

Talmudic Legal Narrative: Broadening the Discourse of Jewish Law

Barry Wimpfheimer*

Introduction

Though rabbinic literature is generally categorized in accordance with the dichotomy between halakhah and aggadah, rabbinic texts are not formally marked as belonging to either category.¹ The absence of internal marking leaves open the possibility that certain texts might fit both definitions. In fact, a comparison of the medieval works – *Hilkhot* and *'Aggadot ha-Talmud/En Ya'akov* – that respectively isolate the halakhic and aggadic components of the Babylonian Talmud yields overlapping material that reflects such ambiguity. Talmudic legal

* This article has benefited from feedback I have received from various people. An early version of this piece was workshopped at the 2005 Law and Humanities Workshop; I would like to express my gratitude to Robert Post and Nan Goodman, who presented critiques in that setting, and to the other workshop participants. I would also like to thank David Weiss Halivni, Elizabeth Castelli, Jeffrey Rubenstein, Michael Stanislawski and Alan Segal for their comments during my dissertation defense. In addition, I would like to thank Beth Berkowitz, Jeremy Dauber, Shana Gillers, Meir Katz, Jennifer Lemberg, Asha Moorthy, Tzvi Novick, Ravit Reichman, Daniel Reifman, Shai Secunda, Jonathan Stein, David Stern, and Eli Stern for reading and commenting upon earlier drafts. The article's final form benefitted greatly from Suzanne Last Stone's editorial suggestions.

¹ For an extensive review of the literature about this dichotomy see Bera-chyahu Lifshitz, "'Aggadah' and Its Role in the History of the Oral Law (*Torah She'Be'al Peh*)" (Hebrew), *Shenaton ha-Mishpat ha-Ivri* 22 (2003), 233-328.

Talmudic Legal Narrative

narratives – sage stories whose content implicates law in serious ways² – constitute a genre of talmudic material that defies the halakhah/aggadah characterization.

The genre of talmudic legal narrative both blurs the essential categorization of halakhah/aggadah and problematizes the bifurcated reading practices that have sprung up along either side of the dichotomy. Scholars of rabbinic narrative have occasionally treated the talmudic legal narrative qua narrative, but have generally deferred work on the unique problems generated by the interaction of law and literature.³ Scholars of rabbinic law, by contrast, have considered talmudic legal narratives as any other legal text, ignoring the special circumstances of the genre's form. To properly situate the genre, it is important to recognize the idiosyncratic characteristics that inhere in the genre which warrant special handling.

In his work on case citations in the Babylonian Talmud, a major subset of talmudic legal narrative, Eliezer Segal has noted that such narratives often evoke a flurry of talmudic and post-talmudic interpretive activity that attempts to make case citations fit with the larger treatments of their respective topics in talmudic law.⁴ Segal considers this ungrammaticality a product of talmudic redaction and posits a diachronic explanation for the phenomenon.⁵ While Segal's redaction history may be correct, it does not sufficiently appreciate the synchronic dilemma of talmudic legal narrative.

2 The genre does not include the examples of blatant rabbinic poetic license with legal concepts in certain lengthy aggadic sugyot. Shamma Friedman has alerted me to two excellent examples (the legal debate between R. Yohanan/Resh Lakish and Rabbah's contribution to the heavenly debate) at bBM 84a-86a in which stories reopen previously resolved issues of law for the sake of narrative drama.

3 Yonah Frenkel, *Aggadic Narrative: Harmony of Form and Content* (Hebrew) (Tel Aviv: Ben Hayim, 2001), 220-35.

4 Eliezer Segal, *Case Citation in the Babylonian Talmud: The Evidence of Tractate Neziqin* (Atlanta, GA: Scholars Press, 1990), 216.

5 Ibid.

Barry Wimpfheimer

Legal narratives are different from non-narrative legal texts. While legal statutes are articulated in present time in order to evoke a universality of temporal application, legal narratives employ the dynamic movement of time as part of their poetics. Where statements of legal reasoning aim to rationally justify positions of law in an imagined affectless world, legal narratives utilize surface and latent emotions to generate tone and nuance. A rabbinic ruling provides a black and white affirmative or negative reply while a legal narrative on the same topic allows for multiple characters and multiple actions that color the same issue in shades of grey. There is, thus, a contradiction of form that precedes the perceived contradictions of content.

But it is not, I would argue, the inherent contradiction in textual form that creates the largest conflict in content. Rather, the legal interpreters, from those within the Talmud through to the present, have imposed hermeneutic expectations that color talmudic legal narrative as incoherent. The defining feature of talmudic legal discourse (and the one that accounts for the term “Talmud” within the Talmud itself) is the unification of seemingly incongruent canonical legal texts. The Talmud’s anonymous editor specializes in juxtaposing conflicting texts and resolving the conflict through distinction; post-talmudic commentaries continue this process, with subsequent generations of scholars expanding the boundaries of the canonical texts that demand congruence. This pursuit of congruence demands that legal narratives be syllogized into statutory form in order to allow their position in the legal code to be evaluated. In other words, the default expectation of the legal interpreter is of a statute-like statement of law (or a logical assertion or biblical inference to support such a statement). In order to allow talmudic legal narrative to be assimilated into talmudic interpretive discourse, legal readers divorce content from form. This separation of content from form does not yield pure content, but transmogrifies the talmudic legal narrative into a legal statute. These statutes are often perceived to conflict with other legal materials and hence to be incoherent.⁶

6 This observation about the hermeneutic expectation of legal readers can

Talmudic Legal Narrative

The talmudic legal narrative demands a different hermeneutic expectation. In order to properly understand these stories, we need to find an alternative to the statute as the default image of law and to the search for conflicted rulings as the default hermeneutic operation. In the following pages, I will draw upon Mikhail Bakhtin's work on the novel to provide a model for appreciating the special characteristics of talmudic legal narrative and on Robert Cover's legal insights to create a different set of hermeneutic expectations and operations for the study of such narratives.

I. Bakhtin's Preference

The multivocality that often stands as the trademark of rabbinic literature has led some to suggest that the midrashim and Talmuds are, to use Bakhtin's own terms, inherently heteroglossic and dialogical.⁷

also be connected to the long-standing tension within Jewish law between code-supporters and code-protesters. Steven D. Fraade, "Nomos and Narrative before *Nomos and Narrative*," *Yale Journal of Law and the Humanities* 17 (2005), 81-96, has recently argued that early Jewish law reflects this tension through the renarrativization of law that transpires after every attempt to encode the law. Such tension prefigures, Fraade argues, the medieval debates in which such tension is explicit. Though I am hesitant about Fraade's broad use of the term "narrative" to refer to a diverse body of literature, I value his insight that Jewish legal history can be charted through an awareness of the ways in which the code is resisted through the production of other literary texts. Scholarship about the code debates often focuses on the code as reflecting single opinions rather than multiple ones. But the protestations of Maharshah and others are as much about the fact that Jewish law is discourse rather than product. For code supporters, Jewish law is a signified and that signified is a set of rules; the code is, therefore, the literary text that best matches signifier with signified. For code protesters, Jewish law is a network of signifiers and the attempt to boil these into a code is preposterous. Though code supporters are understandably unable to appreciate legal narratives as a literary genre, even code protesters have trouble doing so because the discourse that is Jewish law still constructs itself as debate about statutes.

⁷ Daniel Boyarin, *Carnal Israel: Reading Sex in Talmudic Culture* (Berkeley:

Barry Wimpfheimer

But Bakhtin's notion of the dialogical developed over time and a return to this development within Bakhtin can help us appreciate the ways in which talmudic legal narratives are differently dialogical than talmudic discourse in general and demand an interpretive lens that is sensitive to this difference.

The genre of the novel – Bakhtin's lifelong obsession – is analogous to talmudic legal narrative because of the ways in which its generic flexibility has often frustrated its critics.⁸ A genre is sometimes understood as a set of agreed upon principles followed by writers and understood by readers; one of the roles of the stylistics scholar is to identify and categorize such principles.⁹ This understanding of genre and the scholar's goal works well with rigid poetic genres; though critics have tried to employ the same approach to the novel, the inherent flexibility of the genre has made it difficult for scholars to compile and categorize such a list of principles.¹⁰

In his early work Bakhtin followed this approach. Because of the frustrations of the larger genre of the novel, Bakhtin focused on a specific subgenre which he called the “polyphonic novel” and a single author, Fyodor Dostoevsky, whom Bakhtin credited with the invention of this subgenre.¹¹ The “polyphonic novel,” Bakhtin argued, is characterized by an authorial withdrawal from the voices of individual characters that allows these characters to inhabit different “consciousnesses.”¹² By

University of California Press, 1993), 27, about rabbinic texts: “Speaking in Bakhtinian terms, the texts are not monological but dialogical, presenting different views on most issues dialectically at nearly every turn.” Gerald L. Bruns, *Hermeneutics, Ancient and Modern* (New Haven: Yale University Press, 1992), 104-23.

8 M. M. Bakhtin and Michael Holquist, *The Dialogic Imagination* (Austin: University of Texas Press, 1981), xxvi-xxx.

9 Ibid.

10 Ibid.

11 Ibid.

12 M. M. Bakhtin and Caryl Emerson, *Problems of Dostoevsky's Poetics* (Minneapolis: University of Minnesota Press, 1984), 8-16.

