions. Although the rubric of *lashon ha-ra* includes what we call gossip and slander, the notion is broader than these two terms and defies easy translation. For Kagan *lashon ha-ra* refers to any remark that improperly demeans or harms another Jew who is *amitekha*. *R’khillut* is a specific kind of *lashon ha-ra* that involves telling one Jew what another Jew said or did to harm him, thereby creating or exacerbating animosity between them.²⁰ The prohibition against *lashon ha-ra* and *r’khillut* applies to both the speaker and *ha-m’kabel* (the person who accepts the remarks as true) and pertains regardless of whether the remarks are made publicly or privately, directly to the subject or out of his presence. Finally, the prohibition applies regardless of whether the remarks are true or false. If the remarks are false, they constitute *motzi shem ra*, or slander, which Kagan views as the most egregious form of *lashon ha-ra*.²¹

²⁰ See Kagan, RK1.2: 127. “Who is a *r’khill*? Someone who carries words from this person to that person and says, ‘So-and-so said this about you,’ or ‘So-and-so did this to you,’ or ‘I heard he did this to you or wants to do this to you.’” See also Kagan, Preface: 8; Levy, 1: 41 and Kagan, Preface (h): 9; Levy, 1: 23. Kagan explains that most of the laws regarding *r’khillut* can be deduced from his discussion of *lashon ha-ra*. However, because the sin of improper speech is so common and such a “great stumbling block,” he feels he must explain the law as it pertains to *r’khillut* in detail, even at the risk of being redundant.

²¹ Kagan, Preface: 8; Levy, 1: 41. Thus Kagan refers to eight *afanim* (characteristics or parameters) that must be considered when discussing the laws pertaining to prohibited speech: whether the remark is *lashon ha-ra* or *r’khillut*, whether it is true or false (the latter is *motzi shem ra*), whether it is made in the presence of the subject or not, and whether the issue is the culpability of the speaker or the listener/believer.

However, while *lashon ha-ra* does include slander, Kagan discusses lies and exaggerations only a few times, and when he does it is often in an incidental manner indicating that the sinfulness of lying about someone is so obvious that it can be assumed and does not need extensive explanation. It's clear, in other words, that Kagan's main concern throughout the book is *truthful* or factually neutral remarks that demean, harm or cause conflict among Jews. Indeed he says one of the primary reasons *lashon ha-ra* is so prevalent in contemporary society is that many Jews do not realize that the prohibition pertains to truthful remarks.

CHAPTER III

THE DEPICTION OF CONTEMPORARY JEWISH DISCOURSE IN *SEFER CHAFETZ CHAIM*

Introduction

Kagan says in the Preface that his goal is to create a single source for “all the laws pertaining to *lashon ha-ra* and *r’khillut* scattered throughout *shas v’rishonim*” — the ancient and medieval rabbinic sources.¹ Much of *Sefer Chafetz Chaim*, therefore, is taken up with an analysis of the Talmuds and other rabbinic texts from these earlier eras. However, Kagan regularly emerges from his analysis of halakhic precedents to comment on aspects of contemporary discourse among Jews that he contends violate the prohibition against *lashon ha-ra*. Many of these observations are accompanied by the formulaic phrase *ba-avonoteinu ha-rabim matzui ha-rabah m’od* (because of our many sins it is extremely common), an explicit indication that he views a particular kind of speech act as not only sinful but also widespread. In this chapter I will examine these observations to determine what they reveal about the nature of the discourse that alarmed Kagan.

For the most part I am limiting my analysis to passages in which he comments unambiguously on contemporary Jewish society. However, I will also consider examples of *lashon ha-ra* that he implies were common without explicitly saying they were. Several of these are in the last chapter on *r’khillut* and the addendum in which he illustrates how the laws on *r’khillut* should be applied in specific circumstances.

¹ Kagan, Preface: 9; Levy, 1: 21. Compiling all the laws on *lashon ha-ra* into a single source will make them more accessible, thereby helping to reduce its prevalence in contemporary Jewish society, he says.

My analysis of these observations and examples will show that Kagan depicts Jewish society as divided and highly contentious. It will also show that he is especially concerned about public disputes and confrontations. For the most part, Kagan places this public contentiousness in traditional settings such as the *beit midrash* and the synagogue or in the context of financial relationships and contracts such as business partnerships, employment and marriage agreements. He also describes public criticism of rabbis and Torah scholars as widespread and acknowledges the diminished status and authority of the *beit din* (religious court) and *kahal* (Jewish communal government). Taken as whole, Kagan's observations about *lashon ha-ra* in contemporary society reflect a broad erosion of solidarity among Lithuanian Jews and a general decline in allegiance to traditional institutions of civil and religious authority.

Kagan's observations indicate that the discourse that alarmed him had little to do with the ideological dispute between traditionalists and *maskilim*, the adherents of the Jewish Enlightenment. *Sefer Chafetz Chaim* clearly is not intended to suppress criticism of the latter. As I will discuss in Chapter V, *maskilim* do not fit Kagan's definition of Jews who are *amitekha*. As a result, publicly condemning and humiliating them is a holy obligation, not a sin. And given the fact that Kagan's intended readers were traditionally observant Jews, it is highly unlikely that his purpose was to condemn maskilic criticism of traditionalism. On the contrary, we will see that *Sefer Chafetz Chaim* aims to persuade his observant readers, including the religious elite, to stop demeaning one another.

If Kagan was concerned about the way traditionally observant Lithuanian Jews were speaking to and about each other, then to fully understand the discourse to which he

was responding we must open the contextual lens and consider factors other than the *haskalah*. I will discuss these factors in Chapter IV.

A divided and contentious society

The explicit premise of *Sefer Chafetz Chaim* is that the sin of *lashon ha-ra* pervaded contemporary Jewish society. “Many, many people commit it thousands of times during their lifetimes and don’t take it upon themselves to guard against it.”²

Elsewhere Kagan elaborates about what he perceives as the dire state of contemporary Jewish discourse:

. . . the matter (of guarding against *lashon ha-ra*) has collapsed so completely that people are accustomed to saying whatever happens to come out of their mouths without considering whether their words are *r’khillut* and *lashon ha-ra*. Because of our many sins, we have become so accustomed to this sin that many people do not consider it wrong even if they speak unmitigated *lashon ha-ra* and *r’khillut* — for example saying something evil about one’s *chaver* and purposely condemning and dishonoring him.³

Even allowing for hyperbole, these descriptions indicate that Kagan was not responding to speech acts that he considered unusual or that he associated with some aberrant minority. Indeed his use of the word *chaver* indicates that he viewed them as widespread among traditionally observant Jews.

He reiterates this view in his explanation of how the trivialization of the sin of *lashon ha-ra* inevitably results in the desecration of God’s name, another grave Torah

² Kagan, Preface: 8; Levy, 1:15. See also Kagan, Forward: 2. In the first approbation, Rabbi Mordechai Klostsky of Lida supports Kagan’s view of contemporary discourse with a colorful metaphor: Jewish society was filled with “grasshoppers” ceaselessly chirping *lashon ha-ra* and *r’khillut*.

³ Kagan, Preface: 9; Levy, 1: 19 and 21.

violation. “And especially in regard to the prohibition against *lashon ha-ra* and *r’khillut* we see that, because of our many sins, everyone is accustomed to [seeing it] as a *hefker* (triviality). In their eyes it isn’t considered a Torah violation at all.”⁴

In addition to noting the pervasiveness of *lashon ha-ra*, this clause goes on to describe its pernicious effect: Those who consider *lashon ha-ra* a trivial matter resist rebuke and persist in speaking it until they “no longer consider [the subjects of their remarks] to be part of the community of Israel.”⁵ In Kagan’s view, widespread violation of the laws against *lashon ha-ra* was creating divisions that undermined Jewish solidarity and social cohesion.

The same view comes through in Kagan’s discussion of how *lashon ha-ra* frequently leads to violations of the Torah prohibition against *chanupah*, or obsequious flattery. In this case Kagan is referring to a person who “purposely speaks *lashon ha-ra* and *r’khillut* about *p’loni* (so-and-so) in order to ingratiate himself to [another person] who has a grudge against *p’loni*.” He describes this form of *chanupah* as common.

And know that because of our many sins, we find this sin very often [in today’s society]. One person denigrates his *chaver*, and then the listener, even though he knows the speaker’s words violate *halakha*, nevertheless nods his head and adds his own comments that make the matter worse because he [the first speaker] sometimes is a *ba’al ha-beit chashuv v’khadumah* [an important leaseholder or the like] and [the second speaker] wants a favor from him or fears he will seem unwise.⁶

⁴ Kagan, Introduction (*lav* 6): 17; Levy, 1: 151. The translation is Levy’s. In rabbinic law a *hefker* is an object or property whose owner has legally abandoned it. Kagan is using the term as a figure of speech for something unwanted or abandoned — hence trivial.

⁵ Ibid.

⁶ Kagan, Introduction (*lav* 16): 23-24; Levy, 1: 193 and 195.

The point is not that Kagan condemns *chanupah*, which is to be expected, but rather that he portrays Jewish society as divided and fractious: It was not uncommon for influential members of the community to denigrate someone with whom they were having a dispute. Others often joined in, either to curry favor with the speaker or to protect their reputations and positions. And once again Kagan uses the word *chaver*, indicating that he is referring to traditionally observant Jews speaking about one another.

Elsewhere Kagan discusses what a person should do when he finds himself “sitting with a group of people assembled for a specific matter,” and some of them begin speaking *lashon ha-ra*. The context is not entirely clear, although he seems to be referring to official or conventional gatherings that a person might be required or expected to attend — a civic meeting, religious service or wedding, for example. In previous clauses Kagan explained that a person must rebuke someone speaking *lashon ha-ra* and defend the subject of the remarks unless doing so would incite further denigration, in which case it is a *mitzvah* for the person to leave or place his fingers in his ears. (Either action prevents him from hearing the objectionable remarks and signals his disapproval.) But in this situation it is likely that the listener will be publicly ridiculed if he leaves or places his fingers in his ears. Under such circumstances, he is required only to “steel himself to protect his soul and fight God’s war against his *yetzer ha-ra* (evil inclination). . . and not accept *lashon ha-ra*.”⁷

In the *be’er* Kagan acknowledges that his lenient position is problematic, given the numerous rabbinic precedents that forbid inaction in the face of sin, particularly violations of Torah commandments. “Truthfully, one who wishes to comply with heaven

⁷ Kagan, 6.5: 80-81; Levy, 2: 307 and 309. This means the listener is prohibited not only from believing the denigrating information but also from deriving any benefit or pleasure from listening to it.

must carefully consider how to behave [in this kind of situation] . . . Perhaps the law requires that [the listener] put his fingers in his ears as our sages said that it is better to be thought a fool all your life than to be an evil person for even a moment.”⁸ On the other hand, he observes, “There is a reason for a leniency [in this situation] since in our time, because of our many sins, he would be regarded as a fool and a simpleton.”⁹ Kagan’s lenient position, then, appears to be a pragmatic concession to what he describes as the dire state of discourse in contemporary Jewish society: Not only was it common for a person to find himself at a gathering in which Jews were speaking disparagingly of other Jews, but also such discourse was so widely accepted that taking even a tacit stand against it was likely to result in public ridicule.

In another clause Kagan warns his readers to stay away from *anshei reisha* (evil people) and *ba’alei lashon ha-ra* who gather in groups to publicly denounce a fellow Jew or listen to such denunciations.¹⁰ The purpose of this clause is to argue that such gatherings violate the *asah* in Deuteronomy 10:20 “to cling to him (God).” But in making this legal argument, Kagan also indicates that they were common and associates them with discussions of “worldly matters.”

And because of our many sins, we commonly see on the holy Sabbath after the third meal that some groups of men study Torah and converse about the God of Life, and the rest of the people it seems converse about worldly matters. And most certainly speaking about these matters devolves into *lashon ha-ra* and wickedness and cynicism. Therefore leaving Torah masters to join these evil groups and listen to their nonsense violates this positive commandment (to cling to God).¹¹

⁸ He is citing m. Eduyot 5.6.

⁹ Kagan, 6.5.11: 78-79; Levy, 2: 313.

¹⁰ Kagan, Introduction (*asah* 6): 29, Levy, 1: 229.

¹¹ Ibid.

Kagan is not merely expressing the traditional aversion to the study and discussion of worldly matters instead of religious texts. He also appears to be describing an actual social phenomenon in which observant Jews were shirking religious studies on the Sabbath in order to take part in discussions of controversial, non-religious matters that typically involved overt criticism of other Jews. In the *be'er* Kagan indicates that one had to be careful even at weddings or other traditional social gatherings, where it was easy to become involved in such conversations.¹²

We get another indication of widespread acrimony within contemporary Jewish society in Kagan's discussion of the prohibition against believing *lashon ha-ra* (as opposed to merely listening to it as in the example above). If a person hears a negative report about another Jew, he may suspect that it is true and even investigate further, but only if he has a legitimate interest in protecting himself or another Jew from harm or loss.¹³ However, he may neither "secretly hate him [the subject of the remarks] in his heart" nor, in taking steps to protect himself or others, do anything that harms or shames the subject in any way.¹⁴ In the *be'er*, Kagan elaborates on this restriction. One may not relate the information to others who have a legitimate interest in protecting themselves if

¹² Kagan, Introduction (*asah* 6): 29; Levy, 1: 231.

¹³ As noted in Part I, the Talmudic source for this leniency is the passage in b. Niddah 61a which faults Gedaliah ben Achikam, the ruler of Judah under Nebuchadnezzar, for failing to take precautions after being warned of a plot to assassinate him. It concludes that although it is forbidden to accept *lashon ha-ra* as true, one may suspect that it might be and take appropriate measures to protect oneself and others.

¹⁴ Kagan, 6.11: 88-90; Levy, 2: 377 and 379. In this case, he is talking about the information coming from a single reliable witness. Just as the *beit din* may not punish anyone based on the testimony of a single witness, neither may an individual take action that would harm someone or cause him a loss based on the word of just one person.

they are likely to bypass the *beit din* and act on their own to harm or shame the subject in a way the law does not permit.

Because of our many sins, it is very common that the listener will do something worse to [the subject] than the law would allow even if the information is true. Therefore it is necessary to be extremely careful in this situation to see the consequences [of relating negative information in order to warn others]. It is often preferable to sit and do nothing.¹⁵

Not only does Kagan limit the leniency that allows a person to repeat a negative report about another Jew in order to prevent or rectify harm, but also his rationale is that Jewish society was so contentious that such revelations often provoked improper or illegal retribution that ratcheted up animosity. I would also point out that his observation indicates that it was common for individuals to circumvent the *beit din* in seeking redress for offenses against them, which tells us something about the diminished status and authority of religious courts.

Public disputes and confrontations

Kagan is unambiguous in his view that denigrating another Jew or saying something that harms him is *lashon ha-ra*, regardless of whether it is done privately or in public. However, as several of the passages above indicate, his primary concern in *Sefer Chafetz Chaim* is the latter. He makes this clear in the Preface, where he argues that one of the two reasons *lashon ha-ra* pervades contemporary society is that many *ba'alei torah* (those learned in Torah) wrongly cite leniencies for derogatory or harmful remarks made *bifnei t'lata* (in the presence of three, meaning publicly), *b'panai* (directly to the subject or in his presence) and in response to a *ba'al machloket* (someone who routinely

¹⁵ Kagan, 6.11.30: 89-90; Levy, 2: 385.

provokes public controversy).¹⁶ The implication of this passage is that rabbis and others among the scholarly elite were sanctioning rhetoric associated with public disputes and confrontations. Kagan states clearly that one of his primary aims is to rebut the legal basis for these leniencies.

He begins the second chapter, for example, by asserting that it is forbidden to speak *lashon ha-ra* about a fellow Jew to just one person, “and all the more so [is it forbidden] in front of many” — that is publicly. Indeed “the greater the number of people who hear this *lashon ha-ra*, the greater the speaker’s sin because his *chaver* suffers more denigration.”¹⁷ Speaking *lashon ha-ra* in public, then, is worse than speaking it in private, and speaking it to a large audience is worse than speaking it to a small one.

Kagan devotes the rest of the chapter to debunking the perceived leniency regarding speech *bifnei t’lata*, which derives from the following teaching in b. Arachin 16a attributed to R. Rabbah bar Rav Huna (BA3): “Anything said in the presence of three is not *lishna bisha* because your *chaver* (rabbinic colleague) has a *chaver* and the *chaver* of your *chaver* has a *chaver*.” Kagan’s legal arguments on this issue are among the longest and most complex in *Sefer Chafetz Chaim*. While it is beyond the scope of this project to present them in full, I will summarize two of them here.

The first concerns a commentary in the *tosafot* on Rabbah bar Rav Huna’s teaching.¹⁸ The *tosafot* reasons that because such remarks inevitably become widely

¹⁶ Kagan, Preface: 8; Levy, 1: 17. As noted above, the other is that *hamon* — the general Jewish public — does not understand that *lashon ha-ra* applies to truthful remarks as well as those that are false.

¹⁷ Kagan, 2.1: 41-42; Levy, 1: 321.

¹⁸ The *tosafot* consists of glosses from various medieval rabbis that appear in most printed editions of the Bavli. This commentary actually accompanies b. Bava Batra 39a, which repeats the teaching attributed to R. Rabbah bar Rav Huna in b. Arachin 16a.

known — that is, public — one must assume they will get back to the subject. Thus, it is as if the speaker has made them *b'panai*. And according to the passage in b. Arakhin 15b immediately preceding Rabbah bar Huna's ruling, anything said about someone in his presence is not *lashon ha-ra*.¹⁹

Kagan finds this position *kasha m'od* (very difficult or problematic) because it is too permissive.²⁰ Taken at face value, he argues, it seems to permit even *false* derogatory remarks as long as they are spoken in public, and certainly that can't be the intent of the *tosafot*. He argues that the actual meaning of this commentary can be understood only in light of the one on remarks *b'panai*. In that gloss the *tosafot* permits only ambiguous remarks *b'panai*, or as Kagan puts it, remarks that “are not entirely demeaning or damaging.”²¹ In the *be'er* he says the leniency applies only to remarks that are ambiguous and “could be understood as not containing *lashon ha-ra*.”²²

Kagan reads the *tosafot* as arguing that, in regard to ambiguous remarks, one must assume that a typical Jew will be especially careful not to say anything demeaning or harmful about another Jew to his face. Thus, as long as a remark *b'panai* has a plausible meaning that is not demeaning or damaging, the speaker deserves the benefit of the

¹⁹ As Kagan notes, several other prominent authorities make the same connection between these two leniencies. R. Shmuel ben Meir (Rashbam), for example, argues that because comments *bifnei t'lata* will inevitably become public, the subject is sure to hear about them, i.e. it is as if they were made *b'panai*. Thus it is permissible to tell the subject about them without violating the prohibition against *r'khilut*. Kagan explicitly rejects this leniency, finding “no basis to support Rashbam.” See Kagan, 2.3.6: 46-47; Levy 1: 385. He repeats this rejection in Kagan, R2.3: 131-132; Levy, 4: 139.

²⁰ Kagan, 2.1.1: 41, Levy, 1: 325.

²¹ Kagan, 2.2: 42; Levy, 1: 337.

²² Kagan, 2.2.2: 43; Levy, 1: 341.

doubt. One must assume that he intended the benign meaning, which means the remark is not *lashon ha-ra*.²³

However, while the *tosafot* permits certain ambiguous remarks *b'panai*, Kagan insists this leniency does not extend to *lashon ha-ra gamurah* — remarks that are patently demeaning or otherwise harmful. And because the position of the *tosafot* on remarks *b'panai* is the basis for its position on remarks *bifnei t'lata*, it therefore does not permit patently derogatory remarks spoken *bifnei t'lata* for the very reason that they are likely to get back to the subject. Instead the *tosafot* allows only remarks that have a plausible positive or neutral meaning and are delivered in a way that does not contradict or undermine that meaning. (In Kagan's view, this also absolves those who listen to such ambiguous remarks *b'panai* or *bifnei t'lata* as long as they do not infer a negative meaning.)²⁴

Likewise, Kagan seeks to narrow if not eliminate a leniency cited by Maimonides regarding remarks *bifnei t'lata*: “If the speaker made his remarks in front of three people, then those remarks are considered to have become generally known in society. And if one of the three people repeats them, he will not be in violation of the prohibition against *lashon ha-ra* as long as he does not intend to spread the information further.”²⁵

Maimonides does not absolve the original speaker of *lashon ha-ra*, only those who repeat the remarks. His argument is that because remarks *bifnei t'lata* eventually

²³ Kagan, 2.2.2: 43; Levy, 1: 343. According to Kagan, whether the ambiguous statement can plausibly be understood in a non-negative sense depends on the speaker's demeanor as well as the words themselves. “With a little change of expression, the speaker can alter the entire meaning to be either degrading or not degrading.” The former is *avak lashon ha-ra* and is not permitted.

²⁴ Kagan, 2.2.2: 43-44, Levy 1: 345 and 347.

²⁵ Maimonides, *Hilchot De'ot*, 7:5, as cited by Kagan.

become widely known, those who hear the comments can repeat them as long as they do not knowingly convey the information to someone who has *not* heard it yet. According to Kagan, the key factor for Maimonides is the intent of the person who repeats the original remark. Only if he intends to spread the negative information and thereby further demean or harm the subject it is *lashon ha-ra*.²⁶

In a long series of legal arguments, Kagan whittles away at Maimonides' position. It applies only to someone who hears the derogatory remarks first hand²⁷ and only if he *l'sapeir b'derekh akrai* (relates the information randomly or by chance).²⁸ The sense here is that the speaker is not culpable only if he repeats the original remark inadvertently as opposed to deliberately. While Kagan and Maimonides agree that repeating remarks heard *bifnei t'lata* with the intent of spreading the information violates the prohibition against *lashon ha-ra*, Kagan's position is stricter. Maimonides allows the speaker to deliberately repeat the remarks as long as he is not trying to disseminate the information. Kagan, however, argues that deliberately repeating the information under any

²⁶ Kagan, 2.2.3: 44-45; Levy, 1: 361. In his commentary on b. Arakhin 16a, R. Shlomo Yitzhaki (Rashi) also holds that someone who "reveals what is said *bifnei t'lata*" is not guilty of *lashon ha-ra* because the original speaker either intends for the information to become public or does not care if it does. Unlike Maimonides, however, Rashi does not cite the intent of those who repeat the remark as a factor in this leniency. Kagan describes Rashi as ambiguous. He might merely be agreeing with Rashbam that it is permissible to repeat the information, though only to the subject of the remarks, a position Kagan has already rejected out of hand. However, Kagan thinks it more likely that Rashi is identifying a leniency that applies only in the very narrow circumstance in which someone reveals sensitive information about *himself*. By telling three people, he indicates that he doesn't care if they repeat it.

²⁷ Kagan, 2.4: 48; Levy, 1: 397. Unless "the report is already publicized (*nitparseim*) and known (*noda*) to everyone." I will explore this exception in Chapter VI.

²⁸ Kagan, 2.3: 46; Levy, 1: 373.

circumstance, even without malice to someone who already knows it, is problematic. His rationale is that doing so inevitably hastens its dissemination.²⁹

Furthermore, if any of the three listeners is a God-fearing person who usually is careful not to speak *lashon ha-ra*, even this limited leniency does not apply because it cannot be assumed the remarks will eventually become widely known.³⁰ Kagan also argues that the leniency of *bifnei t'lata* applies only in the city where the remarks are made³¹ and is void if the speaker cautions the listeners not to repeat them.³² After explaining all these restrictions, he concludes with an admonition.

Understand, my brother, how important it is to avoid this leniency [regarding remarks made *bifnei t'lata*]. There is almost no place and no circumstance where we can meet all the conditions. And even if we do, we must study the law on this matter as it is the opinion of many authorities that there is no source for this leniency in the Talmud. Therefore, he who guards his soul will stay far away from this [leniency].³³

Kagan takes a similarly hard line in the next chapter against the leniency regarding remarks made directly to the subject or in his presence. “From one perspective, the sin is greater *b'panai* than not *b'panai*. Besides violating the prohibition against

²⁹ Kagan, 2.3.7: 47-48; Levy, 1: 393. We should recall here Kagan’s distinction between *ba’alei lashon ha-ra* and those who *l’sapeir g’nut chavero b’mikreh*. While both deliberately say something about a fellow Jew, their motives are different. The former intend to demean or harm the subject. The latter do not. To put it another way, their remarks about the subject are intentional but the harmful effect of those remarks is not. Although they are not nearly as sinful as *ba’alei lashon ha-ra*, those who speak deliberately but demean unintentionally are still guilty of *lashon ha-ra*. Thus, in regard to repeating remarks made *bifnei t'lata*, it is not enough to speak without the malicious intent of spreading the information as Maimonides holds. In Kagan’s view, one must actually speak *b’derekh akrai* — inadvertently or, as Levy describes it, “without premeditation during a chance conversation.”

³⁰ Kagan, 2.5: 49-50; Levy, 1: 403. Or if one of the three is a friend or relative of the subject.

³¹ Kagan, 2.6: 50-51; Levy, 1: 419. Even if there is frequent travel between the two cities.

³² Kagan, 2.7: 51; Levy, 1: 423.

³³ Kagan, 2.10: 52; Levy, 1: 439 and 441.

lashon ha-ra, [the speaker] shows himself to be mean and impudent, and he arouses more contention.”³⁴ In Kagan’s view, speaking *b’panai* is not a leniency. It is more sinful to speak badly about someone in his presence than when he is absent.

The source of the leniency regarding remarks *b’panai* is the following exchange in b. Arakhin 15b between Rabbah and Abaye:

Rabbah: Anything said [about a person] in his presence is not *lishna bisha*
Abaye: [But in that case] it is all the more impudence and *lishna bisha*.
Rabbah: I agree with R. Yose (T3) who said, “I have never said a word [about someone] and looked behind me [to see if he was there.]”

The issue at stake in this debate seems to be whether one may speak bluntly about a person when addressing him directly as Rabbah’s initial statement indicates, or whether, as Abaye argues, one must be more circumspect when speaking *b’panai* so as not to offend or embarrass.

It is important to take note of the connection in rabbinic literature between remarks *b’panai* and those *bifnei t’lata*. As mentioned above, the *tosafot* and Rashi cite the Talmudic passage regarding the former as the underlying legal rationale permitting the latter. Kagan himself describes them as “one and the same law”³⁵ and was well aware that the status of remarks *b’panai* had important implications for public discourse and controversy. His purpose was to debunk the perception that one was free to speak negatively about someone *bifnei t’lata* — that is, in a context that ensured the remarks would get back to the subject — because doing so demonstrated a willingness to say the same thing *b’panai*.

³⁴ Kagan, 3.1: 56; Levy, 2: 81.

³⁵ Kagan, 2.2.2: 44; Levy, 1: 347.

As we have already observed, Kagan endorses the opposite view. Essentially he agrees with Abaye's position that a Jew must be especially careful not to say anything that could be construed as negative or demeaning about another Jew to his face — or, in the case of remarks *bifnei t'lata*, that is likely to get back to him. He contends that authorities who apparently allow negative remarks *bifnei t'lata* based on the leniency regarding remarks *b'panai* must be referring not to comments that would otherwise be *lashon ha-ra* but rather to permissible negative remarks — those spoken to or about a Jew who is no longer *amitekha*, for instance, or that are spoken to protect the innocent from harm.³⁶ Kagan ends the long *be'er* on this issue with a caution similar to the one regarding remarks *bifnei t'lata*:

We know all this (that remarks that would otherwise be *lashon ha-ra* are forbidden even if they are or would be made in the presence of the subject) from Rambam (Maimonides), the SeMag (Rabbi Moses ben Jacob of Coucy), the *tosafot* and Rabbeinu Yonah. And who would be so bold as to cite a leniency in opposition to all these authorities?³⁷

I am not suggesting that Kagan treats more lenient positions regarding comments *bifnei t'lata* and *b'panai* unfairly from the standpoint of rabbinic hermeneutics, or that his own strict positions are without precedent. Rather my point is that his effort to render

³⁶Kagan, 3.1.1: 56-57; Levy, 2: 83-103. Note particularly his analysis of Rashi, R. Eliezar ben Samuel of Metz in *Sefer Yere'im* and Rabbeinu Yonah in *Shaare Teshuvah*. See also Kagan, 7.1 and 7.2 and 10.7: 91 and 118-119; Levy, 3: 85, 87, 237 and 239. In the first two clauses he prohibits believing *lashon ha-ra* “even if the speaker makes his remarks publicly in front of many people” or “claims that he would have made those same remarks *b'panai*.” In the second, he says that in situations when it is permissible to denounce another Jew, it is better to do so *bifnei t'lata* rather than discreetly. In this way the speaker demonstrates not only that he is not lying and has a legitimate reason for making the remarks but also that is he not afraid that the subject will find out about them. Kagan's position, then, is that while it is preferable to make justifiable negative or demeaning remarks *bifnei t'lata* or *b'panai*, speaking *bifnei t'lata* or *b'panai* does not justify negative or demeaning remarks.

³⁷ Kagan, 3.1.1: 57; Levy, 2: 103.

these perceived leniencies irrelevant indicates that his primary concern — as stated explicitly in the preface — was demeaning and/or confrontational *public* discourse.

This conclusion is supported by a number of his observations about *lashon ha-ra* in contemporary Jewish society that associate it with public controversy, referred to in rabbinic literature as *machloket*. For example, Kagan argues that publicly denouncing a Jew for committing a halakhic offense that harms another Jew is permissible only if one's intent is to achieve a beneficial outcome — either to help the wronged person limit or recover damages or to prevent others from being wronged.³⁸ This is true even if the potential harm is not imminent. Thus, one can denounce the subject to others in order to warn them to stay away from him.

However, having already placed nine limiting conditions on this leniency in a previous clause,³⁹ Kagan adds another: One may not disclose this kind of offense to *ba'alei rasha* (masters of evil) — those who routinely commit the same interpersonal offense and do not consider it sinful. Denouncing the offender to these people not only serves no purpose but also results in *kilkul gadol* (great harm) because they are almost certain to tell the offender about the speaker's remarks, thereby creating animosity between them.⁴⁰ Denouncing someone to such people “usually causes *machlokot g'dolot* (great controversies) and in particular can lead to *malshinut* (informing on a fellow Jew to non-Jewish authorities).” When faced with this kind of situation, Kagan concludes, one

³⁸ The disclosure is not permissible, however, if the speaker has any personal or financial motivation. Thus the speaker could not tell others about the incident if he dislikes the subject and would derive satisfaction from denouncing him.

³⁹ They are listed in Kagan, 10.2: 112-114; Levy, 3: 271 and 273. I will address these conditions in Chapter VI.

⁴⁰ Thus the speaker would be inciting these listeners to commit the sin of *r'khillut*.

must refrain from denouncing the person who has committed an interpersonal sin, even if all the other conditions for doing so are met.⁴¹ In the *be'er* Kagan states even more explicitly that the contentiousness of contemporary Jewish society demands exercising great restraint when it comes to publicizing one Jew's offense against another.

