Chapter Four

Plans in the Sacrificial System

Intention plays equivalent roles in the sacrificial system and in the system of purity. In both systems, a person’s intention determines the classification into which a given object falls. To be sure, the contexts in which classification matters and the types of objects requiring categorization differ in the two systems. In the rules of purity, as we have seen, the Mishnah speaks about the power of Israelite householders to define the status of objects around their homes and on their farms. Merely by formulating a plan, a householder assigns an object to a given category. In the sacrificial system, by contrast, the Mishnah discusses the role of Temple priests in determining the status of animals which they sacrifice to God. Furthermore, the Mishnah invokes different, although related, categories in the two sets of laws. In the system of purity, the sages consider whether a given object falls under the rubric of useful or useless objects, and whether an edible substance belongs to the category of food or waste. In the laws of the sacrificial system, on the other hand, the sages take an interest in whether an animal slaughtered in the Temple falls under the rubric of a sacred or profane thing.

On the surface, the sacrificial system and system of cultic purity would appear quite different. But at a deeper level, we find that one is the mirror image of the other. To begin with, the dichotomy between useful and useless things parallels the distinction between sacred and profane things. By dividing objects into the categories of useful and useless items, the Mishnah in effect distinguishes objects which belong to the domain of human beings (useful) from objects which belong to nature (useless). Similarly, by assigning things to the categories of sacred and profane, the sages separate objects which belong to God (sacred) from those which belong to human beings (profane). It turns out, moreover, that the priest and householder perform similar roles in their respective domains. Just as a householder presides over the home and ensures that household things are maintained in a state of cultic purity, the priest oversees the Temple cult and safeguards the sanctity of that place.

To return to the main point of the present inquiry, we also discover that intention serves the same function in the two systems. A householder, we recall, places an object into a given category simply by formulating an intention to use it in a particular way. Analogously, the plan a priest formulates determines the
status of an animal he is sacrificing. For example, the priest's intention to use
an animal for secular purposes has the effect of classifying the animal as a
profane thing.

Before proceeding to spell out the role of a priest's intention, we first need
to familiarize ourselves with some basic facts about the Temple cult and the
function of the priest within the cult. In the Mishnah, as in Scripture, the
Temple serves as the axis around which Israelite religious life revolves. When
Israelites wish to offer an animal to God, they must bring it to Jerusalem and
sacrifice it in the Temple. Israelites offer animals to God for a variety of
purposes. Sometimes they dedicate an animal as expiation for a sin they have
inadvertently committed (Lev. 4:27). At other times they bring sacrifices in
honor of certain festivals (Lev. chap. 23). Offerings, therefore, may fall into
various categories. Some offerings are obligatory. For example, when an
Israelite unintentionally violates the law, he or she must bring an offering to
expiate the sin. Obligatory offerings also include the sacrifices God commanded
the people to offer on special festival days, such as the festival of Passover. In
addition to the obligatory offerings, an Israelite may of his or her own volition
consecrate an animal for an offering. For example, a person may designate an
animal for a burnt-offering (Lev. 1:3-14) or for an offering of well-being (Lev.
3:1-17).

Upon bringing any of these offerings to the Temple, an Israelite householder
must turn them over to a priest, a temple functionary descended from the line of
Aaron. The priest, as the following passage from Leviticus indicates, plays the
central role in carrying out the actual sacrifice:

The Lord spoke to Moses, saying: Speak to Aaron and his
sons and to all the Israelite people and say to them: This is
what the Lord has commanded: If any man of the house of
Israel slaughters an ox or sheep or goat in the camp, or does so
outside the camp, and does not bring it to the entrance of the
Tent of Meeting to present it as an offering to the Lord, before
the Lord's Tabernacle, bloodguilt shall be imputed to that man:
he has shed blood; that man shall be cut off from among his
people. This is in order that the Israelites may bring the
sacrifices which they have been making in the open - that they
may bring them before the Lord, to the priest, at the entrance
of the Tent of Meeting, and offer them as sacrifices of well-
being to the Lord; that the priest may dash the blood against
the altar of the Lord at the entrance of the Tent of Meeting, and
turn the fat into smoke as a pleasing odor to the Lord (Lev.
17:1-6).

The Mishnah interprets this passage to mean that only a priest, and not a
mere Israelite, can perform the rite of tossing the blood on the altar (M. Zeb.
2:1). In order to sacrifice an offering to God, therefore, an Israelite householder
has no choice but to ask a priest to perform the offering on his behalf. As I will argue below, the Mishnah thus conceives of the priest as the agent of the Israelite householder. In turning over an animal consecrated for sacrifice to a priest, the Israelite householder effectively appoints the priest to act on his behalf. Consequently, all the rules that normally govern a principal and an agent also govern the relationship between priest and householder. As an agent, a priest has the power to execute a valid sacrifice only if he carries out the instructions of the householder who appointed him. Conversely, if a priest ignores the terms of the agency, his act of slaughter is invalid. I shall return to these points at a later stage in my argument. At present, we must establish how animals become consecrated for sacrifice in the first place.

The Householder's Power to Consecrate an Animal

In the mishnaic system, each Israelite householder possesses the power to consecrate his livestock. Merely by intending to offer an animal to God, an Israelite confers on it the status of a sacred thing. If an Israelite takes an unconsecrated cow and says, "This will be an offering of well-being," the cow immediately becomes holy. The following passages presuppose the householder's capacity to turn an unconsecrated animal into a holy thing:

I. A. "[If] a man said, 'The offspring of this animal will be a burnt-offering and the animal itself will be an offering of well-being,' his words are valid [i.e., the pregnant animal falls into the category of an offering of well-being and the offspring falls into the category of a burnt-offering]."

B. "[If he said], 'This [animal] will be an offering of well-being and her offspring a burnt-offering,'"

C. "[the animal falls into the category of an offering of well-being and the offspring also falls into the category of an offering of well-being," the words of Rabbi Meir."

M. Tem. 5:3

II. A. [Concerning a householder who intends to say, "This animal] will be a burnt-offering,"

B. but who [accidentally said], "an offering of well-being"

C. and [concerning an householder who intends to say, "This cow will be an offering of] well-being"

D. but [who accidentally] said, "a burnt-offering"

E. he has said nothing unless his words and heart correspond. [That is, his words have no legal effects unless he says what he intended. Hence, the animal enters neither the category of an offering of well-being nor the category of a burnt-offering]."

M. Ter. 3:8

These cases take for granted the householder's power to consecrate one of his livestock. The first case (I A-D) involves a householder who dedicates a pregnant cow and her unborn calf for two different types of offerings. Once he expresses
his intention to consecrate the pregnant cow as an offering of well-being, it automatically falls into that category. He subsequently is obligated to take that animal to the Temple and have a priest sacrifice it as an offering of well-being. The householder also has the power to consecrate an unborn animal. Here, however, the situation is more complicated, because the unborn calf is still part of its mother's body. Therefore, if the householder consecrates the mother animal first, the unborn animal automatically falls into the same category as its mother (I B-C). The second case, like the first, presupposes the householder's power to sanctify his livestock. The reason that the householder is unable to consecrate the animal in this context is because he fails to express the intention he originally formulated. By implication, however, if his words and intention correspond, the animal becomes consecrated (II A-E).

For our purposes, the cases just considered contribute one important point. Merely by formulating an intention an Israelite householder has the power to sanctify an unconsecrated animal. So here, as in the previous chapter, we discover that the thoughts and intentions of an Israelite householder define the character of objects around him. Holiness is not inherent in any of his livestock. Any animal can potentially serve as either food for his family (profane) or as a holy offering to God (sacred). It is the householder who determines into which of these categories a given animal will fall. If he plans to dedicate it to God, it automatically enters the category of sacred things, whereas if he intends to use it for food, it remains in an unconsecrated state. Sanctity, therefore, is a status which an Israelite confers on an object by intending to use it for holy purposes.

This capacity is part of the householder's overall power to define the character of objects around his home. We have already seen how a householder can determine whether a given object absorbs impurity. The ability to consecrate an animal is equally impressive. By sanctifying an animal, a householder changes its very character. Once it assumes the properties of a holy thing, it must be used only for sacred purposes. If the householder subsequently puts it to profane use, he incurs divine wrath.

The idea that an Israelite can consecrate an animal is scriptural in origin. According to Leviticus, if an Israelite takes a vow to dedicate an animal to the Temple, that animal is consecrated and hence cannot be put to profane use (Lev. 27:9). This biblical rule anticipates the major elements of the Mishnah's theory. Vowing to donate an animal to the Temple is similar to formulating an intention of sacrificing an animal. There is, however, one significant difference between the biblical and mishnaic conceptions. In Scripture, an Israelite's vow merely determines that the animal in question is holy. But in the Mishnah, an Israelite not only sanctifies an animal but defines the precise category of offering for which that animal will be used. Moreover, if that animal is sacrificed for any other type of offering, the sacrificial rite is invalidated. For instance, if an Israelite formulates an intention to offer the animal as a burnt-offering, the animal falls into the category of a burnt-offering and cannot be used for another
type of offering. The Mishnah, therefore, goes beyond Scripture by claiming that an Israelite's intention not only consecrates an animal but classifies it as a particular type of sacred offering.

I would suggest once again that this mishnaic innovation is shaped by the Yahwist story of creation. Conceptually, there is a remarkable similarity between the mishnaic notion that an Israelite places an animal into a specific category and the biblical account which says that Adam gave the animals names. Moreover, the biblical story states explicitly that God pays attention to the names which Adam gave to the creatures. God brought the animals "to the man to see what he would call them; and whatever the man called each living creature that would be its name (Gen. 2: 19)." As we shall see, the sages of the Mishnah advance a similar claim. In their view, God takes account of how a householder labels a given animal. Once a householder designates an animal as an offering of well-being, God expects that animal to be sacrificed as an offering of well-being. If it is sacrificed as a different category of offering, God repudiates the sacrifice.

Finally, we again find a linguistic connection between the Mishnah's sacrificial system and the biblical myth. When a householder classifies an animal, the Mishnah says he "calls it a name (lqrwt sm)." This is precisely the same expression used in the biblical story of Adam's naming the animals: "And the man gave names (wyqr' smwt) to all the cattle and to the birds of the sky... (Gen. 2:20)." Moreover, when a priest has in mind the correct category of offering, the Mishnah says he sacrifices it "in its own name." The Mishnah's sacrificial system, therefore, supports the thesis that Genesis 2: 19-20 played a role in shaping mishnaic theology and law. Having explained how an animal becomes consecrated in the first place, we can return to the main focus of the present discussion, namely, the role of a priest's intentions in the sacrificial system.

