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TURN IT AND TURN IT AGAIN: THE TALMUD, ETHICS, AND #METOO

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Introduction

I understand ethics as an engagement with human responsibility, the deliberative study of what people should do to contribute to the flourishing of individuals, communities, ecosystems, and the inhabited world. My approach to ethics is shaped in large part by the teachings of Emmanuel Levinas, who was inspired by the Talmud. One grounding principle that Levinas draws from the Talmud is that the human condition is defined by obligations to others. He develops this idea in both his philosophical writings and in the commentaries and essays he wrote on the Talmud and other aspects of Jewish life. Levinas is famous for giving primacy to ethics in his philosophy, which is structured on his account of the face-to-face. For Levinas, it is the face of another person that imposes obligation on the self, awakening a sense of responsibility that comes not from the power or coercion of the other person, but rather from their vulnerability and need. Unlike the Greek philosophic tradition which begins with the self, for Levinas, the other comes first. Everything hinges on the face-to-face encounter because responsibility for the other person becomes the very grounding for the self. While my approach to ethics is

rooted in Levinas's account of human responsibility, I am interested in expanding his orientation beyond the interpersonal. I want to think about Jewish ethics in a way that addresses politics, communities, institutions, ecology, and non-human subjects, even as it remains rooted in the kind of urgency and obligation that the face-to-face meeting enacts.

Because my definition of ethics begins with Levinas, Talmudic concepts are baked in from the very beginning. For me, the ethical value of the Talmud lies not in its normative content, but in the procedures it models—of close reading and interpretation, of careful deliberation, of reasoned argument enriched by imaginative storytelling. I also cherish the tradition of collaborative study that has grown up around the Talmud. Talmudic tradition shapes my orientation to ethics as a pursuit that is embedded in relationship, that joins thought to feeling and study to action.

In my work as a liberal rabbi and a professor of rabbinic literature, I encourage people of all backgrounds to engage in Talmud study. While I think the Talmud's ethical import and literary richness can speak to all people, the Talmud has special importance to me because of its foundational role in Jewish life and in the formation of rabbis, in particular. I teach Talmud at the Reconstructionist Rabbinical College, where many of my students encounter serious Talmud study for the first time as they train to become rabbis. Some of my students are hungry for Talmud study; they have already studied with great teachers who have invited them to approach Talmud as a vital conversation across generations, and they are eager to join their voices, insights, and experiences to the conversation. Others, though, are more suspicious—they associate the Talmud with the stringencies of orthodoxy or with the prejudices of the past, and question why the Talmud continues to take up so much time and space in the curriculum. Part of my role as a Talmud teacher in a progressive Jewish setting is to model how Talmud can serve as an ethical resource, even—especially—for people who don't assign it any special religious value. I present the Talmud not as a rulebook, but as a curriculum—not as the last word on Jewish ethics, but rather as a springboard for rich and nuanced conversation.

For all the ethical wisdom that I discover in the Talmud, there is a lot of Talmudic material that I myself find alienating and even harmful, especially with regard to the Talmud's treatment of women and non-Jews. This is disappointing but not surprising given the distance that separates my world from the cultures that gave rise to the Talmud. I am trained in critical approaches to the Talmud, and this means that I seek to understand its content within the historical context of the late antique societies in which it took shape. I generally come to the Talmud with low expectations for how its content can address specific ethical issues in contemporary life, and instead find inspiration in its forms, procedures, and richly textured discourse.

In this essay, I tell the story of what happened when I became excited about the possibility of the Talmud offering more than this. In the first flush of the #MeToo movement, I seized on a Talmudic narrative that I thought could speak directly to the ethical questions of the moment. Victims and survivors of sexual misconduct and abuse were organizing to tell their stories and demand justice, and I promoted this narrative from Moed Katan 17a as a text that supported their ethical claims, giving them the imprimatur of Talmudic authority. Upon further study and in dialogue with colleagues, I revised my initial reading of the Talmudic narrative and came to a different understanding of what the text means and how it addresses questions of justice. Thus, this essay recounts the story of how my understanding of a contemporary ethical problem developed in conversation with a particular Talmudic text. I offer a close reading of the text, highlighting how my analysis changed in conversation with my study partner. I conclude with some reflections on what my experience with one particular Talmudic text suggests about how the Talmud can serve contemporary Jewish ethics.

The #MeToo Movement

The "Me Too" movement was founded in 2006 by activist Tarana Burke to help survivors of sexual violence—particularly Black girls from marginalized communities—find healing and community. Burke was then working at a youth camp, and she reports that the phrase came to her

as she reflected on how best to support a girl at the camp who had been traumatized by sexual violence and wanted to disclose what had happened to her. At the time, Burke did not share her own story with the girl, and later it occurred to her that had she said, "Me too," it would have helped puncture the sense of isolation that afflicts so many victims. For Burke, "Me too" was not so much a rallying cry as a confiding word of consolation that became an invitation for survivors to find mutual support. She said of the phrase, "It's a very touchy, private, deeply personal thing."[1]

"#MeToo" went viral as a hashtag in Fall of 2017, when film actress Alyssa Milano used it in a tweet in response to revelations of Harvey Weinstein's crimes. Once the hashtag was embraced by Hollywood, the meaning of "Me too" shifted. While Burke's primary focus was on sexual violence perpetrated against poor girls and women of color, the hashtag was invoked in connection to a wide array of sexual misdeeds in diverse corners of American life, but particularly in the halls of power—in politics, the arts, the media, and large corporations. What had once been an invitation to relationship—a "private, deeply personal thing"—became overtly and emphatically public, a call to expose the misconduct of the powerful and to hold them accountable for their abuses. This shift from intimate speech to public speech is powerfully captured by the translation that "#MeToo" underwent in France, where it became "#BalanceTonPorc" or "Squeal on your pig." While "Me too" are words with which one could privately, quietly *receive* a disclosure, "Squeal on your pig" is a call to disclose, to call out, to name and shame.

