NORTHWESTERN UNIVERSITY

The Rabbinic Legal Imagination: Narrativity and Scholasticism in the Babylonian Talmud

A DISSERTATION

SUBMITTED TO THE GRADUATE SCHOOL
IN PARTIAL FULFILLMENT OF THE REQUIREMENTS

for the degree

DOCTOR OF PHILOSOPHY

Field of Religious Studies

By

Sarah E. K. Wolf

EVANSTON, ILLINOIS

September 2018

Abstract

While scholarship over recent decades has complicated the traditional classification of the Bavli's texts into "*halakhah*" (law) and "*aggadah*" (narrative), the field has still maintained a model of two separate, though fundamentally interrelated, discourses. According to this model, the Bavli consists of a normative, non-narrative, legal discourse alongside an antinomian, narrativized discourse of stories. Through close readings of passages that address legal topics, this dissertation complicates that model by revealing the narrative elements that are inherent in even what might seem like the most technical legal *sugyot* (passages). This insight, along with a historical contextualization of the Bavli's shift towards increased narrativity during the rise of scholastic academies in Sassanian Persia, reveals new insights into the nature of the Bavli's legal texts and of the Rabbinic legal project more broadly.

The three chapters of the dissertation demonstrate that legal *sugyot* exhibit specific literary elements: plot; characterization; and a complex engagement with narration, including the use of unreliable narrators. Close readings of these passages show that narrative elements at times dictate the focus of *sugyot* more than legal concerns do. In fact, this narrative drive comes to take precedence over legal aims such as the solution of logical problems or the production of useable rules.

The dissertation also reveals a correspondence between increased narrativity and increased redactorial activity. Scholars have argued that much of the Bavli's redaction occurred contemporaneously with the growth of scholastic culture, and have also

demonstrated a connection between scholasticism and narrativity in both exegetical and lengthy narrative passages. The increasingly narrativized nature of the Bavli's legal texts must likewise be situated in the context of the rise of scholasticism.

This dissertation suggests that the increased narrative richness of the Bavli's legal passages helped to create a new kind of interpretive community, inviting the reader's engagement with legal concepts through the creation of compelling imaginary worlds, as well as encouraging the reader's identification with the characters of the rabbis whose legal discussions are dramatized. The legal passages' heightened narrativity is thus shown to be an essential component of the formation of a robust text-centered community of Rabbinic Jews.

Acknowledgments

I am grateful first and foremost to my *doktoreltern,* Mira Balberg and Barry Wimpfheimer, for their invaluable mentorship and support. Mira and Barry both spent countless hours reading drafts, discussing ideas, and supporting me through the inevitable frustrations of producing a dissertation. They helped to make my graduate studies both intellectually challenging and truly plesaurable, for which I am inexpressably appreciative. They are also two of the most insightful and creative readers of text I have ever encountered, and their theoretically sophisticated yet deeply textually grounded approaches to rabbinic literature provide a model for my own scholarship. I am grateful to Jeffrey Stackert as well for his time and thoughtful advice as the third reader of my dissertation.

I owe much of my development as a scholar to many other teachers whose approaches have shaped my own. I had the privilege of studying Talmud with Judith Hauptman at the Jewish Theological Seminary, in whose course the germ of the idea for this dissertation first developed, and with Ethan Tucker at Yeshivat Hadar, where I was first introduced to the power of combining source critical methods with literary approaches to Talmud. Yair Furstenburg, Menachem Kahana, and Shai Secunda generously allowed me to sit in on their classes at the Hebrew University of Jerusalem in the year before I came to Northwestern and provided me with my first tastes of a wide variety of approaches to the study of texts, from lower criticism to J. Z. Smith. I am also grateful to Robert Orsi and David Shyovitz, whose courses at Northwestern were

formative in my thinking about histories of religion in general and of Judaism in particular.

I have been fortunate to spend time at the Shalom Hartman Institute of North America this year as a David Hartman Center Fellow, where I have gained a new, treasured intellectual community. It has been a great joy to share ideas over the year with Yehuda Kurtzer, Elana Stein Hain, and my fellow fellows: Zohar Atkins, Shira Billet, David Zvi Kalman, Sara Labaton, Sarah Mulhern, and Zalman Rothschild. I look forward to continuing those conversations, and I am also excited to develop new intellectual relationships in the coming years as I join the faculty of the Jewish Theological Seminary.

I would like to thank several colleagues and friends for their support, both personal and professional. Noah Bickart, Miri Fenton, William Friedman, Amit Gvaryahu, Yedidah Koren, Shuli Shinnar, Sara Ronis, and Mira Wasserman, among others, have helped make Jewish Studies feel like a home to me. I am also grateful to my Northwestern comrades Ariel Schwartz and Ilana Emmett, for their writing advice and companionship. A delicate balance of purposefully ignoring and checking in with each other during our study dates helped make this dissertation a reality. Special thanks is due to Raphael Magarik, who has been a valued *hevruta* and thought partner for nearly a decade, and who read and provided feedback on several chapters of this dissertation. His insightful approaches to texts of all kinds have undoubtedly helped to shape my own. I have also been extremely fortunate to find a dear friend and colleague in Liane Feldman, whose scholarship I greatly admire and whose support through the last four years of

graduate school has been a true gift. Finally, I want to thank Matthew Bluestone for his writing advice, encouragement, patience, and kindness.

Last and most importantly, I am so grateful to my parents, Robert Wolf and Rebecca Kornblatt, whose unflagging support is ultimately what made everything possible.

Table of Contents

Introduction

This dissertation reveals previously unacknowledged narrative features of the late Rabbinic legal project as expressed through the Babylonian Talmud. Scholarship on the interrelationship between law and narrative in ancient Rabbinic literature has primarily shown the ways in which both "law" and "narrative" are part and parcel of the same cultural discourse, which is an important corrective to a long history of dichotomization but nonetheless problematically preserves the distinction between the two categories and overlooks some striking literary features of the Babylonian Talmud as a whole. Through a literary analysis of Rabbinic legal texts, this dissertation demonstrates the Talmud's increasing focus on narrativity and decreased emphasis on legal rules, and situates this development in later layers of the Bavli within a broader cultural context of scholasticism.

I argue that the Rabbinic approach to legal thought was deeply influenced by the late ancient Babylonian rabbis' increasingly scholastic cultural tendencies—that is to say, their participation in a Late Antique Sassanian trend towards the formation of religions communities centered around text, tradition, and the production and consumption of knowledge. As the Rabbinic community grew larger and increasingly organized around text study and analysis as a central and widespread part of religious practice, the structure, focus, and authority of legal discussion all began to shift. As I will show, late legal passages in the Babylonian Talmud, or Bavli, become increasingly concerned with storytelling about and with legal concepts, and less concerned with practical law. I will

also demonstrate that the rabbis' propensity to reflect upon, question, and even doubt their own methodologies, which is one of the primary features of scholasticism in general, is likewise expressed through narrative frameworks. For example, the Rabbis express ambivalence about their own scholastic tendencies by employing consistent characterization across tractates of a particular rabbinic figure, portraying him as an exaggerated—and denigrated—model of a scholastic rabbi. Furthermore, in several late passages, the creators of the Bavli use an unreliable narrator to explore doubt both about the reliability of their own legal traditions as well as about the authority of the Bavli's anonymous narrative voice itself. The rabbinic legal project is thus a deeply scholastic one in both form and content, but this scholasticism is also expressed in what seems to be a uniquely rabbinic way: through an increasingly narrativized engagement with law.

The Bavli as a Scholastic Text

In approaching the Bavli as a scholastic text, I employ the notion of scholasticism as a cross-cultural category as first proposed by José Cabezón, whose work recovers scholasticism as a positive comparative category that encompasses literature from a wide range of geographic and historical origins.[1] Cabezón suggests a multi-part definition of scholasticism, some features of which will of course be better or more fruitful descriptors

[1] José Ignacio Cabezón (ed.), *Scholasticism: Cross-Cultural and Comparative Perspectives* (Albany: State University of New York Press, 1998). Cabezón, along with several of the volume's contributors, notes that scholasticism has long been portrayed as something to be transcended.

of some cultures than others. Of the key elements detailed by Cabezón, I focus primarily on the following characteristics, which I find most relevant and apt to describe late Rabbinic literature:

1. An emphasis on text and language, which generally manifests in a concern for exegesis, and under which Cabezón also includes a commitment to "the importance of conceptual thought and categories";
2. A sense of tradition, and more specifically a self-conception as the successor(s) to a chain of earlier thinkers;
3. Proliferativity, meaning the tendency to include as many texts as possible within the canon, even at the expense of consistency;
4. Belief in the world's epistemological accessibility, as opposed to philosophical or theological positions that claim that certain phenomena are beyond human ken; and finally
5. Self-reflexivity, which Cabezón defines as "the tendency to objectify and to critically analyze first order practices," resulting in scholastic engagement not only in "the first-order task of exegesis or commentary, but also in the second-order task of hermeneutics, the self-critical reflection on the rules, principles, and problems related to the act of exegesis."[2]

[2] Cabezón, *Scholasticism,* 4-6.

Many of these elements are not only apposite characterizations but arguably some of the defining features of the Bavli.[3] The Babylonian Talmud is a vast, genre-defying work addressing law, theology, narrative, and biblical exegesis, one whose inclusive approach seems not to have left any potentially important text or saying out of its pages, including everything from folk sayings to minority legal opinions. The Bavli famously places importance on citing its sources and situating speakers within a chain of rabbinic figures.[4] And finally, both exegesis (mostly of earlier rabbinic statements) and a concern with developing and defining conceptual categories are perhaps the most obvious modes of the Bavli's legal thought.[5]

The Bavli was produced over several centuries and was likely redacted during approximately the 6th-7th centuries in Sassanian Persia.[6] In contrast to the many works in various genres produced by the rabbis of Roman Palestine, the Bavli was the only legal text—indeed, the only text at all that we know of—produced by the Babylonian rabbis of that time period. These rabbis lived in an empire that was majority Zoroastrian but was generally hospitable to other religions and cultures, including Syriac-speaking Nestorian Christians.

---

[3] For an analysis of the applicability of the category to Rabbinic Judaism more generally, see Michael D. Swartz, "Scholasticism as a Comparative Category and the Study of Judaism," in *Scholasticism*, 91–114.

[4] Although for a nuanced portrayal of what these attributions were intended to convey, see Sacha Stern, "Attribution and Authorship in the Babylonian Talmud," *Journal of Jewish Studies* 45:1 (April 1994): 28-51.

[5] On the development of conceptual categories, see Leib Moscovitz, *Talmudic Reasoning: From Casuistics to Conceptualization* (Tübingen: Mohr Siebeck, 2002).

[6] See Richard Kalmin, "The Formation and Character of the Babylonian Talmud," in *The Cambridge History of Judaism IV: The Late Roman-Rabbinic Period*, ed. S. T. Katz (Cambridge: Cambridge University Press, 2006), 840-876.

The existence of a shared cultural context between Babylonian Rabbis and Nestorian Christians is in part what has prompted scholars to begin thinking about early Rabbinic Judaism in terms of scholasticism, as a way to describe the cultural shift under which both groups began to form large, institutionalized academies around the same time. [7] As Isaiah Gafni and others have shown, Rabbinic academies and Eastern Christian schools shared major structural similarities such as the physical layout of the study hall, the rhythms of the academic calendar, and even the use of similar terminology.[8] Given the striking parallels between the formation of the two groups' text-centered communities (albeit mostly written texts in Christian circles and mostly oral texts in Rabbinic ones), Adam Becker, a scholar of Syriac texts, has called for further research on both Syriac and Rabbinic texts and communities under the shared rubric of scholasticism. As Becker has argued, these similarities may not necessarily be a result of direct cross-cultural influence, but they are nonetheless too significant to be merely a historical accident.

---

[7] For more on the Syriac Christian schools, see Adam H. Becker, *Fear of God and the Beginning of Wisdom: The School of Nisibis and the Development of Scholastic Culture in Late Antique Mesopotamia* (Philadelphia: University of Pennsylvania Press, 2006). On the nature and late provenance of the rabbinic academy (*yeshiva*), see David Goodblatt, "The History of the Babylonian Academies," in *The Cambridge History of Judaism IV: The Late Roman-Rabbinic Period*, ed. S. T. Katz (Cambridge: Cambridge University Press, 2006), 821-839; Jeffrey L. Rubenstein, "The Rise of the Babylonian Rabbinic Academy: A Reexamination of the Talmudic Evidence," *Jewish Studies: an Internet Journal*, 1 (2002): 55-68.

[8] Isaiah Gafni, "Nestorian Literature as a Source for the History of the Babylonian Yeshivot," *Tarbiz* 51:4 (1982): 567–576. See also Burton L. Visotsky, "Three Syriac Cruxes," *Journal of Jewish Studies* 42:2 (1991): 167-175. More recently, see Noah Bickart, "Tistayem: An Investigation into the Scholastic Culture of the Bavli," Ph.D. dissertation, The Jewish Theological Seminary of America, 2015. For a fairly comprehensive list of these similarities, see Adam H. Becker, "The Comparative Study of 'Scholasticism' in Late Antique Mesopotamia: Rabbis and East Syrians," *AJS Review* 34 (2010): 91-113.

Becker advocates for an approach that does not seek to locate specific parallels or directions of influence, but rather sees both communities' textual output as akin to "dialects of a shared language" (as, in fact, Syriac and Jewish Babylonian Aramaic could be said to be).[9]

Whereas Gafni and Goodblatt demonstrated that late rabbinic society possessed a scholastic infrastructure, as evidenced by the rise of institutionalized academies and the nature of their internal hierarchies and school calendars, Jeffrey Rubenstein's work has investigated ways in which late narrative portions of the Bavli reflect cultural elements of scholasticism.[10] Rubenstein argues that the *stam,* the late anonymous editorial voice of the Bavli, reflects ideas and concerns that are particular to the rise of scholastic culture at the time of the Talmud's redaction, which is an approach that I take in this dissertation as well.[11] He identifies those specific concerns by comparing stories and themes in the Babylonian Talmud to their parallels, or lack thereof, in the Palestinian Talmud, and finds that certain motifs, such as emphases on shame, hierarchy, elitism, and violence, are present only in the late anonymous layer of rabbinic narratives.

Rubenstein focuses on these interpersonal cultural elements, but primarily leaves aside the question of what defines the Bavli's scholastic legal culture, perhaps because it

---

[9] Adam H. Becker, "Polishing the Mirror: Some Thoughts on Syriac Sources and Early Judaism," in *Envisioning Judaism: Studies in Honor of Peter Schäfer on the Occasion of his Seventieth Birthday,* eds. Ra'anan Boustan, Klaus Hermann, Reimund Leicht, Annette Yoshiko Reed, and Giuseppe Veltri (Tübingen: Mohr Siebeck, 2013).
[10] Jeffrey L. Rubenstein, *The Culture of the Babylonian Talmud* (Baltimore: The Johns Hopkins University Press, 2003).
[11] Jeffrey L. Rubenstein, *Talmudic Stories: Narrative, Art, Composition and Culture* (Baltimore: The Johns Hopkins University Press, 1999), 1-33. See also Rubenstein, "The Rise of the Babylonian Rabbinic Academy."

seems intuitively obvious. He describes the particularities of scholastic as opposed to legislative legal work in brief: "While law courts are most interested in final decisions and rulings, law academies such as the beit midrash emphasize argumentation, even hypothetical argumentation on behalf of minority opinions. Within the rabbinic academy the *Stam*maim pursued their scholastic activities, what we might call the 'pure theory' of Torah."[12] Though I would agree with Rubenstein's characterization of the beit midrash as more concerned with producing hypotheticals that rulings, there is much more to be said about both the form and content of late rabbinic legal practice and its relationship to its increasingly institutionalized scholastic context.

This dissertation adds to the scholarly portrait of Late Antique Sassanian cross-cultural scholasticism, not from a comparative perspective, but rather from a purely internal study of rabbinic scholastic texts viewed through a broader scholastic paradigm. I thus help contribute to a fuller conception of the nature and varieties of Late Antique Scholasticism through a deeper understanding of the ways in which the Babylonian rabbis both participated in and remained distinct from their broader scholastic cultural context. In taking this approach, my project builds upon the work of Mira Balberg and Moulie Vidas, who examine rabbinic scholasticism in a legal context and in particular the Bavli's expression of ambivalence about their own scholasticism, a phenomenon which I analyze further in my second chapter.[13] Unlike previous scholarship on rabbinic

---

[12] Rubenstein, *Talmudic Stories,* 22.
[13] Mira Balberg and Moulie Vidas, "Impure Scholasticism: The Study of Purity Laws and Rabbinic Self-Criticism in the Babylonian Talmud," *Prooftexts*, 32:3 (Fall 2012): 312-356.

scholasticism, however, I focus on how this cultural shift impacts rabbinic law in particular, thus both helping to reveal new elements of scholasticism by looking at its effect on how legal texts are structured, presented, and discussed, and in turn using the framework of scholasticism to help explain the literary form and development of the rabbinic legal project.

Scholastic elements also exist in earlier strata of rabbinic literature, such as the Mishnah and the Palestinian Talmud, and I do not make the claim that the Bavli, or its redaction, was a scholastic enterprise whereas those earlier works were not. All of rabbinic literature can be called scholastic, but these elements become more pronounced and take greater precedence in the Bavli, particularly its later layers and anonymous voice. Scholars have already demonstrated some of the ways in which the nature of rabbinic law changed by the end of the Talmudic period, and many of these shifts fit well with the conceptualization of the Bavli, and particularly later layers of the Bavli, as a more prominently scholastic document. For instance, Leib Moscovitz has already shown that Rabbinic legal thought became progressively more abstract and conceptual.[14] Christine Hayes has also described the ways in which Babylonian legal thought differed from Palestinian thought in its more nominalist or, in her terms, "mind-dependent" tendencies.[15] My work takes a new direction by shifting from the examination of changes in legal concepts or methods to noting shifts in the literary form of the Bavli's legal musings and disputes. This form exhibits increasingly developed forms of several key

[14] Moscovitz, *Talmudic Reasoning.*
[15] Christine Hayes, *What's Divine About Divine Law: Early Perspectives* (Princeton: Princeton University Press, 2015), 195 ff.

features of narrative, including consistent characterization, more complex plotting, and use of the narrator in sophisticated and even subversive ways. As I will argue, these narrative features in fact come to take precedence over the passages' legal content. My dissertation thus reveals that for the rabbis, scholasticism's proliferativity is expressed not merely through the copiousness of texts, but in the heightening of narrativity as those texts' central focus.

Narrativity

The increasing emphasis on narrativity in late rabbinic legal texts can be demonstrated by identifying specific narrative elements at play in the Bavli's legal narratives and interpretive passages, including characterization, plot, and the use of unreliable narrators. I will refer to these elements collectively as possessing narrativity,[16] a quality that exists in texts along a spectrum.[17] Instead of specifying one or more formal

---

[16] For more on narravity and narrative theory, see, among many others: Mieke Bal, *Narratology: Introduction to the Theory of Narrative* (Toronto; Buffalo: University of Toronto Press, 1985); Jerome Bruner, "The Narrative Construction of Reality," *Critical Inquiry* 18:1 (Autumn 1991): 1-21; Dorrit Cohn, *The Distinction of Fiction* (Baltimore: Johns Hopkins University Press, 2000); Gérard Genette, *Narrative Discourse: An Essay in Method,* trans. Jane E. Lewin (Ithaca: Cornell University Press, 1980); and Tzvetan Todorov, *Genres in Discourse* (Cambridge, New York, Melbourne: Cambridge University Press, 1990).

[17] In his study of stories in the Mishnah, Moshe Simon-Shoshan also defines narrativity along a spectrum, as a "collection of textual attributes" which texts can possess in greater or lesser quantities. Simon-Shoshan specifies "dynamism," i.e. change over time, and "specificity," i.e. level of material and temporal specificity, as the primary attributes of narrativity. He uses the terms "narrative" and "story" to distinguish two points along a spectrum of narrativity. See Moshe Simon-Shoshan, *Stories of the Law: Narrative Discourse and the Construction of Authority in the Mishnah* (New York: Oxford

qualities that define narrative texts, I employ Richard Gerrig's definition of narrativity as a text that has the capacity to create an imaginatively rich narrative world for the reader. Gerrig writes:

> If we define the experience of narrative worlds with respect to an endpoint (the operation of whatever set of mental processes transports the reader) rather than with respect to a starting point (a text with some formal features), we can see that no a priori limits can be put on the types of language structures that might prompt the construction of narrative worlds.[18]

Narrativity is thus the aspect of text or language, in any structure or form, that enables it to "transport" the reader from the world of his or her own head into a new world created by the text. This definition of narrativity, though admittedly subjective, is especially helpful in discerning narrative features of texts that do not fit conventional expectations of narratives—for example, if they are narrated as a hypothetical rather than as an event that occurred in the past; or if they are being continually revised throughout the process of their telling; or if they describe events that do not typically make up the main action of stories or novels (e.g., rabbis sitting around the study house debating legal

---

University Press, 2012), 15-22. My framework differs from Simon-Shoshan's in two important ways: first, Simon-Shoshan locates narrativity within formal elements of the text itself, whereas I locate narrativity in the imaginative response of the reader; and second, Simon-Shoshan is concerned with what features cause texts along the narrative spectrum to reach the threshold of "story," whereas I do not distinguish between different kinds of narratives in this way, preferring instead a spectrum that does not include clearly defined stages.

[18] Richard Gerrig, *Experiencing Narrative Worlds: On the Psychological Activities of Reading* (Boulder, CO: Westview Press, 1998), 4. For more on reader response theory, see Wolfgang Iser, *The Act of Reading: A Theory of Aesthetic Response,* (Baltimore and London: The Johns Hopkins Univeristy Press, 1978); and Susan R. Suleiman and Inge Crosman (eds.), *The Reader in the Text: Essays on Audience and Interpretation* (Princeton: Princeton University Press, 1980).

questions). Focusing on the text's effect on the reader's imaginative process, however, assumes that a wide range of texts have at least some narrative qualities. In particular, legal codes, which are sometimes portrayed as the opposite of narrative texts, also generate a kind of minimal narrative world. Even the reader of traffic statutes, for example, is led to imagine a hypothetical person who has not put enough money in the parking meter and will now have to pay a fine. However, some texts—those to which the authors have contributed more detail, more complex plots, or a deeper understanding of the characters and their motivations—are more narrative than others. I argue that using this rubric, later rabbinic texts—including passages that are conventionally classified as "legal" and not "narrative"—possess more narrativity than earlier ones.

Other Rabbinics scholars have also begun to analyze the entire Bavli, not just the conventionally "narrative" portions of the Talmud, as a literary text, and my work builds on and responds to their work. This dissertation is indebted both to the pioneering work of Daniel Boyarin in revolutionizing the way legal portions of the Bavli are read, and to Barry Wimpfheimer's presentation of legal narratives as an important genre of rabbinic narrative. I address their work at greater length in the body chapters; here, I will briefly detail this dissertation's contribution to a view of the Bavli as a unified and ubiquitously narrative work already set into motion by Zvi Septimus, Itay Marienberg-Milikowsky, Moulie Vidas, and Joshua Levinson. Septimus and Marienberg-Milikowsky have each argued that the Bavli can most fruitfully be considered a literary, self-referential whole, while Vidas and Levinson take a more historical and source-critical approach and address the narrative tendencies of later Bavli layers vis-à-vis earlier material. My dissertation

responds to these analyses by showing that the narrativity and self-referentiality of the Bavli extends beyond what either Septimus or Marienberg-Milikowsky have allowed, and that both Vidas and Levinson's claims each only treat one isolated narrative aspect of the Bavli—Biblical exegetical narratives for Levinson; quotation as narrative for Vidas—and must be both broadened and understood in the context of the scholastic culture within which the Bavli was redacted.

My portrayal of consistent characterization across different tractates of the Bavli builds on Septimus's argument that the entire Bavli is meant to be understood as self-referential.[19] I show that the Bavli not only uses textual cues to build links from one story to another, as Septimus claims, but employs broader and more narratively sophisticated connections that link disparate parts of the Bavli as well. I thus demonstrate the Bavli as a whole should be considered more of a unified narrative work than has previously been acknowledged.

Marienberg-Milikowksy has recently argued that the Bavli as a whole manifests a drive towards increased narrativity, focusing on its development of plot and narrative.[20] Marienberg-Milikowsky uses a methodology of "distant reading" to analyze thousands of passages from across the Talmud and identify the broad trends that characterize its literary form, leading him to propose a widespread rise of narrativity in the Bavli that is manifested within the structure of *sugyot*. He identifies in particular what he terms the

---

[19] Zvi Septimus, "The Poetic Superstructure of the Babylonian Talmud and the Reader it Fashions," Ph.D. dissertation, University of California, Berkeley, 2011.
[20] Itay Marienberg-Milkowsky, "Beyond the Matter: Stories and their Contexts in the Babylonian Talmud—Repeated Stories as a Test Case," Ph.D. dissertation, Ben-Gurion University of the Negev, 2015.

"terminologization" of repeated narrative structures, that is, their use in the Bavli as transferrable frameworks that can convey various different types of content, and the increasing narrativization of the sages' legal discourse, which he refers to as "the emplotment of discourse." Marienberg-Milikowsky explicitly refrains from conjecturing as to whether these phenomena are a result of post-amoraic rabbinic cultural shifts, especially since some of the markers he points out (for example, the shift from the tannaitic "R. X forbids" to the amoraic "R. X says, 'It is forbidden'") are already present in earlier sources.[21] Rather, Marienberg-Milikowsky's focus is on distinguishing the Bavli as a whole from the other rabbinic works that preceded it. While I do not disagree that the entire Bavli is generally a more narrativitized text than earlier rabbinic works, I make a more historically specific argument than Marienberg-Milikowsky does about the Bavli's narrativity. I show that the literariness of the Talmud can be attributed specifically to its later layers, and that as such it should be seen as a particular manifestation of late Rabbinic scholastic thought.

My reading of the Talmud's anonymous voice also builds on an important insight from Moulie Vidas about the *stam*'s function as narrator, which he mentions several times but does not fully play out from a literary perspective. In his description of the transformation of a passage in the Bavli from its (presumably earlier) parallel in the Yerushalmi, Vidas writes, "The result is that in the Bavli, R. Abbahu, (sic) and Hezekiah are the narrated rather than the narrators. The *sugya* becomes a text about them, not by

[21] Marienberg-Milikowsky, "Beyond the Matter," 212.

them."[22] This is an essential literary feature of the Bavli whose implications are central to the way we read all of its legal passages as, in some sense, stories about the rabbis who speak within them. However, Vidas sees the *stam*'s narrative voice as performing a distancing function, with the goal of asserting authority and scholastic superiority over the text's chronologically earlier "narratees," whereas my dissertation reveals the *stam*-as-narrator to possess a much more complicated relationship with authority and received tradition than Vidas posits. I show that as opposed to the fully omniscient narrator Vidas portrays the *stam* to be, the Bavli's anonymous voice in fact often portrays itself as an unreliable narrator, thus undermining not only its own authority but destabilizing the epistemological certainty of legal knowledge altogether.

My discussion of the *stam*'s role as narrator thus also responds to the move in rabbinics scholarship to describe rabbinic literature, and particularly the Bavli, as an example of a text to which the notion of "authorship" does not apply.[23] While this insight is itself an apt one in some respects, the move to view the Bavli as an "authorless" text also risks problematically obscuring the ways in which the Bavli, even if it lacks an "author function,"[24] nevertheless possesses a narrating voice. To throw the possibility of a narrator out along with the possibility of a single, identifiable author is to lose sight of

---

[22] Moulie Vidas, *Tradition and the Formation of the Talmud* (Princeton, NJ: Princeton University Press, 2014), 65.
[23] Martin S. Jaffee, "Rabbinic Authorship as a Collective Enterprise," in *The Cambridge Companion to the Talmud and Rabbinic Literature*, eds. Charlotte Elisheva Fonrobert and Martin S. Jaffee, (Cambridge: Cambridge University Press, 2007), 17-37; Sacha Stern, "The Concept of Authorship in the Babylonian Talmud," *Journal of Jewish Studies* 45:1 (Spring 1994): 28-51.
[24] Michel Foucault, "What is an Author," in *Aesthetics, Method, and Epistemology,* ed. James D. Faubion (New York: The New Press, 1998), 205-222.

the ways in which "the *stam* as the narrator of the *sugya*, with its typical formulations and endless inquiries, is itself a literary character that follows the conventions of the genre."[25] In what follows, I show that the *stam*'s character as a narrator of legal passages is much more nuanced than has previously been understood.

Finally, my dissertation argues that within its scholastic context, the creation of detailed narrative worlds in the Bavli comes to occupy the primary focus of its legal discourse, over and above a concern with practical issues of legal interpretation or adjudication. This argument supports and builds upon an insight that Joshua Levinson has made regarding biblical exegetical narratives in late rabbinic literature. Levinson argues that the development of these narratives shows that for the Bavli, "Narrative becomes an autonomous cultural category, a distinct form of cultural capital endowed with a religious and ideological dignity of its own, which is independent of revelation or exegesis, boldly asserting its own claim to tell a truth about the world.[26] Much as Levinson has shown that late rabbinic Biblical retellings employ narrative not as a tool but as an end in and of itself, I show that an equally essential feature of late rabbinic law is that it too becomes increasingly narrativized—and that narrative in fact seems to be a goal of Babylonian legal thought.[27]

Levinson also argues that there is a connection between the late rabbinic

---

[25] Vidas, *Tradition and the Formation of the Talmud*, 78.
[26] Joshua Levinson, "The Cultural Dignity of Narrative," in *Creation and Composition: The Contribution of the Bavli Redactors (Stammaim) to the Aggadah,* ed. Jeffrey L. Rubenstein (Tübingen: Mohr Siebeck, 2005), 381.
[27] Joshua Levinson, "Dialogical Reading in the Rabbinic Exegetical Narrative," *Poetics Today* 25:3 (Fall 2004): 497-528; Levinson, *The Twice-told Tale: A Poetics of the Exegetical Narrative in Rabbinic Midrash* (Jerusalem: Magnes Press, 2005).

reluctance to perform exegesis on biblical passages, as others have shown, and the "emergence and intensification of the narrative mode" in the Bavli.[28] In other words, as the rabbis' sense of their own interpretive authority declines, their narrative propensities increase. Levinson's argument to this effect also supports my own findings about the simultaneous decline in the rabbis' interest in—or belief in the authority of—practical law and the intensified narrative mode found in late rabbinic legal passages as well.

Why does increased narrativity in particular become a feature of scholastic legal activity for the rabbis? Levinson has suggested that the rise of narrativity is connected to the rise of epistemological openness and increasing legal pluralism precisely because narrative is the utmost expression of such an attitude: "What could be a better vehicle for the expression of this polyphony than narrative itself, which by its nature enacts through the tensions between its characters this plurality of unmerged voices."[29] My third chapter, in which I connect the *stam*'s stance of uncertainty about legal truth with its often surprising and destabilizing use of narrative, supports and adds to this explanation.

Primarily, however, the Bavli's use of narrative is closely connected with the formation of scholastic culture because of the way that narrative uniquely creates an emotionally invested community of readers.[30] Narratives—including the Bavli's narrativized legal *sugyot*—invite readers to imagine details, anticipate endings to plots, fill narrative gaps, and relate to characters. As Steven Fraade has noted about an earlier

---

[28] Levinson, ibid., 379.
[29] Levinson, "Cultural Dignity," 381.
[30] On literature and "interpretive communities," see Stanley Fish, *Is There a Text in This Class?: The Authority of Interpretive Communities* (Cambridge: Harvard University Press, 1982).

genre of Rabbinic literature, "through its dialogically engaging textual practices, the Mishnah draws its auditors in to inhabit a nomo-narrative world which is continually under construction."[31] The integration of law and narrative in this tannaitic text, according to Fraade, allows the Mishnah to construct "a nomian world of 'words of Torah'"—something like Gerrig's imaginative world in which law comes to take on imaginative significance through the construction of characters, scenes, and plots.[32] This notion that rabbinic texts create a "world of words" that draw its readers in to both imaginatively inhabit it and continue its construction is even more true for the Bavli. The creation of a more highly narrative text places increased emphasis on readerly engagement, a literary shift which may have helped contribute to the rise of the rabbinic academy and the creation of a unified, uniquely rabbinic textual community.

Not only does the Bavli thus create compelling narrative (legal) worlds, but the Bavli's narrativization of the everyday interactions in the study house means that the rabbis themselves, as the texts' main characters, become important objects of readers' identification. Just as early Christian readers might have read about holy men whose amazing lives they desired to emulate, the Rabbinic trainee who becomes acquainted with the Bavli is introduced to the excitement of life as a textual warrior, a role into which he

---

[31] Steven Fraade, "Nomos and Narrative before *Nomos and Narrative,*" *Yale Journal of Law and the Humanities* 17:1 (2005): 94.

[32] Fraade, ibid. My one objection to Fraade's remarks here is that by "Torah" he seems to refer (at least in part) to the actual Pentateuch, which he claims the Mishnah "renarrativizes"; such a claim is somewhat problematic for the Mishnah, which uses narrative techniques most of which bear little direct connection to the Pentateuch, and is certainly not pertinent to the majority of the Bavli. If, however, "Torah" can be understood more broadly as "nomos," which as Fraade points out is frequently used as its translation in the Second Temple period, the claim seems to me to be much stronger.

can project himself.[33] The use of the first person plural by the Bavli's anonymous narrator even suggests that the reader is already part of the cast of characters. The Bavli's narrativity thus may have thus played a role in the development of ancient Jewish scholastic culture by using narrative to simultaneously portray and create compelling communities of Rabbinic readers.

Law and Literature in the Bavli

By revealing the new intersections between law and narrative that are a product of the Bavli's increasingly scholastic nature, this dissertation builds upon and advances the ongoing conversation during the last several decades about "*halakhah*" and "*aggadah*" in the Bavli, as well as the larger conversation in the humanities about the relationship between law and literature more broadly. The "Law and Literature" movement gained prominence in the 1970s and 1980s, primarily within the world of contemporary Anglo-American law.[34] This general heading has included several different types of

[33] See Peter Brown, "The Rise and Function of the Holy Man in Late Antiquity," *The Journal of Roman Studies* 61 (1971): 80-101. On the sage as warrior, see Rubenstein, *Culture,* 54-66.

[34] On the Law and Literature movement in general, see Guyora Binder and Robert Weisberg, *Literary Criticisms of Law* (Princeton, NJ: Princeton University Press, 2000); Sanford Levinson, "Law as Literature," in *Interpreting Law and Literature: A Hermeneutic Reader*, ed. Sanford Levinson and Steven Mailloux (Evanston, Ill.: Northwestern University Press, 1988), 155– 73; Anthony G. Amsterdam and Jerome Bruner, *Minding the Law* (Cambridge: Harvard University Press, 2000); Peter Brooks and Paul Gewirtz (eds.), *Law's Stories* (New Haven: Yale University Press, 1996); Richard Posner, *Law and Literature: A Misunderstood Relation* (Cambridge: Harvard University Press, 1998). For two thoughtful and quite different reviews of the interdisciplinary project and its history, see Jane Baron, "Law, Literature and the

interdisciplinary approaches, including the investigation of portrayals of legal settings within literary works, analysis of the use of narratives in the courtroom and other legal contexts, and the application of techniques of literary analysis to legal texts in order to reveal how they function as discourse.

In order to analyze how scholars of late antiquity have positioned themselves in regard to these various approaches to law and literature and how my own methodology fits into that rubric, I will discuss the difference between a "Law and…" versus a "Law as…" approach.[35] The main distinction I am drawing here has to do with the way in which the interdisciplinary project treats the relationship between the two disciplines it is attempting to harness. The former, while drawing connections between the two disciplines, ultimately still perceives them as discrete entities, even if they share certain

---

Problems of Interdisciplinarity," *The Yale Law Journal* 108 (1999): 1059-1085, and Julie Stone Peters, "Law, Literature, and the Vanishing Real: On the Future of an Interdisciplinary Illusion," *PMLA* 120:2 (March 2005): 442-453.

[35] A distinction within this multifaceted interdisciplinary project is often made between "law *in* literature" and "law *as* literature." See, for example, Binder and Weisberg, *Literary Criticisms,* 3; Brooks, *Law's Stories,* 14-15. This is not the same as the distinction I am proposing here. Generally, the "law *in* literature" category comprises studies of literary (often novelistic) representations of the law, while what is often referred to as "law as literature" deals with the types of hermeneutic techniques that are used to analyze legal texts. To my mind, either of these categories can include either of the distinct approaches I lay out here. Shai Lavi also makes use of a "Law as"/"Law and" distinction in "Enchanting a Disenchanted Law: On Jewish Ritual and Secular History in Nineteenth Century Germany," *U.C. Irvine Law Review* 1:3 (2011): 813-842. Lavi's argument is somewhat different than mine, however: first, he is not speaking strictly of "Law and/as Literature," and furthermore, his main point is has to do with the different attitudes these two approaches take towards law's significance: whereas the "Law and…" approach has generally taken a firmly realist stance on legal writings, showing that they are in fact a product of social or political forces, the "Law as…" approach attempts to "re-enchant" the law by "tak[ing] seriously the metaphoric, symbolic, and transrational dimensions of law." The distinction I am proposing, by contrast, focuses more on whether or not law is viewed as an autonomous category.

features or goals. The latter approach, on the other hand, in looking for the overlapping features of both categories of text, allows for the potential to begin to question boundary lines between genres and disciplines, thus contributing more fruitfully to the interdisciplinary project. These two kinds of approaches, which I will use to map out the different ways in which literary studies and legal studies have intersected in the analysis of ancient Jewish/proto-Jewish law, are—as I will argue—more or less congruent with the fields of Bible and Rabbinic: whereas "Law as Literature" has characterized several important works in Bible scholarship, the "Law and Literature" approach has generally been the dominant one in the field of Rabbinics.

The "Law and Literature" approach, which sees its two objects of study as intertwined but ultimately separate, often tends to portray law's primary tendency as a drive towards codification, while storytelling serves as "a vehicle of dissent from traditional forms of legal reasoning and argumentation."[36] The dominance of this approach in Rabbinics is likely in large part a result of the persistence of the traditional split between the categories of "*halakhah*" and "*aggadah*" in the Bavli. Despite major shifts in the description of narrative in the Bavli over the past century of Talmud scholarship, the field has nonetheless continued to maintain that "narrative" is a discrete category that applies only to specific portions of the text.

One major transformation in scholarship on narrative in the Bavli was the "recovery" of the Bavli's long, often fantastical stories from their relegation, both in traditional religious study culture and in the academy, to a secondary status. This

[36] Brooks, *Law's Stories,* 16.

development largely coincided with the emergence of area studies and the spread of literary theory as a key mode of engagement across the humanities, and *midrash* and *aggadah* claimed their moment in the sun.[37] Though scholars such as David Stern and José Faur attempted to demonstrate the value of putting literary criticism in conversation with rabbinic literature, this move was by and large limited to what were considered the purely narrative portions of the Bavli and other rabbinic texts, and bypassed what were considered to be primarily legal passages.

Daniel Boyarin's *Carnal Israel* marked a second watershed moment in the study of narrative in the Bavli, bridging the boundary between *aggadah* and *halakhah* and arguing that the two forms of discourse should actually both be read as reflections of the same cultural concerns and norms.[38] This "new historicist" trend in reading rabbinic literature sparked a revolution in Bavli scholarship, and also marked an important "law as" moment in Rabbinics as the field shifted to consider news ways in which legal texts might serve as a locus for the expression and negotiation of identity.[39] Scholars including Charlotte Fonrobert, Beth Berkowitz, and Mira Balberg demonstrated the ways in which Rabbinic legal texts express cultural, seemingly extra-legal phenomena such as

---

[37] Jonah Fraenkel, "Hermeneutic Problems in the Study of the Aggadic Narrative" (Heb.)*, Tarbiz* 47:3-4 (1978): 139-172; José Faur, *Golden Doves with Silver Dots: Semiotics and Textuality in Rabbinic Tradition* (Bloomington: Indiana University Press, 1986); Daniel Boyarin, *Intertextuality and the Study of Midrash* (Bloomington: Indiana University Press, 1990); David Stern, *Midrash and Theory* (Evanston: Northwestern University Press, 1996).

