

## Partial Eclipse of the Mind

My discussion so far has suggested that the Tannaitic preoccupation with memory failures reflects the challenges and ideologies pertinent to the formation of early rabbinic Judaism. First, I argued that the complex, intricate, and demanding halakhic system that the rabbis constructed gave rise to multiple opportunities for forgetting and made cognitive omissions a genuine concern. Second, I argued that the rabbis utilized memory failures as a powerful rhetorical tool in their attempt to depict their version of Judaism as appropriate for all Jews and themselves as its rightful guardians. It is time to note, however, that the rabbis' enterprise of building omissions and inadvertent failures into their legal system is not wholly unprecedented. The rabbis took some of their most important cues from the Priestly Code of the Pentateuch, and specifically from chapters 4 and 5 of the book of Leviticus that deal with erroneous transgressions. The anecdote with which I concluded the previous chapter, about R. Ishmael, who made a note for himself to bring a sin offering for violating the Sabbath once the temple is rebuilt, reminds us that the rabbinic map of memory failures was in some respects an added layer upon a much more ancient map that matched mental omissions with required sacrifices. But this ancient map, as this chapter will show, was thoroughly recharted and redrawn by the rabbis, who experimented wildly with the biblical notion of inadvertent transgression and presented radically new ideas on halakhic memory, agency, and responsibility.

The book of Leviticus commences with instructions regarding three kinds of offerings: burnt offering, in which an entire animal is burned on the altar; grain offering, which is mostly eaten by the priests; and well-being offering, which is eaten by the owners with certain portions given to the priests. These three offerings are well known, not only from other sources in the Pentateuch that precede the Priestly Code, but also from the surrounding ancient Near East.<sup>1</sup> Chapters 4

1. See Baruch Levine, *In the Presence of the Lord: A Study of Cult and Some Cultic Terms in Ancient Israel* (Leiden: Brill, 1974), 3–45.

and 5 then introduce two kinds of offerings that are unique to the Priestly Code (and to texts closely related to the Priestly Code), called *hattat* and *asham*. These offerings are meant, in different configurations and varying according to different contingencies, to expiate transgressions that were committed inadvertently, “when anyone sins unintentionally in any of the YHWH’s commandments about things not to be done and does any one of them.”<sup>2</sup> The question of how to translate the names of these offerings is itself a charged one. The nouns *hattat* and *asham* mean, in their other occurrences in the Hebrew Bible, “sin” (or more accurately, “transgression”) and “guilt,” respectively. Scholars thus traditionally translated the names of these offerings as “sin offering” and “guilt offering” and interpreted them as sacrifices meant to atone for transgressions and attain forgiveness for the sinner, an interpretation that was often entangled in Christian theology. Other scholars, most notably Jacob Milgrom, insisted that these offerings be understood as means for cleansing the sanctuary and not the transgressor.<sup>3</sup> Accordingly, Milgrom maintained that *hattat* and *asham* should be translated as “purification offering” and “ramification offering,” respectively, and that they should be understood not as priestly innovations but in line with similar rites of purification known from the ancient Near East.<sup>4</sup>

While Milgrom is surely correct that the main function of the priestly expiatory offerings is purification, I find the translation “sin/guilt offering” more suitable, and I will be using this terminology throughout the chapter. As James Watts observed, it is important to distinguish between the overall function of these offerings in the priestly sacrificial system and the rhetoric of their presentation specifically in Leviticus 4 and 5. These chapters make repeated use of the verbs “to transgress” (*h-t-ʾa*) and “to be guilty” (*ʾa-sh-m*) in conjunction with the names of the offerings deriving from these roots, thus effectively making the point that these offerings exist, first and foremost, to rectify transgressions and failures. Even if their function is technically to cleanse the sanctuary or to repair damage done to it, they are emphatically portrayed as geared toward an individual’s (or a community’s) guilty conscience and as capable of changing one’s standing with

2. Lev. 4:2. While the general framework of these chapters pertains to inadvertent transgressions, two of the offenses mentioned in Lev. 5 (5:1, 5:20–23) are not specifically mentioned as having been committed erroneously, and the instructions regarding these offenses seem to cover intentional violation of the law as well. Milgrom suggested that these may have been independent laws that were incorporated into the list of inadvertent offenses at a later point. See Jacob Milgrom, *Leviticus: A Book of Ritual and Ethics* (Minneapolis: Augsburg Press, 2004), 48–49.

3. See Jacob Milgrom, “Israel’s Sanctuary: The Priestly Picture of Dorian Gray,” *Revue Biblique* 83 (1976): 390–99.

4. For a survey of scholarship on the translation of *hattat* and *asham*, see James Watts, *Ritual and Rhetoric in Leviticus: From Sacrifice to Scripture* (New York: Cambridge University Press, 2007), 79–85; William K. Gilders, “חטאת as Sin Offering: A Reconsideration,” in *The One Who Sows Bountifully: Essays in Honor of Stanley K. Stowers*, ed. Caroline Johnson Hodge, Saul M. Olyan, Daniel Ullucci, and Emma Wasserman (Providence: Brown Judaic Studies, 2013), 119–28.

God.<sup>5</sup> Most important for our purposes, Watts notes that Leviticus 4 and 5 are unique in the greater landscape of ancient Near Eastern ritual instructions insofar as they prescribe these offerings specifically for *inadvertent* offenses, whereas other similar texts do not distinguish between intentional and unintentional offenses when it comes to purification and cleansing.<sup>6</sup> The priestly innovation is not in requiring sacrificial practices to deal with transgressions and pollution, but in specifying that these practices are required for transgressions committed without the committer realizing it. As such, *hattat* and *asham* are rhetorically set to speak to the audience's sense of religious anxiety (but also, of course, to *generate* a sense of anxiety), and to reassure the audience that the elaborate priestly system of cultic regulations is the means through which such anxiety can be allayed.

There is notable correspondence between the priestly preoccupation with inadvertent transgression (*shegagah*) and the rabbinic preoccupation with memory failures. Both are indicative of the authors' view that the legal-ritual system with which Israelites/Jews are required to comply is complex and demanding, such that slippage is a very real possibility.<sup>7</sup> Both also demonstrate the authors' efforts to incorporate omissions and unintentional failures *into* their system rather than marking failures as pushing one outside the system, and both the priestly authors and the rabbis ultimately use their guidelines regarding inadvertent omissions to make a case for their own authority and indispensability. Perhaps most fundamentally, the rabbis share with the priestly authors the premise (which was held by other ancient legislators as well)<sup>8</sup> that intentionality or the lack thereof is a decisive factor in determining the legal or ritual consequences of an action, although the rabbis famously expanded and enhanced the role of intention in their system well beyond the priestly authors.<sup>9</sup>

It is important to register, however, that the Priestly Code is concerned only with cognitive omissions that *actually* lead to transgression, whereas the rabbis are concerned, as we have seen in the previous chapters, with a much larger variety of

5. Watts, *Ritual and Rhetoric*, 85–96; see also Noam Zohar, “Repentance and Purification: The Significance and Semantics of חטאת in the Pentateuch,” *Journal of Biblical Literature* 107, no. 4 (1988): 609–18.

6. James Watts, “The Historical and Literary Contexts of the Sin and Guilt Offerings,” in *Text, Time, and Temple: Literary, Historical, and Ritual Studies in Leviticus*, ed. Francis Landy, Leigh M. Trevaskis, and Bryan Bibb (Sheffield: Phoenix, 2015), 85–93.

7. As Watts commented, the recurring phrase “any of the Lord’s commandments” in Leviticus 4 and 5 grounds sin and guilt offerings in the larger narrative context of continuous giving of multiple laws to the people of Israel; see Watts, *Ritual and Rhetoric*, 93. Liane Feldman noted that the instructions regarding sin and guilt offerings are introduced at one and the same time as the very notion of negative commandments, or things not to be done. See Liane M. Feldman, *The Story of Sacrifice: Ritual and Narrative in the Priestly Source* (Tübingen: Mohr Siebeck, 2020), 62–64.

8. See David Daube, “Error and Ignorance as Excuses in Crime,” in *Ancient Jewish Law: Three Inaugural Lectures* (Leiden: Brill, 1981), 49–70.

9. See Howard Eilberg-Schwartz, *The Human Will in Judaism: The Mishnah’s Philosophy of Intention* (Atlanta: Scholars Press, 1986); Balberg, *Purity, Body, and Self*, 74–95.

cognitive omissions, even if they do not result in forbidden actions (for example, forgetting one's previous activities such that one finds oneself in halakhic uncertainty, forgetting to perform necessary tasks such that one's ability to carry out one's halakhic plans is compromised, forgetting voluntary activities such as prayer and self-imposed fasts, etc.). For the rabbis, cognitive omissions that are the direct cause of transgressions actually committed, on account of which one is obligated to bring a sin or guilt offering, form a specific and idiosyncratic halakhic category. This halakhic category, which relies heavily on the Priestly Code but also takes it in surprising new directions, is the topic of this chapter.

At the center of this chapter stands the novel rabbinic concept of *he'elem*, which can be roughly translated as "concealment" but which I prefer to call "mental eclipse." This concept is based upon several biblical verses in Leviticus 4 and 5 that describe an individual's lack of awareness of their transgression with the words "and the matter was concealed from him (*ve-ne'elam mimenu*)."<sup>10</sup> From the verb *ne'elam* the rabbis derived the noun *he'elem*, which denotes an episode of unawareness of a transgression. *He'elem* is used in early rabbinic literature to discuss situations in which one's knowledge (either of facts or of laws) is temporarily suspended such that one transgresses against stark biblical prohibitions and does not realize it. This suspension of knowledge is best described as mental eclipse: for as long as *he'elem* lasts (which can be minutes or days or years), specific parts of the vast array of legal prohibitions that the subject holds in his mind simply go dark, and he acts as though the "concealed" prohibitions do not exist. To be clear, *he'elem* cannot be understood in terms of a pathological condition that affects one's mind as a whole. The rabbis conceptualize *he'elem* as pertaining to one specific commandment, and sometimes even to one part of one specific commandment, so one can theoretically excel in one's halakhic performance in every respect except for one element that currently escapes him. Hence the title of this chapter, "Partial Eclipse of the Mind," rather than "Total Eclipse of the Mind."

The applicability of *he'elem* is quite limited in Tannaitic discourse. The rabbis only use this concept to account for mental omissions that lead to particular transgressions, specifically to any of the thirty-six transgressions that obligate one to bring a sin offering when done erroneously and condemn one to extirpation (*karet*) when done purposefully. Those thirty-six transgressions include things like forbidden sexual relations, idolatry, violation of the Sabbath, eating bread on Passover, and misuse of sacred items; they do not include things like murder, theft, failing to give alms or tithes, eating nonkosher animals, and many other possible transgressions.<sup>11</sup> In addition, *he'elem* is a heavily theoretical concept that should not be taken as responding to any real-life situations, but rather as an analytical apparatus used to examine questions of legal responsibility vis-à-vis mental states. Most discussions of *he'elem* set out to determine one issue only: whether

10. Lev. 4:13, 5:2, 5:3.

11. M. Karetot 1.1–2.

the one who unknowingly transgressed owes a sin offering or not and how many sin offerings he owes, which is hardly a practical concern in the time of the rabbis. These discussions, however, present systematic efforts to examine what kind of consciousness and what kind of awareness of the law are required to define one's agency and responsibility within the halakhic system. My purpose in this chapter is to explore the category of *he'elem* as a conceptual laboratory through which the early rabbis experimented with memory failures and cognitive vicissitudes in the halakhic landscape.