The #MeToo movement traced a trajectory from silence to speech, from privacy to publicity. While some of the most egregious #MeToo cases—the serial abuses of Harvey Weinstein, for example—were

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[1] Abby Ohlheiser, "The woman behind 'Me Too' knew the power of the phrase when she created it – 10 years ago," *Washington Post*, October 19, 2017. https://www.washingtonpost.com/news/the-intersect/wp/2017/10/19/the-woman-behind-me-too-knew-the-power-of-the-phrase-when-she-created-it-10-years-ago/?noredirect=on&utm_term=.5624b7d6b6f9

adjudicated in the courts, in most instances, the worst consequences that the accused have suffered can be directly traced to the publicity that attended their accusations. For months, forced resignations and terminations were the stuff of daily news, as comedians and congressmen, news anchors and media moguls were publicly exposed and spurned. During the last months of 2017 and the beginning of 2018, the scandals that seized the headlines were matched by an outpouring of personal testimonies on social media. In my real-life encounters as well, it seemed like a dam had broken, and stories of abuse and objectification flooded forth from friends, colleagues, and relatives, all disclosing secrets long buried.

At the time, I was struck by how the #MeToo movement exemplified a phenomenon identified by social scientist James C. Scott. In his 1990 work *Domination and the Arts of Resistance: Hidden Transcripts*,[2] Scott describes the transformative power that is unleashed when stories of oppression that have long been kept under wraps are at long last made public. Scott's theory of hidden transcripts begins with the observation that oppressed people tend to have two distinct modes of discourse, one for addressing the powerful in public, and another for a confined circle of secret sharers. Most of the time, people do the best they can to get along with those who have power over them, and the more vulnerable one is, the more pressure one feels to assuage those who are powerful, outwardly affirming the official version of events. But quietly and covertly, among trusted friends and confidants, the powerless speak the truth about the oppression and offenses they suffer. These true stories of abuse and humiliation are what Scott calls "hidden transcripts." They quietly circulate among oppressed people through complaints, gossip, and whisper networks, and are normally too risky to share in public. When a hidden transcript is at long last brought into the open, the very act of disclosure becomes a potent force for change. According to Scott, "It is only when this hidden transcript is openly declared that subordinates can

[2] James C. Scott, *Domination and the Arts of Resistance: Hidden Transcripts* (New Haven: Yale University Press, 1990).

fully recognize the full extent to which their claims, their dreams, their anger is shared by other subordinates."[3] Scott offers examples of how the act of publicly exposing hidden transcripts has sparked political movements and social uprisings, unseating the powerful.

During the early months of the #MeToo movement, Scott's theory seemed like an apt account of the social upheaval and cultural shifts that the hashtag had unleashed—so apt, it got me wondering why such disruptions were slow in coming to the Jewish community. For all the stories of harassment and humiliation that I was hearing from friends and colleagues, for all the testimonies of assault and intimidation that were filling my Facebook feed, in my Jewish professional circles, the shift that #MeToo brought was not so much that hidden transcripts were now being spoken aloud, but rather that such stories were being shared at all, quietly, in anonymous posts or in hushed tones.[4] I learned from social media that there was a list of alleged offenders that had been posted anonymously, and an uproar about the impropriety of the list lasted for weeks after the list had been taken down.[5] I never saw this list, but in formal and informal meetings with colleagues, I heard whispers that impugned major donors, rabbis, and other professional leaders of a range of improprieties and abuses. Nevertheless, in contrast to the wider American public, within the Jewish world, there were long months during which public accusations of misconduct remained few and far between.[6]

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[3] Scott, *Domination*, 223.

[4] The Jewish Women's Archive (JWA) initiated a project to collect stories of gender-based harassment and other forms of sexual misconduct anonymously. Judith Rosenbaum introduced the #MeToo Archive in "Archiving #MeToo," published by EJewish Philanthropy on January 21, 2018. https://ejewishphilanthropy.com/archiving-metoo/.

[5] Journalist Hannah Dreyfus reported on this list in the *New York Jewish Week* on February 9, 2018, at https://jewishweek.timesofisrael.com/metoo-list-circulating-in-jewish-nonprofit-world/

[6] These were my personal impressions at the time. Later, they were confirmed and nuanced in a study by Guila Benchimol and Marie Huber on behalf of the Safety Respect Equity Coalition. Their research included a content analysis of public discourse within and beyond the Jewish community. The report, "We Need to Talk: A Review of Public Discourse and Survivor Experiences of Safety, Respect, and Equity in Jewish Workplaces and Communal

To a certain degree, the logic of the #MeToo movement runs counter to traditional Jewish speech ethics, which on the whole favor discretion over disclosure and privacy over publicity. In one oft cited Talmudic passage, embarrassing someone in public is compared to bloodshed (Baba Metzia 58b).[7] The dangerous power of speech is emphasized in classical rabbinic discussions of *leshon ha-ra*, or evil speech,[8] and is reinforced in Jewish liturgy—in the daily petition that God "guard my tongue from evil and my lips from speaking deceitfully," and in the prominence of speech acts in the long confessional lists of sins that are recited during the season of atonement. Other Jewish ethical teachings promote the value of rebuke[9] and clarify that sometimes speaking out about wrongdoing is necessary for upholding communal norms and preventing and redressing harm[10]; these sources are less widely studied, however.[11] During the early months

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Spaces," was issued in 2019. Among the key findings: "This review of both survivor experiences and the content analysis found that Jewish values and texts have been used to silence survivors or revelations of harassing or abusive perpetrators," 42. https://srenetwork.org/wp-content/uploads/2020/10/SRE_ResearchReport_093019.pdf

[7] The comparison is likely rhetorical, to underscore the gravity of causing embarrassment. For a discussion of the honor–shame culture that is the context for such Talmudic statements, see Jeffrey Rubenstein, *The Culture of the Babylonian Talmud* (Baltimore: John Hopkins University Press, 2003), 67–79.

[8] For a review of speech ethics in rabbinic literature, see Alyssa M. Gray, "Jewish Ethics of Speech," *The Oxford Handbook of Jewish Ethics and Morality*, ed. Elliot N. Dorff and Jonathan K. Crane (Oxford: Oxford University Press, 2013), 433–444.

[9] For discussion of the rabbinic sources, see Matthew S. Goldstone, *The Dangerous Duty of Rebuke: Leviticus 19:17 in Early Jewish and Christian Interpretation* (Leiden: Brill, 2018), especially 91–141 and 176–235.

[10] In the signature book of the rabbinic authority known as the *Ḥafetz Ḥayim* (Rabbi Israel Meir Kagan, 1838–1933), there are seven criteria for determining when it is permissible and even imperative to speak out about the wrongdoing of others. When such criteria are met, the speech is not considered "*leshon ha-ra*"; it is speech that is intended for good. See *Sefer Hafetz Hayim*, Part 1, Principle 10.