The Role of a Priest's Plans in the Sacrificial System: Desacralizing a Consecrated Animal

When a priest performs a sacrifice, his plans have the power either to reaffirm the classification given to the animal by the householder or to alter the animal's status. Depending upon the particular plan he formulates, the animal either retains its sacred status or reverts to its original classification as a profane thing. For example, the animal retains its sacred status if the priest plans to perform the rite within the span of time and location specified in Leviticus for that type of sacrifice. By planning to perform the rite in the correct place and within the designated period of time, the priest indicates that he conceives of the animal's slaughter as a sacred act. On the other hand, if the priest plans to carry out the rite in another location or after the designated period of time has elapsed, he desacralizes the animal. Because he intends to perform the rite at the place and time of his own choosing, he clearly regards the rite as a secular act of slaughter,
The Function of Plans in the Mishnaic System

which Scripture says may take place where and when a person pleases (Deut. 12:20-24).

Four acts comprise the sacrificial rite: slaughtering the beast according to a prescribed procedure, collecting the animal's blood, transferring the blood to the altar, sprinkling the blood on the altar, and in some cases, eating the meat of the animal. As we shall now see, if the priest plans to perform any part of the rite at the wrong place or after the designated time, he spoils the rite.

A. [As regards a priest who, while slaughtering an animal, plans] to eat an olive's bulk [or more of its flesh] outside [the place designated for eating the offering] and [who also plans, while collecting, transferring and sprinkling the blood, to eat] an olive's bulk [of its flesh] during the following day [that is, after the designated time for eating the sacrifice has elapsed].--

B. [or as regards a priest who, while slaughtering an animal, plans to eat] an olive's bulk [of its flesh] during the following day and [who also plans, while handling the animal's blood, to eat] an olive's bulk [of its flesh] outside [the designated place].--

C. [or as regards a priest who, while slaughtering an animal, plans to eat] half an olive's bulk [of its flesh] outside [the designated place] and [who also plans, while handling its blood to eat] half an olive's bulk on the following day.--

D. [or as regards a priest who, while slaughtering an animal, plans to eat] half an olive's bulk the following day and [who, while handling the blood, plans to eat] half an olive's bulk outside the designated place.--

E. [in all of these cases, the offering] is invalid.

M. Zeb. 2:5

This rule involves a priest who intends to eat the animal outside the designated place or after the specified period of time has elapsed. Because the priest formulates this plan, he obviously does not regard the animal as a sacred thing, which must be eaten at a specific time and place. On the contrary, he apparently conceives of it as profane food, which he may consume at a time and place of his choice. As a result, his intention desacralizes the animal. By turning a sacred animal into a profane one, the priest has, in effect, brought an unconsecrated object into the Temple precincts, an act which is forbidden. For this reason, the Mishnah claims that God repudiates the offering.

For precisely the same reasons, a priest invalidates an offering when he intends to perform other parts of the sacrificial rite, for example tossing the blood or burning the entrails outside the Temple precincts or after the proper time has already elapsed:

A. [Concerning a priest] who slaughters [an animal consecrated for] an offering [with the intention of] sprinkling its blood outside [the designated place] or [with the intention of sprinkling] part of its blood outside [the designated place] --
B. [and as regards a priest who slaughters an animal consecrated for an offering with the intention of] burning its entrails outside [the place designated for this rite] or [with the intention of burning] part of its entrails outside [the designated place]--

C. [and as regards a priest who intends] to eat its meat outside [the designated place], or an olive's bulk of its flesh outside [the designated place], or an olive's bulk from the skin of the fat-tail outside [the designated place]--

D. [in each of these cases the act of slaughter] is invalid, but one does not incur the divine punishment of premature death [if one eats it].

E. [By contrast, if a priest plans] to toss its blood during the following day [that is, after the time designated for consuming the animal has elapsed], or [intends] to toss part of its blood on the following day,

F. [and if a priest intends] to burn its entrails during the following day, or [intends] to burn part of its entrails during the following day--

G. [and if a priest intends] to eat its flesh during the following day, or [intends to eat] an olive's bulk of its flesh during the following day, or [intends to eat] an olive's bulk from the skin of the fat-tail during the following day--

H. [in all of these cases the slaughtered animal falls into the category of] refuse and [anyone who eats] it incurs the divine punishment of a premature death.

M. Zeb. 2:2

In this rule, a priest intends to sprinkle the animal's blood or burn its entrails outside the Temple or after the designated period of time. The fact that the priest formulates this plan indicates that he does not conceive of the animal as a sacred thing. If he did, he would plan to carry out the rite in the proper place and at the proper time. Instead, the priest obviously thinks of it as a profane act, which he may perform where and when he chooses. Consequently, the animal reverts to the status of a profane thing, and hence, God rejects the offering.

It is important to note that different legal consequences occur depending upon the particular intention which the priest formulates. The intention to perform part of the rite at the wrong time not only spoils the rite but also places the animal into the category called "refuse" (E-H). Refuse is the name given to any offering which is not completed by the specified period of time. If a person eats anything which falls into this category he or she incurs the divine penalty of premature death (Lev. 7:18). The intention to violate the rules governing where the sacrifice should take place produces less severe consequences. In this case, the rite is spoiled but the animal is not deemed to be refuse (A-D). Consequently, a person who eats this offering does not incur a premature death.

The reason one plan has more severe legal effects than the other is simple. The Mishnah equates the intention to perform an act with the actual performance of that act. When a priest intends to perform part of the rite after the specified time, the sages treat the animal as if the priest had actually put his plan into effect. Leviticus specifies that any offering which is not completed by the
specified time falls under the rubric of refuse (Lev. 7:18). Consequently, the plan to perform that act also places the animal into the category of refuse. But when a priest sacrifices an animal outside the designated place, Leviticus says only that the rite is invalidated. It does not claim that the animal falls under the rubric of refuse (Lev. 17:1-12). Therefore, the plan to perform the rite at the wrong place has precisely the same legal effects as the act itself: the rite is invalidated but the animal does not enter the classification of refuse. We see, therefore, that in determining the status of an animal, the Mishnah equates the priest's intention to perform an act with the very performance of that act.

In one respect, however, the priest's intention is not treated as equivalent to the performance of an act. According to Leviticus, a priest incurs divine punishment either for taking an offering outside the Temple, or for not completing the rite within the specified period of time (Lev. 17:3, M. Zeb. 13:1). But as we see from the rules just cited, the priest incurs no liability at all for merely planning to perform these acts. We here expose a fundamental principle underlying the Mishnah's theory of intention. In the mishnaic system, plans have the power to classify objects. But a person never incurs liability merely for formulating an intention to violate God's law. Whether an Israelite intends to violate a sacrificial procedure or to kill a fellow human being, he or she incurs no punishment as long as no steps are taken toward that goal. The Mishnah thus differs from a system such as the Gospel of Matthew in which the mere intention to violate God's law precipitates divine punishment (Matthew 5:21-30).

Ruling Out Alternative Explanations

I have claimed thus far that a priest's intention spoils the sacrificial rite because he puts the animal into the category of a profane thing. I must now defend this position. At first reading, a far simpler explanation also accounts for the data so far discussed. From the cases already examined, one might argue that a priest invalidates the rite because he plans to violate a rule governing the sacrificial procedure. Since he performs the rite with the intention of violating God's law, God rejects the offering. The following rule shows this interpretation to be incorrect. This rule states unequivocally that an intention to violate a sacrificial law does not necessarily invalidate the offering.

I. A. [If a priest] slaughtered an animal with the intention of sprinkling [the blood] on the ramp [of the altar] but not on the base of the altar itself [where by law the blood must be sprinkled (M. Zeb. 2:1)],

B. [or if he intended] to sprinkle above [the red line which divides the top of the altar from the base] the blood that [by law] must be sprinkled below [the red line, (M. Zeb. 2:1)],

C. [or if he intended] to sprinkle below [the red line] the blood that [by law] must be sprinkled above [the red line (M. Zeb. 2:1)],
D. [or if he intended] to sprinkle on the outer [altar, i.e., the altar in the Temple court], the blood which [by law] must be sprinkled on the inner [altar, that is, the altar within the Temple itself],

E. [or if he intended to sprinkle] on the inner [altar], the blood which [by law] must be sprinkled on the outer [altar, (M. Zeb. 2:1)],

F. [or if the priest intended to let an] unclean person eat [from the offering of well-being which he is offering, an act which is forbidden (Lev. 7:20)],

G. [or if the priest intended to let] unclean persons sacrifice it [and thus handle its blood, an act which is forbidden (M. Zeb. 2:1)],

H. [or if the priest intended to let] uncircumcised persons eat [the Passover offering he is sacrificing, an act which is forbidden (Ex. 12:48)],

I. [or if the priest intended to let] an uncircumcised person offer up a sacrifice [and thus handle its blood, which is forbidden (M. Zeb. 2:1)],

J. [or if the priest intended] to break the bones of a Passover offering [an act forbidden by Ex. 12:46],

K. [or if the priest intended] to eat from [a Passover offering which is raw or boiled in water, an act forbidden by Ex. 12:9],

L. [or if the priest intended] to mix its blood with blood unfit [for sprinkling on the altar, an act forbidden by M. Zeb. 8:7],

M. [the offering is] valid, [despite the fact that the priest planned to perform an act that is forbidden by law].

N. This is because [a priest's] intention (mahshabah) invalidates [an offering] only [if he intends to eat the flesh of the sacrifice] after the time [designated for eating it], or outside the place [designated for its consumption, but not if he intends to violate one of the other rules governing the sacrificial procedure].