Talmudic Legal Narrative

allowing these different consciousnesses to speak, the novelist employs what Bakhtin calls heteroglossia – a simultaneous speaking in multiple languages. The result of this authorial withdrawal and heteroglossia is that ideas emerge from Dostoevsky's novels formed in the crucible of real interaction, where Dostoevsky's own perspective is always in danger of giving way to those of his characters and vice versa. Bakhtin suggests that an idea can only be considered real when it has entered into a dialogue with other ideas, when it is "dialogical."¹³

In his later work, Bakhtin claims that all language is inherently dialogical.¹⁴ The dialogue is not between characters or individuals (author and character) but between the social discourses or systems of signification (perhaps best symbolized but not entirely described by different intellectual fields) that comprise the cultural world. Human interactions are always overdetermined, partaking simultaneously in the multiple discourses of psychology, sociology, economics, philosophy, theology, law, etc. The assertion of the dialogical quality of language and everyday experience led Bakhtin to pose a fresh dichotomy of poetry and prose that inverts the age-old stylistic preference of rigidity and celebrates prose for its flexibility.¹⁵

Poetry, Bakhtin argues, attempts to impose a unitary meaning on dialogical realities and force those realities to reflect a single context or perspective.¹⁶ As a rigid genre of writing with strict rules, poetry resists

13 Ibid., 88: "The idea begins to live, that is, to take shape, to develop, to find and renew its verbal expression, to give birth to new ideas, only when it enters into genuine dialogic relationships with other ideas, with the ideas of others. Human thought becomes genuine thought, that is, an idea, only under conditions of living contact with another and alien thought, a thought embodied in someone else's voice, that is, in someone else's consciousness expressed in discourse. At that point of contact between voice-consciousnesses the idea is born and lives."

14 Bakhtin and Holquist, *Dialogic Imagination*, 259-422.

15 Michael Holquist, "Introduction," in *ibid.*, xxvi-xxvii.

16 Ibid., 296: "The poet is a poet insofar as he accepts the idea of a unitary and singular language and a unitary, monologically sealed-off utterance."

Barry Wimpfheimer

the natural heteroglossia of language and human experience and imposes on these a strict structure.¹⁷ The prose writer on the other hand (and here the new approach enables Bakhtin to expand beyond the novel into general prose) is free to engage the natural dialogical qualities of language in the course of composition and allow multiple discourses to be reflected.¹⁸

Bakhtin's preference for the novel could only be achieved through an appreciation of the ways in which the approach of conventional stylistics was itself biased towards poetry and against prose.¹⁹ It is my contention that Bakhtin's dichotomy of poetry/prose maps onto the dichotomy of statute/narrative within rabbinic law. Just as literary stylistics was biased against the novel, considering it a less beautiful genre for its defiance of stylistic rigidity, so too the study of Jewish law is biased against the legal narrative because the form does not fit the default expectation of a legal text.

Bakhtin's approach to the novel is not simply an analogous model for our talmudic project. Rather, the mapping of Bakhtin's dichotomy onto our own highlights the extent to which non-narrative forms of legal writing (the statute, midrash, or statement of reasoning) attempt to speak in a unitary voice, to control meaning within a single and narrow legal discourse. These forms of writing tolerate only one consciousness – the legal – and throw up blinders to the other cultural voices or contexts with which law negotiates its own power. The talmudic legal narrative (prose), by contrast, contextualizes the rules of

17 *Ibid.*, 298: “As a result of this work – stripping all aspects of language of the intentions and accents of other people, destroying all traces of social heteroglossia and diversity of language – a tension-filled unity of language is achieved in the poetic work.”

18 *Ibid.*, 299: “The prose writer as a novelist does not strip away the intentions of others from the heteroglot language of his works, he does not violate those socio-ideological cultural horizons (big and little worlds) that open up behind heteroglot languages – rather, he welcomes them into his work.”

19 *Ibid.*, xxvii-xxx.

Talmudic Legal Narrative

law by locating these within a narrative frame wherein they are neither exclusive nor uniquely authorized. Thus the narrative provides grounds for the negotiation of different systems of meaning.

While general talmudic legal discourse consists of dialogues between rabbis, these are the dialogues of individuals (early Bakhtin) within the singular context of the discourse of legal rules (aggadic discourse contains similar disagreements within a singular discursive plane). But talmudic legal narratives create a dialogue between legal rules and other cultural contexts – be they sociological, psychological, political, or economic. In examining talmudic legal narratives within a broader cultural framework, we can reverse the talmudic preference for resolving discrete legal conflicts and begin to explore the complex realities that inhere in talmudic legal narrative. For a model of legal hermeneutics that incorporates just such a frame, I turn now to Robert Cover's seminal essay, "Nomos and Narrative."²⁰

II. Reconceiving Legal Space

"Nomos" and "narrative" are terms that require explication. "Nomos," the Greek word for law that the Septuagint uses for the Hebrew word "Torah,"²¹ is defined in the essay's opening sentence as "a normative universe." This normative universe can be large or small and is not determined by formal apparatus of institutions. It is a discursive world

20 Robert M. Cover, "The Supreme Court, 1982 Term – Foreword: Nomos and Narrative," *Harvard Law Review* 97 (1983), 4-68, reprinted in Robert M. Cover et al., *Narrative, Violence, and the Law: The Essays of Robert Cover* (Ann Arbor: University of Michigan Press, 1992), 95-172. Suzanne Last Stone, "In Pursuit of the Countertext: The Turn to the Jewish Legal Model in Contemporary American Legal Theory," *Harvard Law Review* 106 (1993), 813-94, is an important critique from both American and Jewish perspectives.

21 Fraade, "Nomos and Narrative before *Nomos and Narrative*," 84, notes the semantic consequences of the Septuagint's consistent translation of *Torah* as *nomos*.

Barry Wimpfheimer

that is constituted by communal commitment. In an early footnote, Cover references Clifford Geertz's definition of culture as "the webs of significance [man] himself has spun."²² In truth, Geertz's picture of the cultural world as a space of interwoven systems of significance is the model for the legal *nomos*. Put another way, Cover's *nomos* is Geertz's cultural world when viewed from the vantage point of a single system of signification – the law. *Nomos* and law are not synonyms for Cover; the former describes a cultural field and the latter the movement within the field that both constitutes the field and is constituted by it.²³ The introduction of the term "*nomos*" enables a shifting of the focus of theorizations of law away from the rules and institutions that still define law for Cover and towards the space that such rules and institutions inhabit. This shift is part and parcel of a larger shift within the essay from practice to meaning.²⁴

The dichotomy *Nomos/Narrative* is undoubtedly influenced by *Halakhah/Aggadah*; Cover's use of "narrative," like the term "aggadah," is difficult to define in positive terms. One negative definition, borrowed from *Halakhah/Aggadah*, is that "narrative" refers to all aspects of cultural meaning that are not directly tied to legal rules and

22 Cover, "Nomos and Narrative," 5 n. 7. Clifford Geertz, *The Interpretation of Cultures* (New York: Basic Books, 1973), 5.

23 The use of "field" is a nod to Pierre Bourdieu, *The Field of Cultural Production* (trans. Randal Johnson; New York: Columbia University Press, 1993).

24 Compare more recently Paul W. Kahn, *The Cultural Study of Law: Reconstructing Legal Scholarship* (Chicago: University of Chicago Press, 1999), 40: "A cultural study of law is precisely *not* a part of the practice of law. It should not, therefore, be asked to reform law. It has nothing to say in this respect. It is, however, a necessary supplement to our current practice of legal studies. The critical turn is a turn away from the professional school and back to the disciplines of philosophy, psychology, anthropology, and history. We can know more about ourselves. This is all that a cultural study of law can promise. What we do once we have that knowledge is a question for practice, not theory." The relationship between practice and meaning is different in the Jewish context, as I hope to articulate in the future.

Talmudic Legal Narrative

institutions.²⁵ There are other positive definitions of “narrative” within the essay. “Narrative” refers to cultural grand-narratives or myths that are directly related to the legal enterprise because they serve to undergird law’s ongoing operation.²⁶ The shared nature of such narratives constitute the *nomos* as a communal normative world rather than an individual flight of fancy.²⁷ But “narratives” are not simply stories from the past that unite communities and provide shared cultural context, they are also stories told about the future, about communal aspirations. These future narratives represent the law’s optimistic attempt to transform present reality into utopian, sometimes messianic, goals.²⁸

To illustrate the way in which precepts and narratives operate together to ground legal meaning, “Nomos and Narrative” draws upon an example from the biblical laws of primogeniture. Deuteronomy 21:15-17 formulates the law of primogeniture as a statute:

If a man has two wives, one loved and the other unloved, and both the loved and the unloved have borne him sons, but the first-born is the son of the unloved one – when he wills his property to his sons,

- 25 Cover, “Nomos and Narrative,” 4: “No set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning ... Once understood in the context of narratives that give it meaning, law becomes not merely a system of rules to be observed, but a world in which we live.”
- 26 Ibid., 9: “A legal tradition is hence part and parcel of a complex normative world. The tradition includes not only a corpus juris, but also a language and a mythos – narratives in which the corpus juris is located by those whose wills act upon it.”
- 27 Ibid., 10: “The intelligibility of normative behavior inheres in the communal character of the narratives that provide the context of that behavior. Any person who lived an entirely idiosyncratic normative life would be quite mad.”
- 28 Ibid., 9: “The normative meaning that has inhered in the patterns of the past will be found in the history of ordinary legal doctrine at work in mundane affairs; in *utopian and messianic yearnings*, imaginary shapes given to a less resistant reality; in apologies for power and privilege and in the critiques that may be leveled at the justificatory enterprises of law.” [emphasis mine]

Barry Wimpfheimer

he may not treat as first-born the son of the loved one in disregard of the son of the unloved one who is older. Instead, he must accept the first-born, the son of the unloved one, and allot to him a double portion of all he possesses; since he is the first fruit of his vigor, the birthright is his due.²⁹

The statute is itself aware of the pull of love that may mitigate against the legal precept.³⁰ Nevertheless, it insists that such love cannot outweigh the unloved oldest son's entitlement to the birthright.