[38] Daniel Boyarin, *Carnal Israel: Reading Sex in Talmudic Culture* (Berkeley: University of California Press, 1993).

[39] For another take on the scholarly legacy of *Carnal Israel,* see Charlotte Fonrobert, "Carnal Israel and the Consequences," *The Jewish Quarterly Review* 95:3 (Summer 2005): 462-469.

constructions of gender, negotiations of group authority in a colonial context, and conceptions of and relationships towards the embodied self.[40] However, this development is probably better labeled as something like "Law as Culture" rather than "Law as Literature," and though this trend in scholarship transformed the study of Rabbinic law by seeing it as a reflection of something deeper, the fundamental distinction between law and storytelling remained, even if the two textual categories were seen as serving the same purpose. Rather than targeting a deeper understanding of a specific subject area of rabbinic discourse as culture, my work aims to more broadly stake a claim about the nature of Talmudic legal composition and the methods one must employ in reading for narrative in all rabbinic subject areas.

Even Robert Cover's seminal *Nomos and Narrative,* which has served as an inspiration for much of the contemporary scholarship on rabbinic law, also reveals in its very title a "Law and…" approach.[41] Though *Nomos and Narrative* might seem to fall under the "Law as…" category in the connections it draws between law and meaning-making, Cover nonetheless also treats narrative as fundamentally separate from and performing a different function from law. Cover's reception in Rabbinics has also

---

[40] Charlotte Fonrobert, *Menstrual Purity: Rabbinic and Christian Reconstructions of Biblical Gender* (Stanford, CA: Stanford University Press, 2000); Beth Berkowitz, *Execution and Invention: Death Penalty Discourse in Early Rabbinic and Christian Cultures* (Oxford and New York: Oxford University Press, 2006); Mira Balberg, *Purity, Body, and Self in Early Rabbinic Literature* (Berkeley: University of California Press, 2014).

[41] Robert Cover, *Narrative, Violence and the Law: The Essays of Robert Cover* (Martha Minnow and Austin Sarat, eds. Ann Arbor: University of Michigan Press, 1992).

frequently reified a realist view of law by viewing it as only part of a dichotomy alongside "narrative," which is distinct from law and also is what grants it meaning.

Wimpfheimer's *Narrating the Law* and Boyarin's *Socrates and the Fat Rabbis* are two important examples of this approach.[42] Wimpfheimer's *Narrating the Law* introduces the category of "legal narratives," which he defines as a subset of Talmudic texts that take a "story form and legal content," to reveal the aspects of rabbinic law that are "messy" and not expressible in statute form. Though Wimpfheimer on the one hand reveals that law *can* be expressed through the use of narrative and thus seen as discourse rather than code, he also continues to emphasize a fundamental difference between story and statute, and much of the book focuses on texts that take a more conventional narrative shape. Boyarin's *Socrates and the Fat Rabbis,* on the other hand, posits two different authors of the Bavli: a serious author of the "dialectic" (i.e. legal) passages on the one hand, and a second, comic author of the Talmud's lengthy and more conventionally narrative passages.

While Wimpfheimer and Boyarin both do important work in pointing out the fundamental interrelationship between the Bavli's multiple different modes of discourse, they also both divide the Bavli into distinct voices along what are at times reductive lines, delineating a serious (for Boyarin) or systematizing (for Wimpfheimer) "legal" voice on the one hand, and an antinomian (for Wimpfheimer) or carnivalesque (for Boyarin), "narrative" voice on the other. Both scholars occasionally push this division too hard, and

---

[42] Barry Wimpfheimer, *Narrating the Law* (Philadelphia: University of Pennsylvania Press, 2011); Daniel Boyarin, *Socrates and the Fat Rabbis* (Chicago: University of Chicago Press, 2009).

do not give enough recognition to legal passages for very often containing many of the features they ascribe solely to the Bavli's "narrative" voice.[43]

In so doing, Wimpfheimer, Boyarin, and others who take this approach may be guilty of a broader trend in the broader Law and Literature movement that Jane Baron has pointed to: a reification of law itself. Baron writes, "Law-and-literature scholarship has not questioned what the category 'law' consists of and has thus tended inadvertently to reinforce the notion of law as autonomous."[44] By assuming that law is not merely autonomous but is, in its unadulterated state, something ultimately resembling a code, the practitioners of this methodology are in danger of unnecessarily reinforcing disciplinary boundaries even while they claim to question them.

In contrast to the "Law and Literature" method, however, the "Law *as* Literature" approach "looks at law not as rules and policies but as stories, explanations, performances, linguistic exchanges—as narratives and rhetoric."[45] James Boyd White is perhaps the most well-known voice of this approach in the movement, arguing that, especially when it comes to legal interpretation, law and narrative must be understood as fundamentally similar in the ways that they produce meaning.[46] This methodological approach has been much more influential in Biblical scholarship than in Rabbinics, including Mary Douglas's stylistic and symbolic approach, James Watts's analysis of

---

[43] I address this critique further in my second chapter.
[44] Baron, "Law," 1061.
[45] Brooks and Gewirtz, *Law's Stories*, 2.
[46] James Boyd White, *The Legal Imagination* (Abridged Edition) (Chicago: University of Chicago Press, 1985); *Heracles' Bow: Essays on the Rhetoric and Poetics of the Law* (Madison: University of Wisconsin Press, 1985); *Justice as Translation: An Essay in Cultural and Legal Criticism* (Chicago: University of Chicago Press, 1990).

Biblical law as rhetoric, and Assnat Bartor's readings of casuistic laws as narrative.[47] I find this approach to be more fruitful for analysis of the Bavli because rather than reinscribing preexisting boundaries, it enables a more fluid approach to texts and an openness to their potentially surprising features. This is the approach towards rabbinic legal texts (by which I mean the loosely defined category of texts that deal with institutionalized norms, statutes, rulings, and/or judicial contexts) that I take in this dissertation.

In my analysis of ways in which rabbinic law contravenes expectations of what legal texts normally look like, my work also shares textual approaches with Raymond Westbrook. Westbrook, another Bible scholar whose work implicitly questions a conventional definition of "law," describes Mesopotamian law as a vehicle for recording and organizing knowledge about the world, but argues that it was not sufficiently autonomous to function as a textual basis for future legal decisions.[48] Rabbinic law—especially the Bavli, in which legal arguments are frequently left unresolved—also looks like common law, but in fact functions much more as a vehicle for thinking and writing

---

[47] Mary Douglas, *Leviticus as Literature* (Oxford: Oxford University Press, 1999); James Watts, *Reading Law: The Ritual Shaping to the Pentateuch* (Sheffield: Sheffield Academic, 1999); *Ritual and Rhetoric in Leviticus: From Sacrifice to Scripture* (Cambridge and New York: Cambridge University Press, 2007); Assnat Bartor, *Reading Law as Narrative: A Study in the Casuistic Laws of the Pentateuch* (Atlanta: Society of Biblical Literature, 2010). See also Chaya Halberstam, "The Art of Biblical Law," *Prooftexts* 27 (2007): 345-364, and Liane Marquis Feldman, "Ritual and Narrative in the Priestly Story of the Inauguration of the Tabernacle," Ph.D dissertation, University of Chicago, 2018. For an example of this type of approach in Rabbinics, see Jane Kanarek, *Biblical Narrative and the Formation of Rabbinic Law* (New York: Cambridge University Press, 2014).

[48] Raymond Westbrook, *Ex Oriente Lex* (Baltimore: Johns Hopkins University Press, 2015), 182-184.

about the way the world works or should ideally work. Rabbinic law is, furthermore, a resource for the cultivation of religious subjectivity through ritualized textual interpretation. I thus explore what it means for law to be purely a "resource in signification," as Robert Cover puts it, potentially detached from any goal of future practical normative use, and how those kinds of legal texts can better help us understand law as a category.

To be clear, my argument that the Bavli's legal passages ought to be read through the lens of narrativity is not a claim that there are no genre distinctions within the Bavli. The Bavli obviously combines many different types of texts in terms of content, style, language. However, I suggest that this multifaceted text may be sliced many different ways, and that the historical reception of its genre distinctions need not determine the way modern scholars categorize or analyze the Bavli's texts. As such, I present the type of passage I analyze in each chapter as its own entity without attempting to categorize it, thus sidestepping the question of whether the text fits better within the category of "law" or "literature" and instead focusing on the way each type of passage uses narrative techniques in portraying discussions of legal issues.

This dissertation thus draws on important trends in rabbinics—the recovery of narrative as an essential rather than a marginal feature of the Bavli; the acknowledgement that the texts traditionally classified as *halakhah* as well as *aggadah* are ultimately forms of cultural production and imagination; and the emphasis on the interplay of multiple, sometimes discordant voices in the Bavli—while incorporating biblical scholarship's insight into the literary qualities of *all* legal texts, thus including those passages in the

Bavli that might be traditionally considered purely "halakhic." I draw in particular on Wimpfheimer's introduction of the "legal narrative" as an important genre within the Bavli in my portrayal of the Bavli's use of characterization across legal narratives. However, instead of seeing the different voices of the Bavli as consisting of a "serious" legal voice on the one hand and a serio-comic storytelling voice on the author, thus reifying disciplinary boundaries between law and narrative, I show that storytelling is inherent and even emphasized in every aspect of the Bavli, thus revealing that "law" is a more complex category than is often acknowledged.

Texts and Methods

This dissertation comprises analyses of *sugyot* from across the Bavli, organized thematically by subtype. Taking the entire Babylonian Talmud as my corpus, I used specific key phrases and structural patterns to identify subtypes of *sugyot* that exemplify the role of narrativity in late legal passages. Since the texts included here represent only a small selection of narrative legal passages, I included a range of *sugya* types in order to highlight the various literary techniques through which the Bavli's narrativity is expressed. Thus, one of my chapters explores the Bavli's use of characterization through several similar *sugyot* that highlight a particular rabbinic figure's portrayal in legal dialogues; a second chapter investigates how plot features in a particular style of legal interpretive passage; and another chapter highlights narration through an analysis of two related "families" of *sugyot*, each of which possesses a similar structure within which the

anonymous narrator is able to destabilize its own narration by contradicting it. I recognize that these are only several examples of the narrative qualities that appear to a greater or lesser extent throughout the Bavli—including the dialogical format in which nearly all legal passages are presented—and there is certainly more to be done to uncover the complex narrative elements of the Bavli's engagement with law. However, my intention in selecting these particular subtypes of Bavli passage was not only to highlight the variety of narrative techniques employed by the Bavli's authors, but also to highlight legal passages in which the narrative features are both especially amplified and are also more clearly the product of a late redactorial hand, thus connecting this rise in narrativity to the scholastic shift in rabbinic culture towards the end of the Bavli's formation.

Because I attribute heightened narrativity not just to the Bavli as a whole but to its late redactorial layer, I wish to briefly address my approach towards the history of the Bavli's composition and the conclusions that one may responsibly draw about historical developments in rabbinic thought. My scholarship takes as a given that the Bavli went through a process of redaction and contains both earlier and later material, such that passages can often be separated into their constitutive layers. Indeed, much of my argument hinges on the ability to make a distinction between what material in the Bavli has been preserved (at least in some form) from earlier sources and what has been added later on, since I argue that later material generally tends to be more scholastic than earlier material.

This methodological approach is based on the seminal work of Shamma Friedman[49] and David Weiss Halivni,[50] the two main progenitors of the now widespread model of the "*stam*," the Bavli's anonymous editorial voice. According to both Friedman and Halivni, the Bavli is made up of earlier attributed statements, often in Hebrew, that are preserved and transmitted within the framework of an anonymous Aramaic commentary. As Friedman acknowledges, the boundaries between anonymous and attributed material are not always completely fixed—some materials that are presented as earlier, tannaitic texts are recognized by scholars as later Babylonian fabrications, while some concepts or assumptions from earlier material may also be found in the anonymous layer. It is thus necessary to use other tools, such as comparisons with parallels where possible as well as a recognition of literary motivations for reworking earlier material, to best determine the makeup of a passage. Nonetheless, it is still most often the case that one may safely distinguish between the Bavli's earlier, attributed, often Hebrew tannaitic or amoraic material on the one hand and later, anonymous, Aramaic material on the other. This theory of the *stam* is important for my claims about scholasticism in the Bavli, since the ability to attribute the rise of rabbinic scholasticism to a particular time period, one that is generally contemporaneous with early Christian scholasticism, also depends on the ability to determine which elements of the Bavli are later and which are earlier. Likewise, Jeffrey Rubenstein's description of the scholastic culture of the Bavli is also

---

[49] Shamma Friedman, "Mavo Klali: 'Al Derekh Heqer Ha-Sugya," in *Mehkarim u-Meqorot: Ma'asaf le-Mada'ei ha-Yahadut* (H.Z. Dmitrovsky ed., New York: The Jewish Theological Seminary of America, 1978), 283-321.

[50] David Weiss Halivni, *The Formation of the Babylonian Talmud* (New York: Oxford University Press, 2013).

closely tied to the premise that the late, anonymous, Aramaic stories he analyzes can likewise be safely dated as later than many other portions of the Bavli.

The Friedman/Halivni theory of the *stam* is not uncontested. Robert Brody and David Rosenthal are two of the main voices in favor of a more gradual theory of the Bavli's redaction.[51] Rosenthal argues that as opposed to a purely "geological" model of the Talmud's composition, according to which *sugyot* developed one layer after another starting with an initial comment on a mishnah, there are also clear indications of *sugyot* that were fully redacted sometime before they were fixed in their present location. He shows that some *sugyot* are mostly unrelated to the *sugyot* that precede it or to the mishnah that is supposedly being addressed, and seem to be inserted solely on the basis of shared words or concepts.

Rosenthal's argument is compelling, and Brody takes his suggestion one step further, arguing that if there are multiple different stages of redaction, then it seems logical that there are also multiple stammaitic layers—i.e., that not all anonymous commentary in the Bavli is later than every single amoraic layer. Brody points out that the Palestinian Talmud, which was clearly redacted earlier than the final layers of the Babylonian Talmud, also has its own (albeit less developed) anonymous layer. He also notes several *sugyot* in which *amora'im* appear to respond to the *stam*. He highlights the fact that in most of these cases the responding *amora* is from a later generation, making it more plausible that the *amora'im* in these cases are genuinely responding to the

---

[51] Robert Brody, "Stam ha-talmud ve-divre ha-amora'im," *Iggud I* (Jerusalem: Ha-Iggud Ha-Olami Le-Mada'ei Ha-Yahadut, 2008); David Rosenthal, "Arikhot qedumot ha-meshuqa'ot be-talmud ha-bavli," *Mehkerei Talmud I* (Jerusalem: Magnes Press, 1990).

anonymous voice and not that the *sugya* was purposely rearranged by the *stam* in order to give this impression. Brody thus posits that there are multiple layers of stammaitic texts, some of which are earlier than some amoraic statements.

I am open to the possibility that some redaction of the Talmud happened in multiple, discernible stages, and not all at once during a single, late period (and, as Brody points out, so are many other source critical Bavli scholars). However, it still seems most likely that the majority of the Talmud's redaction happened at a late stage, and I remain skeptical about Brody's proposed theory of multiple anonymous editors. My view is that given the consistency in the defining features of the anonymous layer as well as evidence pointing to instances of quite heavy editorial activity, most passages in the Bavli are best explained by a late *stam* who exercised more forceful redactorial hand than Brody may be prepared to admit. My second chapter in fact helps to bolster the argument for a later and more editorially active *stam* by showing that increasingly scholastic tendencies are found specifically in the context of more highly redacted passages, reaching their apex in purely anonymous variations on what I show to have initially been an earlier amoraic structure.

Not only does my dissertation bolster a theory of intensive redaction at a later date, but it also lends support to a specific argument about a unified and late *stam*: Jeffrey Rubenstein's claim that the *stam* is also the author of the lengthy and complex narratives in the Bavli. Richard Kalmin has questioned this argument on the basis that it attributes a type of compositional activity to the *stam* that is not found elsewhere in the Bavli: "If the anonymous editors authored the Talmud's greatest stories, why do the overwhelmingly prosaic, legal preoccupations of these commentators throughout the Talmud reveal them

to be the very antithesis of deft storytellers and imaginative artists?"[52] However, if, as I show throughout this dissertation, the *stam* is indeed just as narratively active and creative in its creating of legal narratives, whether they are hypotheticals, case narratives, or tales of intra-rabbinic interactions, then the argument for a not only late but literary *stam* becomes even more compelling.

My argument about the *stam*'s literary activities in the Bavli's legal passages also builds upon and responds to earlier scholarship on the structure of heavily redacted halakhic *sugyot*. Shamma Friedman has argued that the *stam* constructs *sugyot* in ways that conform to certain structural principles, betraying a preference for cohesiveness, elegance, and the use of certain numbers.[53] Ethan Tucker has further explored the connection between the structure of *sugyot* and their legal content in his dissertation. Tucker argues that the literary pressures of Bavli *sugyot*—for which Tucker sees the need for ease of transmission as a primary motivator—often wind up effecting legal change, since "form can triumph over content and aesthetics can best the untidiness of legal rulings."[54] In some ways, Tucker's argument is similar to mine, especially as he points out that when the Bavli's legal discussions are "shaped by what I call 'literary agendas,' *there is no substantive legal objective* [italics original]. Indeed, the *sugya* may reveal a distinct *disinterest* in practical halakha…"[55] However, both Tucker and Friedman take a

---

[52] Kalmin, "The Formation and Character of the Babylonian Talmud," 846.
[53] Shamma Friedman, "Mivne Sifruti be-Sugyot Ha-Bavli," *Proceedings of The Word Congress for Jewish Studies* 6:3: 389-402.
[54] Ethan Tucker, "Literary Agendas and Legal Conclusions: The Contributions of Rabbinic Editors to the Laws of Legal Mixtures," Ph.D. dissertation, The Jewish Theological Seminary of America, 2006.
[55] Tucker, ibid., 13.

very different approach towards what "literariness" means for the Talmud's editors. Whereas Tucker and Friedman focus on structural elements, my own engagement with editorial literariness deals not with the formal qualities of *sugyot* but rather with the techniques that enable them to create increasingly developed narrative worlds for their readers.

Finally, Moulie Vidas has also questioned the Friedman/Halivni model of the Bavli by arguing for an even more redactorially active *stam* than their model accounts for, and showing cases in which the supposedly quoted material is in fact crafted along with the anonymous layer, creating the impression of layers where there need not be.[56] As others have pointed out, this model still needs further proof.[57] However, even granting the validity of this theory for many passages in the Bavli, Vidas's model still works well with my claims. My argument is based on the lateness of the *stam* and not the reliability of attributed statements nor the reliability of the *stam* in transmitting them. In fact, my third chapter hinges on the *stam*'s very unreliability as a transmitter and its own acknowledgment of this. My argument thus questions not the model that Vidas proposes, in which the *stam* knowingly reworks attributed statements, but rather the explanation he provides: whereas Vidas argues that the *stam* uses quotation to create a distancing, even relegating impression regarding the quoted material, I show that the *stam*'s unreliability is something that is a source of discomfort, and may even be purposely emphasized in

---

[56] Vidas, *Tradition and the Formation of the Talmud,* see especially 54 ff.
[57] See, for example, Raphael Magarik, "Tradition and the Formation of the Talmud by Moulie Vidas," *MAKE Literary Magazine*, accessed March 26, 2018, http://makemag.com/review-tradition-and-the-formation-of-the-talmud-by-moulie-vidas/.

order to create a heightened sense of uncertainty. The *stam* thus subverts the Bavli's own legal enterprise by revealing the epistemological instability inherent at the heart of law.

My approach thus both draws on source-critical methods, even contributing to one side of the debate about the history of the Bavli's composition, but also moves beyond them. While my argument both relies upon and reinforces the notion of a primarily late and scholastic *stam*, whose contributions can and should be separated from earlier textual layers, I also reveal the narrative complexity and inherent narrativity of the *stam*'s textual productions, beyond its relationship towards—whether harmonizing, preserving, or distancing—earlier sources. [58]

Chapter Overview

The body of the dissertation consists of three chapters, each of which investigates a different genre of legal *sugyot* through the lens of rabbinic scholasticism and its relationship with narrative. Each of the chapters takes as its focus a different feature of narrativity that is accentuated in late Bavli legal *sugyot*: plot; characterization; and a distinction between narrator and implied author. While my first chapter shows a straightforward increase in narrativity between earlier and later forms of the same type of passage, my second and third chapters explore ways in which this narrativity also

[58] Barry Wimpfheimer has similarly called for the Bavli's analysis from "a literary rather than a compositional perspective" (*Narrating the Law,* 5), and Itay Marienberg-Milikowsky likewise proposes a shift away from Friedman's historically-oriented literary analysis of the Bavli to a more synchronic method ("Beyond the Matter," 263).

becomes self-undermining. In the second chapter, I show that this narrativized challenge expresses an internal self-critique of the Bavi's own scholastic tendencies, whereas in the third chapter I argue that the destabilization expressed through the use of an unreliable narrator functions as a critique of law itself.

In my first chapter, I show that the Bavli's scholastic tendencies are fundamentally tied to the production of narrative, and that this increased narrativity affects the development of legal *sugyot*. I compare early, late, and intermediate passages in which a mishnaic ruling is reinterpreted through a multi-step process of producing new case scenarios, showing that later passages exhibit more narrative complexity and less practical legal relevance. In the early, less redacted instances of these passages—those with a high proportion of attributed amoraic statements to anonymous commentary—we find multiple, discrete new case scenarios in response to a clearly established difficulty with the original casuistic ruling. These several case scenarios are related only to the original case but not to each other, and they each attempt to solve what seems to be a genuine conceptual problem in the Mishnah. In the intermediate passages, the discrete, attributed case scenarios are reworked by the addition of anonymous commentary to transform them into one unified, complex new case scenario. Finally, in the latest passages, which are entirely anonymous with no core of earlier attributed material, the earlier mishnaic case scenarios are not only reinterpreted through the use of a complex new hypothetical, but the process of generating a new scenario does not clearly serve a useful interpretive purpose in the passage, as the problem itself often seems artificial and the new hypothetical does little to solve it. I also show that the purely anonymous

passages maintain the narrative structure of the earlier passages, in which several different voices each propose separate elements of a solution to a problem, even when there is only a single (anonymous) voice and the solution is already known at the beginning of the passage. I thus show that for the composers of these later passages, the production and increasing narrative complication of case narratives does not serve as a tool, but is emphasized in and of itself, much as Joshua Levinson has shown to be the case with respect to rabbinic exegetical narratives.

Having demonstrated increased narrativity in one type of later, more scholastic legal *sugyot*, I turn in my second chapter to the Bavli's expressions of ambivalence about its own scholastic tendencies through texts that, in their focus on meta-analysis and use of character development, are themselves highly scholastic. I explore the Bavli's use of characterization as critique by analyzing passages throughout the Bavli in which Rabbi Yirmiyah is portrayed as asking theoretical questions which, though not any more or less pedantic or absurd than questions asked anywhere else in the Bavli, nonetheless lead to his rebuke and even in one case his expulsion from the study hall. These stories share certain characteristic features: R. Yirmiyah's questions, which relate to plants and animals, address epistemological questions about the natural world and often ask second-order questions about methods for deriving legal truth; R. Yirmiyah's interlocutor is always his teacher/colleague R. Zeira; and each story often draws attention to the fact that it is just one example of a repeated and seemingly well-known trope. By establishing both consistent themes and a sense of self-referentiality within these stories, the rabbis use characterization to present R. Yirmiyah as a recognizable caricature of a scholastic

and thus as a scapegoat for their ambivalence about their own scholastic tendencies. I thus show that it is not the case that some feature of R. Yirmiyah's questions themselves makes them inherently bad or dangerous for the rabbinic project, but rather R. Yirmiyah's portrayal as the local pedant allows him to become the target of criticism for questions that may well seem absurdly scholastic, but are in fact within the boundaries of typical rabbinic dialogue in the Bavli. In addition to revealing this mode of scholastic self-caricature, my analysis of these exchanges between R. Yirmiyah and R. Zeira also shows that consistency of characterization is an important but under-acknowledged feature of the Bavli, and that the Bavli is—at least in some respects—a unified literary work in ways that have as yet been insufficiently explored.

I turn in my last chapter to the Bavli's use of an unreliable narrator as a critique of law. I show that, contrary to some portrayals of the *stam* as being primarily concerned with asserting its own authority over earlier sources, the *stam* in fact assumes an attitude of extreme epistemological uncertainty about the ability to rely on knowledge either from the earlier sources it preserves or from its own interpretive statements, thus pointing to the fundamental instability of legal judgments. In the passages I consider in this chapter, the *stam* undermines its own textual authority through its self-disclosure as an unreliable narrator. I begin with an analysis of two types of legal narratives, both of which are retold through the mechanism of narrative information that is either withheld or revealed. In both types of narratives, the *stam*'s authority is called into question, either through the revelation that its own observations have led it to false conclusions, or through the *stam*'s revision of its own narrative in ways that it acknowledges to be unconvincing. Finally, I

analyze a passage in which the *stam* explicitly addresses concerns about the connection between epistemology and narration, specifically related to the difficulty of determining reliable information about correct adjudication. I thus suggest in this chapter that the presence of an undermined unreliable narrator in these passages is a manifestation of late rabbinic doubt, both about the reliability of received traditions and about their own trustworthiness and authority as interpreters, evaluators, and transmitters of tradition themselves. The late Rabbinic approach towards law thus shifts from that of a legislator to that of a legal theorist, pointing to law's instability and unmasking it through the vehicle of narrative.

I. The Poetics of *Oqimtot*: Reading for the Plot in Legal *Sugyot*

Nomos and Narrative Revisited: Plotting the Law

This chapter probes the relationship between law, literariness, and scholasticism in the Bavli by examining the narrative structure of Bavli passages that reinterpret tannaitic case law. I will show that for the Bavli, scholasticism is always narrativized—not just in stories about rabbinic activity, but in the more "technical" discussion and interpretation of statutes as well. However, the nature of this narrativization changes from earlier to later material: whereas the narrative elements in amoraic material are employed in the service of various ends, the later anonymous material reveals an impulse to produce narrative that takes on a life of its own. I will explore this transition from amoraic to stammaitic narration by looking specifically at the development of a particular type of multi-step reinterpretation of tannaitic material.

The building block of these multi-step passages, which I will refer to by the Aramaic term *oqimta,* generally resolves a textual or conceptual difficulty with an extant piece of legislation by adding new information in order to restrict the type of case to which the ruling applies.[1] An *oqimta* can frequently take a fairly general form, such as

[1] The term *oqimta* comes from the Aramaic root q.w.m., which can mean "to refer to" or "to establish." In the af'el form this verb sometimes means "to explain" or "to interpret," and the word *oqimta* in the BT is the second person conjugation of this form ("you explain" or "you interpret"). The word is used as a noun with the definition I have provided above by Rabbenu Hananel in several glosses (e.g., BT Yoma 29a: "This *oqimta* does not appear in the Yerushalmi, just in this *sugya*") and Rashi (e.g., BT Ketubot 71a s.v. "For poor women": "He establishes an *oqimta* on our Mishnah"), as well

"This law applies only to adult males" or "This law applies only in a case where the deceased has living heirs." Other instances of *oqimtot* can restrict the law in such a way that results in the generation of a new and fairly well-developed hypothetical narrative. I will focus here on passages in the BT that contain a series of *oqimtot* that all respond to the same specific problem with an earlier case law. I will show that these multiple-*oqimta* passages contain a complex form of nested narratives, and that in later texts, these narrative elements become both progressively more complex and more central to the larger significance of the passages.

In emphasizing the narrativity of both late rabbinic legal interpretation and the dialectical format in which such interpretations are presented, my approach to relationship between law and narrative in the Bavli departs from previous "law and literature" analyses. Both Barry Wimpfheimer's *Narrating the Law* and Daniel Boyarin's *Socrates and the Fat Rabbis,* despite challenging the *aggadah*/*halakhah* dichotomy, have nonetheless still portrayed the Talmud as containing two competing voices or drives. One such drive represents systemic "statutes" (Wimpfheimer's "drive towards codification"; Boyarin's monological *stam*) and one represents anti-systemic "stories" (Wimpfheimer's legal narratives; Boyarin's *stam* of the grotesque and carnivalesque). However, I show

---

as by other medieval commentators, though they continue to use it as a verb as well. There is little academic scholarship on the *oqimta* in rabbinic literature. For an analysis of oqtimtot and canonicity, see Menachem Fisch, "Parshanut Dehuqa v'Tekstim Mehayyavim," in *Iyunim Hadashim be-Filosofia shel Ha-Halakhah,* eds. Ravitsky and Rosenak (Jerusalem: Magnes, 2008), 293-326. For an analysis of the *oqimta* from a purely logical perspective, see Ronen Reichman, "The Talmudic Okimta and its Logical Structure: A Contribution to the Systematic Research into Talmudic Legal Hermeneutics," *Jewish Studies Quarterly* 12:2 (2005): 129-147.

here that the statutory passages of the Bavli are also narratively rich—and in certain cases, even carnivalesque—in their own way, and that this narrative drive ultimately rests at the heart of all late rabbinic engagement with legal thought.

Rather than attempt to propose a formal definition of "narrative" as a static category, I will treat "narrativity" as a spectrum, using the—admittedly subjective—measure of whether or not texts create a narrative world that is, or can be, imaginatively vivid for the reader. As Richard Gerrig argues, narratives may be identified by the effect they produce on the reader—namely, an experience of being imaginatively "transported" elsewhere and in some way "performing" the role of narratee—rather than by their conformity to certain verbal or textual structures.[2]

In other words, regardless of whether or not texts resemble what we think of as a traditional story, with an immediately identifiable beginning, middle, and end, they can still contain features that encourage the reader to imaginatively construct a world in which their characters, chronology, and/or details exist. This is a particularly useful way to think about the narrative aspects of legal texts, which frequently do not possess the textual structure one might expect in a narrative, yet nonetheless may possess details and/or framing structures that make them more imaginatively vivid for the reader than they otherwise might be.

---

[2] It is, of course, always difficult to make blanket statements about "the reader's" experience, but many of the traditionally proposed features of narrative (specificity, chronology, even causality) can be explained within Gerrig's framework of components that build a fuller and more compelling narrative world for the reader.

The passages that I will analyze all take as their starting point an earlier case law. As Assnat Bartor has suggested, the casuistic laws of the Bible should themselves be treated as "mini-narratives."[3] Chaya Halberstam has also argued that Biblical narrative and casuistic laws share a "common literary texture," which she too characterizes as "reaching towards narrative."[4] This important insight is one that has yet to be fully applied to the study of the Bavli's legal texts. For instance, in his presentation of the contrast between statutes and stories, Wimpfheimer draws on Robert Cover's *Nomos and Narrative,* arguably the landmark piece of scholarship laying out the "law and narrative" approach. He cites Cover's contrast between the law of primogeniture in Deuteronomy, which rules that the double portion must go to the eldest son, and the stories of primogeniture in Genesis, in which it is frequently the youngest son who upsets the norm and receives the parental legacy. However, neither Cover nor Wimpfheimer give enough credit to the way in which the Deuteronomic law is itself creating a story.[5] Like much other Biblical law, the Deuteronomic law of primogeniture is stated in casuistic form, first describing a case and then issuing a verdict (apodosis):

> 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, 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

---

[3] Bartor, 17. Moshe Simon-Shoshan has similarly pointed out the narrative elements of casuistic laws in the Mishnah; *Stories of the Law,* 24 and 34.
[4] Halberstam, "The Art of Biblical Law," 347-8.
[5] Cover does note that "The very casuistic phrasing of this precept suggests an extremely problematic psychodynamic" ("Nomos and Narrative," 20), but his treatment of this legal formulation primarily treats it as one of the rules that stands in contradistinction to the anti-nomian narrative context of the Hebrew Bible.

> 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.[6]

If the Deuteronomic law of primogeniture were not presented in the irrealis ("if… then") mood, the series of events it describes would make for a compelling, even emotionally moving short tale: *Once a man had two wives, one loved and the other unloved… and even though his first-born was the son of the unloved one, he allotted to him a double portion of all he possessed, because the birthright was his due.* The author of this text encourages the reader of this law to create a narrative world, one with a sympathetic protagonist who ultimately overcomes his urges and follows the law, instead of simply saying "You shall always give your first-born son the double portion" and leaving it at that. Similarly, Halberstam's reading of Deuteronomy's laws about lost property reveal the ways in which this commandment provides "dramatic tension, emotional reverberation, and the possibility of restoration and resolution," as well as characterization, [7] and thus is able to not just offer a statute but to "affect the heart of the reader."[8]

In general, the more detailed the protasis of a casuistic law, the richer the narrative world it creates. The development of increasingly complex hypothetical case scenarios, and thus the heightening of their narrativity, is a defining feature of the Bavli, especially the anonymous layer. Not only are casuistic laws themselves narratives, but Bartor also points out biblical laws exist within another meta-narrative—a "frame

---

[6] Deut. 20:15-17.
[7] Halberstam, "The Art of Biblical Law," 359.
[8] Halberstam, ibid., 348.

narrative"—that gives an account of how those laws were received and transmitted.[9] Instead of simply stating a legal code, the biblical laws are intertwined both with the account of the giving of The Law at Sinai as well as with accounts of the transmission of individual laws (e.g., the ubiquitous opening phrase "God spoke to Moses and told him…"). Like the Hebrew Bible, the Bavli also presents its case law within the context of a framing narrative: that of the rabbinic discussions in the *beit midrash.* The Bavli not only presents new legal interpretations, but gives an account of which rabbi offered which legal interpretation, what his colleagues had to say about it, and how later rabbis understood and reacted to their predecessors' legal claims. The Bavli's creation of the imaginary world of the *beit midrash* is thus another important element of narrative depth that characterizes its legal passages.

In addition to the narrativity of the Bavli's complex case scenarios and its framing narrative of conversations in the study house, the Bavli's multiple-*oqimta* passages also include a third narrative element, one which is not present in the Bible. Not only is the legal material often presented through a framing narrative, but the specific structure of the framing narrative is one that tells the story of the search for, and discovery of, new knowledge—specifically, the search for the best interpretation of the original but problematic case law, which itself takes the form of yet another (hypothetical) narrative.

---

[9] Halberstam, "The Art of Biblical Law," 18. On the narrative elements of Biblical law, see also Simeon Chavel, *Oracular Law and Priestly Historiography in the Torah* (Tübingen: Mohr Siebeck, 2014); Hanna Liss, *Creating Fictional Worlds: Peshat Exegesis and Narrativity in Rashbam's Commentary on the Torah*, *Studies in Jewish History and Culture 25* (Leiden/Boston: Brill, 2011); and Liane Marquis Feldman, "Ritual and Narrative in the Priestly Story of the Inauguration of the Tabernacle," Ph.D dissertation, University of Chicago, 2018.

In other words, these passages offer accounts of conversations that are in fact quests to find a solution to the problem proposed by the passage. The story of this conversational quest is a central yet overlooked narrative feature in these *sugyot*.

My analysis of the passages in this chapter will focus not only on the textual elements that help to create narrative worlds, but on the way these narrative elements are structurally arranged and connected to one another—what is frequently referred to as "plot." Following the Russian formalists, I will look at the "plot" of these passages in terms of the relationship between the content of each *sugya's* narratives according to their own internal logic, which the Russian formalists Vladimir Propp and Victor Shklovsky called the *fabula*, and the order in which that content is presented to the reader, which the formalists termed the *szujet. Fabula* and *szujet* can be identical, such that the events in the story are told in the same order in which they are purported to have occurred, or they can diverge, as in the case of a flashback within a story. Multiple-*oqimta sugyot* lend themselves particularly well to this type of analysis because they contain a complex arrangement of three different *fabulas*: the original case scenario, which I will refer to as the base *fabula*; the revised case scenario(s), which I will refer to as the solution *fabula*; and the account of how the revised scenario was derived from the original scenario, which I will refer to as the frame *fabula.* In my analysis of the transformation of these passages from amoraic to stammaitic, I will show that two of these three *fabulas* are both preserved and made more complex, even when they no longer serve a clear purpose.

Structurally, the complex arrangement of *fabula* and *szujet* in the Bavli's presentations of the rabbis' legal conversations—both early and late—in many ways

resembles Freud's presentation of case histories. Peter Brooks points out that a Freudian case history contains multiple, overlapping *fabulas*: the story of the neurosis's origin; the presentation of the neurosis in the adult subject; and the history of the subject's treatment in analysis. The *szujet* consists of the order of presentation of all three of these elements.[10]

Both Freudian case histories and multiple-*oqimta sugyot* narrate the story of how one confusing story was solved by the generation/discovery of a second story. For Freud, the story that must be "solved" is that of the neurosis's presentation in the subject's adult life, the story that is the "solution" is the origin story, and the story of *how* it is solved is the history of the analysis, carried out through a conversation between the analyst and the analysand. For the Bavli, the story that must be "solved" is the flawed tannaitic text; its possible "solutions" are the new amoraic or stammaitic versions of what the tannaitic text "really meant"; and the story of *how* it is solved is the narration of different rabbis'/voices' presentations of new readings (and, if applicable, the rejections of some of those readings). In this way, case histories and *oqimtot* share the narrative quality that Tzvetan Todorov refers to as "gnoseological"[11]: rather than primarily relating a sequences of events, these types of narratives are mainly focused on the solving of a riddle and thereby the discovery of new knowledge. A paradigmatic modern form of this type of narrative would be a detective story.[12]

---

[10] Peter Brooks, *Reading for the Plot* (Cambridge: Harvard University Press, 1984), 272-273.
[11] Tzvetan Todorov, *Genres in Discourse,* 31. Brooks, by way of Roland Barthes's *S/Z*, refers to this narrative quality as "hermeneutic" (*Reading for the Plot,* 18).
[12] Todorov, 33.

One shared feature of the *szujet* of these types of narratives is that the end of the second *fabula*—the *fabula* that represents the "true meaning"—is often presented first. In the first few pages of the detective story, we already know that the victim has died. Only once the end of that *fabula* has been established does the story narrate the detective's discovery of the rest of the events that led up to that final moment. This is likewise true of the multiple-*oqimta sugya*. The end—that is, the verdict of the case—is presented first, and only afterwards does the *sugya* narrate the details of the events that could logically have led to such a legal outcome.