M. Zeb. 3:6

II. A. [As regards a priest who] slaughtered [an animal] with the intention of leaving either its blood [unsprinkled] or its entrails [unburned] until the following day --

B. or [as regards a priest who slaughtered an animal with the intention] of taking [the blood or the entrails] outside [the proper place, but does not actually plan to sprinkle the blood or burn the entrails there]--

C. Rabbi Judah declares the offering invalid.

D. But the sages declare the offering valid.

M. Zeb. 3:6

A priest's intention to perform part of the sacrificial rite at the wrong time or place spoils the rite (I N). But the intention of violating one of the other laws governing the sacrificial procedure, such as the rules governing where the blood should be sprinkled, or who should eat the offering, does not invalidate the ritual (I A-M). As previously suggested, a simple explanation accounts for why one type of plan spoils the rite but another does not. The rite is disqualified only when it is obvious that the priest conceives of the animal as a profane thing. Specifically, it is the intention to perform part of the rite at the wrong time or place which indicates that the priest regards the rite as a secular act of slaughter, which by definition may take place where and when a person pleases.
By contrast, none of the other plans listed here prove unequivocally that the priest conceives of the offering as a profane thing. For example, one cannot conclude that a priest has in mind a secular act when he intends to sprinkle the blood in the wrong place within the Temple precincts. On the contrary, the fact that he plans to sprinkle the blood within the sacred precincts at all indicates that he regards the animal as a consecrated thing. He has merely confused one type of sacred offering with another type of sacred offering, the blood of which is sprinkled in a different place. Since he conceives of the cow as a sacred thing, his intention does spoil the rite.

The same principle is operative in the case of a priest who intends to let an unclean or uncircumcised person perform part of the rite, or eat some of the flesh. By law, such persons are forbidden to eat most types of offerings and to handle the blood of the sacrifice. They are, however, permitted to perform the ritual act of slaughter (M. Zeb. 3:1) and to eat the flesh from an offering of well-being (M. Zeb. 5:7). Consequently, an ambiguity arises when the priest forms the intention of letting such a person participate in the rite or eat part of the animal. It may be that the priest thinks of it as a profane thing, which even unclean and uncircumcised people can eat. On the other hand, it may simply be that he has in mind the type of holy offering which such persons can consume, or the part of the holy rite which these people are permitted to perform. Since his intention is susceptible to alternative interpretations, it does not desacralize the animal.

The same ambiguity emerges in the case of a priest who intends to boil a Passover offering or break its bones. His intention may indicate that he has confused the Passover sacrifice with a secular act of slaughter. However, it is also possible that he only confused the Passover offering with another type of holy offering, the bones of which he may break and flesh of which he may boil. Again, due to the ambiguity involved, his intention has no legal consequences.

We may now understand the rather interesting dispute between Judah and the sages (II A-D). Judah and the sages discuss two cases. The first involves a priest who does not intend to sprinkle the blood or burn the entrails during the specified period of time. The second discusses a priest who intends to take the blood outside the specified place. In both of these cases an ambiguity arises. On the one hand, the priest does not intend to complete the offering within the proper span of time or within the designated area. For this reason, Judah argues that he conceives of the animal as if it were a profane thing. Yet, on the other hand, the priest has not actually formed an intention of performing part of the rite (slaughtering the animal, sprinkling its blood, burning its entrails or eating it) after the specified period of time or outside the designated place. The sages, therefore, conclude that he has not confused the offering with a profane act of slaughter. In their judgment, only if he imagines performing one of the sacrificial acts at the wrong time or place does one know for certain that he confused the holy rite with its secular counterpart.
The Plan to Offer the Wrong Type of Holy Offering

We have seen thus far that a priest spoils a sacrificial rite by planning to put a consecrated animal to secular use. But what happens if, while sacrificing an animal consecrated for one type of holy offering, a priest thinks about a different type of holy offering? In the rules to follow, the sages explicitly address this question. In these cases, a householder initially consecrates an animal for one type of offering. But while sacrificing the animal the priest intends to offer up a different type. As we shall see, sometimes the priest's intention invalidates the rite but in other cases it does not.

I. A. [As regards] all animals [which were originally consecrated as one type of offering and] which were sacrificed under different names [that is, the priest who killed the animal had in mind a different type of offering, for example, he had in mind a burnt-offering while sacrificing an animal the householder has consecrated as an offering of well-being]--

B. [the offerings] are valid, but they do not satisfy the householder's obligation. [That is, the priest can complete the rite by sprinkling the blood on God's altar. However, since the priest had in mind the wrong type of offering, God does not credit the householder who brought the offering with having fulfilled a religious duty].

C. [The above rule applies to all offerings] with the exception of the Passover offering and the sin-offering. [If an animal designated as a Passover or sin-offering is sacrificed under a different name, God totally repudiates the offering. It does not fulfill the obligation of the householder and the priest may not complete the rite by sprinkling the blood on God's altar. The sages now spell this out:]

   M. Zeb. 1:1

II. A. [As regards animals consecrated as a] Passover or sin-offering which [a priest] sacrificed under other names [that is, during the sacrificial procedure, he had in mind the wrong type of offering],

B. [and if the same priest] collected [the blood of the offering], or transferred [the blood of the animal to the altar] or sprinkled [the blood on the altar] under some other name--

C. or [if the priest slaughtered these animals] under their own name, but [collected, or transferred, or sprinkled their blood] under some other name--

D. or [if the priest slaughtered these offerings] under some other name but [collected, or transferred, or sprinkled the blood] under their own name--

E. [in each case the offerings] are invalid. [Since during at least one of the sacrificial acts, the priest intended to offer the animal for the wrong type of sacrifice, the offering is declared invalid, as specified at I C.]

   M. Zeb. 1:4

III. A. Yose son of Honi says, "[Animals designated as either peace or burnt-offerings which were] slaughtered under the name of a Passover or sin-offering,

B. "are invalid, [that is, God totally repudiates the sacrifice. Hence the priest cannot sprinkle its blood on the altar]."
C. Rabbi Simeon brother of Azariah says, "[If a priest] slaughtered [animals] under the name of [an offering which has a] higher [degree of sanctity],

D. "the [offerings] are valid, [that is, God accepts the offering and hence the priest is permitted to complete the rite.]

E. "[But if a priest slaughtered animals designated for one type of offering] under the name of [an offering which has a] lesser [degree of sanctity],

F. "the offerings are invalid. [In this case, God totally repudiates the offering, which means that the priest cannot complete the rite by sprinkling the blood on the altar].

G. "What are examples of C-F?"

H. "[In the case of] most holy offerings which were slaughtered under the name of lesser holy things--

I. "the offerings are invalid.

J. "[By contrast, in the case of] lesser holy offerings which were slaughtered under the name of most holy offerings--

K. "the offerings are valid.

L. "[By the same token in the case of an animal consecrated as] a firstling, or as tithe [offerings] which were slaughtered under the name of offerings of well-being--

M. "the offerings are valid, [because these are of higher degree of sanctity].

N. "[And, in the case of] offerings of well-being which were slaughtered either under the name of a firstling, or under the name of a tithe [offering]--

O. "the offerings are invalid, [because these are of lower degree of sanctity]."

M. Zeb. 1:2

All of the cases at hand take up a single question: if a householder designates an animal for one type of offering and a priest sacrifices it with the intention of offering up a different type of offering, is the offering valid? The answer depends upon two factors: 1) the type of offering for which the householder originally consecrated the animal, and 2) the type of offering the priest has in mind when slaughtering the animal. To understand these rules, therefore, we first need to discuss how the Mishnah subdivides the category of holy sacrifices into classes.

The sages break down holy offerings in two different ways. First they distinguish voluntary offerings (e.g., burnt-offerings and offerings of well-being) from obligatory ones (e.g., sin-offerings and Passover offerings). Second, the sages also distinguish offerings according to their grade of sanctity. Some offerings fall into the category of most holy offerings (e.g., burnt-offerings, sin-offerings, and guilt-offerings). Others fall into the category of lesser holy offerings (e.g., offerings of well-being, the sacrifice of the firstling and tithe of cattle).8 Below, I have schematized the relationships between the various categories of holy offerings. In the the vertical columns (A, B), I list the types of offerings according to their degree of sanctity. The horizontal columns (1,2), by contrast, divide the offerings between the categories of voluntary and obligatory.9
With this diagram in hand, let us now work our way through the sages' discussion. We begin with the statement of Simeon (III C-O). Simeon considers most important the distinction between offerings of higher and lower grades of sanctity. In his view, a priest is expected to have in mind an offering of at least the same grade of sanctity as the householder originally conferred on it. If the priest intends to sacrifice an offering of lesser sanctity, he invalidates the rite. Simeon, therefore, espouses a theory similar to the one we have already discovered in previous rules. Just as a priest spoils an offering by planning to use a consecrated animal for secular purposes, he also invalidates the rite if he has in mind an offering of a lower grade of sanctity.

The anonymous sages (I A-C, II A-E) and Yose (III A-B) consider the distinction between voluntary and obligatory offerings to be most important. If while sacrificing an animal originally designated as an obligatory offering (i.e., a sin or Passover offering), a priest intends to offer a voluntary offering (such as an offering of well-being), he totally invalidates the rite (I C, II A-E). By the same token, a priest spoils the rite by intending to sacrifice as a voluntary offering an animal originally designated as an obligatory offering (III A-B). In either case, by having in mind the wrong category of offering the priest invalidates the sacrifice.

The anonymous sages also raise a further complication. What happens if a priest has in mind the correct general category of offering, but the wrong subclass of that category? For example, suppose a householder has designated an animal for one type of voluntary offering, for example as an offering of well-being. But when the priest sacrifices it, he intends to offer up a different type of voluntary offering, for example, a burnt-offering (I A-B). Here, the priest has in mind the correct category of offering (i.e., voluntary offerings), but the incorrect class of voluntary offering (a burnt-offering instead of an offering of well-being, both of which are voluntary offerings).

The sages claim that in this situation the priest only partially invalidates it. Since the priest has in mind the wrong class of voluntary offering, the householder who brought it to the Temple receives no credit for having dedicated an offering to God. According to the Mishnah, however, since the priest had in mind the correct general category of offering, God does not repudiate the sacrifice. This is evident in the fact that the Mishnah permits the priest to sprinkle its blood on the Temple altar, an act which symbolizes the acceptability of the offering to God.
Having teased out the principles underlying these rules, we see the same basic theory we found previously. Whenever a priest has in mind the wrong category of offering, whether he confuses a sacrifice with a profane act of slaughter, or one type of sacrifice with another, he invalidates the rite. The mere thought of the wrong type of offering, therefore, alters the animal's status and thus ruins the sacrifice.