With the specificity of the statute in mind, then, we are shocked to discover that the book of Genesis turns the inheritance of the younger son at the expense of his older brother into its most prevalent trope.³¹ Time and again, the heroes of Genesis are younger siblings who attain the rightful legacies of their elder brethren.³² But, as Cover notes, the Genesis narratives do not indicate that the rule articulated in Deuteronomy was not the norm.

29 Jewish Publication Society, *Tanakh: A New Translation of the Holy Scriptures According to the Traditional Hebrew Text* (1st ed.; Philadelphia: Jewish Publication Society, 1985), 307.

30 Cover realizes that the statute's discussion of love complicates the usage to which he is putting the Genesis deviation from the norm; because of this Cover imagines a second legal system where the rule is followed without protest. But the imagination of such a legal system for heuristic purposes is not unproblematic. It imagines the social discourse of familial relations as something ancillary to the system; this contributes to the code-like image of a monological legal world.

31 Cover, "Nomos and Narrative," 20, circumvents the problems of biblical source criticism by asserting that his argument does not rely on the canonical union of the later Deuteronomy statute with the earlier Genesis narratives, but on the shared heritage of the two: "The Deuteronomic material has been included in a biblical canon together with a rich set of accompanying narratives. Long before the final redaction of the canon, many of the texts and stories existed as parts of a common sacred heritage of the people who produced Deuteronomy."

32 Cain and Abel [Gen 4], Ishmael and Isaac [Gen 16-22], Esau and Jacob [Gen 23-26], Reuben and Judah [Gen 43-45], Judah and Joseph [Gen 37; 40-50], Manasseh and Ephraim [Gen 48].

Talmudic Legal Narrative

This does not mean that the formal precept was not obeyed. Indeed, the narratives in question would lose most if not all of their force were it not for the fact that the rule *was* followed routinely in ordinary life. What is distinctive about the biblical narratives is that they can never be wholly squared either with the formal rule – though some later rabbis tried to do so – or with the normal practice. It is tempting to reconcile the stories to the rule by creating exceptions or by positing circumstances that would remove the case from the rule. These strategies may be useful to the later legist whose concern is a consistent body of precepts. Life in the normative world of the Bible, however, required a well-honed sense of where the rule would end and why.³³

To resolve the incoherent Genesis narratives of primogeniture, Cover turns to the grand narrative in which such subversion is meaningful. The Genesis stories are myths that function as the opening scenes of the national history of Israel. Their poetics, therefore, reflect the grand narrative of Israelite history. Reversal of primogeniture should be understood as an interruption of the normal order that was possible and maybe even desirable:

To be an inhabitant of the biblical normative world is to understand, first, that the rule of succession can be overturned; second, that it takes a conviction of divine destiny to overturn it; and third, that divine destiny is likely to manifest itself precisely in overturning this specific rule.³⁴

Cover does not see these narratives as arriving within a fully developed interpretive world, but as constructing the hermeneutic expectations of their intended audience. The stories construct an expectation that the

33 Cover, “Nomos and Narrative,” 21. I would add that without Deuteronomy one could easily establish from the Genesis narratives the norm that they are subverting.

34 *Ibid.*, 22.

Barry Wimpfheimer

rule of succession will be overturned and that this reversal is a marker of divine destiny.

The contemporary practice of law shares with biblical exegesis an often unacknowledged challenge of resolving abundant and glaring contradiction. Both biblical exegetes and judges regularly proffer distinctions that preserve a singularity of meaning in the face of such contradiction. In thickly describing³⁵ the Genesis narratives as participants in multiple discourses – theological, moral, and political – Cover instantiates a new model of legal exegesis that has ramifications both for biblical exegesis and for the practice of law.³⁶ Where earlier biblical exegetes had identified the identical contradiction in the rule of succession and offered various formal distinctions for the divide – in short, preferred singular to complex meaning – Cover, like Bakhtin with the novel, embraces the complexity of the problem as its very solution. He creates a method of understanding law that no longer looks to resolve this kind of problem nor to see it as a problem in the first place. Within the jurisgenerative or paideic model of law, a multiplicity of positions is not problematic but ideal.³⁷ In other words, Cover’s solution to the

35 The title of the section of “Nomos and Narrative” that discusses the biblical example is “The Thickness of Legal Meaning.” This is a nod to the notion of “thick description” first suggested by Gilbert Ryle and popularized by Clifford Geertz in Geertz, *Interpretation of Cultures*, 3-30. Ryle’s example is the wink. Whereas a thin description describes the physical characteristics of the eye’s movements, thick description captures the various and often overdetermined semiotics of the same movement. Geertz’s definition of culture as a tangled semiotic web demands for it thick description. Cover here calls for the same thickness vis-à-vis the legal *nomos*.

36 It may appear, at first glance, that Cover continues here an age-old exegetical practice of posing a contradiction and then resolving that contradiction through supernatural means – divine destiny as *deus ex machina*. But Cover’s focus on the “inhabitant of the biblical normative world” places emphasis on an implied biblical audience; it is this audience’s perception of divine destiny that the Genesis accounts construct and to which they cater.

37 The terms “jurisgenerative” and “paideic” are used by Cover to refer to dichotomies that prefer multiplicities of legal meaning to “jurispathic” or “imperial” social bases that destroy law’s natural urge to multiplicity.

Talmudic Legal Narrative

exegetical problem of the Genesis narratives is the idealization of a different type of legal multiplicity; not only are there multiple legal opinions and multiple *nomoi* but there are also multiple discourses within a single *nomos* and through which law can be understood as meaningful. Cover's solution resolves the contradictions in legal content by enlarging the space of the text to include the historical, political, and affective ways in which the Genesis narratives impact upon their audience.

Through the Genesis example, Cover provides a new critical exegesis for the legal narrative, suggesting that the reader must expand the frame of reading to include a broader array of cultural voices, allowing the stories themselves to construct much of the hermeneutic frame for their interpretations. Cover's approach to the incoherence of biblical legal narrative provides a model for the reading below of a talmudic story about a lovesick man.

III. The Lovesick Man: Palestinian Talmud

The story of the lovesick man appears within a discussion found verbatim in two different contexts in the Palestinian Talmud: *Avodah Zarah* 2:2, 40d discusses whether Jews may be treated by idol-worshipping doctors and *Shabbat* 14:4, 14d discusses whether medical cures may be effected on the Sabbath.³⁸ Towards the middle of this discussion a statutory text reads:

R. Ya'akov in the name of R. Yoḥanan [said], "[They] may be cured with all [forbidden things] except those of idolatry, illicit sex, and murder."

38 On the unique phenomenon of twinned extensive discussions in the Palestinian Talmud see Saul Lieberman, *On the Yerushalmi* (Hebrew) (Jerusalem: Darom, 1929), 12-21. Because some of the material is out of place in *Avodah Zarah*, it appears that the original discussion was *Shabbat* and, as often happens with twinned discussions (Lieberman, *Yerushalmi*, 20-21), extra material made it over in the transfer.

Barry Wimpfheimer

Though the statute is itself not explicit, mishnaic context indicates that the illness in question is fatal; in other words, three cardinal sins (idolatry, illicit sex, and murder) are the only prohibitions that deny access to a life-saving cure. The discussion proceeds to name other possible scenarios in which a Jew would be forced to choose between life and violating a prohibition, implying that the cardinal sins are the only ones for which this sacrifice is always demanded.

The discussion following R. Yoḥanan's enumeration of the three cardinal sins is remarkably well-structured. R. Yoḥanan's three sins are the basis for a tripartite analysis in which each sin is examined on its own. Analysis of each of the three sins proceeds along parallel lines: each discussion expands the definition of the cardinal sin to include scenarios that would seem, on the surface, not to qualify. The idolatry discussion expands the sin of idolatry to include unrequested or unintentional usage of idolatrous objects. The murder discussion expands the notion of murder to include non-murderous brigandage. The discussion around illicit sex expands its cardinal sin by invoking the story of the lovesick man:

And not only when he said to him, "bring me"³⁹ [for sexual intercourse] a married woman," but even to listen to her voice.

Like one man who loved a woman in the days of R. Elazar and became dangerously ill.

They came and asked [R. Elazar],

"Is she permitted to pass before him so that he may live?"⁴⁰

He said, "Let him die and this not be so."

"Should he hear her voice and not die?"

He said, "Let him die and this not be so."