[11] One powerful illustration of Jewish ethical tendencies toward privacy over publicity is the rabbinic transformation of the Greek concept of *parrhesia*, explicated by Julia Watts Belser in *Power, Ethics, and Ecology in Jewish Late Antiquity* (New York: Cambridge University Press, 2015), especially 116–149. In the Greek and Roman worlds, *parrhesia* refers to speech that is free and frank, a privilege invested in individuals to address those in positions of power with words of criticism and conscience. In rabbinic discourse, the cognate *be-farhesia* refers not to

of the #MeToo movement, it concerned me that the well-known rabbinic prohibition against public shaming might be stalling or stopping the disclosure of hidden transcripts within the Jewish community.

It was with these concerns in mind that I followed the lead of other rabbis and scholars and turned to a story from Moed Katan 17a. In the story, a leading sage is prompted to take action against a colleague on the basis of troubling rumors. I seized on this story as a corrective to the notion that Talmudic teaching favors reticence in the face of wrongdoing and promoted it as a model for how contemporary Jewish leaders could respond to #MeToo.[12] Later, my reading got more complicated, for reasons I will explain.

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discourse but to public space. Belser demonstrates continuities with the Greek concept in rabbinic storytelling that celebrates holy men and charismatics interceding with God on behalf of the people; she also identifies public space—*be-farhesia*—as an arena in which shame is magnified. Aryeh Cohen illuminates another aspect of *be-farhesia*, describing how, for the rabbis, a public stage induces heightened levels of responsibility. While most transgressions under duress are excused in the private realm, the public realm requires martyrdom instead of even a small breach. See Cohen, "The Place of Politics: Public Protest and the Rabbinic Construction of Space," *Tikkun*, March 2, 2017. https://www.tikkun.org/the-place-of-politics-public-protest-and-the-rabbinic-construction-of-space-2/ . In rabbinic discourse, *be-farhesia* is a space of danger that magnifies personal responsibility. This might help account for the drive toward privacy and reticence in Jewish ethical discourse.

[12] My interest in this story was sparked by readings that were advanced by Jason Rubenstein (on an email listserv) and by Meesh Hammer-Kossoy (in a class an acquaintance told me about). Later I discovered that Susan Reimer-Torn had made similar connections much earlier, comparing the story to the Dominique Strauss-Kahn scandal in 2015: https://jewishcurrents.org/editor/mirror-and-enigma-dominique-strauss-kahn-and-the-yetzer-hara/ .

I invoked the story in two articles in the popular Jewish press: https://forward.com/life/faith/397539/is-there-a-jewish-ethical-imperative-to-publicize-names-of-accused/ (March 27, 2018) and https://www.jta.org/2018/09/27/united-states/understand-kavanaugh-allegations-according-rabbis (September 27, 2018).

For discussion of this and other rabbinic sources in relation to Jewish ethics and #MeToo, see Sarah Zager, "Beyond Form and Content: Using Jewish Ethical Responses to #MeToo as a Resource for Methodology," *Journal of Textual Reasoning* 11.1 (May 2020).

The Talmudic Story, Take One

This is how the Talmudic story begins:

> There was a certain rabbinical student whose reputation was despised.
>
> Rav Yehuda said: What should be done? Should I excommunicate him? But the sages need him! Should I not excommunicate him? But this would be to desecrate the Name of Heaven!
>
> He said to Rabbah bar bar Ḥannah: Have you heard anything with regard to this issue?
>
> He said to him: Rabbi Yoḥanan said as follows: What is the meaning of that which is written: "As the priest's lips should keep knowledge, and they should seek Torah at his mouth; for he is a messenger of the Lord of hosts" (Malachi 2:7)? This verse teaches: If the teacher is similar to a messenger of the Lord, then seek Torah from his mouth, but if he is not, then do not seek Torah from his mouth.
>
> Rav Yehuda excommunicated the student.

In keeping with the style of Talmudic narrative, the language here is terse. The interpretation of the story as a whole turns on what we make of this unnamed rabbinical student and how he earned his bad reputation. Later on, the storyteller will provide an important clue, reporting that this student died from a bee sting on his penis. Since the rabbinic concept of *midah ke-neged midah*, or "measure for measure," insists that divine punishment fits the crime, this is a strong indication that the student's offense was sexual.[13] It is this inference that led me and others to understand that the student's "bad reputation" came from whispered accusations of sexual misconduct. Rav Yehuda has heard the rumors, and he takes them to heart, but he faces a dilemma—the rabbinical student is

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[13] While the concept of "measure for measure" is not explicitly named, I would argue that its logic is deeply ingrained in rabbinic conceptions of divine justice and providence. For an overview of the concept and references to relevant rabbinic sources, see E. E. Urbach, *The Sages: Their Concepts and Beliefs* (Cambridge: Harvard University Press, 1979), 371–373, 438–439. For analysis of how the concept is deployed in rabbinic law and hermeneutics, see Ishay Rosen-Zvi, "Measure for Measures as a Hermeneutical Tool in Early Rabbinic Literature: The Case of Tosefta Sotah," *Journal of Jewish Studies*,57.2 (Autumn 2006): 269–86.

doing valuable work. And so Rav Yehuda asks himself, "What should be done?"

For me, it was the Talmud's account of Rav Yehuda's dilemma that first brought this story into such close alignment with the contemporary problem of harassment and abuse in the Jewish community. In Rav Yehuda's musings, I could hear the unspoken calculus that so often weighs moral claims and the allegations of victims against institutional interests and communal priorities in Jewish life today. Some individuals are considered too important, too valuable, to be held accountable, even when their misdeeds are "open secrets."[14] Rav Yehuda recognizes that to allow this rabbinical student to remain in his post would be a desecration, and yet he nevertheless hesitates and goes to consult with a colleague. Rabbah bar bar Ḥannah provides the rabbinic teaching that confirms what Rav Yehuda has already articulated to himself—that there is no communal or institutional need that outweighs the sacred imperative to address the student's wrongdoing. How can one who disdains God's moral teachings then invoke God's authority in teaching Torah? The teaching transmitted by Rabbah bar bar Ḥannah offers the moral clarity and religious authority that Rav Yehuda sought in his time and that I sought for mine.[15] Rav Yehuda declares a *shamta*, a temporary ban of excommunication, on the rabbinical student.