Although all the passages in this chapter share this fundamental structure, I will show the ways in which the nature of the *fabulas* and their interrelationship changes between earlier and later *sugyot,* moving towards both the productive of more detailed and narratively rich *fabulas* that create increasingly complex narrative worlds, as well as the apparent pursuit of increased narrativity as a goal in and of itself. In the early form of the *sugya,* the base *fabula*—i.e., the tannaitic case law—is followed by a series of independent solution *fabulas*, which are framed within a narrative that presents itself as a record of rabbinic thought. In *sugyot* that contain more stammaitic interjections, the presentation of the solution *fabulas* is transformed from simply a record of various rabbinic opinions to a sort of rabbinic intellectual history, narrating a tale of how solutions were proposed, rejected, and revised over the course of often intergenerational conversations. Furthermore, in the primarily amoraic *sugyot*, the various solution *fabulas*

are all presented as plausible alternatives, but a single "correct" solution is never explicitly chosen.[13]

In the later stammaitic form, however, the problematic hypothetical narrative is followed by a series of statements that build on each other to form one unified solution hypothetical narrative that is much more detailed, complex, and imaginatively vivid. In this way, the anonymous layer heightens the narrativity of both the frame *fabula* and the solution *fabula.* The anonymous layer also preserves narrativity even when it is not strictly "necessary": whereas in earlier *sugyot,* the generation of new solution *fabulas* seems to be done in service of navigating true legal or textual difficulties, in later *sugyot* we see the production of these *fabulas* even when they do not directly serve a legal or interpretive goal. Finally, even when there are no amoraic statements for the anonymous layer to transmit, the late passages still employ a frame *fabula* that suggests a dialogue between legislators seeking to determine the best possible legal outcome. By demonstrating these shifts between earlier and later multiple-*oqimtot sugyot*, I will show that narrative components are both preserved and developed in later layers of Bavli text, coming to take on a significance of their own outside the framework of the recounting of rabbinic opinions or the solution of legal problems.

---

[13] See also Sigmund Freud, "From the History of an Infantile Neurosis," in *Three Case Histories* (Philip Reiff ed., New York: Collier Books, 1963), and Brooks: "The relation between *fabula* and *sjuzet,* between event and its significant reworking, is one of suspicion and conjecture, a structure of indeterminacy which can offer only a framework of narrative possibilities rather than a clearly specifiable plot" (*Reading for the Plot,* 275).

Amoraic *Oqimtot* as Rabbinic Intellectual Historiography

To begin with, I will demonstrate the interconnection of these multiple *fabulas* in primarily amoraic *sugyot.* These earlier passages use narratives in the service both of working out legal questions and portraying the type of legal activity that the rabbis do: solving legal problems by creating new narratives.

The first passage we will consider, at Bava Qamma 27b, comments on the first Mishnah of the third chapter of the tractate, which—like much of the first part of this tractate—deals with the laws of negligence, injury, and property damage. The Mishnah presents a casuistic law dealing with two subjects: the owner of a vessel, and someone who accidentally breaks the vessel. The hypothetical case and its verdict are narrated as follows: "If one places a vessel in the public domain, and another comes and stumbles upon it and breaks it, [the stumbler] is exempt [from paying for the vessel he has broken]. And if [the stumbler] is injured by it, the owner of the barrel is liable for his injury."

If the events in Mishnah's case scenario were placed in order of the internal logic of the narrative, we would have the following (hypothetical) sequence of events:

A person put a vessel in a public place. Then a second person came along and broke the vessel. In the end, the second person didn't have to pay for the broken vessel (though, the Mishnah implies, one might have thought otherwise).

This narrative also has an optional coda:

The second person who broke the vessel was injured in the process, and the owner of the vessel had to pay damages to him.

This is the base *fabula,* the first of the three *fabulas* that are arranged in this passage.

The later interpreters of this law were apparently troubled by the Mishnah's exoneration of the pedestrian, and reread the narrative of the Mishnah in various ways that decrease the fault of the pedestrian and thus justify his exemption from payment:

> Why is he exempt? He should be checking while walking!
> A saying of the school of Rav in the name of Rav: In the case that the barrels fill the entire public domain.[14]
> Shmuel said: It was taught [regarding a case that occured] in the dark.
> R. Yohanan said: [The barrel was around] a corner…

Each *amora* proposes a new solution *fabula* that revises the base *fabula* by preserving the ending—the pedestrian is exempt—while adding information to the beginning. First, Rav proposes a new suggestion that is effectively the base *fabula* with one added detail: There was not just one vessel[15] placed in the public domain—which, as the *stam* makes explicit, the pedestrian ought to have seen and avoided—but enough vessels to fill the entire walkway, making it impossible for the pedestrian to avoid tripping over one of them. Next, Shmuel suggests a different addition to the base *fabula,* generating a new solution *fabula*: the pedestrian tripped over a barrel in the dark, when he is less responsible for

---

[14] A parallel *oqimta* occurs at BT Bava Metzia 107a: "…As it was taught: [in the case of a tree] that is situated on the boundary [between two properties], Rav says that the part that leans to one side belongs to [the owner of] that side, and the part that leans to the other side belongs to [the owner of] that side. And Shmuel says they divide it. An objection was cited: "If a tree is situated on the boundary, they split it." This is a refutation of Rav. *Shmuel interpreted [this ruling] in accordance with Rav's position: In the case that the tree fills the entire boundary.*"

[15] Or "barrel" – the Mishnah uses both terms, which the Bavli addresses later on the same page.

noticing and avoiding obstacles. While Rav's initial statement is never explicitly rejected, it seems superfluous when read in conjunction with Shmuel's statement. The *sugya* has thus offered two new solution *fabulas* that stand independently from one another. Rav and Shmuel's statements are likewise independent of R. Yohanan's statement, which provides yet another solution *fabula*—the tripped-over vessel was around the corner—without explicitly rejecting Rav or Shmuel's revisions.

In addition to the base *fabula* and the various solution *fabulas*, the *sugya* also offers a frame *fabula* in which the rabbis named Rav, Shmuel, and R. Yohanan each offer revisions to a received legal text. By offering the solution *fabulas* within the context of the frame *fabulas*, the *sugya* conveys two different types of information. The *sugya* offers us legal information about legal principles, claiming that negligent behavior should not be exempt from legal consequences unless the circumstances are especially unusual, and offering examples of what those unusual circumstances might be. But the *sugya* also conveys information about how the rabbis that feature in it operated as legal thinkers: they took an initial case scenario and they rewrote it by keeping the original but adding new details. This is, of course, a version of a story about rabbinic thought that is repeated about different instances of legal reinterpretation throughout the Bavli. It is, in a sense, a rabbinic type-narrative. Because of its ubiquity, it may in fact be more likely to escape notice as a narrative genre with specific features. However, it is in fact a purposeful literary choice and one that, as we shall see, is intentiontally repeated throughout the Bavli and even imposed on material to which it does not naturally belong.

In the specific instantiation of this framework here, the initial anonymous comment that introduces the amoraic commentary on the Mishnah articulates their motivation for legal revision: they found that the case presented by the Mishnah did not fit with their conception of what a just legal verdict should be. The *sugya* thus tells a story not only about the hypothetical vessel-owner and vessel-breaker in the solution *fabula*, but also about the rabbis' actions as legal interpreters, and specifically how they tried to deal with a conceptually troubling law, in the frame *fabula*.

Another primarily amoraic passage, at Bava Qamma 41a, contains a similar kind of multiple-*oqimta* structure. Here the basic structure is one of amoraic statements arranged in sequence, but in addition we find interjections by the *stam* between each statement. The *stam*'s arrangement of multiple amoraic opinions produce a more narratively detailed frame *fabula* by creating the sense of a conversation that has, if not a clear beginning and end, a sense of accumulation and a drive towards completion.

The Mishnah under discussion in this passage describes two different legal categories of oxen: those which are not known to be dangerous ("innocent") and those which are known to have gored fatally three times ("dangerous").[16] However, the Mishnah also mandates the death penalty for an ox of either category if it has killed a person. This set of laws prompts the question, as an anonymous voice in the Bavli poses

[16] The Mishnaic Hebrew terms for these categories, תם and מועד, literally translate to "innocent/simple" and "forewarned/testified," the latter of which refers to the fact that these legal categories are derived from the Covenant Code in Exodus, specifically Ex. 21:29: "But if it was a goring ox from time past, and this was testified about to its owner and he did not guard it, and it killed a man or a woman…"

it, "Since they kill the ox while it is still innocent, how could one ever find a [case of] a dangerous ox?"

Even without the explicit framing of this question by the anonymous editor of this passage, the problem is clear to any reader of the Mishnah, and the rest of the passage consists of a series of statements by *amora'im,* each of whom attempts to determine the particular case that could reconcile these apparently contradictory mishnaic laws.

> Rava[17] said: What are we dealing with here? If they estimated that it could kill three people.[18]
> R. Ashi said: Estimation is meaningless. Rather, what are we dealing with here? If it endangered three people.
> R. Zavid said: If it killed three animals.
> *Is [an ox that is deemed] dangerous regarding animals [also deemed] dangerous regarding people?!*
> Rather, R. Shimi b. Ashi said: If it killed three non-Jews.
> *Is [an ox that is deemed] dangerous regarding non-Jews [also deemed] dangerous regarding Jews?!*
> Rather, R. Shimon b. Laqish said: If it killed three fatally afflicted people.
> *Is [an ox that is deemed] dangerous regarding fatally afflicted people [also deemed] dangerous regarding intact people?!*
> Rather, R. Pappa said: It killed and ran away into the meadow and killed [again] and ran away into the meadow.
> R. Aha b. R. Ika said: If witnesses testified [about the ox], their testimony was declared false testimony by other witnesses, and the falsification of the testimony was itself declared false by a third set of witnesses.

As in the passage about the barrels in the public domain, each of the amoraic statements here creates a new narrative about a case. Again, most of the amoraic statements here seem not to be in dialogue with each other, but rather each respond separately to the same difficulty by generating new details to insert in the scenario. The base *fabula* in this case

---

[17] "Rava" is attested in most manuscripts; "Rabbah" is attested in Florence II-I-8 and Vilna print edition.

[18] Rashi ad loc.: "That [the ox] ran after them one after the other and they ran away from it, and they estimated that if they had not run away, it would have killed them."

is extremely weak, since all we can say from the Mishnah is that someone testifies about an ox three times and then it becomes dangerous,[19] but it is unclear precisely what has been testified about and/or what happened after the testimony was given. The *amora'im* thus propose different insertions into the gap in this narrative framework, which can be generally divided into three categories: the ox didn't kill anyone but it seems like he might (Rava and R. Ashi); the ox did kill three people or beings, but they were people or beings whose murder does not require the death penalty (R. Zavid, R. Shimi, and R. Shimon b. Laqish); and finally, the ox killed three Jews, but something went wrong in the judicial process (R. Pappa and R. Aha b. R. Ika).

The first two suggested solution *fabulas*, by Rava and R. Ashi, are presented as though they are in dialogue with each other. Rava suggests that the "testimony" is really estimation, and R. Ashi directly responds by rejecting the idea that estimation is sufficiently legally meaningful. However, the rest of the amoraic suggestions are proposed as possible alternatives without explicitly rejecting any of the other suggestions. It is the interjections of the anonymous voice that attempt to connect them to one another by offering a rejection of the previous statement. The next statement then seems to be a response to a specific problem with its predecessor as opposed to merely part of a collection of statements.

---

[19] M. Bava Qamma 2:4. The Mishnah never explicitly decides between this narrative and entirely different proposed narrative of how an ox becomes dangerous, which has to do with consecutive days of (presumably witnessed) behavior instead of repeated instances of testimony. However, it is clear that the *amora'im* have chosen to go with the three-instances-of-testimony model (which is then transformed into a fourth-instance model).

This interpolative work by the *stam* amplifies the narrativity of the frame *fabula* by emphasizing a sense of causality. Instead of just a record of what different rabbis thought was the answer to this logical difficulty with the Mishnah, the *sugya* becomes a sort of micro-intellectual history of the development of different rabbinic opinions about how to understand the category of "dangerous." At first, the *sugya* implies, Rava thought the best explanation involved estimation. R. Ashi didn't like that idea and suggested that it involved endangerment. R. Zavid didn't like that idea and suggested that it involved killing animals… and so on. (This presentation of the rabbis as each responding to the previous voice in the passage is, at least in part, historically impossible—R. Shimon b. Laqish lived four generations earlier than R. Shimi b. Ashi—but such anachronisms are common to the presentation of rabbinic dialogue in the Bavli.)

Seeing this sort of passage as an account of rabbinic intellectual history provides an important corrective to the notion that rabbinic texts do not "do" history (even if we understand "history" to mean the form of the genre as it existed in late antiquity, in terms of a lack of concern for citing primary sources or verifiability). Yosef Hayim Yerushalmi has claimed that "After the close of the biblical canon the Jews virtually stopped writing history."[20] He points out that in Rabbinic texts, "Historical events of the first order are either not recorded at all, or else they are mentioned in so legendary or fragmentary a way as often to preclude even an elementary retrieval of what occurred."[21] Jonah

---

[20] Yosef Hayim Yerushalmi, *Zakhor: Jewish History and Jewish Memory* (Seattle, Washington; London, England: University of Washington Press, 1996), 18.

[21] Isaiah Gafni also claims that "the variegated corpus of rabbinic literature did not preserve any work that might point to an effort on the part of the rabbis at producing a systematic and critical study of the past" in "Rabbinic Historiography and

Fraenkel has likewise argued that Rabbinic texts may constitute "chronography" but not history, since they do not tell a "sequential story" or a "continuous history," but rather, each passage tells the story of "a single, delimited event."[22]

It is certainly the case that between the writings of Josephus in the first century CE and the Epistle of Sherira Gaon in the tenth, we have no Jewish texts that are devoted to discussing what we would consider major world events. A few passages in the Talmud here and there may mention a king, or casually reference the rivalry between Rome and Sassanian Persia, but always in the service of some other aim: a story about someone's righteousness or lack thereof, a theological claim, or a legal point. The Talmud does not ultimately seem concerned with imparting knowledge or opinions about world events themselves. Interestingly, however, Yerushalmi seems only to be searching for history in what he considers "aggadic" texts, including biblical exegetical narratives. By considering legal texts as well, Amos Funkenstein offers an important corrective to Yerushalmi's claim, arguing that in legal sources,

> …We find clear distinctions of time and place throughout: distinctions concerning customs and their context, exact knowledge of the place and time of the messengers and teachers of *halakha,* the estimated monetary value of coins mentioned in sources, the significance of institutions of the past. In the realm of halakha, every "event" was worthy of preserving, including minority opinions. …The basic fact remains plain: normative Judaism did not preserve a continuous record of political events in the form of chronicles or historical studies. It did, however, preserve a

---

Representations of the Past," in *The Cambridge Companion to the Talmud and Rabbinic Literature* (Charlotte Elisheva Fonrobert and Martin S. Jaffee eds., Cambridge: Cambridge University Press, 2007), 295.

[22] Fraenkel, Jonah. *Darkhe Ha-Agadah Veha-Midrash* (Masadah: Yad la-Talmud, 1991), 236-237. For a different rebuttal to another of Fraenkel's claims about the lack of continuity in Rabbinic literature, see p. 82 below.

> continous and chronological record of legal innovations… Innovations of halakha were genuine 'historical' happenings…" [23]

Funkenstein's claim is an important one that still needs to be developed further in the study of rabbinic literature and especially the Bavli. If we reframe our understanding of "history" to include not just major world events but the events that are important to the rabbinic world, then the Bavli can be seen as providing—albeit not told sequentially—a kind of history of the rabbinic movement and its norms.[24] This history, of course, must be understood in the same way as Josephus's accounts of battles and politics are "history": not necessarily factual or even verifiable, but nonetheless an attempt to tell the authoritative story of events that the author considers important. If Josephus's subject matter was the world of wars and empires, the rabbis' historical subject is the rabbinic legal world.[25] This history is conveyed in legal passages through the use of the frame *fabula,* especially as converted by the anonymous layer from simply a record of disparate statements (which are perhaps comparable to annals as a record of discrete events without

---

[23] Amos Funkenstein, *Perceptions of Jewish History* (Berkeley and Los Angles: Los Angeles University Press, 1993), 17.

[24] On thinking beyond "statist history" to the history of "the everyday," see Ranajit Guha, *History at the Limit of World-History* (New York: Columbia University Press, 2002).

[25] Gafni notes that rabbinic literature sometimes provides an account of legal change, mentioning the phrases "at first" (*barishona*) and "they ordained" (*hitkinu*). Gafni sees these moments, which, it should be noted, are specifically features of tannatiic literature, as an anomaly within rabbinic literature's general perception "that the halakha itself was normative and unchanging from the days of Moses to their own time." To be clear, I am not making the argument that the Talmud provides a history of *halakhah*—i.e., an account of how specific legal principles changed and developed—but rather a history of the *beit midrash,* an account of who said what to whom and why.

any attribution of causality[26]) into the story of how and why an ordered sequence of suggestions were offered and rejected.

Transitional *Sugyot:* Creating Imaginary Worlds

Having now seen the way in which the amoraic restatements of tannaitic case scenarios generate two simultaneous new *fabulas,* as well as the way in which the anonymous voice begins to heighten the narrativity of the frame *fabula* through the creation of a sense of interconnectedness and dialogue, we shall now see passages that take a similar form but contain even more anonymous interpolations. In these passages, not only does the *stam* create a more complex frame *fabula* by imagining each new suggestion of a solution *fabula* as a response to the one before it, but it also creates much more complex and unified solution *fabula* by combining each individual suggestion into a single story. We shall also see that the anonymous voice produces this framework—the presentation of multiple possible scenarios in the form of a dialogue that combine to create a single, highly detailed solution *fabula*—outside the context of any extant amoraic statement to build off of, as well as at times without the impetus of a clear legal problem that would necessitate the generation of a new case narrative. The increased narrativity here is thus not necessarily in service of a particular legal end, or the preservation or

[26] See Hayden White, *The Content of the Form: Narrative Discourse and Historical Representation* (Baltimore, Maryland: The Johns Hopkins University Press, 1987), 1-25.

harmonization of extant opinions. It does, however, create a much more imaginatively rich legal text.

One such part-amoraic, part-anonymous passage can be found at Makkot 8a. Like the passage about the pedestrian who trips over the vessel at BQ 27b, this passage begins with the formulation of a substantive legal difficulty with a Mishnah that describes a penalty for negligence. In this case, the case has to do with the rabbinic interpretation of the biblical law mandating that one who kills unintentionally is sent to a city of refuge.[27] As in the passage about the pedestrian and the vessels, the Mishnah here offers a ruling about negligence that does not fit with the amoraic conception of liability.

The Mishnah states: "One who throws a stone into the public domain and [thus] kills, behold, this person is exiled…" The Mishnah's ruling here likely has to do with the issue of public and private domains, relating to the Deuteronomic specification of a forest as the location for exile-worthy manslaughter as well as early tannaitic interpretations that this verse implies certain rules about whether or not the victim was permitted to enter the scene of the accident.[28] The Mishnah's interpreters, however, seem to be troubled that the stone-thrower is exiled as an *unintentional* murderer, since he has intentionally committed a reckless act: "Into the public domain?! [Then] he [committed this act] intentionally!" Like the passage about the pedestrian and the vessels, the passage here

---

[27] Ex. 21:13; Num 35:22-23; Deut 19-15.

[28] See Sifre Deut. 182, Horowitz-Rabin edition, 224: "'Such as when a man goes with his neighbor into a forest': Just as the forest [is a place that] the injured and the injurer have a right to enter, so too [the law applies to] anywhere that the injured and the injurer have a right to enter—this excludes the courtyard of a householder, into which the injured and the injurer do not have a right to enter."

evinces concern that a party whom the Mishnah had deemed totally without fault actually bears more responsibility for his careless behavior. In the passage that follows, two amoraic suggestions of solution *fabulas* are presented, along with some interpolations from the anonymous voice that do even more narrative work than those we have seen so far:

> Said R. Shmuel bar Yitzhak: [The Mishnah's judgment of exile refers to the case of a person who is] knocking down his wall.[29]
> But he should have checked [for passersby]!
> [The Mishnah refers to the case of a person who is] knocking down his wall at night.
> At night he also should have checked [for passersby]!
> [The Mishnah refers to the case of a person who is] knocking down his wall into a refuse heap.
> This refuse heap, what is it like? If the public frequents it, he is a sinner. If the public does not frequent it, he is compelled.
> R. Pappa said: [It refers to] a refuse heap where people are liable to relieve themselves there at night and not liable to relieve themselves there during the day, but it [could] happen that someone came [to relieve himself there during the day]. It is not criminal negligence, for behold, it was not intended for people to relieve themselves in it during the day; it is also not compulsion, for behold, it [could] happen that someone came.[30]

The passage here gives a new interpretation of the Mishnah that grants the perpetrator exactly the "right" level of culpability to satisfy the later rabbis' understanding of who is liable to be sent to the city of refuge: as Aharon Shemesh has demonstrated, by the later amoraic period, only an unintentional act that was foreseeable but not what we would call

---

[29] Cf. parallel at PT Makkot 2:2, 31c, p. 1336: "Does he have permission to throw the stone into the public domain? Said R. Yosi Bei Rabbi Bon: It should be interpreted that his wall was tilted."

[30] See also parallel *sugya* at BT Bava Qamma 32b. Instead of "[Then] he [committed this act] intentionally," the *sugya* there reads "But behold, this is a case of criminal negligence (שוגג קרוב למזיד), for he should have paid attention to the fact that people frequent the public domain!" Based on context, it is fairly certain that the Makkot passage is the original version.

criminally negligent would make the perpetrator liable as an unintentional murderer.[31] The passage here offers a hypothetical scenario that perfectly exemplifies this new conception of exile-worthy unintentional murder. This new scenario is not simply presented to the reader all at once, however, but is presented in a way that is narratively interesting on a number of levels.

First, this series of interpretations of the Mishnah contains two amoraic statements that are linked by a purely anonymous back-and-forth exchange. When read without the intervening stammaitic material, the two amoraic statements in this passage, one by R. Shmuel b. Yitzhak and the other by R. Pappa, are not inherently connected. As in the purely amoraic passages above, these two statements generate independent revisions of the Mishnah's base *fabula* by means of the addition of details. The base *fabula,* paraphrased, would be: "A man threw a stone in public and killed someone; the stone-thrower was sentenced to exile as an unintentional murderer." R. Shmuel b. Yitzhak's statement creates one possible solution *fabula*: "A man was knocking down his stone wall, and when he threw one of the stones in the process, it hit someone and he died. The stone-thrower was sentenced to death as an unintentional murderer." And R. Pappa suggests a separate alternative solution *fabula*: "A man threw a stone into a refuse heap where people were known to relieve themselves at night, but not during the day. As it turned out, someone was there during the day, the stone hit him, and he died. The stone-thrower was sentenced to exile as an unintentional murderer." These two amoraic

[31] Aharon Shemesh, "Shogeg Karov L'Meizid: L'Veirur Yetzirato Shel Ha-Musag B'Torat Ha-Amora'im" (*Sh'naton Mishpat Ha-Ivri*, 1997), 399-428.

statements, taken on their own, do not seem to be inherently related to one another, but rather each one independently refers back to and modifies the base *fabula.*[32]

As in the passage about the dangerous ox, the anonymous repartee here creates a logical chain of connection between R. Shmuel b. Yitzhak's statement and R. Pappa's statement. First, the anonymous voice provides an explication of why the passage doesn't simply end with R. Shmuel b. Yitzhak's statement: his suggestion is inadequate because simply knocking down one's stone wall is an insufficient excuse to relieve someone from liability for negligence, and a person ought to be liable for any injuries that ensue if he knocks down a wall into a busy street in the middle of the day. To account for this problem, the *stam* adds another detail to R. Shmuel b. Yitzhak's statement: the stone-thrower was knocking down his wall into a refuse heap. By the time R. Pappa's statement is brought in, the scenario of "knocking his wall into a refuse heap" has been firmly established, and R. Pappa seems to be a gloss on top of—rather than an alternative to—R. Shmuel b. Yitzhak.

The *stam* not only creates the impression of dialogue between the two *amora'im*; the stammaitic monologue between these two amoraic sources also constructs a passage

---

[32] This is in fact how the tosafists read R. Pappa's statement in the *sugya's* parallel at Makkot 8a. The language of R. Pappa's statement there is: "It is needed [only – in some mss.] in the case of refuse heap…" (None of the manuscripts of the Bava Qamma version of the *sugya* attest "it is needed only.") According to the Tosafists, the phrase "it is needed only" indicates that R. Pappa's suggestion reverts the situation under discussion to a case of "actual throwing," and not to the case of wall-destroying at all. In other words, they read R. Pappa's suggestion in Makkot as an independent revision of the Mishnah that is not attached to R. Shmuel b. Yitzhak's suggestion. Though this may well have been the original meaning of R. Pappa's statement, the stammaitic interpolations make it extremely difficult to read it as conceptually detached from the material that links it to R. Shmuel b. Yitzhak's statement about the wall, as I explain below.

that creates the impression of one, unified solution *fabula,* one that includes both the solution *fabula* presented by R. Shmuel b. Yitzhak and the one presented by R. Pappa. Once the *stam* makes the claim that the perpetrator is "knocking down his wall into a refuse heap," then R. Pappa's statement cannot be read other than in that light. The anonymous material in this *sugya* thus transforms what were initially two separate *fabulas* into a single one that is now extremely complex and specific:

> *A man decided to knock his stone wall into a refuse heap where he knew people sometimes went to relieve themselves at night. Knowing that there might be people there after dark, he figured it was safer to knock it down during the day. But he was so confident in his assumption that no one would be around during daylight hours that he failed to double check that the refuse heap was vacant. As it happened, someone was in fact sitting in the refuse heap that day, and this unsuspecting person was hit by a stone from the wall and died. Based on these events, the court sentenced him to exile as an unintentional murderer.*

This *sugya,* which consists partially of amoraic and partially of stammaitic material, thus tells two narratives in addition to the mishnaic base *fabula* to which it responds. First, it tells a much more detailed frame *fabula* in which R. Shmuel b. Yitzhak and R. Pappa each comes up with a new reading of the Mishnah, and as in the oxen *sugya*, their readings are presented as though in conversation with one another. Secondly, it tells a unified and highly complex solution *fabula* that is vastly, almost comically more detailed than the base *fabula* which it purports to interpret. Although the solution *fabula* here is created in response to a real change in the rabbis' legal conceptualization, it also seems absurd to claim that the rabbis believe that the new, imaginatively vivid case scenario is in any way a "faithful" interpretation of the Mishnah's very simple statement. And, in fact, it is not necessary to do so to explain the interpretive process at play in passages like

this one. Just as the *amora'im* created retold biblical narratives that are narratively rich on their own terms, as Joshua Levinson has shown, the rabbinic retellings of legal cases may also be seen as valuable—both to their creators and to their readers—because of their narrative depth and their ability to create compelling imaginary worlds, not only in their descriptions of hypothetical legal subjects and their actions, but also in their depictions of the rabbinic legal thought process itself.[33]

A second example of a half-amoraic, half-stammaitic passage highlights two features of later legal passages' drive towards narrativity. First, as we shall see, the generation of new case narratives in this passage, though presented as an attempt to square one source with another, is not actually motivated by the need to resolve any inherent contradictions. Whereas the primarily amoraic *oqimtot* in the first section responded to what seemed like genuine legal-textual difficulties (it seemed unjust that the law would exempt the pedestrian for breaking the vessel; it seemed like it was impossible for an ox to become dangerous), the *oqimtot* in this passage are motivated by a forced and unnecessary reading of the earlier source. In other words, the creators of this passage actively create or assume difficulties that were not already there. The creative, storytelling drive of the Bavli's legal thought thus starts to become an end in and of itself instead of a legal tool, and must hollow out new spaces into which it can insert its narrative worlds.

---

[33] See Joshua Levinson, "The Cultural Dignity of Narrative," in *Creation and Composition: The Contribution of the Bavli Redactors (Stammaim) to the Aggadah,* ed. Jeffrey L. Rubenstein (Tübingen: Mohr Siebeck, 2005), 361-381; *The Twice-told Tale: A Poetics of the Exegetical Narrative in Rabbinic Midrash* (Jerusalem: Magnes Press), 2005.

Furthermore, the narrative scenarios created by this passage are both numerous and vivid to the point of being ridiculous. Daniel Boyarin's argument for two *stammaim,* one Menippean and one legislative, is difficult to square with this passage that seems to embody the voice of dry, complex, conceptual law and the voice of the grotesque in one long series of absurd cases.[34] This appearance of the violent, disgusting and absurd as part and parcel of a logically complex argument about impurity shows that, despite scholarly recognition that the boundaries between *halakhah* and *aggadah* are more porous than previously acknowledged, the literary features—including a tendency towards the carnivalesque—of technical legal passages have still been underacknowledged.

The passage, which begins at Bava Batra 19b, is structured around an amoraic statement in the name of Shmuel. According to tannaitic sources, impurity from a dead body can be conveyed outside a house through a window that is at least a *tefach* (about a handsbreadth) large. If an object is placed in the window that legally diminishes the size of the window, however, the impurity is blocked from leaving the first house. Shmuel claims that a wafer is not considered an object that diminishes the opening of a window.

Shmuel does not provide a justification for this statement, and as the anonymous voice points out, there are at least three reasons why he might have said that a wafer does not block impurity. One reason is that wafers are too insubstantial. Another possibility is that most wafers themselves are susceptible to impurity. It is also possible that Shmuel specified a wafer because whether or not it is susceptible to impurity, it is edible, and

---

[34] Boyarin, *Socrates and the Fat Rabbis,* see especially 202.

anything edible does not count as a legally significant barrier. A final reason, upon which the anonymous voice seizes to the exclusion of the others and which motivates almost the entire next page of discourse, is that anything that can be tied to a specific purpose cannot be legally counted as part of another object because it retains significance as its own independent item.

The anonymous layer's adoption of this final reading instead of any of the first three helps generate an enormous number of contradictions with several tannaitic lists of things that constitute a barrier, even though they are also objects that could be used for various other purposes. The anonymous voice then generates scenarios explaining why, in fact, no one would want to use these particular objects. For example, the following statement from the Mishnah about straw and figs seems like it might be problematic for Shmuel as far as the figs are concerned, but the editor extends the potential problem to straw as well:

> An objection was brought: "A box full of straw and a jug full of figs placed in a window, we see: anything that if the box and jug[35] were taken away and the straw and figs could stand by themselves, it serves as a barrier. And if not, they do not serve as a barrier."[36]
>
> But straw could be used for his animal! In the case of rotten straw.
> It could be used for clay! In the case that there are thorns in it.
> It could be used for heating! In the case that it is wet.
> It could be used for a great heating! A great heating is not common.
>
> Figs could be used!
> Shmuel said: In the case that they became wormy.
> And thus taught Rabba b. Avuha: In the case that they became wormy…

[35] Attested in Oxford Geniza manuscript.
[36] See m. Ohalot 6:2.

The amoraic (i.e., Shmuel and Rabba b. Avuha's) *oqimtot* on figs fit with the option that Shmuel's comment about wafers in particular ought to be interpreted as a statement about edible things in general. Because the figs are wormy and inedible, they are not like wafers and therefore they can serve as a barrier. The anonymous *oqimtot* about straw, however, take the interpretation of Shmuel a step further: not only is anything potentially edible not nullified, but neither is anything (such as straw) that could potentially be used for any purpose.[37] The *stam* must then conjecture the existence of rotten, thorny, wet straw, which is uniquely able to exist in both the categories of "straw" and "totally unusable items." The stammaitic description of the straw—unlike the figs, which are described in an amoraic statement as wormy and left at that—creates the effect of cumulative degeneration such that both the straw itself and the original case are barely recognizable by the end.

As the passage continues, the editor pits Shmuel's statement about wafers against another tannaitic statement with which it is forced into a contradictory relationship. The hyperbolic nature of the passage grows, as not only are the tannaitic statements reinterpreted almost past recognition as the objects they mention are imagined to be more

[37] The legal significance of straw's appeal as a portable, resuable object in this passage may also be influenced by the discussion of straw at Eruvin 94a, which deals with actions that are permissible or prohibited on Shabbat: "R. Ika from Pashrunia raised an objection to Rava. The Mishnah teaches: One may sprinkle salt on a road in order that it not become slippery: in the Temple yes, but in the rest of the country no. But there is a contradiction: For a courtyard that was ruined during the rainy season, one may bring straw and strew it upon it! Straw is different, *because one will not nullify it* [but will pick it up to use it again later, thus rendering the placing of the straw impermanent and thus permissible on Shabbat]."

and more degenerated, but the series of reinterpretations themselves accumulate until it is no longer clear what their purpose is.

> An[other] objection was brought: "Grasses that were cut and placed in a window, or that went up into windows by themselves, and small patches that are less than three by three, and the limb and the hanging flesh of a tame animal or a wild animal or a bird that dwells in the window, and a non-Jew who is sitting in the window, and a child of eight [months in the womb] who was placed in the window, and salt and clay vessels and a Torah scroll, all of them diminish a window."[38]

Even if one grants the interpretation that Shmuel meant that anything usable cannot serve as a barrier because people might intend to use it later, it is not clear that each of the objects mentioned in this *baraita* rightly falls under the category of "might be used." In fact, the interpretation of Shmuel's original statement about the wafer shifts even further as the passage continued, from rejecting anything that falls under the category of "might be used" to an even broader concept of "might not be there anymore at some point in the future." Although this legal category conveniently ties together several possibly problematic aspects of Shmuel's wafer—it might be eaten or it might decompose, but either way it likely won't be around for long—it is unlikely that this broad conceptual claim was Shmuel's original intent. Furthermore, even if it is what Shmuel meant, it is not necessary to claim that Shmuel's statement accords with the *baraita* at all—perhaps he disagreed with it, or simply was not aware of it.[39] Nonetheless, the passage continues

---

[38] t. Ohalot 14:6

[39] HaLivni, *Mekorot u'Mesorot: Bi'urim ba-Talmud, Masechet Bava Batra* (Jerusalem: Magnes Press, 2007), 32: "It is very far-fetched to reconcile [Shmuel's statement with] the *baraita* in all of these circumstances (and among them ones that are not at all relevant). It is possible that Shmuel disagrees with the *baraita* (among the early *amora'im* this is not rare) or 'perhaps it was not known to him.'"

to follow its own pattern and invent a story about each and every object named by the *baraita.*

> The limb and the hanging flesh of a tame animal or a wild animal—it will run away and go!
> In the case that it is tied.
> Someone will slaughter it!
> In the case that it is impure.
> Someone will sell it to a non-Jew!
> In the case that it is bony.
> They will decide to throw it to the dogs!
> Since there is cruelty to animals they will not do that.
>
> Or a bird that dwells in the window—it will fly away and go!
> In the case that it is tied.
> Someone will slaughter it!
> In the case that it is impure.
> Someone will sell it to a non-Jew!
> In the case that it is bony.
> They will give it to a child.
> In the case that it scratches.
> A bony chicken does not scratch.
> In the case that it is like a bony chicken.
>
> A non-Jew who is sitting in the window—he will get up and leave!
> In the case that he is bound.
> His friends will come and untie him!
> In the case of a leper.
> His leper friends will come and untie him!
> Rather in the case of prisoners of the government.

The *oqimtot* here shuttle back and forth between claiming that the various items are unfit for use and that they are mobile. In the case of the non-Jew and the baby, it is of course not possible to argue that they are "unfit for use" at all, and the *oqimtot* focus only on arguing that they are fixed in place. They certainly resemble the passage's attempts to make the Mishnah align with Shmuel, but in reality they are making the Mishnah align with an entirely new idea about mobility that had not been present in Shmuel's original

statement or its interpretation at all. In so doing, they continue to produce imaginary scenarios that include various beings that are almost comically degraded. Not only is the non-Jew tied up, but he is a leprous prisoner of the government who is tied up and placed in a window! What's more, he now occupies a space in the reader's imagination next to the impure, bony dog tied up in the window as well as the impure, bony, scratching chicken tied up in the window next door. These absurdly pathetic images did not need to be there. The passage here is not solving an inherent legal problem, but rather responding to a problem it has chosen to create for itself. And as it does so, it generates a slew of solution *fabulas* that are just about as comically grotesque and structurally exaggerated as any tale about buckets of rabbinic fat.

The "grotesque" features of this *sugya* are a crucial part of its creation of a series of imaginatively compelling narratives. Though they may be comic, I want to suggest that these details are also essential in helping the narrative seem more vivid and stick in the mind. This desire for mental vividness may have been part of the Talmud's oral culture, i.e., one of the tools that facilitated memorization of legal scenarios, but more importantly, it may also have been one of the ways in which the creators of these *sugyot* cultivated readerly engagement.

Tamar Gendler's research on philosophical thought experiments has shown that mental exercises which ask the listener to consider an anecdote that, like the legal *sugyot* we have seen, frequently features absurd or even grotesque details, are particularly effective—perhaps even more so than normal abstract argumentation—because of the

way they engage the reader imaginatively.[40] As Gendler puts it, the thought experiment asks the thinker to perform an experiment on his or her own beliefs—what would I think if I were confronted with a given situation, and does that fit with my preexisting hypothesis about my own thoughts?[41] If the thought experiment is successful, the results of the reader's experiment-in-thought are likely to be surprising to the reader, and to "direct the reader's attention to inadequacies in her conceptual scheme."[42] According to Gendler's analysis, thought experiments are effective—more so than standard argumentation—not because they directly generate new knowledge about the physical world or about ethical truths, but because they cause the reader to engage in experiments-in-thought that result in new knowledge about the *reader's own beliefs.*

Likewise, the Bavli's grotesque scenarios ask the reader to consider an unusual case and form an opinion about it. Gendler does not go so far as to make this point, but perhaps another aspect of what makes thought experiments uniquely successful is that they prompt the reader to create an imaginary world which seems particularly real precisely because its constitutive elements are so vividly out of the ordinary. Richard Gerrig has claimed that readers draw inferences about imaginary worlds (whether

---

[40] One such example is philosopher Judith Jarvis Thompson's thought experiment about an ailing violinist, which was intended to disprove arguments against abortion based on the premise that a fetus is a person. In this imaginary scenario, a subject is kidnapped by the "Society of Music Lovers" and his kidneys are hooked up to those of a fatally ill violinist without the subject's consent. The subject is told that unfortunately he may not ever unplug himself from the violinist, because the violinist is relying on his kidneys to live, and "All persons have a right to life, and violinist are persons." See Thomson, "A Defense of Abortion," *Philosophy & Public Affairs,* Vol. 1, no. 1 (Fall 1971).

[41] Gendler, Tamar. *Thought Experiment: On the Powers and Limits of Imaginary Cases* (New York: Garland, 2000), 54.

[42] Gendler, ibid., 53.

automatic responses, like assuming that the Mona Lisa has legs, or participatory responses, like "I wish someone would expose Iago") because they are emotionally invested in that world.[43] The strange and surprising details in some Bavli hypotheticals also prompt the reader to create an imaginary legal world whose elements are both familiar and unfamiliar, transporting the reader into a world to which they are likely to have strong reactions.

Late *Oqimtot*: Legal Narrative Without Norms

As a final set of examples, we will take a look at entirely anonymous multi-step *oqimtot* passages, which, as we shall see, evince the highest ratio of narrativity to legislative relevance. Since these are entirely anonymous passages, they necessarily do not relate any specific statements by named rabbis in the past. These are passages in which the stories told by the multi-step revision of an earlier law no longer incorporates legal thinkers' proposing new solutions, but only that of the new, complex hypothetical case scenario. Even though the *stam* is not recounting specific speakers' opinions and their development, however, the structure of the passage—a series of suggested revisions, each of which is rejected as inadequate—remains the same. Thus, as we also saw in the passage about barriers to impurity, the *stam* retains (and even highlights) the vivid narrative elements of the "frame narrative" presentation of new interpretations: the sense

[43] Gerrig, *Experiencing Narrative Worlds,* see especially 13 ff and 29 ("Although we cannot see her torso, we are quite willing to infer that the Mona Lisa has legs. To put it another way, we would be genuinely surprised to discover that she does *not* have legs").

of genuinely reported dialogue, as well as the sense of the reader's bearing witness to a gradual progression from a weaker interpretation to a stronger one.

As the narrativity of the frame *fabula* is emphasized regardless of whether or not it is necessary to convey specific information, so too the narrativity of the solution *fabula* is maintained and heightened regardless of whether that narrative is required to solve a legal problem. Much like the extended passage about barriers to impurity, later Bavli passages at times are more driven by the need to create stories than the need to solve any actual legal or textual difficulties, and can even wind up generating narratives that do not effect any legal change whatsoever. This is the case in the first of the passages we will examine.