Generally speaking, *he'elem* in Tannaitic texts pertains both to situations in which one had no access to the relevant knowledge to begin with (e.g., one never learned that certain actions were prohibited) and to situations in which one had the relevant information but forgot it. The fact that ignorance and forgetfulness are regarded interchangeably is significant in and of itself, as it reveals the extent to which the rabbis considered one's mind to be outside of one's control: in a state of "eclipse" one is no more responsible for knowledge one temporarily lost than for knowledge one never had. Several texts, however, indicate that at least some rabbis were deeply invested in making a distinction between ignorance and forgetfulness for the purpose of determining liability, and insisted that *he'elem* pertains only to one and not to the other. The discussions in these texts allow us to reconstruct pieces of a rabbinic metadiscourse on human fallibility in the observance of commandments, and to get a glimpse of competing theories of legal subjectivity that animated these seemingly arcane and inscrutable scholastic debates. I propose that while the scenarios the rabbis develop in their discussions of *he'elem* are highly theoretical and sometimes even absurd, they nonetheless reveal a fundamental concern with the volatility and unreliability of the human mind. The imagined subject who experiences mental eclipses in these scenarios, who is to some extent an extreme or exaggerated version of the forgetful subjects we encountered in the previous chapters, is a canvas on which the rabbis can draw and redraw the boundaries of cognitive control, the boundaries of halakhic agency, and the boundaries of their own authority.

#### IN AND OUT OF THE MIND

The Priestly Code makes a categorical distinction between one who transgresses in error and one who transgresses "with a high hand" (*be-yad ramah*), that is, consciously and flauntingly. The former can rectify his transgression through the assigned sin offering, whereas the latter will be "cut off" from the people.<sup>12</sup> The Community Rule of Qumran interpreted the "cutting off" of intentional transgressors as expulsion from the community with no ability to return, whereas those who transgressed inadvertently (*bi-shegagah*) are removed from the community's

12. Numbers 15:27–31. See also Toeg, "A Halakhic Midrash."

meals and from its council for two years but can be restored afterward if they do not repeat the offense. This temporary removal was the Qumran community's substitution for sin offerings, as they did not participate in the Jerusalem temple's cult.<sup>13</sup> The rabbis, in contrast, adhered to the priestly injunction that inadvertent transgression warrants a sacrifice, and understood the "cutting off" of the intentional transgressor as death—presumably premature death—by the hand of God.<sup>14</sup> Palpably uncomfortable with the finite nature of extirpation (*karet*), which leaves no room for change of heart or transformation (and possibly also with the unenforceability of this punishment), the rabbis ruled that one who brought extirpation upon oneself can be released from this divine punishment by receiving lashes.<sup>15</sup> This audacious move points to a strong rabbinic commitment to rehabilitate intentional transgressors as community members, making their allegedly unforgivable offenses forgivable through the power of the court's procedure.<sup>16</sup> But despite the rabbis' insistence that even intentional transgressors remain part of the greater community of Israel, Tannaitic texts show remarkably little interest in scrutinizing the workings of intentionality in transgressions or in determining what constitutes a *mens rea*, or "guilty mind," in the halakhic realm. The early rabbis chose, for the most part, to leave conscious decisions to break the commandments as phenomena that either cannot be explained or need not be explained.

Inadvertent transgressions, on the other hand, were of tremendous interest to the rabbis, who spent a great deal of time attempting to decipher how one can commit an offense without intending to do so, and what the legal implications of such offenses are. Here, too, the rabbis notably diverge from the Qumranic legislators in their interpretation of unintentionality. The Community Rule explains inadvertent transgressions, of the kind that brings about a two-year removal from the community, as necessarily stemming from madness or folly, from a "trembling

13. Community Rule (1QS) 8:17–9:2, according to Geza Vermes, *The Complete Dead Sea Scrolls in English* (London: Penguin Press, 2004), 109–10. For analysis of this text as an interpretation of Num. 15:22–31, see Aharon Shemesh, *Punishments and Sins: From Scripture to the Rabbis* (in Hebrew) (Jerusalem: Magnes Press, 2003), 60–81. See also Gary Anderson, "Intentional and Unintentional Sin in the Dead Sea Scrolls," in *Pomegranates and Golden Bells: Studies in Biblical, Jewish, and Near Eastern Ritual, Law, and Literature in Honor of Jacob Milgrom*, ed. David P. Wright, David N. Freedman, and Avi Hurvitz (Winona Lake, IN: Eisenbrauns, 1995), 49–64.

14. It should be noted, however, that multiple transgressions said to be punishable by extirpation (*karet*) are also listed as warranting execution by a court of law. See Shemsh, *Punishments and Sins*, 102–7.

15. M. Makkot 3.1, 3.15.

16. See Shemesh, *Punishments and Sins*, 82–95. We ought to remember, of course, that the rabbis' deliberations on corporal and capital punishments are utterly theoretical, as Jews under the Roman Empire had no juridical authority on such matters. On this, see Beth Berkowitz, *Execution and Invention: Death Penalty Discourse in Early Rabbinic and Christian Cultures* (New York: Oxford University Press, 2006), 12–24.

of the spirit.”<sup>17</sup> Unintentional transgression, for the Qumran community, is the result of a temporary lapse of reason that entirely transforms one’s mind, and the community can only wait until one recovers from it to reinstate one as a member. The rabbis, in contrast, regarded people who suffer from madness or mental disability, even temporary, as devoid of legal agency altogether and therefore as exempt from any kind of repercussions.<sup>18</sup> The actions of mentally compromised people are not “inadvertent transgressions” but are rather lacking any legal status. Accordingly, the rabbis put forth a much more focused notion of inadvertent transgression: a transgression is inadvertent insofar as an otherwise competent legal subject was unaware that he was committing a *specific* transgression *while* he was committing this specific transgression.

For the rabbis, then, determining whether a particular action can be defined as “inadvertent transgression” required a close scrutiny of halakhic boundaries: When does an action that is classified as a transgression begin, and when does it end? When does the mindset of unawareness vis-à-vis the transgression take over, and when does it recede? These laborious questions intensely engaged the early rabbis, as we can see in the following example:

One who throws [something from his hand on the Sabbath], and he was reminded [that it was forbidden] after it left his hand—is exempt [from bringing a sin offering]. . . . This is the rule: all those who are liable for sin offerings are not liable until both the beginning and the end [of their action] are inadvertent. If its beginning is inadvertent and its end is advertent, or if its beginning is advertent and its end is inadvertent, they are exempt, unless both its beginning and end are inadvertent.<sup>19</sup>

This passage presents the rabbinic principle that a transgression can only be considered inadvertent, and thus make its committer liable to bring a sin offering, if throughout the *entire duration* of the transgressive action the transgressor did not know that he was doing something forbidden. The scenario describes a person who throws an object from his hand into the public domain on the Sabbath, which is forbidden. However, before the object hits the ground the person is reminded that the day is the Sabbath (and/or that throwing is not allowed on the Sabbath). The halakhic action in question, throwing, is only considered complete once the object hits the ground. Since by the time that object touched the ground the thrower

17. Community Rule (1QS) 7:19–21, according to Vermes, *Complete Dead Sea Scrolls*, 108. Qimron reads a passage from the Damascus Document (4QD 15:13–17) as expressing the same idea; see Elisha Qimron, “Terminology for Intention Used in the Legal Texts of the Dead Sea Scrolls” (in Hebrew), *Proceedings of the World Congress of Jewish Studies* 10, vol. A (1989): 105. See also Shemesh, *Punishments and Sins*, 74–77.

18. Such people fall under the category of *shoteh*, a term used in multiple rabbinic rulings to refer to persons whose compromised mental state denies them legal personhood. See Yohanan Silman, “The Basic Norm in Halakhah in Light of Sugyot Pertaining to Deaf, Mentally Incompetent, and Minor” (in Hebrew), *Dine Israel* 18 (1995): 23–51.

19. M. Shabbat 11.6 (11.7 in the Mishnah’s manuscripts). Cf. T. Shabbat 10.19 (ed. Lieberman 45).



was no longer in a state of unawareness, it is impossible to say that the action was inadvertent and accordingly that the thrower owes a sin offering. It does not matter that once the thrower realized that he did something forbidden he could do nothing to stop it: the asynchrony between action and unawareness makes this transgression something indeterminable between intentional and unintentional. For halakhic purposes, an action that was not completed in the state of unawareness in which it began is like an action that was not completed at all and is devoid of halakhic status.<sup>20</sup>

This passage demonstrates the critical role of forgetfulness and recollection in the rabbis' configuration of the category of inadvertent transgression. The paradigm in this passage is that inadvertent transgression takes place when one forgets a particular halakhic fact—whether regarding one's lived world ("Today is the Sabbath") or regarding the law ("It is forbidden to throw objects on the Sabbath")—and the state of forgetfulness must remain unchanged throughout the duration of the transgression-event. Once one remembers the halakhic fact one lost earlier, the inadvertent transgression-event (violating the Sabbath) abruptly stops, even if the physical event (throwing an object) continues. The transition from forgetfulness to recollection in the actor's mind, in other words, completely changes the halakhic significance and repercussions of events that take place in the world. Here is another example that demonstrates the same principle:

If one sent [coins designated for the temple] in the hand of a competent person, and he was reminded [that the coins were sacred] before [the messenger] reached the shopkeeper—the shopkeeper is guilty of [inadvertent] misuse of sacred items, once he spends them.<sup>21</sup>

In this case, a person who holds in his house some coins that were consecrated as the property of the temple forgets that these coins may not be used and gives them to a messenger, asking that he buy something for him at a shop. Before the messenger reaches the shop, however, the one who sent him recalls that the coins were forbidden to use. At this point, this sender's imminent use (by proxy) of consecrated money no longer counts as an inadvertent transgression, because he is no longer unaware of what he is doing—even though he has no power to stop the forbidden transaction from taking place.<sup>22</sup> In fact, at this point the category of misuse of sacred items (*me'ilah*) does not even apply to the sender's action anymore, since the rabbis understand this category as pertaining exclusively to inadvertent

20. Indeed, the case of a person who threw an object and was reminded that it was forbidden before the object touched the ground is equated in this passage with a case in which the object never touched the ground, because it was caught by a dog or was burned midair.

21. M. *Me'ilah* 6.2. This case is contrasted with a case in which the messenger is not considered a legally competent person and therefore bears no responsibility.

22. The Mishnah does suggest, however, a mechanism through which the sender can preemptively release the coins from their sanctity.



actions.<sup>23</sup> Rather, when the shopkeeper takes the coins and eventually spends them for his own purposes, *he* will be the one committing the inadvertent transgression of misuse of sacred items, because he really and truly does not know that he is doing something forbidden. Again, the ebbs and flows of one's memory vis-à-vis halakhic prohibitions actively change the status of halakhic actions and actors.

### *Concealment of Impurity and Concealment of the Temple*

As the passage above illustrates, forgetting is not the only condition that allows a transgression to count as inadvertent. The rabbis, generally speaking, recognize that one can commit an inadvertent transgression because one never had access to the relevant facts in the first place, as in the case of the shopkeeper who uses consecrated coins without having any way of knowing that he was doing so. There is, however, one area of rabbinic legislation in which the rabbis unambiguously and explicitly determine that forgetting is the *only* kind of unawareness that makes for inadvertent transgression. This area pertains to what the rabbis called "the impurity of the temple and the sancta," and it is a good place to begin our exploration of the concept of *he'elem*, or eclipse of the mind, in Tannaitic texts.

The Priestly Code in Leviticus 4 discusses sin offerings that must be brought following inadvertent transgressive actions, and it determines that the required type of sacrificial animal for the offering varies based on the identity of the transgressor (a bull for a high priest or for a collective transgression of the entire congregation, a male goat for a prince, and a female goat for a commoner). Leviticus 5:1–14 then presents a subset of instructions regarding four specific transgressions: failing to provide a required testimony, contracting impurity originating in animal carcasses, contracting impurity originating in human bodies, and breaking one's own oath. For these four offenses, the nature of the offering is determined not by the civil status of the offenders but by their financial means: those who cannot afford the requisite female lamb or goat can bring two birds, and those who cannot afford two birds can bring a grain offering. The rabbis termed this offering "an ascending and descending offering" (*korban 'oleh ve-yored*), to mark its fluctuating value. It is well beyond the scope of this book to discuss why it is these four offenses in particular that merit a unique sacrificial arrangement.<sup>24</sup> For our purposes, it is mainly important to understand the Levitical instructions regarding impurity contracted inadvertently:

Or when a person touches any impure thing—whether the carcass of an impure beast or the carcass of impure livestock or the carcass of an impure swarming thing—and it was concealed from him and he has become impure and is guilty; or when he touches human impurity—any impurity by which one can become impure—and it was concealed from him and he came to know it, he shall be guilty . . .<sup>25</sup>

23. See Sifra Hovah 11.19.8–9 (ed. Finkelstein 197).

24. On this question, see Jacob Milgrom, "The Graduated Sin Offering of Leviticus 5:1–13" (in Hebrew), *Beit Mikra* 29 (1984): 139–48.

