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HOMELAND INSECURITY

JEFFREY M. GREEN

"Henry, why are you here?"
"Waldo, why are you not here?"

One might have thought that the establishment of the State of Israel would resolve the debate about the need for a Jewish homeland in the guise of a sovereign state by making the question moot. Whether we need it or not, we have a state. However, like many other issues in internal Jewish debate, this one remains open: Is the State of Israel truly the Jewish homeland? If it isn't, where is the Jewish homeland? If it is, and you don't live there, why not? And if you do live there, what are you to think of the Jews who do not?

There is no need to expatiate upon the negative responses, even within the Jewish community, to the proposition that the State of Israel is the Jewish homeland. These include Neturei Karta on the radical religious right to Jews for Justice for Palestinians on the other extreme. Nor need one mention the extremists who regard the State of Israel as illegitimate but see it as their religious obligation to settle on the Land of Israel (under the protection of the army of the state they reject). The range of these responses signify that the question is far from moot.

My own life choices, beginning with *aliyah* in 1973, service in the IDF, and involvement in the social, cultural, intellectual, political, and religious life of Israel reflect my own answer to this question. I have become an Israeli Jew. I regard Israel as my homeland. Though at times I disagree strongly with our present government and am disappointed by many of the developments that have taken place here since my *aliyah*, I don't intend to leave the country and deny its legitimacy.

My learned and brilliant friend, Prof. Daniel Boyarin, takes the opposite view. He doesn't think we need a geopolitical homeland at all. In his [*A Traveling Homeland*](#), Boyarin musters historical, philological, and theoretical arguments to redefine the Jewish diaspora. He claims that the "homeland" to which Jewish communities related was not the geographical or historical Land of Israel, but rather a text, the Babylonian Talmud, which they made into a virtual homeland for Jews living among non-Jews in communities throughout the world. The implicit consequence of this thesis is that the Zionist interpretation of Jewish history is erroneous. If the Talmud is the real Jewish homeland, we Jews have no business displacing Palestinians in the Land of Israel.

The term “diaspora,” as Boyarin shows, has become a prominent element in social theory and is no longer a specific term. Originally, with a capital 'D,' the term referred (according to [Merriam- Webster](#)) to “the settling of scattered colonies of Jews outside Palestine after the Babylonian exile; *b*: the area outside Palestine settled by Jews; *c*: the Jews living outside Palestine or modern Israel.” Now, as the dictionary definition continues, it has also come to refer, with a lowercase ‘d,’ to “*a*: the movement, migration, or scattering of a people away from an established or ancestral homeland; ... *b*: people settled far from their ancestral homelands ...; *c*: the place where these people live.”

“Diaspora” is descended from the Greek word *diaspeirein*, meaning “to scatter, spread about.” Boyarin claims that it is never used in the Septuagint to translate the Hebrew “*galut*” (exile), which in any case, he says was “not always negatively charged” in Greek and Aramaic (p.6). As Merriam-Webster further notes, the term is first used specifically in connection with Jews, and no later than 1594, in a translation of Lambert Daneau’s [A Fruitfull Commentarie Upon the Twelve Small Prophets](#):

This scattering abrode of the Iewes, as it were an heauenly sowing, fell out after their returne from the captiuitie of Babylon ... they are called Diaspora, that is, a scattering or sowing abrode.

Nevertheless, Boyarin rejects the idea that the Jewish Diaspora is the ideal standard to which all other diasporas must be compared. He attacks “usage of the alleged experience of the Jews in theorizing diaspora” (30) and claims that “the Jewish diaspora has been seriously misdescribed by most theoreticians and historians until now and that when more accurately interpreted, the Jewish historical experience serves as an excellent example—not regulating norm or even ideal type—of what seems to me is most useful in identifying diaspora and constraining the term sufficiently so that it is a useful taxonomic term for discussing modes of cultural hybridity” (31).

Boyarin's insertion of the word “alleged” here is the key to his historical thesis, which is essentially that the Jews were quite at home in many places to which they migrated, and he musters considerable evidence from the Babylonian Talmud and elsewhere to prove this point. For him, living in a D/diaspora community means living in two places at once—the physical place where one actually lives, and a distant, ideal homeland—and this diasporic experience is enriching (and shared by many other people besides the Jews). As he says, “We cannot think of the Jewish diaspora... as always and everywhere being understood as a forced and oppressive exile” (6). Though, of course, it often was!