39 The language of "bring me" is odd and is likely based on the parallel discussion of idolatry wherein the point was made that even if the patient doesn't say "bring me idolatrous herbs...". Alternatively, the text is trying to maintain the patient's agency.

40 Michael Sokoloff, *A Dictionary of Jewish Palestinian Aramaic of the Byzantine Period* (2nd ed.; Ramat Gan, Israel and Baltimore: Bar Ilan University Press and Johns Hopkins University Press, 2002), 394 s.v. "AVR."

Talmudic Legal Narrative

The Palestinian Talmud here narrates a purportedly historical incident from the tannaitic period. A certain anonymous man fell lovesick over an anonymous woman; when his representatives asked R. Elazar for permission to enact sexual cures, the rabbi refused and insisted that the man die before such cures would be enacted. Taken on its own, the story expands the cardinal sin of illicit sex both by broadening the definition of the sex act and by increasing the parameters of the sexual taboo. It broadens the sex act by considering “passing before him” and “hearing her voice” as tantamount to the intercourse that normally defines sex for rabbinic law. It expands the parameters of the sexual taboo by forbidding the sexual cures even though, as it would appear from a simple reading of the story, the female object of desire is unmarried. Whereas sex between a man and a single woman is discouraged, such does not qualify as adultery and would not be considered a violation of the biblical taboo on illicit sex.⁴¹

This maximal reading of the story is limited by the editor of the Palestinian Talmud already within the story’s introduction. The anonymous editor (italicized in the quotation above) asserts that the story expands the definition of the cardinal sin only in broadening the definition of a sex act. As for the taboo, the editor prejudices the reader before he or she reads the story that the woman is married: “And not only when he said to him, ‘bring me [for sexual intercourse] *a married woman,*’ but even to listen to her voice.” Already from the introductory line, the Palestinian Talmud’s editor attempts to control the impact of the story by restricting its expansive properties in one direction.

That the woman’s marital status within the story is a matter of concern can be seen from the early amoraic debate that immediately follows the story:

41 Even if the act qualifies as another sexually related biblical prohibition (see n. 42), it does not constitute the cardinal sin unless it violates a sexual taboo.

Barry Wimpfheimer

What happened?

R. Ya'akov bar Idi and R. Yitshak bar Nahman.

One said she was married (henceforth "Married Amora"), and the other said she was unmarried (henceforth "Unmarried Amora").

The "Married Amora" shares the editor's view that the woman was married while the "Unmarried Amora" chooses not to limit the story's double expansion of the law. The absence of an explicit determination of the woman's status leads the "Unmarried Amora" to a maximal reading of the story that understands R. Elazar as demanding a man's death rather than authorizing a flirtatious encounter with a single woman.

The editor's desire to confine the story with a minimalist reading is continued within the Palestinian Talmud's reaction to the amoraic debate:

It is fine for the one who said she was married.

But according to the one who said she was unmarried,

what about Bar Koḥa Nagra who loved a woman in the days of R. Elazar and [R. Elazar] permitted him?

Here the editor marshals a counter-narrative to pose a question to the "Unmarried Amora."⁴² Two factors mark this counter-narrative as self-consciously ahistorical. First, while one could logically accept one story about a lovesick man as an historical event, it is harder to imagine the same event happening twice before the same rabbinic judge.⁴³ Second,

42 R. Elazar condemns sex between a single man and woman as a biblical act of prostitution in tKidd 1:4; *Sifra 'Emor* 1:7, 94b; yYev 6:5, 7c; 7:5, 8b; 13:1, 13b; bYev 59b, 61b, 76a; bSan 51a; bTem 29b, 30a. Since R. Elazar's prohibitive position is consistent with that position, the Palestinian Talmud might be compelled to construct a counter-narrative in order to formulate its question. R. Elazar's association with the prohibitive position may also explain why the Palestinian Talmud attributes the story to him. I thank David Flatto for pointing out this connection.

43 This is not to say that the original story is historically reliable; there is a difference, however, between the general historiographical issues of rab-

Talmudic Legal Narrative

the name of the lovesick man in the counter-narrative has clear linguistic overtones. “Bar Koḥa Nagra” means “the one capable of hollowing out.” The phallic significance of such a moniker requires little elucidation. We can safely say, then, that the second narrative is an ahistorical composition by an editor who wants to limit the story’s double expansion to a single broadening of the definition of sex. The existence of an amoraic position that embraces the story’s maximal meaning motivates the creation of a counter-narrative to eliminate the position of the “Unmarried Amora.”

More evidence of this editorial motivation is clear in the answers that the editor offers to resolve the contradiction between the lovesick man story and its counter-narrative. The editor offers three problematic solutions to its question:

- a) In one case she was unmarried and in the other she was married.
- b) And even if she was unmarried in both cases, you can explain that he placed his eyes on her before she was married.
- c) Some want to say she was a woman of stature and wouldn’t listen to him, and everything he would do he would do in prohibition.

Each of these solutions is problematic; the repeated attempt to suggest incomplete solutions highlights the editor’s desire to limit the legal ramifications of the lovesick man story. The first solution is simply untenable. The question it comes to answer is posed only to the “Unmarried Amora.” How then can that Amora now resolve the contradiction with the counter-narrative by saying that the woman in the first story was married?⁴⁴ The second answer is a way of allowing

binic stories and stories that are blatantly ahistorical creations. On the general problem of the unreliability of such stories see William Scott Green, “What’s in a Name? – The Problematic of Rabbinic ‘Biography’,” in idem (ed.), *Approaches to Ancient Judaism: Theory and Practice* (Missoula, MO: Scholars Press, 1978), 1:77-96.

44 Palestinian Talmud commentators attempt to calisthenically extricate themselves from this problem. *Pene Moshe* (Shabbat "כאן בפנייה") and *Korban ha-Edah* (Shabbat "ומאן דאמר") suggest that this is not an answer so much as a

Barry Wimpfheimer

the “Unmarried Amora” to claim that the prohibition of the first story stemmed from the fact that the woman was married: though at the beginning of the story she was unmarried, at the time of prohibition she was married. This answer is a clever way of turning the “Unmarried Amora” into the “Married Amora.” The third answer is a genuine attempt to resolve the problem. Here for the first time we encounter the woman’s agency as a relevant factor. Curiously, in order for that agency to even be a possibility the Talmud has to posit that she was a woman of stature; only a woman of stature would have the right (desire) to refuse. But even this answer is unsatisfying since “in prohibition” is ambiguous.⁴⁵ Quite possibly, this answer assumes that the desperate man might rape the non-compliant woman; therefore, R. Elazar chose the man’s death over any possible flirtations, since all flirtations would be refused and he might have come to violate other prohibitions. If this is, in fact, the meaning of the final answer, there is much missing from the text.

reminder that the only viable interpretation is the interpretation of the other amoraic position.

- 45 The two Palestinian Talmud texts, *Shabbat* and *‘Avodah Zarah*, diverge here. I have chosen *‘Avodah Zarah*’s text, “ולא הוות משמע ליה,” “she would not listen to him,” over *Shabbat*’s text, “ולא מנסכה,” “she would not be marrying him.” Several factors point to “she would not listen to him” as the original text. First, because marriage is raised in the Babylonian Talmud it is likely that the emendation was made, as it often is in the Palestinian Talmud, on that basis. Second, *lectio difficilior* is quite relevant here. The second half of this statement, “and everything he would do, he would do in prohibition,” makes considerably more sense on the basis of the reading that she wouldn’t marry him and we therefore have to suspect an emendation. Moreover, such a reading would also appeal to someone unwilling to directly confront the fact that the *sugya* does not find any extant justification for prohibition in the case of an unmarried woman. Such a permissive stance caused a tradent to change the final phrase which implies that the earlier suggested cures were suggested within the confines of marriage, a position that makes no sense whatsoever.

Talmudic Legal Narrative

The incoherence of the lovesick man's story as a legal narrative is borne out within the editor's active struggle to suppress the narrative's legal meaning. The *sugya's* super-structure of expanded definitions of the cardinal sins seems capable of creating enough space within legal precedent for the story to fit comfortably. And yet, the story's expansion in two different legal directions – an expansion that is somehow acceptable to the “Unmarried Amora” – is too much for the editor, who attempts to rein in the story's expansion in order to make it fit with legal precedent. The *sugya's* dynamic energy comes from the classic talmudic enterprise of making canonical texts cohere. The attempt to revise the narrative of the lovesick man so that it can cohere with other legal texts is thwarted by the existence of one interpreter, the “Unmarried Amora,” who will not revise the original story. The editor tries unsuccessfully to force even this view into some sort of revision, but the reader is ultimately left without a true understanding of how the “Unmarried Amora” resolves this tension.

IV. The Lovesick Man: Babylonian Talmud

The Babylonian Talmud's version of the story of the lovesick man is located in a *sugya* at *Sanhedrin* 74a-75a that also addresses the three cardinal sins.⁴⁶ Its discussion of the cardinal sins begins with a different original statutory statement:

R. Yoḥanan said in the name of R. Shimon ben Yehotsadak, “They tallied and concluded in the attic of the house of Nitseh in Lod [that] all prohibitions in the Torah, if they say to a person, ‘violate and you will not be killed’ he should violate and not be killed except for [the prohibitions of] idolatry, illicit sex, and murder.”