Based on what is seen [in society today], because of our many sins, the comments will get back to the accused and result is *machlokot ravot v'atzimot* (many great controversies) without any benefit. (It is understood that the basic reason for prohibiting *r'khilut* is to prevent controversy among the Jewish people.) It is more likely that [the person who discloses the offense] will provoke controversy and will not cause people to refrain from [the subject's] evil ways . . . Even though there is a slight reason to permit these disclosures because [the subject] might be influenced by public opinion and change his lifestyle from bad to good and compensate [the person he wronged], nevertheless it seems obvious to decide the law stringently. . . This slight possibility [is outweighed] by the greater likelihood of conflict if the remarks were permitted.⁴²

This passage reveals several salient points. First, it indicates that condemning or otherwise publicizing interpersonal offenses often was not an effective social sanction and instead merely exacerbated dissention and *machlokot*. More important, while Kagan no doubt sympathizes with those eager to denounce interpersonal sins and warn the public about the “evil person” committing them, it is exactly this kind of denunciation — presumably by traditionally observant Jews — that he describes as dangerously divisive and seeks to limit. And because it is in the *be'er*, we can infer that this warning is directed at *ba'alei torah*.

⁴¹ Kagan, 10.4: 116; Levy, 3: 301.

⁴² Kagan, 10.4.18: 116; Levy, 3: 311. Kagan does, however, add a caveat: If the victim would inevitably discover that he has been wronged *and* if he is able to protect himself or recover his loss, then one may disclose the offense to him.

We should also consider Kagan's position when the interpersonal offense is *lashon ha-ra*. If someone hears one Jew disparaging another, he is permitted to "publicize [the speaker's] terrible offense to *b'nei adam* (society in general)," but only if the subject of the *lashon ha-ra* already knows about it. Otherwise he may not disclose the remarks to anyone lest word get back to the subject. If that were to happen, the observer would be guilty of *r'khilut*. So concerned was Kagan about preventing animosity among Jews that this stringency applies "even if [the speaker] is *min ha-pachutim* (an inferior person or boor) who is mocking a prestigious figure in the community, including [the observer's] own father or rabbi."⁴³

Kagan qualifies this position in the *be'er*, where he cites a ruling in the *Shulkhan Aruch* that permits a person to denounce a fellow Jew in order to "zealously defend the honor of a Torah sage."⁴⁴ In the next clause, he says this leniency also pertains to denigrating remarks about other Jews, not just Torah sages, but only in a limited way: Only if the speaker is likely to *repeat* the remarks to others may one denounce him publicly. Kagan's rationale is that exposing the speaker as a boor and his remarks as sinful will limit further damage to the victim's reputation. This benefit trumps concern about animosity that might develop from the victim learning about the remarks. Kagan then explains why it is important to pre-empt the speaker in this way.

. . . as a result of our many sins, we all fail when it comes to *lashon ha-ra*, especially accepting *lashon ha-ra*. [Given this situation] it is probable that [the speaker's] *lashon ha-ra* will be accepted as true, and it will be hard to remove his words from their hearts after the fact . . . Therefore it is

⁴³ Kagan, 10.5: 117; Levy, 3: 313 and 315.

⁴⁴ Kagan, 10.5.20: 117; Levy, 3: 317.

certainly correct to pre-empt [the speaker] and lay out before the people the great injustice of his remarks and somehow defend [the subject].⁴⁵

There is tension evident in these two clauses as Kagan tries to balance conflicting concerns — limiting public denunciations of those who speak *lashon ha-ra* in order to avoid exacerbating animosity among Jews on the one hand, and allowing such denunciations in order to defend individuals whose reputations were being harmed on the other. Central to both positions, however, is Kagan’s description of a divided and contentious Jewish society in which people frequently — even eagerly — engaged in derogatory discourse about one another.

Kagan gives us another glimpse of public discord in contemporary Jewish society in his discussion of how those who routinely speak *lashon ha-ra* violate the commandment to fear God as well as the prohibition against using God’s name in vain:

Since we are discussing this *mitzvah* (to fear God), I thought I should issue a warning about something that occurs commonly in our society, namely invoking [God’s] name in vain . . . Someone will see something done that is against the Torah and become upset. Because of the many sins of society, *ba’alei lashon* (masters of the tongue) make jokes about him and mock him, saying, “What is the difference between [the protestor] and [the person he criticizes]? He puts on a cloak of fear and zealously defends *h’ tzeva’ot* (the Lord of the heavenly hosts) but he is a bigger transgressor.”⁴⁶

Kagan’s point is that by using the term *tzeva’ot*, one of the seven holy names that should never be spoken, the *ba’alei lashon* who publicly mock the protestor demonstrate that they have no fear of God. However, this does not appear to be a dispute about the importance of halakhic observance per se. It is not even clear that those mocking this

⁴⁵ Kagan, 10.6: 117-118; Levy, 3: 319 and 321.

⁴⁶ Kagan, Introduction (*asah* 11): 32; Levy 1: 251.

person disagree with his assessment that a halakhic violation has occurred. They are criticizing him not for being a zealous defender of the law but rather for being a hypocrite who routinely violates the same or a similar law. Kagan seems to be describing a public dispute among traditionally observant Jews about a specific allegation and the moral credibility of the accuser. Not only does he portray such disputes as common but he also indicates that they were typically characterized by vicious, demeaning rhetoric.

The traditional context and content of public disputes

The preceding analysis shows that Kagan viewed *lashon ha-ra* as widespread in Jewish society and associated it with frequent public disputes and controversies. In the last part of this chapter I will look more closely at the content of these disputes and the contexts in which they were occurring.

A number of Kagan's observations depict *lashon ha-ra* as common in the *beit midrash* or directed at *talmidei chakhamim* (Talmudic sages). In one clause, for example, he says it is forbidden to live in the same neighborhood with people who routinely speak *lashon ha-ra* or to associate with them or listen to their conversations.⁴⁷ However, this is not some small group of deviants who isolate themselves from the rest of the community or who otherwise can be easily identified and avoided. In the same clause he explains what a Torah scholar must do "if he discovers that one of his students is a *ba'al lashon ha-ra*." Even Torah students, it seems, were among those who routinely denigrated their fellow Jews.⁴⁸

⁴⁷ Kagan, 9.4:110; Levy, 3: 251.

⁴⁸ He must "distance himself" from the student if a reprimand would be useless. In the same clause Kagan discusses the obligations of a person who finds himself among *ba-alei lashon ha-ra* "due to circumstances

The widespread presence of *ba-alei lashon ha-ra* in Jewish society becomes even more apparent in an accompanying *hagahah*, where Kagan writes, “From this [the prohibition against living near or associating with *ba’alei lashon ha-ra*] we can learn that most certainly one must be very careful not to choose for himself a seat in the synagogue or in the *beit midrash* that is near *ba’alei lashon ha-ra*.”⁴⁹ Those who routinely spoke the kind of rhetoric that Kagan viewed as sinful were present in the most traditional settings of religious study and prayer.

Elsewhere Kagan observes that “many people make the mistake of telling their wives about the wrongs done to them by others in the *beit midrash* or the marketplace.” This is *lashon ha-ra*, he warns, and inevitably results in controversy because the wives will bear a grudge against their husbands’ antagonists and argue with them and their family members.⁵⁰ The chauvinism aside, this observation associates *lashon ha-ra* with disputes arising in the *beit midrash*.⁵¹

In another clause, Kagan not only tells us that *lashon ha-ra* was common in the *beit midrash* but also provides insight into its content:

beyond his control.” He must rebuke them if it would not worsen the situation. If they are denigrating a righteous person, “this is the one circumstance where he is obligated to get up and leave” so as not to appear to be participating in the sinful discussion.

⁴⁹ Kagan, 9.4 (h): 110; Levy, 3: 253. The danger is not just that these people will tempt a person to speak *lashon ha-ra*. Sitting near them in synagogue might cause a person to miss saying an “amen” or distract him during the Torah reading. And in the *beit midrash*, *ba-alei lashon ha-ra* distract others from studying the text.

⁵⁰ Kagan, 8.10: 106; Levy, 3: 217.

⁵¹ See also Kagan, R7.1: 144-145; Levy 4: 249. Kagan forbids speaking or believing *r’khillut* regardless of whether it is about a man, a woman or a close relative. “People often make this mistake,” he says. He then gives an example: Someone sees two boys hitting each other and tells the father of one of them about the fight, causing “great conflict” between the fathers of the two boys. “Very often, this [occurs] in the *beit midrash*.”

I find it necessary to write this explicitly because I have seen that many people are accustomed [to speaking *lashon ha-ra*] about someone when he gives a lecture in the *beit midrash*. . . The law forbids mocking him and saying that his *drashot* (scriptural interpretations) are without substance and not worth listening to. And because of our many sins, we see that many people erupt in this manner . . . According to the law, this is unmitigated *lashon ha-ra* because speech like this often causes monetary damage and sometimes distress and shame as well . . . [The critic] should approach [the lecturer] one-on-one after his talk to suggest that he change his method because his remarks are not being heeded . . . But under no circumstance can this critic make a public mockery of the lecturer.⁵²

This passage describes the routine “eruption” of mockery and derision directed at lecturers in the *beit midrash*, the traditional setting of religious study. A long *hagahah* sheds even more light on the substance of the criticism: In addition to being ridiculed “for not knowing what he is talking about,” a lecturer in the *beit midrash* was likely to be criticized for speaking “to satisfy his personal needs” — that is, to collect a fee.

Even if he wanted to collect a fee but also wanted to increase Torah knowledge and observance, he is still a righteous person . . . From the perspective of truth, we are required to give the lecturer the benefit of the doubt (regarding his motives) . . . Maybe at the time he preaches, his basic intention is that everyone hear words of *musar* and *yirat ha-shamayim* (fear of heaven) . . . Usually this criticism [of the lecturer] comes from people who themselves have no *yirat ha-shamayim*, so criticism for lax Torah observance grates on them. The shortcomings they assign to the lecturer are really their own. Because of our many sins, the critic’s ridicule stems from a hatred of the lecturer. In some instances he may be an authority who ruled against [the critic] in some civil matter. Or perhaps it is in the nature of critics to hate decent men because they disapprove of their lowly behavior . . . When one carefully considers the actions of the critics and their listeners, one will find that they violated every one of the *laveen* and *aseeen* described in the Introduction.⁵³

⁵² Kagan, 2.12: 53-55; Levy, 1: 449. A one-sentence *hagahah* adds a caveat — “unless the lecture includes heresy.” We will explore this exception in Chapter V.

⁵³ Kagan, 2.12 (h): 54; Levy, 1: 451-457.

In these passages Kagan describes unabashed animosity toward lecturers in the *beit midrash*. They were routinely ridiculed not only as boring and ignorant but venal as well. Apparently it was also common for critics to resent a lecturer's moral critiques of Jewish society and to hold grudges against rabbinic decisors for past rulings. More important, this anger and derision was not coming from outsiders but from within the *beit midrash* itself. The setting and criticism are entirely traditional. Not only do they portray a lack of deference toward the scholarly elite, but they also indicate the presence of hard-edged rivalry if not outright animosity *among* them.

In another clause Kagan explains that believing *lashon ha-ra* about *chakhamim* (sages) is an especially grave sin. If *adam beinoni* (an average Jew) deserves the benefit of the doubt, "all the more so if the [subject] is a God-fearing person for whom it is even more imperative to fulfill the positive commandment to judge your countryman favorably."⁵⁴ Although the *mekor* does not further identify a "God-fearing person," a long *hagahah* focuses exclusively on criticism of the *beit din* or individual rabbinic decisors.

We often find that when someone leaves the *beit din* after having lost a case, [a litigant] will go over to a friend and lay out in front of him all of his arguments demonstrating his innocence. This person continues to speak against the *beit din*, cursing them and defaming them, saying things I could not print . . . He finds errors and inconsistencies in the verdict based on his understanding of the law . . . [and] both he and his friend are convinced that the rabbi or the *beit din* of that city are not reasonable or capable of making a just verdict . . .⁵⁵

In the same *hagahah*, Kagan goes on to say that that the friend must not believe or encourage such criticism and should try to convince the disgruntled litigant that the

⁵⁴ Kagan, 6.8: 84; Levy, Vol. 2: 347-349.

⁵⁵ Kagan, 6.8 (h): 84-85; Levy, 2: 349-355.

court's decision was correct. What's more, "Regarding [an acknowledged Talmudic sage], the commandment to judge favorably applies even if circumstances point to the side of culpability." Thus, Kagan argues, even if the litigant argues convincingly that the *beit din* erred, his friend must suspect that he did not present his case so convincingly to the court. Even if, after examining the facts thoroughly, the friend can find no justification for the court's decision, he still may not believe the court was wrong or criticize its verdict publicly. Instead he should approach the rabbi or a member of the court privately to get a more thorough explanation.

That Kagan would defend the authority of the *beit din* and rabbinic decisors is less significant than the contemporary social reality his defense reveals: frequent *public* criticism of rulings by the *beit din*, the institution through which rabbis exerted their authority. And as in the previous passage, the critics were traditionalists. They were not challenging the authority of the *beit din* per se but rather criticizing the *halakhic* soundness of a particular ruling or the legal acumen of a particular court or decisor.

Likewise, in another clause ostensibly dealing with the prohibition against believing *lashon ha-ra* about unlearned Jews, Kagan instead emphasizes how much greater a sin it is to believe *lashon ha-ra* about a Torah sage, especially a rabbinic decisor.

A person's evil inclination persuades him to believe the prohibition against belittling a *talmid chakham* applied only to [the Mishnaic-Talmudic period], when the sages were very great, and not in our time. But this is pure error. Each *talmid chakham* is appropriate for his generation. Even in our time, one who teaches and toils in Torah is called a *talmid chakham* [and deserves the same respect]. The person who scorns him is a sinful criminal and must be excommunicated. And even more so if this *talmid chakham* is a *morah hora-ah ba-ir* (the legal decisor of a community), the sin [of believing *lashon ha-ra* about him] is certainly

much more serious. Besides being obligated to respect and honor him (the decisor) because he (the critic) relies on his decisions, the person who denigrates the *chakham* prevents society from serving God. It will cause people to ask, “Why should we approach him with questions about our legal affairs if he cannot mediate [correctly] among us.” As a result each [person] will build an altar for himself (i.e. rely on his own legal interpretations).⁵⁶

Rabbis often use this “all the more so” formulation to emphasize their own status and authority within Jewish society. However, I would argue that this passage — particularly the left-handed support of contemporary *chakhamim* and the hyperbolic condemnation of their critics — indicates that hostility toward Torah sages, particularly rabbinic decisors, was widespread. It’s also clear that Kagan viewed this attitude as a threat to the status of religious courts and the fabric of Jewish society. I would also point out that, as was the case in previous passages, the criticism he describes reflects dissatisfaction with contemporary rabbis and their decisions, not with the idea of rabbinic authority itself. In that sense it appears to be coming from traditionalists.

We should also consider Kagan’s argument that the prohibition against *r’khillut* (telling one person the bad thing another has said about him or done to him) applies even to reminding a person of something he already knows about — a case he lost before the *beit din*, for example. This merely causes him to remember his loss and “to hate [his court opponent.]”⁵⁷ In the *be’er*, however, Kagan indicates that he is worried about comments that undermine the court’s authority or cast doubt on its ability to decide the

⁵⁶ Kagan, 8.4: 104; Levy, 3: 195 and 197. See also Kagan, R7.2: 145; Levy, 4: 253 and 255. Although the clause begins with an admonition not to speak *r’khillut* about *am ha-aretz*, it is devoted almost entirely to the gravity of spreading *r’khillut* about a *chakham*. Because a sage would not do or say anything that wrongly harms another Jew, such gossip is all but certain to be a lie, Kagan argues. More important, since Torah sages are so important in Jewish society, the animosity created by gossiping about them is greater and results in more controversy and danger.

⁵⁷ Kagan, R4.1: 135; Levy, 4: 169.

law correctly. And that fact that it appears in the *be'er* indicates that it was intended to suppress second-guessing of the *beit din* among the scholarly elite.

Even if he knows all the arguments on both sides, it is forbidden to speak in the presence of the person found liable because what good would come of it since the verdict is final and irrevocable. If there was a mistake that would reverse the ruling, he should not tell this to [the litigant] but rather discreetly approach the *beit din* to discuss the matter. Perhaps they will reverse the ruling.⁵⁸

In addition to Torah sages and the *beit din*, Kagan's observations about contemporary society also describe animosity toward and among *tovei ha-ir* (city administrators) — that is, members of the *kahal*. For example, he says *tovei ha-ir* must be careful not to reveal their own positions or the positions of their colleagues in split decisions involving issues in which “someone loses and another gains.”⁵⁹ They must not “blame [fellow administrators] and exempt themselves, even if it is true.”⁶⁰

In the *be'er* Kagan warns that revealing information about split decisions causes “arguments and a sense of hatred [among those adversely affected]” toward the administrators who voted against them. But it appears that he is also addressing disputes among communal leaders themselves. Arguing that “the informed opinion of the majority is much more likely to be closer to the truth than the view of the minority,” he

⁵⁸ Kagan, R4.1.2: 135; Levy, 4: 171.

⁵⁹ The phrase is *hanhagat anshei ha-ir b'iny'nai ha-arakhot v'khayotzei ba-zeh b'davar she-hu chov lazeh v'zakhut lazeh*. Levy translates this as “the amount of tax each resident should pay or something like this in which one party gains and another party loses.” Although civil authorities did apportion the tax burden, we shouldn't assume that Kagan was referring only to financial winners and losers. As I will explain, decisions by the *kahal* about how to fulfill the conscription quotas for the Russian army created many non-financial winners and losers.

⁶⁰ Kagan, 2.11: 52-53; Levy, 1: 441 and 443. Even if the administrators do not agree to keep private their individual positions on an issue, an administrator who votes in the minority cannot relate his own opinion even casually to a disinterested third party lest it get back to one of those involved.

admonishes the latter to accede to the former once it becomes clear what the decision will be. In effect, he urges communal leaders to put up a united front on controversial decisions, even if they privately disagree.⁶¹ Kagan's position certainly has halakhic precedent.⁶² My point, however, is that it not only reflects concern that controversial decisions were eroding support for communal authorities but also indicates that some communal leaders were inciting public dissension by openly resisting or criticizing decisions of the majority.

The same view is implicit in Kagan's warning not to praise a person in public on the theory that in any group there will be those who, because they dislike or envy the person, will respond by denigrating him.⁶³ The *be'er* elaborates by putting this prohibition specifically in the context of speaking about *g'dolei ha-dor* (great or important people of the time) in a public setting.

One can learn a lesson from this, namely how important it is to stay away from gatherings where people speak the praises of even *g'dolei ha-dor* because it is virtually certain that as a result of their praise the conversation will lapse into *lashon ha-ra*, and we know that the consequences of speaking *lashon ha-ra* against such people are far more serious than speaking *lashon ha-ra* against an ordinary Jew.⁶⁴

The significance of this passage is not just that Kagan condemns the denigration of important people as an especially grave offense but that he also describes it as so

⁶¹ Kagan, 2.11.23: 53; Levy, 1: 443-447. See also Kagan, R3.1.2: 133; Levy, 4: 151 where he explains that the same prohibition applies to telling litigants how individual members of the *beit din* voted.

⁶² He cites b. Sanhedrin 29a, which prohibits a judge from telling the litigants that he favored one side but was overruled by the majority, and b. Sanhedrin 86b, which condemns the "rebellious sage" who disagrees with the majority of the Jerusalem court and follows the minority opinion.

⁶³ The person who denigrates the subject is guilty of *lashon ha-ra* while the person who intentionally incites the derogatory comments by praising the subject is guilty of *avak lashon ha-ra*.

⁶⁴ Kagan, 9.2.7: 109; Levy, 3: 247.

routine that one should expect it even at gatherings where they are being honored. This indicates that public dissatisfaction with and criticism of civic leaders was widespread. It also suggests that there were rivalries among them and their followers that resulted in the kind of rhetoric that Kagan viewed as *lashon ha-ra*.

Disputes about money and business

Many of Kagan's observations also associate *lashon ha-ra* with disputes about money, particularly those involving contracts and commercial activity. In discussing the prohibition against believing *r'chilut*, for example, Kagan offers the example of a businessman who has lost a government contract.

For example, he loses a government lease and doesn't know whether someone spoke against him or whether the government official made the decision on his own. It is forbidden for him to suspect a fellow Jew . . . Even if he hears that this person caused his loss, he is not permitted to believe this to be true, only to suspect.⁶⁵

In a related *hagahah*, it becomes clear that this is not a chance example. "Because of our many sins, many problems arise from this bad character trait of believing *r'khillut*," Kagan says. He then offers two more examples in the hope that "through God's mercy it will have some impact by revealing the deceit of the *yetzer hara* (evil inclination)."

The first example involves a Jewish businessman who inquires about the loss of a government lease. A government official blames another Jew in order to deflect blame from himself. "Immediately [the victim's] response is to believe in his heart that this is true." The second example involves a gentile businessman who has agreed to purchase

⁶⁵ Kagan, R6.3: 140-141; Levy, 4: 213. This is true even if "society in general" believes him to be the cause of the victim's loss.

“*mashka* (liquor) or the like” from a Jewish distributor. (Typically, such a distributor would have held a leasehold agreement with a private magnate or other gentile authority.) The context here is that the gentile customer and the Jewish distributor have struck but not consummated a deal. From a halakhic standpoint, it would be improper for another Jew to offer the buyer a better price or do anything that interferes with the existing agreement. In this case, however, the customer approaches a second Jewish dealer who, unaware of the pending arrangement, sells him the same merchandize at a lower price. When the first dealer asks the gentile buyer why he has reneged on their agreement, the buyer tells him the second dealer came to him with a better offer. “And he [the first dealer] immediately believes this is absolutely true and thinks the other Jew is a *rasha* (evil person) who has improperly interfered with his business.”⁶⁶

Kagan portrays gentile officials and businessmen as unethical and the cause of frequent misunderstandings and animosity among Jews who trade with them.⁶⁷ Regardless of whether this passage inaccurately stereotypes non-Jewish businessmen or rationalizes the questionable practices of their Jewish counterparts, it indicates that commerce with gentiles — specifically commerce related to government leaseholds — was a frequent context for the kind of discourse among Jews that Kagan considered *lashon ha-ra*.

This is supported by another passage in which he explains that *r'khilut* is an even more serious sin when the remarks are made to a non-Jew. “Yet there are people who

⁶⁶ Kagan, R6.3 (h): 140-141; Levy, 4: 215-221.

⁶⁷ In the same clause he explains, “There are [gentile] buyers who, even after making a purchase agreement with one [seller], will go to other [Jewish] dealers of the same kind, perhaps to get a little lower price than the first deal.”

very often make just this mistake. They tell a *nakhri* (a foreigner, or non-Jew) about a defect in merchandise sold to him by a Jew or in the work done for him [by a Jew] or something like this. And this results in the loss of his livelihood.”⁶⁸

Elsewhere, Kagan indicates that sinful discourse was common even in business transactions that did not involve gentiles.

Now I will explain a mistake made by many people. It is common for someone to bring merchandise to a city to sell and see many buyers. And frequently someone without the money to complete a transaction immediately selects merchandise and asks the dealer not to sell it to someone else until he can return with his money. During this time, other buyers come to [the merchant] and pressure him to sell them the same merchandise, and he agrees. And when the first buyer returns [with his money] and asks for his merchandise, the seller says, “So-and-so came, and I did not want to sell him [your merchandise] but he threw down money and took [the merchandise]. I reluctantly acceded because I didn’t want to start a quarrel.” By doing this, the merchant absolutely violates the Torah prohibition against peddling gossip among your people, even though [the second buyer] also committed a serious sin by pressuring the merchant to sell merchandise he had promised to someone else. . . . It is necessary to be very careful in such circumstances not to reveal the name of the second buyer even if the merchant takes the blame himself for making the deal. It is likely the admission will still cause the first buyer to hate the second in his heart, thinking that he diminished his livelihood. [The merchant] should only say, “I sold it to someone else by mistake.”⁶⁹

In this passage we learn not only that Kagan was troubled by the prevailing business practices of Jewish merchants and buyers but also that such transactions often were the context for the kind of discourse that he sought to suppress.

⁶⁸ Kagan, R 7.4: 145; Levy, 4: 257. In a related *hagaha*, Kagan says this clause pertains to false remarks. If the remarks are truthful and the speaker would be permitted to repeat them to a Jew in order to achieve a beneficial result, then he can also tell a non-Jew. Levy cites subsequent editions of *Sefer Chafetz Chaim* in which editors speculate that this *hagahah* was inserted to mollify censors. Regardless, my point remains: The clause portrays *r'khilut* as common in the context of business dealings with non-Jews.

⁶⁹ Kagan, R9.15: 157; Levy, 4: 357-361. He goes on to say that if the second buyer didn’t actually pressure the merchant too badly or the merchant didn’t tell him about the first agreement but simply sold the goods because it was a better deal, then by blaming the second buyer he commits the graver sin of *motzi shem ra*.

The view comes through even more clearly in another clause in which Kagan explains that one may not repeat stories about another Jew's past halakhic violations (or the past violations of his family members) if the subject now conducts himself according to the law. His position is based on the rabbinic precedent that forbids publicly shaming a *ba'al teshuvah* (repentant sinner) by mentioning his previous sins.⁷⁰ In the *be'er*, Kagan explains that the former sinner's atonement is not complete until he rectifies the harm he wrought. A repentant thief, for example, must reimburse his victim. But Kagan allows a leniency when restitution is impossible or impractical.

Either this person does not have the means to fulfill the *mitzvah* of restitution or it is not relevant — for example, [the person] was not an outright thief but his way of doing business was not strictly halakhic. It involved altercations and quarrels in which he snatched business from his fellow Jew as is typical [in contemporary society] because of our many sins. [This person's] *yetzer hara* convinces him that his [unethical business practices] were not prohibited because he had to make a living. And now that this man has changed his evil ways and conducts his business properly, he is a *ba'al teshuvah*. There is absolutely no basis for denouncing this person, even if his earlier practices were common knowledge and he was unable [to make restitution] to everyone he had previously dealt with.⁷¹

For my purposes, the relevant point is not Kagan's position regarding the *ba'al teshuvah* but rather what he is telling us about commerce in contemporary Jewish society:

Merchants and other business owners typically ignored or fudged halakhic standards, and

⁷⁰ Kagan, 4.1: 61-62; Levy, 4: 135. This applies even if the remarks are not made in the presence of the subject, and even if the comments were not intended to be demeaning and would not cause the listener to change his good opinion of the subject.

⁷¹ Kagan, 4.1.3: 62; Levy, 2: 143. Kagan cites Rabbeinu Yonah's ruling in *Sha'are Teshuvah* that public condemnations can be made "only for the sake of being zealous for the truth or to assist the victim of a sinner." Neither of these purposes, Kagan reasons, pertains in the two situations he cites — the repentant thief who lacks the means to repay his victim and the formerly unethical businessman for whom there is no practical way to identify and repay all his victims. However, *Sha'are Teshuva* itself does not cite these specific exceptions.

their unethical or illegal business practices were the source of controversy and angry public discourse.

Another clause deals with the kind of information that may be sought (or conveyed) by someone who is hiring an employee, entering into a business partnership or arranging a marriage.⁷² One may make discreet inquiries before entering into these kinds of contractual agreements, Kagan says, even if there is no reason to suspect that the prospective employee, partner or in-law has done something improper. Such inquiries have a legitimate purpose: To protect the inquirer from hiring a bad employee or entering into a bad partnership or marriage arrangement. Even if negative information is exchanged, neither the inquirer nor the respondent is guilty of speaking or believing *lashon ha-ra* as long as he does not intend to denigrate the subject of the inquiry, only discover (or reveal) pertinent information.⁷³

However, there is an important caveat to this leniency: The inquirer should explain his purpose at the outset, emphasizing that he is seeking only information relevant to the business deal, not merely digging up dirt or hoping to incite the respondent into denigrating the subject. In an accompanying *hagahah*, Kagan indicates that improper inquiries were the norm in contemporary society.

Yet most of society stumbles in this matter. Because of our many sins, in matters of matchmaking and the like, when they ask and inquire about the

⁷² An arranged marriage involved a legal contract in which the fathers of the couple agreed to certain financial obligations — the amount of the bride’s dowry, for example, and in some cases a minimum level of support for the newlyweds from the groom’s family. Typically one father would want to make sure the other had the financial wherewithal to fulfill his obligations under the marriage contract. This is not to suggest that non-financial considerations weren’t also important in marriage arrangements. However, non-financial factors such as the status of the families or the groom’s level of Torah scholarship had financial implications as well.

⁷³ Kagan, 4.11: 70-71; Levy, 2: 221 and 223.

nature of the participant (prospective groom, business associate or employee), they pretend as if they don't have a bit of interest [in this person]. And in doing so, they violate this prohibition by causing their fellow Jews to speak *lashon ha-ra*.⁷⁴

There are dozens of other passages in which Kagan discusses *lashon ha-ra* in similar contexts or describes disputes related to financial losses, employment and commerce as common. Although it is not possible to examine them all, I will mention some:

- One may not engage in *lashon ha-ra* even if it means the loss of one's livelihood — for example, if a person's employer is someone with “no sense of Torah” who will fire him for not speaking *lashon ha-ra* as he does. More important than Kagan's position, for which there is much rabbinic precedent, is that he describes sinful discourse as common in the workplace, where owners and managers pressured employees to participate: “It is well known that, because of our many sins, these men are completely uninhibited by this profound sin.”⁷⁵

- The prohibition against spreading a calumny (*hotzia dibah*) about a fellow Jew also pertains to his merchandise or services. “It is very common, because of our many sins, that one shopkeeper spreads a calumny about another shopkeeper's goods, all because of envy.”⁷⁶ This is one of the few instances in which Kagan explicitly portrays *lashon ha-ra* as a lie. However, my point is that he places this common violation in the context of intense commercial competition.

⁷⁴ Kagan, 4.11: 72; Levy, 2: 227.

⁷⁵ Kagan, 1.6: 39; Levy, 1: 307.

⁷⁶ Kagan, 5.7: 77; Levy, 2: 273.

- One cannot demean a fellow Jew merely for “refusing a favor concerning a loan, charity, hospitality and the like.” Here Kagan appears to be referring to the provision of money or material comfort to fellow Jews that, while not required in a strict legal sense, nevertheless is expected of those who are righteous and ethical. It is “absolute *lashon ha-ra*” to reveal that someone did not live up to this expectation. “And because of our many sins, many people fail in this regard. If he is not received in one city as pleasantly as he would like, when he travels to another city he publicizes this denigration to the important people there.”⁷⁷

- If a businessman explores the possibility of ending one partnership and entering another but eventually decides not to, it is forbidden to tell the original partner. This is *r'khillut* because it would cause one partner to distrust the other. The same applies to a pending marriage arrangement in which the prospective groom or his family considers another potential bride.⁷⁸

- The last chapter of *Sefer Chafetz Chaim* discusses “cases in which *r'khillut* is not prohibited as long as we fulfill the necessary conditions.”⁷⁹ I will explore this leniency in another chapter, but for now the important point is Kagan puts it in the context of someone “who sees that his *chaver* wants to participate in something with [another Jew]

⁷⁷ Kagan, 10.12: 121-122; Levy, 3: 367. See also Kagan, R8.3: 146; Levy, 4: 265. In the latter Kagan forbids *r'khillut* in the context of loans and other financial favors. If one Jew turns down another’s request for a financial favor, it is forbidden for the rejected party to say, “So-and-so told me himself [that you granted him the same favor].” The point is that the subject will be angry at so-and-so for telling others about the favor and thereby putting him in the position of having to deal with their requests for a similar favor.

