

# WHEN WOMEN CONFER WITH RABBIS: ON MALE AUTHORITY AND FEMALE AGENCY IN THE MISHNAH

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Roman Palestine in the time of the rabbis was neither a feminist utopia nor a patriarchal dystopia. Though society was indeed patriarchal, feminist interpreters have shown that there was nuance to the ways in which men established and maintained their dominance. Women, moreover, had opportunities to assert themselves and to negotiate a culture dominated by men. One practice that reflects such an opportunity is that of women consulting a rabbi for a legal ruling. In the Mishnah, there are four narratives that describe this type of encounter. In Mishnah *Yadaim* 3:1 a woman comes to Rabban Shimon ben Gamliel about the purity of her hands; in *M. Nedarim* 9:5 (an example attested only in the manuscripts) a woman comes to Rabbi Akiva after her husband vows not to derive benefit from her (that is, benefit from her labor or property or engage in sexual relations); in *M. Niddah* 8:3 a woman comes to Rabbi Akiva about menstrual impurity; and in *M. Bava Kamma* 8:6 a woman comes to Rabbi Akiva to collect damages owed by a man who uncovered her head in public.

In the Mishnah, these incidents are presented as actual case—*ma'asim*—which occurred during the time of these two famous rabbis. These women are portrayed consulting leading rabbinic figures with their very real concerns in the early part of the Tannaitic period. While the inference that ancient Jewish women did consult with rabbis may be correct, these passages invite a deeper reading. Furthermore, there are reasons to question the historicity of these cases. First, as has been recognized more and more frequently, these stories are necessarily mediated by their rabbinic authors. Even if the rabbis responsible for creating and transmitting these accounts have not invented them from scratch, they, like all authors, have chosen what to include and what to omit, shaping these accounts—whether consciously or not—in light of their own concerns and their own realities.

Recognition of this mediating role raises doubts about the historicity of the accounts but, at the same time, opens up important questions and potential insights about the rabbis and their world. If the rabbis have chosen to include these four narratives in the Mishnah, why have they done so? Why have they incorporated the specific details that they do? And what do the choices they have made tell us about their own concerns and realities?

Since these four stories are also about women, the mediating role played by the rabbis *specifically as men* is also significant. Feminist historians—especially those of early Christianity and Judaism—have shown that what men have to say in their texts about women is shaped by their interest in maintaining the subordination of women, as well as their fantasies about the place and role of women in society and about their own place in society. As such, these stories can unmask the subtle ways in which the rabbis, as male authorities, assert the dominance of men over women, the ways in which they use women to assert their own identities as authoritative men, and the ways they imagined women acting in society. What is surprising about these stories is that in the process of claiming authority for the rabbis, they end up subverting more restrictive norms of female behavior found elsewhere in the Mishnah. And this subversion, the stories admit, comes about at the instigation of women. In

the world of these narratives, the rabbinic legal venue provides a social space for women to express their subjectivity and agency. At times, this expression is even supported, though also delimited, by the rabbinic legal authorities. Ultimately, these stories can only testify to the rabbinic construction of women, yet they do nevertheless provide hints as to the range of possibilities about ways in which “real” Jewish women at the time may have acted and the choices available to them.<sup>1</sup>

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<sup>1</sup> Feminist scholarship on Jewish women in Roman Palestine: Miriam B. Peskowitz, *Spinning Fantasies: Rabbi, Gender, and History* (Berkeley and Los Angeles: University of California Press 1997); Cynthia M. Baker, *Rebuilding the House of Israel: Architectures of Gender in Jewish Antiquity* (Stanford: Stanford University Press 2002); Tal Ilan, *Jewish Women in Greco-Roman Palestine* (Peabody, MA: Hendrickson 1996); Idem., “Women in Jewish Life and Law,” in *The Cambridge History of Judaism: Volume 4: The Late Roman-Rabbinic Period*, ed. Steven T. Katz (Cambridge and New York: Cambridge University Press 2006). See also Elizabeth Shanks Alexander’s useful review, “The Impact of Feminism on Rabbinic Studies: The Impossible Paradox of Reading Women into Rabbinic Literature,” in *Jews and Gender: The Challenge to Hierarchy*, ed. Jonathan Frankel (Oxford: Oxford University Press, 2000), 101-118.

On the four examples in the Mishnah: *M. Nedarim* 9:5 uses a masculine verb in the printed editions of the Mishnah and Talmud, but in almost all of the manuscripts, the reading is feminine, and thus the woman is the one who has come to Rabbi Akiva. Note also that I do not include in my analysis here four additional Tannaitic or purportedly Tannaitic examples found in the Tosefta, the Yerushalmi, and the Bavli: *T. Kelim Bava Batra* 1:2, *Y. Ketubot* 25a, and *B. Niddah* 45a (two different examples).