46 Aryeh Cohen, “Towards an Erotics of Martyrdom,” *The Journal of Jewish Thought and Philosophy* 7 (1997), 227-56, offers an interpretation of this *sugya* that reads the lovesick man narrative in light of the *sugya's* earlier material.

Barry Wimpfheimer

The context here is a scenario in which an oppressor forces a Jew to choose between death and the violation of a precept. The discussion begins by attempting to find some basis in either scripture or logic for each of the cardinal sins before talking about additional exceptional scenarios that either require death for non-cardinal sins or violations for cardinal sins. There is no attempt within the *sugya* to expand the definition of the prohibitions. At the conclusion of the *sugya*, the story of the lovesick man is recounted:

R.⁴⁷ Yehudah said in the name of Rav,⁴⁸
“[There is] a story of a man who placed his eyes on a woman and his heart filled with black bile.⁴⁹
And they [came⁵⁰ and] asked the doctors,
and [the doctors] said, ‘He has no treatment unless she has intercourse [with him].’
The sages said, ‘Let him die, but she will not have intercourse with him.’
‘She should stand before him naked.’
‘Let him die, but she will not stand before him naked.’
‘She should converse with him from behind a barrier.’
‘Let him die, but she will not converse with him from behind a barrier.’”

47 "ת"ר" appears in *Yalkut Shim'oni Mishle* preceding this story as per Raphael Nathan Nata Rabbinovicz, *Sefer Dikduke Soferim*, 2 vols. (Jerusalem: Ohr ha-Hokhma, 2002), Sanhedrin (10), 210. These words also appear in the version found in Moses Gaster, *The Exempla of the Rabbis* (New York: Ktav, 1968), 159, but since they appear as an introductory formula before every story in *Sefer ha-Ma'asiyot (The Exempla)* they cannot be used as evidence of tannaitic provenance.

48 "אמר רב" is added into the margins of MS Karlsruhe. A number of words, including some essential ones, are similarly added in Karlsruhe's margins. Perhaps the scribe became sloppy at the end of a chapter?

49 MS Karlsruhe has the deleted term "באש) טינא," For black bile see below, n. 56ff.

50 "ובאו" is missing in MS Herzog.

Talmudic Legal Narrative

Though the Palestinian Talmud identifies R. Elazar by name, the Babylonian Talmud knows only an anonymous collective of sages. Where the Palestinian Talmud's diagnosis is implied, the Babylonian Talmud's diagnosis includes the specifics of black bile and the doctors responsible for the diagnosis. Those doctors in the Babylonian Talmud suggest that she stand before him naked rather than pass before him, presumably clothed, as suggested by the doctors in the Palestinian Talmud. Despite these differences, the two discussions clearly refer to the same story.

The similarity between the Talmuds does not end with the story unit. The early amoraic reaction to the story in the Babylonian Talmud, and the editorial response to that reaction are nearly identical. As in the Palestinian Talmud, the Babylonian Talmud knows of an early debate between Palestinian amoraim but no longer remembers which name is responsible for which position:

R. Ya'akov bar Idi and R. Shemuel⁵¹ bar Naḥmeni disagreed about it.
One said she was married, and the other said she was unmarried.
For the one who said she was married the story works well,
but for the one who said she was unmarried,
what is this all about?

The two amoraim have the same disagreement about the woman's marital status. One claims she was married and the other that she was unmarried. Though the story is silent about the woman's marital status, it is difficult to imagine a storyteller's omitting the compelling detail of her marriage. Additional support for the "Unmarried Amora" comes from the fact that one version of another rabbinic tale, about *Natan*

51 MS Herzog has R. Yishmael bar Naḥmeni. We can posit a possible transition then from Yerushalmi's text to the printed editions' Shemuel. R. Yishmael bar Naḥmeni for R. Yitshak bar Naḥman became the more prevalent R. Yishmael bar Naḥmeni, which is easily mistaken for R. Shemuel bar Naḥmeni. But MS Karlsruhe has the variant R. Shemuel alone, so the transition may work in the opposite direction.

Barry Wimpfheimer

Tsutsita, opens with the same first line as the Babylonian Talmud's story but specifies the woman's marital status:

[There is] a story about a man who placed his eyes on a woman and his heart filled with bile.

*And she was a married woman.*⁵²

52 Rashi *Sanhedrin* 31b in the name of "*Sefer Haggadah*." The *Natan Tsutsita* story requires its own study, an endeavor I hope to undertake in the near future. There are two fundamental problems in dealing with the story – the nature of the story itself and the name *Natan Tsutsita*:

A) The story itself is found at Rashi *Sanhedrin* 31b, where it shares much with our own narrative and is written in a precise middle Hebrew. The language alone suggests to us that Rashi's version is an authentic rabbinic narrative which Rashi attributes to a *Sefer Haggadah* we do not have. Another version of the story is found in R. Nissim Gaon's *Hibbur Yafeh Min ha-Yeshu'ah*. Because R. Nissim expanded his stories in general, and this one in particular, and because R. Nissim's work was originally written in Arabic, it is difficult to extract from this work a pre-Geonic version. As one of his expansions, R. Nissim borrows the interaction of doctors and rabbis in the narrative at *Sanhedrin* 75a for dramatic effect. Rashi and R. Nissim share both the overall plot and the name of the male protagonist. *She'iltot Va'era* contains a halakhic discussion of martyrdom in which the story of *Sanhedrin* 75a has a prominent place. In introducing that story, *She'iltot* adds details familiar from both Rashi and R. Nissim as associated with the other narrative. *She'iltot* names the male protagonist *Natan Tsutsita* and the female protagonist Hannah, and claims that Hannah is a married woman, a feature that appears in all accounts. The troubling aspect of this final feature is that Hannah's being married conflicts with the early amoraic debate about her marital status that *She'iltot* quotes after citing the body of the narrative of *Sanhedrin* 75a. Because of this contradiction, I posit that *She'iltot*'s version of the narrative must have been, like Rashi's, remarkably similar to *Sanhedrin* 75a in both content and language. Such similarity led to the borrowing of details even when these did not work in their new contexts.

B) The name *Natan Tsutsita* has been the subject of considerable discussion. Daniel Boyarin, "Towards the Talmudic Lexicon" (Hebrew), *Tarbiz* 50 (1981), 164-91, is the seminal treatment on the lexicography of this term. I would like to suggest an explanation for the term that is based on Boyarin's research but unsuggested in that piece. Boyarin writes that the word

Talmudic Legal Narrative

The Babylonian Talmud's editor (the Stam⁵³) is, like its counterpart, troubled by the “unmarried” view. While the editor of the Palestinian Talmud explicates the question through the creation of a counter-narrative, the Stam expresses surprise through a generic formulation: “What is this all about?”

One of the advantages that the Stam has over the editor of the Palestinian Talmud is several generations of later amoraim. Unlike the Palestinian Talmud's editorial struggle to resolve its own question, the Stam here cites two fifth-generation Babylonian amoraim to answer this question:

- a) Rav Pappa said, “Because of family shame.”
- b) Rav Aḥa son of Rav Ika⁵⁴ said, “So that the daughters of Israel should not be prostituted for illicit sex.”

One can conceptualize the answers provided by these amoraim in two ways: either the justification expands the framework of the legal precedent to accommodate the story, creating the illusion that the story fits with rabbinic law (much as the expanded PT super-structure would allow this perception) or the justification recognizes that rabbis often have to act outside the framework of legal precedent when other social concerns are pressing. Neither allows the story to function outside of

is related to a part of the wheat stalk that the rabbis referred to as “the manhood of the wheat.” It is very possible, then, that the word *Tsutsita* is associated with this narrative not because of the heavenly halo, but because the protagonist attempts to give (*Natan*) his manhood (*Tsutsita*) to the woman with whom he is obsessed.

53 On the Stam see David Weiss Halivni, *Sources and Traditions: Shabbat* (Hebrew) (Jerusalem: The Jewish Theological Seminary of America, 1975), 5-27 and Shamma Friedman, “A Critical Study of *Yevamot* X with a Methodological Introduction” (Hebrew), in H. Z. Dimitrovsky, *Texts and Studies* (Hebrew) (New York: The Jewish Theological Seminary of America, 1977), 278-441, 283-321.

54 “בריה דר' איקא” is missing in *Yalkut Shim'oni Mishle* according to Rabbinovicz, *Dikduke Soferim*, (10), 211.

Barry Wimpfheimer

legal discourse because both find ways to fit the story in the framework of rabbinic judicial decision-making; in other words the discourse is the same legal one even if the parameters of that discourse have been somewhat expanded.⁵⁵

While the discussion in the Palestinian Talmud ends at this stage, the Babylonian Talmud here takes its most interesting twist as the Stam puzzles over another aspect of the rabbinic prohibition – the seeming eagerness of the anonymous rabbis to prohibit without considering alternatives:

So let him marry her?

That would not settle his mind because of R. Yitṣḥak.

For R. Yitṣḥak said, “From the day of the destruction of the temple, the flavor of intercourse was taken and given to sinners as it is written, ‘Stolen waters will be sweet and hidden breads will be pleasant’” (Prov 9:17).