This passage, at BT Bava Metzia 116b, deals with a mishnaic ruling about what to do with the materials that remain after a shared two-story house collapses: "If a house with an upper story belonging to two [owners] fell, the two of them divide the wood and stones and rubble, and they determine [רואין] which stones were liable to break…" The Mishnah mandates that the two owners—one who owned the top floor and one who owned the bottom floor—divide up the building materials. When it comes to broken stones, which neither party would want, they determine which story of the house they were likely to have come from.

The Talmud's anonymous voice understands that "they determine which stones were liable to break" means that the parties determine the cause of house's collapse, and

this is how they determine which stones would have broken.[44] This creates a problem for the Mishnah's anonymous interpreters, however, as follows: if one is able to determine whose stones were more likely to break, then one can determine why the house fell, and then one can determine precisely whose stones were whose based on where they lay and there is no need to say "divide them."

> From the fact that the end [of the Mishnah] teaches "They determine [which stones were liable to break]," it follows that we can establish about it whether it broke because of shock or because of pressure.[45]
> If so, [then regarding] the beginning [of the Mishnah] also, which teaches that one must divide [the stones], then see—if they fell because of shock, then it was the upper story that broke; if they fell because of pressure, then it was the lower story that broke!

A simple way to resolve this problem, as Rabbi Josef Hirsch Dunner points out, is to claim that the end of the Mishnah refers to a case in which either observers saw the house fall or it was very clear after the fact how it happened, whereas the beginning of the Mishnah—"the two of them divide, etc."—refers to a case in which no one saw the house

---

[44] In his commentary Hagahot Dinar, Rabbi Josef Hirsch Dunner argues that it is more likely that רואין means "consider" and not "determine." According to Dunner, the Mishnah originally meant "we consider all the stones—even the whole ones—as though they were also likely to break" and that the statement ראוין אלו אבנים ראויות להשתבר was originally ראוין **כ**אלו הן אבנים ראויות להשתבר. The parallel to this passage in the PT, at Bava Metzia 10:1, 12c, p. 1237, seems as though it understands the word ראוין in the Mishnah to mean "determine" and not "consider," and specifically "determine" on the basis of the way in which the house fell. It is worth noting, however, that even when describing the different possibilities for the manner in which the house collapsed, the PT continues to use the language of "which were *liable* to break," which could conceivably still fit with Dunner's read of the Mishnah (and would also explain the strange text of the PT, which counterintuitively claims that the upper stones are liable to break if the house collapsed on itself, and the lower stones are liable to break if the house fell outwards—if these are instead the complete stones that we consider as though they are broken, then the PT's analysis here makes much more sense). The BT, on the other hand, is definitely addressing the issue of determining which stones had actually broken (איתבר).

[45] All mss attest this except for ones that just repeat "or because of shock."

fall and it was impossible to determine the cause after the fact.[46] Yet the Bavli's anonymous voice creates a much more complex new scenario to justify the apparent contradiction in the Mishnah:

> No, it is necessary in the case that it fell at night.
> Then see in the morning!
> People cleared them away.
> Then ask [the person who cleared them away]!
> In the case that people from the public cleared them away and now they are gone.
> Then go see in whose property [the stones] are.
> Then it shall be for the other "The one who makes a claim on his fellow has the burden of proof!"

The series of *oqimtot* again combine to produce a new, unified solution *fabula*. In the case generated by this *oqimta*, a house fell at night, and by the time the morning came, unidentified people from the local population had cleared away all the stones, thus rendering it impossible to examine the stones and thus determine how the house fell. The passage does not generate this new case all at once, however, but instead carefully adds some details and rejects others until it finally comes up with a scenario that it can accept. The anonymous voice preserves the sense of a back-and-forth dialogue between two voices and gradual determination of a solution *fabula* that it had also created in passages that contain amoraic material, even though the *stam* presumably knows exactly where it is going. It thus maintains a sense of a highly narrative frame *fabula,* one that creates the

[46]"We do not need the far-fetched interpretation that it fell at night and so forth, for when the first part of the Mishnah states 'they divide it,' one should interpret this as referring to [a case where] we did not see the manner in which it fell at the time in which it fell. And after the collapse it is not possible to distinguish [whose stones are whose] because everything is wood and stones and rubble all mixed up together…" Hagahot Dinar, Bava Metzia, ad loc.

experience of time passing and a series of ideas being generated between the statement of the problem with the base *fabula* and the final solution *fabula,* thus creating for the reader the experience of listening to a conversation in the study hall even though there is only one anonymous narrator.

The most important indicator of the nature of the stammaitic *oqimtot* in this *sugya*, however, is the complete lack of legal relevance that the *oqimta* holds in this *sugya*. Following the production of the new case about the absconding stone thieves, the anonymous voice adds a new interpretive possibility: "No, it is necessary in the case that [the stones] are in [the two owners'] shared courtyard."[47] The anonymous voice resolves the final problem with the first series of *oqimtot*—that the burden of proof would be on the stones' rightful owner—by narratively removing the stones from someone else's property and placing them back into the shared property of the building's co-owners. Although this is an effective way of resolving the logical problem, it also has the effect of practically getting rid of any legal or even narrative change that the *oqimta* could have generated by placing the stones right back where the Mishnah's reader would have expected them to be to begin with: in the co-owners' shared property, albeit now presumably in a heap.[48]

The final line of the *sugya* does even more to negate the significance of the *oqimta:* "Or if you like I will say that co-owners of this sort are not stringent with each

---

[47] All mss. besides Florence II-I-8 and Munich 95 attest the gloss: "…or alternately in the public domain."

[48] I would like to thank Sara Ronis for pointing out this striking feature of the passage to me.

other." This alternative resolution of the Mishnah suggests that because such co-owners would deal generously with each other and not worry about coming up with a perfectly accurate division of the stones, they will never both going through any process of figuring out how the house fell or whose stones were whose to begin with. Following on the heels of the previous statement, which made the *oqimtot* almost completely useless, this statement then negates the necessity of the entire series of *oqimtot* altogether. The *oqimtot* thus neither respond to an inherent logical problem with the Mishnah, nor do they have any significant effect—or perhaps any effect at all—on either the legal or narrative understanding of the case the Mishnah describes. Rather, the *oqimtot* here appear to be motivated primarily by the drive to create new hypothetical narrative worlds.

In the second purely anonymous passage we will examine, we shall see how the anonymous voice not only preserves and heightens the narrativity of the frame *fabula* by maintaining the sense of a quest for a solution, but also conveys the impression that the frame *fabula* is telling a story of legislators who are concerned about consequences for a potential legal subject. This passage appears in the course of a discussion about when a person incurs penalties for accidental damage and death. The passage begins by quoting the following *baraita*: "…If someone enters a blacksmith's shop and sparks fly off and strike him in the face and he dies, he [the blacksmith] is exempt [from exile as an unintentional murderer]—even if he [who enters the shop] enters with permission."[49] According to the *baraita*, a fatal injury incurred in a blacksmith's shop falls into the category of an accident that is not considered negligent. Thus, the incident does not make

[49] Bava Qamma 32b-33a.

the blacksmith liable to be exiled for manslaughter; it's a sad fatal accident, but one for which the blacksmith incurs no penalty whatsoever.

The Bavli's interpretation of this law, however, expresses doubt about the *baraita's* failure to consider the blacksmith liable. The Bavli rereads the scenario in the *baraita* and, in so doing, generates a case in which it is not just the victim's mentality but the blacksmith's own actions that shift this scenario from the category of "unintentional murder" to the category of events that cannot even be said to have a perpetrator. The anonymous voice interprets this *baraita* as follows:

> What are we dealing with here? With a blacksmith's apprentice.
> Does a blacksmith's apprentice exist [simply] to be killed?!
> [This is a case when] his master urges him to leave, and he does not leave.
> And because his master urges him to leave, does he exist [simply] to be killed?![50]
> [The blacksmith] thought he [the apprentice] had left!
> If so, [the case should apply to] someone else [besides an apprentice who entered the shop] as well!
> Someone else would not have fear of a master; this one has fear of his master.[51] [52]

Like earlier forms of multiple-*oqimta* passages, the passage here offers a series of resolutions of the same legal problem, each of which is explicitly rejected as insufficient. Yet as is characteristic of later versions of this form, each new resolution builds upon the

---

[50] Hamburg manuscript has instead: "Is it permitted to kill him?!" This is almost certainly not original, since it is a better formulation and not attested in any other manuscript. But this formulation aptly highlights the question standing behind "does he exist [simply] to be killed": should these aspects of the victim's situation really mean that the penalty for killing him, even by accident, should be lessened?

[51] Rashi ad loc: Someone else would not have fear of the blacksmith; thus [the blacksmith] should have considered that he might not have left.

[52] This example is also discussed by Ronen Reichman in "The Talmudic Okimta and its Logical Structure."

suggestion offered by the previous one. Taken together, the series of interpretations generate a new case that would go something like this:

> *A blacksmith had an apprentice whom he assumed had the appropriate amount of respect and fear for him. One day, the blacksmith told his apprentice to leave his shop because he was about to start hammering. The blacksmith didn't turn around to check that his orders had been followed, but he assumed that his respectful apprentice had obeyed him, and he started to hammer away. Unfortunately, however, the apprentice was still in the shop, and a spark flew off the anvil, hit the apprentice in the face, and killed him. Because the blacksmith was totally faultless in this scenario, he was therefore exempt from any punishment, including exile to the city of refuge as a manslaughter.*

This is the only story that the author(s) of this passage seem to think fits both the bare outlines of the *baraita's* story ("Once there was a man who was hit in the face by a spark in a blacksmith's shop and died, and the blacksmith was ruled innocent of any wrongdoing") and the authors' assumptions about how negligence, fault, and consequences ought to play out legally. The new version of the story adds details not just about the victim's responsibilities and actions but the blacksmith's actions and assumptions as well, creating a case narrative in which—despite the *baraita's* apparent exemption of the blacksmith from needed to do such a thing—the blacksmith did in fact take reasonable precautions to prevent harm to another person in his workspace.

Like the other late passages that we have seen, this passage uses the anonymous voice to create the sense of a conversation in which the solution *fabula* is generated through a process of trial and error. Not only does this passage preserve the frame *fabula* in which the solution *fabula* is generated, however, but the anonymous voice that expresses the dialogical creation of the new case also adds its own important tone and implicit characterization to the story that is being told here. In particular, the *stam* creates

the impression that the rejection of solutions is being done in the context of determining consequences for a real case.

The first rejection, which dismisses the suggestion that the blacksmith's exemption had to do with the fact that the victim is his own apprentice, expresses incredulity at the callousness of such a statement. As it appears within the intrastammaitic dialogue, one anonymous voice has presented a rereading of the *baraita* such that a blacksmith is exempt for killing his own apprentice, and a subsequent anonymous voice has expressed shock over such an opinion. Yet upon closer examination, it is not at all apparent that the suggestion of "it was a blacksmith's apprentice" was ever meant to stand on its own as a rereading of the *baraita*. It is not clear what is added by hypothesizing that the victim was an apprentice, especially since the *baraita* already specified that even the death of a person who had entered with permission does not make the blacksmith liable for exile, and the blacksmith's apprentice is in a sense the epitome of the person with permission to enter the shop. Rather, the suggestion that the victim was the blacksmith's apprentice seems to be specifically intended as the first step in the production of what is expected to be a more complex and detailed narrative. The relevant difference between the apprentice and anyone else is not revealed until the end of the passage (after the anonymous voice explicitly asks!): the nature of the relationship between the blacksmith and his apprentice, and therefore the level to which the blacksmith can expect to predict the apprentice's actions.[53] The initial suggestion of

[53] A strikingly similar multi-*oqimta* passage can be found at BT Makkot 8b, in which the anonymous voice suggests that a father is exempt from exile as an unintentional murderer

"blacksmith's apprentice," therefore, is more of a formulaic setup for the rest of the details of the new case scenario, and not a genuine suggestion that was meant to stand on its own.

This self-presentation of each individual interpretive step as possessing real consequences is thus somewhat incongruous with the nature of the stammaitic multiple-*oqimta* passage. It seems likely that the initial assertion that the victim was the blacksmith's apprentice was not in and of itself a true legal interpretation at all, but only one piece of a more formalistic, scripted, and complex mechanism for generating a new hypothetical scenario. In other words, "[We are dealing] with a blacksmith's apprentice" was never meant to stand alone as a potential final interpretation. It does not do the same work as, for example, "The ox endangered three people" in the passage about the dangerous oxen, which clearly attempts to provide a full solution (even if ultimately an unsatisfactory one) to the problem posed by the tannaitic material. Instead, "[We are dealing] with a blacksmith's apprentice" is merely the first step in the creation of the new full story of the case scenario that we have seen above, and works as a solution only once the rest of the information provided by the *stam*—the blacksmith's behavior towards his apprentice in addition to the particular quality of the apprentice's relationship towards his master—are brought into the equation. Yet the *stam* still rejects it in a tone of appalled disbelief, as though this initial building block in the creation of a complex new case scenario were about to be applied to a case in a terrible perversion of justice.

---

if he beats his son to death specifically in the process of teaching him to be a carpenter's apprentice.

The *stam*—which repeats its same astonished question a second time, in response to the assertion that the master had urged the blacksmith to leave—may thus also serve a second purpose in its creation of the frame *fabula* here, in addition to its heightening of the narrativity of this passage. The incredulity of the rejecting voice, which can perhaps even be described as moral horror, implicitly asserts that the authors of this passage are ultimately concerned about legal values. The rejection could have been phrased differently—for example, as a comment on the fact that the victim's status as an apprentice does not seem to add any relevant legal information to the case, or even as a question along the lines of "but why should that make a difference?" Instead, the rejecting voice expresses shock that a legal interpreter might come up with a solution that would unfairly mitigate the penalty for accidental death of a particular type of victim. Thus, in addition to presenting a narrative in which interpreters gradually develop an ideal solution narrative in response to a problematic base *fabula,* the *stam*'s presentation of the frame *fabula* also tells the story of an interpretive process that has potential consequences for real legal subjects.

In this last passage, we have seen that the anonymous voice is able to present the frame *fabula* as one of legislators debating what readings of law will have the right consequences for potential legal subjects—despite the fact that both the "legislators" and the imaginary legal subjects are in fact only narrative constructs of the anonymous voice. In so doing, the anonymous voice does two things: first, it amplifies the sense of reality of the legal narrative world it creates by relating to the characters in its hypothetical narrative as though they were real legal subjects; and second, it represents its own drive

towards narrativity—which, as we have seen, comes to take precedence over solving legal problems and becomes an end in and of itself—as directed towards the solution of real and compelling legal problems. Even though the later layer of the Bavli has moved towards an increasingly narratively complex, and thus increasingly scholastic, approach towards law, it still presents itself as though it is telling an older story of the consideration of different interpretations and their practical legal consequences. If the Bavli's legal scholasticism takes the form of a drive towards narrativity, as we have seen, then the tone of the anonymous voice in this last passage, as it presents an increasingly complex solution *fabula* in the context of a narratively heightened frame *fabula,* thus suggests a way in which the Bavli suppresses its own scholastic energy even as it moves towards the peak of its expression.

Conclusion

We have thus seen that in later multi-step *oqimta* passages, narrativity—both of the legal hypothetical and of the rabbinic search for the solution to a problem—comes to take precedence over the generation of any useful legal resolution. Joshua Levinson has also made a similar argument regarding biblical narrative, showing that whereas earlier rabbinic writers may have been motivated to create biblical exegetical narratives in order to solve hermeneutic problems, in later rabbinic texts the "story becomes an independent source of authority, creating a whole greater than the sum of its parts."[54] He attributes this

[54] Levinson, *The Cultural Dignity of Narrative,* 381.

phenomenon to the rabbis' decreasing lack of confidence in exegesis, which makes way for and perhaps even requires a literary vehicle that is better at expressing uncertainty and doubt: "The weakening of the exegetical links enables the emergence and intensification of the narrative mode."[55] I will explore the connection between narrativity and doubt further in the next chapter. However, as I have pointed to earlier in this chapter, narrative also serves its own purpose beyond a response to or an expression of uncertainty and plurality.

In his study of the psychological effects of reading, Richard Gerrig uses the metaphors of "*being transported* by a narrative by virtue of *performing* that narrative."[56] Gerrig argues that as the reader undergoes this process of transportation, he or she "assumes certain new characteristics (as called for by the narrative) as a consequence of undertaking the journey."[57] The need for the reader to respond to the text in some way is particularly true of narratives, which require particular acts of interpretation and gap-filling on the part of their readers.[58] By creating both increasingly complex case hypotheticals and continuing to emphasize the gnoseological narrative in these *sugyot*, as I have shown, the composers of the Bavli create an imaginatively vivid scenario to which the reader is compelled to respond. In so doing, the authors of the Bavli may have enabled the growth of a community of textual interpreters (as exemplified by the Babylonian rabbinic academies) by creating a textual world that is imaginatively

---

[55] Levinson, ibid., 379.
[56] Gerrig, *Experiencing Narrative Worlds,* 2.
[57] Gerrig, ibid., 11.
[58] See Jerome Bruner, "The Narrative Construction of Reality."

compelling and into which, thanks to the narrativization of rabbinic activity itself, the text's readers could imagine themselves entering in reality.

II. "Haven't I Told You Not to Take Yourself Outside of the Law?": Rabbi Yirmiyah and the Characterization of a Scholastic

What's the Matter with Rabbi Yirmiyah?

In "The Force of Law," Pierre Bourdieu describes the social norms that exist within and help to define what he terms the "juridical field," that is, the professional world inhabited by lawyers and judges.[1] For Bourdieu, there exists an "internal logic of juridical functioning which constantly constrains the range of possible actions and, thereby, limits the realm of specifically juridical solutions"—that is to say, all jurists necessarily operate through specific types of language and professional tools that work to maintain the authority of the juridical system and those who claim expertise in it.[2] Though Bourdieu is focused here on a 20th century European judicial context, elsewhere he more broadly applies Mauss's idea of a "habitus," the particular set of acquired techniques with which one interacts with the world, and which both reflect and establish a person's particular social milieu. Elite professional worlds besides law, such as medicine or academia, likewise require the use of specific professional techniques, terminologies, and other ways of staking out a place within the field's power structure. And as far as we can tell from the Babylonian Talmud's portrayal of the elite rabbinic

[1] Pierre Bourdieu, "The Force of Law: Toward a Sociology of the Juridical Field," *The Hastings Law Journal* 38 (July 1987): 816-853.
[2] Bourdieu, ibid., 816.

scholarly circle, that world too possessed its own specialized ways of being, thinking, and speaking that simultaneously constituted and were determined by the rabbinic social/professional field.

Yet what happens when these socially conditioned norms of perceiving and classifying the world are publicly revealed and even called into question? As I will show, the Talmud's authors imagine the results of such a disruption of their own established norms through the characterization of a particular rabbi, a Palestinian *amora* named R. Yirmiyah. They portray R. Yirimyah as uncomfortably pointing out the norms and routines of their own "professional" world. The rabbis thus produce a discourse in which they are able to express their ambivalence about their own cultural norms through the portrayal of a character who is a liminal figure, at once part of the rabbinic community yet somehow dangerously close to its borders.

In four different passages in the Bavli, R. Yirmiyah is portrayed as asking a question that is quite similar to questions asked by other rabbis in other contexts, and in response he is harshly rebuked. R. Yirmiyah—who, it should be noted, is treated just like any other rabbi in hundreds of appearances throughout the rest of the Bavli—is told that by asking his question he is either removing himself from or must be removed from the bounds of scholarly discourse. R. Yirmiyah's questions take different forms and seem to address different concerns. A question at Rosh Hashanah 13a and its parallel at Sotah 16b address the ability of standardized rabbinic measurements to either account for anomalies or accurately assess a particular situation at all, while another pair of questions, at Bava Batra 23b and Niddah 23a, ask about the proper legal rulings for some unlikely liminal

(in one case literally so) situations. The responses to the questions also differ: in the Rosh Hashanah and Sotah passages he receives a specially formulated rebuke; in the Bava Batra passage he is thrown out of the beit midrash; and in the Niddah passage his question is met with a typical counter-question about its legal significance, followed by R. Aha b. Yaakov's statement that R. Yirmiyah had been attempting to make a joke.

The appearance of these stories—and in particular one in which he is actually thrown out of the rabbinic study hall—has prompted generations of scholars and commentators to wonder what was so problematic about R. Yirmiyah's questions. This question troubled the classical medieval commentators, who are inclined to read across the R. Yirmiyah stories. Rashi, who suggests that R. Yirmiyah was thrown out for being annoying, seems to read the accusation that R. Yirmiyah is joking as a description of his behavior all along; Rabbenu Gershom (Gershom b. Judah, c. 960-1040) comments that R. Yirmiyah was annoying them specifically by asking them questions with no substance. Tosafot at Bava Batra 23b reject the idea that R. Yirmiyah was thrown out for asking about an impossible scenario, which is apparently how the Tosafists understand Rabbenu Gershom's "questions with no substance," and explain that he was actually punished for the same offense as in Rosh Hashanah and Sotah: questioning the arbitrariness of rabbinic measurements.[3]

---

[3] The Rashba, the Ran, and the Ritva's paraphrases of Tosafot ad loc. conflate the problem of asking an impossible question with the problem of doubting rabbinic measurements by taking a strongly nominalist position regarding the measurement given in the passage. R. Yirmiyah asks about the legal ruling for a baby bird that has hopped fifty *amot* and one half-step, but an anonymous voice states earlier in the passage that baby birds cannot hop more than fifty *amot.* therefore, according to these medieval commentators, R. Yirmiyah is asking about a legally impossible situation because, as the

Several modern scholars have also attempted to find a critical motivation behind R. Yirmiyah's questions in these stories that can explain his colleagues' extreme disapproval. Like their medieval predecessors, they too often read the R. Yirmiyah stories in conjunction with each other in an attempt to discern an overarching theme that links them. Moshe Silberg reads R. Yirmiyah as expressing criticism of the rabbinic legal project, asking questions that are designed to point out the limits of halakhic formalism.[4] On the basis of a fifth story, in which R. Yirmiyah is reinstated to the beit midrash after submitting very humbly worded responses to rabbinic queries, Adin Steinsaltz argues that the problem with the *amora*'s questions to begin with was a lack of humility towards his fellows.[5] More recently, Eliezer Diamond has argued that R. Yirmiyah's questions are deemed unacceptable because they are either parodic or satirical forms of mockery.[6]

Ritva puts it, by traveling more than fifty *amot—even though the bird is hopping*—"it has left the legal category of 'hopping' and is established in the legal realm of 'flying.'"

[4] Moshe Silberg, "R. Yirmiyah's Questions: Methodology or Personality?" in *Kitve Moshe Silberg* (Jerusalem: Magnes, 1998), 151-159. See also Silberg, *Kakh Darko Shel Talmud* (Jerusalem: Mif'al Ha-shikhpul, 1961), 46-47.

[5] Adin Steinsaltz, "Why Was Rabbi Yirmiyah Removed from the Beit Midrash?" *Sinai* 54 (1963-1964).

[6] Eliezer Diamond, "But Is it Funny? Identifying Humor, Satire, and Parody in Rabbinic Literature" in *Jews and Humor* (ed. Leonard J. Greenspoon; West Lafayette: Purdue University Press, 2007), 33-50. Diamond's arguments hinge on somewhat subjective judgments of parody. Diamond astutely points out that R. Yirmiyah's question about a bird with one foot in and one foot out of a boundary closely resembles a question elsewhere by R. Hanina about a man with one foot in and one foot out of the Shabbat boundary. He argues that R. Yirmiyah's question should be considered a parody of R. Hanina's because R. Hanina also appears earlier in the R. Yirmiyah *sugya* and because Diamond considers the bird case to be much more absurd than the human case. He also judges R. Yirmiyah's question about R. Meir's position to be an "unacceptable" (to the rabbis) form of parody because it is disguised as a real question, which would not allow the recipient of the mockery to respond properly.

It may not be fruitful, though, to look for a feature that makes R. Yirmiyah's questions inherently more problematic than any other question asked by a Bavli rabbi. After all, we do not have access to a question that exists independent of its framing in the *sugya* and can be analyzed to determine whether it was asked either derogatorily or in earnest. As James Frow has pointed out, the "equation of 'character' with 'person'"—that is, the "humanist understanding of literary character as the representation of autonomous, unified and self-identical subjects"—is an assumption that is specific to historical moments in readership, but is not always the best or most faithful understanding of a text.[7] Instead of attempting to understand R. Yirmiyah as an autonomous being, then, we can acknowledge that we have only the problematic R. Yirmiyah character who has been created for us by the Bavli's redactors. It is the literary features of the R. Yirmyah stories—both the minimal "plot" of each story ending in his rebuke, as well as the development of R. Yirmiyah as a character through a series of related anecdotes—that turn his questions into something more troubling and make it virtually impossible for the reader (or at least the reader who is committed to seeing the response to his questions as valid) to read them as questions asked in earnest. Thus, we may be better off asking "What do the producers of the Bavli convey by constructing a censure-worthy rabbi

[7] James Frow, "Spectacle Binding: On Character," *Poetics Today,* 7, No. 2 (1986): 228. On the historical contingency inherent in the production, use, and meaning of characters, see also Deidre Lynch, *The Economy of Character: Novels, Market Culture, and the Business of Inner Meaning* (London and Chicago: The University of Chicago Press, 1998). On character in rabbinic literature, see Ofra Meir, "Ha-Demut Ha-Mishtaneh Veha-Demut Ha-Mitgaleh Be-Sifrut Hazal" in *Jerusalem Studies in Hebrew Literature,* (Jerusalem: Mandel Institute for Jewish Studies), 1984.

whose censurable deeds consist of asking fairly standard (at least for the rabbis) legal questions?"

It may not be possible to cull a historical biography of the rabbis from their depictions in the Bavli, but this does not mean that one cannot read across the Bavli in search of information about how individual rabbis are created as literary characters. Zvi Septimus has argued that the Bavli is meant to be read as self-referential whole, and that the existence of certain "trigger words" that link stories across tractates shows that the intended reader of any one section of the Bavli is someone who already knows the entire text.[8] The consistency of certain rabbi-characters across the Bavli, of which R. Yirmiyah is an important example, shows that the Bavli itself operates in some ways as a unified literary work beyond the level of Septimus's "trigger words."[9]

The existence of several interconnected R. Yirmiyah stories, many of which seem to assume a preexisting understanding of R. Yirmiyah's character and history, shows that the Bavli's self-referentiality extends beyond the use of linguistic markers and employs a more standard literary unifier: characterization through repeated plot elements. In the case of R. Yirmiyah, such elements include the characterization of R. Yirmiyah as a performer of legal meta-analysis, the persistence of R. Yirmiyah's questions and their

---

[8] Zvi Septimus, "Trigger Words and Simultexts: The Experience of Reading the Bavli," in *Wisdom of Batsheva: The Dr. Beth Samuels Memorial Volume,* ed. Barry Wimpfheimer (Jersey City, NJ: Ktav, 2009); see also Septimus, "The Poetic Superstructure of the Babylonian Talmud and the Reader it Fashions," Ph.D dissertation, University of California, Berkeley, 2011.

[9] The characterological consistency of R. Yirmiyah across these passages also offers a definitive rebuke to Yonah Fraenkel's theory of "external closure" in rabbinic stories; see Fraenkel, "Hermeneutic Problems in the Study of the Aggadic Narrative."

seemingly inevitable rebuke, and the appearance of R. Zeira as R. Yirmiyah's foil. The R. Yirmiyah stories thus reveal a way in which the "halakhic" portions of the Bavli also function as narratives, creating a multi-part dramatic story about a liminal character that runs throughout the entire text.

I will argue that R. Yirmiyah is portrayed in these stories as the Ultimate Scholastic and, therefore, as deserving the most serious rebuke. Two of the central features of scholasticism as a cross-cultural category, as defined by José Cabezon, are intellectual orientations towards "the epistemological accessibility of the world: the belief that the universe is basically intelligible"[10] and "self-reflexivity: the tendency to objectify and to critically analyze first-order practice."[11] Another key feature of scholastic culture, especially in oral cultures, is an emphasis on dialectics and debate, even to the point of verbal "violence."[12] As I will show, each of these elements is either integral to or imposed upon R. Yirmiyah's questions, and is additionally emphasized in the responses he receives. R. Yirmiyah's questions in this group of legal stories all treat the law as an object for hypothetical contemplation rather than real-life application. They also share an overarching concern: the ability of rabbinic law to describe the natural world, especially when it manifests in a messy or unusual way. Each of the questions pits legal fictions—about determining ownership, quantifying grain growth, or determining the status of an anomalous birth—against the possibility that reality may be either too complex or too unknowable for those legal fictions to accurately judge. Additionally, the story of R.

---

[10] Cabezon, *Scholasticism,* 5
[11] Cabezon, ibid., 6
[12] Rubenstein, *Culture,* 54 ff.

Yirmiyah's return to rabbinic favor seems to imply that one of his "crimes" was insufficient deference in his exchanges with colleagues, perhaps thus expressing a critique of scholastic verbal sparring.

To be clear, these features of scholasticism are expressed in different ways throughout the Bavli; they are in no way unique to R. Yirmiyah or the set of legal narratives I analyze in the chapter. However, I will argue that the Talmud's redactors produce the character of R. Yirmiyah as The Problematic Scholastic in order to voice doubt about the Talmud's own increasingly abstract and scholastic approach towards law, while simultaneously repressing that doubt within the structure and rhetoric of the passages in which these moments occur. Even if R. Yirmiyah's questions *could* be read as "straight"—i.e., earnest attempts to apply rabbinic law to unusual cases or to question the utility of the law—the fact that their literary framing all but forces the reader to interpret them as subversive betrays self-consciousness and discomfort about this aspect of rabbinic legal activity. The creation of a character who is rebuked for asking questions that push at the limits of rabbinic legal fictions—whether earnestly or not—shows that such activity was a source of tension for the character's creator(s).[13]

[13] R. Yirmiyah is not the only character through which the Rabbis play out ambivalence around their own cultural norms. Daniel Boyarin points out another example in his analysis of the series of *sugyot* in BT Ketubot about scholars who leave their wives for extended periods of time to study, culminating in one version of the story of R. Akiva and his wife: "The absolute and contradictory demands of marriage and commitment to study of Torah remained one of the great unresolved tensions of rabbinic culture. The text thematizes that tension by 'personifying' its poles. This is to be taken as neither an assertion nor a denial of the biographical, historical 'reality' of these Rabbis and their discourse, but only as an interpretation of the function that the text plays, in my reading, in rabbinic culture." *Carnal Israel,* 134.

As I will also demonstrate, the R. Yirmiyah anecdotes also tend to appear within passages whose logic is somewhat difficult to accept, whether it is the establishment of a rabbinic legal fiction on the basis of very shaky midrashic grounds, or the reinterpretation of a mishnaic legal fiction as a statement of ontological fact as though the metaphor were meant to be a literal description of its object, or the attempt to establish a blanket conceptual rule about competing legal principles that clearly contradicts the established approaches to certain legal questions. I argue that the rebuke of R. Yirmiyah in the context of these passages is not a coincidence, but rather an outlet for release for the tension built up by strained argumentation.

Just as R. Yirmiyah's questions are not in and of themselves unique, I am also not claiming that such moments of strained logic are out of the ordinary for the Bavli. Rather, the appearance and rebuke of R. Yirmiyah the Ultimate Scholastic in these passages represents a somewhat unusual moment of rabbinic self-criticism interrupting the flow of rabbinic legal work, in which occasional logical difficulties are mostly taken in stride. In these moments, however, R. Yirmiyah is treated as though he were an actor who has interrupted the performance of a play with a reminder that he and his fellows are, ultimately, behaving according to set guidelines that under closer consideration may seem ridiculous, artificial, or constraining. Erving Goffman has argued that all everyday human interactions involve the communication of information about the nature of the participants, as well as the roles of the parties vis-a-vis each other in that moment given the mutually constructed situation. He describes the effect of moments in which these projected definitions of people or situations come into question—a kind of "breaking of

the fourth wall"—as follows:

> When these disruptive events occur, the interaction itself may come to a confused and embarrassed halt. Some of the assumptions upon which the responses of the participants had been predicated become untenable, and the participants find themselves lodged in an interaction for which the situation has been wrongly defined and is now no longer defined. At such moments the individual whose presentation has been discredited may feel ashamed while the others present may feel hostile, and all the participants may come to feel ill at ease, nonplussed, out of countenance, embarrassed…[14]

In these Bavli passages, R. Yirmiyah is likewise treated as though he has embarrassingly revealed the scholasticism at the heart of *all* rabbinic work—that is to say, its ultimate orientation towards the performance of intellectual group identity as instantiated through attitudes towards both texts and other interpreters. The tensions and incongruities of these and perhaps other Bavli passages may be attributed at least in part to the requirements of such a performance.

The R. Yirmiyah anecdotes thus reveal two significant and somewhat related features of the Bavli's legal discourse. First, the Bavli's creators seem to be conflicted about the scholastic nature of their legal discussions, and particularly the relationship between their legal fictions and the natural world. And second, the legal discourse of the Bavli also functions as a vehicle for storytelling, a forum for working out cultural concerns not just through legislation but through more typically literary tools such as characterization. Examining these stories can thus help us to understand how the rabbis of the Talmud understood their intellectual project—a legal discourse that is far more than a

---

[14] Erving Goffman, *The Presentation of Self in Everyday Life* (New York: Anchor Press, 1959), 12.

guide to practical law, but one that betrays competing tendencies towards fruition in reality and fruition in the minds of its interpreters.

Venturing Outside of the Law

In the first pair of passages we will examine, R. Yirmiyah is rebuked by his teacher/colleague R. Zeira for asking a question that casts doubt on the correspondence between formalized rabbinic measurements and reality. I discuss these first two passages as a pair because they are partial parallels: R. Zeira's response to R. Yirmiyah is nearly identical in both passages, as we shall see below. R. Yirmiyah's question, I will argue, expresses a typically scholastic concern for epistemological certitude, which R. Zeira seems to view as antithetical to the goal of producing practical legal opinions.

The first passage begins with a discussion of the mechanism for determining whether produce is legally considered to have grown during a sabbatical year. Since everything that is grown in the sabbatical year (every seven years) is forbidden for use, the rabbis must develop a standard for determining which grain should be categorized as forbidden sabbatical produce. Is such categorization based on the year the grain was harvested or on the year it was planted? The standard for making such determinations regarding tithing, according to a mishnaic statement quoted in this passage, is based on a cutoff somewhere in between. If the grain grew one third of its total growth during the final year of counting, then no matter when it was harvested, it is considered titheable—

and presumably, by analogy, sabbatical—produce.[15]

The passage at hand, which leads into R. Yirmiyah's question, begins as though it is going to provide a biblical justification for this mishnaic standard, asking, "From where are these words?" Yet neither the legal midrash that follows nor its subsequent discussion provide biblical proof for the one third standard, though the passage reads as though it has.[16] This hermeneutic tension is an important backdrop for the exchange between R. Yirmiyah and R. Zeira that follows, which serves as an outlet for the passage's unacknowledged textual difficulties.

The initial legal midrash does not provide an explanation for the one third growth standard, either for tithing or for sabbatical produce, but instead brings in a new factor not mentioned in the Mishnah: the Feast of Booths, which is a harvest festival that occurs two weeks into the beginning of the year.

> We taught elsewhere: "…Grain and olives [are tithable] from when they grow one third."
> From where are these words? R. Asi said in the name of R. Yohanan, and they brought it in the name of R. Yosi haGlili: Scripture says "At the end of every seven years, at the time of the year of release, on the Feast of Booths" (Deut. 31:10).
> What does the year of release have to do with the Feast of Booths? [The Feast of Booths falls in] the eighth year!
> Rather, it teaches you that for all grain that grew one third in the seventh year before the New Year, you must behave towards it with the customs of the seventh year in the eighth year.[17]

---

[15] Mishnah Ma'aserot 1:3, on the threshold for plants' legal significance with regard to tithing. See also Mishnah Hallah 1:3.
[16] A midrashic justification is eventually brought later in the text: "R. Yonatan b. Yosef says, 'And it shall bring forth produce for those three years' (Lev. 25:21): Do not read 'three' (שלש) but rather 'one third' (שליש)." (BT Rosh Hashanah 13a-b).
[17] BT Rosh Hashanah 12b.

According to this midrash, Deuteronomy mentions the Feast of Booths in the same verse as the sabbatical year in order to teach the standard about one third growth. The logic seems to be as follows: because the Feast of Booths occurs two weeks into the beginning of the eighth year, the holiday's appearance in the verse about the sabbatical year is meant to convey the notion that some plants that seem to be eighth year plants, because they are harvested in year eight, are really seventh year plants (and thus clarifying that the year in which the grain is harvested is not the deciding factor). A similar midrash, upon which this passage is likely based, appears in Sifra Behar: "R. Yonatan b. Yosef says: From where do we know that if grain grew a third before the New Year [of the eighth year], you gather it in [i.e. it is legally part of] the sabbatical year? Scripture says 'and you harvest your grain'—from when it has grown one third."[18]

Yet although the midrash purports to explain why the standard for grain is one third of its growth, it never makes any explicit connection between that standard and either the sabbatical year *or* the eighth year harvest festival. The understood link between the two might be motivated in part by the Tosefta at Shevi'it 2:7, which specifically mentions the idea of retroactive tithing of (at least some part of) plants that were harvested in the following year if they grew one third before the New Year—but even there, the connection seems to be merely incidental and not causal.[19]

---

[18] Sifra Behar Section 1.

[19] "Dill that was planted for seeds, even if it took root before the New Year and was harvested after the New Year, must be tithed, and at the time of its harvest it is forbidden. One may tithe from its seeds in place of its greens or from its greens in place of its seeds, and if it grew one third before Rosh Hashanah, its seeds are tithed retroactively, and its greens according to the time of its harvest." Tosefta, Zuckermandel ed., p. 62.

The connection between the Feast of Booths and the one third of growth is at least partially explained in the subsequent discussion of the midrash:

> R. Zeira said to R. Asi: But perhaps it did not grow it all and Scripture says to let it lie fallow until the Feast of Booths?
> Do not think that, for it is written: "The harvest festival at the end of the year." (Ex. 23:16).
> What is "harvest"? If you will say it is the holiday that happens at the time of the harvest, it is already written "When you harvest"!
> Rather, what is "harvest"? Cutting down. And the Rabbis knew that for any grain that was [fit to be] harvested on that holiday, it was certain that it had grown a third before the New Year, and it was called last year's grain.

R. Zeira, questioning the legal midrash, asks whether the Feast of Booths is really mentioned in the verse in order to convey the standard of one third growth, or whether it simply means that the standard is based on the time of planting, and that as long as the grain was planted at any point during the seventh year it cannot be harvested in the eight year, whether it grew one third or not. This indeed seems to be a much more straightforward interpretation of the verse, but R. Asi argues that the mention of the harvest festival (i.e., the Feast of Booths) in a different verse about the sabbatical year is not merely there to provide a date, since that would be redundant, but to signify actual harvesting. If the grain is fit for harvest at that date, according to R. Asi's reading of the second verse, the rabbis could then know that it must have grown one third of its growth by the New Year two weeks earlier.

R. Asi's explanation makes it seem as though some earlier source had at some point firmly established the one third growth standard for sabbatical produce, and he is merely providing a midrash that offers a nice mechanism for how one could determine this standard retroactively. Yet there seems to be no such earlier source (if there were,

surely the midrash would have quoted it and not a mishnah about tithing!). The conclusion of the midrash's explanation ultimately fails to show any textual connection between the eighth year harvest festival and the one third standard, even though this is what it purports to do. Instead, it presents readiness for harvest on the Feast of Booths as a rabbinically established—but not biblically or even midrashically justified—legal fiction that allows the rabbis to determine whether grain had grown one third in the previous year or not.