25. Lev. 5:2–3.

What is the nature of the offense referred to in these verses? Contracting impurity is, of course, not a transgression in and of itself in the Priestly Code, which sees physical impurity as an inevitable part of life. What is it about impurity, then, that makes the one who contracted it “guilty”? Jacob Milgrom proposed that the issue at hand is failure to purify oneself in a timely manner. Because the one who contracted impurity was not aware that this happened (since it was “concealed from him”) he did not take measures to perform the purificatory rituals, and therefore generated impurity that compromises God’s abode.<sup>26</sup> This is a convincing reading of the biblical text, but it is not the way in which the rabbis interpreted this passage. Whereas the priestly authors maintained that the sanctuary can be contaminated even from afar, merely by the presence of impure persons in the camp, the rabbis maintained that the sanctuary can only be contaminated if impure persons enter it or touch its objects directly. Accordingly, the rabbis interpreted the offense in Leviticus 5:2–3 not as failing to purify oneself, but as actual entrance into the temple in a state of ritual impurity. They also identified a comparable offense in touching sacred items (such as sacrificial meat, incense for temple use, etc.) while impure. But whereas in Leviticus it does not matter how and why the impure person was oblivious of his impurity (it only matters that impurity was first “concealed” and then “known”), the rabbis assert that the “ascending and descending offering” prescribed in these verses only applies if the person knew he was impure, forgot about it, and finally remembered it again. Tractate Shevu’ot of the Mishnah presents a list of five scenarios in which one causes pollution to the temple or the sancta, and rules that the polluter’s state of awareness before, during, and after causing pollution determines which offering is appropriate in order to atone for this pollution:

[A] Whenever there is awareness at the beginning and awareness at the end and concealment (*he’elem*) in the interim—[the polluter’s transgression is to be atoned] with an ascending and descending offering.

[B] If there is awareness at the beginning but there is no awareness at the end—the goat that is offered inside [on/and]<sup>27</sup> the Day of Atonement suspends [the polluter’s judgment] until it becomes known to him, [at which point] he will bring an ascending and descending offering.

[C] If there is no awareness at the beginning but there is awareness at the end—the goat that is offered outside [on/and] the Day of Atonement atones for him . . .

[D] If there is awareness neither at the beginning nor at the end, the goats of the festivals and the goats of the beginnings of months atone . . .

26. Milgrom, “The Graduated Sin Offering.”

27. The words “the Day of Atonement,” here and in clause C, seem to be a later insertion influenced by clause E. See also Yosef Marcus, “Sin Offerings for Impurity of the Temple and Its Holiness in Tannaitic Literature: Atonement for Sin or Purification of the Temple?” (in Hebrew), *Jewish Studies Internet Journal* 21 (2021): 9–10n43.

[E] And for purposeful pollution of the temple and the sancta, the goat that is offered inside and the Day of Atonement atone . . .<sup>28</sup>

This detailed list (parts of which I skipped for the sake of brevity) assigns a specific role to different kinds of required sin offerings that could easily strike one as redundant or overlapping, and it explains that each kind of sin offering is necessary to address a different state of awareness of the polluter. As such, this list makes a forceful statement about the relation between awareness, memory, and legal responsibility. It effectively proclaims that one cannot be held responsible for transgressions one had no way of knowing one was committing and thus had no way of preventing, at least not in what pertains to the pollution of the temple.<sup>29</sup>

According to this list, one is required to provide an ascending and descending offering—that is, one is fully liable for the pollution of the temple—only if one had the necessary knowledge to prevent this from happening, but this knowledge temporarily escaped him and was later restored (case A). Nevertheless, there are means to rectify the pollution caused to the temple even if the person who caused the pollution need not or cannot bring an individual sin offering.<sup>30</sup> If one knowingly polluted the temple (case E) the corrective means of individual sin offering does not apply to him, but the congregational sin offering of the Day of Atonement, as well as of the Day of Atonement itself, serve to atone for the polluter (assuming that he repented).<sup>31</sup> Also, if one inadvertently polluted the temple or sancta but never realized that this happened, obviously he cannot be expected to bring an offering, as he does not even know that he needs one. Here the Mishnah distinguishes between two cases: in case D, one had no “awareness of impurity” in the first place (i.e., he did not know that he contracted impurity, or he did not know that it was forbidden to enter the temple impure), whereas in case B one had “awareness of impurity” initially, but this awareness escaped him by the time he had contact with the sancta. In case D, it is not assumed that this person will ever realize that he

28. M. Shevu'ot 1.2–6 (1.2–9 in the manuscripts).

29. This emphasis may be directed against the “pious” notion, described in M. Karetot 6.3, that one may bring a sacrificial offering every single day to atone for transgressions one may have committed without knowing; see Mira Balberg, *Blood for Thought: The Reinvention of Sacrifice in Early Rabbinic Literature* (Oakland: University of California Press, 2017), 129–31. On the “guilt offering of the pious,” see also Halbertal, *The Birth of Doubt*, 64–72.

30. Yosef Marcus argued that the rabbis assumed that the temple cannot contract impurity at all, even if impure persons come into contact with it, and that the rabbis' interest in “the pollution of the temple and the sancta” pertains strictly to the transgression of the polluter, not to the consequences for the temple itself; see Marcus, “Sin Offerings.” While I am not entirely convinced that rabbinic texts are unanimous on the question of the pollution of the temple, and I think some of them do suggest that such pollution is a problem in and of itself, Marcus is undoubtedly correct that the opening passages of tractate Shevu'ot are concerned with the transgressor and not with the temple. “Atonement” in this context is clearly meant as cleansing of sin, not as eradication of impurity—although I believe the rabbis do struggle in these passages with Leviticus 16, in which impurity and sin are closely intertwined.

31. Cf. M. Yoma 8.8.

owes a sin offering, so certain congregational offerings are assigned to atone for his transgression. In case B it is assumed that this person will realize at some point that he had contact with the sancta while impure, but until he realizes it (which will move him to the category of case A) and brings his offering, the congregational sin offering of the Day of Atonement will serve to suspend his judgement.

The notion that only initial awareness followed by forgetfulness renders the polluter directly responsible is especially apparent in the ruling regarding case C. In this case one initially has no awareness of impurity (for example, one touches an impure person without knowing that they are impure) but later finds out that he contracted impurity and that he had entered the temple or touched the sancta while impure. On the face of it, this is exactly the kind of case that the priestly author has in mind when describing a case of “concealment” followed by knowledge. Yet for the rabbis, remarkably, this case is to be addressed with another congregational offering and *not* with the individual “ascending and descending” offering prescribed in Leviticus 5. Only in a case of awareness followed by “concealment” followed by awareness—in other words, only in the case of forgetfulness and recollection—does one owe an individual sin offering. How are we to explain this surprising interpretive move?<sup>32</sup>

There are two ways of accounting for the Mishnah’s distinction between forgetfulness and initial ignorance in this context. One way is to assume that the rabbis considered sin offerings to be a penalty of sorts that has a punitive dimension to it, and that they maintained that such penalty is only warranted if the transgressor could have done more to prevent the transgression—that is, if the transgressor can be seen as guilty of what we call today “negligence.”<sup>33</sup> One who forgot his impurity can be charged with negligence, whereas one who never knew he was impure cannot. An alternative explanation is that the rabbis, or at least some of them, viewed sin offerings not as a penalty but as a remedy for a guilty conscience. The one who forgot his impurity is likely to feel guilty—again, because he could have prevented the transgression had he paid more attention—whereas the one who never knew of his impurity is not likely to have a guilty conscience if there was nothing he could do to prevent the transgression, and therefore he does not need a sin offering.<sup>34</sup> Arguments can be made in favor of both explanations, and perhaps both views existed among the rabbis. For our purposes, I wish only to highlight that the Mishnah posits here a categorical view of “inadvertent transgression,” specifically when it comes to polluting the temple and the sancta, as transgression

32. The Sifra (Hovah 8.12.11, ed. Finkelstein 177; cf. BT Shevu’ot 4b, PT Shevu’ot 1.2, 32d) offers a scriptural reasoning for this ruling, but clearly attempts to justify an already established halakhic principle.

33. For an analysis of the rabbinic concept of inadvertent transgression in terms of negligence, see Edrei, “If Any One Shall Sin.”

34. This is the interpretation proposed by Zohar, “Sin Offering,” 89–95. Zohar associates this approach specifically with R. Yehoshua.

stemming *exclusively* from temporary forgetfulness. Thereby, the Mishnah makes the point that only in a state of forgetfulness does one maintain the unique balance of responsibility without culpability that defines unintentional sin. I shall return to the distinction between forgetfulness and ignorance, in another context, toward the end of this chapter.

But what is it that one forgets, exactly, when there is “concealment” or *he’elem*, between an initial phase of knowing and a subsequent phase of knowing? Early rabbinic texts are very open-ended and vague on this question. It seems that the memory failures brought about by *he’elem* can be either of episodic nature (e.g., I forgot that I touched something impure) or of semantic nature (e.g., I forgot that carcasses make one impure). Moreover, the Mishnah asserts that one’s forgetfulness does not necessarily pertain only to impurity, but can also pertain to the temple and the sancta (or to both):

[A] If one became impure and knew it, and impurity was concealed from him while he remembered the sancta, or the sancta was concealed from him while he remembered his impurity, or both were concealed from him, and he ate a sacred item, and he did not know, and after he ate, he knew—he is [liable for] an ascending and descending offering.

[B] If one became impure and knew it, and impurity was concealed from him while he remembered the temple, or the temple was concealed from him while he remembered his impurity, or both were concealed from him, and he entered the temple, and he did not know, and after he left, he knew—he is [liable for] an ascending and descending offering.<sup>35</sup>

According to this passage, since the essence of the transgression is causing contact between a source of impurity and the temple or the sancta, the forgetfulness that obligates one to bring an offering can pertain to either side of this equation: to the impurity side or to the temple/sancta side. One can forget that one is impure and enter the temple knowing full well that it is the temple (and that one is not allowed to enter the temple impure), but one can also know full well that one is impure but forget that the place he is entering is the temple (or forget that one may not enter the temple impure), and the same goes for touching the sancta. As we find out later in the same Mishnaic chapter, this view, which the Mishnah at first presents anonymously, was actually the view of one rabbi whose colleagues disagreed with him:

R. Eliezer says, “[Scripture says,] ‘When a person touches . . . an impure swarming thing and it was concealed from him’—he is liable for concealment of a swarming thing, and he is not liable for concealment of the temple.”

R. Akiva says, “[Scripture says,] ‘And it was concealed from him, and he has become impure’—he is liable for concealment of impurity, and he is not liable for concealment of the temple.”

35. M. Shevu’ot 2.1 (2.1–2.2 in the manuscripts).

R. Ishmael says, “[Scripture says,] ‘And it was concealed, and it was concealed’ twice, to make one liable both for concealment of impurity and for concealment of the temple.”<sup>36</sup>

The named rabbis in this passage present a range of positions on the kind of forgetting that renders one liable to bring a sin offering, moving from the very specific to the all-inclusive. For R. Eliezer, the only kind of forgetting that makes one liable is forgetting pertinent to the particular *source* of impurity, such as the carcass of a swarming creature (for example, if one forgets that a particular dead creature conveys impurity or forgets that he had contact with a particular creature). R. Akiva maintains that it does not matter whether the person can trace the origin of impurity or not: as long as he was initially aware that he was impure, he is liable for a sin offering. Both R. Eliezer and R. Akiva, however, reject the possibility that one is liable if his forgetfulness pertained not to impurity but to the temple.<sup>37</sup> Perhaps they consider forgetfulness of something as central as the temple to be well beyond the realm of ordinary mental omission, crossing the line into the pathological realm; or perhaps they do not think that such a reading can be supported by the biblical text, which never mentions the temple at all. R. Ishmael, in contrast, maintains that either forgetfulness of impurity or forgetfulness of the temple makes one liable, and proposes some exegetical gymnastics with the biblical verses (relying on the dual appearance of the phrase “and it was concealed”) to justify his view.