This basic theory generates an interesting secondary question. If a priest spoils the sacrifice when he has in mind the wrong category of offering, is it also true that he ruins the sacrifice if he fails to have in mind the correct category of offering? Suppose, for example, that while slaughtering an animal, a priest lets his mind wander and does not concentrate at all on what he is doing. In this situation, the priest has not formed an intention to sacrifice the wrong category of offering. Yet, at the same time, he also does not have in mind the correct category of offering. As we shall now see, the sages dispute whether, in this situation, a priest spoils the rite:

A. [In order to constitute a valid sacrifice] an offering must be sacrificed [by a priest] with the following six things in mind:

B. 1) with the intention of (lit. for the sake of) offering the particular category of holy offering [for which the householder designated it],
2) with the intention of [offering the animal on behalf of] the person who supplied the animal for the offering,
3) with the intention of [offering the animal] to God,
4) with the intention of [burning the animal in] the fires [of the altar but not with the intention of burning them at some other place],
5) with the intention of [sending up] an odor [to God, as specified by Lev. 1:9]),
6) with the intention of [producing] a pleasing [smell for God, again as specified by Lev. 1:9],

C. [Moreover, in the case of] a sin-offering or guilt offering [i.e., sacrifices offered after a person has committed a sin, the priest must offer them] with the intention of [expiating] the particular sin [that the householder who brought the animal had committed].

D. Said R. Yose, "Even [if a priest] did not have in mind [even a single] one of the [intentions listed at B 1-6]--

E. "[the offering nonetheless] is valid.

F. "[This leniency] is a stipulation of the court."

G. [The rationale for the rule at hand is supplied by the following]: [The laws regarding] proper intention [listed at A-E] apply only to the officiant [i.e., the priest. During the sacrificial rite, the intention of the householder who supplied the animal for slaughter cannot invalidate the offering.] 13

M. Zeb. 4:6

The critical issue in this law is whether a priest invalidates an offering if he does not have in mind the category of offering for which the householder originally designated it. In Yose's view, as long as the priest does not have the
wrong category of offering in mind, it is irrelevant what he thinks about. Even if he lets his mind wander to other matters, the rite is valid (D-E). The sages disagree. They consider the rite to be valid only if it is self-evident that the priest intends to offer the correct type of holy offering. This is why the sages require the priest to have in mind six specific intentions. Only when a priest has these intentions in mind is it obvious that he offers up the correct type of offering.

Four of these intentions show that the priest conceives of the sacrifice as a holy offering to God. When he intends to send up a pleasing odor to God (3, 5-6) he obviously regards the offering not as a secular thing to be used for human purposes but as a sacred offering. By the same token, the intention to burn the animal in the fires of God's altar demonstrates that he considers the animal to be sacred, and not a substance which he can cook at home (4). In line with the law previously examined, the sages also require the priest to offer the particular type of holy offering that the householder originally designated.

Of the six intentions listed here, only one does not involve the classification of the animal, namely, the intention to offer it on behalf of the householder who brought the cow to the Temple. As I will argue below, the priest must keep the householder in mind because he acts as the agent of the householder. If the priest fails to do so, he in effect repudiates the terms of his agency, and therefore loses the right to perform the sacrifice. The idea that the priest serves as the householder's agent also explains why the intentions of the householder who initially brought the cow to the Temple have no effect upon the validity of the offering (G). When a householder appoints a priest to sacrifice an animal, he turns his own power to determine the status of that animal over to the priest. Having conferred this legal capacity on the priest, the householder relinquishes any further control over the animal's status, and hence, his intention cannot spoil the rite.

We have thus far isolated one factor that determines whether a priest's intention invalidates a sacrificial rite, namely, whether the priest has in mind the wrong category of offering. As we shall now see, a second factor also plays a role in determining whether the priest's intention affects the validity of the rite. The Mishnah also takes account of whether the priest has formulated a plan which he is likely to carry out.

The Appeal to Social Norms in Evaluating a Priest's Plans

A priest's plan spoils a sacrifice only if there is a reasonable possibility that he will put that plan into action. The question naturally arises as to how the Mishnah distinguishes between reasonable and unreasonable plans. A simple test serves this purpose. If the priest intends to act in a manner consistent with the behavioral norms assumed to exist in Israelite society, the sages conclude that he will act as he intended. Such plans, therefore, have the power to invalidate an offering. However, the sages consider it unlikely that a priest will deviate from the norm. Consequently, if a priest intends to act in an atypical manner, they
simply ignore his intention. These points emerge from the following rules in which a priest intends to eat parts of an animal which people do not normally treat as food.

I. A. [In the case of a priest] who sacrifices an [animal consecrated as an] offering [with the intention of] eating [outside the designated place or after the specified time] part [of the animal] which typically is not eaten—

B. and [in the case of a priest who sacrifices an offering with the intention] of burning [outside the designated place or after the specified time] something which one normally does not burn [on the altar]—

C. [the offering is] valid.

D. Rabbi Eliezer declares it invalid.

M. Zeb. 3:3

II. A. [In the case of a priest] who sacrifices an [animal consecrated as an] offering [with the intention of eating]

B. an olive's bulk from its hide, [or] from the grease [of the meat], [or] from the coagulation [of the meat], [or] from the fatty substance, [or] from the bones, [or] from the sinews, [or] from the hooves, [or] from the horns

C. after its [designated] time or outside its [designated] place—

D. [the offering] is valid.

M. Zeb. 3:4

III. A. [In the case of a priest] who sacrifices a [mother cow consecrated as] an offering [with the intention of eating the] fetus or the placenta, outside [the designated place],

B. he does not place the animal into the category of refuse, [because most people do not eat the fetus or placenta of an animal, (see M. Hul. 4:7)].

C. [In the case of a priest] who wrings [the neck of] turtle-doves inside the Temple,

D. with the intention of eating their eggs outside [the designated place in the Temple]—

E. he does not place the animal into the category of refuse, [because he has formulated an unreasonable intention].

M. Zeb. 3:5

The intention to eat part of the sacrifice at the wrong time and place usually invalidates an offering. In these cases, however, it does not. This is because the priest intends to act in a manner which is inconsistent with normal Israelite behavior, for example, by intending to eat the hooves, horns, or fetus of an animal. The Mishnah, therefore, regards these intentions as unreasonable, or perhaps even absurd, and therefore deprives them of their power to determine the status of the offering (I, II, III). 14

The Mishnah also appeals to Israelite conventions to predict the order in which a priest is likely to carry out his plans. For example, the cases to follow involve a priest who formulates two intentions. He both intends to eat part of an
offering outside the designated place and to eat part of the offering after the specified time. The fact that the priest has formulated two intentions creates an ambiguity, for as we recall, each of these intentions has different effects on the status of the offering (see my discussion of M. Zeb. 2:2). The plan to eat the offering after the specified time gives the animal the status of refuse. Eating refuse is a transgression of divine law and incurs a penalty. By contrast, if the priest plans to eat the animal at the wrong place, the sacrifice is invalidated, but the animal does not fall under the rubric of refuse.

In this rule, the sages discuss which of the priest's two intentions determines the animal's status. The answer depends upon the order in which a priest will implement those plans. The plan he is most likely to carry out first determines the classification of the animal. As we shall see, the framers appeal to normal Israelite behavior to predict the order in which a priest will implement his plans.

A. Said Rabbi Judah, "This is the general principle: If the intention (mhsbt) [to eat the animal after the proper] time precedes the intention (mhsbt) [to eat it outside the designated] place, [the offering falls into the category of] refuse, and [eating] it invokes the divine penalty of a premature death."

B. "But if the intention (mhsbt) [to eat it outside the designated] place precedes the intention (mhsbt) to eat it after the specified time, it is invalid [but eating it] does not incur the divine punishment of premature death."

C. The sages say, "In both cases it is invalid, and [eating it] does not incur the divine punishment of premature death. [That is, in the sages' view the order in which the priest formulates his intentions is unimportant. No matter which plan he formulates first, the animal is treated as if the priest took the animal outside the designated place before the specified time has elapsed]."

M. Zeb. 2:5 (M. Zeb. 6:7, M. Men. 1:4)

The Mishnah does not explain the issue under debate between the sages and Judah. However, based on what we have found elsewhere in this study, we may speculate as to the nature of the dispute in question. It seems that both the sages (C) and Judah (A-B) appeal to normal Israelite behavior to determine which plan the priest will carry out first. The dispute arises because they disagree about how people normally behave.

Judah believes that people tend to execute their intentions in the order in which they formulate them. The sages, by contrast, claim that this is not necessarily so. They argue that, regardless of the order in which the priest conceives of his plans, he probably will transgress the rules governing place before he violates the laws governing time. The sages base this conclusion on their image of the typical Israelite. In their view, if a person intends to perform two actions, he will perform them in the most convenient order. Now a priest
can take an animal outside the proper place as soon as he formulates that intention. But in order to eat the offering after the specified time, the priest by definition has to wait until a given period of time has elapsed (one to three days depending on the type of offering in question). The sages, therefore, assume that the priest will violate the rules governing place before those governing time. For this reason, they do not regard the animal as refuse (C).

It turns out, therefore, that norms fulfill the same function in the sacrificial system as in the system of purity. In both cases, normal Israelite behavior serves as a criterion for predicting what an individual will do. When it is possible to predict a person's action in this manner, the Mishnah simply discounts the actual intention the person has in mind.

While norms serve the same function in the two sets of laws, one significant difference emerges. The Mishnah appeals to normal Israelite behavior far more often in the system of purity than in the laws of sacrifice. We cited a half dozen pericopae from the laws of purity in which normal behavior was an important consideration. In the sacrificial system, by contrast, there are only two examples.

Let me propose an explanation of this difference which fits what we have found elsewhere in this study. In the laws of purity, the sages need to predict whether a householder will use or dispose of certain objects or substances. This is precisely the type of question one can answer by appealing to the norm. There tends to be a consensus in society about what things are "food" or "waste," "useful" or "useless." This is why social norms play such a decisive role in the system of purity laws.

But from the Mishnah's standpoint, there exists an intrinsic ambiguity in the sacrificing of an animal. In the society presented by the Mishnah, the killing of an animal can serve one of two purposes. It can either be a sacred act, the purpose of which is to worship God, or a profane act designed to prepare the animal for consumption. Moreover, sacred and profane slaughters are performed according to similar procedures. From the act of slaughter alone, therefore, it is impossible to determine whether the slaughterer conceives of the killing as a sacred or profane act. Since the act of sacrificing an animal is by definition ambiguous, the sages must resolve the doubt by appealing to the subjective intention of the slaughterer. Social norms generally cannot help to determine the meaning of the slaughterer's action. For this reason, Israelite norms play a relatively minor role in the laws of sacrifice.