⁷⁸ Kagan, R2.4: 132; Levy, 4: 141 and 143.

⁷⁹ Kagan, R9 (introduction): 147; Levy, 4: 271. The *be'er* for this introduction is a long, unnumbered argument that the prohibition against *lashon ha-ra* is unlike any other Torah *lav* in that a person is responsible for indirect damages and becomes culpable even before they occur. His purpose is to caution readers not to be too quick to use the leniencies he is about to cite. My point, however, is that this warning reinforces the fact that he is addressing speech in the context of financial activity.

and he surmises that this affair certainly will turn out bad for him.”⁸⁰ The sense is that he is talking about business venture or other financial transaction in which the observer’s *chaver* is likely to be taken advantage of or lose money.

Kagan explores specific circumstances and examples throughout the chapter that bear this out: The *chaver* is about to hire an employee the observer knows to be a thief;⁸¹ the *chaver* has legally finalized a business or financial deal with someone the observer knows will take advantage of him;⁸² the observer sees his *chaver* about to patronize a dishonest merchant (for example, one who marks up the price of his goods more than the *halakhic* limit of twenty percent),⁸³ or the observer sees one customer convince a merchant to sell him goods that the merchant had already agreed to sell to another customer.⁸⁴

Finally, we should consider Kagan’s argument prohibiting the public condemnation of a fellow Jew who has committed a Torah violation “even if it is something that much of Jewish population is not careful to observe, for example, saying that someone does not want to study Torah . . .”⁸⁵ One may not criticize a fellow Jew for a sin even if doing so is not likely to harm his reputation because most people commit the very same offense themselves. What’s interesting is that Kagan includes disregard for Torah study in this category.

⁸⁰ Kagan, R9.1: 147; Levy, 4: 275.

⁸¹ Kagan, R.9.1.1: 147, Levy, 4: 277.

⁸² Kagan, R9.5: 150-153; Levy, 4: 307 and 309.

⁸³ Kagan, R9.10: 153-154; Levy, 4: 329 and 331.

⁸⁴ Kagan, R9.15: 157; Levy, 4: 358.

⁸⁵ Kagan, 4.2: 62; Levy, 2: 145.

He elaborates in the *be'er*, where he cites a ruling by Rabbeinu Yonah in *Sha'are Teshuvah* that prohibits denouncing another Jew for a Torah violation except where the behavior is widely regarded as sinful and the transgression so flagrant that it demonstrates a profound disrespect for God. According to Kagan, “[The sin of not wanting to learn Torah] is not in this serious category. Because of our many sins, today’s society is lax in regard to Torah study, believing that it interferes with earning a living.”⁸⁶

There are two key points about this passage. First, in Kagan’s view, economic stress had as much to do with contemporary attitudes toward Torah study as ideology. Second, it’s fair to assume that denigrating rhetoric directed at those who were lax in Torah study was coming from traditionally observant Jews if not from Torah scholars themselves. Yet Kagan, while no doubt among those who lamented this trend, nevertheless prohibits the public condemnation of Jews who were not fulfilling their obligations to study Torah.⁸⁷ Instead, he says, “it is necessary to approach this person privately and reprove him gently and make him understand that laxity in Torah study is a rationalization of his *yetzer hara* [and that] even a destitute person must set aside a regular time for Torah . . . But [the speaker may not] go and dishonor him in front of the rest of the people.”⁸⁸

⁸⁶ Kagan, 4.2.6: 62; Levy, 2: 147.

⁸⁷ See also 4.11 (h): 72; Levy, 2: 229. Kagan observes that “it is typical in [today’s] society that when [a person] moves to a new city and meets someone from his former town, he inquires about all his old acquaintances in general and in detail, how well they are behaving, both in their relationship with God and with other people, either good or bad. In particular these inquiries are made to find out whether the youth are still studying Torah. . . There is no grounds for permitting these types of inquiry because the questioner has no intention of moving back to the first town to rebuke them (privately) and convince them to return to Torah study. This kind of inquiry and response is utter *lashon ha-ra*.” This passage is further indication that laxity in Torah study was an issue of public discussion and that Kagan was trying to suppress public criticism by traditionally observant Jews of those they perceived to be lax in fulfilling this obligation.

⁸⁸ Kagan, 4.2.6: 62, Levy, 2: 149.

Discourse about rabbis and Torah sages

As noted above, Kagan identifies two reasons that *lashon ha-ra* was so prevalent in contemporary Jewish society: The Jewish masses (*hamon*) did not know the law while masters of Torah (*ba'alei torah*) rationalized or misinterpreted it in order to establish unwarranted leniencies.⁸⁹ The dual structure of *Sefer Chafetz Chaim* is intended to address these two audiences. The *mekor* instructs the unlearned masses on the basic requirements of the law regarding *lashon ha-ra* and *r'khillut*. Meanwhile, the *be'er* corrects the mistaken legal reasoning of the scholarly elite. Kagan acknowledges that he is appealing to these two distinct groups when he explains that the *mekor* is for readers for whom wading through the intricate legal arguments in the *be'er* would be difficult or tedious.⁹⁰

That Kagan felt compelled to write for both Torah scholars and the Jewish masses is significant. As noted in my introduction, although *Sefer Chafetz Chaim* deals with only a small corner of *halakha* having to do with improper speech, within the spectrum of rabbinic literature it falls into the category of legal codes. Traditionally, legal codes were not written for the general Jewish population. Although some non-rabbis may have read or been familiar with them, in the eyes of their rabbinic authors such codes were part of an ongoing discourse among the scholarly elite and were intended to guide the rabbinate in making halakhic rulings. This is true even of Rabbi Joseph Caro's revered *Shulkhan Aruch*, the abridged version of his *Beit Yosef* that omits the *halakhic* sources found in the

⁸⁹ Kagan, Preface: 8; Levy, 1: 17.

⁹⁰ Kagan, Preface: 9; Levy, 1: 25.

longer work.⁹¹ The authors of legal codes assumed that their intended readership — primarily the rabbinate and their students — had the status and authority to determine the practice of Jews in general. Even if it had been possible to write for a general audience, there was no reason to.

For Kagan, on the other hand, writing only for the scholarly elite was not sufficient. In order to ensure the proper behavior of Jewish society in regard to *lashon ha-ra*, he felt it necessary to appeal directly to the general Jewish population. Thus the two-part structure of *Sefer Chafetz Chaim* implicitly acknowledges the diminished status of rabbis as the arbiters of socio-religious practice among Lithuanian Jews. In recognizing that correct halakhic observance was a matter of individual choice and could not be assured by the authority of communal institutions, *Sefer Chafetz Chaim* is an expression of modern Jewish orthodoxy.⁹²

The diminished status of rabbis is supported by a number of observations in *Sefer Chafetz Chaim* about contemporary society. Let's begin with Kagan's discussion of a situation in which someone witnesses an *adam beinoni* (an average Jew) knowingly

⁹¹ Although the *Shulkhan Aruch* would become the legal handbook of observant East European Jews, Caro wrote it late in life almost as an afterthought and says in the introduction that it was intended not for a general audience but rather for “young [Torah] students” who didn't yet have the intellectual maturity and knowledge to understand the more complex legal arguments in *Beit Yosef*. He did not anticipate that it would be widely read by ordinary Jews.

⁹² In “Rupture and Reconstruction,” Haym Soloveitchik attributes the rise of a stringent, text-based authority within modern Orthodox Judaism to the decline of “mimetic practice” — the variable religious customs determined by family and affirmed by communal authorities, particularly rabbis. He argues that this change, which began in the nineteenth century and was exacerbated by the Holocaust, has resulted in a flood of legal texts aimed at instructing a general Jewish audience on correct religious practice. Soloveitchik cites Kagan's *Mishnah Berurah* as an example of the tendency of Orthodox Jews to place the authority of texts ahead of custom. The structure of *Sefer Chafetz Chaim* indicates that Kagan was responding to this phenomenon a decade before beginning *Mishnah Berurah*. See also Benjamin Brown, “‘Soft Stringency’ in the Mishnah B[e]rurah: Jurisprudential, Social, and Ideological Aspects of a Halachic Formulation,” *Contemporary Jewry* 27 (2007), 15. Kagan was very much aware that “many Jews could not or would not turn to available rabbis . . . and believed with all his heart that one of the major solutions to the crisis was the composition of popularized *halacha* books for Jewish laymen.”

commit a widely recognized sin against God — adultery, for example, or the consumption of a forbidden food. For Kagan, an *adam beinoni* signified a traditional Lithuanian Jew, someone who intended to observe religious law and was remorseful when he did not. An observer may not tell anyone about the one-time sin against God of an *adam beinoni* because it's possible the offender has already repented. Instead the observer must admonish the offender gently in private.⁹³

But Kagan qualifies this prohibition in a *hagahah*: In addition to admonishing the offender, one is obligated to disclose the information privately or discreetly to certain individuals so long as there is no intent to denigrate the subject and doing so will achieve a legitimate benefit. For instance, a person who knows first hand that a woman has committed adultery must, in addition to admonishing her, tell her husband so that he will “separate himself from her” — that is, not have sexual relations with her while she is in a state of sexual sin.⁹⁴

In the *be'er* Kagan discusses this qualification in regard to informing the *beit din* about a halakhic violation. Normally a single witness is barred from reporting the offense of a fellow Jew to the *beit din* because the court must hear testimony from at least two witnesses in order to act. Absent this legitimate benefit, an official report to the *beit din* by a lone witness can serve no purpose other than to denigrate the offender. Therefore, it is *lashon ha-ra*. However, Kagan argues that the discreet, unofficial disclosure of a

⁹³ Kagan, 4.4: 63-65; Levy, 2: 155-157. See also Kagan, 4.5.23 (h): 66; Levy, 2: 181 and 183. Kagan acknowledges but rejects a more lenient position that seems to permit publicly denouncing *adam beinoni* for a one-time violation of religious law. While it may be permissible to secretly hate an average Jew who sins one time, Kagan says, “regarding the issue of publicly denouncing his behavior or insulting him to his face, we take the strict view that he repented [and disclosure is prohibited]. One should analyze this very carefully.”

⁹⁴ Kagan, 4.4 (h): 65; Levy, 2: 159.

halakhic offense to members of the *beit din* does achieve a beneficial effect. Even though the court cannot convict or punish the offender, it can at least prevent him from swearing an oath or testifying in other cases.⁹⁵ Therefore, he says, “it appears that if this disclosure is made [by a single witness] to a *beit din*, it is not altogether forbidden, although it would be better if it were not initially disclosed.” What’s more, while the court may not take official action against the offender, “substantial thought must be given to whether this person must be reprimanded [privately] by the city’s judges.”⁹⁶

It is not surprising that Kagan privileges the *beit din* by allowing its members to hear certain derogatory reports that others may not and suggesting that they may respond to such reports in an unofficial capacity. What’s significant for my argument, however, is that Kagan exempts the lone witness from the obligation to warn the offender before disclosing the offense to the *beit din*. In doing so, he makes this observation about contemporary society: “At any rate, what is the relevance in a time like this of giving or receiving a forewarning . . .”⁹⁷

This cryptic aside refers to forewarnings in general, either by a single witness or by multiple witnesses. Apparently Kagan believed it was a toothless threat to warn a typical Jew that his sinful behavior would be reported to religious authorities if it continued. Even the offender’s acknowledgement of his sin was no guarantee about his future behavior. Kagan’s description of such forewarnings as ineffective or irrelevant

⁹⁵This benefit holds even if there is no specific case in which the sinner might be a witness. It is still permissible to disclose the sin to the *beit din*, “because perhaps it might be relevant at some time in the future when this person might be called as a witness or asked to swear an oath.”

⁹⁶ Kagan, 4.4.16: 64; Levy, 2: 165-169.

⁹⁷ Kagan, 4.4.16: 64; Levy, 2: 169.

reflects an awareness of the diminished status of the *beit din* and its authority to determine social norms even among *adam beinoni*.

We find a similar implication in the following two clauses, both of which deal with a situation in which someone witnesses a halakhic violation by one of “those foolish clowns who hate to be admonished.” Here Kagan is still referring to a traditionally observant Jew who has committed a one-time offense and, therefore, should be privately and gently admonished, not publicly humiliated. But in contrast to the *adam beinoni*, who normally is contrite and repentant when admonished by a peer about having committed a known sin, this person is likely to become angry and defensive, to insist that his actions were not sinful and repeat them out of sheer stubbornness.

In order to avoid this, the witness should not rebuke the offender himself but rather disclose the offense to the city’s *beit din* or the offender’s rabbi so that they can admonish him privately.⁹⁸ The rationale here is that this stubborn, foolish person is more likely to accept a rebuke from “those who are important and influential in society.”⁹⁹ However, because it would be a sin — *lashon ha-ra* — to do anything that results in the public humiliation of the offender, the witness must be careful to make the disclosure only to a discreet authority figure, one who will not tell anyone else.

In the next clause, Kagan qualifies this position with a leniency. If the witness feels the person is likely to commit the sin again, he can report the offense to the person’s rabbi, even if the rabbi is not particularly discreet and the information is likely to become

⁹⁸ Kagan, 4.5: 65-66; Levy, 2: 173 and 175.

⁹⁹ Alternatively, Kagan says, a witness may report this person to his relatives if he is sure they will believe him *and* the offender is likely to heed their reprimand.

public. This leniency holds, however, only if one is sure this indiscreet rabbi is sufficiently influential that his rebuke will be effective.¹⁰⁰

In this case, where there is a conflict between enforcing proper religious behavior and risking the public humiliation of a fellow Jew, Kagan comes down on the side of the former. However, in doing so he also reveals something important about the status of the rabbinate in contemporary Lithuanian Jewish society: The very fact that one would have to consider whether a particular rabbi was sufficiently influential within his community before telling him about a *halakhic* violation indicates that some rabbis were not.¹⁰¹

There also is an underlying assumption in *Sefer Chafetz Chaim* that many Jews were no longer turning to rabbis and the *beit din* to settle matters that had long been within their purview, particularly business disputes and other financial disagreements. For example, Kagan explains that the rationale behind the prohibition against *r'khillut* — telling one Jew about the bad thing another Jew has said about him or done to him — is that it causes hatred and conflict between them. The exception is if telling the person allows him to protect himself against harm or loss. In that case, revealing the information to him is a *mitzvah*, not a sin.

However, if the victim is the type of person who, instead of bringing the matter to the *beit din*, is likely to bypass the court and “take the law into his own hands,” then the information may be related only by two first-hand witnesses and only if they are certain

¹⁰⁰ Kagan, 4.6: 66-67; Levy, 2: 189 and 191. As always, the speaker’s sole motivation must be constructive — in this case to make sure the subject has seen the error of his ways — not to shame or otherwise harm someone.

¹⁰¹ This passage should not be interpreted simply as a jab at the so-called “state rabbis” — those who graduated from state-sanctioned seminaries and whose appointments had to be approved by the Russian government. As I will argue later, while state rabbis contributed to the decline of the rabbinate’s status and authority, there were other factors as well. At any rate, it is not likely that Kagan would have considered them legitimate rabbis.

the victim's response will not harm the offender or cause him a financial loss that exceeds the punishment the *beit din* would have meted out for the offense. Kagan's insistence that one must take into account whether revealing information about an interpersonal offense would result in a legally acceptable outcome is an implicit acknowledgment that many of Jews were, in fact, taking such matters into their own hands rather than relying on the *beit din*.

The same impression comes through in Kagan's discussion about whether an individual may believe a report that another Jew has said or done something to harm him for which there are *d'varim nikarim* (recognizable things, i.e. circumstantial evidence). If the report comes from a single witness, the victim may not harm the offender or cause him a monetary loss.¹⁰² In the *be'er* Kagan gives an example "of what is common [in contemporary society]."

Money is stolen from Shimon's house on the night that Reuven happens to stay there. Shimon checks his safe and finds it broken and everything indicates that his *chaver* (Reuven) caused his loss. Even so, he may not seize [Reuven's money claiming that it is his] . . . only bring him to court where the *beit din* will make him swear an oath about whether he was involved.¹⁰³

Here Kagan not only discusses *r'khillut* in the context of a financial loss from theft but also implies that it was not unusual for individuals to try to recover such losses on their

¹⁰² Kagan, R6.9: 143; Levy, 4: 237-239. If the evidence is strong — meaning it leaves no grounds for judging the alleged offender favorably — the victim may believe the report, but only if doing so serves a constructive purpose, i.e. it allows him to protect himself or recover a loss.

¹⁰³ Kagan, R6.9.20: 143-144; Levy, 4: 243. Just as the victim cannot do anything to harm the suspect, the *beit din* cannot punish him because there are not two eyewitnesses to the crime.

own instead of going through the *beit din*.¹⁰⁴ In the next clause, he indicates that this frequently involved turning to gentile authorities.

We can see for ourselves how people make this mistake, because of our many sins, that if someone's business is harmed by *malshinut* (i.e., someone informed on him) or the like and he has circumstantial evidence that a Jew did this do him, he turns around and informs on him too. The people's common perception is that if someone informed on his *chaver*, it is permissible for him to [retaliate and] inform on him too.¹⁰⁵

We should also consider Kagan's discussion about speaking ill of a fellow Jew to gentiles, which is worse than making such comments to another Jew. Worse still is the "terrible and hateful sin" of the *malshin* — the informant — who speaks badly about another Jew to gentile authorities.

He is considered in the category of informants who are equal to those who deny God or repudiate Torah or do not believe God will bring the dead back to life, and their punishment will continue long after *gehinnom* ceases to exist. Therefore every Jew must guard himself carefully not to commit this terrible act. One who does inform on Israel to them [gentile authorities] is considered to have abused and cursed and raised his hand against the Torah of Moses our teacher.¹⁰⁶

¹⁰⁴ According to Kagan, this was true even of Jewish communal administrators. See Kagan, 7.14: 102; Levy, 3: 183. "See how often people make a mistake in this regard when something is stolen from them, and they suspect someone, they tell *tovei ha-ir* that they have circumstantial evidence and, contrary to the law, they (*tovei ha-ir*) beat and punish him so that he will confess. . . . In reality this is not legal. They (*tovei ha-ir*) may not depend [solely] on [the word] of the complainant and punish a Jew without justification." Although Kagan's use of pronouns makes identifying the antecedents difficult, he indicates that civil authorities frequently acted outside the bounds of *halakha* in response to accusations of theft or financial wrongdoing. In this case, they are not permitted to act without either having first-hand knowledge of conclusive circumstantial evidence or hearing testimony about it from at least two independent eyewitnesses.

¹⁰⁵ Kagan, R6.10: 143; Levy, Vol. IV: 245.

¹⁰⁶ Kagan, 8.12: 106-107; Levy, 3: 221.

Similar hyperbolic condemnations of informants can be found elsewhere in rabbinic literature, and it would be unusual if Kagan did not take this position. More interesting is an accompanying *hagahah*, which sheds some light on the contemporary social situation he may have been addressing: “It is known that there are people who pay witnesses and deal treacherously with their fellow Jews before the government’s judges to acquire [their fellow Jew’s] money unjustly.”¹⁰⁷

According to Levy, at least one previous editor of *Sefer Chafetz Chaim* believed this *hagahah* was inserted at the insistence of government censors. However, it seems unlikely that the censors would require this cryptic *hagahah* while permitting other explicitly unflattering remarks about gentiles in this clause and elsewhere in *Sefer Chafetz Chaim*. It is more likely that the injustice to which Kagan refers has something to do with the lower standards of evidence in gentile courts, including the fact that, unlike the *beit din*, they could accept testimony from non-Jews and lone witnesses. Thus Kagan is not merely reiterating the historic rabbinic condemnation of the *malshin*. He appears to be referring to a tendency among contemporary Jews to settle their legal disputes in gentile forums in order to circumvent halakhic standards of evidence.¹⁰⁸

¹⁰⁷ Kagan, 8.13 (h): 107; Levy, 3: 223.

¹⁰⁸ See also Kagan, R9.5.17: 151-152; Levy, 4: 311-319. He forbids a single witness from telling one Jew what another has done to or said about him if the first one will “take matters into his own hands” and renege on a business deal. In the long *be’er*, Kagan reminds readers that this requirement prohibits single-witness testimony in a gentile court, regardless of the veracity of the testimony. It is single-witness testimony that the Talmud condemns, he says, not testimony in gentile courts per se.

CHAPTER IV

THE SOCIO-HISTORICAL CONTEXT OF NINETEENTH CENTURY LITHUANIAN JEWISH DISCOURSE

Introduction

In this chapter I will examine developments in the nineteenth century that ruptured solidarity among Lithuanian Jews and undermined traditional institutions of authority. I will argue that the resulting social instability not only explains why Kagan perceived *lashon ha-ra* to be so prevalent and threatening but also helps account for his specific descriptions of it.

We should be careful not to overstate the solidarity among Jews in the Polish-Lithuanian Commonwealth or the authority of their communal institutions at the onset of Russian rule at the end of the eighteenth century.¹ Social criticism already had become “an integral part of the inner life of the Jews of Eastern Europe,” and the number of edicts condemning “gossip mongers” and those who ridiculed town notables indicates that civil authorities were concerned about such criticism.² Likewise, the prevalence of “heresy hunting” in East European Jewish society during the last half of the eighteenth century

¹ The partition took place in three stages between 1772 and 1795. Most of the Grand Duchy of Lithuania, including Vilna, came under Russian rule in the final partition.

² Shmuel Ettinger, “The Modern Period,” in *A History of the Jewish People*, ed. H. H. Ben-Sasson, trans. George Weidenfeld (Cambridge MA: Harvard University Press, 1976), 766-767. Jewish artisan and craft societies, for instance, protested corruption and patronage among communal leaders and the enactment of taxes on certain goods and services. Some even organized their own synagogues and hired their own rabbis. Communal authorities tried to obstruct the societies by limiting their access to public funds, restricting their membership and, in some cases, banning them outright. Ettinger also observes that ethical literature popular among East European Jews during the eighteenth century included “a strong element of social criticism.”

indicates a certain inability of religious leaders to control behavior that challenged their authority to determine religious norms.³

Still, while life in eighteenth century Poland-Lithuania was hardly tranquil much less idyllic, Jews existed in what Michael Stanislawski calls a “legalized insularity” that allowed for a relatively stable, autonomous society with secure communal institutions of authority as well as a quasi-national political structure adept at defending Jewish interests. Even in the first few decades after the partition of Poland-Lithuania, “Jews continued to live in their own autonomous communities, governed by Jewish civil and criminal, as well as ritual, law.”⁴

Gershon Hundert makes a similar argument. Despite internal religious turmoil associated with the Frankist and Hasidic movements and external pressure in the form of periodic violence and restrictions on Jewish movement and economic activity, “there was also an irreducible continuity among the majority of Jews” in Poland-Lithuania throughout the eighteenth century. This was due mainly to the crucial role of Jews in the feudal economy and their “ramified, complex and extensive communal organizations.”⁵

³ Gershon D. Hundert, *Jews in Poland-Lithuania in the Eighteenth Century: A Genealogy of Modernity* (University of California Press: Berkeley and Los Angeles, 2004), 183. These would include the Vilna Gaon’s bans of excommunication against *Hasidim* issued in 1777 and 1781.

⁴ Michael Stanislawski, *Tsar Nicholas I and the Jews: The Transformation of Jewish Society in Russia, 1825-1855* (Philadelphia: Jewish Publication Society of America, 1983), xi.

⁵ Hundert, *Jews in Poland-Lithuania*, 234-239. Up to 75 percent of the Jews in Poland-Lithuania lived in private towns and on private estates whose magnate/noble owners retained considerable power in the politically de-centralized Polish-Lithuanian Commonwealth. Because Jews were so important to the economy of these private estates, the owners deflected efforts by the Catholic Church, the royal government and landless gentry to restrict Jewish autonomy and economic activity. This does not mean that the Jews of Poland-Lithuania were, as a group, wealthy or free in the sense that we think of it today. Hundert describes them as a “colonized economic group.” (37) The primary beneficiaries of their economic activity were the landed nobility for whom they worked. Jewish security and communal autonomy were always a function of the self-interest of these magnate/nobles and, therefore, somewhat tenuous.

Likewise, authority in East European Jewish society remained concentrated in long-established institutions. While its relationship with the state and other centers of power became increasingly complex, the *kahal* “continued to function in the overwhelming majority of East European cities and towns,” where it was viewed as “the institutional expression of Jewish autonomy.”⁶ Meanwhile, the *beit din* — typically headed by the local rabbi — remained the sole religious and legal authority for the vast majority of Jews. Far from a time of communal crisis, the eighteenth century was a period of enhanced Jewish autonomy and solidarity in Poland-Lithuania that gave rise to “an incipient Jewish national identity.”⁷

Furthermore, at the end of the eighteenth century, Lithuania’s Jewish society was arguably the most secure and cohesive in Eastern Europe. Lithuanian Jews had been the first to organize a supra-communal political body that purported to represent and govern Jews from all the “lands” within a specific nation state.⁸ They also had been among the most active and successful in exerting political influence to promote Jewish interests in the larger society. Even during the early years of Russian rule, “the Jews of the Lithuanian lands played a very important role” in maintaining Jewish political activity.

Lithuanian Jews were accustomed to organized activity of this sort, as a legacy of the Commonwealth. Lobbying activities and elected delegates were nothing new to them . . . [Lithuanian] Jewish activism was not random or accidental, but directly linked to traditions of the Jews of the

⁶ Ibid., 100.

⁷ Ibid., 77-78.

⁸ H.H. Ben-Sasson, “The Middle Ages,” in *A History of the Jewish People*, 672. Documents from 1569 indicate that “select men from all the lands of Lithuania” were enacting legislation in the name of “all the communities of the states of Lithuania whose authority has been invested in us.” This self-described pan-Lithuanian Jewish legislature existed a full decade before the founding in 1580 of its Polish counterpart, the Council of Four Lands. Although Lithuanians were originally part of the Council of Four Lands, they withdrew in 1623 to form the independent Council of the Land of Lithuania.

Commonwealth. These activities demonstrated real political sophistication.⁹

Mordechai Zalkin contends that the authority of the Vilna *kahal* in particular was at its height as the dawn of the nineteenth century. In addition to setting and collecting taxes, it established and enforced commercial regulations, supervised the registration of local Jewish citizens, maintained communal records, and issued permits for travel and other activities.¹⁰ This is not to suggest that Lithuanian Jews were immune from internal dissent, discrimination, violence or outside attempts to infringe on their autonomy and economic activity. But in general they were more cohesive and their institutions of authority more secure than Jews and Jewish institutions in Poland or elsewhere in Eastern Europe.¹¹ As a result of its relative social stability, Lithuania saw a net influx of Jews from Poland during the seventeenth and eighteenth centuries. And the fact that

⁹ John D. Klier, "Traditions of the Commonwealth: Lithuanian Jewry and the Exercise of Power in Tsarist Russia," in *The Vanished World of Lithuanian Jews*, eds. Alvydas Nikzentaitis, Stefan Shreiner and Darius Staliuna (Amsterdam and New York: Rodopi, 2004), 6-7. Lithuanian Jews were instrumental in ensuring that Jewish communities were included in the Charter for the Towns (1785), which gave certain rights to corporate groups in regard to municipal governments. And when Tsar Alexander I set up a special committee in 1802 to consider the status of Jews in Russia, Lithuania accounted for two of the four provinces that sent lobbyists to St. Petersburg. The Lithuanian delegates "displayed real political sophistication" in blocking a number of objectionable provisions, including one that would have allowed the state to interfere in the Jewish religious cult.

¹⁰ Mordechai Zalkin, "Who Wields the Power? The *Kahal* and the *Chevrot* in Vilna at the Beginning of the 19th Century," in *The Gaon of Vilnius and the Annals of Jewish Culture* (Vilnius: Vilnius University Publishing House, 1998) 354. The *chevrot* were charitable and civic associations comprised of socially and economically influential individuals. Though the *chevrot* were "not totally subordinate," Zalkin argues that "the *kahal* wielded the main authority" among Jews in Vilna in the early nineteenth century and used the *chevrot* to enhance its own public support.

¹¹ Egidijus Aleksandravicius, "Jews in Lithuanian Historiography," in *The Gaon of Vilnius and the Annals of Jewish Culture*, 13-14. The Grand Duchy of Lithuania was the last nation in Europe to be Christianized, and it retained a strong pagan tradition of tolerance for national and religious difference. Not only did gentile Lithuanians tend "not look down on the Jewish religion," but also corporate distinctions were less rigid in Lithuania than in surrounding states. This enabled Jews to achieve the status of free subordinates of the grand duke, essentially giving them the rights and privileges of the noble class. Lithuanian Jews retained many of these rights even after the grand duchy allied itself with Poland in 1569 to form the Polish-Lithuanian Commonwealth. See also Dov Levin, *The Litvaks: A Short History of the Jews of Lithuania*, trans. Adam Teller (Jerusalem: Yad Vashem, 2000), 44-45 and 49-54.

Lithuanian religious authorities were able to resist the wave of Hasidism that swept over the rest of Eastern Europe is evidence of their authority and relatively secure position at the end of the eighteenth century. Given the tradition of social cohesion and strong civil and religious leadership among Lithuanian Jews, it makes sense that they would have felt especially vulnerable as events in the nineteenth century destabilized Jewish communities under Russian rule and undermined traditional centers of authority.

The decline of the *kahal* and Jewish solidarity

The number of Jews under Russian rule increased dramatically following the final partition of Poland-Lithuania, and the government adopted a number of policies in the first half of the nineteenth century aimed at controlling if not reforming their insular society. It restricted the authority of Jews to raise taxes for the rabbinate and other communal activities. It diverted some of that revenue to new government-sponsored Jewish schools that taught Russian and other secular subjects as well as the traditional religious curriculum. It required each community's official rabbi to be certified by the state, limited the authority of all rabbis to matters of religious ritual and forbade the use of bans of excommunication, a primary means of social control in Jewish communities. Finally, in 1844 the state officially abolished the *kahal* as an independent communal government. While these policies were haphazardly enforced at best and did not have the intended effect of russifying the Jewish population,¹² they nevertheless weakened the traditional structure and cohesion of Jewish society.

¹² The state schools were shunned by the vast majority of Lithuanian Jews as were the so-called "crown rabbis." And because the government needed a political entity to collect taxes and oversee military conscription in Jewish communities, the *kahal* continued to function, though in an attenuated form, even after it was officially abolished.

I want to focus on two developments in particular that had a profound impact on Jewish solidarity and the authority of the *kahal* because they provide insight into some of Kagan's descriptions of *lashon ha-ra* in contemporary society. The first was the repeal of the Jewish military exemption in 1827. The second was Russian government policies that ravaged Jewish economic life.