R. Ishmael’s position—and following him, the anonymous Mishnah’s position—is qualitatively different from his colleagues’ position. It is not simply that R. Ishmael thinks that two kinds of forgetfulness make one liable whereas his colleagues think that only one kind of forgetfulness makes one liable. There is also a significant difference between forgetting that one contracted impurity, which is a scenario that can be easily imagined, and forgetting the temple, which requires a rather extreme cognitive blackout.<sup>38</sup> When R. Ishmael and the anonymous Mishnah make “forgetting impurity” and “forgetting the temple” comparable cases, they drive the conversation on forgetting and inadvertent transgressions in a very formalistic direction, loosening its grounding in realistic settings.<sup>39</sup> This

36. M. Shevu’ot 2.5 (2.6 in the manuscripts); cf. Sifra Hovah 8.12.7 (ed. Finkelstein 175–76).

37. Indeed, in T. Shevu’ot 1.8 (ed. Zuckerman 447) R. Eliezer and R. Akiva are presented as sharing the same opinion, according to which one is only liable for “concealment of impurity.”

38. The Babylonian Talmud (BT Shevu’ot 14b) suggests that a Babylonian person who came to Palestine might not know the location of the temple, which could lead him to pollute it. The Talmud seems to imagine a setting in which the temple no longer exists, and only the location of its former site is remembered (the location of the destroyed temple, too, needs to be protected from impurity). Tannaitic sources, however, all seem to construct scenarios on the assumption that the temple is still standing.

39. Perhaps not surprisingly, in later Talmudic literature both “forgetting impurity” and “forgetting the temple” are mostly interpreted as “forgetting the *laws* of impurity” and “forgetting the *laws* of the temple,” which places both types of forgetfulness on an level playing field, as both are now pieces of the greater array of abstract knowledge that one has to hold in mind. For example, in PT Shevu’ot

formalistic orientation, in turn, allows for the creation of extreme, and some might say absurd, scenarios of forgetfulness. To explore the question of correspondence or lack thereof between transgression and awareness of transgression in every possible iteration, the rabbis create a literary subject who can abruptly forget any fact or law—no matter how elemental and self-evident—and just as abruptly remember it, for no apparent reason. The following scenario serves well to demonstrate the extreme and inexplicable vicissitudes of memory this kind of literary subject is capable of:

If one contracted impurity in the temple's courtyard, and impurity was concealed from him, but he remembered the temple; or the temple was concealed from him, but he remembered impurity; or both were concealed from him—

If he prostrated or spent enough time [in the courtyard] to prostrate, or if he left [the courtyard] the long way—he is liable [for a sin offering].

[If he left the courtyard] the short way—he is exempt.<sup>40</sup>

In this scenario, the forgetfulness that leads to contact between impurity and the temple takes place in the temple itself. As the case goes, a person becomes impure *while* in the temple. He initially realizes both that he has become impure and that he is in the temple (and that this is a problematic situation) but then somehow forgets that he is impure, or forgets that he is in the temple, or forgets that one is not allowed to be in the temple when impure, or forgets all of the above. The rule is that if he leaves fast enough after becoming impure his contact with the temple will not make him liable for a sin offering. To deliver this ruling, the Mishnah constructs a subject who, in a remarkably short interval of time, manages to become impure, realize it, and forget about it, or more radically, manages to forget that he is in the temple while in the temple. To emphasize, we are not talking about a person who never knew he was impure or never knew that he was in the temple, since such a person is (according to the Mishnah) not liable at all. Rather, we are talking about a person who knows the relevant facts/laws pertinent to the situation, suddenly and inexplicably forgets them, and eventually remembers them again. This kind of literary subject, as we will now turn to see, appears also in other halakhic contexts, and he is inherent in the larger analytical apparatus that the rabbis develop to discuss the possibility and implications of inadvertent transgressions. This subject, to be sure, is a theoretical construct meant for intellectual experimentation, and yet

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1.1, 32d, “concealment of impurity” is interpreted as forgetting which kinds of impurity make one liable to bring an offering, and in BT Shevu’ot 14b “concealment” occurs when one does not remember whether an insect the size of a lentil suffices to make one impure or not, and whether frogs convey impurity or not.

40. M. Shevu’ot 2.3 (2.4 in the manuscripts).



his recurring appearance in rabbinic discourse serves to rechart the possibilities of memory failures within the halakhic realm, making them effectively unlimited.

*Mental Eclipses and Suspended Legal Subjectivity*

As I noted above, the rabbis maintain that in order to define a transgressive action as inadvertent, one must confirm that the state of *he'elem*, or mental eclipse, lasted the entire duration of the action. One implication of this principle is that if the eclipse ended before the action ended, as in the case of the person who throws an object on the Sabbath and realizes the prohibition before the object hits the ground, then the action cannot be considered inadvertent. The rabbis, in their methodical way, test this principle by looking into a case in which a mental eclipse ended midaction, but then *another* mental eclipse occurred, during which the action was completed:

If one writes two characters in two concealments (*he'elemot*), one in the morning and one at dusk—Rabban Gamaliel renders him liable, but the Sages exempt him [from a sin offering].<sup>41</sup>

Much of tractate Shabbat of the Mishnah is dedicated to scrutinizing the thirty-nine labors that are forbidden on the Sabbath and to determining the minimum amount of “labor” that renders one liable for violating the Sabbath in each case. Writing is one of those forbidden labors, and the rabbis determine that in order to be considered liable on account of writing, one must write at least two characters. Moreover, these two characters must be written “in one concealment”—that is, during a single mental eclipse in which one is not aware that he is transgressing a prohibition.<sup>42</sup> The question then arises, What if one had one mental eclipse during which he wrote one character, and then another *separate* mental eclipse during which he wrote the second character? That is, what if a person forgot that it was the Sabbath, wrote one character, was reminded that it was the Sabbath, and then forgot *again* that it was the Sabbath, and wrote another character? Should the two characters be taken together as constituting the minimum for the violation of the Sabbath, or must each character be counted separately, since they were not written during the same eclipse? The question at hand, ultimately, is, What matters more—the final outcome of the actions performed (two characters were written), or the correspondence between transgressive action and mental eclipse (only one character was written during each eclipse, which does not suffice as a transgression)? Rabban Gamaliel takes the former view and renders the person who wrote two characters in two eclipses liable, whereas the Sages take the latter view and do not render him liable.

41. M. Shabbat 12.6.

42. M. Shabbat 12.3–4.

The Sages' position is expressed anonymously, without a competing view alongside it, in a similar case in the Tosefta:

If one took out half [the volume] of a dried fig, and then came back and took out another half [the volume] of a dried fig—[if both halves were taken out] in one concealment, he is liable; in two concealments, he is exempt.<sup>43</sup>

The prohibition to carry food into the public domain on the Sabbath pertains to a minimum amount equivalent to the volume of a dried fig (*grogeret*).<sup>44</sup> Like the Sages in the Mishnah, the anonymous Tosefta asserts that if one carried two halves of this volume on two different occasions, it all depends on whether the two halves were carried during the same mental eclipse or not. If one carried the two halves during a single episode of forgetfulness, he is seen as one who completed a full inadvertent transgressive action. But if he forgot the prohibition of the Sabbath and carried half the minimum quantity, remembered the prohibition, forgot it again, and carried the other half, these are considered two separate transgressive actions, and since neither of them meets the required minimum this person is not liable to bring a sin offering.

The view that an inadvertent transgression is defined not by its ultimate outcome, but strictly by the one-to-one correspondence of unawareness and prohibited action, is a striking rabbinic innovation. What it means, effectively, is that the determining factor in deciding one's status as a transgressor, and in deciding the means through which one should rectify one's transgression, are the vicissitudes of one's memory before, during, and after the prohibited action. Accordingly, two people who inadvertently committed the exact same offense would be assessed very differently if their memory functioned in different ways in respect to the transgression, as the following passage illustrates:

If one had intercourse with any of the forbidden sexual partners stated in the Torah, he during one concealment and she during five concealments—he brings one sin offering and she brings five sin offerings. She in one concealment and he in five concealments—she brings one sin offering and he brings five sin offerings.<sup>45</sup>

Forbidden sexual unions (*'arayot*), which are listed in Leviticus 18 and 20, are among the transgressions that warrant a sin offering when the participants act inadvertently, and a punishment of extirpation when they act knowingly. As we shall see later on, the rabbis have a special fondness for examples related to forbidden sexual unions, but in this context they use sexual transgressions to illustrate the point that even when a transgression takes place through the concurrent actions of two people, these two people are assessed differently based on their

43. T. Shabbat 9.11 (ed. Lieberman 38).

44. M. Shabbat 7.4.

45. T. Karetot 1.18 (ed. Zuckerman 562). The Tosefta comments on (and partially quotes) M. Karetot 2.6 (2.7 in the manuscripts).

changing states of memory. This passage depicts two partners who are not allowed to have sex with each other—for example, a brother and a sister. Somehow the fact that they are not supposed to have sex with each other escapes them: they both forgot (or in this case, perhaps did not know at all) that they were brother and sister, or they forgot that brothers and sisters are not supposed to have sex with each other. One of them remained oblivious of the fact that they were doing something prohibited throughout multiple sexual acts, whereas the other was at some point aware of the prohibition, then forgot about it, then remembered it again, and then forgot it again—five times total. The first one thus committed one transgression, since they acted in a single bout of mental eclipse (regardless of how many times they actually had intercourse), but the other one committed *five* transgressions, since each episode of forgetting and remembering constitutes its own mental eclipse and therefore constitutes an independent transgression.

While these cases are clearly hypertheoretical constructs that mainly serve to test conceptual boundaries, their casuistic narrative style endows them with a mimetic quality that makes them sound like “real” cases, thus incorporating them into the realm of the possible—even if only remotely possible—within the halakhic landscape. As such, they lead the readers to wonder *how* it is possible for such cases of remembering-forgetting-remembering-forgetting to take place. It is tempting to think that what the rabbis had in mind when describing such cases is something akin to short-term memory loss, which can take place as a result of brain injury, aging-related dementia, or severe mental illness.<sup>46</sup> Yet I very much doubt that the rabbis devised these scenarios of memory malfunction while specifically thinking of such malfunction as pathological in nature. As I noted earlier, the general rabbinic rule is that people who are ill or mentally disabled are exempt from legal sanctions altogether. Rather, I believe that the rabbis considered human memory to be inherently imperfect and faulty, even in its “normal” state, and constructed these scenarios to experiment with the full range of halakhic contingencies created by cognitive failures. By incorporating scenarios of highly unlikely or recurring mental eclipses into the array of halakhic possibilities, and by devising principles for addressing such scenarios, the rabbis convey that inexplicable and uncontrollable forgetfulness, even one that touches at the heart of Torah-based prohibitions, does not exclude those who experience it from the halakhic playing field. In this respect, the imagined literary subject who goes through consecutive mental eclipses is essentially an overstated version of the forgetful rabbinic subject we have seen in the previous chapters, who is prone to halakhic memory failures yet faithfully remains within the bounds of rabbinic normativity.