On my approach to the rabbis shaping their accounts: my main inspirations here are the work of Hayden White, especially the essays in *The Content of the Form: Narrative Discourse and Historical Representation* (Baltimore: Johns Hopkins University Press 1987) and, in the study of rabbinic literature, Charlotte Fonrobert, *Menstrual Purity: Rabbinic and Christian Reconstructions of Biblical Gender* (Stanford: Stanford University Press 2000), Beth Berkowitz, *Execution and Invention: Death Penalty Discourse in Early Rabbinic and Christian Cultures* (New York: Oxford University Press, 2006), and Moshe Simon-Shoshan, “Halachah Lema’aseh: Narrative and Legal Discourse in the Mishnah,” PhD diss., University of Pennsylvania, 2005. See also Naftali S. Cohn, “Rabbis as Jurists: On the Representation of Past and Present Legal Institutions in the Mishnah,” *JJS* 60 (2009): 245-263, and see my *The Memory of the Temple and the Making of the Rabbis* (under review).

On imagining women in ways that assert the male author’s own place in society, see Peter Brown’s notion of men “thinking with” women in *The Body and Society: Men, Women, and Sexual Renunciation in Early Christianity* (New York: Columbia University Press 1988), 153. The body of scholarly literature also includes (and the following is a partial list): Ross Shepard Kraemer, *Her Share of the Blessings: Women’s Religions Among Pagans, Christians, and*

## Women Coming Before Rabbis

The combined evidence of the four different cases in which women come before rabbis suggest, as do all similar case-stories in the Mishnah, that the rabbis considered themselves the ultimate arbiters and authorities of Jewish law. Women, like men, would come before rabbis to resolve legal issues and legal disputes because the rabbis were the ones who could and did resolve such cases—at least according to the rabbis themselves.

Two of the cases of women coming before a rabbi—both involving ritual purity—are described in the manner typical of “case-stories,” which involve an ambiguous matter of law that had arisen in a particular case and a ruling by a rabbi (or group of rabbis) that resolves the ambiguity.<sup>2</sup> As has been noted, in a subset of the Mishnah’s case-stories, an individual involved in the case is said to have “come before” the rabbi for the ruling, and this is precisely what happens with the women in these two cases. First, in *M. Yadaim* 3:1, Rabban Gamliel reports that “a certain woman came before [Rabban Gamliel’s] father and said to him, ‘My hands entered into the space of a clay pot’; He said to her, ‘My daughter, what was the nature of its impurity?’”<sup>3</sup> At this point, Rabban Gamliel cannot recall what

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*Jews in the Greco-Roman World* (New York: Oxford University Press 1992); Peskowitz, *Spinning Fantasies*; Baker, *Rebuilding the House of Israel* (Stanford: Stanford University Press, 2002); Elizabeth A. Clark, “Ideology, History, and the Construction of ‘Woman’ in Late Ancient Christianity,” *Journal of Early Christian Studies* 2 (1994): 155-184; Idem., “The Lady Vanishes: Dilemmas of a Feminist Historian after the ‘Linguistic Turn’,” *Church History* 67 (1998): 1-31; Andrew S. Jacobs, “Writing Demetrias: Ascetic Logic in Ancient Christianity,” *Church History* 69 (2000): 719-748. See especially the notion of the “social logic” of the text he develops.

<sup>2</sup> On these case stories, see my “Rabbis as Jurists”; my *The Memory of the Temple*; Shaye J. D. Cohen, “The Rabbi in Second-Century Jewish Society,” in *The Cambridge History of Judaism*, Vol. 3 (*The Early Roman Period*), ed. William Horbury et. al. (Cambridge: Cambridge University Press 1999), 922-990; Idem., “The Place of the Rabbi in Jewish Society of the Second Century,” in *The Galilee in Late Antiquity*, ed. Lee I. Levine (New York: Jewish Theological Seminary of America, 1994), 157-173. I take up the terminology “case-story” (as well as a general understanding of these case-stories) from Simon-Shoshan, “Halachah.”

<sup>3</sup> In the printed edition the story is told by Rabban Shimon ben Gamliel about his father, Rabban Gamliel; however, in the manuscripts, it is Rabban Gamliel who tells the story about his father.

happened next, and a rabbinic back-and-forth ensues. In the second instance, *M. Niddah* 8:3, the case is reported of “a woman who came before Rabbi Akiva and said to him, “I have seen a bloodstain (from genital blood flow).” In this instance, the rabbi questions the woman about the details of the case and ultimately declares her “pure.” In both cases, something has happened that has led each woman to a question about her purity status, and she approaches the rabbi who, based on the details of the case, rules on her status.

Like similar case-stories in the Mishnah, these two narratives assert that typical, anonymous Jews recognized the authority of these two early rabbis. The two anonymous women, like the characters in a handful of other case-stories, recognize and submit to the dictates and expertise of rabbis. Although, as many scholars now believe, the rabbis were not especially powerful, and there were other legal and ritual experts whom the average Jew may have been more likely to consult, these narratives imagine that the law of the land is rabbinic law.