When Jews of Poland-Lithuania came under Russian rule, they were required to pay a tax in lieu of providing conscripts for the Russian army. The decision by Nicholas I to end the military exemption was the key factor in “the revolutionary dismemberment of the legal integrity of Jewish society.”¹³ To understand why we must consider the consequences of military service for Jewish conscripts and society as well as the process by which they were chosen. Although conscripts were granted nominal freedom of religion, Jews viewed military service as a process of religious conversion.¹⁴ Jewish conscripts were billeted with Christians, denied contact with other Jews and routinely subjected to physical and psychological coercion to convert. Most of the Jewish conscripts were cantonists — teenagers and, in some cases, mere boys — who were especially susceptible to such coercion. The result was that a third to a half of Jewish conscripts converted.¹⁵ And because the term of conscription was twenty-five years —

¹³ Stanislawski, *Tsar Nicholas I and the Jews*, 17. As he observes, the exemption was never viewed as a privilege. It was based on the assumption that Jews were unfit to serve in the military. Likewise, its repeal did not represent a rejection of corporate distinctions in Russian society in favor of egalitarianism. Rather it was viewed as a repressive measure intended to undermine Jewish society.

¹⁴ While conversion may not have been the state's primary motive for conscripting Jews, it was certainly a factor. Nicholas demanded regular reports on the percentage of Jewish conscripts who converted.

¹⁵ Stanislawski, *Tsar Nicholas I and the Jews*, 22-24. Conversion was so common among Jewish conscripts that Christian institutions struggled to meet the demand for baptismal fonts and godparents.

essentially a lifetime — even those who resisted conversion were effectively lost to Jewish society.¹⁶

What made conscription so destructive to Jewish social solidarity, however, was the role Jewish authorities played in the process. As was the case with all groups, the government required every community to provide a certain number of conscripts. However, they were selected not by the government but rather by the community's leadership — in the case of Jews, the *kahal*. With local authorities having great leeway to determine who would serve, the selection process devolved into what Stanislawski describes as “legalized social discrimination.” Jewish authorities drafted conscripts from villages instead of cities, from among the poor or otherwise powerless rather than the wealthy or influential, and from among those who challenged authority or violated community standards.¹⁷ Worse still was that seven out of every ten Jewish conscripts were cantonists.

Although Russian officials preferred recruits under the age of eighteen . . . [t]here is no evidence that the government applied any specific pressure on the Jewish officials to comply with its preference for child-recruits; that the leaders of the Jewish communities did comply [with the army's age preference] was one of the most significant occurrences in Russian-Jewish history.¹⁸

¹⁶ Ibid., 18. Jews between the ages of twelve and twenty-five were eligible for conscription. Those eighteen and over served for twenty-five years. Those under eighteen served in special cantonists units until they turned eighteen, at which time their full twenty-five year term of service began. Although there were some exceptions, the age eligibility range for other groups in Russia was twenty to thirty-five.

¹⁷ Ibid., 16-21. While the government specifically prohibited Jewish authorities from considering violations of “religious superstitions” as a criterion in the draft, the Vilna *kahal* targeted the sons of the teachers at the local state-sponsored rabbinical seminary until Russian authorities ended the practice.

¹⁸ Ibid., 25-26. The primary reason was demographic. Because Jews typically married at a young age, many Jewish males 18 or over already had their own families. Faced with choosing between these young fathers or unmarried teenagers and boys, Jewish communities decided to conscript the latter in order to protect existing families and preserve manpower. A “substantial number” of Jewish cantonists were under the legal draft age of twelve.

Desperate Jewish parents took to hiding their children or using other means such as bribery to prevent their conscription. To fill draft quotas, Jewish authorities hired special agents called *khappers* (from the Yiddish verb “catch”) — bounty hunters whose job was to capture conscripts fleeing military service. The *khappers*, who often grabbed the wrong person or extorted money from the families of conscripts, “soon became permanent fixtures in the Pale [of Settlement] and earned the hatred and scorn of the masses of Jews.”¹⁹

The Jewish public viewed conscription as an existential crisis. They were shocked and angered at the apparent willingness of communal authorities to contravene the ideal undergirding Jewish solidarity — that suffering should be distributed equitably and that Jews should not take advantage of one another. The social trauma caused by the loss of tens of thousands of Jewish men and boys, the discrimination and corruption in the selection process, and the deep antipathy it created for the *kahal* and their hirelings resulted in “an entirely unprecedented breaking of the ranks” against communal authority and among Jews in general.

Numerous riots and attacks against the *khappers* and their *kahal* employers erupted throughout the Pale, cases of informing to the government mounted in both frequency and in scope, and several groups of Jews even took the radical step of applying for legal separation from the rest of the Jewish community. These actions seriously debilitated the autonomous communal structure, whose powers were steadily being diminished by the government.²⁰

¹⁹ Ibid., 29. The system became even more corrupt in 1853 when the state allowed the conscription of any Jew found traveling without proper papers. Not only did *khappers* begin abducting itinerant Jews at random, ordinary citizens sometimes grabbed travelers off the street as substitutes for family members who had been selected for conscription.

²⁰ Ibid., 33. See also 129. In 1853 noted rabbi Eliyahu Shik called for a revolt against Jewish civil authorities of Grodno, historically a part of Lithuania, and led an axe-wielding crowd in an attempt to free three conscripts being held by the *kahal*.

While conscription was the issue that “destroyed the moral authority of the *kahal*’s leadership” and “shattered the taboo against informing,” it is important to note that many of the complaints about communal leaders that began flowing to Russian authorities dealt not only with the draft process but also with unrelated political and economic issues such as corrupt communal elections, illegal tax assessments, fraudulent accounting and financial mismanagement. The denunciations came from both Hasidic and traditional Litvak communities and resulted in so many criminal cases against members of the *kahal* that the Russian Senate held a special session in 1840 to establish guidelines for handling them.

“The point is not that these [accusations] are true but that traditional authority was no longer respected to the point where Jews would inform on [their own] authorities to the non-Jewish government.”²¹ As the *kahal* “ceased to be the automatic representative of all the Jews and submission to its authority [became] voluntary,” power in Jewish society grew diffuse and uncertain. The resulting competition for authority deepened throughout the nineteenth century, eventually “giving rise to political parties and movements that battled each other as much as central authorities.”²² Lithuanian traditionalists would have felt especially vulnerable in the late 1860s and early 1870s

²¹ John D. Klier, “The *Kahal* in the Russian Empire: Birth, death and afterlife of a Jewish Institution, 1772-1882,” in the *Yearbook of the Simon Dubnow Institute* 5, ed. Dan Diner, (Göttingen: Vandenhoeck & Ruprecht, 2006), 41-42. A number of scholars have attributed the demise of Jewish social solidarity and the diffusion of civil authority to class tension, citing the especially dire impact of economic reform and conscription on the poor and the fact that education reform created dual school systems — state schools for the poor and traditional schools for those who could afford them. However, while class tension was no doubt a factor, Klier observes that dissatisfaction with communal leadership and efforts to disassociate from the Jewish community extended to well-to-do Jews of the merchant class.

²² Stanislawski, *Tsar Nicholas I and the Jews*, 133.

after the state's concerted effort to russify Lithuanian Jewish society, an effort that was blunted only with the aid of prominent *maskilim* in Lithuania and St. Petersburg.²³

The perception that the *kahal* was unfair and corrupt and the political vulnerability of traditional authorities help explain why Kagan describes widespread *lashon ha-ra* in connection with controversial decisions by *tovei ha-ir* (*kahal* officials) and the denigration of *g'dolei ha-dor* (important personages) as common even at gatherings intended to honor them. Likewise, the fact that so many Jews were willing to resist communal authority and take their grievances to the state helps account for Kagan's diatribe against *malshinim* as well as his admonition to those called to testify in gentile courts.

Jewish social cohesion was further undermined by severe economic dislocation. At the beginning of the nineteenth century many Jews in Poland-Lithuania still made their livings as leaseholders on private estates, where they were involved in managing inns and overseeing the manufacture and sale of alcohol. However, a number of events combined to close off this source of economic activity to Jews. In the wake of the Polish revolts against Russian rule in 1830 and 1863, many of the nobles who had protected Jews fled or abandoned their estates to the government. The Russian government expelled Jews from many of the remaining private towns and villages and sharply restricted Jewish leaseholds, all but eliminating Jews from a sphere of economic activity that once accounted for an estimated 40 percent of all Jewish income. Economically

²³ Lithuanian political influence declined during the course of the nineteenth century as its once distinctive political perspective and practices spread through East European Jewish society, giving rise to competing hubs of Jewish political leadership in Odessa, Warsaw, Kiev and St. Petersburg. While Vilna remained an important intellectual and religious center, it was no longer the vanguard of Jewish political activism that it had been during the period of the Polish Commonwealth and the early years of Russian rule.

displaced Jews poured into already crowded artisan and craft guilds or turned to petty shop keeping for their livelihood. The result was a sharp increase in poverty and “bitter internal competition” among Jewish tradesmen, merchants and shopkeepers.²⁴ The dire economic situation in Lithuania was made worse by a severe famine in 1867-68.

Kagan’s portrayal of *lashon ha-ra* in connection with business activities and financial loss and his references to *malshinut* related to leaseholds reflect the kind of harsh accusations and recriminations one would expect from increased competition during a time of economic crisis.

The decline of the rabbinate and the diffusion of religious authority

Immanuel Etkes has observed that the biographies of Lithuanian Torah scholars in the nineteenth century tend to portray them as being reluctant to enter a career in the rabbinate. Especially in the second half of the century, it seems to have been a social convention among Talmudic scholars to insist that Torah knowledge should not be used as “a hoe with which to dig” — a traditional metaphor signifying a tool or skill with which one earns a living.²⁵

The negative view of the rabbinate was not mere lip service to the ancient ideal of Torah for its own sake. Rather it was an actual phenomenon among Lithuanian scholars for which Etkes offers several explanations. It may have reflected their desire to model

²⁴Ettinger, “The Modern Period,” in *A History of the Jewish People*, 794-795. See also Stanislawski, *Tsar Nicholas I and the Jews* 166. The number of registered Jewish guild merchants in the Pale of Settlement rose from 4,863 in 1830 to 27,469 in 1851. The 500 percent increase far exceeded Jewish population growth during the same time period. And these figures do not include unregistered artisans, craftsmen and other employees of merchants.

²⁵ Immanuel Etkes, *The Gaon of Vilna: The Man and his Image* (Berkeley and Los Angeles: University of California Press, 2002), 210-211.

themselves after the Vilna Gaon, who famously refused any official communal appointment and instead studied Torah as a divine calling. At the same time it may have been an expression of defiance toward the maskilic argument that the study of halakhic literature was appropriate only for those aspiring to a rabbinical career.²⁶

Beyond these ideological factors, however, economic and political events eroded the status of rabbis. In the seventeenth and eighteenth centuries, most rabbis came from well-to-do circumstances. Rabbinic salaries, fees and attendant economic privileges were so lucrative that wealthy families often negotiated with community councils for plum appointments and paid fees to the gentile officials who had to approve them. The financial position of rabbis declined dramatically in the nineteenth century, however. Not only did a rabbinic appointment not guarantee a comfortable living, many rabbis were so poor that their wives had to work in order to support their families.²⁷

A primary cause of financial reversal of the rabbinate was a change in its legal status. In 1835 the Russian government began requiring rabbis to keep official records of births, deaths, weddings and the like, which meant they had to be proficient in Russian. As a result, a number of Jewish communities hired graduates from the state-sponsored rabbinic seminaries in Vilna and Zhitomir as their official rabbis rather than those who had received a traditional religious education. Although the vast majority of Lithuanian Jews rejected the crown rabbis and continued to rely on their traditional counterparts in

²⁶ Ibid., 213-214. See also Adam Teller, "The Gaon of Vilna and the Communal Rabbinate in 18th Century Lithuania," in *The Gaon of Vilnius and the Annals of Jewish Culture*, 147-148. He traces the roots of Lithuanian skepticism of working rabbis to the mid-eighteenth century when the "communal rabbinate reached its nadir" as a result of corruption and self-dealing. The result was an increase in the number and importance of non-rabbinic preachers who left their professions to deliver strident social criticism. At the same time there arose a movement of pious ascetics that idealized scholars who withdrew from public life and devoted all their time to study. "The Vilna Gaon was himself a classic example of this kind of scholar."

²⁷ Etkes, *The Gaon of Vilna: The Man and his Image*, 219. See also Teller, "The Gaon of Vilna and the Communal Rabbinate in 18th Century Lithuania," 144.

religious matters, the dual rabbinate did have serious financial repercussions for traditional working rabbis. Because the Russian government forbade the use of communal tax revenue to pay unofficial rabbis, their salaries depended primarily on private contributions. As the economic situation in Jewish communities worsened, this source of funding grew so inconsistent that it became common for working rabbis to strike, refusing to render halakhic decisions until they were paid. Although some communities found ways to circumvent the law and pay traditional rabbis with public funds, there was nevertheless “a decline in those salaries and, as a result, in the rabbis’ public status.”²⁸ What’s more, the “intense, occasionally fierce, competition” for the dwindling number of rabbinic posts that did pay well further diminished the prestige of career rabbis and reinforced the perception that they were primarily interested in Torah as a “hoe.”²⁹

There is textual evidence that Kagan himself was quite aware of the diminished status of rabbis and the concomitant idealization of Torah for its own sake. Aside from his reference to the frequent complaint that lecturers in the *beit midrash* were speaking “only to satisfy their needs,” one of the approbations in the forward of *Sefer Chafetz Chaim* goes to great lengths to assure readers that money collected from sales of the book would go toward its publication and distribution, not into Kagan’s pocket.³⁰

Here we should recall the clause in which Kagan argues that one may not tell another Jew that his business partner considered ending their relationship but decided not

²⁸ Etkes, *The Gaon of Vilna*, 219-220.

²⁹ *Ibid.*, 220-221. This competition was exacerbated by two factors: Not only were there many more rabbis than in the seventeenth and eighteenth centuries but also a far greater percentage of them came from poor families and were, therefore, less likely to have sources of income other than their rabbinic salaries.

³⁰ See the approbation by Rabbi Mordechai Klotsy of Lida in Kagan, Forward: 2. (The Levy translation does not carry the approbations).

to. The *be'er* discusses this prohibition specifically in the context of a rabbi searching for a new position.

Similarly, [if] a rabbi travels from his city to apply [for a rabbinic position] in another city but does not get it, the people in the other city may not disclose anything about this to anyone in the rabbi's city. Even if this information is already known to many people and is certain to get back [to the rabbi's city], nevertheless it is forbidden because everyone in his city will resent him.³¹

Although Kagan does not explain why he felt it necessary to mention rabbinic job seekers in respect to this prohibition, Etkes' observation about the idealization of Torah study may provide some insight. The fact that Kagan likens the situation of the rabbinic job seeker to that of a businessman looking for a more lucrative partnership indicates that feelings of resentment within a community towards a rabbi who wants to leave for another position might be expressed as criticism of his financial motives.

We should also consider the impact on the rabbinate of the Lithuanian yeshiva movement, which is usually dated to the founding of the Volozhin Yeshiva in 1803. The yeshiva movement not only institutionalized and formalized what had previously been an informal system of advanced religious study but also divorced it from the direct influence of the rabbinate. Most *roshei yeshivot* (heads of yeshivas) were not communal rabbis. Rather they were fulltime educators who were revered for pursuing Torah for its own sake. In contrast to the rabbinate, their prestige grew among Lithuania Jews throughout the nineteenth century.³² Thus, in valorizing and institutionalizing Torah study, the

³¹ Kagan, R2.4.7: 132; Levy, 2: 143.

³² Etkes, 225-226. Haym Soloveitchik also writes about this phenomenon in "Rupture and Reconstruction." Although his focus is on the contemporary situation, he argues that the shift in power from the "quasi-

yeshiva movement created a network of independent scholars and students who competed with the rabbinate — and each other — for religious status and authority.

Shaul Stampfer makes a similar argument. At the end of the eighteenth century, most advanced religious study in Eastern Europe took place informally in the *beit midrash*, the public study hall maintained by each community. There were no admissions requirements, tests, designated teachers or formal supervisors. However, the local rabbi was often an important educator, and many of the students received room, board and other financial support from the local community. The “rapid collapse” of the *beit midrash* system in the nineteenth century led to a decline in the number and quality of Talmudic students, creating a perception among traditional Jews that “rabbinic leadership had failed to deflect the challenge of modernity.”³³ Many Jews saw the network of private, independent academic institutions that sprung up in Lithuania as an effective response to this failure. In contrast to the rabbinate, the charismatic *roshei yeshiva* were venerated for revitalizing religious education.³⁴

The decline in the prestige of the rabbinate during the nineteenth century and the corresponding rise in status of *roshei yeshivot* and other independent scholars resulted in

mayoral rabbi and lay leaders” to the *rosh yeshiva* and other textual experts began in the nineteenth century.

³³ Shaul, Stampfer, “The Yeshiva after 1800,” in *The YIVO Institute Encyclopedia of Jews in Eastern Europe*, accessed Sept. 10, 2011, <http://www.jidaily.com/n86zw>. The *beit midrash* system depended on both students and the community embracing the importance of Torah study. The former “competed to be recognized for excellence and sought to imitate their most successful peers.” The latter rewarded the most promising students with financial support, including marriage into well-to-do families. The system broke down in the nineteenth century when community support for students waned and wealthy families began to attach greater value to formal university study. This caused many students, particularly the brightest, to abandon Talmud study.

³⁴ *Ibid.* The new breed of *roshei yeshiva* traveled or sent emissaries throughout Eastern Europe and sometimes beyond to seek funding for their institutions. This private funding was used to secure facilities, pay faculty and make grants to students, who used the money to pay for room and board rather than relying on the largess of local householders as they did in the *beit midrash* system. Thus the *yeshivot* were often independent of both the local rabbi and the community.

competition for religious authority. In this context we can better understand Kagan's reference to the frequent "eruption" of *lashon ha-ra* among traditionalists in the *beit midrash*. The communal study hall, which often doubled as a synagogue, was the primary public venue for religious life. At a time when religious authority was increasingly diffuse and uncertain, this is exactly where we would expect power struggles among religious leaders and their followers to have played out.

The diminished status of the rabbis and the perceived failure of the traditional system of religious education also help explain some of the other descriptions of contemporary Jewish discourse and attitudes in *Sefer Chafetz Chaim* — the frequent criticism of legal rulings by the *beit din* or individual decisors, the social vulnerability of rabbis who were searching for new positions, and the apparently widespread perception that the present generation of *chachamim* was inferior if not downright incompetent.

Another reference in Kagan's discussion of *lashon ha-ra* in the *beit midrash* provides additional insight into tension arising from religious difference and competition. Referring to criticism of the lecturer who accepts a fee, Kagan admonishes his readers that the payment may not be his primary motivation. "Maybe at the time he is preaching his main intention is for everyone to hear words of *musar* and *yirat ha-shamayim* (fear of heaven)." Later he adds, "Usually this criticism (of lecturing for a fee) comes from people who themselves have no *yirat ha-shamayim*. Therefore it bothers them to hear words of *musar* or a rebuke for lax Torah observance."

The concepts of *musar* and *yirat ha-shamayim* have long traditions in rabbinic literature. Broadly speaking, the former refers to instruction on how to achieve a virtuous character and ethical behavior. The latter refers to the fear of divine punishment, which,

together with the awe of God's majesty, enables a person to resist the human tendency to sin. At the time Kagan wrote *Sefer Chafetz Chaim*, however, both terms carried a special connotation associated with the modern *musar* movement that arose in Lithuania in the early 1840s. Though *musar* never grew into the popular religious revitalization movement its supporters envisioned, its presence in a number of *yeshivot* created periodic controversies within the Lithuanian scholarly elite throughout the last half of the nineteenth century. *Musar* opponents viewed its emphasis on non-halakhic literature as an infringement on the primacy of Talmud study. They also disdained the ecstatic style of study in *musar* called *hitpa'alut* as a challenge to traditional Lithuanian intellectualism.³⁵

According to Kagan, the frequent “eruption” of *lashon ha-ra* against lecturers in the *beit midrash* pertained not only to their use of Torah as a “hoe” but also to their topic — *musar*. By defending lecturers who simply want “everyone to hear words of *musar* and *yirat ha-shamayim*,” by insisting that *musar* adherents remain *amitecha* despite their differences in belief and practice, Kagan was taking a pragmatic stance against social fragmentation, one that tolerated a certain amount of divergence — even what some traditional Litvaks might have viewed as deviancy — within the boundaries of traditionalism.

³⁵ Lithuanian Rabbi Israel Lipkin of Salant is considered the father of the modern *musar* movement. He believed that one could not achieve *yirat ha-shamayim* through the intellect alone. Intellectual knowledge of divine punishment had to be transformed into emotional awareness. To that end, the movement advocated the study of *musar* literature *b'hitpa'alut* — a group activity that often involved repetitive chanting, groaning, crying and strange movements aimed at producing an emotional connection to the text. Opponents of *musar* likened *hitpa'alut* to the ecstatic prayer of Hasidic Jews. And when Lipkin created a small synagogue in Kovno that emphasized *musar*, he was accused of separating from the main community and de-emphasizing Talmud study. While it would be going too far to say that *musar* adherents considered the ethical texts more important than the Talmud, the movement did implicitly challenge Lithuanian intellectualism by suggesting that Talmudic scholarship alone was not sufficient to create good character and ethical behavior.

Kagan's defense of *musar* makes sense given that, while he himself was outside the ambit of the *musar* movement, he often is described as having been influenced by or at least sympathetic to it.³⁶ He knew Israel Lipkin, founder of the modern movement, and wrote the introduction to a collection of essays in which Lipkin was one of the two primary contributors. Furthermore, Kagan's toleration of religious difference in this case is consistent with his reputation as someone who "sought to unify Orthodox Jewry in Lithuania and endeavored to bridge internal disputes."³⁷ This effort would culminate forty years later with his important role in the founding of *Agudat Yisrael*

The emergence of religious orthodoxy and the popular Jewish press

Yosef Salmon identifies the period between 1868 and 1878 as crucial in the development of ultra-Orthodox Judaism in Eastern Europe. Growing pressure for religious and social reform in the late 1860s was perceived by many Jews as "a threat to wash away traditional Judaism altogether."³⁸ During the internal debate among traditionalists about how to respond to this crisis, opposition to reform hardened into an ideological and halachic militancy characteristic of modern ultra-Orthodox Judaism.³⁹

³⁶ Yehuda Mirsky, "The Musar Movement," in *The YIVO Encyclopedia of Jews in Eastern Europe*, accessed Sept. 10 2011, http://www.yivoencyclopedia.org/article.aspx/Musar_Movement.

³⁷ Brown, "Yisrael Me'ir ha-Kohen," in *The YIVO Encyclopedia of Jews in Eastern Europe*, accessed Sept. 6, 2011, http://www.yivoencyclopedia.org/article.aspx/Yisrael_Meir_ha-Kohen. As Brown observes, this does not mean that Kagan didn't have differences with other orthodox leaders on such issues as religious education and Jewish nationalism, only that he believed the differences should not be allowed to devolve into factionalism.

³⁸ Yosef Salmon, "Orthodox Judaism in Eastern Europe," in *The Gaon of Vilnius and the Annals of Jewish Culture*, 105. In addition to the reform gatherings organized by Jews in Germany, Hungary and America, the Russian government held highly publicized hearings on reforming Jewish society, the most prominent of which were in Vilna from 1866 through 1869.

³⁹ *Ibid.*, 106-114. The debate initially focused on the theological issue raised by M.L. Lilienblum's famous 1868 article *Orhot ha-Talmud* — was *halakha* fixed or should it evolve within the framework of rabbinic

Not only were many of the participants in this debate prominent Lithuanians, but the vitriolic exchanges that played out among traditionalists, often in the pages of the nascent popular Jewish press, were indicative of “a new style of argumentation based on defamation of character.”⁴⁰

Likewise, Stanislawski says the orthodoxy embraced by “the vast majority of East European Jews” in the mid-nineteenth century resulted in “a self-conscious society battling its enemies on their own ground, often with their own tools, organized by leaders armed with a vigilant new strategy and militant new ideology.”⁴¹ The *haskalah* represented a new heresy, and the need to guard against any hint of it put an end to a certain fluidity that had existed between *maskilim* and Lithuanian traditionalists during the early years of the *haskalah*.⁴² While Stanislawski differs from Salmon in that he emphasizes the significance of events during the reign of Nicholas I (1825-1855), this does not negate the importance of the debate among traditionalists that occurred between 1868 and 1878, especially its impact on Jewish public discourse.

As the preferred medium for this debate,⁴³ the Jewish periodical press amplified the “new style of argumentation based on public defamation” and broadened it to other

authority in response to contemporary circumstances. However, the debate shifted to specific halakhic issues, making even arcane legal disputes among traditionalists a test of proper Jewish identity.

⁴⁰ Ibid., 113.

⁴¹ Stanislawski, *Tsar Nicholas I and the Jews*, 149.

⁴² Ibid., p. 55.

⁴³ The primary publications for the principles in the debate were two Hebrew journals, *Ha-Melitz*, which was sympathetic to religious reform within the framework of rabbinic authority, and *Ha-Levanon*, an outlet for traditionalists who opposed any reform whatsoever. Although the former was published in Odessa and the latter in Paris, both circulated widely in Lithuania and throughout Eastern Europe. The exchanges also were covered to some extent in other popular Jewish publications such as the *Ha-Karmel*, a Hebrew journal published in Vilna; *Kol Mevasser*, the Yiddish sister publication of *Ha-Melitz* also published in Odessa, and *Ha-Magid*, another traditionalist outlet published in Prussia.

issues. Discourse on important matters — not just religious reform but also communal leadership, corruption, social and economic malaise — became hard-edged and public in a way that had not been possible before. Furthermore, newspapers and journals in both Hebrew and Yiddish opened public discourse to voices beyond traditional centers of authority, helping Jews “equip themselves to operate within the public sphere that was opening up in Russia.”⁴⁴

As an arena for public debate, the press re-defined Jewish politics. Added to the external dimension that was traditionally handled by *shtadlanim* (a Jew who, whether officially or unofficially, represents Jewish interests to non-Jewish authorities) and the domestic aspect of community affairs, there was now a new internal factor that was independent of both the local communal structure and the notables of St. Petersburg.⁴⁵

We should not conclude that that the publication of *Sefer Chafetz Chaim* in the middle of this critical period indicates that Kagan was resisting the emerging orthodoxy or that he opposed the public condemnation of reformers in defense of it. As we shall in the next chapter, he clearly encourages the latter. I contend, however, that the concern about the prevalence of *lashon ha-ra* expressed in *Sefer Chafetz Chaim* reflects the fact that the new style of argumentation and its amplification in the popular press was influencing how traditional Jews thought and talked about each other as well. It was this new mode of discourse that Kagan viewed as a threat to Jewish unity.

In covering controversial issues and events such as the hearings of the Vilna Commission, the popular Jewish press routinely carried stories in which Jews talked

⁴⁴ Klier, “Traditions of the Commonwealth,” 12.

⁴⁵ Eli Lederhendler, “Modernity without emancipation or assimilation?” In *Assimilation and Community: The Jews in Nineteenth Century Europe*, eds. Jonathan Frankel and Steven J. Zipperstein (Cambridge: University of Cambridge Press, 1992), 332.

badly about other Jews, Jewish institutions or Jewish society in general. As Salmon observes, even the renowned Lithuanian traditionalists Rabbi Isaac Spektor was not immune from vitriolic criticism in print when he intervened in the dispute over the kosher status of Corfu citrons.⁴⁶ And regardless of the fact that a number of these publications were run by russified Jewish who embraced at least some reform ideas, tens of thousands of ordinary Jews read them eagerly. This may explain why Kagan spends so much time discussing the prohibition against listening to and believing *lashon ha-ra*. It also adds to our understanding of his complaint in the introduction about the prevalence of Jews gathering to discuss “worldly matters” instead of “Torah and the God of Life.” The Jewish popular press was providing the grist for these discussions.

⁴⁶ Salmon, “Orthodox Judaism in Eastern Europe,” 112-113. I explore this dispute more fully in Chapter VI. For now, however, the significance of this incident has less to do with the arguments of Spektor’s opponents than with their willingness to publicly condemn a prominent traditional rabbi.

CHAPTER V

THE BOUNDARIES OF JEWISH SOCIETY

Introduction

In the first sentence of Chapter I of *Sefer Chafetz Chaim*, Kagan defines *lashon hara* as *l'sapeir bignut chavero* — relating something that demeans or disgraces one's *chaver* (companion or friend). Elsewhere he says, “The entire prohibition against *lashon hara* applies specifically to [speech about] a person who, according to Torah law, is still *amitekha* (your colleague).” He then defines *amitekha* as “someone who is with you in Torah and *mitzvot*.”¹

Levy treats *chaver* and *amit* as synonyms and translates them as “fellow Jew” or “brother Jew.” However, these translations are not quite adequate. While it's true that in the context of nineteenth century Lithuania both terms refer to another Jew, they signify a special relationship that does not include all Jews. Kagan explains that one of the most pernicious effects of *lashon hara* is that it undermines solidarity among Jews by wrongly implying that the subject of the remark is no longer *amitekha*. Although still a Jew, this person “is not part of the community of Israel (*hu einu bi-klal yisrael*).”² *Amitekha*, then, is a term that identifies a Jew who is a member in good standing of *klal yisrael* and reflects certain ideas about what it means to be a *proper Jew*.

My goal in this chapter is to examine which Jews Kagan excludes from the category of *amitekha* and why. Determining how he delimits *klal yisrael* will give us an

¹ Kagan, 8.5: 104; Levy, 3: 197.

² Kagan, Introduction (Lav 6): 17; Levy, 1: 151.

idea of where he stood in the contemporary debate about the boundaries of Jewish collective identity. The evidence will show that while Kagan resists even the slightest challenge to the centrality of traditional religious texts in Jewish life and the authority of rabbis to interpret them, he nevertheless tolerates a considerable level of difference — even what he would have considered deviance — within the traditional communal and religious framework.

This does not mean that we should read Kagan as validating difference and deviance. Certainly he was not embracing the contemporary ideology of multiculturalism that views diversity as a value. Rather we should read him as responding pragmatically to the forces of divergence described in the previous chapter. However, while recognizing that some difference must be tolerated within the traditional framework in order to preserve Jewish social cohesion, Kagan emphatically draws the line at the *haskalah* ideology that sought to de-emphasize the role of traditional texts and the authority of rabbis in Jewish life.

The apostate, the heretic and the informant

The first indication of which Jews are not *amitekha* comes during the discussion cited above about the harmful effect of *lashon hara* on solidarity within *klal yisrael*. If someone who is *amitekha* is admonished privately after inadvertently eating pork, Kagan asks rhetorically, is it reasonable to believe that he would then turn around and brazenly eat a piece of the pork in front of the person who reprimanded him? On the contrary, one must assume that after a reprimand he would be remorseful and especially careful *not* to eat the pork. Thus telling others about the one-time offense of someone who is *amitekha*

accomplishes nothing useful. It merely demeans a fellow Jew and diminishes his status as a member in good standing of *klal yisrael*.