In summary, we have now determined the circumstances in which a priest's intentions will invalidate the sacrificial rite. First, and most importantly, he spoils the rite if he has the wrong category of offering in mind. Second, an intention ruins the ritual only if it is one which the Israelite is likely to carry out. This now brings us to the next important question for the present study. Why does a priest's intention have the power to define the status of the animal in the first place? I suggested earlier that the Mishnah conceives of the priest as an
agent of an Israeliite householder. In assigning a priest the task of sacrificing an animal, a householder transfers to the priest the power to define the status of the offering. Let me now substantiate this claim by showing that the Mishnah's conception of agency accounts for the relationship between householder and priest.

**Priests as Agents of Householders**

The idea that priests serve as agents for other Israelites is implicit in Scripture. God tells the people to bring their sacrifices "to the Lord, to the priest at the door of the tent of meeting, and slay them as sacrifices of peace offering to the Lord; and the priest shall sprinkle the blood on the altar of the Lord at the door of the tent of meeting, and burn the fat for a pleasing odor to the Lord (Lev. 17:1-6)." The biblical writer clearly conceives of the priest as the functionary who performs sacrifices on behalf of other Israelites.

In appropriating this biblical idea, however, the Mishnah interprets it in light of its overall conceptions of agency. Specifically, I will show that the three principles governing agency in general also apply to the relationship between householders and priests. These three principles were discussed in some detail in Chapter Three. Consequently, we need only briefly review them in this context. First, an agent must resemble the principal in certain fundamental respects. Adult male Israelites, for example, generally cannot appoint a child, deaf-mute or retarded person to act as an agent, because these Israelites lack the mature mental capacities of an adult. Second, an agent has the power to produce legal consequences only because the principal has transferred those legal capacities to the agent in the first place. For example, a person can consecrate produce for another person only if instructed to do so (M. Ter. 3:8). Third, an agent can produce legal consequences only by following the instructions of the principal. However, by repudiating the terms of the appointment, the agent loses the powers which the principal originally conferred on him. In what follows, I will show how these ideas govern the relationship between householder and priest.

**Householders and Priests: A Fundamental Correspondence**

In the Mishnah, a householder can appoint a priest to act on his behalf because a priest resembles a householder in all important respects. To begin with, householders and priests are both adult, male, mentally mature Israelites. The correspondence between priest and householder, however, runs deeper than this, for both serve a similar function in society as a whole. The householder, by definition, is the master of an Israeliite household. As master, he has responsibility for overseeing the proper functioning of the household. One of his most important tasks involves making sure that members of his household obey the rules of purity. A priest plays an analogous role in the Temple. He presides over the Temple cult and ensures that the rules of cultic purity and laws of sacrifice are obeyed. The priest, in a sense, is the householder of God's Temple.
By the same token, the householder serves as a kind of priest who presides over the household.

The fact that priests and householders fulfill similar roles does not in and of itself prove that the priest acts as the householder's agent. It remains to be shown that by turning one of his animals over to a priest, the householder confers on the priest the power to determine the status of that animal. What would constitute evidence that priests derive the capacity to define the status of an animal from householders? First of all, we would expect the legal powers of priests to correspond point for point with those of householders. If it turns out that their respective powers do not correspond, it is then obvious that householders are not the source of the priestly powers. Second, if priests derive their powers from Israelite householders, we would expect to find that they lack these powers when acting on behalf of someone other than an Israelite householder.

**The Power of Householders to Classify Animals**

In the mishnaic system, we find a perfect correspondence between the powers of Israelite householders and priests. To begin with, both householders and priests slaughter animals. Priests, as we have seen, sacrifice consecrated animals in the Temple. Householders, for their part, slaughter unconsecrated animals for food. Furthermore, as the rule below indicates, a householder's intention can spoil a secular act of slaughter in precisely the same way that a priest's intention invalidates a holy offering.

I. A. [Concerning a householder] who slaughters [an unconsecrated animal as a voluntary offering, as for example when he slaughters it] as a burnt-offering, [or] as a [peace-) offering, [or] as a doubtful-guilt offering [i.e., an offering sacrificed when a person suspects but is not certain that he has committed a sin], [or] as a Passover-offering, [or] as a thank-offering.--

B. his act of slaughter is invalid.

C. Rabbi Simeon declares [the act of slaughter] valid, [and hence, the householder may eat the meat from the animal]....

D. [Concerning a householder] who slaughters [an unconsecrated animal as any type of obligatory offering, for example] as a sin-offering, [or] as an offering for certain guilt [i.e., those offerings listed at M. Zeb. 5:5], [or] as a firstling, [or] as a tithe-offering, [or] as a substitute [offering]--

E. his act of slaughter is valid [and hence he may eat the animal].

F. This is the general rule:

G. An offering which is offered in fulfillment of a vow, or voluntarily [i.e., those listed at A]--

H. [if a householder offered his cow] under its [name, that is under the name of any offering voluntarily given to the Temple],

I. the animal is forbidden. [The offering has been invalidated and hence he cannot eat the meat of the animal.]
J. But an offering which is not offered in fulfillment of a vow or voluntarily [i.e., obligatory offerings, such as those listed at C]--

K. [if the householder offers his cow] under its name

L. the act of slaughter is valid [and therefore the animal may be consumed].

M. Hul. 2:10

II. A. [Concerning a householder] who slaughters [an animal] in honor of mountains, [or] in honor of hills, [or] in honor of the seas, [or] in honor of rivers, or in honor of the deserts--

B. his act of slaughter is invalid.

M. Hul. 2:8

We see from this rule that the intentions of householders and priests fulfill equivalent functions in their respective domains. A priest spoils a sacrificial rite when he intends to use a consecrated animal for secular purposes. Analogously, a householder spoils a secular act of slaughter if he either intends to offer it to God as a voluntary offering (I A-B, G-I) or intends to honor the mountains or other natural phenomena (II A-B). In either case, he has in mind the wrong category of offering. By intending it for a voluntary offering, he classifies it as a sacred object. Since he slaughters it outside the Temple, he has in effect killed a consecrated thing in a profane place, and for this reason, he invalidates the slaughter. Similarly, when he intends to honor the natural phenomena, he places the object into the category of things used for idolatrous purposes. This too spoils the rite.

Only in one case does a householder's intention fail to invalidate the act, namely, when he intends the animal to serve as an obligatory offering (I D-E). Here his thoughts have no legal consequences because householders are permitted to consecrate animals for obligatory offerings only if they previously incurred an obligation to make that sort of sacrifice. A householder can set aside an animal for a sin-offering, for example, only if he has first committed an inadvertent transgression. Since the householder at hand has incurred no obligation, he does not have the right to consecrate the animal for an obligatory offering. Consequently, his intention to use the animal for that purpose is nullified. Since it has no effect on the animal's status, the act of slaughter is considered valid.

For our purposes, the cases just examined illustrate one point: the intentions of householders and priests have similar effects on the animals they slaughter. A priest desacralizes a consecrated animal by forming an intention to use it for secular purposes. A householder, by intending to sacrifice an animal to God, puts an unconsecrated animal into the category of a sacred thing. The fact that householders and priests possess precisely the same legal capacities supports my claim that priests derive their legal powers from Israelite householders. But additional evidence must also be mustered. If, in fact, priests acquire their legal powers from householders, the converse should also be true. We should find that
a priest cannot exercise such powers when acting as the agent of someone other than an Israelite householder. This is, in fact, what we discover.

When slaughtering an animal for a gentile, a priest’s intention cannot invalidate the offering. This is because gentiles themselves cannot classify things by forming intentions. Since a gentile lacks this power to begin with, he obviously cannot transfer it to a priest. This proves that the power to classify an animal is not intrinsic to the priestly office. The legal powers which he has are conferred on him by another person. If a priest acts on behalf of someone who has those powers (an Israelite householder), he acquires them. But if he sacrifices an animal for someone who lacks those legal rights (such as a gentile), the priest also lacks those powers.

In order to substantiate this interpretation, let me begin by showing that the intentions a gentile actually formulates produce no legal effects. This point emerges from a case involving a gentile who slaughters an animal according to the prescribed ritual of Israelite law.

A. An act of [profane] slaughter performed by a gentile [automatically places the animal into the category of] carrion and hence it contaminates any person who lifts it. [Even if the gentile followed the correct procedure, the act of slaughter is invalid. This is because when a gentile slaughters an offering, the sages always assume that he intended it for idolatrous purposes, as stated in M. Hul. 2:7].

M. Hul. 1:1

The sages automatically impute to all gentiles the intention of sacrificing the animal to their gods. Therefore, any animal which a gentile slaughters by definition falls under the rubric of an improperly slaughtered animal (carrion). The actual intentions of a gentile, therefore, do not affect the status of the animal. Indeed, even if he had no religious motives in mind, the rite would still be invalid.

Because a gentile’s subjective intentions can produce no legal effects, he cannot confer such powers on another person. This point emerges from a rule which discusses a priest who sacrifices an animal which a gentile has brought to the Temple. While sacrificing the animal, the priest formulates an intention to eat it after the time specified for its consumption. We recall that if a priest formulates such an intention while sacrificing an Israelite’s animal, the animal would become refuse. But in this case, precisely the same intention has no effect on the animal’s status.

A. The holy offerings of gentiles --

B. are not subject to [the rules governing] refuse. [That is, if a priest intends to eat a holy offering brought by a gentile after the specified period of time has elapsed, the offering does not fall into the category of refuse. By extension, the intention to eat the animal at the wrong place also does not invalidate the offering.]...
Both Meir and Yose agree that when sacrificing a gentile's cow, a priest's intention has no power to change the status of the offering (A-B). For example, the intention to eat part of the offering after the specified span of time does not place the animal under the rubric of refuse. Meir's logic is self-evident. He believes that gentiles have no power to consecrate an animal even if they bring it to the Temple. Since the animal is not a sacred thing, it does not matter what the priest intends or even does with it (D).