From the perspective of ancient Jewish women, it is noteworthy that these two tales imagine that a woman would have easily come to a rabbi on her own for such a judgment. Clearly she is not stuck at home, and she could go to the rabbi for a ruling on an important ritual matter—at least on issues typical for women, like their bodies and their cooking implements. She is more independent than certain stereotypes would have it, yet she is nevertheless fully dependent on the male rabbinic authority whom she must consult in order to determine her purity status.<sup>4</sup>

The third and fourth examples of a woman coming to a rabbi are somewhat different than the typical case story in the Mishnah, and they project the rabbi’s authority and envision the woman’s appearance before the rabbi differently than the first two examples. In the case story in *Bava Kamma*, the woman again comes before Rabbi Akiva (*uva’at lifnei rabbi Akivah*):

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<sup>4</sup> Even more than this, the story in *Niddah* asserts that the male rabbi has authority and control over the female body. See Fonrobert, *Menstrual Purity*, 114-115.

There was a case of an individual who uncovered a woman's head. She came before Rabbi Akiva, who obligated him to pay her 400 zuz.

He said, "Rabbi, give me a bit of time." And he gave him some time.

He [the "individual"] waited for her to be standing at the door of her courtyard. He broke a jug of oil with one *issar* [a small amount] of oil in it in front of her. She revealed her head and patted the oil into her head (as a lotion). And he had witnesses witness her.

He came before Rabbi Akiva and said, "I must pay 400 zuz to this one?"

But Rabbi Akiva said to him, "You have said nothing, for one who injures himself is free from penalty, but if others injure him, they must pay damages." (*M. Bava Kamma* 8:6)

This example is different because rather than one individual, there are two people before Rabbi Akiva. In this case, Rabbi Akiva appears to be a judge or arbitrator who settles what is apparently a dispute over damages. The woman presumably has come to Rabbi Akiva in order to force the man to pay her damages. Perhaps the reason she comes to Rabbi Akiva in the first place is because he has refused to pay. Following the law recorded in an earlier paragraph in the Mishnah, that there are damages for shaming a woman by uncovering her head, Rabbi Akiva rules that he must pay. Rather than paying, the man decides to employ a double ruse, tricking both Rabbi Akiva and the woman. He barter for time in order to set the woman up to uncover her own head. She does so simply in order to gain a small amount of oil that the man has deliberately spilled near her, and now the man believes he has a new legal argument in his own favor. Nevertheless, Rabbi Akiva dismisses his argument and stands by his original ruling that the man must pay up. The ruling on the ambiguous point of law, which is the usual basis for case-stories in the Mishnah, comes in the end: even though the woman herself may be shameless and uncover her own head, if any others uncover her head, they still owe her the standard payment for damages.

In this example, like the others, the rabbi is depicted as an authoritative arbiter of the law, though this case goes further than usual in imagining the authority not only to determine the law and matters of ritual status and practice, but to settle a dispute between parties in a

matter of civil law.<sup>5</sup> The position of the woman is very different in this case as well. She has not come to Rabbi Akiva because of an ambiguity; rather, she comes in order to collect. The ambiguity revolves around the man in this case. As in the other examples, this story imagines that the woman leaves her home to consult with the rabbi but, at the same time, she is dependent on the male rabbi to protect her legal rights. Significantly, she is just as subordinate to Rabbi Akiva as her male co-litigant, whom the rabbi emphatically puts in his place.

Similar to the case story in *M. Bava Kamma* 8:6, the example in *M. Nedarim* 9:5 also describes two parties who come before Rabbi Akiva in what may be a dispute. Here, however, the parties are husband and wife, and the situation is that the husband has taken a vow not to derive benefit from his wife (namely, not to benefit from her domestic labor, the income produced by her labor or her property, and not to have sexual relations). According to the story, the woman—as indicated by the feminine verb (found only in the manuscripts)—comes before Rabbi Akiva. As in the other examples, her motivation for coming to Rabbi Akiva is not entirely clear, and this gap is rather intriguing: has she come to redress the wrong he has done her? To force a divorce? To prevent her husband from divorcing her? To collect her marriage settlement?<sup>6</sup> Rabbi Akiva's initial ruling is strangely identical to the one in *Bava Kamma*: he requires the husband to pay four-hundred *zuz*, in this case the amount of the woman's unusually high *ketubah* marriage settlement. Here, however, the forced payment also means that Rabbi Akiva is forcing the man to divorce his wife. The initial denouement of the ruling here is also eerily familiar: the man does not want to pay. In this case, he claims that he has inherited only four hundred *zuz* from his father and that it should be sufficient for the woman to receive half. As in the case of the man who uncovered the

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<sup>5</sup> For further analysis of this case and for earlier references, see my "Rabbis as Jurists."