Kagan then adds: “Unless he is someone who converted his faith (*sh’heimir dato*), God forbid, and has left *klal yisrael* completely. We are not talking about a person such as this.”³ Kagan seems to be describing an apostate — someone who has converted and no longer identifies himself as Jew. In this case, the opposite of *amitekha* is not a gentile — that is, someone who has never been a Jew — but rather a person who has renounced his Jewish identity in favor of another and no longer considers himself part of Jewish society.⁴

Kagan identifies another kind of Jew who is not *amitekha* in a discussion of how the prohibition against *lashon hara* limits what one may say about a fellow Jew who has committed a sin against God.⁵ In an accompanying *hagahah*, he says: “But if it becomes apparent that he sins because of heresy (*mifnei sh’yeish bo apikorsut*), God forbid, in regard to a person like this who is not in the category of *amitekha*, we are not bound by the prohibition not to peddle gossip.”⁶

Kagan also contrasts the heretic with *amitekha* in the clause cited above in which he defines the latter as “someone who is with you in Torah and *mitzvot*.” Here he not only

³ Ibid.

⁴ Kagan does not describe the person who “converts his faith” as a *mumar*, a word often translated as “apostate.” As I argue below, in Kagan’s view a *mumar* is not what we commonly refer to as an apostate, i.e. someone who rejects his religious tradition, often in favor of another. Instead a *mumar* is similar to if not synonymous with what Kagan calls a *rasha* (evil person), a habitual sinner.

⁵ Rabbinic tradition recognizes two major categories of sin — offenses against God (*bein adam l’makom*) and offenses against a fellow Jew (*bein adam l’chavero*). To some extent these categories are self-evident. Idol worship is a sin against God. Stealing is an interpersonal sin. However, not all offenses are classified intuitively. For example, although adultery certainly victimizes another person, many authorities, including Kagan, describe it a sin against God. The proof text is Gen. 39: 9. When Potiphar’s wife tries to seduce Joseph, he responds, “How could I commit this great evil and sin against God?”

⁶ Kagan, 4.1 (h): 62; Levy, 3: 137.

reminds his readers that the heretic is not *amitekha* but also tells them they have a holy obligation to denounce him publicly.

But [regarding] those people who are heretics (*sh'yeish ba-hem apikorsut*), it is a *mitzvah* to denounce and scorn them — whether in their presence or not — for anything one sees or hears about them. It is written, “do not oppress *amito* (one’s colleague)” and “do not be a talebearer among *amekha* (your people).” But [these commandments] do not apply to those who do not do as your people do. It is written, “Those who hate you, God, I will hate. And [those who] rebel against you I will battle.”⁷

In the same clause, Kagan defines this Jew who is no longer *amitekha* and must be hated and condemned. “Someone is called an *apikoreis* if he disavows Torah and the prophecy of Israel, whether the written Torah or the oral Torah, even if he says the entire Torah is sent from heaven except one sentence or one deduction or even a single distinction or point of grammar.”⁸

We find a similar description in a paragraph added at the end of the last chapter in the 1877 edition. Although he does not use the word *apikoreis*, Kagan emphatically excludes those who deny the primacy of Torah from the ranks of *amitekha* by emphasizing the sinfulness of speaking badly about the latter and the holy obligation to denounce the former.

Understand that everything we have written in this book about the profound importance of being careful to avoid the sin of *lashon hara* applies to those who are counted as *amitekha*. But regarding the people who deny God’s Torah — even a single letter — and who mock the words

⁷ Kagan, 8.5: 104; Levy, 3: 197. The first two Biblical references are to Leviticus 25:17 and 19: 16, the scriptural foundations for the prohibition against *lashon hara*. The third is to Psalms 139:21.

⁸ Ibid. By written Torah, Kagan means the Pentateuch and the rest of the *Tanakh* (Hebrew Bible). The oral Torah refers to the interpretations of the written Torah said to have been passed down orally through the generations after Sinai and finally codified in the Mishnah, the two Talmuds and other early rabbinic literature.

of *chazal*,⁹ it is a *mitzvah* to publicize their false opinions (*daitam ha-cozevet*) for everyone to see and to condemn them so that we (those who are *amitekha*) will not emulate their evil ways.¹⁰

These passages reveal several significant characteristics of the heretic. First, unlike the convert, the *apikoreis* has not renounced his Jewish identity. Rather he is a self-identified Jew who does not conform — “does not do as his people does.”¹¹ Second, his non-conformity stems from his “false opinions” about the centrality of the Bible and early rabbinic literature in Jewish life. The implication is that these opinions pose the real danger to Jewish society, which is why they must be condemned forcefully and publicly. Third, to be considered an *apikoreis*, one need not deny the authority of the traditional texts altogether. Rejecting the relevance of even a single clause, no matter how obscure, is sufficient.

Finally, Kagan emphasizes that one is obligated to publicly condemn the *apikoreis*. In regard to the convert, he says only that the laws of *lashon hara* do not apply, which implies that denouncing this person is merely permissible. The distinction indicates that Kagan viewed Jews who challenged the preeminence of traditional religious texts and rabbinic authority as a greater threat than converts who simply renounced their Jewish identity. It is because the heretic continues to portray himself as a Jew that he must be condemned so forcefully. Doing so eliminates any doubt about the illegitimacy of his “false opinions.”

⁹ *Chazal* is a rabbinic acronym referring to all of the sages of the Mishnaic and Talmudic periods. Thus “words of *chazal*” refers to the Mishnah, the two Talmuds and other early rabbinic literature.

¹⁰ Israel Meir Kagan, *Sefer Chafetz Chaim* (Warsaw, 1877), R9.15: 149; Levy, 4: 363.

¹¹ See also Kagan, 8.13: 107; Levy, 3: 225 and 227. While the heretic is not *amitekha*, Kagan still refers to him as *adam m'yisrael* (a person of Israel).

Another kind of Jew who is no longer *amitekha* is the person who “goes and informs on Israel to gentiles (*holeich v’malshin al yisrael bifnei nakhrim*).” About this person Kagan says, “Most certainly his sin is terrible and hateful. As a result he enters the ranks of informants (*nikhnas al y’dai zeh bi-klal ha-malshinim*) and is equal to the *apikoreis* and those who deny Torah and the resurrection of the dead.” As I explained in the previous section, Kagan explicitly distinguishes the *malshin* from someone who merely “denounces [his fellow Jews] before gentiles” (*m’ganeihu bifnei nakhrim*). Although both commit *lashon hara*, the former’s sin is greater than the latter’s. The *malshin* is “considered to have abused and cursed and raised his hand against Torah and Moses our teacher.”¹²

According to Levy, the *malshin* is not someone who merely speaks badly about a Jew to a gentile. Rather he reports derogatory or harmful information about another Jew to a gentile *authority*.¹³ In that sense, his offense does more than endanger an individual. By approaching an authority representing the gentile collective, he commits an affront against the Jewish collective. Kagan says explicitly that the *malshin* is not *amitekha*. No Jew may believe *lashon hara* about any *adam m’yisrael* “except for *apikorsim* and *malshinim* and the like who have left the ranks of *amitekha*.”¹⁴ Although Kagan does not

¹² Kagan, 8.12: 106-107; Levy, 3: 221.

¹³ See also Kagan, R6.3: 140; R6.10: 143-144, and R7.4: 145; Levy, Vol. 4: 211 and 213, 245 and 247, and 257. All three clauses deal with the prohibition against believing *r’khillut*. The first two involve a businessman who is told that he lost an exclusive government contract because another Jew informed (*halshin*) on him. The law forbids the businessman from retaliating by informing on the person whom he believes informed on him. The third clause involves a Jew who tells a gentile that the merchandise or work he purchased from a Jewish merchant or craftsman is flawed. Though this speaker also commits the sin of *r’khillut*, Kagan does not characterize him as a *malshin*. The difference seems to be that the first speaker revealed damaging or derogatory information about the subject to gentile authorities while the second did not.

¹⁴ Kagan, 8.13: 107; Levy, 3: 227. As I pointed out, the wording here implies that the heretic and the informant, although not *amitekha*, are still Jews.

say explicitly that one must denounce the informant, he strongly implies such an obligation by linking the *malshin* and the *apikoreis* and by equating the informant's sin to denying Torah and the fundamental belief in resurrection.

The *rasha*

Another kind of Jew who is not *amitekha* is the *rasha* — the evil person. We are introduced to the *rasha* in the chapter that explains how the laws of *lashon hara* apply to speech about someone who has committed a sin against God. The restrictions on what one may say about a fellow Jew who has committed such a sin do not apply to someone whose lifestyle indicates that he “has no fear of opposing God in his affairs and always acts in a manner that is not right.”

For example, *ha-poreik*¹⁵ who breaks faith with the kingdom of heaven or isn't careful about one [particular] *aveirah* (halakhic violation) that all the rest of his people recognize as an *aveirah* (*asher kol sh'ar amo yod-im shehi aveirah*), whether the sin he committed on purpose several times is the same *aveirah* [the observer] wants to disclose or whether the sin he committed on purpose several times is another *aveirah* well known by everyone to be an *aveirah* (*ham'pursemet la-kol sh'hi aveirah*). [In either case] he has demonstrated that he did not stray from God's path because his *yetzer hara* overcame him but rather that he acted willfully (*im bishrirut livo hu holeikh*) and is not afraid to oppose God in his affairs. As a result, it is permissible to shame him and relate his disgrace, whether in his presence or not. And if this person does or says something [ambiguous] that can be judged favorably or unfavorably, one must judge it unfavorably since he has shown himself to be an utter *rasha* in the rest of his affairs. . . It is permissible to shame him for his actions, make known his abominations and heap scorn upon him. And if he was admonished to give up [his sinful behavior] and did not, all the more is it

¹⁵ In rabbinic literature, a *poreik* is someone who brazenly casts off the yoke of Torah. The Yiddish term *poreik ol* refers to someone who contemptuously refuses to live according to the *mitzvot*.

permitted to publicize his identity, disclose his sins publicly and heap scorn upon him until he reverts to a better lifestyle.¹⁶

While Kagan's condemnation of the *rasha* is harsh and unambiguous, we must take into account how narrowly he defines this person. The *rasha* is not someone who has bad personal habits — a quick temper, for example. Rather he is someone who commits an *aveirah*, a violation of religious law.¹⁷ But in Kagan's view this cannot be *any* violation of religious law. Twice he says it must be an act that is widely if not universally acknowledged to be sinful — eating pork, for example. We should also take note that in the first reference to this condition, Kagan says the violation must be one “that all the rest of *his* people recognize as a *aveirah*” — not “your people” or “our people.” This wording seems to acknowledge that there were groups within traditional Jewish society whose legal standards varied. It implies that such differences did not necessarily warrant labeling members of another group *reshaim*. Instead individuals were to be judged according to the standards of their own group or community. (By contrast, in speaking of the heretic, he says the prohibition against *lashon hara* “does not apply to those who do not do as *your* people do.”)

More important, in Kagan's view committing a widely recognized sin only once does not make someone a *rasha*. Even the person who repeatedly commits such a sin is not necessarily a *rasha*. Rather a *rasha* is someone who routinely commits at least one widely recognized offense and does so out of defiance rather than merely being unaware that he is sinning or unable to control his emotions or appetites. In other words, a *rasha* is

¹⁶ Kagan, 4.7: 67-68; Levy, 2: 191 and 193.

¹⁷ The term *aveirah* refers to violations not just of biblical law (i.e. the Torah's 613 *mitzvot*) but to rabbinic law as well, possibly even to customs and traditions established by communal rabbis.

defined less by his deviant behavior than by his defiant attitude. He intentionally thumbs his nose at a law that his entire community recognizes as divine. (Thus Kagan describes him as being unafraid to “oppose God.”) Having demonstrated this defiant attitude, the *rasha* no longer deserves the benefit of the doubt accorded to those who are *amitekha*. This explains why someone identified as a *rasha* for repeatedly violating one widely recognized law may be publicly denounced even for the one-time violation of another.

We find a similar description of the *rasha* in Kagan’s discussion of the prohibition against believing *lashon hara*: “But if it is already established that he is an evil person (*adam ra*) because it is well known that he often contemptuously (*bishat nefesh*) violates prohibitions such as adultery that are acknowledged by all of Israel, then it is permissible to believe *lashon hara* about him.”¹⁸ The *rasha* doesn’t just violate a particular law or laws. He violates a law recognized by all Jews, and he does so with contempt and without fear. In the *be’er* related to this clause, Kagan says that such persistent and willful disobedience of a widely accepted law means the person is no longer *amitekha*. As a result, one can believe a report about his sinful behavior even if it comes from just one witness and even if it concerns an *aveirah* that he previously had not been known to commit.

We should take note here of the similarity between Kagan’s descriptions of the *rasha* and the *mumar*.

The person who routinely (*margil atzmo bit’midut*) and contemptuously (*bishat nefesh*) commits even a minor sin (*chata kal*) is called by this disgraceful name (*mumar*). . . Anyone who is not careful to avoid a known sin (*chata yadu’a*) and does not take it upon his soul to refrain from it, even if it is a minor sin and he is careful to avoid all the other sins mentioned in the Torah, the Sages of Israel call him a *mumar* in regard to

¹⁸ Kagan, 7.5: 95; Levy, 3: 119.

this one sin and he is counted among the criminals, and the extent of his sinfulness is enormous.¹⁹

There is no easy translation for *mumar*. Levi uses “apostate,” which is common. However, the English word “apostate” is not adequate because it carries the connotation of someone who has converted to another faith or at least abandoned his own. Not only does Kagan not use *mumar* in connection with the person who “converts his faith,” it is clear in this passage that he is referring to someone who still identifies himself as a Jew and is identified that way by other Jews as well. Given that the key criterion in his definitions of both the *mumar* and the *rasha* is the routine and willful commission of at least one widely recognized sin, it appears that the two are similar if not identical.²⁰

The issue of willful disobedience comes up again in Kagan’s discussion of the “foolish person” who resists rebuke. As explained previously, one may discreetly report the stubborn fool’s one-time sin against God to his rabbi or a member of his family. The rationale is that a rebuke by someone the offender views as influential will cause him to accept the fact that the behavior in question is sinful. Therefore, he will be less likely to repeat the offense. (One may not shame or denounce him publicly, however.)

In the *be’er* Kagan distinguishes the fool from someone who is “no longer considered *amitekha*” because he repeatedly commits an act “well known by everyone to be prohibited.” The former stubbornly insists that his behavior was not sinful but is

¹⁹ Kagan, Introduction (Curse 3): 35; Levy, 1: 275.

²⁰ Rabbinic tradition differentiates between a *mumar* who violates the law out defiance and a *mumar* who violates the law *l’tei’abon* (as a result of his “appetite,” meaning he is unable to restrain himself.) In this case, Kagan uses the term *mumar* to describe someone who willfully (*bishat nefesh*) ignores a single commandment. According to rabbinic tradition, this is the same as denying the entire Torah. As we will see, Kagan makes the same distinction when it comes to the *rasha*. Only a *rasha* who sins *bishat nefesh* loses his status as *amitekha*. This is further indication that, in Kagan’s view, there is little if any difference between the *rasha* and the *mumar*.

remorseful when he finally sees the light. The latter is quite aware that his behavior violated the law and feels no remorse. The prohibition against *lashon hara* does not protect the willful sinner's honor and standing in *klal yisrael* as it does the fool's. It is a *mitzvah* to publicly denounce him, even for a sin he isn't known to have committed before.²¹

The issue of defiance also comes up in Kagan's discussion of the individual who does not follow instructions from the *beit din* relating to a legal case in which he is a party. If the person gives no explanation for his behavior, he is to be publicly denounced and his condemnation recorded "[in communal records] for posterity."

But if he gives an explanation that hinges on the faithfulness of the heart, then the law is contingent. If we believe the answer is not true and is only meant to change our opinion, then we do not have to believe him and it is permissible to publicly condemn him and inscribe his condemnation [in communal records] for posterity. But if there is any doubt, it is forbidden to condemn him.²²

It becomes clear in the *be'er* that Kagan is referring to a situation in which someone claims either that he did not understand the court's order or that he was overcome by his *yetzer hara* but has since repented and steeled himself against future temptation. However, "such [an explanation] is relevant for going against the *beit din*

²¹ Kagan, 4.5.23: 65; Levy, 2: 177. In this passage, Kagan is citing, paraphrasing and endorsing the position of Rabbeinu Yonah in *Sha'are Teshuvah*. Elsewhere, however, Kagan says only that condemning a *rasha* is permissible, not that it is obligatory.

²² Kagan, 4.8: 68-69; Levy, 2: 203 and 205. Although this clause appears in the chapter dealing with sins against God, Kagan's says it pertains to any ruling of the *beit din*, whether the issue involves a sin against God or a sin against another person.

only once. It does not pertain to ongoing acts that show [the offender] does not want to abide by words of Torah.”²³

Obviously this clause is intended to defend the authority of the *beit din*. The religious court’s rulings are “words of Torah.” The litigant who defies a ruling is a *rasha* and subject to the severest of public condemnations. However, even in this case Kagan attaches a restriction: The person who does not obey the *beit din* gets one chance to convince the court that his heart remained faithful even if his actions were not — that he did not intend to flout communal authorities but rather was confused or overcome by temptation.

Kagan makes this distinction again in a discussion about the prohibition against listening to or accepting a derogatory report about a fellow Jew even if the information is true. In principle, doing either violates the prohibition against *lashon hara*. As we will see in the next chapter, however, if the information is pertinent (or might be in the future), a person may listen to it, suspect that it is true, make discreet inquiries about whether it is, and take appropriate steps to protect himself or others as long as there is no attempt to publicly shame or unduly harm the subject. However, Kagan emphasizes that this should in no way diminish the standing of the subject in Jewish society. Even in cases where a person may listen, suspect and investigate, he remains “obligated to do well by the accused in regard to all the benefits the Torah commands us to extend to the people of Israel.” In addition to giving the benefit of the doubt to a fellow Jew who is the

²³ Kagan, 4.8.33 and 4.8.34: 68-69; Levy, 2: 207.

subject of a negative report, the obligations include returning lost articles, making loans to the needy and redeeming captives.²⁴

In the *be'er* we learn that these obligations remain in effect even if the report is so damning that, if it were true, the subject would no longer be *amitekha*. (The implied rationale is that one may not believe that derogatory information about a fellow Jew is true.) What's relevant to my argument, however, is that in some cases the perquisites apply even to someone already known as an *adam rasha* (evil person) because of his repeated sins. This person "is still not removed entirely from the rest of the people of Israel (*lo yatza adayin l'gamrei miklal sh'ar anshim m'yisrael*)."²⁵

For example. . . the person who is a *mumar* as a result of eating non-kosher food because of his appetite (*s'hu mumar okhel navilot l'tei'abon*) is still among the ranks of *klal yisrael* in all other respects. . . . Therefore it could very well be that even if it were already well established that he regularly ate non-kosher food because he couldn't control his appetite and now people are saying about him — not in the *beit din* (that is, on the street rather than in official court testimony) — that he ate [non-kosher food] in defiance [of religious law], then there is doubt [about whether he was defiant] and his status is unchanged. If he is not able to redeem himself, we are obligated to redeem him.²⁶

Here again Kagan distinguishes between the evil person who repeatedly violates a well-known religious law because he can't control himself and the evil person who repeatedly

²⁴ Kagan summarizes this obligation in 6.11: 88-90, Levy, 2: 377 and 379. He emphasizes that it applies regardless of whether the report alleges a major violation or a minor one. The subject is still due all the benefits of a member of *klal yisrael*.

²⁵ Kagan, 6.10 (h): 87; Levy, Vol. II, p. 367.

²⁶ Kagan, 6:10.27 and 6.10.28: 87-88; Levy, 2: 369-373. He is referring to the Torah commandment called *pidyon sh'vuyim* (ransoming captives), which obligates Jewish communities to ransom or rescue any Jew captured by an enemy. This *mitzvah* epitomizes the solidarity that should exist among Jews, and Kagan uses it here to represent all the halakhic perquisites that Jews owe to a member in good standing of *klal yisrael*. Note also that in this passage, *adam rasha* is synonymous with *mumar*. The issue is whether the *rasha/mumar* sinned in defiance of communal standards or because he couldn't control his appetite. Only the former is excluded from the ranks of *amitekha*.

violates the same law as an act of defiance. The former retains enough standing within *klal yisrael* that he keeps the perquisites due its members. The latter does not.

Kagan acknowledges in the *be'er* that authorities are divided on this issue. Some, including Rashi, take a stricter position regarding those who sin because of their appetites. According to the stricter view, these offenders are no longer considered *amitekha*. Therefore, they do not deserve the perquisites accorded to members of *klal yisrael*, which include the benefit of the doubt and protection against *lashon hara*. Still, Kagan says, “My opinion inclines more toward [the other side].” However tenuously, he takes a position that sharply limits the exclusion of Jews from *klal yisrael* based solely on their non-conforming behavior. For Kagan a defiant attitude and the intent to flout communal standards determine whether someone is removed from the category *amitekha*, not the non-conforming behavior itself.

It also is quite significant that in Kagan’s view a person becomes a *rasha* only by committing sins against God (*bein adam l’makom*), not interpersonal sins (*bein adam l’chavero*). As we shall see in the next chapter, in some circumstances the prohibition against *lashon hara* is less strict in regard to remarks about someone who has sinned against a fellow Jew. What’s important here, however, is that Kagan insists that no Jew loses his status as *amitekha* for committing an interpersonal sin, regardless of how widely recognized the offense or how often it is committed.

In regard to [sins] *bein adam l’chavero*, even if [the offender] violates them many times, we are obligated to rebuke him [privately, not denounce him publicly] because he does not leave the ranks of *amitekha*. Only for the sin of *lashon hara* does Rabbeinu Yonah permit [denouncing the speaker/offender publicly]. But this is not because [the speaker/offender] is no longer *amitekha* but rather only for the sake of truth and to help demonstrate that [the speaker/offender] is guilty [as opposed to the subject

of his remarks]. But in regard to privately rebuking and loving one's companions (*ra'im*) and the rest of the obligations we owe to our fellow Jew (*amitanu*), we must also extend them to [those who commit interpersonal sins].²⁷

Thus Kagan eliminates one of the two major categories of sin as a basis for excluding a Jew from the ranks of *amitekha*. To understand his rationale we must keep in mind that a *rasha* loses his status as *amitekha* only because he sins with a willful heart, not because he doesn't understand the law or has succumbed to his *yetzer hara*. His defiant attitude excludes him from *klal yisrael*, not his behavior per se. Citing Rabbeinu Yonah, Kagan contends that people commit interpersonal sins almost exclusively because their *yetzer hara* misleads them into thinking they are justified in mistreating a particular fellow Jew.²⁸ The fact that they don't treat everyone in such a manner indicates that they do not intend to defy communal standards.

Often [the offender's] *yetzer* seduces him into believing that [mistreating a particular fellow Jew] is actually a *mitzvah*. . . Thus we see that it is merely his *yetzer* that blinds him into saying that all the obligations [to other Jews] commanded by the Torah do not apply to this other person. . . So how can it be permitted to say he (the offender) is not among the ranks of *amitekha*, except if it is apparent to everyone that this is in no way merely a matter of straying [from lawful behavior] but rather that this sinner is a thief or robber.²⁹

Despite the caveat in the last phrase, it's clear that Kagan is making an important distinction between interpersonal sins and sins against God. The former are not criteria

²⁷ Kagan, 10.10.30: 120; Levy, 3: 345.

²⁸ He refers specifically to three broad categories of interpersonal sins — *gezel* (those that cause a financial loss), *nezek* (those that cause damage or injury) and *tza'ar* (those that cause emotional suffering).

²⁹ *Ibid.*

for identifying someone as a *rasha* and excluding him from the ranks of *amitekha*. He makes a similar point in a discussion of what Levy calls “passive” interpersonal sins, arguing that one may not publicly denounce the person who routinely refuses to lend money to needy fellow Jews or denies them similar perquisites commanded by the Torah. While these actions violate Torah, nevertheless “he did not [actually] harm him (*lo asah lo ra’ah*).”³⁰

In the *be’er* Kagan acknowledges that some authorities, including Rabbeinu Yonah, hold that not lending money to a needy fellow Jew is a sin against God.³¹ If that position were correct, an individual who willfully and repeatedly violated this commandment would no longer be *amitekha*. Therefore, it would be permissible to publicly denounce him. Kagan argues, however, that even if refusing to lend money is a sin against God, one may not denounce a person who repeatedly commits it. He cites two reasons. First, the violation is passive (*ein bo ma’aseh*). As a result, “he (the offender) is not removed from the category of *amitekha*.” Second, “many people do not understand the parameters of this *mitzvah* (to lend money) or they think it is merely a *midah tovah* (good attribute, i.e. optional) rather than an absolute commandment like not eating pork or the like.”

The significance of this passage is not just that Kagan believes that a Jew who refuses to lend money remains *amitekha*. Just as revealing is how he deals with the legal difficulty presented by the fact that some authorities categorize the refusal to lend money

³⁰ Kagan, 5.1: 73-74; Levy, 2: 245 and 247. Presumably, however, one should admonish the offender in private.

³¹ The rationale offered by Rabbeinu Yonah is that in Ex. 22:24 God speaks about “lending money to my people.” Likewise, Deut. 15: 9 admonishes the Israelites to care for the poor lest they “cry out to the Lord and you incur guilt.” Because of God’s special interest in the poor, denying them loans or other aid is also a sin against Him.

as a sin against God. Only if that is true does it become necessary to argue that the offense stems primarily from a misunderstanding of the law, not defiance of it. This is because for Kagan, the distinction is not relevant when discussing interpersonal sins, which he argues are committed only out of passion or ignorance.

Legal distinctions between sins *bein adam l'makom* and those *bein adam l'chavero* are quite common in rabbinic literature. And it is certainly true that Kagan's position on this issue — that even repeated interpersonal sins do not exclude someone from the category of *amitekha* because such sins are driven by emotion, desire or misunderstanding — is not without precedent. However, it is not undisputed either. As Kagan observes, Rashi and others exclude from *klal yisrael* those who are induced by their *yetzer* to sin repeatedly, regardless of whether the offenses are against God or their fellow Jews.

To be clear, we should not conclude that Kagan condones or accepts as valid behavior that he believes violates religious law. Indeed he contends that one must privately rebuke those who sin, whether against God or another person. And in the next chapter we will see that in his view the Torah commandment to protect a fellow Jew from harm or injustice is so important that in rare circumstances it even justifies publicly denouncing someone who is *amitekha*. My contention is only that Kagan sharply restricts excluding Jews from the ranks of *amitekha* solely on the basis of non-conforming behavior, even when it involves repeated violations of religious law. In that sense, he can be described as tolerating a certain degree of difference within Jewish society.³²

³² See also Brown, "Soft Stringency," 1-2. He identifies Kagan's approach to *halachah* in the *Mishna Berurah* as a quintessential example of what he defines as "soft stringency." Rather than making a definitive ruling on controversial issues, it is a "democratic text" that identifies a range of stringent and permissive options and "empowers the individual to decide where on the leniency-stringency spectrum he

On the other hand, he shows no tolerance for anyone who challenges the primacy of Torah or the authority of those who interpret. The person who suggests that even a single letter of the traditional texts is irrelevant is an *apikoreis* and excluded from the ranks of *amitekha*. The difference in Kagan's attitude toward non-conforming practice on the one hand and beliefs that challenge the primacy of Torah and rabbinic authority on the other is also apparent in how the *apikoreis* and *rasha* are to be treated. Condemning the heretic is a *mitzvah*, a holy obligation. The only time Kagan uses the word *mitzvah* in connection with denouncing the *rasha* is when he cites a ruling by Rabbeinu Yonah in *Sha'are Teshuvah*. In every other instance, he describes it as *mutar* — permissible. What's more, Kagan establishes a number of conditions that must be met before publicly denouncing a *rasha* for a sin against God:³³

- Not only must the speaker be sure that the offender has been rebuked privately (and given a chance to repent) but he also must consider the authority of the person who rebuked him. If that person is not *nikhbad* (venerable), “even if he tells him that such-and-such is not proper and, therefore, he should not do it again, and even if he (the subject) does it again intentionally, he (the observer) may not shame him or denounce him publicly for this [offense]. Perhaps [the subject] thought [the rebuker] was wrong about the law.” Instead the observer should notify “important people” whose rebuke

wishes to place himself.” According to Brown, this approach was a pragmatic response to a contemporary reality — many Jews who wished to be observant couldn't or wouldn't consult rabbinic authorities on halakhic issues. “The phrasing pattern of soft stringency enables these sorts of readers to learn quickly what is the best performance of the law and what is the necessary minimum.” This is further evidence that Kagan recognized the increasing divergence among traditional Jews and was willing to tolerate it for the sake of social cohesion.

³³ Kagan, 4.7.32: 68; Levy, 2: 201 and 203.

might be more effective. Only if the offender does not listen to *them* is it permissible to denounce him publicly.³⁴

- If a person does not have an established reputation as a *rasha* (*im lo nitchazak ba-ir la-ish rasha*), then the speaker must have witnessed the willful and repeated offenses that justify condemning him. Publicly denouncing someone who does not have a reputation as a *rasha* based on second-hand information is *lashon ha-ra*.

- Likewise, “if [the act] is not *pashut* (plain, obvious or recognizable) . . . except to the person who rebukes him, then one must consider carefully whether this is actually a sin according to Torah and not make a snap judgment.” In other words, one must take into account whether the rebuker has misinterpreted the subject’s actions. Not only must the alleged behavior be widely acknowledged as sinful, but also the act itself must be an unambiguous example of the forbidden behavior.³⁵

- In denouncing a *rasha*, one may not exaggerate his offense.

- One may denounce a *rasha* only to achieve a *to’elet* (legitimate benefit) — either to warn society to “stay far from his evil lifestyle” or to induce the *rasha* to repent. “One may not relate the information for pleasure or out of hatred — only for the truth.”

- One may not denounce a *rasha* secretly while flattering him to his face. The disclosure should be *b’parsum* (public).³⁶ Although Kagan does not offer a rationale for this condition, elsewhere he argues that denouncing someone publicly demonstrates that

³⁴ This condition echoes the approach that one must take in regard to a foolish person who resists rebuke. Although Kagan does not say so, it is apparently to ensure that the offender is not merely a foolish person.

³⁵ This does not contradict his position cited above in 4.7, where he says the *rasha* does not deserve the benefit of the doubt if his actions are ambiguous. In that case, he was referring to someone already known to be a *rasha*. In this case he is referring to someone without an established reputation as a *rasha*.

³⁶ Unless the person making the disclosure has legitimate reason to fear that the subject will harm him or that the disclosure will cause controversy. Under such circumstances one may condemn him privately to one person at a time. But the intent is still the same — to diminish the subject’s status in the community.

one's motives are legitimate. In the context of the previous condition that the speaker be seeking a *to'elet*, this appears to be his reasoning here too.

While denouncing the *rasha* is highly conditional, Kagan cites no conditions for denouncing the heretic. Indeed he indicates just the opposite in a discussion of how the laws governing *r'khillut* would apply in a situation in which the father of a bride-to-be is unaware that his daughter's fiancé has a “serious shortcoming” (*chesron atzum*) — an undisclosed illness, for example, that would nullify the marriage contract. The person who becomes aware of this situation may inform the bride's father but only if he meets five conditions listed in R9.2: He must be sure the situation is truly dire. He must not exaggerate. He must be trying to achieve a *to'elet* — in this case preventing someone from entering into a bad marriage arrangement unawares. He must be sure the father will heed his warning. (In other words, it's not enough to seek a *to'elet*. The speaker must be confident he can actually achieve it.) Finally, he must be sure the *to'elet* cannot be achieved through any other means — for example, trying to persuade the groom's family either to reveal the information or to end the arrangement on their own.