Boyarin knows and concedes that the term “diaspora” is not one that the Jews applied to themselves. Indeed, they saw themselves as living in *galut* (exile) (6). He also knows and

would have to concede that life in exile was not always idyllic. Nevertheless, for him, life among gentiles, with the Talmud as a traveling homeland, is a more authentic mode of Jewish life, preferable to the ingathering of exiles in the Land of Israel and life under Jewish sovereignty.

Speaking as a personal friend of Daniel Boyarin's and an amateur in the areas in which he is expert, I find his argument to be, at bottom, wrongheaded.

My first disagreement with Boyarin is connected to his reconstruction of the word "diaspora," which is obviously central to his entire argument. In every dictionary I have consulted, the first definition of the word "diaspora," with a capital 'D,' refers to the Jewish Diaspora, and all other uses of the term are, *by extension*, applied to ethnic groups living away from their historical homelands. Boyarin reverses the order, giving the secondary meaning priority, and, taking that as the norm, applies it back to the historical situation of the Jews. Thus he enables himself to attack the view that life in the Diaspora is life in exile, an abnormal and painful situation.

By making this move, he empties out the concept of diaspora completely. He calls "the particular situation of diaspora ... the cultural situation of a collective that is located in its own local culture and in the culture shared with another collective elsewhere" (p. 107). As I see it, this definition is so broad that it would include, say, the teenage musicians of Liverpool in the early 1960s who looked to black American rhythm and blues for inspiration, and to the members of the Krishna Consciousness sect, whom I remember from the 1970s, dressed in saffron robes and chanting in Harvard Square.

What have we gained by making the meaning of a term so broad that it encompasses Armenian-Americans in Watertown, Massachusetts; a Korean enclave that Stalin exiled to Turkmenistan; or Circassians sent by the Ottomans to various places in the Middle East? This list of ethnic enclaves could be extended to the Greeks who formerly lived in Asia Minor, to the Germans who once lived in Russia and Romania, to people of Irish and Scottish descent all over the world, to people from South Asia living in London, and so on. It seems obvious to me that placing all of these situations under the rubric of "diaspora" blurs the much more important task of exploring the specifics of every case. Boyarin makes this very point about Jewish ethnic enclaves in various places at various times, arguing that there was not one Diaspora but many diasporas, "the ever-changing and developing conditions of Jewish life through time and space" (26).

Beyond the theoretical issue in cultural studies as to what characterizes a diaspora (a red herring if there ever was one), Boyarin also uses the term "diaspora" metaphorically. Throughout the book he argues, persuasively, although metaphorically, that the Talmud

became a Jewish homeland: Jews lived in local Jewish communities and, simultaneously, in the virtual homeland of the Talmud.

While, in a sense, this may be true, I can't believe that the Jews were so deeply involved in study of the Talmud as to mistake a text for a place. They knew very well where they were living and where their ancestors had once lived. Not only does Boyarin base his entire argument on a metaphor, he also makes an unjustified metaphorical leap, calling the Talmud itself a diaspora, as in the following sentence: "the Talmud as diaspora produces a bifocal Jewish culture" (96). A text cannot be a diaspora.

My second disagreement with Boyarin is historical. Though I am not a professional historian of the Jews, I have acquired enough knowledge of Jewish history to question some of Boyarin's assertions. His major claim is: "it is talmudic study itself that has constituted the Jewish people as a diaspora" (8).

In support of this claim, the epigraph to Chapter 3, "In the Land of the Talmud: The Textual Making of a Diasporic Folk," is a quotation from "Do the Jews have a Middle Ages?" an article by the late Hayyim Zalman Dimitrovsky, Boyarin's teacher, to whom the book is dedicated. Dimitrovsky states, "From the eleventh century on, the Jewry of the world was ... in the realm of the talmudic culture." (Incidentally, as to the relevance of this statement, until this point in the book, almost all of Boyarin's discussion has been of the text of the Talmud itself, at least five hundred years earlier.) The last sentence of this epigraph reads, "Even more than the Bible, it was the Talmud that was the unifying and uniting force of the diasporas of Israel" (30).