The rulings on multiple eclipses, or *he'elemot*, flesh out that what constitutes liability—namely, the obligation to bring a sin offering—is the moment in which one *remembers* that one did something forbidden. The sister or brother in the scenario

46. On short-term memory impairments, see Thompson and Madigan, *Memory*, 117–41.

above does not need to bring five sin offerings because s/he had forbidden sex five times, but because s/he remembered that s/he had forbidden sex five times. Each moment of remembrance renews, as it were, one's relation with the law and resubordinates one to its requirements. The paradigm presented here, then, is one of interrupted legal subjectivity: for as long as one is in a state of mental eclipse, one is actually not liable at all under the law (specifically, under the law that one is currently breaking), and it is as though one's agency as a legal subject is suspended. It is only when one realizes one's transgression that one is reintroduced into the system and resumes being responsible for one's actions. This is the logic behind the Mishnaic ruling we saw above regarding "awareness in the beginning but no awareness at the end" in the context of polluting the temple and the sancta. For as long as the subject does not remember that he polluted the temple, a congregational sin offering serves to "suspend" his judgment, as this person is not regarded as someone who can be legally assessed at all. Only when this subject remembers that he polluted the temple does the obligation to bring a sin offering take effect for him.

The notion that legal agency is suspended for as long as the mental eclipse continues, and resumes only when one remembers the prohibition(s) one transgressed, is also apparent in the following passage:

They said a great rule regarding the Sabbath:

[A] If one forgot the essence (*'iqqar*) of the Sabbath and performed many labors on many Sabbaths—he is only liable for one sin offering.

[B] If one knew the essence of the Sabbath [but did not know that a particular day was the Sabbath], and he performed many labors on many Sabbaths—he is liable [for one sin offering] for each and every Sabbath [that he violated].<sup>47</sup>

[C] If one knew that it was the Sabbath and performed many labors on many Sabbaths—he is liable for each and every prototype (*av*) of labor. But if one performed many labors that are like a single labor, he is only liable [to bring] one sin offering.<sup>48</sup>

There is much to say about this passage, and I will return to it in the second part of this chapter. For now, we can observe that this passage presents a principle according to which one's liability for committing an inadvertent transgression is determined not only by the duration of one's mental eclipse but also by the specific content that was concealed and then recalled. While the prohibited labors that one

47. In MSS Kaufman A50, Parma (de Rossi) 138, and the 1492 Naples Print the scribe skipped from clause B to clause C, such that the text reads: "If one knew the essence of the Sabbath and performed many labors on many Sabbaths, he is liable for each and every labor." In both manuscripts the missing text was added in the margins. Goldberg assumed that this was the original version of the Mishnah; see Goldberg, *Commentary on Tractate Shabbat*, 130–34. However, since the text appears in the fuller version in the Cambridge (Lowe) manuscript, in several Genizah fragments, and in both Talmuds, this omission seems to be no more than a scribal error.

48. M. Shabbat 7.1.

performs in a state of unawareness may be identical in all three cases (for example, cooking on the Sabbath), the nature of forgetting—and accordingly, the nature of re-remembrance—is different in each case. In case A the moment of realization is “I forgot that such a thing as the Sabbath exists”; in case B it is “I forget that today was the Sabbath,” and in case C it is “I forgot that cooking is prohibited on the Sabbath.” These different kinds of realization, in turn, create different kinds of liabilities.

The “great rule” introduced through these scenarios is that for as long as a mental eclipse regarding a legal prohibition continues, one’s responsibility for breaking this prohibition is put on hold, and it is only resumed when one remembers the prohibition. If one does not remember at all that the Sabbath prohibitions exist, no transgressions pertaining to Sabbath prohibitions register for this person. When this person will finally be reminded of the general Sabbath prohibition, only one Sabbath violation will be registered for him—that is, he will owe a single sin offering for all the Sabbaths he violated. If one does not remember that a particular day is the Sabbath, no transgressions will be registered for him on that particular Sabbath, and he will owe a single sin offering when he remembers that particular Sabbath—regardless of how many offenses were committed in its course. And if one remembers that a particular day was the Sabbath but forgets that certain labors were prohibited, when one is reminded that his specific actions were prohibited every single labor he performed will be registered as a transgression (but not multiple performances of the same labor or performances of closely similar labors).<sup>49</sup> He will thus owe a separate sin offering for every prohibited labor he performed. What generates the obligation to bring a sin offering, then, is not the transgression itself but the ways in which the subject construes his mental eclipse in his mind once he realizes it.

The following passage offers a particularly poignant expression of the view that it is recollection of the offense that generates the legal obligation:

[A] If one [had] both suet (*helev*, animal fat forbidden for consumption) and sacrificial meat that remained overnight (*notar*, also forbidden for consumption) in front of him, and he ate one of them and it is not known which one he ate—

[B] If one’s menstruating wife and one’s sister were at home with him, and he erred (*shagag*, i.e., had intercourse) with one of them and it is not known with which of the two he erred—

[C] If the Sabbath and the Day of Atonement [took place on consecutive days], and one performed labor at dusk (i.e., between the two days) and it is not known on which one he performed labor—

49. Cf. M. Karetot 3.10, in which R. Eliezer and R. Akiva disagree on the question of whether one who performs multiple similar labors is liable for every labor he performed or only for one. As Yitzhak Gilat noted, it seems that the Mishnah in tractate Shabbat was formulated in keeping with R. Akiva’s opinion, which in turn gave rise to the rabbinic distinction between “prototypes of labors” (*avot melakhot*) and subtypes of labors. See Gilat, *Studies in the Development of Halakhah*, 32–59.

[In all these cases] R. Eliezer renders one liable for a sin offering, and R. Yehoshua exempts.<sup>50</sup>

In all the cases listed in this passage, there is absolute certainty that one inadvertently committed a transgression. Whether one ate one type of forbidden sacrificial substance or another, had one forbidden sexual union or another, or performed labor on one sacred day or another—a forbidden action has been committed, except that one does not know which of the two forbidden things one did (again, a testimony to the imagined Tannaitic subject's remarkable ability to forget the most critical and basic things). R. Eliezer renders the offender liable to bring a sin offering, which seems like the obvious ruling, but R. Yehoshua exempts him altogether. In a parallel Tosefta passage, each rabbi explains his reasoning (or more likely, has his reasoning explained for him) using the language of Leviticus 4:27, "When the transgression that one has committed is made known to one, one shall bring a female goat without blemish as one's offering":

R. Eliezer says, "'The transgression that one has committed'—either way, he has committed a transgression."

R. Yehoshua says, "'When the transgression that one has committed is made known to one'—[one is not liable] until one knows one's transgression."<sup>51</sup>

R. Yehoshua insists that in order to be made liable for one's inadvertent transgression one need not only remember that one committed a transgression, but also *what* transgression one committed. He makes it clear that it is not the forbidden act as such but the recognition that one performed a forbidden act that creates responsibility to atone for the transgression, and one who does not have a coherent memory of the specific transgression *as* a transgression is still "suspended" within the legal system.<sup>52</sup>

To be clear, one's suspension within the legal system for as long as one's mental eclipse lasts is not an overall suspension of all legal personhood, but only suspension of responsibility within the one corner of the law of which one is currently oblivious. For example, we could imagine a subject who cooked on the Sabbath because he forgot that it was the Sabbath, and also worshipped at the temple of Aphrodite on the same Sabbath. This person's legal responsibility for cooking on the Sabbath is suspended until he is reminded that the day was the Sabbath, but

50. M. Karetot 4.2 (4.3 in the manuscripts).

51. T. Karetot 2.12 (ed. Zuckerman 564).

52. I am following the cogent analysis of Zohar, "Sin Offering," 89–90. Zohar maintains that this controversy reflects a profound and systematic disagreement between R. Eliezer and R. Yehoshua on the definition of transgression and on the purpose of sin offerings. I am less certain that we can safely ascribe to each rabbinic persona a consistent and coherent view on given matters across different Tannaitic texts. For one, R. Eliezer's comment in M. Shevu'ot 2.5, according to which one must know the exact cause of one's impurity to be liable for a sin offering, seems to go in the same direction as R. Yehoshua's position in T. Karetot 2.12.

it cannot be claimed that because he forgot that it was the Sabbath he is also not responsible for worshipping Aphrodite on the Sabbath, as the two are completely different and unrelated offenses. A mental eclipse, for the rabbis, is mental eclipse *vis-à-vis* a specific halakhic category, not a complete shutdown of halakhic agency.

There are, however, diverging rabbinic positions regarding similar or related offenses that take place under a single mental eclipse, and I propose that behind these diverging positions stand different views on how, exactly, one remembers one's transgressions when the eclipse ends. On one end of the spectrum, we find a view that even the exact same transgression, if committed multiple times in different contexts during a single mental eclipse, renders one liable for multiple sin offerings. This position is associated specifically with R. Yehoshua and Rabban Gamaliel, who mention two rulings that they heard from their masters. First, that if a person had five wives and he had sex with all of them while they were menstruating in a single episode of mental eclipse, he is liable for five sin offerings; and second, that if a person ate a single portion of sacrificial meat that was divided between five bowls (presumably, each piece at a separate meal), he is liable for five sin offerings.<sup>53</sup> According to this position, each "body" in which the offense was committed constitutes its own experience of transgression.<sup>54</sup> Since having sex with Sarah, with Rebekah, with Leah, and with Rachel are all different experiences that are remembered independently of each other, each transgressive experience warrants its own sin offering (the same argument can be made for dividing one portion of meat into five separate meals, although here the principle is less evident).<sup>55</sup> It should be noted that, according to this position, if one had sex with a single menstruating woman multiple times in a single mental eclipse, he is *not* liable for each time he had sex with her, so it is not that each transgressive act requires a sin offering of its own.<sup>56</sup> Rather, divided and distinct loci of transgression make for divided experiences of the transgression and memories of the transgression, which in turn generate divided obligations.

On the opposite end of the spectrum, several anonymous Tannaitic passages present a view that if different offenses that all generally fall under the same category took place under a single mental eclipse, one is required to provide only one sin offering for all of them. For example, a passage in the Tosefta rules that "if one ate an olive-volume of suet, an olive-volume of *piggul* (disqualified sacrificial meat), an olive-volume of [sacrificial meat] remaining [overnight], and an olive-volume of impure [meat] in one concealment, he brings [one] sin offering."<sup>57</sup> Even

53. M. Karetot 3.7, 3.9; cf. Sifra Hovah 1.1.8, 10 (ed. Finkelstein 125–26). Cf. T. Karetot 4.1 (ed. Zuckerman 565), which presents a conflicting ruling on the case of five pieces of sacrificial meat.

54. The term "divided bodies" to describe this principle was coined in the Babylonian Talmud (BT Karetot 2b). My analysis here closely follows Zohar, "Sin Offering," 104–8.

55. For a similar principle, see also T. Yebamot 11.4 (ed. Lieberman 34).

56. Although such a view is mentioned in PT Shabbat 7.1, 9b as attributable to R. Eliezer.

57. T. Karetot 2.10 (ed. Zuckerman 564).



though here one person breaks four different prohibitions, since all his actions generally fall under the category of “eating forbidden sacrificial substances” they are all considered one transgression for the purposes of sin offerings. Even more radically, the following passage in the Tosefta rules that if one had sex with his sister, and with his aunt from his mother’s side, and with his aunt from his father’s side, and with his sister-in-law, and with his uncle’s wife, and with a menstruating woman in one bout of mental eclipse—he is only liable for one sin offering.<sup>58</sup> This view is guided by the assumption that similar transgressions are all clustered together in one’s memory as a single *type* of transgression. One did not eat all those items in one mental eclipse because one was unaware of each prohibition pertaining to each piece of meat separately, but because one was unaware of the array of prohibitions pertaining to sacrificial substances in general. Thus, when the subject realizes his transgression, he does not think, “I accidentally ate suet *and* disqualified meat *and* remaining meat *and* impure meat” but rather “I accidentally ate all kinds of forbidden sacrificial things,” and likewise, in the case of sexual prohibitions, “I had sex with many women I should not have had sex with.” Both what is lost and what is later recalled are not the specific offenses but the overall error, and therefore one is liable only for the overall error.