Heresy is a different situation altogether. In the face of this grave danger, Kagan argues, the commandment not to stand idle while a fellow Jew is harmed supersedes the commandment against peddling gossip.³⁷ Elaborating in the *be'er*, he says, “It is not necessary [to fulfill] a single condition (*b'zeh ein tzarik shum p'rat*)” in order to reveal information indicating that the groom is a heretic. Explaining that “even the slightest bit of this (*m'at min ha-m'at mازه*)” means the groom is no longer *amitekha*, Kagan

³⁷ Kagan, A1.6: 159; Levy, 4: 383.

explicitly exempts the speaker from each of the conditions in R9.2, including the prohibition against exaggeration.³⁸

That the speaker must be trying to achieve a *to'elet* when warning others about a *rasha* but not when warning about an *apikoreis* is significant for two related reasons. First, as we will see in the next chapter, achieving a *to'elet* is an essential condition for any leniency that permits speaking negatively about a Jew who is *amitekha*. Second, a legitimate *to'elet* precludes speaking out of hatred or personal satisfaction. Kagan never mentions this restriction in regard to speaking about the heretic or the informant. While he does say that the heretic should be denounced unequivocally so that society will know that his “evil opinions” about Torah and rabbinic authority are not acceptable, he does not exclude hate as a motive. On the contrary, the fact that his definition of the *apikoreis* cites the Biblical commandment to hate those who hate God indicates that hating the heretic is a holy obligation, not merely permissible.

In addition, Kagan mentions two potential benefits in connection with denouncing a *rasha*. Not only does publicly condemning him warn society to avoid his defiant behavior, but it also might induce the *rasha* to repent.³⁹ The second benefit is another indication that the *rasha* retains a connection with *klal yisrael* and, at least in some cases, the perquisites that come with it. At the very least it expresses ambivalence about the status of the *rasha* by indicating that he is redeemable. In contrast, Kagan does not

³⁸ Kagan, A1.6.9: 159; Levy, 4: 387. While the speaker may relate second-hand information to the bride’s father indicating that the would-be groom is a heretic, he must make it clear that he is doing so.

³⁹ Kagan, 4.7.30: 67-68; Levy, 2: 197. Kagan argues that the reference in b. Pesachim 113b to “publicizing his disgrace” refers to a *rasha* — that is, someone who willfully violates a law several times — not to a one-time sinner. However, denouncing this person is permissible only if the speaker intends to warn society against emulating his behavior, not to humiliate him. In the same discussion, he notes that a public denunciation also ensures that word will get back to the subject and perhaps cause him to repent. Here again Kagan implies that the *rasha* can restore his standing as *amitekha*.

suggest that one reason to condemn the *apikoreis* is to induce him to give up his “evil opinions,” help him regain his status as *amitekha* or benefit him in any other way. Unlike the *rasha*, the *apikoreis* is completely and permanently separated from *klal yisrael*. He is irredeemable.

The leniency of public opinion

Another distinction between speaking against the *apikoreis* as opposed to the *rasha* involves the role of public opinion. As we already have seen, a core principle of the prohibition against *lashon hara* is that a Jew may not *m'kabel* (accept) derogatory information he hears about a fellow Jew. Following other authorities, Kagan explains that this prohibits “believing in one’s heart” — that is, making a definitive determination that the information is true. For that reason, one may condemn fellow Jews as heretics only “if he heard heretical words from them himself. But if others told him, it is forbidden to rely on this to denounce them (*l'ganotam*).”⁴⁰

However, the restriction against believing second-hand information that an individual is a heretic applies only to incidental or unsubstantiated reports (*sh'mi'ah b'alma*). “But if they have established reputations in the community as heretics (*muchzakin ba-ir l'apikorsim*), that is as good as seeing it yourself.”⁴¹ In other words, there is a tipping point at which public opinion becomes as conclusive as first-hand

⁴⁰ Kagan, 8.6: 104; Levy, 3: 201. However, as is the case with any relevant negative information, the listener may *suspect* that it is true, investigate and take steps to protect himself or others. This includes “warning others *ba-seiter* (secretly or discreetly) so that they will not associate with [the alleged heretic] until the matter is resolved.” Also, note that one identifies a heretic by what he says, not by what he does. It is not the heretic’s behavior that is so troubling but rather his ideas regarding Torah and rabbinic authority.

⁴¹ Ibid. Levy translates *sh'mi'ah b'alma* as “a generalized rumor circulating in society” and *muchzakin ba-ir* as “well-established reputation.”

observation. When that occurs, even a person who does not have first-hand knowledge may believe that a fellow Jew is a heretic and publicly denounce him.

In the next clause we learn that the same exception applies to a *rasha*. However, when it comes to the *rasha*, Kagan expresses reservations about the leniency of public opinion and seeks to limit its application. For example, he explains that *muchzakin ba-ir* means “the entire city agrees beyond a doubt that he is a *rasha* owing to the many evil stories circulating about him all the time concerning acts like adultery that are known throughout Israel to be prohibited.”⁴²

Elsewhere Kagan elaborates on what it means to have a well-established reputation as a *rasha* in the context of a Talmudic ruling that permits the public humiliation of anyone who has a “hateful reputation (*sani shumei'anyah*).” It takes more than a single rumor (*yotza kol al echad*, literally “a noise or voice emerging about someone”) to establish such a reputation, even if it is a widespread rumor. Rather a person acquires a hateful reputation as a result of persistent reports over time about a variety of offenses.

It is obvious that a hateful reputation refers to someone about whom there are evil rumors that he has committed sins many times. One time a rumor circulates about him (*yotza alei'o kol*) that he did this and another time that he did that until as a result [of so many rumors] it becomes *nitchazak ba-ir* to suspect him of these sins. Certainly everyone in the city can't be wrong [about the subject] all the time. Therefore it is permissible to agree and to decide that he is evil and to denounce him, even if one doesn't know him personally. But this is not the case if one hears incidentally that a person did something improper but [the subject] does not yet have an established reputation [as a *rasha*], even if one hears [the same report] from many people. It is forbidden to trust this [report] and hate him, and

⁴² Kagan, 8.7: 104-105; Levy, 3: 201 and 203. He distinguishes *muchzakin ba-ir* from *kol b'alma bilbad* (an incidental “voice,” or rumor).

even more so to speak *lashon hara* about him and denounce him [publicly].⁴³

In a related *hagahah*, Kagan concedes the possibility that a single, widespread report about a one-time offense by an individual not previously known as a *rasha* is sufficient to establish a “hateful reputation.”

If we heard once that [this person] committed a sin like adultery that is well known by everyone to be prohibited, and it was a persistent rumor, that is the whole city was insolent towards him for a day a half, and he didn’t have enemies who might have circulated the rumor, then it is necessary to consider whether [this person] should be considered to have a terrible reputation, in which case it would be permitted to humiliate him for this sin, and even to accept the report about him and believe in one’s heart that it is true.⁴⁴

It’s clear, however, that Kagan is reluctant to endorse this leniency when it comes to identifying someone as a *rasha* and denouncing him publicly. In the same *hagahah* he warns that a single, widespread rumor may be considered believable⁴⁵ only if “many [people] affirm it openly” and there is no evidence that it was initiated or circulated by one person. In other words, it must be expressed openly and without reservation by many people, leaving no doubt that it is truly public opinion.⁴⁶

What’s more, even when public opinion allows one to believe a report and denounce a *rasha*, he may not be harmed, either financially or physically. For this, no

⁴³ Kagan, 7.4.8: 94; Levy, 3: 113 and 115.

⁴⁴ Kagan, 7.5.10 (h): 95; Levy, 3: 121.

⁴⁵ What makes it believable is that it is both persistent and widespread. The Bavli says a persistent rumor — or what it calls “a voice that doesn’t stop” — is sufficient to create a “terrible reputation,” which means that one is obligated to hate and denounce the subject.

⁴⁶ Kagan, 7.5.10 (h): 95; Levy, 3: 127.

rumor suffices, regardless of how persistent and widespread, only the official testimony of two witnesses before the *beit din*. Kagan is no doubt defending the authority of the *beit din* by prohibiting regular citizens from taking the law into their own hands and exacting physical or financial punishments against the *rasha*. My point, however, is that he does not explicitly extend this protection to either the *apikoreis* or the *malshin*.

Kagan casts further doubt on the leniency of public opinion as it regards *reshaim* by emphasizing the subjective nature of determining whether a rumor is persistent or the point at which someone acquires an established reputation. Because these determinations are open to interpretation, the leniency of public opinion is easily abused. Kagan expresses concern that *ba'alei lashon hara* will misuse the leniency to label their enemies *reshaim* and unfairly denounce and humiliate them.

I was quite fearful about bringing up this law because when *ba'alei lashon hara* hear one little [leniency] they often will [use it to] maintain that a certain person has an established reputation as a *rasha* in order to denounce him, [thereby] mocking the warnings in this book. Even so, I did not omit it . . .⁴⁷

These passages indicate that while Kagan acknowledges the role of public opinion, he does not treat it equally when it comes to identifying *reshaim* and *apikorsim*. In regard to former, he expresses reservations about the leniency, establishes conditions for its use and warns readers not to abuse it. He cites no such reservations or conditions and makes no such warnings in regard to the heretic. This is further indication of his reluctance to exclude the former from the ranks of *amitekha* compared to the latter.

⁴⁷ Kagan: 8.7: 105; Levy, 3: 203.

Socio-historical explanation

The preceding analysis demonstrates how the concept of *lashon hara* inevitably involves identifying the boundaries of Jewish society — who is a member in good standing of *klal yisrael* and who is not. My aim in the remainder of this chapter is to suggest what the analysis tells us about where Kagan stood in the contemporary debate about this issue.

In the previous two chapters I argued that the discourse that so alarmed Kagan was due in part to public disputes among traditional Lithuanian Jews over halakhic issues and the competency of communal rabbis. I argued further that these disputes reflected the growth of both religious diversity and competition for religious authority associated with a decline in the status of communal rabbis and the rise of the *musar* movement and an independent class of Torah scholars within the Yeshiva movement.

I would argue that in limiting *halakhic* deviancy per se as the basis for exclusion from *klal yisrael*, Kagan was responding to public disputes among these traditionalist groups. While they may have disagreed on issues of religious practice and competed for communal authority, none of these groups either disputed the central place of the Torah in Jewish society or challenged the legitimacy of the rabbinate and rabbinic courts. Kagan himself embodied the fundamental connections that existed among the rabbinate, the yeshiva movement and *musar*. As noted previously, he expresses tolerance if not outright sympathy for *musar* and twice forbids publicly condemning a fellow Jew for having a lax attitude toward Torah study, the most serious criticism of *musar* among Lithuanian

traditionalists.⁴⁸ Kagan also was both a *rosh yeshiva* and, like many other *roshei yeshivot*, a rabbinic decisor.

We should also consider the possibility that Kagan's reluctance to permit denunciations aimed at defending *halakhic* principles or enforcing specific religious behavior reflects the evolution of a less hostile attitude among traditional Lithuanian Jews toward their Hasidic rivals. The Vilna Gaon's condemnations of Hasidism and the bans of excommunication issued against its leaders a century earlier depicted it not merely as an aberrant spiritual/religious sect but also as an existential threat to traditional institutions and social order. As Gershon Hundert and others point out, however, despite its innovations in theology and practice, Hasidism proved to be neither revolutionary nor even dramatically reformist from a political or social standpoint. While its followers worshipped separately, they nevertheless accepted Torah as the foundation of Jewish life. Just as important, their leaders acknowledged the authority of and worked within the rabbinate, the *kahal* and other communal institutions. "The Hasidic masters did not preach rebellion against the communal establishment . . . [and] a number of Hasidic leaders were identified with or actually were part of the *kahal* administration."⁴⁹

Likewise, Israel Bartal says:

⁴⁸ Kagan: 4.2.: 62; Levy, 3: 147. The clause explains that one may not denounce a fellow Jew for violating a religious law that most people are not careful to observe. In other words, the prohibition applies even if the remarks would not harm the subject's reputation because most people do not consider the behavior sinful. According to Kagan, laxness in Torah study falls into this category. Thus it is an offense for which one may not publicly criticize a fellow Jew. In the related *be'er* (4.2.6: 62; Levy, 2: 147), he endorses Rabbeinu Yonah's position that public denunciation is appropriate only if a person violates a widely acknowledged law in a way that demonstrates that he has "no fear of heaven" — in other words, in open defiance of communal standards. Kagan then adds, "Because of our many sins, [contemporary Jewish society] is lax in regard to Torah study . . . Therefore, any [public criticism] about this is certainly *lashon hara*, even if it is true."

⁴⁹ Gershon Hundert, *Jews in Poland-Lithuania in the Eighteenth Century: A Genealogy of Modernity* (Berkeley and Los Angeles: University of California Press, 2004), 208. See also Elijah Schochet, *The Hasidic Movement and the Gaon of Vilna* (Northvale NJ: Jason Aronson Inc., 1994). Although he gives

[Hasidic leaders] did not openly challenge the power of the community leadership but rather offered to serve as a supplemental authority. In many cases . . . not only did the influential *tzaddik* (Hasidic spiritual leader) refrain from challenging the existence of the community institutions or trying to change anything in the structure of the *kahal* or the functions it filled, but he placed his followers in key positions in the community.⁵⁰

Hundert also points out that the vehement early opposition to Hasidism had as much to do with power relations as with religious ideology.⁵¹ This means we must take into account how those relations had changed. By the mid-1870s, Hasidism had become the dominant form of traditional Judaism in Eastern Europe, making inroads even in Lithuania. From a socio-political standpoint, it would have been problematic to continue insisting that millions of *Hasidim* were not legitimate Jews. In light of the perceived common threat from the *haskalah*, it makes sense that Litvaks like Kagan would seek a *détente* if not a rapprochement with Hasidism.⁵² In that sense *Sefer Chafetz Chaim* anticipates his prominent role 50 years later in unifying ultra-Orthodox Jews under the political banner of *Agudat Yisrael*.

To be clear, I am arguing only that Kagan did not view Hasidism, *musar* or other expressions of Jewish traditionalism as so deviant that they had to be excluded from *klal*

more weight to the socio-political implications of the conflict between Hasidism and Lithuanian traditionalism, Schochet describes them as two legitimate “religious personalities” that influenced each other and eventually reached a balance. His point is not that no differences remained or that the differences were unimportant but rather that the differences were no longer categorical.

⁵⁰ Israel Bartal, *The Jews of Eastern Europe, 1772-1881*, trans. Chaya Naor (Philadelphia: University of Pennsylvania Press, 2005), 52.

⁵¹ Hundert, *Jews in Poland-Lithuania*, 147-149.

⁵² See Allan Nadler, “Misnagdim,” in *The YIVO Encyclopedia of Jews in Eastern Europe*, accessed Sept. 13, 2011, <http://www.yivoencyclopedia.org/article.aspx/Misnagdim>. “The enmity of the *misnagdim* toward Hasidism lessened as both groups were forced, over the course of the nineteenth century, to confront a common and far greater threat to traditional Judaism: namely, the European Enlightenment and the assimilation and religious reform that it ultimately generated among Jews.”

yisrael. This toleration of difference does not require us to believe that he accepted their theological beliefs and religious practices as valid, or that he approved of their ecstatic worship styles and attitudes toward Torah study. He describes laxness in Torah study as a *midot m'gunot* and says explicitly that it is permissible not only to warn one's children and students to avoid an individual who is so inclined but to exaggerate his shameful attribute to make sure they do. Likewise, his rulings indicate that he might have considered it a *mitzvah* to warn Torah sages or other individuals about the religious practices of non-conforming groups within traditional Lithuanian Jewish society. But in his view these derogatory remarks had to be made discreetly so as not to shame the subjects or diminish their status as members of *klal yisrael*. Despite their questionable practices, they remained *amitekha* as long as they accepted the centrality of Torah and the authority of rabbis to interpret it.

In contrast, my analysis shows that Kagan encourages public condemnation of those who challenged traditional texts and communal authority — either by undermining the primacy of the Torah and its rabbinic interpreters in Jewish life or by informing on Jews to gentile authorities and thereby circumventing communal authority. Given the contemporary socio-historical context, I would argue that Kagan intended to permit the marginalization of adherents of the *haskalah*, the Jewish enlightenment movement.

The *haskalah* was a complex movement, and the attitude of its adherents toward Jewish society and traditional institutions varied and evolved. In the early nineteenth century there was a measure of affinity between *maskilim* and traditional Lithuanian Jews based on their mutual disdain for Hasidism and their proclivity for rationalism over mysticism. But that affinity dissipated as Russian *maskilim* sought de-emphasize the role

of the Talmud and other *halakhic* literature in determining Jewish life in favor of the Bible as an expression of universal human values. They also challenged the role of the rabbinate in Jewish society, particularly in establishing *minhagim*, special customs that often gained the status of law and that many reformers viewed as unnecessarily restrictive and harmful.

Tension and animosity arose [between maskilim and traditional Lithuanian Jews] as the tendency toward secularization, which was inherent in the *haskalah*, took on more open and pronounced expression. Opposition between these two camps broke out in full force in the 1840s, against the background of the episode known as *haskalah mi-ta'am* (government-sponsored *haskalah*).”⁵³

It was during this period that traditionalists came to perceive *maskilim* as being in league with the Russian government’s effort to modernize Jewish culture, mainly through the creation of a state-sponsored education system and the weakening of the rabbinate. Etkes notes that government officials often described reform as an attempt to rid Jewish society of the “damaging influence of the Talmud.” Even if this was not the language or intent of all Russian *maskilim*, in the eyes of many traditionalists they not only “mocked words of *chazal*” but also were in league with Russian authorities in undermining the centrality of Torah in Jewish society. By Kagan’s criteria, then, this would have qualified them as *malshinim* as well as heretics, removed them from the category of *amitekha* and permitted their public condemnation.

⁵³ Immanuel Etkes, “Haskalah,” *The YIVO Encyclopedia of Jews in Eastern Europe*, accessed on Sept. 13, 2011, <http://www.yivoencyclopedia.org/printarticle.aspx?id=10>. As Etkes notes, many of the most prominent *maskilic* writers were Lithuanian.

We should also note that *Sefer Chafetz Chaim* was published during the so-called “radical *haskalah*” of the 1860s and ‘70s when criticism of Jewish society and institutions by *maskilic* novelists and journalists became quite harsh.⁵⁴

Among other things, they criticized traditional education, patterns of marriage in the community, economic behavior, and the actions of communal leaders. The literary genre frequently used by *haskalah* authors to express social criticism was the novel. Their novels were represented as reflecting the entire gamut of Jewish life in Russia; but in fact they were didactic, with stereotypical characters. The *melamed* (traditional schoolteacher) was always described as an ignorant and coarse man; the community functionary was aggressive and violent; and the rabbi a fanatic who tended to issue inappropriately severe rulings. . . . A special place in *haskalah* literature, both imaginative and journalistic, was reserved for rabbis — the more so because they still enjoyed high status in the general community. Authors of the *haskalah* repeatedly accused rabbis of not doing their jobs properly. Since they lacked general education, rabbis were unable to represent the community before the authorities; and their isolation from the real life of the masses of the people kept them from alleviating Jews’ distress. Not only were rabbis unable to lighten the burden resting on the shoulders of the community, but they also actually made it heavier with their severe *halakhic* rulings.⁵⁵

Two *hagahot* that appear in the clause dealing with the *malshin* are relevant here.

I have already mentioned the first. It refers to Jews who “hire witnesses and slander their fellow Jews to take their wealth unjustly and disgrace them before the government’s judges.”⁵⁶ As I argued in a previous chapter, this passage can be understood in the context of the collapse of traditional communal authority and the increasing propensity of even traditional Jews to take their internal economic, political and legal grievances to Russian authorities.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Kagan, 8:12: (h), p. 107; Levy, 3: 223.

The second *hagagah* addresses a different phenomenon — mocking a fellow Jew in a seemingly clever or wise manner so that derogatory nature of one’s words becomes apparent “only after observation (*hitbonut*)” and the subject is unable to respond. “Not only does his *chaver* remain scorned and disgraced . . . but also as a result, when the report is published (*yitparseim*) everyone will agree that [the speaker] is wise (*chakham*).”⁵⁷

The key to understanding this cryptic passage is to keep in mind that Kagan inserted it in his discussion of the *malshin*. One explanation is that he was referring to *maskilic* writing, particularly the serialized Yiddish satires of Jewish society and institutions that became popular during the radical *haskalah* of the 1860s and ‘70s. Because *maskilim* were seen as allies of the government, many traditional Jews assumed that Russian authorities read or were influenced by their works — even those in Hebrew and Yiddish. Thus *maskilic* writers were seen as airing their criticism not just within Jewish society but to gentile authorities as well, which made them even more dangerous. What’s more, satire and other social criticism by *maskilic* writers appeared in publications that did not offer an opportunity for response. These works also were widely read, indicating that a many traditional Jews considered them entertaining, clever and insightful. The writers were making themselves appear *chakham* by publicly ridiculing true *chakhamim*.

Finally, while Kagan condemns these “wise” speakers, his main purpose is to criticize those who admire or encourage them. “The one who praises this bitterness (*ha-*

⁵⁷ Kagan, 8.12 (h): 107; Levy, 3: 223 and 225. Kagan says this offense “is not within the scope of this book, which is specifically about the prohibition against *lashon hara*.” This clever speaker is guilty of the sins of buffoonery (*leitznut*), oppressive language (*ona-at d’varim*) and embarrassing a fellow Jew in public (*malvin p’nei chavero ba-ravim*).

m'haleil et ha-boteh ha-zeh) as words of wisdom has blasphemed (*ni'eitz*) against God. At the very least we fail to fulfill the *mitzvah* to rebuke [the speaker] for this evil deceit. Will we also offer acclaim in response to it?"⁵⁸ As we might expect given his target audience, Kagan's rebuke was aimed not at *maskilim*, who were unlikely to read or be influenced by his book, but rather at the thousands of traditional Jews who were reading and talking about maskilic critiques. (This also explains why he would describe this offense as one that causes "many people to stumble.")

⁵⁸ Ibid.

CHAPTER VI

SPEAKING BADLY ABOUT *AMITEKHA*

Having identified where Kagan draws the boundaries of *klal yisrael*, I now want to look at the circumstances in which Kagan permits the disclosure of negative or harmful information about those who are *amitekha*. My analysis will show that the leniencies primarily permit private or discreet remarks as distinguished from the public condemnation of those who are not *amitekha*. The leniencies also hinge entirely on the speaker's intent. In relating negative information about a fellow Jew, the speaker must be trying to achieve a *to'elet*, a legitimate benefit that excludes speaking *mi-tzad sinah* (out of hatred) or shaming or otherwise harming the subject. In general, these benefits have to do less with defending *halakhic* principles or enforcing religious beliefs and behaviors than with preventing or rectifying specific injustices or conducting routine affairs such as running a business, arranging a marriage, raising children or instructing students. In other words, they are based on ethical or practical considerations, not religious orthodoxy or orthopraxy.

Discretion and legitimate benefit

According to Kagan, the essential principle of the prohibition against *lashon hara* is that a Jew may not say anything that demeans or harms someone who is *amitekha*. It makes no difference whether the remark is true or false, whether it is made to one person

(privately) or in front of many (publicly), or whether the subject is present or not.¹ The corollary to this principle is that one may not believe such a remark (or tell others), regardless of whether it is made in public or private, whether one hears it from one person or from many, or whether the subject is present or not.²

Yet we already have identified a number of exceptions that permit derogatory or harmful remarks about someone who is *amitekha* — for example, the situation in which a person sees his *chaver* commit a sin against God. The witness *must* tell certain individuals about the sin if doing so “benefits [them] by separating [them] from something prohibited (*im hu mo’il l’afroshei mei’isura*).”³

An eyewitness is obligated to inform a man that his wife has committed adultery, for example, so that he will not defile himself by having contact with her.⁴ For a similar reason, one must warn Torah sages about a colleague who has eaten non-kosher food. And while a lone witness to a sin against God is prohibited from testifying or making a formal complaint to the *beit din*, he is “not altogether prohibited” from unofficially informing members of the court.⁵ In this case, the benefit is that the *beit din* knows not to take testimony from the subject until it can be sure that he is no longer in a state of sin.

In summarizing this leniency, Kagan says, “It hinges on whether the speaker intends to denounce him (*lignuto*) . . . or to achieve a legitimate benefit (*l’to’elet ha-yotzei’a mazeh*).” The former violates the prohibition against *lashon hara*; the latter does

¹ Kagan, 1.1: 37, 2.1: 41, and 3.1: 55; Levy, 1: 283 and 381, and 2: 81.

² Kagan, 7.1, 7.2 and 7.3: 91-93, and 8.13: 107; Levy, 3: 85, 87, 99 and 225.

³ Kagan, 4.4 (h): 65; Levy, 2: 159. The speaker must have witnessed the act himself and be sure that the person he tells will not simply reject the warning.

⁴ Strictly speaking, the issue here involves *r’khillut*.

⁵ Kagan, 4.4.16: 64; Levy, 2:165 and 167.

not. Kagan proscribes the kind of public censure permitted or required about those who are not *amitekha*. Instead of *ginah* (denounce or condemn), he uses *gilah* (reveal or disclose) to describe how one may speak about a *chaver* who has committed a sin against God. Thus the leniency depends on two related conditions. The speaker must be discreet, disclosing the information only to certain individuals who, while they can protect themselves, are enjoined from telling others.⁶ And the speaker must intend to achieve a *to'elet*, which explicitly excludes trying to discredit, embarrass or otherwise harm the subject.

To be clear, this does not mean that Kagan believes one should tolerate *halakhic* violations. Indeed the witness is required to rebuke the offender gently and discreetly. Having fulfilled this obligation, however, the witness must assume the sin will not recur. So the purpose of his discreet revelations is to protect a third party, not to punish the offender or influence his behavior. In some cases, the offender might not even be aware of the remarks.

The situation is slightly more complicated if the offender is what Kagan refers to as a foolish person who resists rebuke. As we have seen, in this case the witness should report the sin to the offender's rabbi or a member of his family, who acts as a kind of surrogate rebuker. The rationale is that this person is more likely to accept an admonition from an authority figure or family member. While this leniency does involve enforcing certain religious behaviors, Kagan emphasizes that the disclosure must not be made *b'sinato* (out of hatred for him) and that the whole affair must be handled discreetly

⁶ This is because they did not witness the sin themselves.

(*b'hatznei'a*) so as not to embarrass or dishonor the subject publicly (*lo yalbinu panei b'ravim*).⁷ He may be a “stubborn fool,” but in Kagan’s view he is still *amitekha*.

The leniency pertaining to revealing negative information about someone who is *amitekha* implies a corresponding leniency when it comes to listening to and believing such information. Otherwise a *talmid chacham* would have no basis for avoiding the person who ate non-kosher food or the rabbi for privately admonishing the fool who resists rebuke. This leniency derives from the aforementioned passage in b. Niddah 61a: “While one may not accept [*lishna bisha*], one should be mindful of it.” Following other authorities, Kagan interprets this ruling to mean that a person may listen to negative information about a fellow Jew “if the report is relevant to him (the listener) now or in the future (*im ha-davar nogei'a lo al l'haba*).” Not only may he listen but he also may suspect that the information is true, make inquiries to determine whether it is, and take appropriate steps to protect himself or others.

For example, if the listener sees from the outset that the speaker wants to show him that so-and-so is not a responsible person or something like that, and [the listener] was thinking about hiring [so-and-so] or going into partnership with him or arranging a marriage with him or the like, [the listener] is permitted to listen from the outset in order to suspect (*lachush*) and to safeguard himself. The reason [for this leniency] is that he does not listen because he is interested in hearing his *chaver* disgraced. He only wants to protect himself from harm or prevent a dispute in the future . . . The law is the same even when listening has no legitimate relevance to [the listener] but will benefit others. [In that case] listening is also permitted. For instance, someone wants to listen to this report in order to make inquiries about whether it is true and admonish so-and-so about it.

⁷ Kagan, 4.5: 65-66; Levy, 2: 175. As noted in Chapter III, it is so important not to embarrass the subject or harm his reputation that the speaker must take into account whether the rabbi is discreet. If he is not, then the speaker may reveal the information only if he is absolutely sure the subject respects the rabbi enough to heed his rebuke. In this case, the benefit of preventing the subject from repeating his sin outweighs the potential harm to his reputation.

Perhaps this will result in the sinner repenting or returning stolen merchandise or apologizing to someone he disgraced or cursed.⁸

In some circumstances, it is a *mitzvah* to listen to *lashon hara* — if, for example, the listener can help create “peace in Israel” by convincing the speaker and others who believe him that they are wrong about the subject.⁹ “This is obvious,” Kagan says in the *be’er*, “because even *r’khillut* is proper (*gufa*) if it rectifies damages or resolves a dispute.”¹⁰ Like the passage in b. Niddah 61a and subsequent authorities, however, Kagan distinguishes between listening to negative information and suspecting that it might be true on the one hand and believing that it is true on the other. “But to accept (*l’kabeil*) — that is to determine in one’s heart that the matter is true (*l’hachlit ha-davar b’livo sh’hu emet*) — is prohibited in all circumstances.”¹¹

Being allowed to suspect but not believe limits how the listener may respond. While he may take steps to protect himself or others from harm, the information “should not cause even the slightest doubt about the status and legitimacy of [the subject],” which means the listener must “do well by him” in regard to all the obligations Jews owe to one another.¹² “[One may not] take any action against him or cause him any harm or shame,

⁸ Kagan, 6.2: 77-79; Levy, 2: 283 and 285.

⁹ Kagan, 6.4: 79; Levy, 2: 303.

¹⁰ Kagan, 6.4.6: 79; Levy, 2: 305.

¹¹ Kagan, 6.2: 79; Levy, 2: 285.

¹² Kagan, 6.10: 86-88; Levy, 2: 359 and 361.

great or small, even if the *lishna bisha* came from a reliable witness who testified before the *beit din* . . . Even hating him [secretly] in one's heart is prohibited by Torah."¹³

Elsewhere Kagan responds to the concerns of a hypothetical businessman who worries that the commandment not to listen to or believe *lashon hara* precludes the kind of due diligence necessary in routine commercial activities. If it becomes apparent that someone is about to denigrate a fellow Jew, Kagan says, the listener should interrupt him and ask whether the information is relevant to his affairs "now or in the future" or whether it will enable him "to fix a situation." The latter reference is to a situation in which the listener might prevent someone else from being harmed or rectify an injustice by rebuking or otherwise influencing a third party.

[If either circumstance pertains] it is permissible to listen, but not to believe at that moment, only to suspect until the matter becomes clear. But if [the listener] sees from his answer that there will be no *to'elet* from [listening] or he sees [that the remarks consist] only of hateful and insulting words, that [the speaker] slanders [the subject] sinfully and denounces him because he has a great hatred of him, then it is forbidden even to listen.¹⁴

The passages above demonstrate how the leniency for listening and responding to negative information about a fellow Jew corresponds to the leniency for relating such information. Just as the speaker must be trying to achieve a *to'elet*, so too must the listener. And just as a legitimate *to'elet* precludes revealing the information out of hatred, it also precludes responding out of hatred. What's more, as was the case for the speaker, the benefit may accrue even to the subject of the remarks, who is still *amitekha*. Finally,

¹³ Kagan, 6.11: 88-90; Levy, 2: 377. While the testimony of a single witness is not enough to convict, the *beit din* can use it to require someone to swear an oath. The point here is that even such testimony does not permit concluding that the information is true.