With all due respect to Professor Dimitrovsky, upon reading this statement one would not be surprised to learn that he was a professor of Talmud. I would imagine that professors in other fields of Jewish Studies might advance different candidates as exerting a "unifying and uniting force," such as the synagogue service, the prayer book, the Jewish holidays, ubiquitous social institutions such as burial and charity societies, customs such as circumcision, the reluctance of Jews to marry out, belief that the Jews are the chosen people, rejection by the surrounding society, and ethnic self-identification. Anyone who has studied the Talmud at all knows that the connection between it and actual social and cultural institutions is quite abstract.

Moreover, it is well known that, throughout Jewish history, only a very small rabbinical elite studied the Talmud, and, for example, it would be difficult to claim that the Talmud underlies one of the most important developments in modern Jewish history, the emergence and spread of Hasidism. Finally, although Professor Dimitrovsky claims that the Talmud was more important than the Bible in creating a unified Jewish culture, how is it that, in referring to the dates, Jews commonly mentioned the section of the Pentateuch read during that week?

Certainly the reading of the Bible is central in Jewish religious services, as is the recitation of Psalms.

Another interesting case in point, with which I am familiar because I have translated many articles on the subject by Professor Yosef Kaplan, is that of the marranos, the descendants of Jews who remained in Spain and Portugal after the expulsion, some of whom fled the Iberian peninsula and returned to Judaism. These people regarded themselves as members of what they called the “Nation,” whether or not they had returned to Judaism.

In the seventeenth century, when marranos were allowed to live openly as Jews in a few cities in Western Europe, such as Amsterdam, Hamburg, and London, they established what Kaplan calls the “Western Sephardic Diaspora.” This development was based on the marranos' feeling of group identification and divorced from any knowledge whatsoever of the Talmud (or of normative Judaism, for that matter). Indeed, to found their communities they had to hire rabbis, who were, of course, well versed in the Talmud, from Italian and other Jewish communities, and their relationship with Jewish law was not, as Kaplan shows, unequivocal.¹

Among Jews from the mid-nineteenth century to the present, it would also be quite difficult to argue that their (our) culture has been primarily talmudic. For example, I'm sure that, even among observant Jews today (aside from people in yeshivas), study of the weekly Bible portion is more common than study of the Talmud. Even assuming that Boyarin is right in describing Jewish culture as a culture unified by its relation with the virtual homeland of the Talmud from the third or fourth century CE until the late nineteenth century, it is evident that for many Jews, including me, the actual Land of Israel has become the homeland to which the diaspora is contrasted. Boyarin doesn't say, at least here, what he thinks must happen to Jewish self-understanding when contact with the Talmud is lost.

By temperament, I am reluctant to see things in dichotomous terms: Israel or Diaspora. I know and admire too many Jews who live in the Diaspora to argue that they should be living here in Israel. I also realize that Israelis who decide to live elsewhere may have excellent reasons for their decision. Jews have been migrating for too long to end the habit, and Jewish culture has gained enormously from our contact with other cultures.

Moreover, one must acknowledge that Israel is not the only place where Jewish culture is thriving. Nevertheless, one must also acknowledge that Jewish culture in Israel has more depth than elsewhere. I doubt that the Jewish people could have put itself together again so successfully after the unimaginable devastation of the Holocaust, were it not for the vital energy of the Zionist enterprise.

¹ Prof. Kaplan has written copiously about these communities. A partial list of his publications can be found [here](#).

I don't expect that the question of the place of the Israeli homeland in Jewish life will ever be resolved, either on the level of personal decisions—where should I live, if Jewishness is central to my identity?—or on the theoretical level—where should an authentic Jewish life be led? This is an uncertainty with which I can live. Indeed, we all have to.

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CHALLENGES OF THE AMERICAN RABBINATE FROM THE FIRST
RABBI IN THE AMERICAS: IN HONOR OF THE *Yahrzeit* OF RABBI
ISAAC ABOAB DA FONSECA

ORAN ZWEITER

Rabbi Isaac Aboab da Fonseca, the first ordained rabbi to travel to the Americas, arrived in Recife, Brazil in 1642. The writings of Aboab from his time in Recife reflect the feelings of multitudes of rabbis who would serve in the New World after him. The poem and *vidui* (confession) which Aboab wrote while in Brazil (which can be found in [Hakhmei Recife Ve-Amsterdam](#)) convey the sentiment of the New World as a state of rabbinic exile. They also reflect the challenge of guiding a community entrenched in the economic opportunities offered in the Americas.