<sup>6</sup> For Babatha's legal struggle following the seizure of the date-crop from her late-second-husband's orchard, see *Y. Yadin* 21, 22, 23, 24, and 25. Naphtali Lewis shows the struggle a woman could face in collecting her marriage settlement (*The Documents from the Bar Kokhba Period in the Cave of Letters: Greek Papyri* [Jerusalem: Israel Exploration Society, 1989]).

woman's head, Rabbi Akiva is intransigent and, typically, deploys a principle: "Even if you must sell the hair from your head, you are obligated to give her her marriage settlement." At this point, however, the story in *Nedarim* diverges from the one in *Bava Kamma*. In response to Rabbi Akiva, the man says, "If I had known that this was so, I would never have taken the vow." And so, Rabbi Akiva nullifies the vow.

This fourth example is similar to the others in that it imagines a woman bringing a legal issue to a rabbi. Unlike the other cases, however, the woman here does no more than bring the case; once the case is before Rabbi Akiva, she disappears completely. Not only is she fully dependent on the rabbinic legal figure, but he may have essentially ignored her. This depends on how we interpret her motivation. He can only be taken to have addressed her concern if she came to him in order to cancel the vow and restore her marriage. Regardless of how we understand the way he treats the woman, though, it is significant that on yet another occasion a woman is said to have turned to a rabbi to resolve a matter that involves legal, financial, and ritual issues. Rabbis, according to these stories, are recognized legal authorities.

### Rabbi Akiva's Surprises

In addition to making a claim for rabbinic authority, two of the stories about Rabbi Akiva reinforce this by portraying his rulings as surprising to those involved. This is most evident in the case of the woman with the bloodstain. I quote the narrative in full:

There was a case with a certain woman who came before Rabbi Akiva. She said to him, "I saw a blood stain (*ketem*)."<sup>1</sup> He said to her, "Perhaps you have a wound?" She said, "Yes and it healed." "And perhaps it could have opened up and thus produced blood?" She said, "Yes." And Rabbi Akiva declared her pure. He saw his students looking at each other and he said to them, "Why is this matter difficult in your eyes? For the rabbis said these things in order to be lenient and not stringent." (*M. Niddah* 8:3)

Rabbi Akiva's ruling, which might otherwise seem perfectly typical, causes an unusual reaction among his students. The students "look at each other" in a way that elicits a defensive or perhaps didactic response from



their master. The lenient position he takes is at first “difficult in their eyes.” Based on the intriguing back-and-forth between master and students, it seems that the students expected Rabbi Akiva to deem the woman impure on account of the bloodstain. When he did not, they were surprised. There may be several reasons why they expected him to rule differently. Perhaps they presume—in contrast to the laws recorded in the previous paragraphs of the Mishnah—that all genital bloodstains render a woman impure. Alternatively, they may have believed that explaining away the bloodstain by positing that a wound had reopened was simply a stretch. A third possibility is that they were shocked that he put words in the woman’s mouth in order to render her pure.<sup>7</sup> Whatever the reason, they are clearly unaware of the explicit law recorded in the Mishnah preceding the case-story that allows such a leniency, and they respond with surprise.

Aside from Rabbi Akiva’s students, there is a second character in the story who may have been surprised as well: the woman herself. According to Charlotte Fonrobert’s reading of the passage, the woman is reluctant to go along with the leniency that Rabbi Akiva implies with his first question. Fonrobert translates the woman’s response as “Yes, *but* it healed.” The woman, in Fonrobert’s reading, may have been reluctant because she wished to be more stringent, or perhaps, since her purity status is linked to the permissibility of cohabitation with her husband, she wished to avoid intercourse with him for whatever reason. In coming to Rabbi Akiva, then, the woman expected him to be stringent.

While this reading is plausible, an alternative reading is that the woman did not expect one answer or the other. As in most case-stories, there was a fundamental legal ambiguity, and the rabbi was necessary in order to resolve it. In responding to his leading questions, perhaps she is not resisting but simply answering his line of inquiry. Moreover, the story itself makes no connection to the question of cohabitation, leaving the ruling in the realm of purity. Furthermore, if she wished to be “impure”

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<sup>7</sup> The latter is Hauptman’s reading in *Rereading the Rabbis: A Woman’s Voice* (Boulder: Westview Press 1998), 154. Note that my translation here of *M. Niddah* 8:3 corrects the one in my “Rabbis as Jurists,” 252.