Between these two extremes stands a position, expressed most prominently in tractate Karetot of the Mishnah, according to which the number of sin offerings one owes is determined by the number of clauses in the law that one can be said to have transgressed.<sup>59</sup> This is the most formalistic of the positions, which views transgression as the breaking of a *distinct* injunction, and therefore requires correspondence between the exact number of injunctions transgressed and the number of sin offerings owed. According to this view, if one ate multiple pieces of suet during a single mental eclipse, he is only liable to bring one sin offering, but if he ate “suet and blood and remaining sacrificial meat and disqualified sacrificial meat” during a single mental eclipse, he is liable to bring four sin offerings, since he broke four separate laws.<sup>60</sup> Similarly, if during a mental eclipse one had sex with his married daughter while she was menstruating, he is liable to bring a sin offering for each law he broke (incest, adultery, and sex during menstruation), even though there was only a single sexual act with a single woman.<sup>61</sup> This position is highly legalistic, and it could be argued that it divulges general disinterest in the offender’s state of mind (what information was omitted, what was the experience of transgression, and what was recalled) and instead a juridical interest in devising

58. T. Karetot 2.11 (ed. Zuckerman 564). This is a standardized list of prohibited sexual unions, which appears also in M. Kettubot 3.1, M. Makkot 3.1, and M. Karetot 1.1.

59. See also Zohar, “Sin Offering,” 100–124. Zohar associates this position primarily with R. Akiva and his disciples, but I, again, am not sure that there is sufficient evidence to make such determinations.

60. M. Karetot 3.2.

61. I somewhat simplified M. Karetot 3.5 as basis for this example.

an indictment—namely, in determining as many charges as possible that may be brought up against an offender.<sup>62</sup>

Their different ways of counting transgressive acts vis-à-vis sin offerings notwithstanding, it is notable that none of these three approaches seems to register any difference between transgression caused by forgetfulness (whether of facts or of laws) and transgression caused by absence of knowledge to begin with. Whereas in the case of polluting the temple and the sancta the rabbis stressed that only pollution caused by forgetfulness fits the definition of inadvertent transgression, in other halakhic contexts the distinction between forgetfulness and initial ignorance does not seem to be material. On the face of it, this is perfectly understandable: since the overall meaning of erroneous transgression is transgression performed without the offender realizing it, it should not matter whether one forgot the relevant facts/law or never knew them. One set of texts to which I now turn, however, reveals that at least for some rabbis the distinction between forgetfulness and initial ignorance was significant. The debate on this topic can help illuminate additional facets of the rabbinic discourse on the place of memory failures in the halakhic world.

#### FORGETFULNESS, IGNORANCE, AND BREAKING BOUNDARIES

I now return to the “great rule” passage in tractate Shabbat of the Mishnah (M. Shabbat 7.1), which presents the principle that one’s obligation to bring a sin offering is determined by the content of one’s mental eclipse: if one forgot the essence of the prohibition, one is liable to bring only one sin offering, whereas if one forgot specific components of the prohibition, one is liable for each component. Here is the passage again:

[A] If one forgot the essence of the Sabbath and performed many labors on many Sabbaths—he is only liable [for] one sin offering.

[B] If one knew the essence of the Sabbath [but did not know that a particular day was the Sabbath], and he performed many labors on many Sabbaths—he is liable [for one sin offering] for each and every Sabbath [that he violated].

[C] If one knew that it is the Sabbath and performed many labors on many Sabbaths—he is liable for each and every prototype (*av*) of labor. But if one performed many labors that are like a single labor, he is only liable for one sin offering.

A very similar passage appears in the Sifra, a Tannaitic Midrash on the book of Leviticus closely associated with the school of R. Akiva. While the overall principles and organization of the text are mostly identical, the Sifra’s version differs from the Mishnah’s version in several important details, in boldface below:

62. See also Zohar, “Sin Offering,” 106–10.

[A] **If one did not know** the essence of the Sabbath and performed many labors on many Sabbaths, even though he performed [different] prototypes of labors—he is only liable for one sin offering **all his life**.

[B] If one knew the essence of the Sabbath, **and he erred and said, “This is not the Sabbath,” “This is not the Sabbath,”**<sup>63</sup> and he performed many labors on many Sabbaths—he is liable for one [sin offering] for each and every Sabbath [that he violated].

[C] If one knew that it is the Sabbath, **and he erred and said, “This is not a [forbidden] labor,” “This is not a [forbidden] labor,”** and he performed many labors on many Sabbaths—if he performed [different] prototypes of labors, he is liable for each and every labor, and if he performed [different] labors that are like a single labor, he is liable for each and every concealment.<sup>64</sup>

Leaving aside the Sifra’s emphasis on the distinction between “prototypes” of labors (*avot melakhot*) and labors of the same prototype, which need not concern us here, the most glaring difference between the Sifra and the Mishnah is the phrasing of case A. Whereas the Mishnah speaks of one who *forgot* the essence of the Sabbath, the Sifra speaks of one who *did not know* the essence of the Sabbath. “Forgetting” and “not knowing” are often interchangeable in rabbinic texts, and as we saw in the first chapter, in many cases the only way to interpret the phrase “does not know” is in the sense of “does not remember.” Here, however, the different phrasing of the Mishnah and the Sifra seems to be significant, and to point to differing rabbinic views on one key question: Who is required to provide only a single sin offering for multiple transgressions, one who knew the law and forgot it, or one who never knew the law to begin with?<sup>65</sup>

A passage in the Tosefta provides clear indication of a divergence of views on this question. This passage, commenting on the Mishnah’s “great rule” passage, presents the curious case of “a proselyte who converted among the Gentiles” specifically to denote a person who did not forget the “essence of the Sabbath” but rather never knew it—that is, a person who never received proper Jewish education.<sup>66</sup> Whether or not such a person is liable for violating the Sabbath is a matter of controversy:

63. In MS Oxford (Neubauer 151) and in MS Parma: “If one knew the essence of the Sabbath, and he erred and did not know when the Sabbath was.”

64. Sifra Hovah 1.1.7 (ed. Finkelstein 125).

65. The Palestinian Talmud (PT Shabbat 7.1, 9a) acknowledges the existence of two versions of this passage: “We have recited ‘if one forgot the essence of the Sabbath,’ in the house of Rabbi they recite ‘if one did not know the essence of the Sabbath.’” Epstein maintained that these were two competing versions of the Mishnah representing two conflicting opinions, whereas Goldberg suggested that the “house of Rabbi” merely offered an explanation of the Mishnah, not an alternative version. See Epstein, *Introduction to the Text of the Mishnah*, 53–54; Goldberg, *Commentary on Tractate Shabbat*, 128.

66. In the Palestinian Talmud (PT Shabbat 7.1, 9a) this category is presented through the case of “a child who was taken captive among the Gentiles.” The Babylonian Talmud (BT Shabbat 68a) mentions both a child and a proselyte.

If a proselyte who converted among the Gentiles performed labor on the Sabbath—R. Akiva renders him liable [for a sin offering], but Monobaz exempts him.

[Monobaz said,] “Logic suggests that he would be exempt! If one who acts inadvertently is liable for a sin offering, and one who acts intentionally is liable for extirpation, in the same way that one who acts intentionally is only liable when he comes to know [the law], one who acts inadvertently should also not be liable until he comes to know [the law].”

R. Akiva said to him, “I shall add to your reasoning. In the same way that one who acts intentionally is not liable until he comes to know [the law] while he is acting, one who acts inadvertently should also not be liable until he comes to know [the law] while he is acting.”

[Monobaz] said to him, “All the more so, what you have added!”

[R. Akiva said,] “If he came to know [the law] while he was acting, he was not acting inadvertently but intentionally.”<sup>67</sup>

At first glance, this debate looks like an ordinary scholastic disagreement between two sages, in which each side argues his opinion. The question at hand is whether a person who is halakhically Jewish but was never taught the law or lived among Jews is liable for violating the Sabbath. R. Akiva maintains that he is, whereas Monobaz maintains that he is not. Monobaz’s reasoning is not without merit: he says that if both an inadvertent transgression and an intentional transgression impose some kind of penalty on the transgressor, this penalty indicates that in both cases the transgressor is responsible for his actions, and responsibility necessarily implies prior knowledge.<sup>68</sup> Accordingly, one who had absolutely no knowledge of the law cannot be held responsible and should be exempt from any penalty. While R. Akiva does not explain his own reason for rejecting this view, it can be deduced from the exchange that for him “inadvertent transgression” categorically covers any and every transgression committed unintentionally, with no exceptions. Upon a closer look, however, it becomes evident that this is not a real debate between two sages of equal standing. Monobaz is not a rabbi: he is a known literary character in Jewish lore, the king of Adiabene who converted to Judaism with his mother, Queen

67. T. Shabbat 8.5 (ed. Lieberman 30–31); cf. BT Shabbat 68b. In the Babylonian Talmud’s version it is made clear who says what: Monobaz says, “All the more so what you have added,” and R. Akiva says in response, “According to you, one like that is not called one who acts inadvertently, but one who acts intentionally.” The Babylonian version reflects, in my view, a correct understanding of the exchange in the Tosefta, and I translated the Tosefta accordingly. Lieberman proposed that the last line (“If he came to know [the law] while he was acting, he was not acting inadvertently but intentionally”) should not be understood as spoken by R. Akiva but rather as spoken by Monobaz himself, but I find his reading rather unconvincing, as I will explain in note 70 below. See Lieberman, *Tosefta ki-pshutah Mo’ed*, 3:109–10.

68. See the analysis in Edrei, “If Any One Shall Sin,” 54–59.

Helene, and made sizable donations to the Jerusalem temple.<sup>69</sup> He is put forth as R. Akiva's interlocutor on this topic distinctly because he embodies the category of "a proselyte who converted among the Gentiles" and not for any other reason. Since the readers are assumed to know this fact about Monobaz, the opinion voiced by him in this context is immediately somewhat discredited: Monobaz appears as someone who wants to exempt uninformed converts from penalty mainly because he himself falls (or used to fall) under this category. Moreover, R. Akiva's underhanded way of defeating Monobaz in this argument is set up to make Monobaz seem rather unsophisticated. R. Akiva does not contest Monobaz's reasoning directly, but instead says, "I agree with you, and I'll go even further than you," and takes Monobaz's reasoning to an absurd level. When Monobaz enthusiastically agrees with R. Akiva's comment, R. Akiva exposes his own comment as ludicrous, and thereby exposes Monobaz as dim-witted.<sup>70</sup>

The authors of this Tosefta passage thus stacked the deck to make it seem like the position attributed to R. Akiva, according to which even individuals who were completely ignorant of the law are liable for a sin offering, is the only legitimate view on the matter. The very same view evidently informs the Sifra's version of the Sabbath rule. The Sifra's emphasis that "If one did not know the essence of the Sabbath . . . he is only liable for one sin offering *all his life*" makes it clear that this clause is referring to a person who had no knowledge of the Sabbath law at all rather than to someone who had this knowledge and forgot it. What is envisioned here is a person who transitions from a state of lack of knowledge to a state of knowledge once and for all, and it is this transition that warrants the single sin

69. On the historical figure of Monobaz and the legends associated with him, see Tal Ilan and Vered Noam, in collaboration with Meir Ben Shahr, Daphne Baratz, and Yael Fisch, *Josephus and the Rabbis* (in Hebrew) (Jerusalem: Yad Ben Zvi Press, 2017), 508–20. There is only one other place in Tannaitic literature in which Monobaz participates in a halakhic exchange, again with R. Akiva (Sifra Metzora 1.4, ed. Weiss 70a), and the exchange is very similar to the one in T. Shabbat 8.5, which suggests that one of the two passages was modeled after the other (I tend to think that the Sifra passage was modeled after the Tosefta passage).