Aboab was born to a *converso* family in 1607 in the Portuguese town of Castro Daire. He came from a prominent rabbinic family, his great-grandfather and namesake being one of the last great rabbinic figures in Castile. His family settled in Amsterdam in 1613. There, Aboab rapidly rose in the rabbinic world. By twenty-one, he earned the title *Hakham* and was appointed to the chief rabbinical board of the community, which included the likes of Rabbis Saul Levi Mortera and Menasseh ben Israel.

Aboab's rabbinic career brought him into the thick of various controversies, particularly those involving the former *converso* community in Amsterdam. Jews debated whether *conversos* would suffer eternal damnation for abandoning their faith, or whether repentance would save them from such a fate. Aboab voiced his opinion that *conversos* could redeem their souls by returning to Judaism, a position that put him at odds with Amsterdam's chief Sefardic rabbi, Saul Levi Mortera.

Later in his career, Aboab became embroiled in one of early modern Jewry's most famous controversies, joining fellow rabbis as one of the signatories on the edict excommunicating fellow Portuguese Jew, Barukh Spinoza.

What brought Aboab to travel to the New World is a matter of speculation. Perhaps as one of the youngest members of the Sefardic rabbinate of Amsterdam, Aboab drew the shortest straw. Alternatively, he may have carried with him a sense of idealism to help a fledgling Jewish community. Meyer Kayserling suggested that it was financial reasons that brought Aboab across the Atlantic, wishing to increase the meager salary he was earning in Amsterdam. The legend of the '*Goldene Medinah*' seems to have much earlier origins than

nineteenth century Europe. While Aboab certainly led an exciting rabbinic life in Europe, it is to his brief sojourn, 1642-1654, in the New World that we now turn.

Aboab lived peacefully in Recife for a short time. By 1646, the Dutch colony was under siege by the Portuguese. The Jews of Recife were terrified at the prospect of Portuguese conquest, knowing that Portuguese victory would also migrate the Inquisition to the New World and Brazil.

To respond to the threat, Rabbi Aboab composed a *vidui*, confessing what he believed to be the community's sins, as well as beseeching God to spare them. In addition, Aboab composed a poem recounting the suffering of the siege, as well as the Jews' rescue. These two documents are critical to not only understanding the specific events of the Portuguese threat, but also Aboab's general perception of the Recife community and his rabbinical life in America.

Aboab's poem is an account of the Portuguese siege. It is also a deeply personal reflection on what it meant for him to be sent as a rabbi to the far end of the world. He used biblical words with similar pronunciation and spelling to allude to Brazil, such as *kur ha-barzel*, the "melting pot," which in the Torah refers to Egypt (Deuteronomy 4:20).

Similarly, Aboab referenced the new geography in which the Jews found themselves. "Arise, build cities in the forests," is presumably a reference to the forests surrounding Recife, and "Drink in Aram the cold rivers," a reference to the rivers and waterways upon which Recife was built.

More importantly, however, for Aboab, Brazil represented a state of exile. In a number of places in his poem, Aboab alluded negatively to the remoteness of Brazil. At the very beginning of the poem, he depicted the Jewish residents of Brazil, himself included, as "Dwellers in the shadows of the universe." Brazil was on the fringes, in the shadows of the known world, far from any major center of Jewish life. Later in the poem, he makes a personal statement, claiming that, "For my sin, I have been tossed to a faraway land."

For Aboab, the Americas were in the shadows, and the only reason that could explain his presence there, was that it was a punishment of exile for sins he had committed. He was a young, rising star in the rabbinic world of Amsterdam, who was taken from the center of his community's Jewish life and sent to the most remote place imaginable. Aboab's sentiments reflect the feelings of later immigrant rabbis to the New World, whether from Germany, Lithuania, or Hungary. The Americas were far. The Americas were different. It was rabbinic exile.