(and forbidden to her husband), why could she not simply have declared herself so? The very fact that the woman comes to Rabbi Akiva in the first place seems to suggest that she was simply uncertain about her status—perhaps because of the very point that comes up in the story, the ambiguity of the healed wound. If we read the woman's initial expectations and response as neutral, then she herself would not have been surprised by Rabbi Akiva's ruling; his students, however, were definitely surprised.<sup>8</sup>

The second story in which Rabbi Akiva makes a surprising ruling appears in *Bava Kamma* 8:6, the case of the man who uncovered a woman's head in the market. Here the ruling is not a surprise to any students or to the woman, but to the man involved in the case. The man believes that if he proves that the woman has no shame and will uncover her own head for the sake of a very minimal gain, Rabbi Akiva will reverse his judgment. In taking this view, the man is applying the principle articulated in the Mishnah itself to his own situation: "all [i.e. damages for shame] depends on the one who shames and the one who is shamed" (*M. Bava Kamma* 8:1), and "all goes by his [the shamed one's] honor" (8:6). That is, the amount of compensation should depend on the honor or lack of honor of the one who has been shamed. The man has shown that the woman has no shame, and so he should not have to pay her much. Rabbi Akiva, however, ignores the man's new evidence, citing a different principle according to which even if one injures or causes damages to oneself, this does not give license for others to do the same.

By shifting the issue from the question of a person's "honor" to the difference between harming or shaming oneself and being shamed or harmed by another, Rabbi Akiva may simply be saying that the woman's

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<sup>8</sup> For Fonrobert's translation of the story, see *Menstrual Purity*, 113-114. The students' surprise, however, may support Fonrobert's reading. If they are surprised, presumably the woman was also expecting a stringent ruling. As Fonrobert herself notes, there is simply insufficient detail in the story to help resolve the ambiguity about her motivation. For more on this example, see also Ishay Rosen-Zvi's discussion of Hauptman and Fonrobert in "Blood, Identity, and Counter-Discourse: Rabbinic Writings on Menstruation," *Prooftexts* 23 (2003): 217-218.

act of shaming herself cannot be used as evidence for what her level of honor is. Alternatively, he may be creatively undermining the established principle that “all depends” on the honor of the shamed. This second reading is supported by Rabbi Akiva’s statement just before the case-story that “even the poor in Israel, we should view them as if they are free people (*benei horin*) who have lost their property, for they are all the children of Abraham, Isaac, and Jacob.” Rabbi Akiva objects in this statement to defining Jews as having different levels of honor in cases of compensation for damages. The story, which immediately follows this statement, likely makes the same point. This woman who debases herself, perhaps because she is poor, deserves the same payment as anyone else.

If this reading is correct, then, in both episodes, Rabbi Akiva’s ruling is a surprise to those involved precisely because it is innovative. In *Bava Kamma* it is an innovation in that it goes against the established rule that damages depend on the “honor” of the one shamed. Similarly, in *Niddah*, it presents a shift in attitude towards the laws of menstrual purity. As noted, Rabbi Akiva’s students, with their surprise at his ruling, appear to be unaware of the law in the Mishnah that precedes the case story, that if the wound could open and produce blood, the woman is pure. Depending on the relationship between the case story and the laws that surround it, they may not even be aware of many similar leniencies that the Mishnah provides for rendering the bloodstain non-menstrual and thus not impure. Rabbi Akiva, as he himself puts it in the story, is being lenient. In response to the students’ surprise, he justifies this leniency with three different arguments: asserting that the notion that bloodstains render a woman impure is itself a rabbinic innovation; claiming that the rabbis who innovated intended to be lenient; and interpreting a verse as implying leniency. Though he grounds his leniency in the earlier rabbis and in the Bible itself, the students’ surprise and his explanation show that he recognizes his own innovation as such.

## Rabbi Akiva's Rulings and Norms of Female Behavior

In the two cases in which Rabbi Akiva's innovations prove surprising to those involved, they may also seem so because they tend to undermine more extreme statements about norms of female behavior found elsewhere in the Mishnah. According to other Tannaitic passages, married women must take great care in covering their heads and observing the laws of menstrual purity; any laxness will lead to dire consequences such as divorce and even death. In contrast to these statements, Rabbi Akiva's rulings are quite permissive.

Head covering for women is not mentioned frequently in the Mishnah, and when it is mentioned, it is usually incidental.<sup>9</sup> There is only one text that speaks directly about the practice of head covering, stressing its importance and the severe consequences for anything less than strict observance. This is a law that lists various offenses for which a husband can divorce his wife:

The following [women] must be divorced and they forfeit their marriage settlement: The woman who violates the laws of Moses and [the laws] of the Judaeans (Jews).

What are the laws of Moses? She feeds him untithed food, has sex with him when in a state of menstrual impurity, does not separate the sacred portion of the dough, and takes an oath that she does not fulfill.