At this point in the discussion, R. Yirmiyah asks his problematic question to R. Zeira: "And did the Rabbis know how to distinguish between a third [growth] and less than a third?" R. Yirmiyah's question seems not to follow logically from the anonymous statement immediately preceding it. The explanation of the midrash in no way assumes that the rabbis know how to distinguish between, say, less than a third of growth one day and a third of growth the next—which is more or less the way R. Zeira interprets R. Yirmiyah's question. In fact, this explanation quite nicely accounts for total rabbinic inability to do so by establishing the legal fiction that grain harvested on Sukkot *must have already* reached a third of growth on or before a date about two weeks earlier! R. Yirmiyah's question may thus be understood instead as casting doubt on the correspondence of this rabbinic legal fiction, whose midrashic basis is truly dubious at best, with reality. When it appears at this juncture in the passage, then, R. Yirmiyah seems to be saying: You may have a legal mechanism for determining one third growth based on readiness for harvest on the Feast of Booths, but given the lack of either a real justification for this standard's biblical basis or the ability to verify its correspondence

with natural reality, how can they know that this mechanism produces law that corresponds with truth?

In response, R. Zeira rebukes R. Yirmiyah, saying, "Haven't I told you not to take yourself outside of *hilkheta*?" The term *hilkheta* in the Bavli designates not law as a form of discourse, such as the back-and-forth argumentation typical of the Bavli's "legal" sections, but specifically the formulation of an applicable legal ruling.[20] The peculiar wording of R. Zeira's response thus portrays R. Yirmiyah's question as departing from the bounds of *practical* law. When he accuses R. Yirmiyah of "taking himself outside" of the production of *hilkheta*, i.e. practical law, R. Zeira may be pointing out that R. Yirmiyah risks undermining the law's utility when he questions the accuracy of formalized legal measurements, since it would be impossible to generate usable rules if the law had to account for all individual circumstances.[21] However, one can also read R. Zeira's warning not just as defense of formalistic legal fictions in rabbinic law, but as an admonishment that such concern about the law's epistemological accuracy—a typically scholastic concern—is outside the realm of acceptable rabbinic discourse.[22]

R. Zeira continues his rebuke with the explanation that all rabbinic measurements are "like that," followed by a list of rabbinic legal standards whose precise measurements determine whether an object or a situation falls into one category or another.

---

[20] Yaakov Spiegel, "Hosafot Me'uharot (Savora'iot) ba-Talmud ha-Bavli," Ph.D. dissertation, Tel Aviv University, 1976*,* 164ff.
[21] Cf. Silberg.
[22] The idea that such a question is simply unacceptable seems also to be Rashi's understanding, based on the language he uses to explicate the line "Do not take yourself outside of *hilkheta*" at Sotah 16b: "All of the words of the sages that have been fixed, do not ponder them too much" (על תהרהר אחריהן).

> He [R. Zeira] said to him [R. Yirmiyah]: All the measurements of the sages are like that. One immerses in [a ritual bath of] 40 *se'ot*; in 40 *se'ot* minus a *kortov* one cannot immerse. An egg-amount transmits food impurity; an egg-amount minus a sesame seed does not transmit food impurity. Three by three [*tefachim*] transmits impurity by treading; three by three minus one hair does not transmit impurity by treading.

This response does not seem to fit well with R. Yirmiyah's question. R. Yirmiyah wanted to know whether the rabbis were truly able to distinguish one type of produce from another on the level of externally verifiable fact—had the produce actually grown one third or not? This part of R. Zeira's response, on the other hand, deals with cases where the standard for distinguishing two legal categories is clear (40 *se'ot* are objectively measurable in a way that "one third growth" is not), and there is no such thing as external verifiability—the truth about impurity or purity, or the validity of a ritual bath, are "facts" created by the rabbinic legal standard that do not exist outside of them. As Mira Balberg and Moulie Vidas have pointed out, "…the sage who studies purity and impurity ostensibly purports to make truth claims about the world itself. However, the rabbis were very much aware that they were not really revealing a 'truth': rather, they were engaged in a scholarly activity in which they certified things as pure or impure through processes of dialectical reasoning."[23] Balberg and Vidas describe a rabbinic "tension between description and construction," and whereas purity laws fall closer to the side of construction, sabbatical produce—at least when it comes to the question of how much it grew and when—deals much more with description.

R. Yirmiyah also does not call the measurement arbitrary—an accusation to

[23] Balberg and Vidas, "Impure Scholasticism," 340

which R. Zeira seems to be responding—but rather expresses concern that it might not be possible to apply it in a way that corresponds with reality. His question, in other words, is not about the law's formalism but rather about epistemological validity. Perhaps in part because of this distinction and perhaps also because of his unique characterization, R. Yirmiyah therefore also receives the unique response accusing him of asking a question that is outside the realm of practical law.

R. Zeira's particular rebuke to R. Yirmiyah also appears in this passage's parallel, which deals with the sacrifice of a swallow whose blood must be recognizable when mixed with water. An anonymous legal ruling states that the proper amount of water to achieve this effect is one-quarter *log* (about an eighth of a liter) of water. Following this ruling, R. Yirmiyah asks R. Zeira about the legal consequences of an abnormally sized bird:

> R. Yirmiyah asked R. Zeira: What about large one that [has enough blood that it] displaces the water, or a small one that [has blood that] is displaced by the water? He said to him: Haven't I told you not to "take yourself outside of *hilkheta*"? The rabbis measured based on a swallow. You do not have a large one that displaces the water or a small one that is displaced by the water.[24]

R. Yirmiyah's question in this parallel passage yet again expresses concern that one-size-fits-all legal rules will not correspond with the realities of the natural world. Whereas in the first passage, R. Yirmiyah expressed doubt about the ability of the rabbinic legal fiction to generate epistemologically valid knowledge, here R. Yirmiyah's question expresses concern about the way in which the formalized legal rule discounts the

[24] BT Sotah 16b.

possibility of aberrations from the norm. This question thus seems more suitable to R. Zeira's response about "All the measurements of the sages": Just as a mikvah is only functional at 40 *se'ot* because that is standardized as the right size to fit a human, even though one could theoretically have a small person who needed less than 40 or a large person who needed more, the quarter *log* of water remains the same regardless of the size of the bird being slaughtered.

Indeed, R. Yirmiyah's question here are quite similar to questions asked elsewhere in the BT by other *amora'im,* who are also told that "all the measurements of the sages are like that." At Ketubot 104a, R. Yosef says "all the measurements are like that" in response to Abbaye, who had expressed astonishment that the moment it takes for the sun to set is considered significant enough for a woman to give up her right to her *ketubah* payment. And at Menachot 103b, R. Shimon says it to R. Yehudah b. Ilai, who had asked how it can be that sixty tenths of a meal-offering can be combined in one vessel, but not sixty-one tenths. Those rabbis, however, are not told that they are "taking themselves outside of *hilkheta,*" and R. Yirmiyah here does not receive an explanation about standardized rabbinic measurements. Instead, R. Zeira's response here repeats the warning about "taking yourself outside of *hilkheta,*" and then states that the rabbis prevented possible variations on the size of bird by mandating a single species of bird of which there are no especially large or small specimens.

Could R. Yirmiyah's question in this passage be different in some subtle yet significant way from Abbaye or R. Yehudah b. Ilai's comments about the arbitrariness of the precise moment of sunset or sixty as opposed to sixty-one tenths, such that R. Zeira

responds to R. Yirmiyah not with an explanation of rabbinic measurements but with a warning not to stray too far from the aims of practical law? Perhaps, but I would argue that it is more likely that R. Zeira's response here is part of the literary construction of R. Yirmiyah as a scholastic who is concerned more with meta-analysis of the law than its practical implementation—even if there is nothing about his questions themselves that are especially out of the ordinary for the Bavli's rabbinic characters. This passage's contribution to an ongoing characterization of R. Yirmiyah is further emphasized by the phrase "Haven't I told you," which indicates that these exchanges between R. Zeira and R. Yirmiyah are not isolated incidents but part of an ongoing pattern (which indeed they are, as we shall see).

The scholastic elements emphasized by R. Yirmiyah's questions and their rebukes in these passages include a tendency towards self-reflexivity, and—as one manifestation of that—a concern about epistemological validity, and in particular whether or not rabbinic epistemology matches up with determinations of reality. For R. Zeira, this meta-legal concern is "outside" the bounds of acceptable rabbinic thought, much as elsewhere in rabbinic literature excessive mystical contemplation is discouraged (and it is worth noting that one rabbi who is too engaged in such mystical thoughts is, just like R. Yirmiyah, portrayed by a colleague as—presumably ideologically—"outside").[25] According to R. Zeira, R. Yirmiyah should not be concerned with the pursuit of some kind of deeper truth, but rather with the pursuit of applicable rulings.

[25] BT Hagigah 15a: "R. Yehoshua said to his students: Ben Zoma is still outside."

Following R. Zeira's rebuke, R. Yirmiyah recovers by taking back his question. However, in the process of claiming that his epistemological doubt was misguided, he also reestablishes the validity (if not its relevance) of his question by pointing out that it has already been asked.

> R. Yirmiyah responded: What I said was wrong, for the sages asked Rav Kahana: The *omer* that the Israelites brought when they entered the land, where did they bring it from? If you will say they brought it from non-Jews, the Torah says "your harvest" (Lev. 23:10) – and not the harvest of a non-Jew.
> How do we know they brought it? Maybe they didn't bring it!
> Don't think that, for it is written "And they ate from the produce of the land from the day after Passover" (Josh. 5:11) – from the day after Passover it was eaten; [therefore] beforehand it was not eaten. Thus they brought the *omer* and then they ate.
> From where did they bring it?
> He said to them: Anything that was not yet one third ripe belonging to a non-Jew.
> And perhaps it ripened and they didn't know?
> But they did know. [And] here too, they did know…

In R. Yirmiyah's explanation of why his question was unnecessary, he points out that the same question had already been asked by "the sages" to R. Kahana in another context. Because R. Kahana had explained to the sages that their doubt was unfounded (though not very convincingly, since he provided nothing more than "Don't ask whether or not they knew—they just knew!"), R. Yirmiyah understands that his doubt is unfounded as well. Yet the fact that an anonymous group of sages had asked the exact same question without being rebuked is yet another indication of the fact that R. Yirmiyah is treated as a special, borderline figure whose doubt is more dangerous than other people's doubt, even when his legal questions are no different than others'. R. Yirmiyah is no more of a scholastic than any other rabbi; the difference is that he is

constructed as being one to an unacceptable degree.

Law and Parody

Another R. Yirmiyah passage troubles the relationship between unrealistic legal hypotheticals on the one hand and outright absurdity or parody on the other. In this passage, R. Yirmiyah's question is followed by the accusation that he was trying (unsuccessfully) to make R. Zeira laugh. I will argue that this is another form of accusation about scholastic self-reflexivity, since the ability to joke about one's own intellectual endeavors presupposes a certain amount of detached self-analysis, which is the same attitude that makes possible the objectification and analysis of one's own practice in a serious register as well.

The passage appears in the course of a discussion about the first Mishnah of the third chapter of tractate Niddah, which deals with strangely shaped miscarriages and their resultant impurity for the formerly pregnant woman. Once again, the passage that leads into R. Yirmiyah's question is itself quite logically fraught, as I will demonstrate. Whereas previously we saw hermeneutic tension produced by a failed attempt at midrashic justification of a mishnaic law, the tension in this passage is produced by the Bavli's subtle conflation of a mishnaic legal fiction with a description of ontological reality.

After discussing miscarriages that are shaped like various objects, including fish, locusts, and reptiles, and determining that these result in blood impurity but not childbirth

impurity, the Mishnah presents a disagreement between R. Meir and the sages about miscarriages shaped like birds and beasts:

> [If a woman] miscarries something that looks like[26] a domestic animal, wild animal, or bird, whether pure or impure, if it is male she sits [days of impurity] for a male and if it is female she sits for a female. If it is not known, she sits for a male. These are the words of R. Meir. And the sages say: Whatever does not have in it [anything] of the shape of a man is not a [human] offspring…[27]

The subsequent analysis of this Mishnah attempts to determine what animals and birds have in common with humans such that R. Meir would rule that they result in normal childbirth impurity. The Talmud at first suggests a midrashic explanation for R. Meir (both humans and animals/birds are said to have been "created" in Genesis 1) and then an explanation based on physical resemblance (their eyes, or some feature of their eyes, are similar). Though this passage seems to be a straightforward search for an explanation of R. Meir's position, it also subtly elides the distinction between the *shape* of the miscarried objects and the very *nature* of those objects. In other words, the Talmud,

---

[26] Though some late textual witnesses of the Babylonian Talmud attest "a kind of domestic animal" (מין בהמה), Kaufmann and Parma manuscripts of the Mishnah, the Leiden manuscript of the PT, and BT mss. Vatican 127, Vatican 111, and Munich 95 all attest "something that is like a domestic animal" (כמין בהמה). This original version is not only more logical (a woman is much more likely to miscarry something that resembles a kind of animal than an actual animal) but is consistent with the language used in the first part of the Mishnah, attested in all witnesses as "Something that looks like [membranes, hair, dust, etc.]." It seems likely that the text was amended to "a kind of domestic animal" in later witnesses precisely because—as we will see—the discussion in the Talmud winds up imagining the fetus to be, in essence, a real animal.

[27] I understand the sages' position to require the presence of at least some—but not necessarily all—humanoid feature(s) in the miscarried substance in order to deem it a human fetus. This is how the sages here are understood in the Tosefta as well as the Palestinain and Babylonian Talmuds.

without explicitly saying so, suggests the possibility that the Mishnah refers not to a woman bearing a bird-shaped fetus but to a woman giving birth to a real bird.[28]

The proffered explanations for R. Meir's position each hint at the possibility that these animal-shaped fetuses are real animals. The reference to the creation of animals and birds alongside humans suggests the presence of those beings themselves, not just their shapes. The second suggestion, which claims that animal/bird eyes resemble human eyes, seems less compatible with the notion that the fetuses are animal-like humans and more compatible with the idea that they are human-like animals. If the key feature of animal-shaped human fetuses is their human eyes, why not refer to them as fetuses with humanoid eyes instead of calling them animal-shaped humans? This explanation for R. Meir's position makes much more sense if one considers the fetuses to be—at least at some level—actual animals, which R. Meir considers legally human because of their human-like eyes.

Furthermore, the language of the discussion alternates between describing a woman miscarrying the "form of" some object and simply referring to a woman miscarrying the object itself. There seems to be an editorial shift at work here: in Hebrew statements by named *amora'im*, the Talmud refers to "one who miscarries the form of a

---

[28] This is in fact how Rachel Neis reads the Mishnah here, arguing that "we must take the formula '*ke- min* + creature' as far more than a rhetorical convenience, and instead as earnest formal criteria by which material is assessed." See Neis, *The Reproduction of Species: Humans, Animals and Species Nonconformity in Early Rabbinic Science.* Jewish Studies Quarterly 24:4 (2017): 306. Though Neis makes a compelling point that "rabbinic reproductive biology implicates humans among and as animals" (293), and it is certainly the case that the borders between species are somewhat fuzzy here, I think her claim works much better for the amoraic treatment of this material than it does for the tannaitic sources.

crocodile" and "one who miscarries the form of a mountain," whereas a presumably editorially constructed Aramaic reply statement refers to "one who miscarries a rock" and "one who miscarries wind."[29] Though the description of the object as its shape may be meant metaphorically and not as an ontological claim, the shift in language nonetheless paves the way for interpreting the Mishnah as referring to a real animal as opposed to something that is merely animal-shaped.

Whereas the initial discussion began to elide the distinction between animal-shaped things and actual animals, the line between legal metaphor and reality is finally destroyed by R. Yirimiyah, who takes every part of R. Meir's position completely literally: "R. Yirmiyah asked R. Zeira: According to R. Meir, who said that an animal in a woman's womb is a valid [human] offspring, what if its father receives *kiddushin* on its behalf?"

R. Yirmiyah's question attempts to apply R. Meir's position to a case of presumably prenatal betrothal, asking about a hypothetical case in which the animal-fetus's father received a betrothal payment for it while it was still in the womb.[30] R. Yirmiyah's question implies not only that the fetus is really an animal, as the previous discussion had subtly suggested, but that R. Meir's ruling that the formerly pregnant

[29] The phrases "one who miscarries the form of a crocodile," "one who miscarries the form of a mountain," and "one who miscarries wind" each appear as part of the Hebrew statement: "But according to this logic, one who miscarries [the form of] X, its mother has/should have childbirth impurity!" I read the appearance of "one who miscarries wind" within this statement as later editorial coopting of amoraic formulaic phrasing.
[30] See BT Kiddushin 62b.

woman has childbirth impurity means that R. Meir considers the fetus completely normal for all other purposes as well.

R. Yirmiyah thus turns R. Meir's legal ruling, which creates a *legal* reality (the treatment of the miscarried matter as a normal human fetus for the purposes of impurity) that does not necessarily apply to other situations (e.g., betrothal), into a necessarily contradictory description of ontological reality. Whereas R. Meir's legal position might be summarized as "something somewhat like an animal should be treated like a human in this one legal area," R. Yirmiyah's version of R. Meir might sound something like: "R. Meir is saying an actual animal is a totally normal human baby!" As in the passages about sabbatical produce and ratios of water to bird-blood, R. Yirmiyah appears to be dissatisfied with legal fictions if they do not do a good job of accurately expressing physical realities.

At least part of the reasoning behind R. Yirmiyah's scenario—the conflation of animal-like fetuses with real animals—had already been subtly suggested by the previous discussion and in particular by the Talmud's anonymous voice, and the subsequent analysis of R. Yirmiyah's question rejects a different part of his premise as absurd.

> What would be the legal significance [of this scenario]?
> To prohibit [marriage to] its [presumably normal human] sister.
> This implies that [the fetus] will live! [But] behold, R. Yehudah said in the name of Rav: R. Meir only said [it is valid] because it could live if born from its own kind.
> R. Aha b. Yaakov[31] said: up until then R. Yirmiyah was getting R. Zeira to laugh, but he did not laugh.

[31] Vatican 113, Munich 95, Niddah G125: "R. Aha b. Hanina."

In response to R. Yirimyah's question, an anonymous voice asks what the legal implications of such a case would be, and responds that because it is forbidden to marry two sisters, then the fetus's sister would be prohibited to the prospective husband if the betrothal were valid and permitted if the betrothal turned out to be invalid. The anonymous voice then objects that this conversation is predicated on the assumption that the animal-fetus will live, since if one sister was betrothed and then died, it becomes permitted to marry the other sister.[32]

As a rebuttal to the notion that the fetus will live, the Talmud quotes an opinion of Rav as quoted by R. Yehudah, stating that R. Meir's reason for validating bird- and beast-shaped fetuses is that they would survive if born to an animal of their own species.[33] Rashi explains that the point here is that they would survive if born to their own species, but not otherwise; however, this is only the point when read within the context of the argument as constructed in this *sugya*. Taken by itself, Rav's opinion actually implies nothing about whether or not the fetus would survive if born to a human woman.[34] The coopting of this amoraic statement shows that the redactor of this *sugya* wants to present a clear argument demonstrating that the fetus is not viable and hence that R. Yirmiyah's proposed (no pun intended) scenario is even more absurd that it might appear. Once

---

[32] See BT Yevamot 8b for the specific midrashic derivation of this principle from the verse "You shall not take a woman to be a rival to her sister, to uncover her nakedness beside her, *in her lifetime.*"

[33] As opposed to a miscarriage shaped like a membrane or some other object, which would never be a viable fetus of any species (see Tosafot ad loc).

[34] And, in fact, the *gufa* discussing R. Yehudah's statement in the name of Rav ends with an attempt by Abbaye to disprove that the fetus will surely die, leaving the question of the fetus's viability ulimately unresolved.

again, R. Yirmiyah is set up by the Bavli's redactors to be harshly rejected and portrayed not just as wrong within the context of the debate, but as fundamentally engaging in a different sort of conversation than that which is considered to constitute acceptable legal discourse.

This anonymous discussion of R. Yirmiyah accepts that R. Meir's ruling implies both that a woman could be pregnant with an animal and that such an animal-fetus should be treated like a human in every respect. However, the anonymous voice disputes the premise that the animal-fetus might survive after being born, and for that reason deems R. Yirmiyah's scenario one that could never occur. In the final line of the analysis of R. Yirmiyah's question, another rabbi deems the entire question not just an impossible scenario but an intentional joke. By shifting the focus of improbability to the survival of the fetus as opposed to the possibility that a woman might give birth to an actual animal, the passage implicitly accepts R. Yirmiyah's broad and literal reading of R. Meir's statement.[35] Instead, R. Yirmiyah is accused of making a joke—perhaps an accusation of displaying levity in a manner inappropriate for the seriousness of the study hall, but perhaps yet another depiction of R. Yirmiyah as overly detached from the subject matter at hand. Whereas according to his portrayal in other passages, his meta-analysis of standard rabbinic thought processes causes R. Yirmiyah to express skepticism, in this case—as often happens when one stops what one is doing and thinks about it critically—

[35] A thematically similar passage that contains a surprisingly unacceptable question, very difficult structural logic, and potentially non-viable fetuses appears at Menachot 37a. That passage and the one at hand both seem to reveal some unresolved internal ambivalence about whether or not one can always assume that monstrous births will not survive.

it causes him to laugh. This can be seen, then, as another form of unacceptably scholastic self-reflexivity, taken here to a different extreme: humor instead of doubt.

The special rebuke that R. Yirmiyah is subjected to here is made even more apparent by comparing his question with both the PT's treatment of R. Meir's position and a question by a different rabbi that appears later in the Bavli *sugya*. The PT's analysis of R. Meir's ruling is quite similar to R. Yirmiyah's:

> R. Hagai said in the name of R. Hanina: The rabbinic fellows made the following challenge to [the statement] of R. Meir. [If a woman] miscarried the shape of a raven, [someone] stands at the top of the palm tree and says to it: "Come and perform *halitza* or *yibum*"?![36]

This challenge is similar in both tone and import to R. Yirmiyah's question in BT Niddah. Both R. Yirmiyah and R. Hagai dispute R. Meir's position by treating its legal logic as a kind of descriptive ontological statement. They read R. Meir's legal metaphors—a fetus that looks *like* a bird; a miscarried fetus that is considered human—as though they were statements about reality: a bird that doesn't just look like but acts like a bird, and a human that is not just legally a fetus but a normal human for all intents and purposes.

In the context of the Mishnah, however, R. Meir's ruling that "it is a human offspring" seems intended only to affect the length of time that the formerly pregnant woman will be impure, but not to make any claims about the fetus's role in other legal contexts. The Mishnah is explicitly discussing a miscarriage, not a full-term, viable pregnancy, so presumably the question of whether the miscarried fetus would have grown

---

[36] PT Niddah 3:2, 50c, p. 1443.

up to be a normal human was not even a consideration. Yet both R. Yirmiyah and the rabbis in the PT imagine R. Meir's designation of "valid human offspring" to mean not only that its mother must determine its gender and count her days of impurity accordingly, but that the fetus could and even should be expected to have normal human relationships with spouses and siblings. R. Yirmiyah's question uses the example of prenatal betrothal for a female animal-shaped fetus, while the rabbis' challenge in the PT imagines a case in which a male raven-shaped fetus had a married brother who died, leaving the raven-fetus to either perform levirate marriage for the brother's widow or officially release her. Furthermore, just as R. Yirmiyah (in accordance with the rest of the discussion in the BT) implies that the object in the woman's womb is a true animal, R. Meir's detractors in the PT imagine the miscarried raven-shape to be a true bird—hence the need to address it from the top of a tree.

Whereas the PT parallels R. Yirmiyah's rather flatfooted reading of R. Meir in content if not form, the discussion of R. Meir in the BT offers a structural parallel to R. Yimiyah's question and its attendant discussion, showing once again that R. Yirmiyah is unique not because of the content of his questions but because of the way his questions are responded to. Shortly following R. Yirimyah's question, the BT continues to probe R. Meir's position with a question and subsequent analysis that is nearly identical in structure to R. Yirimiyah's, this time asked by R. Ada b. Ahava, a 4th century Babylonian rabbi:

> R. Ada b. Ahava asked Abbaye: According to R. Meir, who said that an animal born from a woman's womb is a valid offspring, what about a human in an animal's womb?
> What would be the legal significance?

> To permit it for eating.
> But [one may] answer from that which R. Yohanan [said], for R. Yohanan said: One who slaughters an animal and found in it the shape of a dove, it is forbidden for eating.

Once again, the BT offers a (quoted) summary of R. Meir's position in which its legal metaphors are turned into ontological statements; a question as to what R. Meir would say about a particular reductio-ad-absurdum-type situation; a counter-question and response regarding the legal significance of the given situation; and finally a statement by an earlier *amora* that is apparently intended to reject the entire premise of the question. Yet here there is no suggestion that the scenario was offered as a joke. In fact, the legal question is affirmed to be a valid one, so much so that just like in the previous example, it has already been asked in another context and answered by another rabbi.[37]

Both the challenge about the raven in the PT and the parallel to R. Yirmiyah's question in the BT take a position in the Mishnah are, each in their own way, taken seriously: the response to R. Meir in the PT is presented as a valid challenge to R. Meir in the form of a reductio ad absurdum, and R. Ada b. Ahava's parallel question is presented as a legitimate (if unnecessary) legal question, a version of which has already been discussed and answered elsewhere. In the case of R. Yirimyah's question, however, the anonymous voice then attempts to reject the entire premise of the question: R. Yirmiyah could never have seriously thought that the animal-fetus would live; rather, he was asking the question as a joke, perhaps even a sort of parody of a Talmudic hypothetical.

---

[37] And, indeed, the opinion of R. Yehudah here also appears at BT Chullin 69a.

R. Aha b. Yaakov's claim that R. Yirmiyah's question is a joke can be read as a comment not only on this passage but on the portrayal of R. Yirmiyah throughout the Bavli.[38] The word meaning "Up until then" (אדהכי) suggests that R. Yirmiyah's attempt to make R. Zeira laugh has been ongoing, and since this is the only such statement by R. Yirmiyah in the chapter, it is hard to understand it other than as a late comment on R. Yirimyah's character in the Bavli as a whole.[39] We thus see further evidence of the construction of R. Yirmiyah's character as consistently predisposed to problematically scholastic reactions to rabbinic modes of thought.

Liminality and Literariness

In the final passage we will examine, R. Yirmiyah's question is not merely verbally rebuked or described disparagingly, but actually results in his expulsion from the house of study. Later on in the same tractate, however, several versions of the story of R. Yirmiyah's reinstatement are offered, contributing both to the literary depth of R. Yirmiyah's character and to his portrayal as problematically scholastic.

The legal narrative in which R. Yirmiyah is expelled occurs during the discussion of the Mishnah's rules about how to determine ownership of a bird that has fallen out of its nest or coop. The Mishnah states that if the bird was found within fifty cubits of a

[38] This is also how Rashi reads it, ad loc.
[39] R. Yirmiyah does ask R. Zeira a question earlier in the chapter, at BT Niddah 21b, but like most of R. Yirmiyah's questions in the Bavli, it is treated as a normal and serious one.

coop, it is considered to belong to the coop's owner. If it is more than fifty cubits away from a coop, its finder may keep it. If it is found between two adjacent coops, it belongs to the owner of the closer coop. Finally, the Mishnah states, "Half and half, the two split it."

As in the previous two passages, R. Yirmiyah's question appears in the middle of a *sugya* that has gotten off to a logically strained start. The discussion of this Mishnah begins with a series of exchanges between R. Zeira and R. Hanina about whether or not there is a general conceptual rule that determines law in the case of doubt.

> R. Hanina said: Between majority and proximity we follow the majority,[40] even though majority is from the Torah and proximity is also from the Torah—even so, majority takes precedence.
> R. Zeira responded: "The city that is closest to the dead body" (Deut 21:3)—even if there is another that is more populous.

The topic of the discussion is R. Hanina's statement that in legal cases of doubt, one must always rule according to probability based on majority rather than probability based on proximity.[41] R. Zeira's initial response seems to be a decisive refutation of R. Hanina's claim: in the biblical case of the broken-necked calf, Deuteronomy explicitly states that the job of providing the ritual animal falls to the elders of whichever city is closest to the

---

[40] This phrase also appears at BT Betza 10b and 11a, though without the rest of the statement about competing principles from the Torah. "Between majority and proximity we follow the majority" is in Hebrew; the rest of R. Hanina's statement is in Aramaic and thus presumably a later addition.

[41] For instance, one classic example in the Talmud of following the majority in a case of doubt deals with a piece of meat found in the town square. If most of the stores in town sell kosher meat, even if several do not, the meat is deemed kosher. Though R. Hanina's entire position does not appear explicitly in that discussion, the ruling seems at least nominally compatible with his principle. R. Hanina's ruling, if applied to this situation, would emphasize that one should not look into whether the meat was closer to one of the kosher stores or one of the non-kosher stores.

corpse. R. Zeira rightly points out that this seems to be the law regardless of whether one city is more populous than another. However, R. Hanina's position is defended by the Talmud's anonymous voice, sparring with an anonymous representative of R. Zeira.

> If there isn't [another nearby city that is more populous].
> And why not go with the most populous city in general?
> When [the corpse] is in the mountains.

The anonymous voice comes to R. Hanina's defense, but its claims are rather weak. First it argues that when the Torah says "whichever city is closest," it is referring to a case where there is no city that is both larger and farther away. This reading is patently absurd, since it ultimately claims that "closest" actually just means "largest."[42] Next, R. Zeira or his anonymous defender suggests that if majority really took precedence, the Torah would point to the largest city anywhere. The anonymous voice responds that the Torah is referring to a case where the corpse was found in the mountains, and was thus presumably hard to reach from far away. This again seems like an extraordinarily unlikely interpretation—not only does the Torah not say any such thing,[43] but it actually explicitly says that the corpse was found in a field. Up to this point, R. Hanina's position seems rather unconvincing.[44]

---

[42] Rashi understands the case where there is no city both larger and farther away to mean that all of the nearby cities are of equal size. This is a somewhat better reading, since it is possible to imagine that the Torah speaks of an ideal legal situation in which all other factors such as population size are controlled for. However, the truly weak suggestion that follows this one makes me inclined to read the pro-R. Hanina anonymous voice less charitably, since it does not seem designed to be truly compelling.

[43] See my analysis of why such restrictive interpretations are flawed, probably consciously so, in Ch 1.

[44] R. Hanina's position is also dismissed when it appears at BT Betza 10b and 11a.

The connection between this argument and the Mishnah becomes apparent when R. Zeira's side then counters by pointing out that the law of the fallen bird also privileges proximity over majority.

> It is taught in a Mishnah: "A fallen [bird] that was found within fifty *amot*, behold, it belongs to the owner of the coop." Even if there is another that is more populous.
> If there isn't one.
> If so, the last clause should say: "Outside of fifty *amot,* it belongs to its finder, and if there isn't [another] one then of course it fell from this one!"
> Here what are we dealing with? With a [bird] that [only] hops, as R. Ukva b. Hama said: Any [bird] that hops cannot hop more than fifty [amot].[45]

The anonymous defender of R. Zeira points out that the Mishnah does not ask which coop contained more birds, but attributes ownership based on which coop is closer. Just as it did in the discussion of the unknown corpse, the anonymous R. Hanina voice again suggests that this rule is referring to a case in which there is no coop that is both larger and farther away. R. Zeira's side understands this to mean a case in which there is no other coop around whatsoever,[46] and disputes this reading on the basis that if so, the claim that "outside of fifty amot it belongs to its finder" is problematic, since in that case the bird clearly belongs to the only coop around!

Finally, R. Hanina's anonymous defender answers by quoting another *amora* and establishing that the Mishnah refers to a bird that cannot fly but can only hop—i.e., a baby bird. Since according to this *amora,* baby birds cannot hop more than fifty *amot*, it

---

[45] The statement of R. Ukva b. Hama also appears at BT Betza 11a.
[46] This reading is weak in that it requires "there isn't one" to mean something different in the anonymous voice's analysis of the Mishnah than in its analysis of Deuteronomy ("there isn't another X anywhere" vs. "if there is another X it must be smaller"), but also somewhat justifiable because the first part of the Mishnah does not in fact give any indication that there is another coop nearby.

is not a legal ruling but actually a fact of nature that if a chick was found more than that distance from the coop, it could not have originated in the coop. Upon closer consideration, however, this position is quite difficult. If it did not originate in the coop and there is no other coop around, how on earth did it get there?[47]

Only after R. Hanina's claim has been painfully, and not especially convincingly, defended does R. Yirmiyah enter with his exile-worthy question. Following this back and forth, R. Yirmiyah asks: "If one of its feet was within fifty *amot* and one was outside fifty *amot,* what is the ruling?" No response is given, but an anonymous voice then relates, "It was because of this that they threw R. Yirmiyah out of the house of study."[48]

At first glance, R. Yirmiyah's question appears problematic because it seems to have just been answered by the Mishnah itself: "Half and half, the two split it!" If this is the case, then R. Yirmiyah's question has no actual content, and can be read as merely a parody of a rabbinic question. Eliezer Diamond takes this position, arguing that R. Yirmiyah's question should be understood as mocking a question asked by R. Hanina

---

[47] One obvious answer would be "from a tree," but interestingly the entire passage here does not even consider the possibility of birds' existences outside of their ownership by humans, so this solution would likely not be considered within the passage's internal logic.

[48] Other stories in the BT about sages who are expelled from the study house include Rabban Gamaliel's removal of R. Meir and R. Natan from the academy for attempting to depose him at BT Horayot 13b-14a, and R. Ami's expulsion of a disciple from the study-house as a consequence for revealing a secret at BT Sanhedrin 31a. The passage at Menachot 37a mentioned in note 32 in this chapter is the closest parallel to this anecdote about R. Yirmiyah: An interlocutor of R. Judah the Prince asks a hypothetical question ("If one has two heads, on which one should he place his *tefillin*") is told to leave the house of study or else accept a ban upon himself. However, like R. Yirmiyah, the questioner in Menachot 37a does not wind up permanently banished. For a general discussion of rabbinic expulsion from the academy, see Rubenstein, *Culture of the Babylonian Talmud*, 141.

elsewhere about a person with one foot inside the Shabbat boundary and one foot outside of it.[49]

However, it is also possible to understand R. Yirmiyah's question as a real one—not a parody of R. Hanina's question but rather, as we have seen in the other R. Yirmiyah anecdotes, a question just like other rabbinic questions that is nonetheless uniquely subjected to collegial rebuke. First, R. Yirmiyah may see the two halves of the Mishnah as relatively self-contained: the second half, which contains the provision about splitting the value of the bird, deals with the rights of two professional bird-owners who could reasonably be owners of this particular bird. The first half, on the other hand, deals with the right of one professional bird-owner and one finder who all agree never owned the bird initially, and whose right to the bird is only triggered by the departure of the bird from its owner's domain; thus, the provision about splitting its value may not apply, since the competing possible claims to ownership do not start off on equal footing. R. Yirmiyah could thus be asking his question about the first half of the Mishnah only, and thus, as in previous passages, asking a question that echoes other serious rabbinic questions yet is treated as distinctively problematic.

This passage also echoes other elements of the other R. Yirmiyah anecdotes we have already seen. Like his question about the betrothal of an animal-fetus, R. Yirmiyah's question here presents a highly improbable hypothetical scenario. And much like R. Yirmiyah's doubts about the establishment of measurements through the use of legal fictions, his question about the liminal bird again casts doubt on the utility of legal

[49] Diamond, "But Is it Funny," 42

fictions—in this case as a method of determining ownership—and in so doing casts doubt on, or at least ignores the importance of, the functional authority of rabbinic ownership law. The phrasing of the narrative itself suggests that R. Yirmiyah's expulsion was either already known to the reader or a narrative inevitability: rather than stating simply "they expelled him from the house of study,"[50] the anonymous voice states that "*because of this* they expelled R. Yirmiyah from the house of study"—as though either the reader already knows that R. Yirmiyah was expelled at one point, and this story clarifies why; or else the reader is already familiar with the other R. Yirmiyah anecdotes and knows that nothing happened as a result of all the other instances, and therefore the narrative states that, in contrast, because of *this* there were consequences. If read through this second lens of literary inevitability, then, the trouble with R. Yirmiyah's question here is not just its content but its repetition. R. Yirmiyah just won't quit, and it is because of this—not necessarily the worst offense, but the last straw—that the rabbis finally throw him out.

Both the narrative continuity and the metaphorical resonance of R. Yirmiyah's expulsion are further emphasized by the "conclusion" of this narrative much later on in the same tractate.[51] In the context of an entirely different legal discussion, several different narratives are presented about how R. Yirmiyah came to be reinstated. In each version of the story, the rabbis collectively send R. Yirmiyah a legal question, and time his responses are phrased in such a way that they could also be interpreted as an expression of R. Yirmiyah's desire to reenter the academy. The first question, "One who

---

[50] Cf. BT Sanhedrin 31a, אפקיה רבי אמי מבי מדרשא, and BT Horayot 13b, פקיד ואפקינהו מבי מדרשא

[51] BT Bava Batra 165b

bore witness in writing and one who witnessed orally—can they be joined?" provokes the response "…thus the opinion of your student inclines: that they can/should be joined (שיצטרפו)." The second version of the question, "Two who witnessed, one in this courthouse and the other in that courthouse—can one courthouse come to another so they can be joined?" again generates the response "they can/should be joined." The third version too asks about witnesses and again R. Yirmiyah responds "they can/should be joined." In each case, R. Yirmiyah's response does not specify "witnesses," but merely affirms the permissibility or desirability of joining, evoking the act of his own subsequent reinstatement. Just in case the literary resonance of "joining" were not enough, the final version of the sages' question for R. Yirmiyah is explicitly about acknowledging the loss of a colleague: "Three who sat to uphold a document and one of them died, is it necessary to write during the session 'We were three, and one is absent?'" R. Yirmiyah answers: "It is necessary to write during the session 'We were three, and one is absent.'" This response also evokes R. Yirmiyah's absence from his colleagues and perhaps even hints that they ought to be more cognizant of his loss from the house of study.

In this legal narrative, R. Yirmiyah and the rabbis use the language of law to communicate about their own relationship as colleagues. Behind what seems to be a standard exchange of legal questions and answers, the legists are expressing powerful emotions of longing for fellowship, the experience of a colleague's absence, and the desire to connect. This story's literary features are thus not limited to the creation of a kind of "plot," albeit a not entirely linear one, in conjunction with the other R. Yirmiyah anecdotes, but exist on the level of evocative imagery as well. This is true of the story of

R. Yirmiyah's initial expulsion as well: if R. Yirmiyah is portrayed as already having set himself up for trouble with his previous problematic questions, then the image of the bird with one foot inside a boundary and one foot outside is a striking metaphor for the status of R. Yirmiyah himself as he asks the question.

Not only are R. Yirmiyah's answers emotionally resonant, but his response each time follows the same formula: "I am not worthy that you sent to me, but thus the opinion of your student inclines…" The humility and tact of R. Yirmiyah's accepted response suggests that there might have been something rude or self-aggrandizing about his initial offensive question, which he is now able to amend.[52] This may be yet another facet of R. Yirmiyah's being constructed and excoriated as the ultimate scholastic: intense verbal debate, often very much at the expense of tact or kindness, was an integral part of both rabbinic and non-rabbinic scholastic culture, yet here R. Yirmiyah is portrayed as needing to atone for his lack of deference.[53] R. Yirmiyah is thus firmly established as a liminal scholastic character through several elements of these passages' literary construction, both in the imagery of his initial question and in the description of his reinstatement.