Yose's position is more difficult to understand. On the one hand, Yose clearly believes that gentiles can consecrate offerings by bringing them to the Temple. This is evident from his statement that a priest incurs liability for slaughtering such an animal outside the designated area (E). Although Yose thinks the animal is consecrated, he nonetheless claims that the priest's intention of slaughtering it at the wrong time or place does not invalidate the offering. Apparently Yose believes that the priest's intentions are of no import, because he acts on behalf of a gentile. Since a gentile's intentions lack the power to determine the status of an animal, he cannot confer that power on the priest. In conclusion, therefore, it appears that a priest's intentions can invalidate an offering only when he acts on behalf of a person who has those powers at the outset.

A similar point emerges from the following case, which involves a gentile who asks an Israelite householder to slaughter one of his animals. In mishnaic law, as we saw previously, there is a presumption that gentiles sacrifice their animals to their gods. A problem thus arises when a gentile asks an Israelite to slaughter the animal. On the one hand, the gentile presumably intends to honor his gods by having the beast slaughtered. On the other hand, the Israelite conceives of the killing as strictly a secular act of slaughter. This gives rise to a dispute over the status of the slaughtered animal. One sage argues that the gentile's presumed intent to worship his gods is decisive. From the outset, the animal falls into the category of something used for idolatrous worship. Other sages disagree. In their view, the animal's status depends exclusively upon the person who slaughters the animal. Since an Israelite, and not a gentile, performs the rite, the act of slaughter is valid.
The Function of Plans in the Mishnaic System

A. [An Israelite] who slaughters [an animal] on behalf of a gentile--

B. his act of slaughter is valid.

C. But Rabbi Eliezer declares the act of slaughter invalid.

D. Said Rabbi Eliezer [explaining his view at C], "Even if an Israelite slaughtered the animal in order that the gentile eat only from the lobe of the animal's liver [i.e., a negligible amount], the rite would be invalid,

E. "for there is a presumption that the thoughts of a gentile are directed to idolatry."

F. Said Rabbi Yose [in disagreement with Eliezer], "[The proper ruling may be derived from an argument] a fortiori.

G. "Now, if in a case where intention has the power to invalidate the rite, [namely] in [cases involving the sacrifice of] holy things, the legal outcome depends exclusively upon the person who sacrifices the animal [i.e., the priest and not the owner of the animal, see M. Zeb. 4:6],

H. "then in a case where intention does not have the power to invalidate the rite, [namely], in [the cases involving the killing of an] animal for profane purposes, it stands to reason that the legal outcome depends exclusively upon the slaughterer."

M. Hul. 2:7

What requires explanation is Yose's claim that the intentions of Israelites do not have the power to invalidate a secular slaughter (E-H). Yose's position here is unclear. In the rules which immediately follow this one in the Mishnah, we learn that the intentions of Israelites can invalidate a profane act of slaughter (see the above discussion of M. Hul. 2:8, 10). What, then, does Yose mean when he states that intentions do not invalidate a secular act of slaughter? It would seem that Yose subscribes to the view that Israelites' intentions are inert when they act on behalf of gentiles. Since the intentions of gentiles do not produce legal effects, they cannot transfer such powers to Israelites who act as their agents.

By way of summary, let me review the strategy of argument until this point. I claimed at the outset of this discussion that a priest's intention can invalidate an offering because he acts on behalf of an Israelite householder who conferred those powers on the priest. Two sets of facts were adduced to support this thesis. First, the householder and priest have precisely the same powers. Second, when the priest sacrifices an animal for a gentile, his intentions become powerless. Turning now to the third piece of evidence, we shall find that a householder's intentions produce legal effects only when he abides by the terms of his appointment.

The Terms of Agency

As I said at the beginning of this discussion, an agent's actions produce legal consequences as long as the agent obeys the principal's instructions. For example, if a woman said to an agent, "Accept a writ of divorce for me in Jerusalem," and the agent accepted it in Tiberias, the divorce would not be valid (M. Git. 6:3). The sages invoke the same line of reasoning in the following case which involves a priest and a householder. A priest can exercise the powers
conferred on him by a householder only when he is actually performing his assigned task. When the priest is not involved in carrying out his instructions, however, he lacks the power to define the status of the offering:

I. A. This is the general principle: anyone who slaughters [an animal] or collects [its blood] or transports [its blood to the altar] or tosses [its blood on the altar],
B. [with the intention of] eating a substance which [people] normally eat,
C. or [with the intention] of burning a substance which is normally burned [i.e., the entrails],
D. outside of its [designated] place--
E. the offering is invalid but [for eating] it [a person does not] incur the divine punishment of premature death.
F. [If he performed any of the above acts with the intention of eating or burning the offering] after the [specified period] time [has elapsed]--
G. it falls into the category of refuse and [for eating] it [people] incur the divine penalty of premature death.

M. Zeb. 2: 3

II. A. An [animal designated as a] Passover offering or [an animal designated as] a sin-offering
B. which [a priest] slaughtered with the wrong category of offering in mind,
C. [and he] collected, transported, and tossed [the blood of the offering] with the wrong category of offering in mind,
D. and [concerning a priest who slaughtered the animal] with the correct category of offering in mind, but [collected, transported and tossed the blood] with the wrong category of offering in mind,
E. and [concerning a priest who slaughtered the animal] with the wrong category of offering in mind, but [collected, transported and tossed the blood] with the correct category of offering in mind--
F. [in all of these cases, the offerings] are invalid...
G. For an offering may become invalid [as the result of a priest's intention] during [the] four [essential] acts: during the slaughtering [of the animal], the collection [of blood], the transporting [of the blood to the altar] or [during the] tossing [of the blood on the altar].
H. Rabbi Simeon declares [an offering] valid [even if during] the transporting [of the blood, the priest had in mind the wrong category of offering].
I. For Rabbi Simeon did say, "It is impossible [to perform a valid offering] without [the ritual] slaughter, and without the collection [of the blood] and without the tossing [of the blood on the altar].
J. "But it is possible [to perform a valid offering] without the transporting [of the blood. How so?]
K. "One may slaughter [the animal] next to the altar and sprinkle [the blood on the altar without needing to transfer it at all. Since one can perform a valid sacrifice without transferring blood, this does not constitute an essential act]."
L. Rabbi Eleazar says, "One who transports [blood] in circumstances in which he must transport [the blood in order to get it from the animal to the altar, his improper] intention invalidates [the offering].
M. "But in circumstances in which he need not transport [the blood in order to get it to the altar, his improper] intention does not invalidate [the offering]."

M. Zeb. 1:4

When a householder delivers one of his livestock to the priest, he does so with the expectation that the priest will sacrifice it. Consequently, it is precisely during the essential acts of the sacrifice that the priest acts on behalf of the householder, namely, when slaughtering the animal, collecting and tossing its blood. During the performance of those acts, therefore, the priest's intentions have the power to define the status of the animal (I A-G, II A-G). But when the priest performs an unnecessary act, for example, by not carrying the blood directly to the altar, he does not act as the householder instructed. On the contrary, at that moment he is no better than a thief who has stolen an object from a householder. Since he has violated the terms of his agency, he temporarily loses the powers the householder has conferred on him. In this case, therefore, his intention cannot spoil the rite (H-M).

To support my claim, that the Mishnah equates a priest who performs an unnecessary sacrificial act with a person who has stolen property, we turn to a rule which discusses the intentions of thieves and robbers. This pericope, drawn from the Mishnah's system of purity, takes up cases involving thieves and robbers who have stolen leather hides from fellow Israelites. Here, the Mishnah poses the rather bizarre question of whether the intention of a thief or robber can define the classification of a leather hide which he has stolen. We recall from Chapter Three that the classification of an object depends upon the intention of the person who owns that object. If, for example, a person intends to put to use a leather hide which he owns, it automatically falls under the rubric of a useful thing and hence can absorb cultic impurity. By contrast, the intention to discard leather has the effect of placing it in the category of useless objects, with the result that it cannot become contaminated.

The case at hand takes up a related question. Here the Mishnah asks whether a person's intention can define the status of something which he does not own, but which he has in his possession. In turning to this rule, we shall see that the intention of a thief or robber, like the intention of a priest who has ignored his instructions, cannot determine the status of an object:

A. [As regards hides] in the possession of a thief, [which he secretly stole from a householder]--

B. [the thief's] intention (mahshabah) [to use them places them in the category of useful things and so] makes them susceptible to impurity. [Since the thief stole the hides in secret, the householder does not know who has them, and consequently, the householder reconciles himself to the loss. The thief ipso facto acquires ownership of the hides with the result that his intention now determines the status of the hide.]
C. But [as regards hides] in the possession of a robber, [which he took by force from a householder].--

D. [the robber's] intention (mahshabah) [does not place them into the classification of useful things and so] does not make them susceptible to impurity. [Since the householder knows who has stolen his hides, he will try to recover them through litigation. Because the owner has not given up hope of recovering his possessions, the robber never acquires ownership of the hides, with the result that the robber's intention cannot affect the status of the hide.]

E. Rabbi Simeon says, "Matters are [precisely] reversed. [The correct version is as follows:]

F. "[As regards hides which] a robber [stole].--

G. "[his] intention (mahshabah) [to use them places them in the classification of useful things and hence, they become] susceptible to impurity. [According to Simeon, since the robber stole the goods by force, the householder knows for certain that they were stolen and not misplaced. The householder knows, moreover, that it is unlikely that he will recover stolen property. Since the householder has despaired of recovering his goods, the robber ipso facto acquires ownership of the hides and hence his intention has the power to determine the status of the hides.]

H. "[As regards hides which] a thief [stole].--

I. "[his] intention (mahshabah) [to use them does not place them in the classification of useful things and so] does not make them susceptible to impurity.

J. "[The reason that the intentions of the robber (G) can classify the hide is] because the owner has despaired [of recovering the object. But since the thief (H-I) stole the hides secretly, the householder does not know for certain that they were stolen. He will assume that he merely misplaced them or lent them to someone else, and therefore, he is certain that he will get them back. As the owner never despairs of recovering the hides, the thief never acquires ownership of them and hence his intention has no effect on the status of the hides.]

M. Kel. 26:8

The rule at hand takes up two situations; cases in which 1) the owner has despaired of recovering the property (A-B, F-G) and 2) in which he still hopes to recover the property (C-D, H-I). In the former cases, the thief's (or robber's) intention determines the classification of the stolen goods. When the owner gives up hope of recovering the stolen objects, he has, in effect, renounced ownership of that object. By default, the thief or robber acquires ownership of it and thus gains the legal capacity to define that object's status. By contrast, in those cases in which the owner seeks to regain the stolen property, the thief's or robber's intention has no power to define the status of that object. This is for two reasons. First, he has that object without the owner's permission, and second, he never acquired ownership of that object.