70. As mentioned in note 67 above, I am following the Babylonian Talmud's rendition in my reading of the exchange. Lieberman, however, interpreted the last two lines of the passage as spoken by Monobaz; see Lieberman, *Tosefta ki-pshutah Mo'ed*, 3:109–10. He explains that Monobaz said, "All the more so, what you have added," to express respect for R. Akiva, but then continued to correct him gently and said that his "addition" does not stand, since one who knew that he was violating a prohibition at the time of action cannot be said to be acting unintentionally. In other words, Monobaz first formally accepts R. Akiva's comment and then entirely rejects it. This reading makes little sense: while there are certainly settings in life in which one has to hide the fact that one is disagreeing with someone else, rabbinic debates are not among those settings, so a polite acceptance- and then rejection-maneuver is very odd in a rabbinic context. Moreover, it is clear that R. Akiva's "I shall add to your reasoning" comment is meant to trick Monobaz and does not reflect R. Akiva's actual opinion, since we are told at the outset that R. Akiva does *not* exempt people who did not have prior knowledge of the offense from a sin offering. There is no reason for R. Akiva to make this comment except to use it, subsequently, to expose Monobaz's weakness.

offering this person will owe. “One sin offering all his life” cannot pertain to a case of forgetting, which in theory could happen multiple times throughout one’s life. It is perhaps not surprising to find this alignment between the opinion attributed to R. Akiva in the Tosefta and the ruling presented anonymously in the Sifra, considering the Sifra’s strong connection to R. Akiva.

The Sifra’s version presents three possible scenarios of liability for inadvertently violating the Sabbath: not knowing the Sabbath’s “essence” at all, not knowing that a particular day was the Sabbath, and not knowing specific labor prohibitions. It conspicuously excludes altogether the scenario of forgetting the essence of the Sabbath, which commences the Mishnah’s version. How are we to understand this exclusion? One possibility is to assume that the case of one who knew the essence of the Sabbath but then forgot it is subsumed under one of the other cases mentioned in the passage: either it is equated with the case of one who never knew about the Sabbath, or it is equated with the case of one who did not know that a particular day was the Sabbath.<sup>71</sup> But neither of those readings is particularly compelling. As I noted, the emphasis that one who did not know the essence of the Sabbath owes “one sin offering *all his life*” suggests that occasional forgetfulness does not fall under this category. Likewise, the Sifra’s description of the second case as due to localized factual confusion (“*This is not the Sabbath*”) makes it very different from an omission of an entire legal principle that can last many weeks or months. A more plausible explanation is that the case of one who forgot the essence of the Sabbath does not appear in the Sifra passage at all, because whoever formulated this passage did not think that such a case was possible.

This explanation may seem strange at first. All of a sudden, after we have seen all kinds of remarkable rabbinic scenarios of unlikely forgetfulness, we are to accept that someone thought that a scenario of “forgetting the essence of the Sabbath” is too far-fetched to be considered? But when we look more closely at the Sifra passage, we see that this passage steps away from the possibility of forgetting altogether and replaces the prospect of forgetting with the prospect of *error*. Note that in case C of the Sifra, the subject does not forget that a certain labor is prohibited, or performs a labor automatically without thinking about it, but rather, he “erred and said, ‘This is not a [forbidden] labor.’” The subject imagined here is emphatically one who has faulty *knowledge* of halakhic laws, not one who had correct knowledge and forgot it. Similarly, by putting the words “This is not the Sabbath” in the subject’s mouth in case B, the Sifra indicates that this subject erred in keeping track of the days of the week and therefore mistook the wrong day for the Sabbath, not that he inexplicably forgot which day of the week it was or acted on autopilot.<sup>72</sup> I suggest that the anonymous authors of the Sifra operated within an imagined world that consisted exclusively of Torah learners, and

71. Cf. BT Shabbat 68a–b.

72. See BT Shabbat 69b, which suggests a scenario in which one loses track of the Sabbath because one is “on the road or in the desert.”

therefore perceived of errors in practice as attributable strictly to errors in learning (or to absence of learning). To them, the possibility of basic halakhic knowledge or facts unaccountably and suddenly fleeting from the mind, which we saw so prominently in the Mishnah, was incomprehensible.

The same tendency to explain mental omissions in terms of errors in learning can be traced in the Tosefta passage that immediately follows the one that lays out the debate of R. Akiva and Monobaz:

If one forgot the Torah and committed multiple transgressions, he is liable for each one of them. How so? If he knew that there was [a prohibition regarding] suet, but he said, "This is not the suet we are liable for," or if he knew that there was [a prohibition regarding] blood, but he said, "This not the blood we are liable for"—he is liable for each [transgression separately].<sup>73</sup>

In this Tosefta passage, the possibility of "forgetting the Torah" wholesale, or even just forgetting "the essence" of a single injunction, is downright dismissed.<sup>74</sup> The only way in which one can "forget the Torah," according to this passage, is by erring in very specific details of specific laws—for example, knowing fully that one is not allowed to eat suet but not thinking that the type of substance in front of him falls under the prohibition. In stating that even one who forgets "the Torah" still remembers elemental and basic laws like the suet and blood prohibitions, the Tosefta seems to respond to the Mishnah's ruling on "one who forgot the essence of the Sabbath" by saying, implicitly, that one does *not* forget the essence of the Sabbath. It is worth noting that the tendency to explain forgetfulness in terms of errors in learning becomes especially prominent in the two Talmuds, and it stands to reason that the more professionalized and guild-like rabbinic circles became, the more their discourse on forgetfulness skewed toward faulty learning and away from inexplicable memory omissions.

But let us now return to the controversy of R. Akiva and Monobaz. Are we to say that if the Sifra's version follows R. Akiva's position, the Mishnah's version, which specifically uses "forgot" rather than "did not know," follows the position attributed to Monobaz? Since the case of not knowing the essence of the Sabbath in the first place is not mentioned at all in the Mishnah, this could indeed suggest, by way of silence, that in a case like this there is no liability at all and no sin offering is owed—as the fictitious Monobaz contends in the Tosefta.<sup>75</sup> Such a reading

73. T. Shabbat 8.6 (ed. Lieberman 31); cf. T. Karetot 2.9 (ed. Zuckerman 564).

74. Lieberman finds this passage perplexing, since it seems to imply that if one forgot not the specifics, but the essence of the laws, one would be exempt altogether—which goes against every rabbinic ruling we know on the matter. See Lieberman, *Tosefta ki-pshutah Mo'ed*, 3:110. I propose that the Tosefta passage does not imply that there is a different ruling for forgetting "the essence" of laws, but rather dismisses the possibility that the essence of laws can be forgotten in the first place.

75. This is the reading of the Mishnah espoused by R. Yohanan and Resh Lakish in BT Shabbat 68b, and possibly also by R. Eleazar in PT Shabbat 7.1, 9a (although the anonymous Palestinian Talmud later dismisses this possibility).



would also be in line with the anonymous Mishnah's position in tractate Shevu'ot, according to which one owes a sin offering for inadvertent pollution of the temple only in a case of forgetfulness, and not in a case of initial absence of knowledge. Here, however, I think the text is more ambiguous. The fact that the Mishnah does not explicitly mention one who never knew the law in the first place does not necessarily mean that it works with the assumption that such a person is not liable at all. Rather, it is possible that the Mishnah clusters forgetting and not knowing under the same rubric and eliminates the difference between them. The latter reading is proposed in the Babylonian Talmud, which states that "a child who was captured among the Gentiles and a proselyte who converted among the Gentiles is comparable to one who knew and then forgot, and he is liable."<sup>76</sup> According to this reading, not knowing is a particular iteration of forgetting.

I propose that the Talmudic explanation, according to which one who never knew of the Sabbath prohibition is comparable to the one who knew it and forgot it, is not only a way of fitting what looks like a missing category into a specific Mishnah passage, but also a manifestation of a broader ideological stance. This explanation rests on a view that a Jew is born (or reborn, in the case of proselytes) as a fully committed legal subject.<sup>77</sup> To be a Jew is by definition to be informed of the laws that constitute the covenant between God and Israel, whether one is actively aware of this or not.<sup>78</sup> Thus, if a Jew inadvertently violated the Sabbath he is necessarily construed as one who *forgot* the Sabbath, not as one who did not know about it, because on some metaphysical level he is thought to know of the Sabbath just by virtue of being a Jew. There is, admittedly, no evidence that the Mishnah itself was informed by such a view. But particularly in light of the phenomenon we observed in the previous chapter, of the Mishnah's tendency to attribute any and every failure in halakhic practice to forgetting, even when it is small children who present this failure, I find it possible that the Mishnah reflects here a categorical view of all Jewish subjects as subjects who initially know the law.

76. BT Shabbat 68b. In the Babylonian Talmud this reading of the Mishnah is attributed to Rav and Shmuel. The Palestinian Talmud similarly suggests that Rav read "our Mishnah" (which uses the phrasing "forgot" rather than "did not know") as pertaining to a child who was captured among Gentiles, that is, to one who never knew of the Sabbath (PT Shabbat 7.1, 9a).

77. As Yair Furstenberg argued, the rabbis viewed "citizenship" in the Jewish community, whether by birth or by conversion, as defined by subordination to the Torah's laws. See Yair Furstenberg, "The Status of the Samaritans in Early Rabbinic Law and the Roman Concept of Citizenship" (in Hebrew), *Zion* 82, nos. 2–3 (2017): 157–92. On conversion to Judaism as rebirth, see Moshe Lavee, *The Rabbinic Conversion of Judaism: The Unique Perspective of the Bavli on Conversion and the Construction of Jewish Identity* (Leiden: Brill, 2018), 147–80.

78. This idea is expressed repeatedly in the Babylonian Talmud through the notion that each Jew is "sworn since Sinai" to follow the Torah (e.g., BT Yoma 73b, BT Nedarim 8a, BT Nazir 4a, BT Makkot 22a, BT Shevu'ot 21b–23b). Whether or not proselytes are considered to have been present at Sinai or not (see BT Shabbat 146a), since the receiving of the Torah in Sinai is itself portrayed as a conversion ritual, conversion is analogously seen to entail a Sinai-like acceptance of the Torah. See also Lavee, *The Rabbinic Conversion*, 68–79.

Whether the Mishnah's Sabbath rule should be read as exempting subjects who are not aware of the law or as equating lack of knowledge with forgetfulness, it is evident that forgetfulness carries significant rhetorical weight in this Mishnaic passage. Its significance is first and foremost in positing—unlike the Sifra and the Tosefta—that one *can*, in fact, forget the essence of the Sabbath. Human memory is so unpredictable and so unreliable that even something as fundamental and elementary as the Sabbath can be inexplicably forgotten. But this Mishnaic passage also tacitly makes the point that failure to observe the Sabbath altogether, even for an extended period of time, can be readily explained in terms of forgetfulness and not in terms of intentional violation of the law or of blatant carelessness. Of course, the rabbis still acknowledge, in other places, the possibility that one would violate the Sabbath purposefully, but in this particular passage they create a universe in which failure to observe the Sabbath is attributable to forgetfulness alone, even when such failure is all-encompassing and consistent. Through the framing of forgetfulness, even the violation of the Sabbath—the most iconic breaching of boundaries in Jewish law—becomes a manifestation of inherent human fallibility rather than of abandonment of the commandments. The presumed uncontrollability of the mind and of memory serves the rabbis to claim that all Jewish subjects, whether they know it or not, or act like it or not, are willing and well-intentioned subjects and thus fall under their jurisdiction. At the same time, it also allows the rabbis themselves, in the safety of halakhic discourse, to conceptually experiment with all kinds of rule-breaking behavior. The rabbis, I will propose by way of conclusion, utilize the category of *he'elem* not only to embrace transgressors, but also, perhaps, to live vicariously through them.

### *Taboo Breaking and Games of Memory*

Throughout this chapter we have seen discussions of various transgressions and prohibited actions, all used as examples to demonstrate juridical principles regarding the relations between forgetfulness, memory, and legal liability. These examples pertained primarily to pollution or misuse of sacred items, labor prohibitions on Sabbath days, and forbidden sexual unions. These three topics are all discussed in rabbinic texts with similar scholastic distance and dispassion, and to some extent they are all interchangeable with one another: a rabbi can use a case of having sex with five menstruating women to challenge a ruling on a case of eating five pieces of sacrificial meat, as all cases are comparable and are expected, in theory, to operate according to the same rules.<sup>79</sup> This mode of discourse is par for the course in rabbinic literature, both Tannaitic and Amoraic. Readers of rabbinic texts, traditional and academic alike, are thus trained not to see rabbinic debates on blatant sexual topics, from sex with three-year-old girls to sex with multiple relatives, as “really” sexual, but only as mechanical treatments of abstract halakhic principles that happen to be applied to sex-related topics. I am also trained this way, and in

79. See M. Karetot 3.10.

the course of this chapter I, too, focused on the principles that can be extracted from rabbinic discussions of transgressions and not on the nature of the cases depicted in them. I did not stop to ask, “Wait, *how* is someone not sure whether he had intercourse with his wife or with his sister? And how come the wife or the sister has nothing to say about it?” but focused only on the metalegal implications of the scenario. I do think, however, that it is important to de-trivialize this mode of rabbinic discourse, and to consider both its significance and its literary effects.