Conclusion

R. Aha b. Yaakov's characterization of R. Yirmiyah as making a joke is in a way representative of the voice of the later interpreter, whether ancient or modern, whom the

[52] This is how Steinsaltz explains R. Yirmiyah's expulsion.
[53] See Rubenstein, *Culture*, esp. chapters 2 and 3.

text pushes into finding some way to explain the consistently critical treatment of R. Yirmiyah. Like others who have attempted to explain these passages, R. Aha b. Yaakov seems to be reading across or at least picking up on themes in other stories: despite the fact that R. Yirmiyah is never explicitly rebuked in the Niddah *sugya*, R. Aha b. Yaakov nonetheless claims that R. Zeira did not laugh, echoing R. Zeira's disapproval of his colleague elsewhere. More importantly, R. Aha b. Yaakov reads R. Yirmiyah as doing the work of halakhic reasoning in an intentionally (and inappropriately) silly way—even though R. Yirmiyah's questions in that passage seem no more or less silly than many other discussions of law throughout the Bavli.

One could then argue that a great deal of the Talmud is at some level meant to be silly, but that it is only through the character of R. Yirmiyah that this tendency is remarked upon. Daniel Boyarin has argued for a distinct carnivalesque voice in the Talmud, focusing especially on the Bavli's more explicitly narrative portions, and one might argue that legal discussions like the one about the animal-fetus are also part of the Talmud's comic voice.[54] I prefer to remain agnostic as to whether scenarios like these, along with many other scenarios throughout the Bavli involving events such as elephants defecating baskets, weasels swallowing fetuses and vomiting them back up, or men penetrating themselves are intended to be humorous.[55] Just because the modern reader finds them to be so does not mean this was the point of generating such scenarios—the more legally liminal a scenario is, I would argue, the funnier the reader is likely to find it,

[54] Boyarin, *Socrates and the Fat Rabbis.*
[55] BT Menachot 69a, BT Chullin 70a, BT Sanhedrin 75a.

and it is difficult, if not impossible, to determine which came first for the Bavli.[56]

Without having to pass judgment on the comedic intent of the Bavli's case law, one can, however, read the R. Yirmiyah stories as moments of "calling out" some aspects of the Bavli's legal discourse that are actually fairly ubiquitous—and, it seems, that the Bavli's creators feel ambivalent enough about to perform seriously everywhere else. R. Aha b. Yaakov's characterization does not necessarily provide information about whether R. Yirmiyah's question about fetuses or any of his other questions were actually meant to be funny, but it does tell us that a question that is very similar to other rabbinic questions can be understood *by another rabbi* as humorously absurd. These passages, then, may betray the rabbis' awareness that the sorts of questions they ask, if viewed through the right lens, could be understood as something like parodies of legal scholasticism—as performances of caricatures of themselves.

Christine Hayes has also written about the rabbis' self-awareness regarding aspects of their legal discourse. Hayes analyzes several passages in which Palestinian rabbis are described as mocking Babylonian rabbis when the latter propose legal interpretations which privilege legal facts over observable reality in the determination of

---

[56] A famous case that is often taught to first-year law students, *Riggs v. Palmer*, deals with the validity of a will bequeathing a grandfather's estate to his grandson when said grandson, fearing a change to the will, had poisoned the grandfather. The absurdity of this case, indeed the humor if one ignores the fact that this befell real people, is inseparable from the aspects that make it a useful tool for thinking through a tricky legal question. Simple cases are neither useful nor funny. For a description of various approaches to this case by legal writers from Cardozo to Dworkin, see "Statutory Interpretation and Literary Theory: Some Common Concerns of an Unlikely Pair," Kenneth S. Abraham, in *Interpreting Law and Literature: A Hermeneutic Reader*, eds. Sanford Levinson and Steven Mailloux, Evanston, Ill.: Northwestern University Press, 1988, 115-129.

the Rabbinic legal world.[57] Hayes claims that this description of mockery serves as a trope through which the Babylonian rabbis can express some of their own discomfort with their legal methodology. In particular, Hayes sees these passages as manifesting the Babylonian rabbis' awareness of their own tendencies towards nominalist, or what Hayes calls "mind-dependent," law—that is, treating legal facts as real regardless of their correspondence with external realities.[58] According to Hayes, the rabbis were aware that this approach towards law was not necessarily shared by other contemporaneous legal cultures, and they express self-consciousness about this through the mouths of outsiders (here, Palestinians).[59]

Like the passages about the mocking Palestinians, the R. Yirmiyah stories also express ambivalence about the rabbis' legal discourse, and in particular the relationship between law and reality. R. Yirmiyah, it should be noted, is not only a Palestinian, but he

---

[57] Christine Hayes, "In the West, They Laughed at Him: The Mocking Realists of the Babylonian Talmud," *Journal of Law, Religion & State* 2 (2013): 137-167. See also Hayes, *What's Divine About Divine Law*, 229 ff.

[58] The terms "mind-independent" and "mind-dependent," preferred by Hayes, have been more commonly referred to in Jewish studies as "realism" and "nominalism," respectively. Within the context of discussions about late ancient Jewish law, realism is defined as the notion that concepts exist independently of the legislator and that law does not have the power to create new (often abstract) entities in the world. Nominalism, on the other hand, is the belief that concepts can be brought into existence and become truly "real" by means of legislation, regardless of whether or not they have any sort of externally verifiable truth. Hayes has repeatedly argued that although Jewish law is mainly realist, it possesses more of a tendency towards nominalism than other ancient conceptions of divine law.

[59] Both Hayes and Richard Kalmin have also written about the literary displacement of rabbinic self-criticism onto non-Jewish characters in rabbinic literature: Hayes, "Displaced Self-Perceptions: The Deployment of *Minim* and Romans in Bavli Sanhedrin 90b-91a," in *Religious and Ethnic Communities in Later Roman Palestine,* ed. Hayim Lapin (Potomac: University Press of Maryland, 1998), and Kalmin, *Jewish Babylonia Between Persia and Roman Palestine* (Oxford: Oxford University Press, 2006), 87-102.

is at one point in the Bavli deemed the author of every statement attributed to the rabbis "in the west"—so he may even be considered a kind of Palestinian archetype.[60] The R. Yirmiyah stories, however, do not fit so neatly into a nominalism/anti-nominalism framework. The stories about the mocking Palestinians—especially as analyzed through the lens of whether, and to what extent, the rabbis were nominalists—generally reflect discomfort about the employment of specfic legal means towards a practical end. In other words, the question at hand for the mocked Babylonian rabbis, at least according to Hayes, is whether a given case ought to be dealt with from a nominalist perspective, i.e. by creating some kind of legal fiction or otherwise privileging legal facts over empirical acts. This ambivalence about nominalism likewise seems to be at play in R. Yirmiyah's expression of doubt regarding the rabbis' ability to determine one third growth of wheat. In other R. Yirmiyah stories, however, the ambivalence seems less about different sorts of mechanisms for determining legal outcomes and more about a generalized self-consciousness about the increased abstraction, sometimes even to the point of absurdity, of rabbinic legal discourse. The self-consciousness expressed through R. Yirmiyah is not so much about legal means as about legal ends (or lack thereof): should legal discourse entail discussion of scenarios that are useful only for their theoretical implications? In other words: how scholastic should the rabbinic textual community be?

The tension expressed in these passages, then, is not so much about the rabbis' philosophy of law as it is a question of what it means for them to be thinking about law altogether. The rabbis at times seem to function as their community's legislators and at

[60] BT Sanhedrin 17b.

other times as insular legal scholasts, debating intellectual questions that are unlikely to have any bearing on anyone besides those in the study hall. The depictions of R. Yirmiyah's questions and their consequences represent moments of concern about whether they have taken the latter too far—that rabbinic legal discourse may become so internally focused that it becomes primarily an intellectual exercise, and perhaps not even really "law" at all. These moments of raising doubt and then quelling it are ultimately what allows the Talmud to continue taking seriously its work of legal debate and analysis, creating a legal scholastic culture that affirms even the most apparently ridiculous questions as serious, and relevant, business.

III. Truth in Narrative, Truth in Law: The *Stam* as Unreliable Narrator

The *Stam* and its Function

The previous two chapters have explored different ways in which the Bavli's scholastic legal culture is expressed through the use of narrative techniques: first, the increased complexity and emphasis on plot in legal interpretive passages even when it is not strictly necessary to achieve a legal end; and secondly, the use of characterization to highlight ambivalence about the increasingly scholastic nature of late rabbinic legal thought. This chapter will focus on the use of narration in late rabbinic legal passages, and in particular the role of the *stam* as the narrator of legal anecdotes. I will show that while the *stam* has often been characterized as asserting its authority over earlier sources, its narrative voice often also acts to undermine its own textual authority, presenting itself as an unreliable narrator as opposed to an omniscient one. In making this argument, I both reveal another central feature of the Bavli's scholastic legal discourse—the destabilization of legal knowledge through the use of unreliable narration—and also propose a new method of reading the *stam*, one that focuses on the narrative complexities contained within the anonymous layer instead of solely treating its relationship with earlier sources.

In *Tradition and the Formation of the Talmud,* Moulie Vidas proposes a new take on the *stam*'s function in the Bavli, arguing against the prevailing conceptions that the

Bavli's editors are primarily interested in preservation (per David Weiss Halivni[1]) or harmonization (per Shamma Friedman[2]). Vidas claims instead that the *stam* quotes earlier material precisely both to distance itself from those earlier sources and to reject characterizations of rabbis as memorizing and transmitting material without any creative scholarly interaction. It is by establishing itself as the narrator, according to Vidas, that the *stam* asserts its supremacy over the sources it cites. Consequently, the named rabbis become "the narrated rather than the narrators. The *sugya* becomes a text about them, not by them."[3] By narrating a text about these earlier thinkers, Vidas argues, the *stam* highlights its own distance from older ways of analyzing the law, and thus asserts its authority over earlier voices.

Yet Vidas's argument about the *stam*'s function vis-à-vis earlier layers, despite its claim to propose a new alternative to Friedman and Halivni, in fact maintains their basic assumptions about how to read the *stam* and simply reaches an opposite conclusion. Friedman, Halivni, and Vidas all focus on the *stam*'s role in legal *sugyot* as primarily oriented towards some kind of textual relationship with amoraic material, whether that relationship is characterized by drawing those earlier sources near or by distancing them. Both of these approaches, however, still tend to read the *stam* as a relatively flat layer, and ignore the narrative complexities that exist purely within the anonymous layer. While

---

[1] See David Weiss Halivni, *Midrash, Mishnah and Gemara: The Jewish Predilection for Justified Law* (Cambridge, Mass.: Harvard University Press, 1986), 76-92.
[2] See Shamma Friedman, "A Critical Study of Yevamot X with a Methodological Introduction" in *Texts and Studies: Analecta Judaica I,* ed. H. Z. Dimitrovsky (New York: Jewish Theological Seminary of America, 1977), 275-441.
[3] Vidas, *Tradition and the Formation of the Talmud,* 65.

my approach to the *stam* treats it as a layer that is indubitably later than some of the material upon which it comments, and one that reflects the scholastic context in which it was composed much more than earlier amoraic material does, I want to take a much more synchronic approach in this chapter. In what follows, I will present a reading of the *stam* that focuses instead on its textual relationship *with itself.* How does the *stam* portray and relate to its own narrative voice?

By looking at the *stam* from this perspective, I will complicate the argument that the *stam*'s distancing of earlier sources is meant to establish its authority over them. This argument has been made by Vidas as well as by Timothy DeBold, who proposes that the Bavli's anonymous layer "compete[s] with received tradition…in order to assert its own voice as possessing superior dialectical and analytical skills."[4] Other scholars have also argued that the main goal of rabbinic authors in general, anonymous or not, is to assert their own authority. For example, Chaya Halberstam, drawing on Charlotte Fonrobert's work, demonstrates ways in which mainly tannaitic authors sow uncertainty about external reality in order to establish themselves as legal experts, creating "legally-defined facts that are necessary for the formation and perpetuation of the rule of law."[5] While this may well be the tannaitic authors' goal, assertion of legal or textual power cannot be assumed as the primary goal of all rabbinic texts. I will attempt to show instead that an

---

[4] Robert Timothy DeBold, "The Hermeneutics of Textual Hierarchies in the Babylonian Talmud," Ph.D dissertation, Stanford University, 2015, 195.

[5] Chaya Halberstam, *Law and Truth in Biblical and Rabbinic Literature* (Indiana: Indiana University Press, 2010), 29; Charlotte Fonrobert, *Menstrual Purity: Rabbinic and Christian Reconstructions of Biblical Gender* (Stanford, CA: Stanford University Press, 2000).

internal examination of the *stam* reveals a drive to *destabilize* its own authority rather than assert it.[6] This insight may also lead to a different interpretation of the *stam*'s quotation and revision of earlier sources, one based not on the establishment of new, authoritative legal claims, but based instead on the assumption of a posture of extreme skepticism about the possibility of any epistemological certainty.

Christine Hayes has argued that an important feature of rabbinic legal thought is its dissociation of "law" from "truth," making it unique in the ancient world in that respect. However, Hayes claims that the rabbis "divorce truth from *divine* law, not human law."[7] Thus, though Hayes argues that the rabbis relate to their own legal nominalism as a self-aware choice and understand that others might disagree with it or even see it as ridiculous, she nonetheless presents rabbinic legislation as legal information that the rabbis themselves uphold as "true." I suggest in this chapter, however, that the rabbis not only acknowledge outside critiques of their methods of deriving legal knowledge, but they themselves are also skeptical of their own ability to bring law and "truth"—whether epistemological truth or "judicial" truth, i.e., the ability to issue "correct" verdicts—into alignment.

The bulk of this chapter will analyze the *stam*'s narrative role in two different types of legal narrative *sugyot*, each of which employs a formula that calls into question supposedly established narrative facts. My analysis of these two families of *sugyot* will

---

[6] This also fits with my conclusions in the previous chapter, in which I argue that self-reflexivity and questions about epistemology are both central—albeit also contested—aspects of rabbinic scholasticism.

[7] Hayes, *What's Divine About Divine Law,* 244.

reveal that the passages' anonymous narrators destabilize their own narrative authority by asserting facts about a legal anecdote and then revealing those facts to be false, sometimes in multiple different iterations in the same passage. I claim that these passages can be most fruitfully read as examples of unreliable narration.

An unreliable narrator, according to Wayne C. Booth, is one who is portrayed as having fundamentally different norms from the implied author, and is generally one whom the reader is expected to discover as unreliable.[8] This unreliability is not usually premised on the idea that the narrator is deliberately trying to mislead the reader; rather, the unreliability of a narrator is "most often a matter of what [Henry] James calls *inconscience*; the narrator is mistaken, or he believes himself to have qualities which the author denies him."[9] Thus, the unreliable narrator often presents facts that at some level the implied author affirms as accurate, but with an interpretation—especially regarding the narrator's own relationship toward those facts—that is ultimately revealed as false. However, the technique of the unreliable narrator can also lead to a broader sense of narrative instability, as the reader is no longer sure which facts or interpretive moves to trust.

To provide one illustrative example, Henry James employs an unreliable narrator in his short story "The Liar," in which an artist named Lyons reencounters an old lover and discovers that she is now married to Colonel Capadose, who is an inveterate liar. Lyons contrives to paint the Colonel's portrait, in which he artistically reveals the

---

[8] Wayne C. Booth, *The Rhetoric of Fiction* (Second Edition; Chicago: University of Chicago Press, 1983), 158-159.
[9] Booth, *ibid.,* 159.

Colonel's deceitful nature. Although Lyons claims that his goal in painting the portrait is to produce a piece of artwork that displays its subject's true psychology, it is clear that he is also motivated by jealousy and a desire to make the woman who spurned him regret her decision about whom to marry. When the Colonel and his wife discover the cruelty of the portrait, the wife bursts into tears and the Colonel destroys the nearly-finished work by stabbing it with a dagger. Lyons, hiding in the curtains, observes the entire incident, but Colonel and Mrs. Capadose both lie to Lyons about what happened and blame a local commoner.

Lyons, the protagonist, functions as an unreliable narrator in this story. Lyons asserts that it is only the Colonel who lies, and that if his wife also lies it is merely because of the Colonel's training. However, his behavior throughout the story shows that Lyons himself has a great capacity for deceit, and Mrs. Capadose, who gives conflicting explanations of her treatment of Lyons at various points in the story, may in fact also have her own propensities for lying. Lyons also attempts to portray himself as the hero of the story, but his own capacity for cruelty contrasts strikingly with the Colonel's mostly harmless falsehoods and Mrs. Capadose's unflinching loyalty.

Wayne Booth argues that the tale is intended to create distance between a false narrator and a true narrator. However, Booth points out that several other critics have read Lyons as entirely sympathetic, sincerely creating art in the service of Truth. He notes that although this is a poor reading of the story, there are good reasons for the reader to feel ambivalent about Lyons. First, some of Lyons's opinions are, as far as the reader can tell, accurate: Colonel Capadose is indeed a liar; Lyons, who portrays himself as an

extremely talented artist, is apparently just as talented as he claims; and Lyons correctly perceives from the very moment he sees the two of them in the same room that Mrs. Capadose is deeply in love with her husband. Thus, even once the reader perceives that Lyons is in certain ways meant to be unreliable, she is still left with the question, as Booth frames it: "granted that some of Lyons's opinions are unreliable and that some are not, what about the great middle group which are plausible from one point of view, implausible from another?"[10]

Furthermore, often "there is no discernible difference whatsoever" between the voice of the (false) narrator and the voice of the implied author or true narrator. The following passage, which describes Mrs. Capadose's reaction to Lyons's offer to paint Colonel Capadose's portrait, is a remarkable example of free indirect discourse that interweaves the perspective of Lyons with an objective, omniscient perspective:

> Mrs. Capadose objected to this that she really could not consent to accept another present of such value. Lyon had given her the portrait of herself of old, and he had seen what they had had the indelicacy to do with it. Now he had offered her this beautiful memorial of the child — beautiful it would evidently be when it was finished, if he could ever satisfy himself; a precious possession which they would cherish for ever. But his generosity must stop there — they couldn't be so tremendously 'beholden' to him. They couldn't order the picture — of course he would understand that, without her explaining: it was a luxury beyond their reach, for they knew the great prices he received. Besides, what had they ever done — what above all had *she* ever done, that he should overload them with benefits? No, he was too dreadfully good; it was really impossible that Clement should sit.[11]

---

[10] Booth, *Rhetoric*, 252.
[11] Henry James, *The Liar,* in *Henry James: Complete Stories, 1884-1891* (New York: Library of America, 1991), 351.

The narration in this paragraph seamlessly combines the omniscient perspective with Lyons's, and it takes careful analysis to discern which sentence belongs to which narrative voice. The first sentence, which describes Mrs. Capadose's objection, takes the perspective of the omniscient narrator, but the second sentence, which describes the "indelicacy" of the Capadoses' treatment of another portrait (they sold it), takes Lyons's perspective. The third sentence, which comments on Lyons's inability to finish a portrait of their daughter, and the next several sentences after that return to the omniscient perspective. The second to last sentence, which asks "what above all had *she* ever done," interrupts the omniscient narrator's description of Mrs. Capadose's objections with what is again clearly Lyons's resentful thoughts about her, and then seamlessly returns to a neutral, omniscient representation of Mrs. Capadose's response to Lyons. It is thus not always an easy task for the reader to disentangle the unreliable narrator's perspective from that of the implied author, especially when the two voices are interwoven together in the narration, as they are in the above paragraph. As we shall see, the Bavli's use of unreliable narration also entangles the reliable and the unreliable narrators in this way, creating confusion for the reader as to when the switch between narrative voices has occurred and, consequently, which anonymous narrator one can trust.

This story is a particularly striking example of a lack of clear boundaries between the voice of the true narrator and the voice of the false narrator, but it also calls attention to some key features of all uses of unreliable narration (and, arguably, all narration whatsoever). First, the use of an unreliable narrator inherently emphasizes the element of trust, and its inherent risks, in storytelling. The reader must develop some amount of

sympathy and even trust for the unreliable narrator in order for his narration to function at all as a guide for the reader. Any unreliable narrator must therefore convey accurate information at least some of the time, or the conceit of the unreliable narrator—in which the reader is to some extent taken in, only later to realize what the implied author has known all along—would not be effective. On the other hand, the unreliable narrator is ultimately a tool of the implied author, who has proven that he may sometimes hide important facts from the reader by presenting them through an untrustworthy lens. Once the reader comes to distrust the unreliable narrator, then, she must confront the question of to what extent she should trust the implied author at all. Hence, once the unreliable narrator has been established as such, the reliability of all narrative to some extent becomes undermined.

In my analysis of two families of *sugyot* that will make up the bulk of this chapter, I will show that the anonymous narrative voice—the *stam*—of the *sugyot* introduces the possibility of an unreliable narrator and seems to establish a second narrator that is more knowledgeable and authoritative. However, I will argue that in introducing the very notion of unreliability, the *stam* winds up casting doubt on the second authoritative voice as well and, implicitly, on the authority of any supposedly omniscient narrator at all (which, as Booth points out, is a problem for modern users of unreliable narrators as well). I will further argue that in so doing, the *stam* ultimately casts doubt on the ability of any narrator to come to an accurate conclusion about legal subjects. Finally, I will conclude with an analysis of a passage in which the *stam* makes explicit some of the epistemological legal concerns that are implied by its use of unstable

narration. I will show both that the *stam* admits to extreme skepticism about the ability to arrive at legal truth, and that even in that context it continues to emphasize its own narrative self-destabilization.

"It Was Not Stated Explicitly"

The first example of the *stam* as unreliable narrator that I will analyze appears in a particular genre of legal passage in which the credibility of a quoted amoraic dictum is questioned with the phrase "That [dictum] of R. X was not stated explicitly but was stated by inference."[12] The phrase is used in several different ways, including simply as an explanation of the derivation of a dictum that is ultimately upheld as accurate. The particular *sugyot* of this type that I will focus on here, however, all use this phrase to call an aforementioned dictum into question by narrating a misunderstood case story. The *sugyot* that use the phrase in this way all follow the following pattern: A narrator explains that R. X had adjudicated a case in a manner that might indicate to an observer that R. X held a certain legal position; however, R. X did not necessarily hold that position consistently, but was compelled to rule a certain way by the specifics of that particular case, and those who observed the ruling—who presumably were not familiar with the full

[12] This phrase appears in *sugyot* at BT Berakhot 9a, BT Berakhot 11b, BT Shabbat 29, BT Shabbat 146b, BT Eruvin 94a, BT Ketubot 80b, BT Bava Qamma 20b, BT Bava Metzi'a 36a, BT Bava Metzi'a 101a, BT Bava Batra 40b, BT Bava Batra 126a, BT Bava Batra 155a-b, BT Shevuot 21a, BT Menakhot 5b, BT Hullin 94a, BT Hullin 95a, and BT Hullin 111b.

details of the case, which the narrator has made sure to convey by that point—then falsely attributed a more generalized dictum to the adjudicator.

Previous scholarship on the "Not stated explicitly" *sugyot* has focused on the question of which part of the *sugya* ought to be taken at face value: either the original attributed legal position, or else the claim that this original position was mistakenly derived from a specific case ruling. These approaches both take a source-critical perspective, assuming that the passages are all examples of a historically accurate core that has been inserted into a literary or dialectic framework. I will briefly summarize the source-critical arguments as to how to read these passages, and then I will present an alternative reading that proposes a more synchronic approach instead.

David Weiss Halivni, who believes that later rabbis should always be presumed to be reporting as accurately as they can about the dicta of their predecessors, sees the "Not stated explicitly" statements as conveying an accurate account of a misinterpreted case ruling. He believes that these *sugyot* were most likely collected by a witness to the case or circumstance from which the dictum was extrapolated, and who testified that a second witness incorrectly interpreted the scenario.[13] However, Halivni's view that someone actually witnessed the case and its misinterpretation is overly credulous regarding the report of mistaken interpretation. Not only is the report sometimes presented by someone who was very unlikely to have been present, but other signs often suggest that the case is more likely a later invention that was added to the passage.

[13] David Weiss Halivni, *Mekorot u'Mesorot,* 308-309.

Whereas Halivni takes the "Not stated explicitly" statement at face value and thus denies the reliability of the original dictum, Eliezer Segal upholds the validity of the original dictum while rejecting the credibility of the "Not stated explicitly" explanation. Segal thinks that the "Not stated explicitly" statement is most likely to be a purely rhetorical device, and argues that although these passages appear to cast doubt on the reliability of dicta in the Talmud, the doubt itself cannot be taken at face value. Segal notes that the doubtful dicta in these passages most often appear in the context of a dispute, and he argues that "it was not stated explicitly" is thus best understood as just a form of Talmudic legal argumentation, and cannot be taken seriously as a historical source. Segal thinks that in these cases, the original statements ought to be believed until proven otherwise. He does not entirely discount the possibility that some claims of "it was not stated explicitly" might be genuine reports, as Halivni believes all of them to be; however, he distinguishes between claims of this type that are made anonymously and those made by named *amora'im*, taking the latter to be more reliable, since "the 'Amora'im can be presumed to be more knowledgeable concerning the dicta of their predecessors."[14]

Finally, Avraham Weiss argues that because there is no unifying feature of "Not stated explicitly" *sugyot* (since sometimes the dictum is upheld while other times it is rejected, and nothing distinguishes these passages from other *sugyot* in which this term is *not* employed but could have been), it must simply be a rhetorical device—a

[14] Eliezer Segal, *Case Citations in the Babylonian Talmud* (Atlanta: Scholars Press, 1990), 194.

"characteristic of the Talmud's give-and-take."[15] However, in the rest of Weiss's discussion of these *sugyot*, he nonetheless emphasizes the fact that these are examples of dicta that developed from cases, but which were not necessarily actually stated by their supposed speaker. For Weiss, unlike for Segal, the literary/rhetorical function of "It was not stated explicitly" does not preclude them from genuinely casting doubt on the reliability of the original statement. The term may have begun its life as a dialectical tool, but it is also employed in several *sugyot* that do not reject the statement it is attached to at all, as well as in other *sugyot* that—as we shall see—are just as focused on the theme of discrediting an unreliable report as on the legal implications of a dictum's reliability. In such passages, the "not stated explicitly" claim becomes increasingly detached from any rhetorical efficacy.

Segal acknowledges that some statements in the Bavli may be invented. However, he points out that in these passages, many scholars who admit to the unreliability of dicta nonetheless assume that the statement "That [dictum] of R. X was not stated explicitly but was stated by inference" should *itself* be accepted uncritically, perhaps because they are happy to see proof in the Talmud of their own theories about invented dicta.[16] Segal suggests that the "not stated explicitly" claim should not simply be taken at face value,

---

[15] Avraham Weiss, *Le-heker Ha-Talmud* (New York: Feldheim, 1954), 130.

[16] "Those whose concern lies in the realms of higher criticism and redactional studies of the Babylonian Talmud, find in such passages an early precedent for their own critical approach, as the Talmud itself casts doubts upon the reliability of its traditions, suggesting that the students may have invented fictitious dicta, which they mistakenly attributed to various scholars. It would appear, however, that these scholars... are guilty of a certain degree of naivety in the credence that they give to the Talmud's claims that traditions were derived by mere implication. Can we always be certain that this accusation is true?" Segal, *Case Citations,* 193.

but should instead be analyzed as a potential dialectical tool as opposed to an honest attempt at accurately reporting rabbinic opinions.

It seems probable that this usage provided the original context in which this statement appeared, and it does fit well with the format and structure of certain passages that contain the claim. For example, Segal's explanation makes sense as a reading of the following passage, which deals with the question of whether the fruits of land that a woman brings into a marriage can be sold by her husband:

> It was asked of them: If a husband sold land [belonging to his wife] for produce [i.e., on the agreement that someone else should work the land and eat the produce, to which the husband ordinarily has rights], do we say that what he has acquired he has sold, or perhaps when the sages established that the produce belongs to the husband they did so for the prosperity of the household, but not to sell?
> Yehudah Mar bar Mareimar said in the name of Rava: What's done is done.
> R. Pappa[17] said in the name of Rava: He has done nothing.
> R. Pappa said: *That [dictum] that Yehudah Mar bar Mareimar [quoted] was not stated explicitly but was stated by inference*. For there was a certain woman who brought in for his husband two maidservants. The husband went and married another woman. He brought her one of [the maidservants]. [The first wife] went before Rava.[18] She cried; he did not pay attention to her. One who saw thought that it was because "What's done is done." But it is not so—it [i.e., the husband's right to make use of the wife's property] is for the prosperity of the household, and in this case it prospers.[19]

This is a case in which the "not stated explicitly" accusation seems to most clearly play the role of rhetorical device: Yehudah Mar bar Mareimar and R. Pappa have contradictory reports of Rava's position, and R. Pappa is able to discredit his opponent by

[17] Firkovitch 187, Munich 95, Vatican 113, and Vatican 487.11 mss.: R. Pappai.
[18] Firkovich 187: R. Nahman.
[19] BT Ketubot 80b.

describing a case on which Rava ruled, and that R. Pappa claims R. Yehudah Mar bar Mareimar—or whoever was at the case and reported it to R. Yehudah Mar bar Mareimar—misinterpreted.[20]

Another passage likewise seems to use the "not stated explicitly" accusation as a rhetorical tool to discredit the reliability of a legal claim, in this instance regarding the circumstances under which a person may fulfill the requirement to recite a certain prayer both every day and every night. However, as I will argue, both this passage and the previous passage contain a level of detail that cannot be explained by merely categorizing them as argumentative tools.

> It was taught in a *baraita*: R. Shimon ben Yohai says in the name of R. Akiva, There are times when a person performs the recitation of [the] "Hear [O Israel" prayer] twice during the day, once before the sunrise and once after the sunrise, and through these he fulfills his obligation—one for the daytime "Hear [O Israel" prayer] and one for the nighttime "Hear [O Israel" prayer].
> R. Aha said in the name of R. Hanina that R. Yehoshua b. Levi said: The law follows R. Shimon, who said it in the name of R. Akiva…
> When R. Yitzhak b. Yosef came, he said: *That [dictum] of R. Aha in the name of R. Hanina about the statement of R. Yehoshua b. Levi was not stated explicitly but was stated by inference.* For there was a certain pair of sages who became drunk at the wedding feast of R. Yehoshua b. Levi's son. They came before R. Yehoshua b. Levi. He said: [The relevant opinion of] R. Shimon is appropriate to rely upon in an emergency.[21]

Like the previous passage, this *sugya* does seem to employ the "not stated explicitly" claim as a dialectical tool to discredit an assertion of legal fact. Segal certainly makes an important point that these rabbinic expressions of doubt about the authenticity of dicta are

---

[20] Segal, on the other hand, claims that statements made by *amora'im* about their direct predecessors are *more* likely to reflect historical truths.
[21] BT Berakhot 9a.

doing more work in the *sugya* than simply expressing skepticism about the accurate transmission of rabbinic opinions. However, his reading of the "not stated explicitly" claim as a dialectical tool, which is based on the belief that the case story exists independently and is being "distorted" in the *sugya*, is still overly credulous about the existence of some kernel of historicity in these passages, and does not always fit with the actual relationship between the original dictum and the story from which it is supposed to have been mistakenly derived.[22]

Furthermore, to read these two passages as either historical accounts of misinterpreted (or, in this case, erroneously transmitted) case scenarios, as Halivni suggests, or as purely argumentative tools, per Segal, is to miss the narrative richness they contain. The narration of each case contains literary details that are not strictly necessary for verifying the accuracy of legal claims or rulings, but serve to heighten the drama of both stories. In the previous case story, the line "She cried; he paid no attention to her" seems to emphasize Rava's commitment to his legal position despite the distress of the claimant before him. In the story above, the identities of the participants in the legal case scenario, as well as the circumstances of the scenario itself, all add to the reader's sense of empathy both for the claimants and for the rabbi who produces the legal ruling. A legal question about leniency about fixed times for prayer is brought to a sage by, presumably, rabbinic colleagues of his who have been celebrating with him at his own son's wedding. It is easy to imagine that not only does R. Yehoshua b. Levi intend

[22] For a list of instances in which the inference is upheld, see Weiss, *Le-heker,* 128.

his one-off ruling to help out his unnamed colleagues, but that in fact he is in a similar situation and intends to rely on this leniency himself.

These details help create a vivid narrative world for the reader, one that seems intended to spark empathy. The reader feels sorry for the crying wife who is being ignored by Rava, while the fact that the adjudicator is himself one of the main celebrants at the wedding helps to emphasize a sense of solidarity with the guests who were too caught up in celebrating to properly plan for the fulfillment of their regular prayer times. These passages thus implicitly introduce the notion that the presentation of narrative facts can have an influence on either the creation of a legal outcome or how that outcome is perceived.

Another passage in which the "not stated explicitly" claim clearly takes on a narrative life beyond its rhetorical use deals with a disagreement over whether a watchman who entrusts goods to another watchman is liable if damage to the goods occurs. Ordinarily the first watchman would be liable for any damage that occurred to the goods in his care, but it is unclear whether or not his designation of a new watchman also transfers his liability to the other person.

> It was stated: [Regarding] a watchman who entrusts [goods] to [another] watchman: Rav said [the first watchman] is exempt [from liability] and R. Yohanan said he is liable…[23]

After presenting two conflicting opinions, the passage then provides a description of each *amora*'s reasoning. According to Rav, any conveyance of the goods to a mentally competent watchman is considered to be a perfectly acceptable form of guarding those

[23] BT Bava Metzia 36a.

goods. According to R. Yohanan, on the other hand, since the original owner of the goods specified a particular watchman and either explicitly or implicitly conveyed that he did not want a different watchman to guard them, the first watchman is not permitted to designate another person to act in his stead. However, after the passage presents a reasonable-seeming explanation of Rav's line of reasoning, the entire notion that Rav ever held that position is called into question.

> R. Hisda said: *That [dictum] of Rav was not stated explicitly but was stated by inference.* For there were some gardeners who would deposit their spades with a certain old woman. One day, they deposited them with one of [the gardeners]. He heard the sound of a wedding party. He went out and deposited them with the old woman. Before he went and came back, their spades were stolen.
> He came before Rav and he exempted him. One who saw thought that [the ruling was] because a watchman who entrusts [goods] to a watchman is exempt, but this was not true—this case was different, because every [other] day as well they themselves would deposit it with that old woman.

R. Hisda claims that Rav never really said—and in fact never believed—that the secondary watchman was exempt from liability. Rather, someone saw Rav rule to exempt in a case with unusual features—and significantly, ones that would not be immediately apparent to the average bystander—from which one cannot justifiably extrapolate to other cases about watchmen.

It seems unlikely that this is a genuine report of a case. As in the passage about the drunken guests at the wedding feast, the fact that the case about a first-generation *amora* is written entirely in Aramaic is already a potential indicator that the story is a later invention. Furthermore, the story seems as though it is a particularly late and carefully formulated addition to the passage because it not only takes into account Rav's position, but the reasoning that the anonymous layer ascribes to R. Yohanan as well. The

explanation given for why this story cannot be proof for Rav's supposed position is that in this case, the "secondary watchman" was actually the normal watchman that the owners used every day, and the primary watchman, being one of the owners himself, would of course have known that. Thus, at least according to the logic attributed to the two sages in this passage, even R. Yohanan could not say in this case that the original owner didn't want the goods entrusted with the secondary watchman, and would presumably rule to exempt the primary watchman from liability.

Once again, we find that there are literary features of the case scenario in this *sugya* that are significant in and of themselves, regardless of whether the original dictum, the (mis)interpretation of the case, or indeed the case itself ever historically occurred. Not only does the narrator of the case include the information that the gardeners would regularly deposit their spades with the old woman—the piece of information that inclines Rav to rule leniently—but it also mentions that the gardener-watchman was distracted from guarding the spades by the sound of a wedding party. This detail humanizes the gardener-watchman and likely increases the reader or listener's sympathy for him, but more importantly for our purposes, the inclusion of this detail also establishes a contrast between two different narrators presented by this passage. The first narrator, who claims that Rav says the first watchman is exempt from liability, is undermined by a second narrator, who makes the "not stated explicitly" claim and supports it with a description of a legal scenario. This second narrator is portrayed as omniscient. He seems to know every detail of the case: not only the gardeners' usual practice, but the particular events and even internal mental states (distraction) that occurred to the gardeners on the day of the

theft. Because of this narrator's omniscience, it is able to discredit the narrator represented by the "one who saw," presumably also the narrator of the statement "Rav said [the first watchman] is exempt [from liability]," implying that this other narrator is unaware of the full facts of the case.

As previously mentioned, however, once the possibility of one unreliable narrator has been established, the reliability of any narration becomes suspect. The device of the unreliable narrator is always predicated on the initial plausibility of that narrator's ultimately rejected interpretations, which can make it difficult for the reader to fully discount the supposedly inaccurate version of events. The narrator who is supposed to be "reliable" may have more information about the gardeners' everyday behavior, but this only highlights the potential problem of missing information for any narrator. What if the supposedly "unreliable" narrator has more information than the "reliable" one about Rav's rulings in other similar cases? By creating an unreliable narrator, then, the implied author may also implicitly cast doubt on his own narrative authority in general.[24]

In the following passage, we will see the same pattern, with the added twist that the "not stated explicitly" claim will be made against not just one but both sides of an argument. Although Segal argues that this feature of the passage shows that the claim here is being used as a rhetorical device to justify conflicting positions, here too it seems to serve a deeper purpose of expressing uncertainty both about the relationship between

---

[24] This is also how David Henschke reads the *sugya* above: "But the truth is that the only certainty [here] applies to the negation of [the ability to form a] deduction from this anecdote, and there is absolutely no knowledge of Rav's approach to liability." Henschke, *Mishnah Rishonah Be-Talmudam Shel Tana'im Aharonim: Sugyot be-Dinei Shomrim* (Ramat Gan: Universitat Bar Ilan, 1997), 311.

legal principles and their application, as well as the ability to accurately derive legal information either from dicta or from observed cases.

> R. Asi said: A first-born who took a share [of inheritance] equivalent to the single share has given up his right [to the double share]. How has he given up his right?
> R. Pappa in the name of Rava said: He has given up his right to that particular field.
> R. Pappi in the name of Rava said: He has given up his right to all of the possessions.
>
> R. Pappa in the name of Rava said that he has given up his right to that particular field—he held that the first-born does not have [ownership of his portion] before it is divided up, and he may relinquish what has [already] come into his hands, but the rest he may not relinquish.
> R. Pappi in the name of Rava said that he has given up his right to all the possessions—he held that the first-born does have [ownership of his portion] before it is divided up, and since he has relinquished this, he relinquishes the rest.
>
> *And those [dicta] of R. Pappi and R. Pappa were not stated explicitly but were stated by inference.* For there was a certain first-born who went and sold his own possessions and those of the single share [sons]. The orphans of the single-share sons went to eat dates from [the fields of] the buyers. [The buyers] hit them. The relatives [of the orphans] said to them: Is it not enough that you bought their possessions, but you also hit them?!
> They came before Rava. He said: He has not done anything [i.e., the first-born has not accomplished a legally valid act with his attempted sale]. One thought that he had done nothing regarding half [i.e. the single shares, but not his first-born's share, which he rightly sold], and one thought [that he had done nothing] regarding all of it.
>
> They sent from there: A first-born who sold [an inheritance] before it is divided up has done nothing [legally valid]; therefore, the first-born does not have [ownership of his portion] before it is divided up. But the law is that the first-born does have [ownership of his portion] before it is divided up.[25]

[25] BT Bava Batra 126a.