The story of Rav Yehuda appears in the context of a longer discussion of the *shamta* in Moed Katan. In the surrounding discussion, there are several different kinds of excommunication bans, of varying terms of

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[14] For a discussion of how public discourse in the Jewish community focused on the contributions of alleged harassers rather than the harm they caused to survivors/victims, see Benchimol and Huber, "We Need to Talk," 33–34.

[15] Rabbi Yoḥanan's interpretation over-reads the relationship between the second and third clauses of the verse, asserting a conditional relationship between them that the plain meaning of Scripture does not imply: "They should seek Torah at his mouth; for (=when; so long as) he is a messenger of the Lord of hosts." For another invocation of this same tradition, see the discussion of R. Meir's relationship with his heretical teacher Elisha ben Abuya on b. Ḥagigah 15b; in this context, R. Yoḥanan's admonition does not carry the day.

length and degrees of stringency.[16] In some instances, they reinforce the authority of a rabbinic court[17]; in others, they provide alternatives to penalties imposed by a court[18]; and in still others, they are strategies for addressing wrongdoing that cannot be addressed by a court.[19] According to Talmudic tradition, a rabbinic court can only impose fines and corporal or capital punishment when there are two witnesses whose testimony can be examined and confirmed; in the absence of such evidence, the ban provides the rabbis with a powerful extra-juridical tool. Here, it seemed to me, the Talmud's account of Rav Yehuda offered a useful model for the #MeToo movement.

In my reading, even as Rav Yehuda's initial indecision resonated with the reticence of contemporary Jews to act on reports of harassment and abuse, his enactment of the ban provided a model for how organizational leaders could overcome this hesitation. At the time, the popular press was full of accounts of "he said; she said," a shorthand for the daunting challenge of seeking justice for victims/survivors when their alleged perpetrators denied having done anything wrong. Even when

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[16] A baraita at the bottom of Moed Katan 16a sets a thirty-day minimum for a ban of "*nidui*" and a seven-day minimum for "*nezifa*." In the ensuing discussion, it emerges that bans issued in the Land of Israel were more stringent than those issued in Babylonia, and that authorities of different ranks and statuses were empowered to issue bans of varying lengths. The impression that Palestinian rabbis were harsher in their use of the ban might well be a projection of the Babylonian editors, however. See Moshe Simon-Shoshan, "The Oven Hakhinai: The Yerushalmi's Accounts of the Banning of R. Eliezer," *Journal of Jewish Studies* 71.1 (2020): 25–52, for the argument that the ratification of the *shamta* as a tool of rabbinic power distinguishes the Babylonia Talmud from the Palestinian Talmud. According to Simon-Shoshan, in the Palestinian Talmud, such rabbinic powers are presented with suspicion and disapproval.

[17] On MK 16a, those who do not accede to the court's judgments are penalized with bans of ostracism.

[18] For example, at the bottom of Moed Katan 17a (following our story), the Talmud reports that in "the West" (the Land of Israel), the rabbis vote to impose lashes on wayward rabbinical students rather than imposing the ban. The implication is that the Babylonian rabbis prefer the ban even when other penalties are available.

[19] A series of stories on Moed Katan 16b recount instances where rabbis impose bans upon themselves to punish themselves for showing insufficient respect to colleagues or teachers.

complainants were simply asking for a modicum of consideration—the ability to do their work in a safe environment—employers and community leaders too often seemed intent on silencing complaints, invoking the rights of the accused. The American criminal justice system puts the burden of proof on victims, and the presumption of innocence is widely assumed to prevail in workplaces and communal spaces as well. When victims/survivors come forward to report misconduct only to have their reports ignored, minimized, or negated, this not only harms the individual complainants but sends a clear message that it is at best ineffectual and at worst dangerous to report wrongdoing. To my mind, the extra-juridical rabbinic institution of the *shamta* provided a retort to the "he said; she said" quandary that authorities so often invoked in discounting the reports of victims/survivors, establishing a precedent for privileging the safety and dignity of those who are harmed over the reputations of alleged perpetrators. But Rav Yehuda's example went even further in that he attended to rumor—a despised reputation—rather than insisting on formal complaints. I saw this as a model for what leaders could do to be proactive in securing the safety and dignity of potential victims. In a world in which complainants risk reprisals and a gauntlet of challenges to their dignity and credibility, Rav Yehuda demonstrated how community leaders could take action, even in the absence of formal proceedings.

In the early months of #MeToo, when heads were rolling in the media, the arts, and politics, I looked to the story of Rav Yehuda as a model for how contemporary Jews could exercise accountability, dismissing perpetrators from positions of communal authority. I imagined Rav Yehuda as a hero who finds the wherewithal to end the silence that isolates victims, forcing a colleague to suffer the consequences of his hidden offenses in a very public way. I invoked his story to bolster my argument that survivors of sexual harassment and assault could find support for their moral claims within the Talmud.

Once I began to delve deeper into the text, however, other interpretive possibilities began to emerge.

The Talmudic Story, Take Two

When my colleague Sarra Lev and I undertook to study this story together, we began at the start of the Talmudic discussion of excommunication bans, at the beginning of chapter 3 of Moed Katan, on page 14b. Moed Katan addresses the observance of intermediate days of festivals, when the full severity of festival prohibitions is not in force. Chapter 3 begins with a Mishnaic ruling that suspends some of the regular stringencies of festival observance during the intermediate days for several categories of Jews, including mourners, those who were previously in a state of impurity due to the skin disease known as *tzara'at*, and those who are newly released from a ban. The rationale is that those who were not in a position to adequately prepare for the holy day at the start of the festival should have the opportunity to prepare for the holy day at the end of the festival, should their status change in the interim. The Talmudic discussion compiles traditions that govern each particular category of people, asking with regard to the mourner, the *tzara'at*-afflicted, and the excommunicated: What are the established practices relating to dress and comportment, to ritual practices, to social interaction? It is in this context that the Talmud presents a collection of rulings, exegetical readings, and narratives about rabbinic practices of excommunication.