Aside from his own personal feelings of exile, Aboab also implied in his writings what he felt were the shortcomings of his community. The years 1637-1644, the years in which many Sefardic Jews, including Aboab, arrived in Recife, were the peak of Dutch commercial activity in the region. The Jews became an integral part of commercial life in Recife, and in turn in Dutch world trade. According to Aboab, the Jews of Recife were too focused on their material success, which shifted their focus away from spiritual pursuits. Like many American rabbis after him, Aboab was a rabbi struggling to lead his congregation through the challenges of prosperity in the “Land of Opportunity.”

In his poem, Aboab accused his community of forsaking God because of their material success: “My flesh stood up from fear of my adversaries, for from my wealth I forgot my Creator.” Aboab’s accusations of materialism, however, take on a clearer and harsher tone in the *vidui*, confession. “I have coveted ... all of man’s pleasures at all times.” “Towards vanity my eyes fell.” “I stole. I robbed vast amounts of treasures.” In enumerating the long list of evils committed by his community, Aboab probably utilized a measure of hyperbole.

One cannot, however, ignore the common thread binding those evils together, which is the pursuit of material success at the expense of a more pious life. Aboab led the Jews of Recife in the midst of their material success, and could not come to terms with their focus on materialism.

The writings of Rabbi Isaac Aboab, the first rabbi in the Americas, reveal challenges that would continuously confront rabbis, immigrant and native alike, in the Americas. His writing reflects the uniqueness of the Jewish experience in the New World from its earliest stages. His story demonstrates that the challenges that have faced spiritual leadership in the Americas are not new. They began with the very first rabbi to settle, however shortly, in the New World.

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WHEN LAW FAILS US: LESSONS FROM RABBINIC RESPONSES TO CRIMES WE CANNOT PUNISH FOR THE #METOO MOVEMENT?

SARAH ZAGER

While the Torah explicitly permits capital punishment, the rabbis heavily restrict its use. The accused must be warned of the crime and its consequences at the scene; two witnesses—who, in most cases, must be adult Jewish men—must have seen the crime take place, each from separate vantage points. If any one of these elements is missing, the court lacks the power to execute the accused. On many readings, this move demonstrates profound moral fortitude and restraint: though they have a biblical authorization to kill, the rabbis choose heroically to limit their own power.

Americans take similar pride in our legal system's ability to restrict its own power, and American identity is often expressed using legal language: here is a place where you are innocent until proven guilty, where you are entitled to due process of law, where you are guaranteed trial by a jury of your peers. These procedural safeguards are more than just legal restrictions; they are manifestations of a commitment to human equality. Even when we fail to live up to that commitment, these procedural structures in place help us get back on track.

The past six months have seen a tremendous shift in the discourse surrounding sexual misconduct. Patterns of behavior that once went unnoticed and unpunished have been increasingly made visible, and, in the most high-profile cases, widespread popular condemnation has come much more quickly than in the past.

Strikingly, those who have opposed this swift action have used legal language to express their dismay, despite the fact that the vast majority of the sanctions issued against perpetrators are *non-legal*; people are fired from their jobs, removed from professional societies or public roles, but, in many situations, formal judicial action has not been taken.

A few examples of this kind of rhetoric: a recently re-published [book review](#) in *Tablet* lamented the fact that the campus sexual assault cases are not decided on a “beyond a reasonable doubt” standard, and that university officials in Title IX proceedings are “both judge and jury.”

A November 16th [editorial](#) in the *LA Times* argued that a willingness to ignore the “presumption of innocence” in public discussion of sexual misconduct, threatened to turn the #MeToo movement into “an exercise in public shaming, a rash extrajudicial application of stigma to supposedly wicked individuals.”

While the piece acknowledged that Mitt Romney was technically correct to tweet (in condemnation of then-Alabama Senate candidate Roy Moore) that “Innocent until proven guilty is for criminal convictions, not elections,” it also argued that he had missed the point. Instead, the author claimed, these legal standards also “embody what communities over time have agreed is a more civilized way of doing things.” According to this view, procedural rules that restrict the powers of the courts actually express a moral claim; this means that applying procedural legal restrictions outside the courtroom helps us become better, more measured, and more thoughtful people.