This passage deals with the question of when a first-born son can be legally said to own his inheritance such that he may dispose of it at will. Does the first-born have legal ownership of a numerical percentage of the estate, which would mean that he can make decisions about it while it is still unclear which physical portions of the estate will be his, as per R. Pappi? Or does his ownership not take effect until the estate has been divided up and it has been determined which particular plots of land he will receive, as per R. Pappa?

R. Pappi and R. Pappa are said to have derived their positions from conflicting interpretations of a case in which Rava ruled that a sale of property by a first-born son was somehow invalid, implying that he did not have legal ownership over at least some part of the estate—perhaps just his brothers' shares, or perhaps his own portion as well. This *sugya* is unique in that both sides of the rabbinic argument are characterized as stated by inference. Segal picks up on this fact to argue that the "Not stated explicitly" claim is more likely to be a rhetorical device than an authentic report: "There is no compelling reason to see the 'derived by implication' claim as a factual historical tradition. It may be the observation of a late redactor who thought that the case would provide a reasonable explanation for the origin of the conflicting traditions about Rava's opinion."[26] This argument is not especially compelling, however, as conflicting traditions about an earlier rabbi's opinions abound throughout the Bavli, and it is unclear why the redactor would have been particularly motivated to explain such a disagreement in this case.

---

[26] Segal, *Case Citations,* 201.

Although on the surface it appears as though Rava's ruling that "He has not done anything" was "Not explicitly stated" because it could be interpreted multiple ways, the pathos of the case—especially in light of all the cases we have seen so far—also implies that Rava's ruling cannot be taken as the basis of any broader legal principle because the particular circumstances of the case would surely have inclined him towards a merciful verdict. Yet again, the case is presented in such a way as to emphasize the difference between law in the abstract and justice in a specific case, implying that a judge would be cruel not to rule as Rava did and call at least part of the sale invalid. After all, how could justice deny the plight of penniless, abused orphans?

This tendency to want to agree with the unreliable narrator because at least some of the things he says are (or could be) true is even more apparent in yet another "not stated explicitly" passage, which deals with the legal status of a written transfer of property that was produced secretly, meaning that it was purposely written outside the public eye.

> Said R. Yehudah: We do not collect on a secret deed of donation… Rava said: [The order to write a secret deed of donation] is a legal protest against another [disposal by deed]. [In other words, if someone transferred an item via a secret deed and then tried to transfer that item to someone else, the secret deed nullifies the second transfer attempt.]
>
> R. Pappi[27] said: *That [dictum] of Rava was not stated explicitly but was stated by inference.* For a certain man went to betroth a woman. She said to him: If you write [a document giving] me all of your property, I will be yours. If not, I won't be yours. He went to write [a document giving] her all his property. His oldest son came by. He [the son] said to him: And what will become of this man [i.e. me]? He [the man] said to the witnesses: Go hide in Ever Yeminah and write [a secret deed transferring

[27] The Vilna edition has "R. Pappa," but "R. Pappi" is attested in the Paris, Hamburg, Florence, Oxford and Vatican manuscripts. Escorial has "There are those who say."

> the property to the son]. (They wrote for him and then they wrote for her.)[28]
> They came before Rava. He said to them: Neither one has acquired.
>
> One who saw [the case] thought that [Rava's ruling] was because [a secret deed of donation] is a legal protest against another [disposal by deed], but this was not true—in this case it was clear that he was forced to write her [the deed]. But [in general], he [the grantor] wants one person [i.e., the public recipient] to acquire but he does not want the other person [i.e, the secret recipient] to acquire.[29]

The two contrary positions of Rava and R. Yehudah are stated here definitively: Rava holds that secret deeds of donation invalidate any future transfer of those goods by a different deed, whereas R. Yehudah holds that secret deeds are legally meaningless. However, R. Pappi's claim, that Rava's position was not stated explicitly but was (incorrectly) derived from a case, creates a complex interplay of subject positions, some of which—including the anonymous voice itself—are thus called into question. R. Pappi (or an anonymous gloss expanding the "not explicitly stated" claim attributed to R. Pappi) claims that once there was a case in which a man wrote a secret deed donating all his property to his son and a second deed donating all his property to a woman he wished to marry. When the case came before Rava, he ruled that neither deed was effective. R. Pappi then introduces an anonymous observer, the "one who saw." This observer saw Rava's ruling and deduced that Rava must have held the position that secret deeds nullify future deeds, and therefore thought that the secret deed to the son cancelled out the second deed to the woman.

---

[28] The clarifying parenthetical comment is attested in the Escorial and Hamburg manuscripts.
[29] BT Bava Batra 40b.

R. Pappi then contrasts the mistaken deduction of the "one who saw" with the "true" explanation of Rava's position. According to the "true" explanation, Rava generally believes that in the case of doubly deeded property, there is one recipient whom the giver prefers to the other, and most of the time one can assume that the preferred recipient corresponds with the public deed. Therefore, according to R. Pappi, Rava generally would *not* hold that secret deeds nullify future deeds. However, in this particular instance, Rava—and likewise the reader of this case anecdote—has more information about the legal subjects and their preferences, to which the "one who saw" is apparently not privy. Because Rava knows that the man was "forced" to publicly entail his property to the woman in order to marry her, he therefore rules that in this case the son is the preferred recipient, but since one still cannot collect on a secret deed, neither deed is valid.

However, yet again, the establishment of the unreliable narrator in this passage subtly undermines the authority of any narration in the passage at all. The claim of the supposedly reliable narrator—that the plaintiff here was forced to write the public deed to the woman—takes a particular view of intentionality. The woman gave him an option: either he could sign over all his property to her and marry her, or he could decide that this demand seemed like a red flag and call off the betrothal. The man decided that he wanted to marry the woman, and he made the choice to give her all his property. He did so as a means to an end, not necessarily because he would otherwise have donated his property to her, but to say that this was a "forced" donation is difficult—if the case had ended at "He went to write a document giving her all his property," would this donation have been

made invalid simply because he made it in order to secure his marriage to her? It must be the case, then, that Rava at least *sometimes* thinks that a secret deed of donation can act as a legal protest against another disposal by deed—in which case the inference about his opinion is actually at least somewhat accurate. Thus, just as Lyons's characterizations of himself and others in James's *The Liar* seem at times to be reliable, the view of the "unreliable" narrator is ultimately at least partially upheld, making it more difficult to completely discount the supposedly inaccurate position.

The "reliable" narrator's analysis of this passage is more compelling when one reads "forced" not as a legal claim but rather as a claim about where the judge's—and the reader's—sympathies are bound to lie. The woman is presented as mercenary and unsympathetic to the fact that the man apparently already has sons from a previous marriage; the son is portrayed as wronged and upset. Even if a judge truly believed that the secret deed to the son was legally meaningless in every way, who would want to rule in favor of the wife and allow her to pressure her hapless lover into disinheriting his own offspring? When viewed this way, however, the "reliable" narration does not gain credibility by providing the fullest and most accurate report of the facts, despite the fact that it presents itself that way, but by offering an analysis that conforms well to the reader's sensibilities and expectations of justice.

Furthermore, the unreliable narrator who is undermined in this passage is actually associated with the main narrator of the Bavli, the anonymous voice. By establishing the character of the anonymous observer who misinterprets the meaning of Rava's ruling due to inadequate background information, the passage here contrasts the "one who saw"

with the voice of the "true" narrator of this passage, whom presumably the reader is supposed to see as more reliable given this narrator's full knowledge of the details of the case. Yet the "one who saw" *is* the implicit narrator of the first part of the *sugya*, before the "not stated explicitly" claim. The two contradictory positions, R. Yehudah's and Rava's, are not relayed through other *amora'im*, as in the *sugya* about a husband's control over his wife's possessions, or even presented as an unattributed amoraic statement as in the passage about the gardeners, but are simply stated as fact by the Talmud's anonymous voice. It is this statement by the *stam* itself that is revealed to be a mistaken inference by an unreliable viewer.

Finally, we will see an example of this type of *sugya* in which every piece of narrated information—the statement of the original dictum, the dictum's contravention by means of the "not stated explicitly" formula, and the explanation of the story that was apparently misinterpreted—is presented anonymously. This passage deals with the permissibility of eating meat when any doubt has been raised as to its provenance, thus raising the possibility that it may be meat that is either impure or improperly slaughtered.

> Rav said: Meat that has disappeared [from sight] is forbidden…
> *Behold, that [dictum] of Rav was not stated explicitly but was stated by inference.* For Rav was sitting at the crossing-board of the Ishtatit [canal]. He saw a certain man who was washing a head. It fell out of his [grasp], and he went and brought a basket. He threw it in and pulled out two [heads].
> Rav said, "Is such a thing really usual?!" He forbade them [both] to him.
> R. Kahana and R. Asi said to Rav: Are forbidden heads common and permitted heads uncommon?
> He said to them: Forbidden heads are more common.
> And so what if it [was stated] by inference?
> It was a port [occupied mostly by] Gentiles.

> Indeed, [you may] know this, since he said to him that forbidden heads are more common.[30]

In this passage, Rav is quoted by the first narrator as ruling that any meat which has gone out of sight—even for a brief period of time—should not be eaten. However, the second narrator explains the circumstances of the case (not an official court case, but an issued practical ruling) that led Rav to state a version of this ruling, but one that would not be more broadly applicable. According to the second narrator, this ruling was issued only in response to a case in which a man was washing a head in the river, dropped it, and somehow retrieved not just one but two heads from the water.[31] However, if the head-washer had dropped his cargo and then recovered a single head, perhaps Rav would have permitted it to him.[32]

The passage ends with a question about the legal implications of this apparently being the case where Rav originally issued this ruling—why not extrapolate from this case to other cases? The anonymous voice responds by explaining that clearly the location indicates that this is a community where the majority of butchers do not follow rabbinic laws of slaughter, a statement that seems to be justified by Rav's claim that "Forbidden heads are more common." At first glance, this seems to be an example of the

---

[30] BT Hullin 95a-95b.

[31] As in Ch. 2, here we have another instance of difficulty distinguishing whether the story's surprising details are intended to be humorous or simply legally relevant. Both the potential humor in this story and what Rav identifies as their legal import can be summed up in the question "Is such a thing really usual?!"—dropping a head in the river and finding two heads is absurd, which is both what makes it funny and also what makes Rav decide that this occurrence, which cannot be explained as a result of normal circumstances, should cause both heads to be forbidden.

[32] See Ritva ad loc.

stam asserting its superior knowledge (or deductive abilities) over the rabbis it quotes, since even R. Kahana and R. Asi do not seem to understand that this is a location in which a given unknown head should be considered unfit to eat. However, when the entire passage is viewed as one unit, it becomes clear that the anonymous voice here is also undermining the certainty of its own legal knowledge—whereas at first an anonymous narrator asserts that Rav issued a specific ruling, the second anonymous narrator attempts to explain why this is not the case. This passage is thus another example of the *stam* simultaneously portraying itself as possessing more information than other narrative voices in the passage, yet also undermining its own earlier claims.

James's use of unreliable narration contrasts a biased character with an impartial omniscient observer, who seems to represent the implied author, to highlight the ways in which the character's unacknowledged desires affect his judgments and perceptions. The Bavli passages we have seen also use an unreliable narrator to highlight the impact of personal motivations on the formation of judgments. In *The Liar,* the prejudices of the narrator—Lyons's desire to humiliate his ex-lover's current husband, which he attempts to deny both to himself and to the reader—are what cause his narration to be unreliable. In the "not stated explicitly" family of passages, however, it is frequently the narrator posing as the "true" narrator, that is, the voice exposing an earlier false narrative claim, who describes the details surrounding the case scenario that caused the judge to issue a potentially exceptional ruling—often a ruling that is prejudiced towards one of the parties as a result of this extralegal information.

Whereas for James, the omniscient narrator's claim to truth resides in its superior knowledge of the unreliable narrator's prejudices, ones which he will not admit to himself and which therefore color his analysis, the Bavli narrator's veracity resides in its superior knowledge of the judge's prejudices. The Bavli's unreliable narrator is mistaken because it does not know or account for the fact that the judge may have been swayed by the particular facts of the case; the reliable narrator, on the other hand, understands the way the particulars of the case impact the judge beyond the "letter of the law." Thus, while the omniscient narrators in both texts are portrayed as trustworthy because they alone have the ability to understand and reveal bias, James's implied authorial voice portrays Lyons's biased viewpoint as deeply flawed and problematic, whereas the Bavli's narrator is neutral or perhaps even sympathetic towards the judges' biases, portraying them as a factor that must be taken into account in legal analysis because, it seems, they are an inherent part of the way legal judgments work. The Bavli's use of this technique suggests that access to a greater number of facts does not necessarily ensure "objective" judgments or ones that can be applied as general legal rules; in fact, quite the opposite. Judging, these passages imply, is always contingent on narrative, and all narrators will inevitably be influenced by their own prejudices, regardless of how much information they may be privy to.

Law's Embarrassment

In the previous section, I have argued that the portrayal of an unreliable narrator in the "not stated explicitly" family of *sugyot*, often represented by the construction of "the one who saw," has the effect of destabilizing narrative certainty more generally and implying that legal truth is itself unstable because it is always contingent on the presentation of facts. However, one might still maintain that the best reading of the use of "it was not stated explicitly but was stated by inference" in the above *sugyot* is that they serve a dialectical purpose, as Segal argues. Segal's claim that the phrase is being used to craftily discredit a historically accurate dictum may be overly credulous, but the phrase still contributes to the general argument of the *sugya*: when one voice in the *sugya* claims that an earlier rabbi held a specific legal position, another voice attempts to discredit the first voice and prove that no such position was ever really held. This use of the phrase as a way of dealing with an apparent argument between *amora'im* also fits with the general tendency of the *stam* to reduce or narrow the scope of debates, often by claiming broad agreement between two positions and limiting the point of disagreement to something relatively minute.

Nonetheless, even while this feature contributes to the dialectical structure of the *sugya*, it is also true that the *stam* is making a subtler point about the inherent unreliability of its own narration. I would like to further bolster my claim that the *stam* means to destabilize its own narrative authority by analyzing a second family of *sugyot* in which the *stam* again revises its own narrative, this time without any clear dialectical

purpose. These stories, which all contain the phrase "In the end it was revealed," contain at least one and sometimes two instances of the dramatic introduction of important and previously missing narrative facts. Like the "not explicitly stated" *sugyot*, these passages also all involve legal anecdotes in which claimants come before rabbis for judgment.

One such story appears as a sort of etiology for a statement that Rava makes regarding an apparent logical difficulty with a woman accepting a writ of divorce from her husband: if, according to rabbinic law, a woman must take legal ownership of the writ in order for it to take effect, but everything a wife owns belongs to her husband, then how can she truly acquire the writ when her supposedly acquiring body itself is still the husband's? Rava announces that in fact the writ and the hand become hers simultaneously: in an ouroborous-like moment of legal magic, the writ causes her to be an unmarried woman, which causes her body to be able to take ownership of its own possessions, which causes her to be able to acquire the writ, which causes her to be an unmarried woman.

The following narrative is then presented as the court case at which Rava first made this claim:

> There once was a dying man who wrote his wife a writ of divorce on Friday afternoon, but did not manage to give it to her. The next day he became very ill (lit. "the world was heavy for him"). People came before Rava.[33] He said to them: Go tell him to transfer to her ownership of the place where the writ of divorce is sitting, and let her go and close the door and open it and take ownership of it… R. Ilish said to Rava: [But] whatever a woman acquires, her husband [in fact] acquires! Rava was embarrassed. In the end it was revealed that she was his fiancée. Rava

[33] It is not clear who—perhaps concerned family members.

> said: If they said this about a wife [that whatever she acquires is owned by her husband], will they say it about a fiancée?[34]

In some ways, this passage is thus similar to the "not stated explicitly" family of *sugyot*: the anonymous narrator initially makes a claim (a dying man attempts to divorce his wife) that a second iteration of the anonymous narrator reveals as mistaken due to the first narrator missing information (the intended divorcee was assumed to be the man's wife, but in fact it was the man's fiancée). However, whereas in the first family of *sugyot*, the missing narrative information works to heighten the drama of the story by adding details that make the case stories more emotionally resonant for the reader, in this passage the missing narrative information in fact deflates the narrative: the tension was produced by the fact that the man seemed to be unable to grant his wife a divorce and needed a rabbi to help him do so, which Rava thought he could do, but was terribly mistaken. Once the wife is revealed not to be a wife at all, however, the tension disappears, since the man can now grant his wife a divorce without Rava's help at all, and Rava's ruling is no longer tragically mistaken but merely superfluous.

At this point in the story, the narrator seems to be in control of the passage's outcome, and through the revelation of new information has saved both Rava from issuing an incorrect ruling and the woman from not being able to receive her writ of divorce. Surprisingly, however, it is ultimately Rava who regains the upper hand, wresting control of the story's legal implications back from the narrator:

> Then Rava said: It doesn't matter if she is a fiancée or a wife; the writ of divorce and the courtyard enter her possession simultaneously.

---

[34] BT Gittin 77b; see also parallel at Gittin 29b.

Rava apparently does not want to be saved by the narrator, and makes a claim that renders the narrator's intervention irrelevant and reestablishes himself as the hero of the story. The dramatic revelation of the woman's marital status is now peripheral to the story's ending, as Rava justifies his original ruling on the basis of this new claim about how divorce law works (or ought to work). Rava ultimately saves the woman himself, without any external narrative assistance. All of this—including Rava's rejection of the use of the narrator's retelling of the facts—is of course still being portrayed by the narrator, who has now produced a *sugya* in which it is shown to be both unreliable (it first describes a "wife" and then corrects to fiancée) and indeed unnecessary.

A second example of this type of *sugyot* that I will discuss is one that Barry Wimpfheimer also treats extensively in the fifth chapter of *Narrating the Law.* Wimpfheimer portrays this *sugya* as an instance of the *stam*'s assertion of its own authority over and above the named rabbis whom it quotes. However, as I will show, this passage is in fact yet another example of the *stam*'s *undermining* of its own narrative authority.

The passage begins with a case story about renters who were negligent with the item they had rented, thus causing its damage:

> Mareimar bar Hanina rented out a mule to [the residents of] Beit Hozai. He went out to raise up the load with them. They were negligent with [the mule] and it died. They came before Rava and he declared them liable. The sages said to Rava: "This is [a case of] negligence with the owner [in service]!"[35] [Rava] was embarrassed.[36]

---

[35] This formulation courtesy of Wimpfheimer, *Narrating the Law,* 112.
[36] BT Bava Metzia 97a.

Though Rava rules that the renters are liable for the damage they caused to the mule, Rava's colleagues object that Rava has incorrectly classified the legal situation: although in general, renters are liable for any damage that occurs while the rented object is in their possession, this is not the case if they have also engaged the owner's services as a worker along with the object at hand.[37] Once again, however, the narrator reveals a heretofore hidden narrative detail and thus proves that Rava had apparently ruled correctly all along:

> In the end, it was revealed that [Mareimar bar Hanina] had gone out to supervise the loading.

But this revelation is then, again, immediately portrayed as unnecessary, as Rava's ruling is reclaimed as valid even given the original version of the facts:

> This makes sense for one who says that [a case of] negligence with the owner [in service] has no liability—therefore he was embarrassed. But for one who says there is liability, why was he embarrassed?

The narrator points out that even without the narrator's intervention, Rava could have responded in defense of his position. As Wimpfheimer convincingly points out, even though the dominant reading of passage treats Rava's embarrassment as marker of forgetting a legal rule, thus taking his colleagues' objection at face value, the case of Mareimar's mule "does not seem to meet the threshold of owner presence."[38] In other words, it is surprising that Rava has nothing to say in response to his colleagues' rebuke, since an exemption of the renters would require that they had employed the owner's

---

[37] Based on a midrashic interpretation of the Biblical verse "If a man borrows something from his neighbor and it breaks or dies, **and its owner is not with it**, surely he shall pay" (Exodus 22:13). It is worth consulting Wimpfheimer on this *sugya* for a more detailed explanation of the legal details involving liability attached to borrowers or renters in various different scenarios.

[38] Wimpfheimer, *Narrating the Law,* 113.

services, not merely that the owner was present and assisting the renters of his own accord, as seems to be the case in this scenario.

Wimpfheimer argues instead that the true cause of Rava's embarrassment must be because he tends to look for opportunities to rule leniently towards the borrower, and he has failed to do so in this case. This is an ingenious reinterpretation of Rava's reaction, and one that is much easier for the reader to accept than the *stam*'s much more radical interpretation. However, it is not the explanation that the *stam* offers. Instead, as in the previous example we saw, in which the saffron plants were transformed into fruit trees, the entire case is re-narrated to explain why Rava was ashamed. This new version of the story allows the entire ending to remain the same, word for word:[39]

> They were certainly not negligent with it, but rather surely they stole it, and it died naturally while in the house of the thief. They came before Rava and he declared them liable. The sages said to Rava: This is [a case of] theft with the owner [in service]!"

---

[39] Another instance of this type of *sugya* that takes nearly the same structure, including the revision of the narrative to affirm that the embarrassed sage had a good reason to feel embarrassed, appears at BT Bava Metzia 81a-b:

> There were certain ice plant growers who [had an arrangement in which] every day one of them would bake for everyone. One day they said to one of them: Go bake for us. He said to them: Guard my cloak for me. Before he came back, they were negligent with it and it was stolen. They came before R. Pappa and he declared them liable. The sages said to R. Pappa: "Why? This is [a case of] negligence with the owner [in service]!" He was embarrassed. In the end it was revealed that at the time he was drinking beer [and not baking].
> This makes sense for one who says that [a case of] negligence in the presence of the owner has no liability—therefore he was embarrassed. But for one who says there is liability, why was he embarrassed?
> Rather, that day was not his day [to bake], and they said to him, "You go bake for us," and he said to them, "In exchange for the payment of my baking for you, guard my cloak." Before he came back, it was stolen. They came before R. Pappa and he declared them liable. The sages said to R. Pappa: "But this is [a case of] safeguarding with the owner [in service]!" He was embarrassed. In the end it was revealed that at the time he was drinking beer [and not baking].

> [Rava] was embarrassed. In the end, it was revealed that he had gone out to supervise the loading.

Wimpfheimer's treatment of the Mareimar bar Hanina *sugya* leads him to the following conclusion about the phrase "in the end it was revealed": "This formula is employed whenever a narrative shames an *amora*. The purpose of the formula is to prevent the stigma of shame from attaching to the *amora*'s legacy."[40] If I may borrow the language of the *stam*, this makes sense as a claim about each passage's first use of the phrase "in the end it was revealed," which always saves the *amora* from having issued an incorrect ruling (if not from having insufficient knowledge of the law). However, as a claim about the passages as a whole, and specifically the second use of the phrase in this *sugya*, it is difficult to accept. If the goal were truly to remove the taint of shame from Rava's name, why generate a revised story that presents Rava as making an even clearer legal error about negligent borrowers than in the first version? The new story does not save Rava from embarrassment but rather confirms that he was truly embarrassed for a good reason. If there is an attempt to save any character from embarrassment in this *sugya*, that character is the first narrator, whose claim about Rava's behavior is at first called into question and then ultimately recuperated through the revision of the initial narrative, thus showing him to have been only partially mistaken. The first narrator's version of events, however, ultimately cannot stand, and its narrative can only be salvaged by redeeming one piece of the narrative at the expense of another. By the end of these multiple revisions of the narrative—first, that Mareimar bar Hanina was merely supervising and

---

[40] Wimpfheimer, *Narrating the Law,* 119.

not helping; then that the donkey was not borrowed but in fact stolen—the anonymous narrator's credibility has been severely weakened.

In the final passage of this type we will see, the narrator not only undermines its own version of the scenario, it also calls attention to the disconcerting nature of its own revisionist storytelling. The legal case here deals with the question of which arrangements are considered ones in which a Jew is paying a gentile to do labor for him on Shabbat, and are thus forbidden, and which are permitted because they are simply sharing labor and profits but do not involve forbidden labor on behalf of a Jew.

> There were certain saffron growers [who had an arrangement in which] a Gentile took possession [of the field] on Shabbat and a Jew [took possession] on Sunday. They came before Rava, who permitted it.
> Ravina raised an objection to Rava: If a Jew and a gentile received [tenancy of] a field in partnership, the Jew may not say to the Gentile, "You take your share on Shabbat, and I [will take mine] during the week." If they stipulated this to begin with, it is permitted, but if they need to calculate it [later], it is forbidden.
> Rava was embarrassed. In the end, it was revealed that they had stipulated it to begin with.[41]

Once again, the first half of the story appears to be a case of the narrator coming to save the day, thus rescuing Rava from having issued an incorrect ruling, if not the embarrassment of insufficient knowledge of the applicable legal principles.

However, instead of Rava being the one to reclaim his agency over the narrator's, in this passage a new narrator—R. Geviha from Bei Katil—enters and offers a completely different version of the events of the legal case.

> R. Geviha from Bei Katil said: They were *orlah* saplings, and the non-Jew would eat the produce during the *orlah* years and the Jew during the permitted years. They went before Rava and he permitted it.

[41] BT Avodah Zarah 22a.

According to this new version of the story, instead of being about saffron growers and the division of work during the week, the legal case actually had to do with trees whose produce is forbidden to Jews during the first three years of their growth. Though presented within the *sugya* as a revision of the original story, it seems almost like a completely unrelated story, as it is difficult to understand how the end of the story—Ravina's objection and Rava's embarrassment—could fit. Indeed, a voice speaking on behalf the first narrator returns to protest along exactly those lines:

> But Ravina raised an objection to Rava!
> No, surely it was a support.
> But Rava was embarrassed!
> That never happened.

Instead of seeming to accept the rewritten narrative, as in the passage about Mareimar bar Hainina, the end of this passage emphasizes the strangeness of the story's complete revision, particularly given that there was no inherent problem with the first version. Even though the *stam*'s protests that part of the original story has mysteriously disappeared are seemingly dismissed, their dismissal has the unconvincing and even discomfiting effect of the secret police's denial that you ever had a next door neighbor. When the narrator relates in the same authoritative manner that something happened and then that it did not happen, the effect is more likely to be generalized doubt and confusion than willingness to rely on whatever one has been told most recently.

The grammatical construction of the affirmation of the revised story supports this reading: The phrase "surely it was a support" in this passage, as well as the phrase "They were certainly not negligent with it, but rather surely they stole it" in the Mareimar bar

Hanina passage, is formed by the use of an infinitive in the same clause with a finite form of the same verb. This grammatical construction in Aramaic is known as a "cognate object," and it tends to be used to emphasize the lexical content of the verb.[42] While I am unaware of a comprehensive study of all the uses of this construction in Jewish Babylonian Aramaic, it is also used frequently in Biblical Hebrew, in which one of its connotations is "opposition or conditions or suppositions presented as not very likely.[43] In other words, the writer emphasizes the verb precisely in acknowledgment of the fact that without that extra emphasis—or perhaps even with it—the reader is unlikely to believe what she is being told.

The *stam* thus presents its own narrative as unreliable in this family of *sugyot* in up to three different moments: first, by revealing a fact about the case that shows that Rava has ruled correctly and not incorrectly as his colleagues claimed; second, by replacing the original version of the case scenario with a new case scenario that reestablishes that Rava ruled incorrectly after all; and finally, with what is perhaps an implicit stylistic acknowledgment that the revised case scenario itself is difficult to swallow. In so doing, the *stam* interweaves the destabilization of its own narrative authority with the destabilization of Rava's legal authority, suggesting the unattainability of either legal or narrative certainty.

---

[42] Elitzur Bar-Asher Siegal, *Introduction to the Grammar of Jewish Babylonian Aramaic* (Münster: Ugarit-Verlag, 2013), 246.
[43] Paul Joüon and Tamitsu Muraoka, *A Grammar of Biblical Hebrew: Third Reprint of the Second Edition, With Corrections.* Rome: Gregorian and Biblical Press, 2011, 392-393.

"This is the Law in Practice"

So far I have argued that the *stam* presents its own narration as unreliable as a means of expressing a general posture of doubt about the reliability of legal knowledge. In order to further support my claim that the anonymous voice's narrative revisions express an attitude of uncertainty about the ability to discover legal truth, I will now present a passage in which the *stam* addresses this concern in a more direct way. This passage, which appears at Bava Batra 130b, is the *locus classicus* for explicit rabbinic reflection on the same concerns about legal knowledge that are conveyed implicitly in the previous passages. As such, the classical commentators react strongly to it, struggling to walk back the posture of extreme doubt that this passage takes regarding legal certainty. However, they also recognize the reappearance of the Bavli's concerns about law, and therefore they explicitly connect this passage to the "not stated explicitly" passages.

Not only does this passage address the unreliability of legal knowledge, but the theme of the *stam*'s narrative unreliability also reappears in this passage as it re-narrates its own claim in a very similar fashion to the legal narrative passages we have just seen. Even though this passage does not display the same explicitly narrative features as the other two types of passages we have seen, both of which include a legal anecdote and a rabbi's reaction to it, we will nonetheless see that the *stam*-as-narrator functions here in a very similar way. As in the passages we have seen, the narrator of this passage both claims authority and undermines itself. However, this passage is a particularly telling example of narrative unreliability in the Bavli because of the fact that its content

expresses skepticism about external sources of knowledge while its literary context undermines its own authority as a future source of knowledge as well.

The passage begins with a statement that traces a ruling about inheritance law to the position of the tanna R. Yohanan b. Beroqa, who had stated an alternative legal opinion to the anonymous majority opinion in the Mishnah, by way of R. Yehudah haNasi. However, this claim is partially challenged by another rabbinic interlocutor:

> R. Zeriqa said in the name of R. Ami in the name of R. Hanina: Rabbi [Yehudah haNasi] said that the law is according to R. Yohanan b. Beroqa. R. Aba said to him: [No,] it was stated that he [Rabbi Yehudah haNasi] instructed or ruled according to [R. Yohanan b. Beroqa].

R. Zeriqa and his colleague R. Aba dispute R. Yehudah haNasi's relationship to R. Yonahan b. Beroqa's legal position. Whereas the first *amora* claims that R. Yehuda haNasi stated verbally that the law accords with R. Yohanan b. Beroqa's position, his interlocutor claims instead that R. Yehudah haNasi never actually stated that R. Yohanan b. Beroqa's position was correct, but rather adjudicated a particular case following R. Yohanan b. Beroqa's opinion. One might think that in stating that R. Yehudah haNasi ruled in one case according to the opinion of R. Yohanan b. Beroqa, R. Aba is questioning whether R. Yehudah haNasi in fact believed that the law followed his opinion in all cases. The anonymous voice, however, claims that it is not the ruling itself that is being questioned here—and thus presumably R. Aba thinks that R. Yohanan b. Beroqa's opinion is the legally binding one as well—but rather the means by which the binding legal opinion ought to be established:

> What were they disagreeing about? One thought that law is preferable, and one thought that precedent is preferable.[44]

In other words, according to the *stam*, R. Zeriqa thought that one can best determine binding law based on the legal statements of earlier authorities, in this case exemplified by R. Yehudah haNasi, while R. Aba thought that the legal actions of earlier authorities are actually a better determination of the law than statements, and this is what motivated their dispute. This is not an especially convincing read of the two statements, which seem to disagree over what actually happened but not explicitly over which is a stronger source of law, and is perhaps ultimately meant to provide an entrée into a pressing topic rather than to explain a textual difficulty.

The *stam* then follows its portrayal of this amoraic disagreement with a text it presents as a *baraita*:

> Our rabbis taught: We do not learn the law either from a teaching [*talmud*] or from precedent until they say to him "the law in practice."[45] If he asks

---

[44] This line is sometimes translated as "a case ruled on by a sage." The phrase "*ma'aseh rav"* is ambiguous, as "*rav*" can mean either a sage—literally, "great one"—or the adjective "great." In all other instances of the phrase "*ma'aseh rav"* in the BT, the word appears to mean the adjective "great" (see BT Niddah 65b, BT Shabbat 21a, and BT Shabbat 126b). It seems possible that the ambiguity here is an intentional pun.

[45] All manuscripts attest תלמוד (*talmud*); censors changed this to לימוד (*limmud*) in print editions. Yosef ibn Migash seems to have a manuscript that reads "student" (*talmid*) instead of "teaching" (*talmud*). It is not inherently clear what is meant by "teaching." A similar statement, "We do not learn law from teaching," appears at BT Niddah 7b, which is addressed further below. In another parallel statement in PT Pe'ah 2:6, 17a, p. 90, the opposite claim is made: "We do not learn from the laws [*halakhot*] nor the stories [*hagadot*] and not from the additions [*tosafot*] but rather from the teachings [*ha-talmud*]." Given the contrast established here between *halakhot* and *talmud,* many of the classical commentators suggest that *talmud* in the context of PT Pe'ah specifically refers to amoraic statements. It is perhaps thus most reasonable to translate *talmud* as "teachings" broadly, i.e., statements that were handed down from teacher to student, regardless of the time period from which they originated.

> and they say to him "This is the law in practice," he should go and do that [or rule that way] in practice, as long as he does not make comparisons.

According to this passage, which is presented as a tannaitic source but is quite probably not, the only valid source of law is its explicit designation by one's teacher as the law in practice.[46] This claim simultaneously reinforces the nature of the disagreement that the *stam* attributes to R. Zeriqa and R. Aba—i.e., the dichotomy between law learned from a statement by a teacher as opposed to law established by that teacher's ruling—and, at the same time, troubles that dichotomy. According to the *baraita*, neither R. Zeriqa's nor R. Aba's position about authority is sufficient to establish an actionable legal ruling. Instead, a much more conservative position is offered, in which legal judge or actor may be guided only by the explicit statement from a teacher that a specific ruling is the law in practice.

Not only does the introduction of this source cast doubt on the *stam*'s own reading of R. Zeriqa and R. Aba's argument, but it also expresses a position of extreme skepticism about the means of determining legal truth. Both statutory and narrative modes of legal decision-making are, according to the opinion expressed here, inadequate. An account of a ruling in a specific case cannot necessarily be applied as precedent, perhaps because, as we have seen, that case may possess special mitigating features that

---

[46] This text is not attested elsewhere in tannaitic literature. The phrase "the law in practice" (*halakhah le-ma'aseh*) also does not appear anywhere in tannaitic texts, nor in the Palestinian Talmud. A manuscript variation—Vatican 115, which reads "We do not learn the law either from Mishnah or from Talmud or from precedent"—further lends weight to the likely late nature of this "baraita" (in addition to suggesting that "*talmud*" in this context cannot be read as purely referring to attributed tannaitic statements as it does at BT Niddah 7b, despite some commentators' claims, which I explore further below).

change the way the law ought to be applied. On the other hand, simply having heard the statement of a legal rule is also not enough to establish how the law should be applied in a new case, perhaps because all rules in order to be effective as rules must be stated in at least somewhat general terms, and perhaps because there is potentially a gap or even a discrepancy between the law as it exists in theory and the law as it is established by community standards. This source thus expresses doubt about nearly all processes of the law's transmission, with the exception of a specific type of interaction that seems as though it needs to happen in person. Furthermore, the *baraita* claims that this statement establishing actionable law applies only to the particular scenario about which it was made, but the hearer may not employ legal reasoning to extrapolate to other similar scenarios. The *stam* thus implicitly casts doubt on its own interpretation of R. Zeriqa and R. Aba by offering a tannaitic source that would render their supposed disagreement irrelevant.

After having quoted such a conservative approach to legal ruling, the *stam* then backtracks, expressing incredulity that such a strict set of criteria for establishing legitimacy in legal practice could actually result in a functional system:

> As long as he does not make comparisons?! But we compare things to the entire Torah (i.e., the whole legal system is based on comparisons)!

The source requiring verbal affirmation of "the law in practice" could potentially be read more narrowly, as, for example, applying only to court cases. However, by phrasing its concern about the quoted source in this way, the *stam* in fact emphasizes the posture of extreme skepticism this passage is beginning to convey about reliable means of discovering legal truth more generally. Though it is phrased as an objection to the

previous source, this comment in fact strengthens its interpretation as a generalized—and hence legally debilitating—principle by assuming such a reading and then expressing shock about it.

The redactor of the passage then attempts to respond to this concern by citing an opinion by R. Ashi, which states that the ban on comparisons only applies to one specific legal arena, thus saving the legal system at least partially from the extraordinary limitations of the *baraita*:

> R. Ashi said: This is what they said: As long as he does not make comparisons about fatal wounds, as it is taught in a *baraita:* We do not say about fatal wounds that this one is like that one, and do not be surprised, for behold, you cut it [i.e., the animal] from here and it dies, you cut it from there and it lives.[47]

R. Ashi's statement here is an *oqimta,* a narrow rereading of the earlier source's applicability. [48] His claim is that rather than forbidding any comparisons from one legal case to another, the quoted source only meant to forbid comparisons when it comes to fatal wounds that are found in animals, since animal anatomy is varied enough that one cannot extrapolate from one animal to another. However, once the maximalist possibility has been raised that the source is a wrench in the works of the entire legal system, it becomes difficult to swallow this quite minimalist rereading of the source's implications.

---

[47] Interestingly this statement is also almost definitely a Babylonian baraita. It appears several times in BT Hullin (48b, 55b, and 78a) as part of a statement attributed to R. Ashi, and it also attests manuscript variations (again in ms. Vatican 115, where "this one is like that one" appears in Aramaic (!) instead of Hebrew). It is not inherently clear why this too is this is being presented as a baraita, but perhaps it is in order to convince the reader that this could truly be what the other supposed baraita really meant—if it too is an earlier source, then it is more likely that the other supposedly early source also knows it.

[48] For more on *oqimtot*, see Ch 1.

As in the passage discussed in the previous section about the Jewish and Gentile produce partners, the *stam* revises its own narrative in a way that purports to resolve a problem, but is in fact more disconcerting than it is satisfying. The passage thus cites a claim that, it suggests, implies the near impossibility of ever determining legal truth, and then proceeds to destabilize the meaning of that claim.

The passage then proceeds to deconstruct itself further by offering several reports of rabbinic conversations that seem to support the original, extremely legally skeptical interpretation of the pseudo-*baraita*.

> R. Asi said to R. Yohanan: When Master [i.e., R. Yohanan] tells us such-and-such is the law, should we do it in practice? He said: Do not do it until I say to you "the law in practice."

This reported conversation seems to reinforce the position of the *baraita* that only explicit statements of "this is the law in practice" authorize a ruling to be carried out in reality. Yet at the same time, in the context of the topic at hand, this brief exchange between rabbis—again, typical of the way the Talmud discusses legal questions on nearly every page—is also rather paradoxical. The adjuration to rule only in a way that has been explicitly authorized by one's teacher is of course not presented here by the teacher himself, but is preserved and canonized in the (albeit still oral) text of the Bavli itself. In insisting that law can only be determined based on the explicit oral approval of one's teacher, the Bavli thus casts doubt on its own authority as a text made up of statements about what the law should be and stories about how the law was or was not carried out—and does so through the use of a story about precedent.

The passage ends with a second instance of teacher-student dialogue around this question:

> Rava said to R. Pappa and R. Huna the son of R. Yehoshua: When a legal judgment of mine comes before you and you see a refutation for it, do not tear it up until you come before me. If I have a reason, I will tell you. And if not, I will take it back. If it is after [my] death, surely do not tear it up and certainly do not learn from it either. Surely do not tear it up, because if I were there, perhaps I would tell you my reason. But certainly do not learn from it, for the judge has only what his eyes see.

The statement that "the judge has only what his eyes see" casts doubt not only on the student's ability to correctly derive a ruling from a case precedent, but on the ability of the judge himself to correctly understand and rule about any given legal situation. This expression of skepticism as to the judge's ability to draw inferences is only one explicit example of an ongoing doubt that appears in many other passages in the BT, as we have seen.