The Talmud's engagement with bans of excommunication begins on Moed Katan (MK)14b and extends through 17a, where the story of Rav Yehuda's ban appears. One striking feature of this extended discussion is how much it leaves unresolved. Sometimes the lack of resolution is explicit in the Talmudic discussion—for example, when the editorial voice uses a pronouncement of "*teiku*," or "let it stand," to acknowledge that a particular question of law or practice remains unresolved; "*teiku*" is invoked seven times over the course of these few pages. Another example that surfaces on two different occasions on MK 15b relates to the differences between a ban imposed by heaven—for example, when the Israelites are banned from entry into the Land of Israel for a generation—and a ban imposed by human authorities; as the anonymous voice of the Talmud notes, Abaye presumes that there is a difference between these

two circumstances but cannot determine which imposes greater stringency. The text also acknowledges (MK 16b) that the sentences of ostracism imposed by rabbis in the Land of Israel are harsher than those imposed in Babylonia. Other conflicts and tensions that remain unresolved are not explicitly acknowledged. For example, the discussion brings together a variety of different Hebrew and Aramaic terms for various kinds of bans—*nidui, shamta, herem, nezifa*—but does not consistently establish how they relate to one another or which terms can be used interchangeably. The question of whether a ban imposed by one authority can be reversed by another is raised on MK 16a, and when conflicting traditions are invoked, the question remains unresolved.

It is not just questions of law and practice that remain unsettled. The Talmud also raises profound questions about the purpose and meaning of excommunication. Over the course of this section of Moed Katan, the ban is alternatively presented as a strategy for upholding the authority of a rabbinic court and a strategy for upholding the dignity and status of individual rabbis. The entire section culminates with a foundational question that remains unresolved (MK 17a): Is a ban of ostracism a temporary measure that allows one to return to the same position and status once its term expires (as Palestinian rabbi Resh Lakish suggests), or (following Babylonian rabbis Rav and Shmuel) is the ban akin to a social death, instilling an enduring mark of shame that holds fast the way that oil seeps into the walls of an oven?[20] Ambivalence with regard to this core question contributes to the incongruousness with which the story of Rav Yehuda sits within its immediate Talmudic context: while the preceding materials describe excommunication as being temporary, the story treats the ban as a life sentence. It is possible that the unresolved tensions in the discourse of the Talmud reflect the degree to which the practice and meaning of excommunication were contested in the rabbinic cultures that gave rise to the Talmud. Moshe Simon-Shoshan theorizes that while the Babylonian rabbinic authorities embraced the powers that

[20] See Sarra Lev's contribution in this issue for further discussion.

excommunication afforded them, the Palestinian rabbinic sources reflect efforts to leave the institution in the past.[21] This ideological divide might help account for tensions and contradictions that run through the extended Talmudic discussion.

Once I began to contextualize the story of Rav Yehuda and the banned rabbinical student within the larger Talmudic discussion, I could not help but recognize the degree to which my initial reading had been conditioned by my own political and ideological commitments. My study partner Sarra Lev advanced a very different reading of the story. For Lev, the unnamed rabbinical student is not a perpetrator of sexual misconduct, as I had presumed, but rather a victim of the institutional abuse of power.[22] In support of this interpretation, Lev points out that the narrative provides no details about the foundation for the rabbinical student's bad reputation and "gives no indication whatsoever of a victim, or of an aggrieved party, much less of an aggrieved woman (or man)."[23] Even granting that a sting on the penis bespeaks a sexual sin, Lev argues that within the cultural horizon of rabbinic life, any sexual activity outside of marriage would have been objectionable.[24] Whereas I had viewed Rav Yehuda's ban as a positive intervention in pursuit of safety and justice, Lev saw it as symptomatic of rabbinic overreach and an abuse of power. It might be that our divergent readings perpetuated opposing views in an ancient rabbinic

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[21] See Moshe Simon-Shoshan, "The Oven Hakhinai."

[22] See Sarra Lev's contribution within this issue. Lev's reading was first presented in the paper "Shamta: Murder by Shunning" at the panel "Compelling Reading: Access, Discipline, and Marginality in Reading Rabbinic Texts" at the annual conference of the Association for Jewish Studies on December 16, 2018.

[23] Lev, "Shamta: Murder by Shunning," 2.

[24] In keeping with this reading, the medieval Spanish commentator known as the Ritva (Yom Tov ben Avraham Assevilli, 1260–1320) proposes that the rabbinical student's offense was his promiscuity in keeping company with single women. I thank Martin S. Cohen for bringing the Ritva's comments to my attention. In his response to my paper "#MeToo, the Jews, and the Ethics and Politics of Public Disclosures" at the annual meeting of the Society of Jewish Ethics, January 4, 2019, David Brodsky alternatively offered a queer reading of the unspecified transgression, a proposal that is compelling in how it reads the text's silence; the transgression that remains unspoken is understood as behavior that is considered unspeakable. This too is consistent with Lev's interpretation.

debate about the utility and morality of the rabbinic ban. Though I was not entirely persuaded by Lev's reading, I realized that I had faltered in making sweeping conclusions on the basis of Rav Yehuda's example. Evidence that ancient rabbis themselves were divided on whether the ban was a good thing raises questions about the degree to which any principles drawn from an individual narrative can be interpreted as representative of Talmudic norms.

The more I studied the Talmudic story and the way it was positioned within the larger Talmudic discussion, the less justified it seemed to invoke it as evidence that the Talmud aligns with the goals or values of the #MeToo movement. Chastened, I wondered why I had been so intent on invoking "The Talmud" to begin with, when my own scholarship emphasizes the Talmud's multivocality. In my writing and teaching, I highlight how the Talmud's transmission of dissident views and counter-voices challenges norms that are ratified in Jewish law.[25] In this case, however, I had suspended my critical acumen, seizing on the authority of the Talmud to ratify my own view. My ethical commitments had preceded my encounter with the Talmudic text, and I had poked and prodded Rav Yehuda's story, making it speak for me. Now, as I delved deeper, the text became an ethical prompt, raising questions, exposing difficulties, inviting new turns of thought. Confronted with another way to read the story, I began to consider alternative ways to think about sexual harassment and institutional abuses of power.