Or so the story goes. Though many contemporary readers of the rabbinic tradition champion the rabbis’ strict legal procedures, the rabbis themselves also critique it harshly; these critiques can prove instructive in the contemporary American case as well. The rabbis explicitly describe what is supposed to happen when it is clear that a murder has been committed, but the legal requirements for conviction cannot be met. Their proposal is graphically violent, but with a good dose of cartoonish, dark comedy:

ההורג נפש שלא בעדים מכניסין אותו לכיפה ומאכילין אותו (ישעיהו ל, כ) לחם צר ומים לחץ

Someone who murders a person without witnesses is taken into the domed chamber, and is “fed meager bread and scant water” (Isaiah 30:20) (*Sanhedrin* 81b). (This is the version of the Mishnah in the Vilna Edition. Mss. Kaufmann has ...ההורג נפשות שלא... (בעדים כונסין אותו לכיפא ונותנין

The *gemara* interprets this *mishnah* in terms of an earlier one, dealing with a person who is punished with lashes but continues to commit similar offenses. There, the *mishnah* rules that the criminal should be “taken into the domed chamber and fed barley until his intestines explode” (*Sanhedrin* 81b).

The *gemara* appears to be surprised by this violent punishment:

משום דלקה ושנה ב"ד כונסין אותו לכיפה אמר ר' ירמיה אמר רבי שמעון בן לקיש הכא במלקיות של כריתות עסקין דגברא בר קטלא הוא וקרובי הוא דלא מיקרב קטליה וכיון דקא מוותר לה נפשיה מקרבינן ליה לקטליה עליוה:

Because he was whipped and sinned again the court takes him in to the domed chamber?! R. Yirmiyah said R. Shimon ben Lakish said, “We are talking about a whipped person who is liable for excision, because he already deserves to be killed, although his death is not advanced in court. [Here,] since he has surrendered his own life, we hasten his death for him” (*Sanhedrin* 81b).

There is a tension built in to the *gemara's* response here: on the one hand, the repeat offender renounces his own life through crimes—he deserves to be killed. On Rashi's reading (ad loc.), this means that he hands his life over to God, who is supposed to resolve the problem. But, even though the court is not willing to execute the repeat offender according to the usual procedure, it is also not willing to leave his fate up to God alone. The rabbis intervene by moving the accused into a domed chamber, too small for him to stand up in, and ensuring his slow death. Though they remove themselves from formal legal responsibility (each increment of feeding is not enough to make any one person liable for his death), they nonetheless take direct action to halt a destructive and disturbing pattern of behavior.

The *gemara* reads the *mishnah* on the repeat offender and the witnessless murderer as referring to the same punishment:

ומאכילין אותו לחם צר ומים לחץ: מאי שנא הכא דקתני נותנין לו לחם צר ומים לחץ ומאי שנא התם דקתני מאכילין אותו שעורין עד שכריסו מתבקעת אמר רב ששת אידי ואידי נותנין לו לחם צר ומים לחץ עד שיוקטן מעיינו והדר מאכילין אותו שעורין עד שכריסו מתבקעת:

“And is ‘fed meager bread and scant water’”: What is the difference between this *mishnah* which says that we feed him “meager bread and scant water” and the other *mishnah* which says that we feed him barley until his intestines explode? R. Sheshet said: both are referring to feeding him “meager bread and scant water” until his intestines contract, and then we feed him barley until his intestines explode (*Sanhedrin* 81b).

This is a strange, even downright perverse, kind of judicial self-restraint indeed. But that doesn't mean that it is devoid of all ethical insight; nor does it undermine the conventional reading of rabbinic legal procedure. Instead, the text gives voice to a powerful moral impulse that quite literally can't be contained. The rabbis have seen someone shed blood, and with their hands tied, they imagine (it's unclear that they ever actually carried out this procedure) what they would want to happen to the person who so brazenly transgressed a deeply-held moral norm.

We might read this, following the Talmudist Daniel Boyarin in [Socrates and the Fat Rabbis](#), as an acknowledgement of the limitations of the legal strictures and proceduralism that dominate rabbinic discourse. According to Boyarin, the legal procedures of the Talmud also allow the rabbis to speak in “the language of the comic, the fantastic, and the grotesque” (175).