The Stam here wonders why according to the “Unmarried Amora” the sages did not simply suggest that the man and woman marry each other. To answer this question, the Stam marshals a bizarre and psychologically rich source – a tannaitic statement of R. Yitṣḥak which explains that permissible sex (within the context of marriage) is not as

55 Compare Bakhtin’s observation about poetry in Bakhtin, *Dialogic Imagination*, 287: “Nevertheless, heteroglossia (other socio-ideological languages) can be introduced into purely poetic genres, primarily in the speeches of characters. But in such a context it is objective. It appears, in essence, as a *thing*, it does not lie on the *same* plane with the real language of the work: it is the depicted gesture of one of the characters and does not appear as an aspect of the word doing the depicting. Elements of heteroglossia enter here not in the capacity of another language carrying its own particular points of view, about which one can say things not expressible in one’s own language, but rather in the capacity of a depicted thing. Even when speaking of alien things, the poet speaks in his own language. To shed light on an alien world, he ever resorts to an alien language, even though it might in fact be more adequate to that world.”

Talmudic Legal Narrative

pleasurable as forbidden sex. The man's lovesickness can only be cured, it appears, through illicit sex. Though R. Yitshak's statement is posed as an answer to the independent question of marriage, it can also be understood to answer the original question about the permissibility of sex as a cure. The sages cannot permit him because their permission would remove the palliative properties necessary for the cure, which stem from the taboo.

V. Reading the Story Thickly

As in the case of Cover's biblical example, the story of the lovesick man expresses a fundamental incoherence between the ruling of the judge(s) in the story and the rule on the books. Since illicit non-incestuous heterosexual sex is defined everywhere as sexual intercourse between a man and a married woman, at least two of the proposed interactions do not meet the threshold of that definition and therefore should not rise to the level of prohibition. As with Cover's example, the clash is not between the legal narrative and some external legal statute or precedent. Rather, the story constitutes the rule in the process of subverting it as part of a deliberate narrative strategy. In moving the definition of illicit sex from intercourse to a gaze and, finally, to a disembodied voice, the story downgrades the severity of the sin in order to increase the expectation that leniency is forthcoming. The story itself creates a gap between the expectation of an applied legal rule and the prohibition that defies those expectations. Like the Genesis narratives, we have here a narrative that employs incoherence as a deliberate strategy whose purpose is broader than the mere specification of a legal ruling.

Most of the talmudic interpreters assign the legal narrative secondary status, privileging instead the system of legal statutes. Only the approach of the Palestinian Talmud allows the story to take a primary position vis-à-vis the rules, and even then, only to a point. By expanding the rules to accommodate the story, the Palestinian Talmud

Barry Wimpfheimer

gives the story a rightful place in the legal system. But even this approach has its limitations, as the editor's repeated attempts to marry off the female character, even according to the "Unmarried Amora," demonstrate the editor's inability to subjugate the story entirely to accepted legal precepts. The editor's failed attempt to fit the story of the lovesick man perfectly into the legal code begs us to read the story not simply as an example of the rabbis' enactment of legal precepts. Rather, if we remove the assumption that legal narratives merely uphold known statutes, then the story has the power to shed light on its authors. Rather than consider the sages of the story as functionaries who administer the decisions of a pre-existent rule of law, we should imagine these sages as constituting their own power to adjudicate through their actions. If we think of the story in terms of the light it shines on its authors we can see that the story functions as a myth of rabbinic power over life and death.

As a myth of power, the story employs incoherence as part of its poetics. The story's subversion of the normative expectations establishes rabbinic power above and beyond the rules of law. The hortatory formula "let him die ... let him die ... let him die" that excitedly demands a man's immediate death asserts, in its excitedness, the rabbis' confidence in their own authority.

Perhaps the strongest argument for understanding the story as a myth of rabbinic power is the insertion of the term "black bile" in the version of the story found in the Babylonian Talmud. The Babylonian Talmud describes the lovesick man as "העלה לבר טינא." This phrase has traditionally been translated as a metaphor that defines lovesickness as heaviness of the heart. I would argue that the phrase is not a metaphor, but a physiological diagnosis. Though the general definition of "טינא" is cement or clay⁵⁶ the term is used by *Targum Zechariah* (10:5) to

56 Marcus Jastrow, *A Dictionary of the Targumim, the Talmud Babli and Yerushalmi, and the Midrashic Literature* (Brooklyn: Traditional Press, 1975), 1:532; Michael Sokoloff, *A Dictionary of Jewish Babylonian Aramaic of the Talmudic and Geonic Periods* (Ramat-Gan, Israel and Baltimore: Bar Ilan University Press and Johns Hopkins University Press, 2002), 224.

Talmudic Legal Narrative

translate the word "טיט" or tar.⁵⁷ As such, טינא refers to a black oozing substance. For two thousand years, diseases were explained through a theory of bodily humors,⁵⁸ associated with Hippocrates (fifth century BCE).⁵⁹ One of the four humors was the Greek term μέλαινα χολή, or black bile, a term that is the basis of our melancholia.⁶⁰ When this humor is in abundance, the theory stipulates, a patient becomes love-sick. Our story thus offers an understanding of lovesickness not just as an intense emotional state, but also – by invoking the term טינא – as a clinical diagnosis rendered in physiological terms.

Lovesickness is a frequent motif of Greco-Roman literature, where the typical cure for such a condition is a sexual encounter between the forlorn lover and his or her beloved.⁶¹ In several such accounts, the disease is diagnosed by a doctor, who is unable to effect a cure because the relationship between the melancholic and his or her object of obsession is barred by social taboo – a woman in love with her son, or a son in love with his father's wife.⁶² Scholars have pointed out examples of rabbinic stories that borrow Greco-Roman motifs and tale-types, and the story of the lovesick man may be considered another such example.⁶³

57 See also bShab 67a where טינא and טיט are grouped together in a curse.

58 Sokoloff, *Dictionary of Jewish Babylonian Aramaic*, 7.

59 Peter Toohey, "Love, Lovesickness and Melancholy," *Illinois Classical Studies* 17 (1992), 265-86.

60 Ibid.

61 Ibid., 269-74. For a treatment of lovesickness in the Jewish context see Joshua Levinson, "An-Other Woman: Joseph and Potiphar's Wife: Staging the Body Politic," *JQR* 87 (1997), 269-301.

62 Toohey, "Love," 269-74.

63 Henry A. Fischel, *Essays in Greco-Roman and Related Talmudic Literature* (New York: Ktav, 1977), 450-66, suggests that the sage story genre is derived from the Greco-Roman Chreia. David Stern, "The Captive Woman: Hellenization, Greco-Roman Erotic Narrative, and Rabbinic Literature," *Poetics Today* 19 (1998), 91-127, discusses two ways in which the Greco-Roman genre of erotic narrative affects rabbinic literature.

Barry Wimpfheimer

Lovesick desire is also a common motif in biblical and rabbinic literature. In the biblical canon, it fuels the poetry of Song of Songs and the 2 Samuel 13 account of Amnon's rape of Tamar. Rabbinic folk tales of lovesickness include stories that are structurally similar to our own talmudic narrative – the historical legend of the man who steals his teacher's wife at *Gittin* 58a and the aforementioned *Natan Tsutsita* account which celebrates the hero's self-control.⁶⁴ Most tales of desire end with a climactic encounter. The Greek lovesickness stories and the biblical and rabbinic parallels end with either the cure of sexual congress or with the victim's death for lack of a cure. The talmudic narrative before us fails to narrate desire's conclusion. The dying man's state of desire is perpetual, terminated neither by consummation nor by death. While the story certainly implies the man's death, such a death takes place offstage. The missing narration of the man's death suggests that the lovesickness motif is borrowed or co-opted in this story to replace a masked desire – the desire for rabbinic authority. The encounter between rabbis and doctors replaces the encounter between lover and beloved in the climactic scene. This replacement substitutes the rabbinic desire for legal authority for the lover's desire for his beloved.

Lovesickness was often the site of cultural contestation and the arena for assertion of authority in the Greco-Roman world. Mary Wack's summary of Jackie Pigeaud's study of lovesickness is eerily apt for locating the plot of our talmudic story within a dialogical context:

The disease of love, which afflicts both the body and the spirit of a patient caught in a matrix of social and ethical relationships, lay in a cultural zone intersected by the discourses of medicine, literature, natural philosophy, mysticism, pastoral theology and didactic literature ... In this site of contestation priest and physician vied for professional territory...⁶⁵

64 Eli Yassif, *The Hebrew Folktale: History, Genre, Meaning* (trans. Jacqueline S. Teitelbaum; Bloomington, IN: Indiana University Press, 1999), 140, connects these two tales as two iterations of one folk motif.

65 Mary Frances Wack, *Lovesickness in the Middle Ages: The Viaticum and Its*

Talmudic Legal Narrative

Our story's competition between rabbis and doctors is typical of Greco-Roman culture and the ideal setting for Greco-Roman battles for authority. In its rabbinic setting, this legal tale of lovesickness in which rabbis clash with doctors is the quintessential site for rabbinic writers to authorize their own power – to establish legal decisions as a tool of their own power and to establish themselves as the ultimate cultural authority.

The story should also be connected with other literature of dying for the law.⁶⁶ Both talmudic *sugyot* are primary addresses in rabbinic literature for the question of choosing life over law or vice versa. The dying lovesick man is a Jewish martyrology that uses the choice of death as a way of establishing cultural norms. This reading of the lovesickness tale as a rabbinic martyrology is echoed within the Palestinian Talmud, in a parallel legal narrative that immediately follows the *sugya's* three-part expansion of the cardinal sins.