Even as my reading of the Talmudic story changed, the circumstances that had initially provoked my interest in the story shifted as well. About a year after the #Metoo hashtag went viral, developments within and beyond the Jewish community demonstrated that—for better and for worse—the trajectory of #MeToo revelations within the Jewish community was not as anomalous as I had initially thought. In the summer of 2018, Keren McGinity and seven other women came forward with grave accusations against Steven M. Cohen, and Cohen resigned

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[25] My model for this approach is Charlotte Fonrobert's *Menstrual Purity: Rabbinic and Christian Reconstructions of Biblical Gender* (Stanford: Stanford University Press, 2000).

from Hebrew Union College and from other positions of leadership following a Title IX investigation. In March of 2019, an expose in *The New York Times* included six Jewish professionals who accused mega-donor Michael Steinhardt of sexual harassment. Yet even as Jewish leaders, scholars, and rabbis courageously came forward, instigating change within the Jewish community, the larger #MeToo movement faced a devastating setback. In September 2018, less than a year after the surge of the #MeToo hashtag, the harrowing Senate testimony of Professor Christine Blasey Ford electrified the country but did not impede the man she accused of sexual assault from being confirmed as a Supreme Court Justice. For me, this was a sobering demonstration of the shortcomings of James Scott's theory of hidden transcripts. James Scott exalts the liberatory power of truth-telling in public, but had he considered the ways structural hierarchies buttress the power of institutions, making them all but impervious to victims' allegations? Institutions have their own reasons for managing, minimizing, and suppressing complaints and often re-traumatize complainants with a secondary victimization in pursuing institutional interests. I began to wonder if the #MeToo movement was equal to entrenched, moneyed political forces.

With the countervailing forces of money, power, and structural hierarchies in mind, the story of Rav Yehuda reads differently, and Sarra Lev's critique of my initial interpretation becomes all the more trenchant. Whatever we might conjecture about the nature of the rabbinical student's offense—the content of his despised reputation—Lev argues that the student is not the worst offender in this story but is himself a victim of power abuses. Opposing my and others' invocation of this story in solidarity with #Metoo, Lev proposes that "the text speaks more authentically to . . . an atmosphere in which institutions sacrifice their more 'disposable' person in order to protect the reputation of the institution and of their leadership."[26] Lev highlights the way that Rav Yehuda prioritizes institutional interests over the claims of any individual. Indeed, as the story continues, the internal machinations of rabbinic

[26] Lev, "Shamta: Murder by Shunning," 2.

institutional politics overtake the narrative, entirely eclipsing the question of what—if anything—the ostracized rabbinical student had done wrong.

The Talmudic Story, Continued

An overriding concern with institutional interests becomes ever more prominent as the Talmudic story continues to unfold:

> In the end, Rav Yehuda took ill. The sages came to inquire about his well-being, and he [the one who had been excommunicated] came together with them. When Rav Yehuda saw him, he laughed.
>
> He [the excommunicated student] said to him: Was it not enough that you excommunicated me, you even laugh at me?
>
> Rav Yehuda said to him: I was not laughing at you; rather, as I go to the next world, I am happy that I did not flatter even such a man as you.
>
> Rav Yehuda died.

Here, for the first time, we hear the voice of the excommunicated student himself as he decries the personal insult of being mocked by Rav Yehuda when he comes to see him on his sickbed. What are we to make of this encounter? I think the text could easily sustain my initial reading, in which the student is an offender who acts with impudence, pressing his own case without regard for the ailing Rav Yehuda. But a more sympathetic evaluation of the student is also plausible, for as the story continues, we see that Rav Yehuda's death will have grave implications for him; though the Talmud classifies the *shamta* as a temporary ban (MK 16a), with Rav Yehuda's death, it will become indefinite. The continuation of the Talmudic story chronicles the student's efforts to escape the deceased rabbi's decree:

> He [the excommunicated student] came to the Beit Midrash and said to them [the sages]: Release me!
>
> The rabbis said to him: There is no man here as important as Rav Yehuda who could release you, but go before Rabbi Yehuda Nesiah so that he can release you.
>
> He went before him.

> He [Rabbi Yehuda Nesiah] said to Rabbi Ami: Go, examine his case. If he ought to be released, release him!
>
> Rabbi Ami examined his case and decided to release him.
>
> Rabbi Shmuel bar Naḥmani stood up on his feet and said: With regard to the maidservant of Rabbi's household, the sages did not make light of the excommunication she imposed for three years; with our colleague Yehuda, how much the more so!
>
> Rabbi Zera said: What does this mean that this aged man [Rabbi Shmuel bar Naḥmani], who has not come to the *Beit Midrash* for how many years now appears? Conclude from this that he ought not be released!
>
> He was not released. He left, crying. A bee came and stung him on his member, and he died.
>
> They brought him to the burial cave of the righteous, and he was not accepted. They brought him to the cave of the judges, and he was accepted.

In this section, the rabbis close ranks and the structures of power come into sharp relief. First, Rav Yehuda's colleagues inform the student that they don't possess sufficient authority to overturn his ban—Rav Yehuda was the founder of the Yeshiva in Pumbedita, a leader of high esteem. These Pumbeditan rabbis don't send the student to the other Babylonian academies, but rather to the Land of Israel; they claim that only Rabbi Yehuda Nesiah, heir of the line of the patriarchate, has sufficient authority to overturn Rav Yehuda's ban.[27] Rabbi Yehuda Nesiah deputizes Rabbi Ami to investigate, and Rabbi Ami's inquiries lead him to move to release the student. When he suggests as much, however, the elderly Rabbi

[27] This view is consistent with other traditions in the surrounding Talmudic materials—for example, the notion that Palestinian rabbinic authority has more power to issue bans (see MK 16a) and a baraita later on 17a that teaches that if one is put under a ban by an unknown person, only the patriarch has the power to release the ban. The shift in setting from the Babylonian to Palestinian milieu is intriguing in light of Moshe Simon-Shoshan's argument that there are differences between the two settings with regard to bans of ostracism. He argues that Palestinian sources are far more critical of the ban than the Babylonian Talmud. Here, a critical stance is assigned to Palestinian Rabbi Ami. This story as a whole upholds support for the ban in the way that it dramatizes an objection from a Palestinian rabbi that is then effectively squelched by Palestinian colleagues.

Shmuel bar Naḥmani objects that such a reversal would be an affront to the memory of Rav Yehuda.[28] Despite the procedures which had been laid out by Rabbi Yehuda Nesiah, the voice of the aged authority carries the day. The student dies while still under the ban.