Another rabbinic narrative of extralegal conviction describes the offence, rather than the punishment, in similarly grotesque terms:

דתניא אר"ש בן שטח אראה בנחמה אם לא ראיתי אחד שרץ אחר חבירו לחורבה ורצתי אחריו ומצאתי סייף בידו ודם מטפטף והרוג מפרפר אמרתי לו רשע מי הרגו לזה או אני או אתה אבל מה אעשה שאין דמך מסור בידי שהרי אמרה תורה (דברים יז, ו) על פי שנים עדים או שלשה עדים יומת המת אלא המקום יפרע ממך אמרו לא זזו משם עד שנשכו נחש ומת:

It is taught in a *baraita* that Rabbi Shimon ben Shetah said: "I would see the redemption if I had not seen one person run after his fellow, [chasing him] into a ruin. And I ran after him and saw a sword in his hand and blood dripping from it, and a dead body convulsing. And I said to him: 'Wicked one, who killed this person? Me or You?! [It cannot have been me, you know I was not there] But what can I do, your blood is not given over into my hand, because the Torah says, (Deut. 17:6), "On the basis of two witnesses or three witnesses shall he that is to die be put to death." Rather, God will take recompense from you.'" They said: "They did not move from there until a snake came and bit him and he died" (*Shevuot* 34a).

R. Shimon Ben Shetah tells a gripping story, which has clearly made a traumatic impression. The graphic description of the raised sword, the dripping blood, and the convulsing body allow us to begin to feel his moral outrage, and, facing the possibility that the alleged murderer might be let off the hook on a technicality, and, taken as a unit, they offer a pointed parody of rabbinic legal restraint.

Though he is clearly disturbed by the scene, R. Shimon ben Shetah does not actually kill the murderer, and we need not read his story as implying that he should have. Instead, we can read him as arguing that the problem is the willingness to just accept the legal restrictions without a word of moral dismay. Whether or not the murderer gets his just reward—from the Torah's perspective, the shedding of his own blood—we, those who see the bloody trail that he leaves behind, should not be pleased, or even merely complacent about the outcome. We should, instead, be so outraged that we dream up a creative scheme to make him pay for his desecration of God's image.

Though R. Shimon ben Shetah says that "God will take recompense from you," God's intervention does not take the place of his own. He cannot stand to wait for God to resolve this situation either in this world or the next; instead, he creates his own "domed chamber" where a "natural" death is sure to take the murderer swiftly. Even as he acknowledges that, according to rabbinic law, the murder's blood is "not in his hands" in a way that would authorize a formal execution, R. Shimon ben Shetah takes direct action to contain someone who he knows to be violent and dangerous. Though the legal system does not give him (or the Rabbinic court) the power to kill such a murder, it also does not authorize him to ignore the situation; instead, it requires him to find a way to contain it. Following Boyarin, we can now reread "But what can I do, your blood is not in my hands," not as a statement of rabbinic legal restraint, but as a comic yet grotesque punchline that ends the narrative—"Your blood is

not in my hands,” and yet I will still ensure that you receive the punishment I know you deserve.

The willingness to lean on legal restrictions in the non-legal context of workplace sexual harassment, then, amounts to saying “But what can I do, your blood is not in my hands,” leaving the scene without going on to find another solution to the problem at hand. And, in doing so, it makes the expression of the kind of moral outrage that R. Shimon ben Shetah describes impossible; in the worst cases, it may even prevent such an outrage from welling up altogether. The Talmud teaches us that the adherence to legal procedural safeguards—the very procedural safeguards that contemporary readers so often uphold as examples of the rabbis’ progressive non-violence—come with a cost. In fact, it depicts that cost in the most graphic and theologically forceful terms: the only response to injustice that cannot be punished is to find a way to punish it, and a failure to do so presents an obstacle to redemption. This cost is often left unnoticed and undescribed in American discourse, where legal restraint is treated as an instrument for good.