What are the laws of the Judaeans? She goes out of the house with her head uncovered, spins wool in the marketplace, and speaks with any man. Abba Shaul says: Even if she curses his parents in his face. Rabbi Tarfon says: Even a woman with a loud voice. What is a woman with a loud voice? She speaks in her house and her neighbors can hear her voice. (*M. Ketubot* 7:6, emphasis added)

Women's head covering in public, according to this passage, is not a biblical law (a "law of Moses") but a "law of the Judaeans." In context, this seems to mean that the practice is based on the custom of Judaeans the people rather than the word of God or the sacred text of the Torah. Though

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<sup>9</sup> Sources mentioning women's headcovering: *M. Shabbat* 6:1, 6:5-6, *M. Ketubot* 2:1, 2:10, 5:8, 6:1, 7:6, *M. Zavim* 5:1, *M. Kelim* 29:1, and perhaps *M. Sotah* 2:1. See also *T. Sotah* 5:9, *T. Ketubot* 7:6, and *T. Bava Kamma* 11:5.

it is not a religious law, it is nevertheless a law which entails consequences when violated. If the law is taken literally, even a minor breach has drastic consequences: a husband is required to divorce his wife if she goes out in public with her head uncovered.

Rabbi Akiva's ruling stands in stark contrast to this restrictive law in *Ketubot*. Though he does not claim that the woman, in this case, is *allowed* to go out in public with her head uncovered, Rabbi Akiva does rule in a way in which there are no consequences for her doing so. He simply considers her choice to uncover her own head as analogous to injuring herself or damaging her own property. She has shamed herself and violated the law against self-injury, but to an extent that is her choice. This is quite different than insisting that a man must divorce his wife if she ventures out of her home with an uncovered head.

A similar discrepancy exists between Rabbi Akiva's ruling on the woman's bloodstain and three different exhortative statements in the Mishnah about a woman's observance of the laws of *niddah*. In addition to the threat of divorce for "having sex with [her husband] when in a state of *niddah*" in *M. Ketubot* 7:6, *M. Shabbat* 2:6 asserts that "there are three transgressions for which women die at the time of giving birth: when they are not careful (*zehirot*) in [the observance of] *niddah* [menstrual purity laws], in *hallah* [removing the sacred portion of the dough], and in lighting the candle [of the Sabbath]." Here too the mishnaic passage exhorts stringent observance of *niddah* and other practices by implying a dire threat: if a woman is not careful, she will die in childbirth.<sup>10</sup> A more specific exhortation—without any threat of consequences—appears in *M. Niddah* 2:1:

Every hand that excessively inspects [the genitals] is praiseworthy in the case of women, but shall be cut off in the case of men.

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<sup>10</sup> For a more in-depth treatment of this passage, particularly as interpreted in later sources, see Judith R. Baskin, *Midrashic Women: Formations of the Feminine in Rabbinic Literature* (Hannover: Brandeis University Press, 2002), 70-73.

This statement occurs in the midst of a number of laws encouraging or requiring the woman to inspect for menstrual blood before and after sexual intercourse, and from the perspective of the woman, it exhorts her to take extreme care in observing this particular aspect of *niddah* practice.<sup>11</sup>

While Rabbi Akiva's ruling need not specifically contradict any of these exhortations, since bloodstains may be seen as distinct from direct evidence of menstruation, it certainly goes against their spirit or extreme caution and excessive care in order to ascertain whether the woman is menstruating and stringency, in general, associated with the practice of *niddah*. Rabbi Akiva's lenient innovation is not explicit here, but in a passage in the *Sifra* (also in *b. Shabbat* 64b), his stance on practices surrounding *niddah* is portrayed in precisely this way. The passage reports a change in the history of a law made by Rabbi Akiva:

The first elders used to say: "she shall be in her state of *niddah*" (Lev 15:19) [*b. Shabbat* cites Lev 15:33] – she may not paint her eyes with makeup nor paint her face [*B. Shabbat* adds: nor adorn herself with colored garments] "until she goes into water [i.e. purifies herself]" (*ibid.*). Until Rabbi Akiva came and taught: The matter will lead to enmity (between husband and wife) [ *B. Shabbat* reads: If so, you make her repulsive to her husband and her husband will divorce her].

According to this passage, Rabbi Akiva made a change in the laws about how women comport themselves during their menstrual impurity: the earlier "elders" – perhaps rabbinically-imagined Second Temple-era legal authorities – forbade women to adorn themselves, whereas Rabbi Akiva argues that this law is problematic and so changes it. Such change is justified, according to Rabbi Akiva, because the earlier law leads to disastrous consequences that only a change can obviate.<sup>12</sup>

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<sup>11</sup> See *M. Niddah* 1:1, 1:7, the end of 2:1, and 2:4. For a detailed analysis of this passage and its gender implications, see Baker, *Rebuilding the House of Israel*, 70-75.

<sup>12</sup> The passage is from *Sifra Zavim*. Divergent passages from *B. Shabbat* 64a, MS Munich 95 with MS Vat. Ebr. 108 (where legible). That Rabbi Akiva makes a change is implied by the formula *ad sheba rabbi Akiva velimed*. On the justification of legal change, see Jaffee, "The Taqqanah in Tannaitic Literature: Jurisprudence and the Construction of Rabbinic Memory," *Journal of Jewish Studies* 41 (1990): 204-225.