¹⁴ Kagan, 6.3: 79; Levy, 2: 301.

and most significant, neither the speaker nor the listener may do anything that harms or humiliates someone who is *amitekha*, which precludes denouncing him publicly or telling any non-interested party about the matter. The matter must be handled discreetly on a need-to-known basis.¹⁵

The leniency of circumstantial evidence

One may not *m'kabeil* (accept as true) negative or demeaning information about a fellow Jew, regardless of how many people say it. The subject must be judged favorably even if there is circumstantial evidence (*d'varim nikarim*, literally “recognizable things”) supporting the report. However, Kagan cites a leniency regarding *d'varim nikarim*. If the circumstantial evidence is so strong as to preclude doubt, then “it is permissible to believe and to accept (*l'ha-amin u-l'kabeil*).”¹⁶

This leniency is based on the exegesis in b. Shabbat 56a of the Biblical story in which King David believes and acts on a report that Mephiboshet, one of Saul's sons, was disloyal to him. The passage exonerates David of the sin of *lashon hara* because he previously had observed circumstantial evidence that supported the accusation. Noting that the leniency is endorsed by a number of subsequent authorities, including Rabbeinu Yonah in *Sha'are Teshuvah*, Kagan concludes that one may believe a report supported by

¹⁵ This is why, as noted previously, a speaker may not reveal negative information to a person who might tell someone else or otherwise harm the subject. The one exception is the leniency that permits telling an indiscreet rabbi about a foolish person who won't otherwise accept rebuke for a sin against God.

¹⁶ Kagan, 7.10: 99-100; Levy, 3: 157.

“substantial circumstantial evidence” (*d’varim nikarim mamash*), even if the speaker is known to have lied previously.¹⁷

Though he acknowledges the leniency regarding circumstantial evidence, Kagan cites a number of limitations. Before believing a negative report about a fellow Jew based on *d’varim nikarim*, one must “carefully investigate” to make sure the evidence is true and meets certain criteria: It must be substantial rather than flimsy (*d’varim nikarim mamash*, not *davar ha-nikar k’tza*). It must relate directly to the substance of the remarks. And the speaker must have observed the evidence first-hand.¹⁸ In addition, one can believe the report only if it results in a legitimate benefit such as allowing a person to distance himself from the subject until he has atoned or changed his lifestyle.¹⁹ It is strictly forbidden to rely on the leniency of strong circumstantial evidence to harm the subject or cause him a financial loss. And while a person who hears a report supported by substantial circumstantial evidence may take steps to distance himself from sin, he may not tell others what he heard.²⁰

In regard to the last condition, however, Kagan cites two exceptions. The first, which we have already discussed, is if the subject is someone who has a well-established reputation as a *rasha*. The second applies if “the information concerns an interpersonal sin and it is necessary to be jealous for the truth and assist the victim.”

¹⁷ Kagan, 7.10.22: 101; Levy, 3: 165. See also Kagan, 7.10.25: 101, Levy, 3: 169. One can also believe a slave or a woman. In the context of the ancient rabbis, these classes of people were less credible, which is why they were not allowed to testify before a *beit din*. Kagan makes this point in order to emphasize the credibility that can be accorded to strong circumstantial evidence.

¹⁸ Kagan, 7.11: 101; Levy, 3: 171.

¹⁹ Kagan, 7.10.25: 101; Levy, 3: 169.

²⁰ Kagan, 7.12: 101; Levy, 3: 173.

In that case, even if [the speaker] did not witness the event himself but only heard that so-and-so committed an offense against so-and-so, and there is strong circumstantial evidence indicating that this report is true, it seems to me that it is permitted to relate this information to others and explain to them why this seems to be true in order to encourage them to help the victim and be jealous for the truth.²¹

For Kagan, the leniency of circumstantial evidence does not pertain to defending halakhic principles or even punishing certain behavior. Rather it is primarily an ethical concession that allows the exchange of information in order to assist the victim of a specific injustice.

Significantly, Kagan exempts the *beit din* from one important restriction regarding circumstantial evidence. In the face of exigent circumstances (*mifnei tzoreich sha'at*), the religious court can mete out punishment based on strong circumstantial evidence.

For example, say someone whose money has been stolen appears before them and alleges with certainty based on strong circumstantial evidence that so-and-so robbed him of his livelihood, and the *beit din* either sees the circumstantial evidence itself or hears [independent] testimony about it. They have permission to punish [the accused person] so that he will confess. But an individual does not have this prerogative. Nor does the *beit din* have it if the circumstantial evidence is not clearly proven by testimony beyond that of the victim.²²

It is not surprising that Kagan privileges the religious court when it comes to circumstantial evidence. However, the fact that the court may punish someone based on

²¹ Kagan, 7:12.28: 101; Levy, 3: 175.

²² Kagan, 7.13: 102; Levy, 3: 181. In the next clause he laments the fact that it was common for city officials (*tovei ha-ir*) to condemn and punish an alleged thief based only on the victim's testimony about circumstantial evidence. This is forbidden even if "the city officials have the status of a religious court (*tovei ha-ir chashivi k'mo beit din*)." Before acting on circumstantial evidence, they must either see it themselves or hear independent testimony that confirms it.

such evidence only serves to emphasize that individuals may not. What's more, even in this circumstance, "believing" a negative report based on circumstantial evidence does not permit the *beit din* to publicly condemn the subject and diminish his status as *amitekha*. Thus, it has to do less with inculcating certain normative beliefs or behavior and more with rectifying a specific interpersonal offense. I would also point out that the phrase "robbed him of his livelihood" indicates that Kagan is referring to financial offenses.

Shameful attributes and personal shortcomings

Kagan sharply restricts speaking about another Jew's *midot ha-m'gunot* — shameful attributes. His description of these attributes — "someone who is haughty or becomes angry over nothing" — indicates that he is referring to behavior or personality traits that are undesirable but do not amount to halakhic violations. The person who sees another Jew exhibit a shameful attribute is obligated to reprove him privately. But even if the behavior continues, "it is forbidden to characterize him as a *rasha* and to tell [others] about him."²³

In the next clause, however, Kagan identifies a significant leniency: "If someone sees a person with a *midah m'gunah* — for example haughtiness or a quick temper or some other evil attribute, or he is lazy in regard to Torah study or the like — it is proper for the observer to relate this matter to his son or students in order to warn them not to

²³ Kagan, 4.9: 69-70; Levy, 2: 209 and 211. While Kagan acknowledges that b. Ta'anit 7b characterizes an insolent person as a *rasha* and permits denouncing him publicly, he notes that Rashi and the *tosafot* argue that this leniency pertains only to "this especially bad attribute," not to any others. He then qualifies the leniency further: Even regarding someone who is insolent, "it is necessary to [carefully] consider when to call him a *rasha*."

associate with him or emulate his behavior.” His rationale is that the prohibition against *lashon hara* is intended to prevent Jews from intentionally humiliating a *chaver* and rejoicing in his dishonor. However, if one’s only intent is to warn others discreetly not to emulate a fellow Jew’s bad character trait, “it is obviously permissible and a *mitzvah*” to do so.²⁴ In other words, while the speaker may do nothing to harm or shame someone for exhibiting a bad character trait, he nevertheless is obligated to warn those under his tutelage to stay away from the person and refrain from his boorish behavior.

In the *be’er*, Kagan expands the leniency in several notable ways. Not only is it proper for a person to tell his sons and students about another person’s *midot m’gunot*, he may do so even if he has not witnessed the improper behavior himself.²⁵ Even more interesting, Kagan says “it is possible he (the speaker) is allowed to exaggerate” if he believes that doing so is the only way to ensure that the individuals he is warning will not associate with the subject or emulate the offensive behavior. “The main principle here is that [the speaker] intends to uphold the honor of God’s name, meaning he sees that speaking will produce a *to’elet* and there is no hatred involved.”²⁶

In the context of speaking about the halakhic violations of a fellow Jew, Kagan forbids exaggeration in any circumstance. Doing so is the same as lying and amounts to *motzi shem ra* (slander), the gravest kind of *lashon hara*.²⁷ The prohibition against

²⁴ Kagan, 4.10: 70; Levy, 2: 215. For this reason the speaker must make his intent clear.

²⁵ Kagan, 4:10.43: 70-71; Levy, 2: 221. As long as he relates the information in a way that indicates it is second hand. For example: “I heard such-and-such about [the subject], therefore there is very much reason to suspect him and to guard yourself from him.”

²⁶ Ibid.

²⁷ See, for example, Kagan, 10.2.9: 113; Levy, 3: 285. This clause deals with the leniency (discussed below) that permits publicly denouncing someone who is *amitekha* for an interpersonal sin. It establishes several conditions, one of which prohibits exaggeration. “Obviously [the speaker who exaggerates] is

exaggeration applies even when publicly condemning a *rasha* who is no longer *amitekha*. Yet in the private context of educating one's family or students to avoid unseemly behavior, Kagan permits exaggerating the bad habits of a *chaver*. We should note that the speech permitted by the leniency regarding shameful attributes must be discreet and is intended to promote certain behavior within a select group of listeners, not to force the subject to change his behavior.

A similar leniency applies to speaking about another person's *chesron sh'laimut ha-ma'alot* — “defects of merit” or what we might call personal shortcomings. Examples of such defects are poor intellectual ability, particularly when it comes to studying Torah; a lack of financial resources and/or business acumen, and bad health or physical weakness. In contrast to shameful attributes, defects of merit are inadequacies over which a person has little or no control. Being disdainful toward Torah study or profligate with a business partner's money is a shameful attribute. Being a poor Torah student or an inept merchant is a defect of merit.

In three consecutive clauses, Kagan emphasizes the sinfulness of shaming a *chaver* for his lack of merit.²⁸ Apparently one may not even discreetly talk about a fellow Jew's defects, much less exaggerate them, in order to teach one's sons or students about proper behavior. This is reasonable position in view of the fact that personal defects cannot be avoided in the same sense as bad habits. On the other hand, one may reveal a

categorized as a liar and is seen as committing *motzi shem ra*.” And as we saw in Chapter V, one of the five conditions for denouncing a *rasha* is that the speaker not exaggerate his offense.

²⁸ Kagan, 5.2, 5.3 and 5.4: 74-76; Levy, 2: 253-265. In the first clause, Kagan describes violations of this prohibition as “quite common.” In the last clause he emphasizes the sin of denigrating a *chakham* for his lack of Torah knowledge and explicitly forbids the citizens of a community from criticizing their rabbi for having limited Torah knowledge. “Even if it is true, it is absolute *lashon hara* from the perspective of Torah because it completely dishonors him, reduces his livelihood and diminishes respect for Torah and the observance of *mitzvot*.” The implication is that such criticism was common.

person's defects in order to protect others from harm and as long as there is no intent to disgrace the subject. For example, while it is "absolute *lashon hara*" to tell a group of people that a certain craftsman does shoddy work, warning an individual not to hire him is permitted "if (the speaker) does not intend to denigrate [the craftsman], only to achieve a *to'elet*" — that is, warn someone who is about to hire a craftsman whose work is substandard.²⁹ In the *be'er*, we learn that this leniency even permits speaking publicly about a person's lack of Torah knowledge if one sees that the subject's imminent appointment to a communal post would be "a big mistake."³⁰

Elsewhere Kagan says, "Sometimes the prohibition against *lashon hara* applies even to [remarks about] a young child (*katan*)."³¹ The wording implies that this is not always the case. While one must not speak badly about a child if doing so will result in undue harm or anguish — causing an orphan to be evicted from a home, for example³² — such remarks are permitted as long as the speaker is sure the information is true and his intent is to rectify harm caused by the child or to ensure that the child is instructed on proper behavior.

None of the other conditions that normally must be met to justify a negative report appear to apply in regard to small children. The speaker is not required to give the child

²⁹ Kagan, 5.4: 76; Levy, 2: 265.

³⁰ Kagan, 5.4.8: 76; Levy, 2: 267. To be fair, in the next clause (MH: 5.5: 76; Levy, 2: 269), Kagan admonishes his readers to be "very, very careful not to rush to this leniency and say, 'My intention is not to condemn the accused, only to achieve a legitimate benefit.'"

³¹ Kagan, 8:3: 103-104; Levy, 3: 193.

³² *Ibid.* Kagan refers to orphans twice more in the *be'er* of this clause. He notes their special vulnerability to *lashon hara* compared to children living with their natural parents. The latter are unlikely to be cast out of their homes or suffer unfair punishment. What's more, the potential consequences of eviction are grave. "Many times it will endanger the child's soul or push him into corruption." While Kagan's concern reflects rabbinic literature's traditional emphasis on caring for orphans, it may also have been a response to contemporary circumstances. This does not, however, negate my point about the leniency of speaking *lahon hara* about small children in general.

the benefit of the doubt by assuming he has atoned or didn't realize he was doing something wrong. Nor must he first rebuke the child or explore other options before making the report. What's more, while in other contexts Kagan explicitly prohibits making a negative report if it will result in greater harm than the subject's offense warrants, here he says only that the speaker must make an effort to understand the possible consequences.

The passages above indicate that, in Kagan's view, negative comments about a *chaver* — whether they pertain to halakhic violations or to bad character traits and personal shortcomings — are permissible as long as they result in a legitimate benefit and the speaker is discreet, i.e. his remarks do not unduly harm or publicly shame the subject. In contrast to public condemnations, which signify that a person is no longer *amitekha*, Kagan permits the private exchange of negative information about *chevarim* that prevents or rectifies harm or that is necessary for conducting routine affairs. A shop owner, for example, may tell his wife about a customer's bad credit history so that she won't extend him credit.³³ To ensure that he is making a good deal, a businessman may inquire discreetly about a prospective partner. Likewise, a father may inquire about his prospective son-in-law.³⁴ In such situations

it is permitted and quite appropriate to inquire and investigate from the outset (i.e., even without a basis for suspecting impropriety). There is nothing at all in this that comes to *lashon hara* . . . To say otherwise would be impractical (literally: “require us to abandon life”), and it is not

³³ Kagan, 8.10: 106; Levy 3: 215.

³⁴ Kagan, 4.11: 70-71; Levy, 2: 221 and 223. It is important, however, that the inquirer make his purpose clear so that no one misunderstands his intent and thinks he is simply fishing for negative information about the subject. He also cautions against making such inquiries of someone who is a known enemy of the subject.

logical that Torah would compel us to associate with someone whose nature is unknown to us without inquiring about him.³⁵

Public information

As we saw in Chapter III, Kagan forbids deliberately repeating remarks heard *bifnei t'lata* even if the speaker does not intend to disseminate the information to people who don't already know it. He is stricter than Maimonides who, while not excusing the original speaker, appears to permit the deliberate discussion of negative or derogatory information about an individual that one can fairly assume to be widely known. According to Kagan, such remarks may be repeated only *b'derech akrai* (inadvertently and incidental to the conversation) and only by someone who heard them first-hand.

However, he adds a caveat. Those who do not actually hear derogatory remarks made *bifnei t'lata* may repeat them if “the information is already publicized and known to everyone (*k'var nitparseim divar v'noda l'kol*).”³⁶ What's more, it appears that the information can be repeated deliberately. The implicit rationale is that in such a circumstance there is no possibility of further defaming or harming the subject.

In distinguishing between remarks made *bifnei t'lata* and information that is *nitparseim v'noda l'kol*, Kagan's position seems to be that one may not repeat a derogatory remark based on the *presumption* that it eventually will become common knowledge. Rather one must be virtually *certain* that it already is common knowledge.

³⁵ Kagan, 4.11.44: 72; Levy, 2: 233. And the respondent is obligated to provide relevant negative information as long his remarks do not publicly shame the subject or cause him undue harm.

³⁶ Kagan, 2.4: 48; Levy, 1: 397. See also the related *be'er* entry 2.4.10: 48; Levy, 1: 401. Kagan cites a ruling by the *yad ketana* that one may repeat only the derogatory or harmful information, not the identity of the person who originally revealed it. This is because it is impossible to determine whether the original speaker did, in fact, reveal it to at least three people, thereby indicating that he intended both the remarks and his identity to become widely known. This ruling emphasizes the public nature of the information by dissociating it from a specific source.

While this narrows the definition of public information, it nevertheless recognizes that at some point information becomes so widespread that precluding its discussion serves no legitimate social or ethical purpose.

In the same chapter, Kagan argues that the leniency of *bifnei t'lata* does not apply if the speaker explicitly instructs the listeners not to tell anyone else about his remarks. However, this restriction also has an exception. If the speaker merely instructs his listeners not to tell the *subject* of the remarks “it’s possible that it is permissible to reveal [the information] to another [person].”

If his (the speaker’s) warning [not to reveal the information to the subject] does not mention the community, the report is something that is likely to emerge eventually (*l’hitgalot l’basof*). And the Torah would not prohibit this altogether as *lashon hara* (*lo asra ha’torah bazeh mishum lashon hara*) as long as there is no intent to denounce [the subject]. [But] further consideration [of this position] is necessary.³⁷

This exception apparently hinges on the speaker’s implied lack of concern about whether his remarks become known to anyone other than the subject. While clearly ambivalent about endorsing this exception, Kagan nevertheless is unwilling to label as sinful those who, without malice, repeat information they hear under such circumstances.

Kagan also says that if an individual discloses information in front of three people about his own business or financial affairs — even if it is information that might cause him financial loss if it becomes widely known — the listeners may tell others about it. The reason is that the speaker, by revealing the information in front of three people, obviously does not care if it becomes widely known.³⁸ In the *be’er* Kagan makes it clear

³⁷ Kagan, 2.8 (h): 52; Levy, 1: 431.

³⁸ Kagan, 2.13: 55-56; Levy, 1: 459.

that he is referring only to financial information (*davar shel mammon*). “But if it is another matter that eventually could embarrass him — such as telling three people about a sin he once committed, then it is forbidden because he [the listener who repeats it] intends to embarrass him.”³⁹ This leniency, then, is aimed specifically at allowing the discussion of relevant financial information about someone who ostensibly does not care if it is known. Thus, despite his restrictive position on remarks *bifnei t’lata*, Kagan recognizes that some harmful or derogatory information falls into the public domain and may be discussed and even disseminated as long as there is no malicious intent.

Privileging rabbis and rabbinic courts

We have already seen several leniencies that privilege rabbis and the *beit din* when it comes to relating, listening to or acting on negative reports about those who are *amitekha*. For instance, not only may an eye-witness unofficially report a fellow Jew’s one-time sin against God to the *beit din*, but also the religious court may act on that information, if only discreetly. Someone not previously known as a *rasha* can be publicly condemned for refusing to follow a single order of the religious court. And the *beit din* also has more latitude when it comes to acting on circumstantial evidence: Unlike individuals, it can punish someone for committing an interpersonal offense such as theft based solely on strong circumstantial evidence.

Elsewhere, Kagan argues that the person who denigrates widows or orphans also violates the Biblical commandment not to oppress these two vulnerable groups.⁴⁰ In the

³⁹ Kagan, 2.13.28: 55; Levy, 1: 465.

⁴⁰ Kagan, Introduction (Lav 15): 23; Levy, 1: 189.

be'er, however, he cites a leniency that pertains to rabbis: “But if a rabbi [verbally] oppresses them to teach them Torah or a trade or how to conduct themselves properly, this is permitted.”⁴¹ The context is not clear, but rabbis often were integral figures in the instruction of orphans at communal schools. Kagan appears to be giving them dispensation to use abusive language in this role.

Although this is the only instance in which Kagan addresses the issue of abusive rhetoric by rabbis in a contemporary context, elsewhere he offers a traditional defense of such rhetoric in ancient rabbinic literature: Sages who are recorded as having ridiculed their colleagues were not guilty of speaking *lashon hara* because their intent was not to demean. Instead they were fulfilling their obligation to argue strenuously “for the sake of heaven” — that is, to make clear the legal precepts of God’s Torah.

That which we sometimes find in the writings of the *ga'onim*, that one of them taunts his *chaver*, that was only in the context of debating words of Torah for the sake of Heaven because he saw that [the other’s position] did not agree with the law and he didn’t want society to follow [a faulty opinion] . . . But it was never the intent, God forbid, of one [sage] to mock and make sport of his *chaver*. Because even if the mockery were true, he would know that it was forbidden to denounce his *chaver*.⁴²

Thus, when it comes to defending halakhic principles, it appears that rabbis are allowed to speak about one another in a manner that would otherwise be considered *lashon ha-ra*. Kagan also explains that he has included in *Sefer Chafetz Chaim* a *responsum* by the seventeenth century German rabbi Yair Chayim Bacharach “so that the reader will not wonder in amazement why, given the great sin of *lashon hara*, there are

⁴¹ Kagan, Introduction (Lav 15), p. 23, Levy, Vol. I, p. 191.

⁴² Kagan, 8.9.23: 106; Levy, 3: 213 and 215.

several instances in the *gemara* where one *amora* appears to belittle his *chaver*.⁴³

Bacharach gives three explanations for the abusive language found in early rabbinic literature.⁴⁴ The first reiterates Kagan's explanation: The sages in question were vigorously and appropriately defending legal positions and did not intend to insult their colleagues. In some cases, the *responsum* argues, remarks intended as praise have been misinterpreted as demeaning.⁴⁵ And in still others the remarks, though indeed demeaning, were justified because a rabbi is obligated to correct a student or younger colleague who errs or to rebuke him for not performing up to his ability. Regardless of whether these explanations are strained or misrepresent the meaning of the texts, they privilege the literary rabbis by justifying speech that would otherwise be considered *lashon hara*. Both the *responsum* and Kagan's own position in 8.9.23 — that the sages recorded as taunting their opponents were speaking “for the sake of Heaven” — imply that rabbis, unlike other Jews, are permitted some leniency in using harsh and abusive rhetoric to defend religious ideals and legal principles.

In addition to privileging rabbis and Torah scholars when it comes to listening to and speaking *lashon hara*, Kagan also cites special obligations to defend *chakhamim* against such speech. For instance, an observer is obligated to publicize an instance of

⁴³ Kagan, Introduction: 36; Levy, 1: 279. Although this is his only reference to the *responsum*, it seems fair to infer that it represents his view on the issue.

⁴⁴ Two pages, apparently those with the *responsum*, are missing from some copies of the 1873 edition, including the version available at <http://www.hebrewbooks.org>. The *responsum* can be found in the 1877 edition on pages 5-6; Levy, 4: 405-419.

⁴⁵ The *responsum* cites two instances in which apparent insults were actually intended as praise. One of them comprises almost half the text. It concerns a passage in b. Sanhedrin 59b in which a rabbi, responding to a colleague who has asked a silly question, calls him a *ya'arod nah'alah*. The meaning is obscure, but Rashi interprets it as “a demented bird who is always in mourning.” According to the *responsum*, this description refers to the fact that elsewhere in rabbinic literature the subject is portrayed as constantly worrying about his sins and shortcomings. It should be read, therefore, not as an insult but rather as an acknowledgment of the subject's piety.

lashon hara and denounce the speaker unless the subject of the derogatory remarks is unaware of them. As explained above, the rationale for this stringency is that publicizing the speaker's sin would indirectly inform the victim and, therefore, constitute *r'khillut*. The risk of controversy and hatred outweighs the obligation to warn the victim. "This is absolute *r'khillut* even if an inferior person mocks an important person of Israel, even if it is his father or his rabbi."⁴⁶

In the *be'er*, however, Kagan mitigates this prohibition in regard to Torah scholars: "In regard to repeating the remarks to others, if he sees that a *to'elet* will result — that he would be defending (literally, "being jealous for") the honor of a *talmid chacham* — it is permitted."⁴⁷ The obligation to defend Torah scholars is a logical consequence of their special status and the protection traditionally afforded them against abusive speech. In one clause, for example, Kagan explains that the prohibition against speaking *lashon hara* applies "even [if the subject] is an unlearned person (*am ha-aretz*) because he is also part of the people God freed from slavery in Egypt." However, he devotes the rest of the clause to emphasizing how much more sinful it is to speak *lashon hara* against a Torah sage.⁴⁸

⁴⁶ Kagan, 10.5.; Levy, 3: 313 and 315. He qualifies this restriction somewhat in the next clause. If the observer believes the subject of the derogatory remarks might be harmed, he is permitted to denounce the speaker even if the subject is unaware of the incident. In addition to potential physical or financial harm, this leniency includes potential harm to the subject's reputation. However, unlike the leniency that permits defending the honor of a Torah sage, this one applies only if the speaker is likely to repeat the derogatory comments.

⁴⁷ Kagan, 10.5.20: 117; Levy, 3: 319. He cites a ruling in the *Shulkhan Aruch* regarding a situation in which someone mocks (*liglag*) a *talmid chacham* who is not present. Although it is forbidden to tell the victim directly that this person has ridiculed him, it is permissible to excommunicate the speaker (*l'nidoto*) "without concern that this will reveal [the information] to the victim."

⁴⁸ Kagan, 8.4: 104; Levy, 3: 195 and 197. See also Kagan, 6.8: 84; Levy, 2: 347, where he makes a similar argument in regard to believing *lashon hara*.

Finally, the authority of the *beit din* also appears to be at issue in Kagan’s warning to carefully consider the potential ramifications before fulfilling the “very great *mitzvah*” of telling a fellow Jew that someone intends to harm him. “What often happens is that when someone is told that so-and-so has in mind to shame him (or otherwise harm him), he will be overcome with anger at so-and-so and do something first that leads to great controversy.”⁴⁹

In the next two clauses it becomes clear that Kagan is referring to offenses involving commercial or financial matters in which the aggrieved party is likely to circumvent traditional communal authorities and seek redress himself. In the first clause he forbids a single witness from alerting a fellow Jew that he has been cheated if “[the victim’s] nature is that he will immediately determine with absolute certainty that [the report] is true . . . and as a result will decide the law on his own and do something, namely renege on this deal or otherwise harm [the offender’s] business.” Such warnings must be made by at least two people, both of whom must have first-hand knowledge of the offense. In addition they must be sure that the victim will not do anything that will cause more harm to the subject than the penalty the *beit din* would assess for the same offense.”⁵⁰

In the next clause he discourages even two eyewitnesses from warning someone “whose nature is to take the law into his own hands.” Even if the witnesses do not violate the prohibition against *richilut*, they still would be guilty of “abetting the commission of

⁴⁹ Kagan, R9.4: 150; Levy, 4: 305.

⁵⁰ Kagan, R9.5: 150-153; Levy, 4: 307 and 309. The *beit din* may not punish someone based on the testimony of a single witness. The point is that warning a fellow Jew does not take precedence over *halakhic* rules of evidence and punishment. As I noted in Chapter III, this clause and the one that follows imply that it was common for traditional Jews to circumvent the rabbinic courts in this manner.

a sin” if the person they warn were to act on his own authority to unduly defame or otherwise harm the subject. It is “very uncommon” to find people who not only are familiar enough with the pertinent laws but also can foresee the consequences of warning such a person. “Therefore one must be careful not to reveal anything to a person whose nature is to act without the consent of the *beit din* so that one avoids the trap of *ba’alei ha-lashon*” (masters of the tongue).⁵¹

It’s clear that the main purpose of these clauses is to insist that aggrieved individuals adhere to the rules of testimony and punishment that govern the *beit din*. But their effect is also to afford less protection from interpersonal offenses to individuals who are likely to circumvent the religious court. In doing so, they also defend the court’s authority.

Public denunciations

According to Kagan, there are two circumstances in which it is permissible to publicly condemn someone who is *amitekha*. To understand the first, we must go back to the distinction he makes between sins *bein adam l’makom* and sins *bein adam l’chavero*. On the one hand, it is never permissible to denounce someone who is *amitekha* for committing a sin against God. At some point, however, the person who repeatedly and willfully does something widely acknowledged as a sin against God loses his status as *amitekha* and becomes subject to public condemnation. On the other hand, Kagan argues that even repeated interpersonal sins do not remove a person from the category of

⁵¹ Kagan, R9.6: 153; Levy, 4: 323. See also Kagan, R9.13: 155-156, Levy, 4: 347 where he makes the same argument in regard to someone who has been swindled in a commercial deal and is likely to “seize [compensation] or return the merchandize or not pay his bill without the authority of the *beit din*.” Because such a response would be illegal, “one must be very careful in revealing information to a person whose nature is to take the law into his own hands without the authority of the *beit din*.”

amitekha. As a consequence, however, it becomes necessary to publicly denounce a *chaver* who commits an interpersonal sin if doing so is the only way to rectify the injustice.

If one knows that a person committed an injustice (*asah avlah*) against his *chaver* — for example, he stole from him or exploited him or harmed him, whether or not [the victim] is aware of the loss or harm, or he shamed him or caused him sorrow or deceived him — and if [the observer] knows with certainty that [the subject] has not returned what he stole or compensated [the victim] for the damages or asked the victim to forgive his sin, even if [the observer] saw this incident by himself, he can relate (*l'sapeir*) the information to the general public (*b'nei adam*)⁵² in order to help confirm [the offender's] guilt and to condemn (*l'ganut*) the evil deeds before the people (*bifnei ha-biriot*).⁵³

In the *be'er*, Kagan acknowledges that the two non-Talmudic authorities he cites most frequently — Maimonides and Rabbeinu Yonah — disagree on this issue.

Maimonides says that the person who commits a sin against God may be publicly denounced if he refuses to respond to a private rebuke. But he does not mention sins *bein adam l'chavero*, implying that the leniency does not pertain to interpersonal offenses.

Yonah, however, explicitly permits condemning the perpetrator or would-be perpetrator of an interpersonal sin if doing so is the only way to “arrive at the truth” and thereby rectify or prevent an injustice.⁵⁴ In resolving this disagreement, Kagan argues that

⁵² Levy translates *b'nei adam* as “other people.” However, the phrase implies a more public disclosure, which is why I have chosen “general public.” This is supported by the subsequent obligation to denounce the offender's evil deeds *bifnei ha'biriot*.

⁵³ Kagan, 10.1: 111-112; Levy, 3: 261 and 263. In “relating” the information, one condemns only the deed, not the person who committed it. In a situation involving someone who is not *amitekha*, the subject himself is condemned as well. The subtle but important distinction reflects the fact that the subject in this situation remains *amitekha*.

⁵⁴ For example, Yonah says even a lone witness to a theft or other financial offense must inform the *beit din* in order to compel the offender to swear an oath.

Maimonides did not intend to proscribe publicizing interpersonal sins in every circumstance, only when doing so will not help rectify the wrong. Thus, Kagan concludes, if exposing a *chaver* through public condemnation is the only way to force him to return what he stole or make good on the damage he caused, “certainly it is necessary to do so, and nothing about this amounts to *lashon hara* or *r’khillut*.”⁵⁵

It is clear, however, that Kagan views this as an extreme measure that should be undertaken only in rare circumstances. As I noted in Chapter III, he insists that before taking the drastic step of publicly denouncing someone who is *amitekha* for committing an interpersonal sin, the speaker must meet no fewer than nine conditions. He must have witnessed the act first-hand.⁵⁶ He must not hastily conclude that the act involved “theft, exploitation, harm or the like.” Instead he must carefully review the circumstances to be sure that the subject was indeed legally responsible for causing financial loss or damage (*im hu al pei din biklal gezel o hezek*). He must first rebuke the offender privately and in a non-confrontational manner.⁵⁷ He must be trying to achieve a *to’elet*, which specifically precludes speaking out of hatred or for personal benefit. Before speaking, he must consider whether the *to’elet* can be achieved through means other than publicly disclosing the offense. If it cannot, then he must be sure his disclosure will not result in greater harm to the subject than the punishment a *beit din* would mete out for the offense

⁵⁵ Kagan, 10.1.1: 111-112; Levy, 3: 263-267.