It is this latter situation that most closely corresponds to the case of the priest and householder discussed above. A priest also has in his possession an
animal which belongs to another person. To be sure, the householder has willingly turned over that animal to the priest. However, by performing an unnecessary sacrificial act and thus ignoring the instructions of the householder, the priest treats the animal as if it were his own, and not the householder's. In this respect, he ceases to act as the householder's agent and hence, the Mishnah equates him with a thief, whose intentions are powerless. In sum, we see that all principles governing agency in the other parts of the mishnaic system also explain the relationship between a priest and a householder. A priest's intentions can invalidate a rite because a householder has transferred those powers to him. Consequently, as long as the priest carries out the designated task, he can exercise those legal capacities.

Priests as Agents of Householders: The Underlying Significance

In claiming that the priests are merely agents of householders, the Mishnah substantially restricts the powers of the priesthood. To begin with, as demonstrated above, the Mishnah conceives of the priest's powers of intention as deriving from an Israelite householder. It is the householder who commissions the priest to perform the sacrifice. Consequently, a priest performs a valid sacrifice only by faithfully carrying out the wishes of the householder. In effect, therefore, the Mishnah has turned Scripture's theory of the priesthood on its head. In Leviticus, the priests play the definitive role in the sacrificial system. Leviticus knows of no constraints by householders on the exercise of the priestly duties. In this respect, the Mishnah has demoted the priest and given householders a more central role in the sacrificial system. It is the intentions of householders which define the classification of the animal. Once a householder has designated an animal for a particular kind of offering, God expects the priest to offer it with the same category in mind. If the priest ignores the householder's classification of the animal, God repudiates the sacrifice. As agents of householders, therefore, priests are merely cogs in a machine which a householder sets in motion and ultimately controls.

The limitations which the Mishnah places on the priesthood show that the Mishnah does not speak from the perspective of the priestly caste. Indeed, the sages are more sympathetic to the interests of lay Israelites as is evident by their desire to circumscribe the powers of the priests in favor of Israelite householders. This fact correlates with findings from previous chapters which showed that the sages found the priestly conception of the world untenable in certain critical respects. We recall that the priestly writings conceive of the world as being organized into a rigid and static scheme of classification which was set in place at creation itself. In the priestly view, humans are merely passive recipients of a preexisting divine scheme of classification. The Mishnah modifies the priestly perspective, however, by granting humans a critical role in implementing the divine scheme of classification. We are thus led to a paradoxical conclusion. Of all the Scriptural writings, it is the priestly writings which most intrigued the Mishnah's sages. At the same time, however, critical aspects of the priestly
perspective were problematic for the sages and required substantial revision. In the conclusion to this study, I will attempt to explain both of these tendencies, namely, why the sages found the priestly writings so compelling and why they modified them in the way they did.

The Role of A Priest's Intentions in the Sacrificial System: Mishnaic Innovation or Scriptural Inheritance?

Having examined the Mishnah's conception of intention in the sacrificial system on its own terms, we now consider the extent to which the Mishnah draws upon Scripture for its ideas. The Mishnah's stress on a priest's thoughts and plans, like other aspects of the Mishnah's theory of intention, derives from two streams of biblical thought, one which emphasizes the importance of the cult and sacrificial system, and the other which places stress on inward obedience to God and inward motivation to carry out God's will. The combination of these two streams of biblical thought in this case is particularly significant, because in the biblical corpus, these two streams of thought are often in tension with one another. On the one hand, those biblical passages which stress the importance of the cult and the role of the priest as the intermediary between Israelites and God ascribe little importance to the inward dimension of religious experience. In Leviticus, for example, the validity of the sacrifice depends entirely upon the priest's actions, not upon the intentions he has in mind. As long as he performs the sacrifice according to the prescribed procedure, the sacrifice is valid. He spoils the rite only if he does something improperly.

On the other hand, those biblical passages which stress the importance of inward obedience to God and inner motivation to carry out God's law tend to denounce the cult and the sacrificial system. In the following passage, for example, Samuel accuses Saul of hypocrisy for sacrificing animals captured in war when in fact God commanded him to destroy all of the enemies' possessions. In this writer's view, sacrifices in and of themselves are meaningless without a commitment to obeying divine instructions.

Does the Lord delight in burnt-offerings and sacrifices
As much as in obedience to the Lord's command?
Surely, obedience is better than sacrifice,
Compliance than the fat of rams (I Sam. 15:22)

For this writer sacrifices do not serve as a substitute for obedience to the divine will. By itself, sacrifice is an empty act which does not win God's approbation.

An even more pronounced dichotomy between sacrifices and obedience to God appears in the writings of several of the classical prophets. Hosea, for example, claims that God desires "goodness not sacrifice, obedience to God, rather than burnt-offerings (Hosea 6:6). " According to Amos, God said, "I loath, I spurn your festivals, I am not appeased by your solemn assemblies. If you offer Me burnt-offerings-or your meal offerings-I will not accept them...But let justice well up like water, righteousness like an unfailing stream. Did you offer
sacrifice and oblation to Me those forty years in the wilderness, O House of Israel?" (Amos 5:21-25).

Jeremiah, too, rejects the cult as empty formalism. "Thus said the Lord of Hosts, the God of Israel: add your burnt-offerings to your other sacrifices and eat the meat! For when I freed your fathers from the land of Egypt, I did not speak with them or command them concerning burnt-offerings or sacrifice (Jer. 7:21-24)." For Jeremiah, what is critical is that God's will be inscribed on peoples' hearts.

Thus said the Lord: Cursed is he who trusts in man, who makes mere flesh his strength, and turns his thoughts from the Lord...Blessed is he who trusts in the Lord, whose trust is the Lord alone...Most devious is the heart; it is perverse - who can fathom it? I the Lord probe the heart, search the mind - to repay every man according to his ways, with the proper fruit of his deeds (Jer. 17:5,7,9-10).

Jeremiah claims that the sacrificial system deceives Israelites as to the nature of their obligation to God. They believe they can carry out divine will through the performance of sacrifices alone. In fact, however, true devotion to God requires obedience which springs from the heart.

One final passage drawn from Psalms will illustrate the tendency within one stream of biblical thought to conceive of the cult as undermining an understanding of the divine will.

You gave me to understand that You do not desire sacrifice and meal offering; You do not ask for burnt-offering and sin offering...To do what pleases You, my God, is my desire; Your teaching is in my inmost parts (Psalm 40:7,9)

The Mishnah, as is now evident, rejects out of hand the biblical stream of thought which claims that the sacrificial system is somehow incompatible with inward obedience to God's will. On the contrary, in the Mishnah these two elements go hand in hand. Without the cult, one cannot properly worship God. At the same time, the priest's thoughts, intentions and plans play a central role in determining whether God accepts the offering at all. The following passage, perhaps more than any other, shows how devotion to God and the cult are compatible and, indeed, inseparable in the Mishnah.

A. [The fact that Scripture describes both expensive and inexpensive offerings as a "pleasing odor to God" (Lev. 1:9,17;2:2)],

B. indicates that [in God's view] there is no difference between a person who gives [a] more [valuable object] and a person who gives [a] less [valuable object],

C. provided that the person directs his mind to heaven.

M. Men. 13:11

In rejecting the stream of thought which considered the cult and obedience to God incompatible, the Mishnah carries forward another strand of biblical thought in which these two ideas peacefully coexist. The Deuteronomist and
Ezekiel, for example, incorporate both ideas into their respective systems. The Deuteronomist apparently saw no contradiction in charging the people to "love the Lord God with all your heart and soul," and at the same time emphasizing the importance of the sacrificial system (Deut. 12:4-19). Likewise, in the writings of the prophet Ezekiel, both inner obedience to God and the cult form major preoccupations. In Ezekiel's depiction of the redemption from exile, God both will give Israel a new heart (Ez. 11:16-20) and reestablish the sacrificial cult (Ez. 43:18-21, 45:18-25, 46:4-15). In one respect, therefore, Ezekiel and the Deuteronomist anticipate the Mishnah in that they detect no incompatibility between the cult and inward obedience to God's will.

Yet, at the same time, the sages of the Mishnah go further than either Ezekiel or Deuteronomy in synthesizing these ideas. In both Ezekiel and Deuteronomy, the idea of inner obedience to God's will and the sacrificial system are two separate strands of the same system. That is to say, the two ideas coexist but do not intersect. The discussion of the cult does not prompt reflection upon the importance of inward devotion to God. In the Mishnah, as we have seen, discussion of the sacrificial cult inevitably turns to the place of the heart and mind in the divine-human relationship, for in the Mishnah, one element is inextricably bound up with the other. Once again, therefore, we discover that the Mishnah significantly modifies the priestly world view. Although the sages accept the importance of the cult, they stress another theme which in the biblical writings is in tension with the priestly world view.

Conclusion: When and Why Plans are Important in the Mishnaic System

Having analyzed the role of plans in the Mishnah's sacrificial system and laws of purity, we now need to formulate a general theory to explain why the Mishnah appeals to plans in the particular legal contexts in which it does. Thus far, we have isolated two factors which seem to account for the Mishnah's interest in plans. First and most importantly, the sages ask about a person's plans only in contexts in which the classification of objects is important. Second, the sages inquire about a person's plan only when they cannot predict an object's use from normal Israelite behavior.

We may state the above findings in terms of a hypothesis which can be tested by surveying the Mishnah's rules. The Mishnah will appeal to a person's plans only when two conditions obtain: 1) the classification of an object is important and 2) it is impossible to determine that object's classification by appealing to Israelite conventions. If one or both of these conditions does not obtain, we should find that the sages will ignore a person's plans. The obvious way to test this theory is by considering in what areas of mishnaic law the Hebrew term for plans (i.e., mahshabah) appears. If our hypothesis is correct, we should find that this term appears quite frequently in those areas of law which meet the two conditions specified above. By contrast, in those contexts in which
one or both of the specified conditions is lacking, we should find that the term *mahshabah* does not make its appearance. Let us now put our theory to the test.