Whatever one makes of this anonymous student and his unnamed offense, this section of the story dramatizes a failure of procedural justice, as the student's appeal becomes lodged in the political machinations of the rabbinic academy. Rabbi Ami alone has examined the matter, and this suggests that the other rabbis' judgments are based not on the facts of the case but rather on their esteem for Rav Yehuda. The narrative account of how Rabbi Yehuda Nesiah asks for an investigation is telling in that it highlights a striking absence in the first part of the story, where no such investigation is mentioned. This omission suggests that at the beginning of the story, when Rav Yehuda is first moved to take action based on the student's despised reputation, he does so without pursuing an investigation. Perhaps this is because the student's misdeeds were well known in his own community—certainly, there are many examples of such open secrets in the Jewish community today.[29] Upon my initial reading, I had appreciated that Rav Yehuda acted so decisively, taking ubiquitous rumors seriously. But reading the story with Sarra Lev's

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[28] Rabbi Shmuel bar Naḥmani's argument *a fortiori* advances a particular gender ideology, in which the status of women is presumed to be lower than the status of men. The maidservant of Rabbi Yehuda Ha-Nasi (Rabbi) is a recurring figure in the Babylonian Talmud. In multiple Talmudic stories, she is depicted instructing rabbis or exceeding them in knowledge or wisdom. For a study of this character and how her treatment in this and other Talmudic contexts convey rabbinic ideology about social hierarchy, see Dina Stein, "A Maidservant and Her Master's Voice: From Narcissism to Mimicry," in her *Textual Mirrors: Reflexivity, Midrash, and The Rabbinic Self* (Philadelphia: University of Pennsylvania Press, 2012), 101–117.

[29] The recent investigatory report that the Hebrew Union College–Jewish Institute of Religion commissioned from Morgan Lewis documents illustrations of how contemporary rabbinic authorities and institutional leaders evaded responsibility for grievous misconduct for decades. While some abuses remained hidden, many were widely known. http://huc.edu/sites/default/files/About/PDF/HUC%20REPORT%20OF%20INVESTIGATION%20--%2011.04.21.pdf

attunement to institutional power in mind induces a sense of unease about Rav Yehuda's act of unilateral fiat.

While I am persuaded by the way that Lev's reading highlights themes of power and institutional interest in this story, I remain agnostic on the question of the rabbinical student's character and culpability. Is he best understood as a perpetrator or a victim? To a large degree, the divergences between these two possible readings trace back to the relative emphases one places on disparate details of this terse Talmudic narrative. Sarra Lev emphasizes the vulnerability of a "*Tzurba mi-rabbanan*,"[30] or rabbinical student, relative to the authority of the prominent Rav Yehuda; the lowly student is easily sacrificed in an effort to burnish and protect the reputation of the academy and its powerful leader, without any process of inquiry. But other details of the narrative pull in another direction: Rav Yehuda's statement that "the sages need him" suggests that the Tzurba is no ordinary student, an impression that is later reinforced when Rav Yehuda expresses satisfaction that "I am happy that I did not flatter even such a man as you."[31] On the one hand, the deceased Tzurba is denied entry in the cave of the righteous; on the other, he is admitted into the cave of judges. Absent evidence with which to adjudicate between my initial interpretation and Sarra Lev's opposing view, I am left instead with a

[30] The etymology and precise resonance of the idiom is unclear. Marcus Jastrow's dictionary entry associates the term with fire and proposes that it refers to one who "has caught fire through association with the rabbis." The Arukh's definition emphasizes strength. Though the term seems to consistently refer to a disciple of the rabbis, it is unclear to what degree it conveys a particular rank.

[31] The fact that after his death, the shunned man's body is rejected from the burial cave of the righteous but accepted into the cave of judges suggests to me that the initial identification of this figure as a "Tzurba," or student, might actually be a misnomer, the term having migrated down from another tradition in a preceding passage. With the exception of this initial identification, every other detail suggests that he is a person with high status, the kind of person who was himself in a position to abuse his power. There is no textual witness to this story that identifies the figure in any way other than "Tzurba." My suggestion is based solely on the internal tensions within the narrative, and the fact that another tradition about *tzurba mi-rabbanan* precedes our story by just a few lines, raising the possibility that the term migrated at an early stage in the development of the *sugya*.

strong sense of indeterminacy, a muddle which eludes moral judgments, raising far more questions than it answers.

I realize it is tempting to draw parallels between the moral muddle this story induces and the challenges of adjudicating allegations of sexual misconduct and abuse; today, divergent notions of consent and the significance of power differentials make the challenge of such adjudications a flashpoint in the general culture, an area of deep ideological divide. To my mind, however, it would be too facile to simply suggest that this story illustrates the difficulty of assigning blame. We don't need the Talmud to show us that.

Where this story offers "value added," supplementing our contemporary ethical discourse—or at least my own analysis—is in its demonstration of how power dynamics configure practices of secrecy and publicity. What makes this Talmudic case so hard to interpret is precisely the problem of secrecy and silence, a problem that the #MeToo movement has sought to address. From the beginning of the story and until the end, the student's offenses remain the stuff of rumor and innuendo, shrouded in mystery. The voices of alleged victims are altogether absent. The full story of the rabbinical student's alleged offense is not known because the full story is not pursued, but rather suppressed, like a dangerous secret. In the absence of investigation and examination, there is no possibility of moral clarity. And in my rush to find a piece of usable Talmud, I had unwittingly recapitulated the failures narrated within the text in my own reading practice. I had bowed to the authority of the text, deferring to Rav Yehuda and the narrator's judgments rather than attending to the silences within the text and investigating the evidence from all sides. Ultimately, the moral muddle that this story induces upon a slow and careful read is actually far more instructive than the moral example that I initially thought I had discovered in Rav Yehuda because it trains my attention on the voices that are absent or suppressed in the story, eliciting more careful inquiry.

The theme of secrecy becomes explicit in the coda that immediately follows the story, where the voice of the Talmud inquires as to why the shunned student is ultimately allowed burial in the cave of judges.

> What is the reason?
>
> Because he acted in accordance with Rabbi Illai, for it is taught: Rabbi Illai says: If a person sees that his impulse overcomes him, let him go to a place he is not known, wear black clothes and wrap himself in black, and let him do what his heart desires, but let him not desecrate the name of Heaven in public.

Here, the Talmud literally banishes sexual misconduct into the shadows, insisting that it be kept under wraps. The logic of *ḥillul Hashem*, "the desecration of God's name," as expressed by Rabbi Illai, directly opposes the public revelations of misdeeds by Rabbis. This coda to the story confirms that when Rav Yehuda invokes the concept of *ḥillul Hashem* as a reason to dismiss a student with a bad reputation, his primary interest in not in the harm caused by the student, but rather in the public perception of his offenses. In the end, the Talmudic authorities seem far more interested in silencing rumors about sexual misconduct than in addressing them. Like Scott's theory of hidden transcripts, the rabbinic concept of *ḥillul Hashem* is structured along an axis of public and private, but while Scott celebrates publicity as a goad to liberation, Talmudic authorities pull in the opposite direction, recommending not the exposure of power abuses, but rather their concealment.[32] This means that this Talmudic passage is not actually a counterweight to other rabbinic admonitions about public shaming as I initially had thought, but very much of a piece with them.