⁵⁶ “Unless it is proven (*nitbareir*) later that the report is true.” Kagan does not explain this leniency. However, as noted above, he allows second-hand information about an interpersonal sin to be repeated if it is supported by strong circumstantial evidence.

⁵⁷ Unless he is certain a private rebuke would be useless. In that case, the speaker should make the denunciation to at least three people so that it is clear he is not speaking behind the subject’s back.

in question.⁵⁸ And he must not exaggerate the offense. Even if the would-be speaker meets these seven conditions, he may not denounce the subject if he is guilty of the same kind of offense or if those listening are *ba'alei rasha* (masters of evil) who routinely commit the same offense and do not consider it sinful.⁵⁹

These conditions clearly are intended to restrict public denunciations of those who are *amitekha* for interpersonal sins. In addition, their wording indicates that Kagan associated this leniency with helping the victims of financial offenses as opposed to defending religious ideals or enforcing legal precepts. (As we have already observed, he argues that interpersonal offenses do not involve defiance of communal standards.)

This becomes more apparent in his extended discussion of the *to'elet*, which is first and foremost “to help the person who has been robbed, exploited, harmed or shamed.”⁶⁰ Kagan does mention two other legitimate benefits that justify publicly condemning a *chaver* who refuses to acknowledge an interpersonal sin and make restitution — “so that people will refrain from an evil lifestyle when they hear how forcefully society denounces sin, and perhaps [the subject] will change his evil lifestyle and correct his behavior.”⁶¹ However, these benefits — both aimed at enforcing certain desired behavior — are ancillary. For instance, unlike the obligation to rectify an injustice, they do not apply if the victim is unaware of the offense. This restriction stems

⁵⁸ Kagan, 10.2: 112-114; Levy, 3: 271 and 273. See also Kagan, 10.7: 118-119; Levy, 3: 327 and 329. While those who listen to such a public denunciation may not accept the information as true, they are obligated to suspect that it might be, investigate and, if the circumstances warrant, rebuke the subject or take other appropriate action.

⁵⁹ Kagan, 10.3 and 10.4 : 115-116; Levy, 3: 297- 301. In the first case, the speaker’s hypocrisy indicates that his motive for speaking is not legitimate. In the second, his remarks are unlikely to achieve the intended benefit. Instead, they are likely to create controversy.

⁶⁰ Kagan, 10.4: 115-116; Levy, 3: 299 and 301.

⁶¹ Ibid.

from the fact that condemning someone in public would indirectly inform the victim, which would constitute *r'khillut*. Kagan's position is that while helping the victim gain restitution justifies the animosity and controversy that results from *r'khillut*, inducing the offender to change his behavior or warning society to avoid sin does not.⁶²

Not only must the speaker be trying to prevent or rectify an offense against a specific individual, he also must be quite certain that his disclosure will have the intended effect. Even if the speaker is sure an offense has occurred, "it is forbidden to say a word" if doing so will not rectify the injustice but only create controversy.⁶³ This is further evidence that in Kagan's view not only is publicly denouncing a fellow Jew for an interpersonal sin an act of last resort but also its primary purpose is to help the victim of an injustice, not to defend a legal principle or enforce normative behavior.

The paramount importance of rectifying an injustice is also apparent in Kagan's discussion about the circumstances in which one is obligated to say something what would normally be considered *r'khillut* — that is, informing one fellow Jew that another has said or done something to harm him. The only *to'etet* he mentions in this context is *l'saleik hanzakin* (to prevent damages or restore a loss).⁶⁴ This makes sense, given that the issue at stake is whether to reveal the information to one particular individual — the victim or potential victim of the offense. In this context, public disclosure — either to warn society to avoid sin or to put public pressure on the subject to change his behavior — is not relevant.

⁶² 10.4 (h): 116; Levy, 3: 303. See also his legal explanation in Kagan, 10.4.18: 116; Levy, 3: 311 and 313.

⁶³ Kagan, 10.4: 116; Levy, 3: 301. Thus he explicitly prohibits denouncing an offender to people who would not consider the subject's behavior sinful.

⁶⁴ Kagan, R9 (Introduction): 147; Levy, 4: 271. See also Kagan, R9.2: 148; Levy, 4: 283 and 285.

Kagan is more lenient when it comes to informing the victim of an interpersonal offense (an act that would normally be *r'khillut*) than he is in regard to publicly denouncing a *chaver* (an act that would normally be *lashon hara*). As we have seen, there are only five conditions for revealing the interpersonal offense (or potential offense) to the victim (or potential victim) compared to nine for denouncing the offender in public.

For instance, Kagan argues that one must inform a fellow Jew that someone has cheated him (or is about to), even if the information is second hand.⁶⁵ He also goes out of his way to mitigate the requirement that one not speak out of hatred. This condition does not absolve the observer/speaker from fulfilling the commandment in Leviticus 19:16: “Do not stand idle by your fellow’s blood.” The obligation to not stand idle applies “even in a matter involving money (*af b’aniyan mamon*).” Therefore, the observer “must force himself as he speaks to believe that he is motivated only by a *to’elet* (that is, to prevent harm or rectify an injustice) and not hatred. By doing this, he prevents himself from violating the prohibition against *r’khillut*.”⁶⁶ In Kagan’s view preventing harm or rectifying an injustice is so important that the observer must, at least for the moment, bracket his animosity for the subject and pretend that this is his sole motivation for warning the victim or potential victim of an interpersonal offense. He does not make this argument in the context of relating information about the *rasha* who commits a sin against God.

Kagan also mitigates the condition that permits speaking *r’khillut* only if the *to’elet* cannot be achieved through other means. Discussing a shop owner “whose nature

⁶⁵ Kagan, R9.2.9: 149; Levy, 4: 293. He qualifies this somewhat in R9.2.9 (h): 149; Levy, 4: 295. It cannot be an incidental rumor (*sh’mi-ah b’alma*). Rather “it must be clear to him that it is true (*nitbareir lo s’hu emet*).

⁶⁶ Kagan, R9.2.3: 148; Levy, 4: 285 and 287.

is to always deceive everyone,” he says it is permissible “in all circumstances” to warn a customer about the owner’s dishonesty — even if there is another way to protect the customer from making a bad deal. However, the purpose is not to defend a legal principle or punish the shop owner but rather “to publicize the flatters so that they will not deceive others.”⁶⁷

The fact that Kagan permits the public denunciation of a fellow Jew to assist the victim or potential victim of an injustice rather than to defend a legal principle does not mean that the speaker can ignore *halakhic* standards. Before telling one Jew that another has taken advantage of him, a speaker must be sure the victim has a legitimate legal claim.

If according to Torah law there is no [legal] claim anymore, either because the deception amounted to less than a sixth of the purchase value or [the buyer] had enough time to show [the goods] to a merchant or a relative or he forfeited his right to a claim for another reason, even if [the merchant] cheated him, [telling the buyer] violates the prohibition against *r'khillut*.⁶⁸

There are two important points in this passage. First, Kagan again discusses interpersonal sins in the context of a financial loss related to commerce.⁶⁹ Second, before informing the victim of a business deal that has already been consummated, the speaker must consider religious laws governing commercial transactions. (Of the two mentioned here, the first

⁶⁷ R9.10.28 (h): 154; Levy, 4: 335.

⁶⁸ Kagan, R9.11: 154; Levy, 4: 335.

⁶⁹ Consider also Kagan, R9.1: 147; Levy, 4: 275. “If a person sees a fellow Jew about to form a business partnership with someone and surmises that this will definitely turn out bad for him, he must tell him in order to save him from this bad deal.” The related *be'er* discusses the obligation to warn someone who is about to hire a thief as a caretaker. The obligation to warn extends even to the single witness speaking outside the auspices of the *beit din*. While Kagan does caution readers “not to rely on this leniency [too] quickly,” he clearly intends to permit the exchange of relevant information that individuals need to protect themselves and others in routine business and financial transactions.

protects the buyer by prohibiting markups greater than one-sixth of the wholesale price while the second protects the seller by preventing a disgruntled buyer from seeking to nullify an unfavorable deal if he had enough time to seek advice before agreeing to it.) The point is that even if someone knows that a seller has deceived a customer, he may not tell the buyer unless there is a legitimate halakhic basis on which to challenge the transaction. Otherwise the report is pointless.

Another *chaver* who may be publicly denounced is the *ba'al ha-machloket* (master of controversy). This term refers not to anyone who starts a controversy but rather to those who routinely do so. In the *be'er*, Kagan acknowledges that rabbinic authorities disagree about this leniency. Based on a ruling in y. Pe'ah 1.1.23,⁷⁰ it is supported by thirteenth century Rabbi Moses ben Jacob of Coucy. But other authorities, including Maimonides, do not cite the ruling in the Yerushalmi. According to Kagan, this indicates that they do not support it.⁷¹ Kagan's own ambivalence is clear. He introduces the leniency with a significant qualification:

Understand that what is said about it being permissible to speak *lashon hara* about *ba-alei ha-machloket* applies only if by revealing to people the enormity of their deceit, the public will see that the law is not with them and the controversy will subside. But if not (that is, if the controversy will

⁷⁰ As explained in the section on the early rabbis, y. Pe'ah 1.1.23 deals with the story in I Kings 1:14 in which Nathan and Bathsheba tell David about his son Adoniyah's plan to usurp the throne promised to Solomon. From this, the un-attributed ruling says, we know that one may speak *lashon hara* against *ba'alei machloket*.

⁷¹ Kagan, 8.8.16: 105, Levy, 3: 209. Kagan notes that Rabbi Raphael of Hamburg, a disciple of the Vilna Gaon, used this rationale to argue that Maimonides did not support the leniency allowing public condemnation of *ba'alei machloket*. Kagan agrees, although he says in an accompanying *hagahah* that Maimonides and others who don't mention y. Pe'ah 1.1.23 may actually hold a stricter position — that it is permissible to denounce *anyone* who promotes controversy, not just those who do so habitually.

not subside), there is absolutely no difference in the matter (*ein shum chiluk ba-davar*).⁷²

There are two important points in this passage. First, while the controversies he refers to appear to involve halakhic violations, Kagan's primary concern is not that correct legal principles be upheld. Quelling the controversy is more important than determining which side is right.⁷³ Even if an observer knows for certain that a *ba'al machloket* is in the wrong, he must remain silent unless he is sure that speaking out will settle the dispute or otherwise quell the controversy. Like the fellow Jew who commits an interpersonal offense, the *ba'al machloket* may not be publicly denounced simply to defend a point of law.

Second, even if denouncing the *ba'al machloket* will avert or quell a controversy, Kagan adds several more restrictions: The speaker must know first hand that the person is trying to provoke controversy (or have confirmed it as true). The speaker's only motive must be to achieve a *to'elet*, which means that he may not speak out of hatred or personal gain. Finally, the speaker must first explore other means of quelling the controversy before speaking out against the *ba-al machloket*.⁷⁴

Most important, Kagan never suggests that the *ba-al machloket* is not *amitekha*. Indeed the requirement that the speaker be trying to achieve a *to'elet* indicates that he is.

⁷² Kagan, 8.8: 105; Levy, 3: 205 and 207. In other words, the exception that permits speaking against the *ba'al machloket* applies only if doing so prevents or resolves the controversy at hand. Otherwise it is *lashon ha-ra*.

⁷³ As I pointed out in Chapter III, he warns that intervening in a controversy requires "great wisdom" and advises against "rushing to label one side *ba'alei machloket*." If the issue is unclear, "it is preferable to do nothing."

⁷⁴ Kagan, 8.8: 105; Levy, 3: 207. The last restriction is qualified somewhat. The speaker does not have to privately reprimand the subject if doing so will prevent him from quelling the controversy through some other means. Still, the aim is to stop the controversy, not defend a legal principle.

Elsewhere Kagan says that it is possible (*efshar*) that the prohibition against believing *lashon hara* about a *chaver* extends to *ba'alei machloket*. The reason: “They do not leave the category of *amitekha* as a result of [provoking controversy], even though it violates a very important prohibition.”⁷⁵ In this sense, they are like *ba'alei lashon hara*. One might even infer that in his view these two groups were the same or at least overlapped to a great extent.

Kagan’s position, then, is that one may denounce a *ba'al machloket* only if doing so will quell a controversy and only if the aforementioned conditions are met. However, because they remain *amitekha*, it is not permissible to believe derogatory information about *ba-alei machloket* that is unrelated to the controversy at hand. The opposite is true when it comes to believing negative comments about heretics and *rshaim* who are no longer *amitekha*.

All of this supports the argument I made in Chapters III and IV that *Sefer Chafetz Chaim* is a prescriptive response to a social fact — frequent public disputes among traditional Lithuanian Jews, particularly over issues of *halakha* and financial matters. While Kagan is disturbed by and seeks to limit these disputes by permitting the public denunciation of those who regularly instigate them, he is reluctant to exclude the instigators from *klal yisrael*.

Socio-historical explanation

The preceding analysis reveals two major conditions for speaking negatively about someone who is *amitekha*. First, the remarks almost always should be private. The major exceptions — publicly denouncing a *chaver* in order to rectify an injustice or stop

⁷⁵ Kagan, 8.13.26: 107; Levy, 3: 227.

a controversy — are highly conditional, indicating that Kagan viewed such condemnations as an extreme measure that should be employed only rarely. For Kagan public condemnation (*ginah*) was the mode of discourse used to marginalize or exclude heretics, informants and certain *reshaim*. This is consistent with the traditional use of bans of excommunication and other forms of public censure in East European Jewish society to shame those who challenged authority or defied communal standards. On the other hand, in circumstances when it is necessary to say something about an individual who has committed an illegal or improper act but is still *amitekha*, one should speak privately, or at least reveal (*gilah*) the information discreetly to a limited group of people who might be affected.

The second condition for speaking negatively about a *chaver* is that one must be trying to achieve a *to'elet*, a legitimate benefit. Not only does Kagan follow authorities in ruling that this precludes speaking out of hatred or self-interest, but he also describes a *to'elet* primarily in terms of rectifying an injustice or preventing harm to a fellow Jew. Thus a witness must privately inform certain individuals about another Jew's sin against God if doing so “benefits [them] by separating [them] from something prohibited (*im hu mo'il l'afroshei mei'isura*).” A teacher (or father) is permitted to talk about the bad character traits of a fellow Jew — even to the point of exaggeration — if his only purpose is to make sure his students (or children) avoid them. As I pointed out, these discreet revelations are not intended to shame the subject or punish their behavior. In many circumstances the subject wouldn't even be aware of the comments. Rather the remarks are intended to prevent an individual or limited group from doing something improper.

Far more often, however, Kagan describes the *to'elet* as rectifying or preventing harm resulting from interpersonal offenses, particularly those involving financial loss or damage (or potential loss or damage). The prohibition against *lashon hara* does not require that a Jew “abandon [the practicalities] of life.” Thus one may make and respond honestly to discreet inquiries about a prospective business partner or spouse, or warn a business associate not to extend credit to a customer with a bad credit history. Nor does the prohibition against *lashon hara* and *r'khillut* supersede the Torah commandment to “not stand idle by your fellow’s blood,” which Kagan makes a point of saying includes financial harm. So important is this commandment that one must inform a fellow Jew when another has cheated or stolen from him (or plans to) — even if the information is second hand and even if the speaker has to pretend he is not speaking out of hatred for the subject.

Finally, it is not enough just to seek a *to'elet*. The speaker must be confident that his comments will help achieve it. Thus he may not tell a fellow Jew that he has been cheated if there is no legal recourse for the victim to recoup his loss. Nor may he condemn a *ba'al machloket* if doing so will not quiet the controversy. For Kagan, then, these leniencies derive primarily from a socio-ethical obligation to prevent actual harm or injustice, especially financial harm or injustice. They have little to do with enforcing conformity by defending abstract legal principles or religious ideals.⁷⁶

⁷⁶ This does not mean that one can ignore legal principles when speaking against a fellow Jew in order to prevent harm or right a wrong. I have noted several instances in which Kagan forbids such speech if it is likely to result in greater harm to the subject than the law allows for the offense in question. In such a case, the speaker must remember that “this one’s blood is not more precious than that one’s.” (Kagan, 6.11.30: 89; Levy, 2: 385). See also Kagan, Introduction (*Asah* 4): 28; Levy, 1: 221 where the same tension is at play. Kagan forbids “humiliating (*hashfil*) a fellow Jew to the point where he loses his livelihood.” In the *be'er*, he adds a caveat: “If the speaker intended to achieve a *to'elet* and was not speaking out of hatred, this is a different situation.” He recognizes that in many cases speaking badly about a fellow Jew in order to

To put these positions into socio-historical perspective, we should recall that this was a period of extreme economic distress for many East European Jews. As explained in Chapter IV, the collapse of the old feudal economic system had displaced Jews from leasehold arrangements into less lucrative and more competitive vocations. The result was a steep decline in income, a sharp increase in poverty and what Ettinger describes as “bitter internal competition” among Jewish tradesmen, merchants and shopkeepers.⁷⁷

As we saw in Chapter III, Kagan also makes several references to widespread impropriety among Jews in their financial dealings with one another, and there is ample textual evidence that he thought it was imperative to confront such impropriety. Most of the situations cited in chapters 10 and 9R — which deal with circumstances in which it is permissible to speak *lashon hara* and *r'khillut* respectively — involve interpersonal offenses resulting in financial loss. Likewise, the addendum explaining how the laws of *r'khillut* apply in real life situations uses two *tzi'urim* (illustrations). One involves a prospective business partnership, the other a prospective marriage.⁷⁸

In Kagan's view these offenses must always be handled according to *halakha* — privately (or at least discreetly) whenever possible, publicly only as a last resort. This explains why he encourages and places fewer restrictions on informing the victim of an interpersonal offense than he does on denouncing the offender in public. The former allows the issue to be handled discreetly. Of course, he discourages informing victims or

rectify an injustice will result in a financial loss to the subject. His concern is that such losses be within halakhic standards for the offense in question.

⁷⁷ See also Dov Levin, *The Litvaks: A Short History of the Jews of Lithuania* (Jerusalem: Yad Vashem, 2000), 83. By 1870, the expulsion of Lithuanian Jews from their traditional livelihoods as innkeepers and producers and distributors of alcohol had led to severe poverty and overcrowding, the kind of social conditions that breed financial crime and malfeasance.

⁷⁸ See Kagan, A1: 157-161, Levy, 4: 365-403. As I explained in Chapter III, a marriage arrangement would have been viewed as a financial agreement between the families.

potential victims of harm if they are likely to act on their own and create a controversy or seek redress that the law doesn't allow. But this does not diminish my argument that the leniencies Kagan cites in regard to speaking badly about a *chaver* are aimed primarily at allowing individuals to prevent or rectify financial loss in a private or discreet manner.

The preceding analysis shows that Kagan is stricter when it comes to speaking badly about someone who is *amitekha* in order to defend an abstract legal principle or ideal. Not only does this support my argument that he was willing to tolerate a certain level of non-conforming behavior and religious practice among Jews, but it also indicates that he may have been ambivalent about if not troubled by the rhetoric of *halakhic* militancy associated with Lithuania's emerging orthodoxy. Salmon describes this rhetoric as "a new style of argumentation based on defamation of character," and traces it back to the establishment in 1870 of the *chevrat matzdikei ha-rabim*, a traditionalist group whose purpose was to defend Jewish society and institutions against *maskilim*, nationalists and any traditionalist who was seen as sympathizing with them.⁷⁹

Through the publication of satiric pamphlets . . . severe criticism was directed against the rabbi who had anything to do with modernity, and step-by-step a distinct line was drawn between two types of Jewish orthodoxy: the ultra-orthodox who totally rejected modernity, and the religious nationalists who accepted modernity in part.⁸⁰

Salmon cites as a prime example an 1875 article by Rabbi Bezalel Cohen, a prominent Vilna rabbinic decisor and *rosh yeshiva*. Although it appeared shortly after the

⁷⁹ Yosef Salmon, "Orthodox Judaism in Eastern Europe," in *The Gaon of Vilnius and the Annals of Jewish Culture* (Vilnius: Vilnius University Publishing House, 1998), 113.

⁸⁰ *Ibid.*, 111.

publication of Kagan's book, Cohen's article represents the kind of harsh, condemnatory rhetoric that traditionalists had been directing not just at *maskilim* but also at each other. Cohen's piece was a response to a halakhic ruling by Rabbi Yitzhak Spektor of Kovno, who had traveled to Corfu and declared that the island's citrons were grafted and, therefore, not kosher for ritual use on Sukkot.⁸¹ The status of Corfu citrons had been in dispute for decades, but the issue took on new political and economic implications in the mid-1870s when Corfu growers raised their prices dramatically. Cohen accused Spektor of disallowing the Corfu citrons based on irrelevant, non-legal factors. The ruling was in his view an unacceptable capitulation to the maskilic criticism that rabbinic rulings on *halakha* and *minhagim* were unnecessarily onerous because they did not take into account their impact on the Jewish masses.⁸²

The article has some relevance for us not just because it is an example of public acrimony between two reknowned traditionalists but also because Kagan had a literary connection to both figures. Cohen co-authored the longest of four approbations that

⁸¹ See Yosef Salmon, "Yitzhak Elhanan Spektor," in The YIVO Institute Encyclopedia of Jews in Eastern Europe, accessed on Sept. 14, 2011, http://www.yivoencyclopedia.org/article.aspx/Spektor_Yitzhak_Elhanan. Salmon describes Spektor as a moderate traditionalist whose *responsa* and halakhic rulings were widely considered authoritative. "As a religious leader, Spektor maneuvered between competing factions in Lithuanian Jewish society, taking care not to side with one against the other. Thus, he identified with the traditional rabbinate of his day, but refrained from entering into confrontation with *maskilim*."

⁸² For example, in an 1869 article with the satiric title "By the Merits of the Rabbis," the Lithuanian writer and poet Y. L. Gordon skewered rabbinic rulings that, among other things, prohibited the use of olive oil and the consumption of legumes on Passover despite a famine and established regulations for ritual slaughter that resulted in kosher meat shortages. His point was that rabbis were not considering the impact of their rulings on the Jewish populace. Cohen was incensed at Spektor's ruling on the Corfu citrons because, in his eyes, it implicitly accepted the argument made by Gordon and other *maskilim*. Spektor's ruling would have been a financial benefit for many East European Jews who, because the especially beautiful Corfu citrons were preferred for Sukkot, felt compelled to pay the exorbitant prices for them. His ruling also would have benefited Jewish growers in Palestine, which Cohen viewed as a sop to nationalists seeking to improve the economy of Jewish communities there. Thus he accused Spektor of basing his ruling not on legal criteria but rather on improper economic and political considerations. This is an example of how the ideological dispute between traditionalists and *maskilim* gave rise to a *halakhic* militancy that played out in vitriolic legal disputes among traditionalists.

appear in the forward to *Sefer Chafetz Chaim*. And as noted above, the latter was one of two main contributors to *Sefer 'Ez-Peri* (Vilna, 1881), for which Kagan wrote the introduction. Given Cohen's approbation, it would be problematic to argue that Kagan viewed the article condemning Spektor as improper.⁸³ (Indeed Kagan's justification of abusive rhetoric by Talmudic sages indicates that he believed rabbis had leeway to speak harshly to and about one another "in defense of heaven.") On the other hand, the fact that Kagan respected Spektor enough to write the introduction to *Sefer 'Ez-Peri* gives us reason to believe that he would have been troubled by his public denigration.

It would be simplistic to suggest that Kagan rejected out of hand the defamatory rhetoric of *halachic* militancy exemplified by Cohen's article. This does not mean, however, that he wasn't concerned that such rhetoric was being abused, both because it was being employed too cavalierly among those competing for religious authority and because it was being disseminated outside rabbinic circles by the nascent popular press and adopted by the general populace. It was one thing for the scholarly elite to speak harshly among themselves as part of legal disputations. It was quite another for the Jewish masses to be doing so. This ambivalence is reminiscent of the tension we saw in the early rabbinic texts between the obligation to speak (words of Torah) and the obligation to not speak (words that demean or harm a fellow Jew). It is a tension that I have argued is inherent in the concept of *lashon hara*.

⁸³ Cohen's approbation is also in the 1877 edition, which was published after the article condemning Spektor.

CONCLUSION

The editors of *Contemporary Jewries: Convergence and Divergence* say the aim of their collection of essays is to explore whether, given the forces of divergence and convergence at work among Jews in the modern era, “one can still, at the beginning of the twenty-first century, speak of one Jewish people encompassing all Jews in the world and based on shared principles of collective identity.”¹ Not surprisingly they conclude that there are multiple collective Jewish identities. While these identities might comprise an “extended family,” some are so different from others that they can be described only as “distant cousins.” Such difference inevitably leads to contention. Some family members respond to difference by trying to “exclude those who deny their truths from the community they define as the Jewish people.” Others exhibit a pluralistic attitude, “a willingness to see Jewry partitioned into divergent sectors.”²

While the editors of *Contemporary Jewries* may be right that the forces of divergence are greater and the parameters of Jewish collective identity more extreme in the “post-traditional” modern era, the problem of difference and the responses to it are not new.³ My aim in this dissertation has been to explore how the concept of *lashon ha-ra* reflects the tension between the impulses to tolerate difference within Jewish society

¹ Eliezer Ben-Rafael, Yosef Gorny and Yaakov Ro'i, Introduction to *Contemporary Jewries: Convergence and Divergence* (Leiden and Boston: Brill, 2003), 1. They identify five ideological, political and cultural “crossroads” for Jewish collective identity in the past 200 years: emancipation, secularism, the Holocaust, the creation of the state of Israel and advent of transnational multi-culturalism.

² Eliezer Ben-Rafael, “The Space and Dilemmas of Contemporary Jewish Identities,” in *Contemporary Jewries*, 358.

³ *Ibid.*, 344. Pre-modern Jewish collective identity stressed religious faith and *halakhic* observance above all else, but as Ben-Rafael notes, “Along the continuum of time and space . . . even this identity has not been homogenous.”

on the one hand and to exclude or marginalize it on the other. To this end I have looked at rabbinic texts from two very different socio-historical contexts — the ancient Talmudic milieu of Palestine and Babylonia in which the concept of *lashon ha-ra* arose, and nineteenth-century Lithuania where the laws regarding the prohibition were codified in detail.

Although the approaches to *lashon har-ra* in these texts took shape under different circumstances, they have two overarching commonalities. First, in each case the notion that *lashon ha-ra* is a grave sin that must be sharply restricted was a prescriptive response to a social reality — the presence of divisive discourse among Jews related to issues of collective identity and authority. For some of the early rabbis, it was the sectarian rhetoric of slander associated with the Roman war and the loss of nationhood. For Kagan it was rancorous speech and public disputes resulting from religious divergence, economic dislocation and competition for communal authority. Like the Republican eleventh commandment, these expressions of concern about *lashon ha-ra* reflect an effort to preserve Jewish social cohesion by limiting rhetorical attacks against difference and autonomy.

The second commonality between *Sefer Chafetz Chaim* and the Talmudic texts is that expressions of concern about *lashon ha-ra* seem to have arisen during periods of social instability or among those who felt socially or politically vulnerable. Palestinian Jews were relatively less secure than Babylonian Jews, and Palestinian rabbis had a lower social status and less authority in Jewish society than their Babylonian counterparts. That Palestinian notions of *lashon ha-ra* tended to be more restrictive and to place greater emphasis on its gravity reflects the fact that Palestinian rabbis were more concerned

about rhetoric that might endanger them or diminish their position in Jewish society. Because the more secure Babylonian rabbis were less concerned about such rhetoric, they tended to voice narrower notions of *lashon ha-ra* that were less restrictive.

Likewise, *Sefer Chafetz Chaim* was written by a traditional Lithuanian rabbi at a time when traditional Lithuanian Jewry was in turmoil. The status and authority of the rabbinate and other communal institutions were in decline and solidarity among Jews eroding. Traditional Lithuanian Jews like Kagan felt vulnerable to the power of the Russian state and its perceived allies, the *maskilim*. His emphasis on the danger of *lashon ha-ra* represents a pragmatic response to divisive discourse among traditionalists during a time of crisis, a willingness to tolerate difference for the sake of social stability.

We should be careful to think of these characterizations as tendencies rather than absolute positions. There is an un-resolvable dialectical tension inherent in the question of how much difference can be tolerated within a social unity. Even for Kagan, who unambiguously portrays *lashon ha-ra* as a grave sin and a threat to Jewish society, there were limits to his concern about divisive, authoritarian speech. His willingness to accept difference in order to preserve social cohesion does not mean that acceptable differences are good or even valid. And it certainly doesn't mean that all differences are acceptable. At some point, difference and autonomy becomes a threat that cannot be tolerated, which is evident in Kagan's attitude toward heretics, informants and *reshaim*. To paraphrase Kimelman, when the ideal of *klal yisrael* (the convergent community of Israel) takes precedence over the reality of *am yisrael* (divergent Jewish communities), it becomes

easier — even necessary — to employ the rhetoric of exclusion.⁴ This tension — whether Jewish unity requires tolerating difference and autonomy or excising them — can be found in every expression of *lashon ha-ra*.

I will conclude by considering what these historical iterations of the concept of *lashon ha-ra* might tell us about the resurgent emphasis on its prohibition in contemporary Jewish society, particularly in light of Ben-Rafael's observation that contemporary Jewry is typified by a "rivalry for hegemony" among and within various models of Jewish collective identity.⁵ The *shmirat ha-lashon* movement is primarily a phenomenon of the American ultra-Orthodox Jewish community, which tends to view itself as a beleaguered minority within American Jewish society, indeed within society in general. The renewed focus on the danger of *lashon ha-ra*, then, has arisen within a group that, like the early rabbis and traditionalists in late nineteenth-century Lithuania, feels particularly vulnerable to the kind of rivalry described by Ben-Rafael.

One response to such feelings, of course, is to exclude or marginalize those who are different, to reject the reality of a divergent *am yisrael* in favor of the ideal of a convergent *klal yisrael*. This has often been described as a characteristic of modern ultra-orthodoxy — and of religious fundamentalism in general. But given the dialectical nature of the issue of unity, I would argue that the renewed emphasis on the prohibition against *lashon ha-ra* among American ultra-Orthodox Jews could very well represent a pragmatic response, one that is more accepting of difference and seeks to preserve a place

⁴ Reuven Kimelman, "Judaism and Pluralism," *Modern Judaism* 7, no. 2 (May, 1987): 131. Usually, he adds, this has resulted in a larger, more powerful group excluding or marginalizing a smaller, weaker group.

⁵ Ben-Rafael, "The Space and Dilemmas of Contemporary Jewish Identities," 358.

for their model of Jewish identity within the imagined collective consciousness that circumscribes *klal yisrael*.

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