To be clear, my point is not to complain that this mode of discourse is patriarchal and offensive. That rabbinic literature is patriarchal (and often misogynistic) is a given; and to find it offensive one must expect the rabbis to conform to contemporary sensibilities and sensitivities, which I find ludicrous. Rather, my point is that the rabbis’ choice not only to discuss the breaking of sexual taboos in completely banal terms, but also to create exaggerated scenarios of taboo violation that bundle together multiple prohibited sexual unions, is exactly that—a choice. It would be woefully naïve to assume that had the rabbis not debated the question of how many sin offerings a person owes if he had sex with multiple relatives in one mental eclipse, future generations would be at a terrible loss when adjudicating such a case, or that without such cases the juridical questions at hand could not fully unfold. I would like to propose that instead of reading rabbinic scenarios of egregious taboo violations with disregard for their content and with interest only in their scholastic value, we also consider what these scenarios do for the rabbis distinctly through their outrageous and hyperbolic nature.

To demonstrate the extent to which the rabbis integrate salacious elements into their halakhic discourse on *he’elem*, even when such elements serve no scholastic purpose, I propose that we look closely at one Mishnaic passage. This passage is the first of four passages in which R. Akiva reports on exchanges that he had with his masters:<sup>80</sup>

Said R. Akiva, “I asked Rabban Gamaliel and R. Yehoshua in the meat market of Emmaus when they went to buy an animal for the wedding feast of Rabban Gamaliel’s son,<sup>81</sup> ‘One who has intercourse with his sister and with his father’s sister and with his mother’s sister in one concealment, what [is the rule]? Is he liable for one [sin offering] for all of them, or for [a separate offering for] each one?’ and they told me, ‘We have not heard [from our masters], but we did hear that one who has intercourse with his five menstruating wives in one concealment is liable [for a sin offering] for each one of them, and we consider it a case that can be deduced *a fortiori*.’”<sup>82</sup>

80. On Mishnaic accounts of R. Akiva’s disagreements with his masters, see Menahem Kahana, “On the Fashioning and Aims of the Mishnaic Controversy” (in Hebrew), *Tarbitz* 73, no. 1 (2004): 51–81.

81. “Rabban Gamaliel’s son” is mentioned only in the printed edition, following the Babylonian Talmud. In the Mishnah’s manuscripts, as well as in most manuscripts of the Sifra, the text only says “his son,” without specifying whose son it was.

82. M. Karetot 3.7; cf. Sifra Hovah 1.1.8 (ed. Finkelstein 125).

Let us remove for a moment our scholastic spectacles, through which all rabbinic scenarios are read strictly as vehicles to discuss abstract principles, and note what is happening here: R. Akiva and R. Yehoshua and Rabban Gamaliel are all in the meat market together, shopping in preparation for the wedding feast of the son of one of them. It is in this particular setting that R. Akiva finds it necessary to ask his masters about the legal repercussions of a triple incest—a case in which one person has sex with his sister, with his paternal aunt, and with his maternal aunt.<sup>83</sup> His masters, in return, tell him that they have not heard a teaching about the particular case he is asking about, but they can offer a related teaching about sex with five menstruating women. In other words, instead of answering R. Akiva's question about a case of over-the-top taboo breaking, they provide their own example of another over-the-top taboo breaking. But beyond the fact that the cases themselves are excessive in nature (Why sex with five menstruating women? Why not just two, to make the same point?), and that their juxtaposition enhances the sense of excess, there is an additional element of excess in providing the circumstances in which the exchange took place. Why did the Mishnah find it necessary to mention that these rabbis were in the process of preparing for a wedding feast, when this detail contributes nothing to the halakhic discussion at hand?<sup>84</sup> Put differently, why did the Mishnah want us to know that it was specifically upon a young man's first sexual experience that his father's friends discussed various kinds of illicit sex, inside and outside the family? As Menahem Kahana understatedly commented, these questions are "slightly awkward in the context of 'his son's wedding feast.'"<sup>85</sup>

I would argue that this awkwardness, and the overall crassness and excessiveness of the text, should not be dismissed as byproducts of the scholastic discourse, because they serve no purpose in the scholastic discourse. Rather, these elements are manufactured and exaggerated on purpose, and they have a strong playful element to them. Allow me to demonstrate this playfulness with one other set of

83. In the Babylonian Talmud (BT Makkot 14a, BT Karetot 15a) R. Akiva's question was interpreted as pertaining to one woman who is all three (she is one's sister *and* one's father's sister *and* one's mother's sister), but this does not seem to be the Mishnah's intention. See Albeck, *Six Orders: Qodashim*, 5:416–17.

84. Here it should be noted that the two following passages (M. Karetot 3.8, 3.9) present exchanges between R. Akiva and his two masters, presumably in the same setting, that pertain more directly to meat-related issues, and it could be argued that the meat market somehow gave rise to these questions. Kahana suggested that in the original version of this collection of exchanges R. Akiva may have first asked his more pertinent meat-related questions, including a question about "one who slaughtered five animals for offering outside the temple in one concealment," and the latter question gave rise to a question about the case of multiple incestuous relations, but the exchanges were edited in a different order in the Mishnah. See Kahana, "The Controversy in the Mishnah," 74–75. Be that as it may, it is not the Mishnah's habit to provide the circumstances in which halakhic exchanges took place, and the awkwardness of the connection between the incest-related question and the impending wedding feast remains (and is accentuated) in the Mishnah's version, as Kahana himself notes.

85. Kahana, "The Controversy in the Mishnah," 75.

passages, which deal with the possibility that one will owe multiple sin offerings for a single offense:

There is a case of one who eats one [thing] and is liable for four sin offerings on account of it: an impure person who ate suet, which has remained overnight from the sancta, and [he ate it] on the Day of Atonement. R. Meir says, "If it was the Sabbath and he carried it out in his mouth, he is liable [for a fifth sin offering]." They told him, "It is not the same name [of transgression]." <sup>86</sup>

There is a case in which one has intercourse a single time and is liable for six sin offerings on account of it: if one has intercourse with his daughter, and he is liable on account of [the fact that she is] his daughter, and his sister, and his brother's wife, and his father's brother's wife, and a married woman, and a menstruant.

Or, if one has intercourse with his daughter's daughter, and he is liable on account of [the fact that she is] his daughter's daughter, and his wife's sister, and his brother's wife, and his father's brother wife, and a married woman, and a menstruant.

R. Yose says, "If the old man (i.e., the father of the aforementioned person) came by and married her, [the son] is liable [for a seventh sin offering], on account of [the fact that she is] his father's wife. And the same is the case if one has intercourse with his wife's daughter [who is also all of the above], or with the daughter of his wife's daughter [ditto]." <sup>87</sup>

Both passages present a challenge: find a single transgressive action that violates as many prohibitions as possible. The first example is of a person who innocently eats a single piece of sacrificial meat and thereby breaks four different laws: one because of his own bodily status (an impure person cannot eat sacrificial meat), one because of the substance of the meat (suet, which has to be burned on the altar and cannot be eaten), one because of the status of the meat (remained overnight), and one because of the timing of the meal (the Day of Atonement). R. Meir, who does not understand the rules of the game, adds that if he carried the meat out on the Sabbath, we may add a fifth violation to these four, and his frustrated friends explain to him that the whole point of the game was to find prohibitions that all fall under the category ("name") of eating, not to add new categories. In the second example, the rabbis try to figure out how many sexual taboos one can break by having intercourse with only one woman, and they create a panoply of incestual unions that would confound even Oedipus: a person's daughter who is also his sister and also his brother's wife and also his aunt and is also menstruating, or a person's granddaughter who is also his wife's sister and also his brother's wife and also his aunt and, to put it over the top, also his stepmother (and of course, also menstruating). The next passage, which I did not quote here, continues on to

86. M. Karetot 3.4.

87. M. Karetot 3.5.

a woman who is a person's mother-in-law but also his daughter-in-law and also his sister-in-law, and the list continues. I will not attempt to untangle all those scenarios and explain how they could happen (Mishnah commentators have done that for us), as I do not think this is important. What is important is that both passages present intellectual games that are completely gratuitous, and that serve no apparent scholarly purpose. So why are they there?

I would like to propose two answers to this question, one practical and one, for lack of a better term, psychological. The practical reason is that grotesque, salacious, and exaggerated images and ideas are easily committed to memory. As I will discuss in greater detail in chapter 5, rabbinic materials were studied and preserved predominantly orally, and the ability to retain large amounts of text and information in memory was crucial for rabbinic disciples. In this regard, the rabbis and their students were not different from other members of educated elites in antiquity, who memorized and learned texts by heart even when they consulted or ultimately produced written documents.<sup>88</sup> Constructing images that are purposefully excessive and bizarre was a known memorization technique, as attested by the author of the influential treatise *Rhetorica ad Herennium* (probably composed in the first century BCE and long mistakenly attributed to Cicero): "We ought, then, to set up images of a kind that can adhere longest in memory. And we shall do so if we establish similitudes as striking as possible . . . or if we somehow disfigure them . . . or by assigning certain comic effects to our images."<sup>89</sup> The rabbis' use of particularly egregious and wild scenarios of taboo-breaking behavior can be readily understood, then, as a way to generate unforgettable images and thereby to assist with memorization.<sup>90</sup>

But on another level, I believe we can acknowledge that wherever there is a taboo, there is also curiosity, and wherever there is a prohibition, there is an allure to breaking it. I do not think it is incidental that rabbinic discussions of *he'elem*, a condition in which individuals are temporarily not responsible for their actions, give rise to scenarios of extreme, overstated, all-you-can-eat transgressions. The very notion that under a "mental eclipse" one can transgress the most fundamental prohibitions—sexual and others—without knowing it turns the concept of "concealment" into a scary but fascinating fantasyland of sorts, in which everything is possible and no offense is beyond the ken of imagination. Episodes of forgetfulness

88. See Jocelyn Penny Small, *Wax Tablets of the Mind: Cognitive Studies of Memory and Literacy in Classical Antiquity* (London: Routledge, 1997).

89. *Rhetorica ad Herennium* III.22, trans. Harry Kaplan, Loeb Classical Library 403 (Cambridge, MA: Harvard University Press, 1954), 221.

90. More generally, engagement with far-fetched and somewhat scandalous cases, often highly sexual, was characteristic of rhetorical training in antiquity. As Richard Hidary noted, in this respect there are some correspondences between rabbinic discussions and the *controvesiae* of Hellenistic and Roman rhetorical schools. See Richard Hidary, *Rabbis and Classical Rhetoric: Sophistic Education and Oratory in the Talmud and Midrash* (New York: Cambridge University Press, 2017), 150–70.

thus function in rabbinic texts somewhat like dreams: they are cognitive territories inherently defined by lack of control, and thus they are safe spaces through which the rabbis can explore uninhibited what loss of control—which they could never afford in their ordinary life—actually makes possible.<sup>91</sup> Forgetful subjects, for the rabbis, are not only errant souls who can be rehabilitated through correct halakhic means, but also proxies through which the rabbis allow themselves, however briefly, to imagine all boundaries broken and all prohibitions defied. In the next chapter we will continue to see, albeit in much more tame and benign ways, how forgetfulness serves the rabbis to question, challenge, and sometimes break the rules of the halakhic game.

91. On the rabbis' approach to dreams, see Haim Weiss, *All Dreams Follow the Mouth: A Reading in the Talmudic Dream Tractate* (in Hebrew) (Beer Sheva: Ben Gurion University Press, 2011).