Ultimately, in this instance, the Talmud served as an ethical prompt in a very different way than I initially hoped it would. I first turned to this text because I sought a usable tradition, a textual grounding for the principles of dignity and justice for victims/survivors that animate the #MeToo movement. I seized on Rav Yehuda's story as a model that leaders of our time would do well to follow, only to discover how closely it cleaves to the very patterns of domination and silencing that the #MeToo

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[32] The drive to conceal rabbinic wrongdoing is further reinforced later on Moed Katan 17a in a tradition attributed to Resh Lakish that states that a rabbinic disciple who offends should not be excommunicated in public (*be-farhesia*) but rather the offense should be "covered up like the night."

movement seeks to end. The Talmudic narrative does not solve the ethical problem; it enacts it. To the degree that the story illustrates the excesses of extrajudicial procedures gone awry, tracing the trajectory of public shaming and shunning to a lethal end, it demonstrates the dangers of proactive intervention without offering a better alternative. The answer cannot be a retreat to circumspection and silence, not when abuse and misconduct remain rampant, not when institutional impulses to cover up offenses remain primary. Studying this story does not solve the ethical conundrum, but it does bring the problems of power abuses and secrecy into sharp relief. Whether we understand the unnamed rabbinical student as a perpetrator of sexual misconduct or as a victim of abuses of power—or as both—the best ethical response is not more hiding, more secrecy, but less.

Concluding Reflections

The point I'd like to emphasize in closing is not that Rav Yehuda faltered in his judgments, but that I faltered in mine. As a liberal rabbi, as a feminist scholar, I don't study the Talmud because I want it to tell me what to do, and I don't value it for its attitudes about gender or power. I value it for how it teaches me to read, reflect, and listen, training me to consider questions from all sides, enticing me to attend to the ways the tersest of words contain multitudes. I forgot this when I was so quick to celebrate Rav Yehuda. This is a serious lapse not only because it diverges from my commitments as a critical scholar but also because it runs the risk of perpetuating the very patterns of deference to authority that exacerbate abuses of power. There are ways in which the discourse of the Talmud—not to mention institutions that ground their authority in the Talmud—sustains ideas that shore up powerful abusers and isolate victims, privileging the reputations of some kinds of people over the safety of others. If whispered, hidden transcripts of harm and humiliation are ever to become full-throated claims for justice, and if those claims are to have the power to make real and lasting change, some Talmudic precedents will have to be set aside. To a certain degree, the Talmud functions best as

a prompt for ethical deliberation when its study prompts an interrogation of its own authority and an examination of its enduring cultural power in Jewish life.

Seizing on this story as I did at first was an exercise in proof-texting. I sifted and strained the roiling sea of the Talmud in an effort to isolate one pearl of wisdom, an authoritative source that would say exactly what I wanted it to, exactly what I had already come to believe. In retrospect, I think I did this because the Talmud functions for me in more ways than I readily acknowledge. Certainly, one of my goals in appealing to the story of Rav Yehuda was to mobilize the authorizing power of the Talmud to effect positive change.[33] The Talmud occupies a special place in the Jewish imagination, grounding Jewish norms and wielding moral authority even for Jews who do not accede to the dictates of halakha. Persuading the broader Jewish community that Talmudic principles were consonant with the goals of #MeToo was an effective tactic for advancing the cause of gender justice within the Jewish community. But alongside this strategic goal was another interest, more personal and harder to articulate: because I love the Talmud, I wanted the Talmud to be on my side. Both my scholarly vocation and my Jewish practice center on Talmud study, and I yearned to find in the Talmud a toehold for my own ethical views. While I know the creators of the Talmud could never have anticipated a feminist female rabbi like me, I still seek their blessings. This was my fantasy: that in some crevice of the Talmud's sprawling structures, I would discover a confidant, a voice that whispered, "Me too."

My search for a snippet of usable wisdom—for a Talmudic source to authorize and affirm a new movement for gender justice—constrained my ability to recognize both the complexity of the Talmudic text and the contradictory impulses that I was bringing to it.

But proof-texting cannot do justice to the Talmud's complicated genius or to the nature of the ethical problems that confront people today. The complexity of contemporary social life means that even the clearest

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[33] I thank Deborah Barer for helping me articulate this, and I thank both Deborah Barer and Ariel Evan Mayse for their prompt to dig a little deeper on this point.

distillation of moral instruction drawn from ancient sources will likely be difficult to apply. And to pluck an isolated source from the rich weave of Talmudic dialectic is to distort the nuanced, dialogical qualities that recommend the Talmud as an ethical resource. There are better ways to deploy the Talmud in the service of contemporary Jewish ethics. The story of my own reading and re-reading reinforces two principles for how Talmud study can contribute to ethics:

1. Context matters. My interpretation grew more nuanced when I investigated the literary and historical contexts in which the text was situated. This is a reminder to bring a critical acumen and the full array of scholarly tools to analysis of the Talmudic text. And it is not just the context of the Talmud that matters, but the context of the reader as well. My ethical analysis deepened when I attended to the ways my own reality and values were shaping my encounter with the Talmudic text. Ultimately, my study prompted me to recognize and reconsider the assumptions and biases I brought to the text.[34]
2. Interpretations are strengthened in conversation with others. I gained a far more nuanced understanding of the text when I studied it together with my colleague Sarra Lev. Precisely because we brought different questions, values, and experiences to the text, Sarra alerted me to aspects of the text that I would not have recognized alone. When the ethical judgments implied and articulated within the Talmudic text proved unsatisfactory for illuminating present challenges, our conversation extended beyond the borders of the text. The Talmud then served as a pretext for our own ethical deliberation, dialogue, and learning.

[34] Thanks to Ariel Evan Mayse for helping me see this.

Talmud study has trained me to look to the margins of the text, to seek out dissonant voices, to attend to silences and to ask questions about what those silences might mean. Talmud is a conversation across generations. It is a great blessing of our time that voices once silenced, that truths once relegated to hidden transcripts, can now move to the center of the page, shaping public conversation.