A story about R. Elazar ben Dama that a snake bit him.
And Ya'akov the man of Kefar Sama came to cure him in the name of Jesus the son of Pandera,⁶⁷ and R. Yishmael refused to allow him.
[R. Elazar] said to [R. Yishmael]: "I can bring a proof that he may heal me," but he did not suffice to cite his proof, until ben Dama died.
R. Yishmael said to [R. Elazar ben Dama]: "Fortunate are you, ben Dama, for you left the world in peace, and you did not violate the fence of the sages, as it is written, 'One who breaks down a fence, let a snake bite him'" (Eccl 10:8).⁶⁸

Commentaries (Philadelphia: University of Pennsylvania Press, 1990), 7.
Jackie Pigeaud, *La Maladie De L'âme: Etude Sur La Relation De L'âme Et Du Corps Dans La Tradition Médico-Philosophique Antique* (Paris: Société d'édition Les Belles lettres, 1981).

66 Both Tessa Rajak, "Dying for the Law: The Martyr's Portrait in Jewish-Greek Literature," in idem (ed.), *The Jewish Dialogue with Greece and Rome* (Leiden: Brill, 2001), 99-133, and Daniel Boyarin, *Dying for God: Martyrdom and the Making of Christianity and Judaism* (Stanford, CA: Stanford University Press, 1999) are apposite here.

67 This name is a late insertion in the Leiden manuscript.

68 yAZ 2:2, 40d-41a; yShab 14:4, 14d.

Barry Wimpfheimer

In this story of competition over a dying body, two rabbis clash over the permissibility of a Christian cure. Though R. Elazar wants the cure and claims to have an argument that justifies its use, R. Yishmael does not allow it. The unambiguous nature of R. Yishmael's desire for R. Elazar's death is certified by the former's reaction to the latter's death: you are *fortunate* for dying so as not to violate the fence of the sages. The statement could not be more explicit about the root of the prohibition that demands R. Elazar's life – it is the sages who erect the fence, not the law that forces the sages' hands.⁶⁹

To read our story thickly, then, is to recognize the lovesick tale as a unique site for establishing authority – for imposing the singular authority of law within an inherently dialogical context. The purpose of the narrative is to suggest rabbinic control over a complex world. Because of the way its own poetics intentionally play with the expectations of law in order to establish authority beyond the law, the story cannot fit easily with the corpus of known statutes. It is this ill fit that is palpable within all of the talmudic interpretations. The final interpretation warrants special attention for what it reveals about the larger rabbinic enterprise.

VI. Temple Destruction, Sexual Dysfunction, and Rabbinic Anxiety

The inherent incoherence of legal narrative motivates the Bavli to leave the confines of legal discourse and seek a psychological resolution. This shift would be perceived by all who recognize the essential dichotomy of halakhah/aggadah as an uncharacteristic transmogrification. The smallest literary unit of the Babylonian Talmud is the *sugya* and most *sugyot* are indeed recognizable for conducting themselves within either

⁶⁹ Boyarin, *Dying for God*, 34-35, reads Tosefta's version of this story as an instantiation of the porous boundary between Judaism and Christianity in the tannaitic period.

Talmudic Legal Narrative

halakhic or aggadic discourse; the challenge of our legal narrative, however, prompts a transition *en medias res*.

The surprising nature of the *sugya* is not limited to its metamorphosis from halakhah to aggadah. There is an uncanny quality to the statement of R. Yitshak that the Stam employs to conclude the *sugya*; the statement is pregnant with uncomfortable meaning. Furthermore, the editorial mobilization of this uncanny text as a means of resolving the narrative's contradictions provides a final testament to its incoherence.

The Bavli's concluding remarks appear after the late amoraic statements that justify the rabbinic prohibition through either family shame or moral social policy. The problem with both of these justifications is that the story's avid hortatory rhetoric ("let him die...") does not reflect rabbis who struggle to balance legal positions against public policy; the hortatory language implies a swiftness that such a struggle belies. The Stam formulates this question through a challenge to the rabbis' thoroughness: if the rabbis cared about this man at all, why did they not suggest that the lovestruck couple marry? The force of the question critiques the late amoraic answers and threatens to return us to the earlier stage in the *sugya* when the explicit question was the challenge to the "Unmarried Amora" to justify the rabbis' position within the law. Only an answer that can satisfactorily explain why the rabbis were so quick to demand death without offering any alternatives will satisfy. At this point, the Stam cites the historical/psychological observation of the tanna R. Yitshak:

So let him marry her?

That would not settle his mind because of R. Yitshak.

For R. Yitshak said, "From the day of the destruction of the temple the flavor of intercourse was taken and given to sinners as it is written, 'Stolen waters will be sweet and hidden breads will be pleasant'" (Prov 9:17).⁷⁰

70 The latter half of R. Yitshak's claim is a midrashic reading of Proverbs 9:17

Barry Wimpfheimer

R. Yitshak's statement connects a new economy of sexual pleasure with the day the temple was destroyed. In this economy, the sexual pleasure of righteous people is not only diminished by the temple's destruction but transferred to sinners. To better understand this statement and its usage within the *sugya* we need to understand how the statement works.

The final chapter of *mSotah* contains a number of statements that allow us to contextualize both the content and form of R. Yitshak's statement. In the context of a discussion of the ritual of *'eglah 'arufah*,⁷¹ the Mishnah explains why the ritual is no longer performed in the tannaitic period:

When murderers multiplied, the ritual of breaking the neck of the calf ceased ... When adulterers multiplied, the ritual of the bitter waters [of the *sotah*] ceased.

And R. Yoḥanan ben Zakkai stopped them as it says, "I will not punish their daughters for fornicating nor their daughters-in-law for committing adultery for they themselves turn aside with whores and sacrifice with prostitutes and a people that is without sense must stumble" (Hos 4:14).

whose meaning varies dramatically depending on how much of the biblical text is incorporated. Proverbs 9 constructs two opposing female paradigms: the lady of wisdom and the lady of folly. Verse 17 is uttered by the lady of folly, who sits as a prostitute outside her door enticing men inside by telling them that "stolen waters will be sweet and hidden breads will be pleasant." But v. 18 announces that these men do not realize that death and hell await them on the other side of the door. If R. Yitshak's statement means to include verse 18 as well as verse 17, then the message of his statement is hopeful: even though sinners appear to be deriving pleasure now, they will eventually pay the price. But if, as it seems from the citation, the statement only adduces verse 17, then R. Yitshak's message is depressingly pessimistic for rabbinic Jews; not only are they unable to experience sexual pleasure because of the temple's loss, but such pleasure is transferred to sinners.

⁷¹ Deuteronomy 21 records this ritual in which the community atones for an unsolved murder by breaking the neck of a calf and washing the elders' hands over it.

Talmudic Legal Narrative

R. Yoḥanan ben Zakkai, the man traditionally credited with post-destruction ritual reform and the invention of rabbinic Judaism is here credited with the termination of the *sotah* and *'eglah 'arufah* rituals because of the increase in adulterers and murderers in the post-temple period. The Mishnah utilizes a midrashic reading of Hosea 4:14 to assert that two cardinal sins – adultery and murder – were normal events in the post-destruction world. This Mishnah shares with R. Yitṣḥak's statement the palpable sense of the post-destruction period as an era rife with sin. Both texts reflect a rabbinic powerlessness during this time period; both utilize a midrashic reading to justify rabbinic inaction in the face of sinful chaos. In *mSotah*, the termination of these rituals (one of which was conducted in the now destroyed temple) is not attributed to the chaotic power vacuum but to the mindful decision of R. Yoḥanan ben Zakkai to activate a midrashic reading within the vacuum. R. Yitṣḥak's statement similarly sees the upside down post-destruction world as the fulfillment of a midrashic prediction.

The ninth chapter of *mSotah* follows R. Yoḥanan ben Zakkai's justification of the absence of these rituals with a series of historiographic observations that are similar in content both to R. Yoḥanan ben Zakkai's Mishnah and to R. Yitṣḥak's statement. Several of these observations share the form of R. Yitṣḥak's statement by dividing historical time around a specific traumatic event – the destruction of the temple, the death of a specific rabbi or the demise of other cultural institutions. One of these statements is arguably the basis for R. Yitṣḥak's own:

R. Shimon ben Gamaliel said in the name of R. Yehoshua,⁷² “From the day the temple was destroyed, there is no day that is not cursed, dew will not fall beneficently, and the flavor of fruit is taken.”

R. Yose said, “Even the fat of fruit is taken.”

R. Yehoshua (cited by R. Shimon ben Gamaliel) laments the destruction of the temple by describing changes in the natural world that originated

72 R. Yehoshua ben Ḥananiah was a second generation tanna and student of R. Yoḥanan ben Zakkai who lived during the time of the destruction.