The notion that this *oqimta* is insufficient to quell the enormous doubt the passage has raised about the Bavli's own authority is borne out by the rather defensive reactions of several classical commentators. In response to the claim that "we do not learn law from teaching (*talmud*)," twelfth century Provencal commentator R. Avraham b. Yitzhak of Narbonne (Raavad II) defends the Bavli's authority by comparing the passage here to a parallel statement at BT Niddah 7b and argues for an application of that passage's definition of "*talmud*" here as applying specifically to attributed tannaitic statements, thus reading the pseudo-*baraita* as in fact a defense of the (capital T) Talmud:

> It is made clear in the first chapter of [BT] Niddah [7b] that if we find a mishnah or a *baraita* that says "the law is according to his words," we do not learn from that law unless it is set for as a ruling [*hilkheta*] in the *gemara* according to *amora'im:* "Until he says to him 'it is the law in

> practice.'" And these things [apply] in those generations [i.e. of the *tanna'im*] when the students would ask their teachers, and each one of them would be stringent and would say to his student not to do a [maaseh] immediately lest he change his mind, until he says to him 'This is the law in practice.' But now we may not budge from what was established in the Talmud as law. For R. Ashi and Ravina were the end of teaching, and even though they did not establish in the Talmud "and it is the law in practice," and a person is not allowed to innovate anything, and who can we ask when a practical question arises if we cannot rely on the Talmud? …In the Yerushalmi at the beginning of Pe'ah, R. Ze'ira in the name of R. Shmuel said: "We do not learn from the laws [*halakhot*] nor from the tales [*hagadot*] nor from the additions [*tosafot*] but rather from teaching [*talmud*]," that is to say from the words of the *amorai'm.* And not from a precedent, that is to say we do not learn from a precedent written in a mishnah or a *baraita*, and one that the majority disagrees about…

R. Avraham b. Yitzhak attempts to muster several arguments in this passage as to why, despite appearances to the contrary, the passage at BT Bava Batra 130b does not undermine the authority of the Bavli. Not only does he equate the statement here with its parallel at Niddah 7b and claim that it refers only to tannaitic sources, but he also appeals to necessity, more or less making the case that since people no longer possess the authority of the rabbis quoted in the Talmud, we must make do with what they recorded, even though he admits that the written Talmud does not pass the "until he says to you 'it is the law in practice'" test. Finally, he quotes a passage from PT Peah that claims that one *does* learn from teaching (*talmud*)—but here, instead of equating the term "*talmud*" with its use at Niddah 7b as referring to specifically tannaitic teachings, he seizes on its pro-"*talmud*" position and reads it as a reference to specifically amoraic teachings instead.

Through this complex juggling act of different uses of the phrase "*talmud*" and his appeal to circumstance, R. Avraham b. Yitzhak attempts to come to the defense of his

community's reliance on transmitted law whose use in practice has not been explicitly confirmed by a teacher—i.e., the Bavli. R. Avraham b. Yitzhak is not alone in his creative rereading of this passage in defense of the Bavli's authority. R. Shmuel b. Meir of Troyes (Rashbam) likewise emphasizes in his commentary on this passage that we may still rely on "*gemara*," and attempts to argue that "We do not learn the law from teaching/*talmud*"—despite being presented as an anonymous *baraita!*—was in fact a minority position taken only by R. Yohanan.[49] Yom Tov b. Avraham Asevilli (Ritva) takes the opposite approach, emphasizing the fact that the statement is supposedly a *baraita* and claiming that therefore "*talmud*" here "means the *talmud* of the *tanna'im,* as they said in the Mishnah 'the *halakhah* is according to So-and-so,' for perhaps they were a minority opinion… and it is a simple matter that the *tanna* of the *baraita* is referring only to the *talmud* of the *tanna'im* that existed in his time."[50]

These commentators may be expressing anxiety about their own habit of treating the Talmud as a unified and authoritative legal source as much as about the apparently self-undermining passage itself. Nonetheless, their reaction to the passage, emphasizing that the Bavli can be relied upon despite what the *sugya* seems to say, simply drives

---

[49] "But regarding *halakhot pesuqot* in the words of the *amora'im*, of course we rely on them, for R. Ashi and Ravina decided them and wrote them… we rely on the decisions in the *gemara* because they were all *halakhah le'ma'aseh*, but R. Yohanan alone was stringent with himself and said to his students as above that they should not do anything until he said to them 'It is the law in practice'… and [מיהו] after his death they do need to act according to what he decided for them, for behold all the days of his life he did not change his mind, and all the more so we must rely on the laws written in the *gemara.*"

[50] See also the commentaries ad loc. of Yosef ibn Migash and Meir b. Todros HaLevi Abulafia, the latter of whom claims that the crucial distinction is between the oral and thus less authoritative *talmud* of the *tanna'im* and "our *talmud*," which when it "was written down was written as law in practice."

home the fact that the pseudo-*baraita* inspires deep doubt about the authority of the entire rest of the text that contains it. This doubt, I argue, is not put to rest—and in fact is heightened—by the *stam*'s ultimately unconvincing *oqimta*, and is the same doubt that is manifested in the *stam*'s use of unreliable narration in the two families of *sugyot* we have seen in this chapter.

Conclusion

As the energy of the later rabbinic period became increasingly focused on legal thought as a complex, narrative, intellectual endeavor—as Leib Moscovitz, Moulie Vidas, and others have shown and as the previous two chapters have explored—the role of legal texts as a guide for practical action concurrently came to take a more secondary place in rabbinic thought. The increasingly scholastic nature of late rabbinic culture may have contributed to this shift in two ways: not only by emphasizing the importance of study as a worthy activity in its own right, but by creating a culture of self-reflexivity that leads to meta-analysis of the legal system and thus to doubt about its validity.

The idea of an oral chain of law is perhaps most famously articulated by the introductory passage of m. Avot: "Moses received Torah [here referring to the "oral law," as distinct from the written Pentateuch] from Sinai and handed it down to Joshua, and Joshua to the elders, and the elders to the prophets, and the prophets down to Men of the

Great Assembly."[51] The ability to situate themselves as part of this chain allows the rabbis to present their project as ultimately authorized by the Sinaitic moment of revelation. Yet though the transmission of principles through a multi-generational game of telephone may provide a source of discursive authority, it also comes with risks.[52] The exact phrasing of a legal principle may be lost to the ages, and it may be impossible to determine the rationale behind an action or a ruling.[53] Basing one's authority on one's ability to accurately access the past means that any doubt about that accuracy also casts doubt on the validity of the legal authority itself. Any interpretation of earlier legal material inherently involves some element of creativity and revision, and the instability

---

[51] On this passage see Adiel Schremer, "Avot Reconsidered: Rethinking Rabbinic Judaism." *The Jewish Quarterly Review,* 105:3 (Summer 2015): 287-311. Schremer argues that this passage comes from a fringe tannaitic circle that privileges R. Eliezer: "There is good reason to speculate, therefore, that tractate *Avot,* including the 'chain of tradition' at its head, is a document stemming from the school of R. Eliezer and reflects his ideological investment in the Sinaitic status of rabbinic tradition" (299-300). Rather, the claim is defensive, an attempt to respond to polemics that emphasize the human rather than divine origin of rabbinic teaching. Schremer's argument here is convincing; nonetheless, the emphasis throughout rabbinic literature on chains of tradition—even if not ones that stretch back to the moment of Sinaitic revelation—continues to be an important mode of self-authorization.

[52] On the role of orality in the production and transmission of rabbinic literature, see Yaakov Sussman, "The Oral Torah," in *Mehqerei Talmud III: Talmudic Studies Dedicated to the Memory of Professor Ephraim E. Urbach* (Jerusalem: Magnes Press, 2005)*,* 209-394; Martin Jaffee, *Torah in the Mouth: Writing and Oral Tradition in Palestinian Judaism, 200 BCE-400 CE* (Oxford: Oxford University Press, 2011)*;* and Elizabeth Shanks Alexander, "The Orality of Rabbinic Writing," in *The Cambridge Companion to The Talmud and Rabbinic Literature, The Cambridge Companion to the Talmud*, eds. Charlotte Elisheva Fonrobert and Martin S. Jaffee, (Cambridge: Cambridge University Press, 2007), 38-57.

[53] For an analysis of Babylonian revisions of tannaitic dicta using the phrase "if it was stated, it was stated thus" (אי אתמר הכי אתמר) see DeBold, "The Hermeneutics of Textual Hierarchies in the Babylonian Talmud, 277 ff.

of earlier sources is even more of a problem in a culture that relies on oral transmission.[54] The rabbis' concern about the challenges posed by deriving law from reports of earlier statements or deeds can be viewed as the result of two different features of scholasticism coming into conflict: the emphasis on chains of tradition on the one hand, and on the other, the scholastic tendency towards reflexivity and meta-analysis. As in the characterization of R. Yirmiyah and the development of complex multi-step *oqimtot,* the rabbinic expression of this tension is again expressed in the above passages through the use of narrative, in this case through the Bavli's exploration of the unreliable narrator.

In this chapter, I have continued to show that a shift towards a more scholastic legal culture goes along with increased narrativity and less legal determinacy. By creating a narrative and then undermining it as unreliable or simply false, the *stam* thus calls attention to its own fallibility both as an accurate observer and as a reporter of inherited legal traditions. If Vidas portrays the *stam*'s sense of belatedness as generally a positive—the inherited traditions are boring, whereas the *stam* is creative and innovative—we can also see in these examples ways in which the *stam*'s sense of belatedness leads to a sense of doubt or uncertainty about the Bavli's entire narrative enterprise. This doubt may be part of what motivates the rabbinic project to move away from a codificatory mode (if an indecisive one) and towards a more analytical, less legislative way of engaging with law.

---

[54] On the rewriting of the past that is inherent in the use of legal precedents, see Stanley Fish, "Working on the Chain Gang: Interpretation in the Law and in Literary Criticism," *Critical Inquiry* 9:1 (September 1982): 201-216, in response to Ronald Dworkin's "Law as Interpretation," *Critical Inquiry* 9:1 (September 1982): 179-200.

The Bavli's exploration of the tension between tradition and doubt, as well as the tensions between abstract legal rulings and particular legal scenarios that we have seen played out many of the *sugyot* above, is reminiscent of more contemporary legal theoretical endeavors, especially the Critical Legal Studies movement. [55] Like the Bavli, the goal of CLS is to identify and understand the law's problems but not necessarily to solve them. Duncan Kennedy, one of the leading scholars of CLS, in fact writes about the very tension addressed in these sugyot—the choice between "clearly defined, highly administrable, general rules" and "equitable standards producing ad hoc decisions with relatively little precedential value."[56] In his analysis of this tension, Kennedy employs what he refers to as a "method of contradictions." As he describes it, "One of its premises is that the experience of unresolvable conflict among our own values and ways of understanding the world is here to stay. In this sense it is pessimistic, one might even say defeatist. But another of its premises is that there is order and meaning to be discovered even within the sense of contradiction."[57] In other words, these tensions may be inescapable, but investigating them is still useful because that process can help us to understand the often subtle ways in which they affect and even order judicial behavior.

---

[55] In his study of the seminal legal school of the 1970s and 1980s, Mark Kelman paints n its practitioners as practically tosafistic dialecticians, but ones who have no hope of reaching a resolution: "The Critics attempted to identify a contradiction in liberal legal thought, a set of paired rhetorical arguments that both resolve cases in opposite, incompatible ways and correspond to distinct visions of human nature and human fulfillment…" See Mark Kelman, *A Guide to Critical Legal Studies* (Cambridge: HUP, 1987), 3.

[56] Duncan Kennedy, "Form and Substance in Private Law Adjudication," *Harvard Law Review* 89 (1976), 1685.

[57] Kennedy, ibid., 1712.

Kennedy writes, "The acknowledgement of contradiction makes it easier to understand judicial behavior that offends the ideal of the judge as a supremely rational being.[58]

By highlighting the contradictions inherent in their own enterprise at least as much as they attempt to resolve them, the rabbis who composed these late scholastic *sugyot* are also playing a self-analytical role similar to the practitioners of CLS. As we have seen in both this and previous chapters, later layers in the Bavli shift from somewhat more solution-oriented text to a text that creates, magnifies, characterizes, and emplots problems, deconstructing and revealing the tensions at the heart of their own project. In so doing, the rabbis of the Bavli's scholastic period created a textual culture that draws the reader into an interpretive community of legal theorists rather than legislators, a world of thinkers who do not settle the law but who reveal its inherent imperfections through the use of narrative.

[58] Kennedy, ibid., 1776.

Conclusion

The purpose of this dissertation was to highlight and begin to explain some of the unique literary features of late rabbinic legal texts in the Babylonian Talmud. Building upon previous scholarship that has situated both rabbinic norms and institutions as well as the Bavli's lengthy narrative portions within the context of the rise of scholasticism in Sassanian Persia, I offered an examination of the Bavli's legal texts as likewise a reflection of the increasingly scholastic culture that produced them. I showed that in addition to exhibiting several of the characterizing features of scholastic texts more generally, including an emphasis on tradition, proliferativity, and self-reflexivity, scholastic legal passages in the Bavli are also characterized by their emphasis on narrative. I demonstrated that three different literary elements are not only present but are in fact the key features of several late legal *sugyot*: plot, characterization, and narration.

I began by combining source-critical and narratological perspectives to demonstrate the development of plot in the Bavli's legal interpretation in later *sugyot.* I argued that the Bavli's representation of complex *oqimtot,* a form of rabbinic legal interpretation that takes a preexisting law and restricts it to a narrow application, can be said to contain two types of "plots": one is a gnoseological plot, focused on the quest for new knowledge, in which *amora'im* seek the correct understanding of a Mishnaic case law; the other is the plot of a new case story generated by the *oqtima,* whose events are usually narrated out of correspondence with the sequence in which they are supposed to have occurred. Not only is the recognition of these two types of plots important for

understanding the nuances of what is happening in multi-*oqimta sugyot*, but it also provides an essential corrective to established scholarly notions of how to classify texts in the Bavli. Contrary to the persistence of the dichotomy between lengthy narratives and statutory texts in the Bavli, the multi-step *oqimtot* passages possess qualities that are supposed to characterize both types of texts: a primary focus on engagement with legal concepts or questions while also portraying absurd or grotesque scenarios within the framework of at least two simultaneous narratives.

Not only are the intertwined plots a significant feature of all multi-step *oqimtot,* but the narrative complexity of such *sugyot* increases the later they seem to be, while the legal or interpretive utility of the *sugyot* correspondingly decreases. In *sugyot* that exhibit more signs of redaction and interpolations by late anonymous editor(s), both types of plots are emphasized and made more unified and intricate, even when doing so does not seem to serve any practical legal purpose for the passage. I argued that the confluence of lateness and narrativity here must be seen in the context of a general trend in scholastic rabbinic culture towards telling stories. An important function of stories—and the rubric according to which I have defined what makes a text "narrative"—is the creation of narrative worlds that have a transportative effect on the reader. I suggested that the formation of a rabbinic society structured around textual institutions would be supported by an emerging textual culture that is imaginatively engaging. The double plots of the multiple-*oqimta sugyot* serve this purpose especially well because the reader is not only imaginatively transported into the world of the case story, but can also imagine herself in

the world of the gnoseological plot, as part of the community of rabbinic thinkers who are trying to solve a puzzle.

Having demonstrated a connection between a scholastic approach to legal questions and an increased emphasis on narrativity in the Bavli, I went on to show that the authors of the Bavli are both aware of and self-critical about their own scholastic tendencies. I argued that the rabbis who produced the Bavli created the character of R. Yirmiyah as a way to reify and critique their own approach to law. In several legal passages across the Bavli, R. Yirmiyah is rebuked for asking a question that may push the boundaries of the imagination but is not significantly different from questions that are asked in many other *sugyot*. While scholars and classical commentators have searched for a trait inherent to these questions that causes R. Yirmiyah to be scolded and even ostracized, the key to understanding the R. Yirmiyah passages is not the specific acts that R. Yirmiyah performs, but rather the way in which he is produced as a consistent character. R. Yirmiyah appears in passages with consistent and self-referential themes: the *sugyot* are often somewhat hermeneutically difficult, providing a backdrop of preexisting tension that calls for some kind of critique; his apparently problematic questions generally have to do with issues of epistemology; he typically appears alongside his teacher/colleague and foil, R. Zeira; and the critiques he receives and the way he is described often makes reference to the fact that his character is known to have been in this kind of situation before. R. Yirmiyah is thus characterized by the text as an insider who embodies a caricature of rabbinic scholasticism gone too far, and thus provides a locus for critical, even subversive self-analysis.

The use of characterization as a mode of self-critique in these passages is important in two respects. First, it shows that the Bavli operates as more of a unified literary text than has generally been understood, as the R. Yirmiyah passages are self-referential despite being spread out across multiple different tractates. Furthermore, the Bavli's acknowledgment and critique of its own scholastic modes of thought, particularly its tendency to raise questions about its own legal methodologies, shows a doubling of scholastic meta-analysis: not only do the Rabbis often question their own legal conclusions just as R. Yirmiyah is critiqued for doing, but they also are self-reflexive *about their own self-reflexive tendencies.* In other words, the Rabbis are inclined to question their own methods, they are self-aware about this inclination, and through the character of R. Yirmiyah, they even question their own questioning.

In addition to using characterization to critique their own project, the composers of the Bavli also employ subversive narrative techniques as a further means of self-reflexive critical analysis. The anonymous voice that frequently serves as the Bavli's narrator is often portrayed as an unreliable narrator. At times the unreliable anonymous narrator is portrayed as the literary representation of a person who witnessed a legal case and misinterpreted it, and thus attempts to pass along information that the reader, who is privy to the "real" facts of the case, knows not to be true. These moments of narrative undermining do not only portray the discrepancy between the full case story and the mistaken legal principle or ruling as narrated by the *stam*, but they in fact suggest that all narration is ultimately unreliable, offering a deeply skeptical approach to legal knowledge. This skepticism is reinforced in a passage that offers explicit musings on the

problem of legal certainty while also continuing to employ a method of narration that undermines its own claims.

I suggested that in these and other moments in which the authors of the Bavli call attention to the problems inherent in its own project, one can see the nature of the developing scholastic approach to text and law. Instead of approaching law with the goal of solving problems, these later rabbis instead saw their work as unmasking problems, revealing the tensions at the heart of law without needing—or perhaps even believing it was possible—to offer a resolution.

Through my readings of these *sugyot*, I have offered new insights into how to read the Bavli from the perspective of genre, the nature of rabbinic scholasticism, and the possible connections between rabbinic textuality and rabbinic culture. I challenged the notion that diachrony is the only basis for all critical talmudic reading, and as an alternative, I employed a literary source criticism to consider the named authorities and the stam in one plane, particularly in my analysis of the stam's role as narrator. By using a literary lens to analyze legal sugyot, I also showed that despite important steps in the field in the last several decades towards decontrustcting the "*halakhah*" and "*aggadah*" dichotomy, the true interrelationship between these two categories—and in particular the idea that every part of the Bavli is at least minimally narrativized in some way—has not yet been acknowledged. In fact, likely all legal *sugyot* can be said to contain some sort of gnoseological plot; that is, the story of a quest for knowledge ("From where are these

words?") that draws the reader in and leads her on a journey, stopping along the way at various possibilities that are then rejected, perhaps reaching a conclusion but perhaps not.

The development of this increasingly narrativized aspect of the Bavli came to take precedence while rabbinic culture was becoming larger and more institutionalized in conjunction with the formation of academies across the Sassanian Empire. In making this argument, I connected the development of particular legal *sugyot* with scholarly theories about the history, both cultural and textual, of Rabbinic scholasticism. I showed that as formalized study became the central cultural practice for the Rabbis, their legal practice shifted from the recording of legal opinions and the resolution of legal problems to a kind of critical legal scholarship, a narrativized mode of often self-critical, conflicted legal analysis that helped to form a new kind of rabbinic textual community.

Bibliography

Abraham, Kenneth S. "Statutory Interpretation and Literary Theory: Some Common Concerns of an Unlikely Pair." In *Interpreting Law and Literature: A Hermeneutic Reader*, eds. Sanford Levinson and Steven Mailloux. Evanston, Ill.: Northwestern University Press, 1988, 115-129.

Alexander, Elizabeth Shanks. "The Orality of Rabbinic Writing." In *The Cambridge Companionmto The Talmud and Rabbinic Literature, The Cambridge Companion to the Talmud,* eds. Charlotte Elisheva Fonrobert and Martin S. Jaffee. Cambridge: Cambridge University Press, 2007.

Amsterdam, Anthony G. and Jerome Bruner. *Minding the Law*. Cambridge: Harvard University Press, 2000.

Bal, Mieke. *Narratology: Introduction to the Theory of Narrative*. Toronto; Buffalo: University of Toronto Press, 1985.

Balberg, Mira. *Purity, Body, and Self in Early Rabbinic Literature.* Berkeley: University Of California Press, 2014.

Balberg, Mira and Moulie Vidas. "Impure Scholasticism: The Study of Purity Laws and Rabbinic Self-Criticism in the Babylonian Talmud." *Prooftexts*, 32:3 (Fall 2012): 312-356.

Bar-Asher Siegal, Elitzur. *Introduction to the Grammar of Jewish Babylonian Aramaic*. Münster: Ugarit-Verlag, 2013.

Baron, Jane. "Law, Literature and the Problems of Interdisciplinarity," *The Yale Law Journal* 108 (1999): 1059-1085.

Bartor, Assnat. *Reading Law as Narrative: A Study in the Casuistic Laws of the Pentateuch.* Atlanta: Society of Biblical Literature, 2010.

Becker, Adam H. "The Comparative Study of 'Scholasticism' in Late Antique Mesopotamia: Rabbis and East Syrians." *AJS Review* 34 (2010): 91-113.

---------. *Fear of God and the Beginning of Wisdom: The School of Nisibis and the Development of Scholastic Culture in Late Antique Mesopotamia*. Philadelphia: University of Pennsylvania Press, 2006.

---------. "Polishing the Mirror: Some Thoughts on Syriac Sources and Early Judaism." In

Envisioning Judaism: Studies in Honor of Peter Schäfer on the Occasion of his Seventieth Birthday. Ra'anan Boustan, Klaus Hermann, Reimund Leicht, Annette Yoshiko Reed, and Giuseppe Veltri, eds; Tübingen: Mohr Siebeck, 2013.

Berkowitz, Beth. *Execution and Invention: Death Penalty Discourse in Early Rabbinic and Christian Cultures.* Oxford and New York: Oxford University Press, 2006.

Bickart, Noah. "Tistayem: An Investigation into the Scholastic Culture of the Bavli." Ph.D. dissertation, The Jewish Theological Seminary of America, 2015.

Binder, Guyora and Robert Weisberg. *Literary Criticisms of Law*. Princeton, NJ: Princeton University Press, 2000.

Booth, Wayne C. *The Rhetoric of Fiction.* Second Edition; Chicago: University of Chicago Press, 1983.

Bourdieu, Pierre. "The Force of Law: Toward a Sociology of the Juridical Field." *The Hastings Law Journal* 38 (July 1987): 816-853.

Boyarin, Daniel. *Carnal Israel: Reading Sex in Talmudic Culture.* Berkeley: University Of California Press, 1993.

---------. *Intertextuality and the Study of Midrash.* Bloomington: Indiana University Press, 1990.

---------. *Socrates and the Fat Rabbis*. Chicago: University of Chicago Press, 2009.

Brody, Robert. "Stam ha-talmud ve-divre ha-amora'im." In *Iggud I.* Jerusalem: Ha-Iggud Ha-Olami Le-Mada'ei Ha-Yahadut, 2008.

Brooks, Peter. *Reading for the Plot.* Cambridge: Harvard University Press, 1984.

Brooks, Peter and Paul Gewirtz, eds. *Law's Stories*. New Haven: Yale University Press, 1996.

Brown, Peter. "The Rise and Function of the Holy Man in Late Antiquity." *The Journal Of Roman Studies* 61 (1971): 80-101.

Bruner, Jerome. "The Narrative Construction of Reality." *Critical Inquiry* 18:1. Autumn 1991: 1-21.

Cabezón, José Ignacio, ed. *Scholasticism: Cross-Cultural and Comparative Perspectives*. Albany: State University of New York Press, 1998.

Chavel, Simeon. *Oracular Law and Priestly Historiography in the Torah*. Tübingen: Mohr Siebeck, 2014.

Cover, Robert. *Narrative, Violence and the Law: The Essays of Robert Cover.* Martha Minnow and Austin Sarat, eds. Ann Arbor: University of Michigan Press, 1992.

DeBold, Robert Timothy, "The Hermeneutics of Textual Hierarchies in the Babylonian Talmud." Ph.D dissertation, Stanford University, 2015.

Diamond, Eliezer. "But Is it Funny? Identifying Humor, Satire, and Parody in Rabbinic Literature." In *Jews and Humor,* ed. Leonard J. Greenspoon. West Lafayette: Purdue University Press, 2007, 33-50.

Douglas, Mary, *Leviticus as Literature.* Oxford: Oxford University Press, 1999.

Dworkin, Ronald. "Law as Interpretation." *Critical Inquiry* 9:1 (September 1982): 179 200.

Faur, José. *Golden Doves with Silver Dots: Semiotics and Textuality in Rabbinic Tradition.m*Bloomington: Indiana University Press, 1986.

Feldman, Liane Marquis, "Ritual and Narrative in the Priestly Story of the Inauguration of the Tabernacle," Ph.D dissertation, The University of Chicago, 2018.

Fisch, Menachem. "Parshanut Dehuqa v'Tekstim Mehayyavim." In *Iyunim Hadashim Be- Filosofia shel Ha-Halakhah,* eds. Ravitsky and Rosenak. Jerusalem: Magnes, 2008, 293-326.

Fish, Stanley. *Is There a Text in This Class?: The Authority of Interpretive Communities.* Cambridge: Harvard University Press, 1982.

---------. "Working on the Chain Gang: Interpretation in the Law and in Literary Criticism," *Critical Inquiry* 9:1 (September 1982): 201-216.

Fonrobert, Charlotte, "Carnal Israel and the Consequences," *The Jewish Quarterly Review* 95:3 (Summer 2005): 462-469.

---------. *Menstrual Purity: Rabbinic and Christian Reconstructions of Biblical Gender.* Stanford, CA: Stanford University Press, 2000.

Foucault, Michel. "What is an Author." In *Aesthetics, Method, and Epistemology,* ed. James D. Faubion. New York: The New Press, 1998, 205-222.

Fraade, Steven. "Nomos and Narrative before *Nomos and Narrative,*" *Yale Journal of*

Law and the Humanities 17:1 (2005): 81-96.

Fraenkel, Jonah. *Darkhe Ha-Agadah Veha-Midrash.* Masadah: Yad la-Talmud, 1991.

---------. "Hermeneutic Problems in the Study of the Aggadic Narrative" (Heb.). *Tarbiz* 47:3-4 (1978): 139-172.

Freud, Sigmund. "From the History of an Infantile Neurosis." In *Three Case Histories,* ed. Philip Reiff. New York: Collier Books, 1963.

Friedman, Shamma. "A Critical Study of Yevamot X with a Methodological Introduction." In *Texts and Studies: Analecta Judaica I,* ed. H. Z. Dimitrovsky. New York: Jewish Theological Seminary of America, 1977.

---------. "Mavo Klali: 'Al Derekh Heqer Ha-*Sugya*." In *Mehkarim u-Meqorot: Ma'asaf le-Mada'ei ha-Yahadut,* ed. H.Z. Dmitrovsky. New York: The Jewish Theological Seminary of America, 1978, 283-321.

---------. "Mivne Sifruti Be-*sugyot* Ha-Bavli," *Proceedings of The Word Congress for Jewish Studies* 6:3: 389-402.

Frow, James. "Spectacle Binding: On Character." *Poetics Today,* 7, No. 2 (1986): 227 250.

Funkenstein, Amos. *Perceptions of Jewish History.* Berkeley and Los Angles: Los Angeles University Press, 1993.

Gafni, Isaiah. "Nestorian Literature as a Source for the History of the Babylonian Yeshivot," *Tarbiz* 51:4 (1982): 567–576.

---------. "Rabbinic Historiography and Representations of the Past." In *The Cambridge Companion to the Talmud and Rabbinic Literature,* eds. Charlotte Elisheva Fonrobert and Martin S. Jaffee. Cambridge: Cambridge University Press, 2007.

Gendler, Tamar. *Thought Experiment: On the Powers and Limits of Imaginary Cases.* New York: Garland, 2000.

Genette, Gérard. *Narrative Discourse: An Essay in Method.* Translated by Jane E. Lewin. Ithaca: Cornell University Press, 1980.

Gerrig, Richard. *Experiencing Narrative Worlds: On the Psychological Activities of Reading.* Boulder, CO: Westview Press, 1998.

Goffman, Erving. *The Presentation of Self in Everyday Life.* New York: Anchor Press,

1959.

Goodblatt, David. "The History of the Babylonian Academies." In *The Cambridge History of Judaism IV: The Late Roman-Rabbinic Period,* ed. S. T. Katz. Cambridge: Cambridge University Press, 2006, 821-839.

Guha, Ranajit. *History at the Limit of World-History*. New York: Columbia University Press, 2002.

Halberstam, Chaya, "The Art of Biblical Law," *Prooftexts* 27 (2007): 345-364.

---------. *Law and Truth in Biblical and Rabbinic Literature.* Indiana: Indiana University Press, 2010.

Halivni, David Weiss. *The Formation of the Babylonian Talmud.* New York: Oxford University Press, 2013.

---------. *Mekorot u'Mesorot: Bi'urim ba-Talmud, Masechet Bava Batra.* Jerusalem: Magnes Press, 2007.

---------. *Midrash, Mishnah and Gemara: The Jewish Predilection for Justified Law.* Cambridge, Mass.: Harvard University Press, 1986.

Hayes, Christine. "Displaced Self-Perceptions: The Deployment of *Minim* and Romans in Bavli Sanhedrin 90b-91a." In *Religious and Ethnic Communities in Later Roman Palestine,* ed. Hayim Lapin. Potomac: University Press of Maryland, 1998.

---------. "In the West, They Laughed at Him: The Mocking Realists of the Babylonian Talmud." *Journal of Law, Religion & State* 2 (2013): 137-167.

---------. *What's Divine About Divine Law?: Early Perspectives.* Princeton: Princeton University Press, 2015.

Henschke, David. *Mishnah Rishonah Be-Talmudam Shel Tana'im Aharonim: Sugyot be Dinei Shomrim.* Ramat Gan: Universitat Bar Ilan, 1997.

Iser, Wolfgang. *The Act of Reading: A Theory of Aesthetic Response.* Baltimore and London: The Johns Hopkins Univeristy Press, 1978.

Kennedy, Duncan. "Form and Substance in Private Law Adjudication." *Harvard Law Review* 89 (1976): 1685-1778.

Jaffee, Martin S., "Rabbinic Authorship as a Collective Enterprise." In *The Cambridge Companion to the Talmud and Rabbinic Literature*, eds. Charlotte Elisheva

Fonrobert and Martin S. Jaffee. Cambridge: Cambridge University Press, 2007.

Jaffee, Martin. *Torah in the Mouth: Writing and Oral Tradition in Palestinian Judaism, 200 BCE-400 CE.* Oxford: Oxford University Press, 2011.

James, Henry. *The Liar,* in *Henry James: Complete Stories, 1884-1891.* New York: Library of America, 1991.

Joüon, Paul and Tamitsu Muraoka, *A Grammar of Biblical Hebrew: Third Reprint of the Second Edition, With Corrections.* Rome: Gregorian and Biblical Press, 2011.

Kalmin, Richard. "The Formation and Character of the Babylonian Talmud." In *The Cambridge History of Judaism IV: The Late Roman-Rabbinic Period*, ed. S. T. Katz. Cambridge: Cambridge University Press, 2006, 840-876.

---------. *Jewish Babylonia Between Persia and Roman Palestine.* Oxford: Oxford University Press, 2006.

Lavi, Shai. "Enchanting a Disenchanted Law: On Jewish Ritual and Secular History in Nineteenth Century Germany," *U.C. Irvine Law Review* 1:3 (2011): 813-842.

Levinson, Joshua. "The Cultural Dignity of Narrative." In *Creation and Composition: The Contribution of the Bavli Redactors (Stammaim) to the Aggadah.* Jeffrey L. Rubenstein, ed., Tübingen: Mohr Siebeck, 2005, 361-381.

---------. "Dialogical Reading in the Rabbinic Exegetical Narrative." *Poetics Today* 25:3 (Fall 2004): 497-528.

---------. *The Twice-told Tale: A Poetics of the Exegetical Narrative in Rabbinic Midrash*. Jerusalem: Magnes Press, 2005.

Levinson, Sanford and Steven Mailloux, eds. *Interpreting Law and Literature: A Hermeneutic Reader*. Evanston, Ill.: Northwestern University Press, 1988.

Liss, Hanna. *Creating Fictional Worlds: Peshat Exegesis and Narrativity in Rashbam's Commentary on the Torah*, *Studies in Jewish History and Culture 25*. Leiden/Boston: Brill, 2011.

Lynch, Deidre. *The Economy of Character: Novels, Market Culture, and the Business of Inner Meaning.* London and Chicago: The University of Chicago Press, 1998.

Magarik, Raphael. "Tradition and the Formation of the Talmud by Moulie Vidas," *MAKE Literary Magazine*. Accessed March 26, 2018, http://makemag.com/review-tradition-and-the-formation-of-the-talmud-by-moulie-vidas/

Marienberg-Milkowsky, Itay. "Beyond the Matter: Stories and their Contexts in the Babylonian Talmud—Repeated Stories as a Test Case." Ph.D. dissertation, Ben Gurion University of the Negev, 2015.

Meir, Ofra. "Ha-Demut Ha-Mishtaneh Veha-Demut Ha-Mitgaleh Be-Sifrut Hazal." In *Jerusalem Studies in Hebrew Literature.* Jerusalem: Mandel Institute for Jewish Studies, 1984.

Moscovitz, Leib. *Talmudic Reasoning: From Casuistics to Conceptualization.* Tübingen: Mohr Siebeck, 2002.

Neis, Rachel. *The Reproduction of Species: Humans, Animals and Species Nonconformity in Early Rabbinic Science.* Jewish Studies Quarterly 24:4 (2017): 289-317.

Peters, Julie Stone. "Law, Literature, and the Vanishing Real: On the Future of an Interdisciplinary Illusion." *PMLA* 120:2 (March 2005): 442-453.

Posner, Richard. *Law and Literature: A Misunderstood Relation*. Cambridge: Harvard University Press, 1998.

Rosenthal, David. "Arikhot Kedumot Ha-Meshuka'ot Be-Talmud Ha-Bavli," *Mehkerei Talmud I*. Jerusalem: Magnes Press, 1990.

Reichman, Ronen. "The Talmudic Okimta and its Logical Structure: A Contribution to The Systematic Research into Talmudic Legal Hermeneutics," *Jewish Studies Quarterly* 12:2 (2005): 129-147.

Rubenstein, Jeffrey L. *The Culture of the Babylonian Talmud*. Baltimore: The Johns Hopkins University Press, 2003.

---------. "The Rise of the Babylonian Rabbinic Academy: A Reexamination of the Talmudic Evidence." *Jewish Studies: an Internet Journal*, 1 (2002): 55-68.

---------. *Talmudic Stories: Narrative, Art, Composition and Culture.* Baltimore: The Johns Hopkins University Press, 1999.

Schremer, Adiel. "Avot Reconsidered: Rethinking Rabbinic Judaism." *The Jewish Quarterly Review,* 105:3 (Summer 2015): 287-311.

Segal, Eliezer. *Case Citations in the Babylonian Talmud*. Atlanta: Scholars Press, 1990.

Septimus, Zvi. "The Poetic Superstructure of the Babylonian Talmud and the Reader it

Fashions." Ph.D. dissertation, University of California, Berkeley, 2011.

Septimus, Zvi. "Trigger Words and Simultexts: The Experience of Reading the Bavli." In *Wisdom of Batsheva: The Dr. Beth Samuels Memorial Volume,* ed. Barry Wimpfheimer. Jersey City: Ktav, 2009.

Shemesh, Aharon. "Shogeg Karov L'Meizid: L'Veirur Yetzirato Shel Ha-Musag B'Torat Ha-Amora'im." *Sh'naton Mishpat Ha-Ivri*, 1997: 399-428.

Silberg, Moshe. *Kakh Darko Shel Talmud*. Jerusalem: Mif'al Ha-shikhpul, 1961.

---------. "R. Yirmiyah's Questions: Methodology or Personality?" In *Kitve Moshe Silberg.* Jerusalem: Magnes, 1998, 151-159.

Simon-Shoshan, Moshe: *Stories of the Law: Narrative Discourse and the Construction of Authority in the Mishnah.* New York: Oxford University Press, 2012.

Spiegel, Yaakov. "Hosafot Me'uharot (Savora'iot) ba-Talmud ha-Bavli," Ph.D. dissertation, Tel Aviv University, 1976.

Steinsaltz, Adin. "Why Was Rabbi Yirmiyah Removed from the Beit Midrash?" *Sinai* 54 (1963-1964).

Stern, David, *Midrash and Theory,* Evanston: Northwestern University Press, 1996.

Stern, Sacha. "Attribution and Authorship in the Babylonian Talmud," Journal of Jewish Studies 45:1 (April 1994): 28-51.

---------. "The Concept of Authorship in the Babylonian Talmud," *Journal of Jewish Studies* 45:1 (Spring 1994): 28-51.

Suleiman, Susan R. and Inge Crosman, eds. *The Reader in the Text: Essays on Audience And Interpretation.* Princeton: Princeton University Press, 1980.

Sussman, Yaakov. "The Oral Torah," in *Mehqerei Talmud III: Talmudic Studies Dedicated to the Memory of Professor Ephraim E. Urbach.* Jerusalem: Magnes Press, 2005.

Thomson, Judith Jarvis. "A Defense of Abortion," *Philosophy & Public Affairs,* 1:1 (Fall 1971).

Todorov, Tzvetan. *Genres in Discourse.* Cambridge, New York, Melbourne: Cambridge University Press, 1990.

Tucker, Ethan. "Literary Agendas and Legal Conclusions: The Contributions of Rabbinic Editors to the Laws of Legal Mixtures," Ph.D. dissertation, The Jewish Theological Seminary of America, 2006.

Vidas, Moulie, *Tradition and the Formation of the Talmud.* Princeton, NJ: Princeton University Press, 2014.

Visotsky, Burton L. "Three Syriac Cruxes," *Journal of Jewish Studies* 42:2 (1991): 167 175.

Watts, James, *Reading Law: The Ritual Shaping to the Pentateuch.* Sheffield: Sheffield Academic, 1999.

---------. *Ritual and Rhetoric in Leviticus: From Sacrifice to Scripture.* Cambridge and New York: Cambridge University Press, 2007.

Weiss, Avraham. *Le-heker Ha-Talmud.* New York: Feldheim, 1954.

Westbrook, Raymond. *Ex Oriente Lex.* Baltimore: Johns Hopkins University Press, 2015.

Wimpfheimer, Barry. *Narrating the Law.* Philadelphia: University of Pennsylvania Press, 2011.

White, Hayden. *The Content of the Form: Narrative Discourse and Historical Representation.* Baltimore, Maryland: The Johns Hopkins University Press, 1987.

White, James Boyd. *Heracles' Bow: Essays on the Rhetoric and Poetics of the Law*. Madison: University of Wisconsin Press, 1985.

---------. *Justice as Translation: An Essay in Cultural and Legal Criticism*. Chicago: University of Chicago Press, 1990.

---------. *The Legal Imagination* (Abridged Edition). Chicago: University of Chicago Press, 1985.

Yerushalmi, Yosef Hayim. *Zakhor: Jewish History and Jewish Memory*. Seattle, Washington; London, England: University of Washington Press, 1996.