If each of these two laws—Rabbi Akiva’s ruling on adornment and his ruling in the case of the bloodstain—are taken alone, they could be explained by the unique circumstances of the case or the particular reason for a change. Together, however, particularly in light of the recurring memory of Rabbi Akiva as a legal innovator, they suggest, as Judith Hauptman has argued, that Rabbi Akiva is being portrayed as innovatively lenient on practices associated with menstrual impurity in general.<sup>13</sup>

In the two case stories in *Niddah* and *Bava Kamma*, then, Rabbi Akiva’s rulings are innovative in easing restrictive rules and practices for women. This is not precisely what surprises those involved in the cases, yet these innovations may be just as significant for the rabbis. Rabbi Akiva, these stories claim, had the power to make unusual rulings, to allow women to get away with uncovering their own heads and to ease up on the stringent practices of *niddah*. The relationship between these rulings and the wider body of laws in the Mishnah thus adds nuance to the claims to authority that the case-stories make. Rabbi Akiva, and by extension all rabbis, according to these stories, have the power to go against even established norms for female behavior.

## Reading Female Agency and Subjectivity in the Stories of Women Who Came Before Rabbi Akiva

In both cases in which Rabbi Akiva innovates and undermines norms of female behavior, the rabbinic authors are using these anonymous women (real or otherwise) to pursue their own goal of religious authority while opening up possibilities for women in their society—or, at least, they imagine they are doing so. The rabbis were certainly “thinking with”

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<sup>13</sup> Hauptman, *Rereading the Rabbis*, 153-156. See also Judah Goldin, “Toward a Profile of the Tanna Aqiba ben Joseph,” *Journal of the American Oriental Society* 96 (1976): 51. See also additional relevant primary passages cited by both Hauptman, *Rereading the Rabbis*, 153-156, and Goldin, “Toward a Profile,” 38-56. There may be a number of broader contexts for Rabbi Akiva’s rulings, including his position on divorce (see Goldin) and changes in the conception in *niddah* (see Hauptman); one of these contexts, I argue, is his reputation as a legal innovator.

women, to use the term made famous by Peter Brown.<sup>14</sup> Yet these stories are not just about the rabbis; they are also about the women the rabbis imagined themselves encountering, and so they point directly to the way the rabbinic authors understood that women could and did act in the world.

Women could be both subjects and agents; they could express both subjectivity and agency. This may be one of the most surprising dimensions of these narratives. In all four examples, women come by themselves, on their own initiative, to the rabbi. More than this, in each of the stories, the woman has her own individual concern which leads her to consult Rabbi Akiva or Shimon ben Gamaliel. In the story about the hand in the impure pot, the woman is concerned with the correct observance of purity laws, and out of this concern she takes the initiative to come before Rabban Gamaliel's father. So too in the case of the bloodstain, the woman takes the initiative to come before Rabbi Akiva in order to observe *niddah* practices correctly. In the story with the husband's vow not to benefit from his wife, the woman has a concern—about her marriage status, or her husband's inappropriate action, or collecting what is owed her—and she takes matters into her own hands in order to resolve the concern. The case with the woman whose head was uncovered may be read, similarly, as a demand to collect what is owed or means of confronting the man's inappropriate behavior. These various concerns, not surprisingly, place the women firmly within the way of life imagined in the Mishnah as a whole. What is surprising, though, is that the stories recognize that these women have their own feelings and concerns about the matters at hand and that they acknowledge the women's ability, on their own initiative, to seek recourse.

A yet greater acknowledgment of these women's agency occurs in the two instances in which Rabbi Akiva undermines more restrictive norms of female behavior about bloodstains and head covering. With his surprising rulings, Rabbi Akiva is not simply showing concern for issues pertaining to women or ruling in ways that benefit the women involved

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<sup>14</sup> Brown, *The Body and Society*, 153-159.



and that benefit other women in the future. He is taking action in direct response to the women who have come before him. His surprising rulings (and the innovations they introduce), while attributable in part to his own tendencies, arise precisely because a woman has come before him. Without these women, he may not have made his innovative ruling and may not have created new laws that were less restrictive for women in general. The two women who come before him are very much like the biblical daughters of Zelophehad in this respect. Like their biblical forebears, these women bring their own legal concerns to the (male) authorities and, as a result, the law becomes less restrictive and more favorable not only for them, but for other women. Outside of the Mishnah but within rabbinic tradition, the daughters of Zelophehad are even lauded for taking such initiative. The expression of subjectivity and agency in these ways is seen by at least some rabbis as appropriate and desirable.<sup>15</sup>

But it is not only the expression of agency *within the bounds of the law* that is recognized by these mishnaic stories. The single most striking acknowledgment of a woman's subjectivity here is Rabbi Akiva's allowing a woman to choose to uncover her own head even when she is in violation of the law. As noted in *Bava Kamma* 8:6, while Rabbi Akiva does not approve of a woman uncovering her head, he allows her a modicum of choice in the matter. This is clear from the distinction he makes between the way she chooses to comport herself and how others treat her. Rabbi Akiva is quite insistent that the choice she makes about covering or uncovering this part of her body does not give anyone else the right to treat her with less dignity.