Barry Wimpfheimer

with the destruction: the dew does not fall beneficently and the flavor of the fruit is taken.⁷³ R. Yose is not satisfied with this description and adds that the fat of fruit is taken.⁷⁴

The formula that connects a specific historical event with the absence or discontinuity of a phenomenon amplifies the symbolic power of the event, turning that single historical moment into a representation of all that is perceived wrong in society. In psychoanalytic terms, the destruction of the temple is transformed from loss to lack, such that the pre-history of the event stands like primordial or edenic time – as the period in which everything was good – while the post-history or real time is pathological. This melancholic conversion of trauma from profound loss into symbolic lack enables the symbolization of the destruction of the temple. In this way rabbinic Judaism transforms the

73 *tSotah* considerably expands the aggadic content of *mSotah* 9 and tells the following story of the same R. Yehoshua:

“When the temple was destroyed there were many separatists in Israel who would not eat meat nor drink wine. R. Yehoshua took an interest in them and said to them, ‘My children, why are you not eating meat?’ They replied, ‘Shall we eat meat when every day the daily sacrifice [of meat] was brought on the altar and now is no longer?’ He asked them, ‘Why are you not drinking wine?’ They replied, ‘Shall we drink wine when every day wine was poured on the altar and now is no longer?’ He said to them, ‘Then figs and grapes we should not eat for from them were the first fruits brought at Pentecost, bread we should not eat because from it they would bring the two loaves and the showbread, water we should not drink because from it they would pour on Tabernacles.’ They were silent. He said to them, ‘To mourn too much is impossible and not to mourn at all is impossible. So the rabbis said, “Let a man lime his house with limestone and leave a small piece in memory of Jerusalem, let a man prepare all of his feast needs and leave something over in memory of Jerusalem, let a woman make jewelry and leave a little bit in memory of Jerusalem as it says, *If I forget you, O Jerusalem, let my right hand wither; let my tongue stick to my palate if I cease to think of you, if I do not keep Jerusalem in memory even at my happiest hour*’ (Ps 137:5-6).”

74 R. Yose’s argument should be understood to reflect the insufficiency of language in the service of the mourned loss/lack.

Talmudic Legal Narrative

temple into a symbol whose absence is the most powerful presence of religious life.

To be sure, R. Yitshak's statement should not be read as a reliable description of an historic phenomenon.⁷⁵ Rather, it reflects the motivation of its author, whether that author is R. Yitshak or another rabbinic writer or editor. Like R. Yoḥanan ben Zakkai's Mishnah, R. Yitshak's statement reflects a rabbinic self-consciousness about the lack of rabbinic power in the post-destruction world in two ways: the assertion of impotence through a loss of sexual pleasure, and the transference of that pleasure to the sinner that clarifies the self-perception of the rabbinic place within the social hierarchy.

While we may not be able to recover the historical impact of the temple's destruction on Jewish society *in toto*, rabbinic literature provides us a window into the rabbinic psyche. That the destruction had a profound impact on the rabbinic mindset should not be surprising; the temple was at once God's address, the central institution of religious life, and one of the prime pieces of symbolic imagery during the pre-destruction period.⁷⁶ The idealization of the temple as the locus of social energy by rabbinic writers is not a surprising turn. What is intriguing, though, is the extent to which the destroyed temple could function symbolically as a sinkhole for rabbinic anxiety. Performances that mourn the temple's destruction – especially performances that are separated by the historical loss by increasing amounts of time as the rabbinic period transpired – should be read as reflecting rabbinic anxieties about their own position in the post-destruction world; the formula that connects the demise of an activity or pleasure since the

75 Rashi, *ad loc.*, attributes the loss of sexual pleasure to the loss of sexual desire brought about by the worries of the destruction; David Biale, *Eros and the Jews: From Biblical Israel to Contemporary America* (New York, NY: BasicBooks, 1992), 58, interprets this text to reflect a view that “with the Temple destroyed, the cultic constraints on erotic passion could no longer operate.”

76 Seth Schwartz, *Imperialism and Jewish Society, 200 B.C.E. to 640 C.E.* (Princeton, NJ: Princeton University Press, 2001), 49-99.

Barry Wimpfheimer

destruction turns the post-destruction world into an anomaly as part of the idealization of temple times.

A more famous Bavli utilization of this loss/lack formula suggests that the formula is inherently connected to assertions of rabbinic power.

R. Hiyya bar Ammi said in the name of Ulla, “From the day the temple was destroyed, the Holy One Blessed be He only has in his world the four cubits of halakhah.”⁷⁷

The statement is perhaps the quintessential description of Judaism’s transition from a temple-based religion to one predicated on law. The formulation is compelling because of the ways in which it simultaneously replicates in form (through the use of the property notion of four cubits of personal space⁷⁸) what it claims in content – namely that God’s space has shifted from physical construction to theoretical construct. More significant for our purposes is the way in which this text uses the same formula as R. Yitshak’s statement to essentially assert authority even over God.

R. Yitshak’s statement reflects a rabbinic author’s anxiety about the rabbinic project within a world which does not externally reflect the rabbinic mindset. In such a time, the normative world of rabbinic halakhah is not mirrored in the larger culture. Under such conditions, the constructed and contingent nature of the halakhic *nomos* is obvious to all. But by connecting this chaotic world to the destruction of the temple, R. Yitshak establishes it as a theoretical anomaly. It is only within the topsy turvy world that halakhic order cannot be established.

The Stam mobilizes R. Yitshak’s statement because its articulation of a disconnect between reality and the normative discourse of legal rules mirrors the disconnect that inheres within the legal narrative. But the connection of these two rabbinic texts – the use of one highly affected text to read another – radically transforms the story’s message. “The

77 bBer 8a.

78 m’Eruv 1:4 talks about four cubits as minimal personal space.

Talmudic Legal Narrative

Lovesick Man” is inherently a Greco-Roman tale whose purpose is the construction of rabbinic power beyond the discourse of rules that ordinarily functions as the rabbis’ tool of power. By connecting the story with R. Yitshak, the Stam turns the story’s rabbis (and rabbis in general) into an impotent group who must remain bystanders within their chaotic world. The Stam’s approach attempts to constrain the legal narrative within the discourse of legal rules by confining the details of the narrative to a theoretically anomalous period of time: the post-destruction mourning period.

Though the application of R. Yitshak to the narrative is not true to the narrative’s own assertion of rabbinic power, there is another sense in which the Stam’s connection of the two texts is insightful. Where the story’s poetic strategy is an assertion of rabbinic power and R. Yitshak’s mourning performance is a recognition of rabbinic impotence, both texts can be understood as reactions to rabbinic anxiety. Power and impotence are not necessarily opposing realities, but opposing directional strategies to the same problem. Faced with anxiety about their own marginalization, rabbis could either attempt to assert power or to explain its absence. While neither strategy is uniquely effective, both admit to a world broader and more complex than the normative world articulated by talmudic and post-talmudic legal discourse. That discourse encourages a legal hermeticism that pretends that its own authority is already and unassailably established.⁷⁹ But in all legal systems, and certainly in the stateless rabbinic version, the practices of legislation, adjudication, and enforcement are inherent assertions of authority. Within such a world it is often beneficial for the system to assume its own authority.

Within the normative world, the discourse of legal rules is a language spoken and understood by adherents and interpreters. But it is not the only such language nor the only one capable of justifying or

⁷⁹ Peter Brooks, “Narrativity of the Law,” *Law and Literature* 14 (2002), 1-9, considers such hermeticism an inherently problematic part of American law as well.

Barry Wimpfheimer

mandating behavior. For this reason, rules of law are always connected to the exercises of power that authorize and enforce them. Those exercises of power are negotiations among cultural languages within which legal meaning is broadly constructed. Both the legal narrative of the lovesick man and the statement of R. Yitshak shine a light on these negotiations of rabbinic power and contextualize the discourse of law, allowing us to see the ways in which legal meaning is inscribed within the multi-voiced *nomos*, and the way in which the behavioral mandates of legal rules can only be actualized through negotiations of power.

Conclusion

Two sets of implications – within the meaning and practice of law respectively – emerge from the identification of talmudic legal narrative as a genre. The minimal claim that emerges for the theoretical study of law is that the genre of legal narrative itself must be examined with a frame that is broad enough to allow the text to speak in multiple discourses, not just the discourse of legal rules. Instead of turning such narratives into relatively flat legal texts, readers should appreciate their textured depth. But the minimal claim is not the only one that our analysis of talmudic legal narrative encourages. Rather, the specific example of talmudic legal narrative invites readings of even non-narrative legal material that take into account the ways in which statutes, rulings, and legal reasoning work both to authorize themselves and, simultaneously, to hide that work. Talmudic legal narrative invites us to unmask the inherent multi-discursive nature of talmudic law even when the internal discourse is not so conducted.

This larger ramification of our work on legal narrative has the potential to redefine talmudic and Jewish law *in toto* by making the practice of such law self-conscious of its own exercises of power. The stateless nature of much of Jewish legal history has invited readings of Jewish law that claim for Jewish law immunity to the messy assertions of power through force that have been the case in statist legal systems.

Talmudic Legal Narrative

The study of talmudic legal narrative uncovers a different notion of power negotiation rather than imposition. It alerts us to the assertions of power that inhere within the hermeneutic choice to restrict a legal discussion to binary decisions of purity, prohibition, and obligation, a narrow discourse even when both sides of a legal decision are represented. To the extent that scholarship of Jewish law impacts upon the contemporary practice of Jewish law, practitioners of Jewish law could broaden their own horizons to include non-legal discourses within the halakhic decision-making process.