The term *mahshabah* and its related verbal forms appear seventy-five times in the mishnaic corpus.\(^2^9\) With the exception of two cases, which we shall examine below, the term appears only in the system of purity and the sacrificial system. The distribution of this term throughout the Mishnah, as we shall now see, accords fully with our theory. Its importance in the laws of purity and sacrifice is predictable, for these two areas of law satisfy both of the postulated conditions. By the same token, the absence of the term *mahshabah* in other areas of law also confirms our theory, because in these contexts we almost never find both of the stated conditions. One or the other is nearly always lacking. Either the classification of objects is not an issue, or the sages can predict the object's use by relying upon Israelite norms. Let me now spell this out in detail.

The importance of plans in the laws of cultic purity and Temple sacrifice follows from the Mishnah's overriding concern with the classification of objects in these contexts. In the laws of cultic purity, as we saw in Chapter Three, the principal issue is determining whether household objects fall into the category of useful or useless objects, food or waste. The classification of objects is critical because, in the sages' view, God has ordained a different set of rules for each category of object. Classification, as shown in this chapter, is also an important issue in the laws of sacrifice. In this context, the sages need to know whether a slaughtered animal belongs to the category of a sacred offering to God or a secular slaughter for food. This distinction is important because certain restrictions apply to sacred objects but not to secular ones. Both the laws of cultic purity and the laws of Temple sacrifice, therefore, satisfy the first condition: the classification of objects constitutes the fundamental issue which the sages wish to address.

Both areas of law satisfy the second condition as well. In these contexts, the sages often find it impossible to anticipate an object's classification by appealing to Israelite norms. This is because the objects to be classified (such as leather hides and dead cows) frequently serve more than one purpose in Israelite society. It is impossible, therefore, to predict what an individual will do with a given object, and hence, the only way to determine its classification is by taking account of his plan.

A similar problem arises in the laws of sacrifice. In the society presented by the Mishnah, slaughtered animals serve either as an offering to God or as food for an Israelite's household. On the basis of Israelite norms alone, therefore, one cannot determine whether a priest slaughtered the cow for holy or secular purposes. Again, to resolve such ambiguity, the framers take into account what the person plans to do. Our theory, therefore, readily accounts for the importance of plans in the laws of cultic purity and Temple sacrifice, for these laws satisfy both of the postulated conditions.
The Mishnah's indifference to plans (mahshabah) in the remaining areas of mishnaic law also conforms to our theory. These laws fail to satisfy at least one of the two conditions we specified. In the case of civil law and rules of appointed times, the classification of objects is not at issue. Rather, the recurring concern here is to determine whether someone has acted in violation of a law. Has the person at hand defrauded someone by selling overpriced goods? Has he or she, for example, violated the Sabbath laws? This is the kind of question which occupies the sages in this area of law. Since in this context, the classification of objects is unimportant, the Mishnah almost never appeals to a person's plan.

One rule, however, proves to be an exception. This law, as we shall now see, reflects a theory inconsistent with what we have found elsewhere in the Mishnah. The case at hand involves an Israelite who asks another to guard one of his or her possessions. According to Scripture, the bailee (the one guarding the object) is forbidden to use or even handle the bailment (the property being guarded). If the bailee does so, a fine is incurred. In the rule at hand, however, the bailee merely formulates the plan of using bailment. The question is whether the bailee incurs liability for the mere intention to violate the law:

A. [If] one puts to use what had been left in his keeping [and it is subsequently damaged or stolen] --
B. The School of Shammai says, "He suffers whether its value increases or decreases. [That is, the bailee must pay the owner its original worth, if it has fallen in value, or he must pay the owner additional money if its value has increased."
C. The School of Hillel says, "[The bailee must compensate the owner the value it had] at the moment it was put to use."
D. [If] one plans to use what had been left in his keeping [and it is subsequently damaged or stolen] --
E. The School of Shammai says, "He is liable."
F. The School of Hillel says, "He is not liable, unless he actually handles the object,
G. "as it says [in Scripture, ' When a man gives money or goods to another for safekeeping, and they are stolen from the man's house-if the thief is caught, he shall pay double; if the thief is not caught, the owner of the house shall depose before God that] he has not laid hands on his neighbor's property (Ex. 22: 6-7).']"
M. B.M. 3:12

This is the only rule in the Mishnah which asks whether an Israelite incurs liability for merely planning to violate a law. Indeed, all the other passages considered in this study presumed the opposite, namely, that a person cannot incur liability for the mere intention to violate the law. There are two ways of accounting for the relationship between this rule and the Mishnah's larger theory of plans. The two views mentioned here are purported to represent authorities who lived prior to 70 A.D.. If this is the case, then the rest of the Mishnah's rules, which impose no liability for merely intending to violate the law, carry
forward the view of the Hillelites. On the other hand, there is some evidence that the disputes attributed to the two schools are pseudopigraphic. Later authorities may have projected their own views onto the earlier authorities, as a way of legitimizing their own positions. If this is the case, then the dispute at hand is intended to justify the Mishnah's general theory that a person incurs no liability for his or her plans. It does this by attributing this view to the school of Hillel, the school granted normative status within the tradition. In any case, this law is the single case in which the term mahshabah appears without the two postulated conditions.

In the laws of agriculture, the term plan (mahshabah) does not appear, because those rules fail to satisfy the second of the specified conditions. In this context, a person's plan is irrelevant, because it is possible to predict his or her behavior by reference to normal behavior. By appealing to Israelite conventions, the sages can determine the status of a farmer's produce (i.e., whether it belongs to the category of sacred, secular, or waste). Since most Israelites raise crops for subsistence, there is no question as to what an individual farmer will do. Presumably, he will use his produce for food, by eating it or selling it in the market. Unless an Israelite indicates otherwise by his actions, therefore, the crop falls into the category of secular food, not holy produce dedicated to the Temple.

It turns out that the word plan (mahshabah) does appear once in the laws of agriculture (M. Sheb. 8:1). But this law, as we shall now see, is an exception which proves the rule, for it meets both of the specified conditions. The rule involves determining whether certain edible substances are subject to the restrictions of the Sabbatical year. During the Sabbatical year, Israelites must let their land lie fallow. But in order to ensure that people have enough to eat during the seventh year, the Mishnah makes a special provision. During the Sabbatical year, Israelites must use a given substance in the way that people normally use that substance during the other years of the Sabbatical cycle (i.e., the previous six years). This rule ensures that people maximize the usefulness of any produce they have stored away. They cannot waste good food on some other purpose. Accordingly, before using a product during the seventh year, an Israelite must first determine its status. If in the previous six years it normally falls under the rubric of food, then during the seventh year he must use it for that purpose. He cannot waste such substances, for example, by using them as animal fodder.

In turning to this rule, we see that the Mishnah invokes the Israelite's plan in order to classify certain types of wild spices. If one plans to use them for food, they belong in that category. But if one plans to use them as kindling wood, they fall into the category of waste.

A. [The sages] stated a general principle regarding produce of the seventh year:
B. [Concerning] all [produce] that [during the preceding six years] is
[normally] designated as food for humans--

C. [Israelites] cannot derive from it a salve for people, and needless to say,
[they cannot use such produce to make a salve] for animals. [Since it
normally serves as food, they cannot use it as salve, which is a less
valuable function.]

D. And [concerning] all [produce] which [normally] is not designated [during
the six years prior to the Sabbatical year] as food for people, [but is
designated as fodder for cattle]--

E. [Israelites] may make a salve from it for man but not for cattle. [Since
this produce generally is used as fodder, it may serve that purpose or its
equivalent during the Sabbatical year. Hence, an Israelite can use such
produce as a salve for people. However, by using it as a salve for
animals, he does not maximize the usefulness of the produce and hence
violates the law.]

F. And [concerning] all [produce] that is neither designated as food for
people nor as fodder for cattle [for example, plants which are ordinarily
not cultivated for any purpose]--

G. [If] one planned [to use] it as food for people and as fodder for animals,
[Israelites must] subject [those plants] to the restrictions [that apply to
the food of] people and to the restrictions [that apply to the fodder] of
animals. [That is, since he has designated it as human food, he may not
use it as a human salve. Furthermore, since he has also designated it as
animal fodder, he cannot use it as a salve for his animal.]

H. [If, by contrast], one planned [to use] it as wood [that is as fuel], it [falls
into the classification of] wood [and so is not subject to the restrictions
governing food during the Sabbatical year].

I. [What are examples of plants that are neither designated for human or
animal use as at F? Spices] like savory, marjoram and thyme.

M. Sheb. 8:1

The fact that the Mishnah appeals to an Israelite's plan in this case should
not surprise us. To begin with, this rule deals with issues of classification. More
importantly, this rule meets the second of our two postulated conditions. It is
impossible to predict how an Israelite will use certain spices from normal
Israelite behavior, because people do not consistently use these plants for a
single purpose. Some Israelites use them as spices, whereas others use them for
fodder or kindling wood. Therefore, to determine their status during the
Sabbatical year the sages must appeal to an Israelite's intention. Thus, the one
context in which the term "plan" appears in the laws of agriculture fully satisfies
the two specified conditions.

It is more difficult to explain the absence of the term "plan" (mahshabah) in
the Mishnah's discussion of family law (Nashim), for these rules do satisfy both
of the postulated conditions. First, the problem of classification is central in
these rules. The sages wish to determine the status of women and treat this
problem as analogous to the classification of objects. Is a woman under the
control of her father (i.e., in the category of daughter), under the control of her
husband (i.e., in the category of wife), or under no man's control (i.e., in the
category of divorcee or widow)? Second, the sages generally cannot determine a woman's status by appealing to norms, for women may fall into any of the above categories. We must ask, therefore, why a man's plan has no effect upon the classification of a woman. For example, a man's mere intention to marry a woman does not put her into the category of a wife. He must first perform some procedure in order to marry her. Similarly, a man's plan to divorce his wife does not place her in the category of a divorsee. Why not?

The answer emerges when we recall that plans have the power to classify only objects with an ambiguous status. But once an object has entered a given category, intention can have no further effect upon it (Chapter Three). The same principle applies to the classification of women. In the Mishnah's view, a woman has a defined status from birth. She is the daughter of a man and hence under his control. Since her status is already determined, another man's plan to marry her can have no effect upon her status. In order to marry her, he must perform an act of betrothal.

In summary, then, a survey of the Mishnah's rules verifies our hypothesis that two factors explain the Mishnah's interest in a person's plans. First, the Mishnah appeals to plans only when discussing the classification of objects. Second, plans serve as a criterion for classification only when it is impossible to determine an object's classification by appealing to Israelite norms.