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<sup>15</sup> The story of the daughters of Zelophehad is in Numbers 27:1-11. For rabbinic treatments of the story, see Mekhilta *Bahodesh* 9; Sifrei Bemidbar *Pinhas* 133, 134; and *b. Sanhedrin* 8a. It must be noted that the recognition that women could be agents of change within the law does not mean that the men in charge of the law would treat them respectfully or fairly. In the end the daughters of Zelophehad had restrictions placed on them that undeniably hindered their expression of agency and thus placed them firmly back under male control (Numbers 36:1-12).

His ruling in this case suggests, further, that he holds that the shame the woman feels derives from her own experiences and so belongs to her. In awarding the four hundred *zuz* to the woman, Rabbi Akiva seems to be following the rule stated in *M. Ketubot* 6:1 that a woman—and not her husband—receives the damages when she is shamed. In both passages, because it is her own shame, uncovering her own head is just like damaging her own property or injuring herself.<sup>16</sup>

Since women's subjectivity and agency is recognized in these narratives specifically in the context of coming before rabbis for a ruling, it seems that the rabbinic legal venue serves as a social space in which women could and did express subjectivity and agency. The mishnaic stories and their rabbinic authors acknowledge that a woman could seek recourse on her own initiative and thus express her unique feelings and concerns by coming before rabbis. In bringing her case to a rabbi, a woman might even secure an advantageous ruling that undermines commonly expressed restrictive norms of female behavior. Similarly, the rabbis' ruling may help her assert her right to choose how to comport herself or behave ritually—even when the rabbi himself might not consider that behavior proper.

Not surprisingly, however, there are limits to these stories' acknowledgement and support of female agency and subjectivity. First, the women are limited by being defined as women who conform to women's categories: they are married, menstruating, subject to abusive behavior and in need of the law's (and the rabbis') protection. Second, their subjectivity and agency are circumscribed by the authority of the rabbis. These women are practitioners of the rabbinic ritual system and so are subjects of the law, as determined and administered by rabbis.

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<sup>16</sup> This stands in contrast to *M. Ketubot* 7:6, which rules that a husband divorces his wife if she goes out with uncovered head. In this passage, a wife's head covering seems to be the husband's right, and when she does not cover her head, she seems to be wronging him (just as insulting his parents and talking with other men, other items on the list of "Judaean laws," are wronging him). Note that in *M. Ketubot* 6:1 she is not, however, entitled to damages for pain, which by my logic should belong to her.

Women, therefore, are simultaneously restricted and given freedom by the rabbis and their legal and ritual system.

To a degree this tension derives from the choice to use these women in order to assert rabbinic authority. Yet simply by including these women, the rabbinic authors of the stories necessarily acknowledge their concerns, even as they mediate them and assert their own importance in addressing them.

## **Conclusion**

These four stories in the Mishnah—written by rabbis about women who come before a rabbi—say something about rabbis and about women in the time of the Mishnah. They speak to the authority claims that the rabbis made, to the nature of the rabbinic memory of Rabbi Akiva as a legal innovator, to the way rabbis constructed “woman,” and to the possibilities that were available to women. The interplay between each of these shows the inherent complexity in this ancient discourse about women, how fundamentally bound together were the rabbis’ understanding of themselves as male authorities, their recognition of female subjectivity and agency, and the constraints they wished to place on this subjectivity and agency. There is no way of knowing to what extent women may have seized on the model presented by these mishnaic case stories, or if this led to the desired results. Indeed, women may have resisted rabbinic claims for authority and perhaps attempted to solve similar matters in other ways. Babatha’s legal struggles several centuries before the production of the Mishnah in nearby Roman Arabia suggest that even in relatively important matters women could circumvent male-dominated legal venues—as in her unilateral seizure of her late husband’s land and sale of its date crop in lieu of debts owed here. Yet, at the same time, it her struggles suggest how difficult such avoidance might ultimately be, as evidenced by the ensuing legal battle.<sup>17</sup> Despite the un-

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<sup>17</sup> For Babatha’s seizure of her late husband’s orchard in lieu of debts owed her, see P. Yadin 21 and 22; on the ensuing legal battle: see the documents P. Yadin 23-26.

certainty about how the Mishnah's stories may relate to the ways in which women actually acted, it is striking that the male rabbinic authors believed that they were giving women the opportunity to express themselves and, ultimately, to change the law.