Just as we can learn from the Talmud’s demand for moral outrage, we can also learn something from the form that it takes. The possibilities that the Talmud explores for extrajudicial punishment are extraordinarily violent, perhaps even more violent than the ones that rabbinic law sanctions explicitly. Boyarin goes so far as to argue that these kinds of passages are “seriocomic”; they are so over-the-top as to be funny. While I’m not quite willing to go that far in reading these specific sources, it does seem like these texts do reveal the inherent volatility of this kind of (entirely necessary) moral outrage. Though we express our moral outrage very differently—through forceful public rhetoric rather than domed chambers and snake bites—the strange, excessive punishments that *Hazal* dream up in cases where their normal legal procedures don’t work can help us understand why the conversation around sexual misconduct has become so polarizing, and why some participants in the debate seem to be talking past one another. Those who have said “me too” are standing over the dead body and crying out; and their cries are so forceful and so painful that they can be hard to hear and to understand. Just as I was surprised, confused, and a little repulsed when I first read the rabbis’ descriptions of force-feeding the accused, many of my male friends and colleagues expressed a churn of the stomach when they encountered the sheer number of “me too” stories and began to understand the pain that underlies each one of them. The Talmud’s grotesque voice vividly expresses this feeling of painful, but difficult to process, disgust.

The rabbis’ response to this feeling was to use their rich imaginations to devise a form of revenge that would settle the moral accounts, and to include those narratives alongside their legal discussions. We can follow their example by making space for moral disgust in our public discourse, even if that disgust is vetted through a shared public discourse that occurs outside the courtroom; though we will not be putting anyone into the domed chamber, we

can allow that disgust, when expressed clearly and compellingly, to have, real, tangible, but non-legal consequences in our institutions. But, as these grotesque rabbinic narratives suggest, the process of addressing wrongs outside of formal legal procedure is as messy, destructive, and even painful as it is necessary. The kinds of sexual misconduct highlighted in the past few months reveal practices that are too insidious and deeply entrenched to have clear legal solutions; but that does not authorize us to say that the blood of the women who have been wronged by this culture is not in our hands. It is.

As Christine Hayes notes in her book [*What's Divine about Divine Law?: Early Perspectives*](#), the rabbis often attempt to incorporate moral intuitions that diverge from the letter of the law within the structure of the law itself (309-310). Confronted with the strange procedure of the domed chamber, the rabbis debate its exact dimensions and legislate precise requirements for when it is to be carried out; what begins as outrage or desperation becomes part of the fabric of rabbinic law (*Sanhedrin* 81b). But, as Hayes also points out, this is not the only move that the Talmud makes in cases of apparent conflict between morality and rabbinic law. “It must be said, however,” Hayes writes, “that not every text that recognizes an ethical value independent of divine law seeks immediately to subsume it within the halakhic system or devalue it. *Some texts openly acknowledge the existence of independently accessed ethical values and rely upon them for the modification of the law*” (314, italics in the original). One of the great challenges for the #MeToo movement is to keep both these approaches alive: we need to build fair and powerful systemic responses to sexual harassment and assault, without allowing those systems to stunt our raw moral outrage.

Addressing this challenge is made all the more urgent by one of the major differences between the rabbinic cases discussed here and current discussions of sexual misconduct: in the rabbinic cases, we never hear the victim speak, only the grotesque and bloody residue testifies to the crime. In most #MeToo cases, we hear testimony directly from the victim.

At first, this might suggest that the evidence in the rabbinic cases is more attenuated, making it harder to feel the deep moral dismay that the rabbis demonstrate in these cases. But, the material evidence that R. Shimon ben Shetah catalogues—physical blood, a raised sword, a convulsing body—are signifiers that all of us can understand easily. We are almost biologically programmed to be disgusted and dismayed when we see them. The same is not true of a human being, in front of us telling her story; it is easy to find a way to discount her, to claim that she isn’t the kind of person who tells the truth, or that it simply “can’t have been that bad.” When used inappropriately, legal language can be a powerful aid in this kind of silencing; when this occurs, we don’t even get to hear the stories that would show us, in words rather than physical evidence, that there really is a bloody sword raised in front of us, demanding a moral response.

The impulse to think broadly about the intuitions that drive a legal tradition, and the willingness to apply these ideas broadly and creatively is important in both the Jewish and American contexts. As learners of Torah, we attempt to find meaning in and to learn from a text whose laws are almost never spoken in a courtroom. Our conviction is that they remain important and informative, that they have something to tell us. And as Americans, we are—or at least ought to be—willing to allow texts that were originally imagined as narrow legal codes to have wider effects on our political life. This kind of thinking has allowed us to greatly extend core freedoms and privileges to people who were excluded from the original imaging of the American project. And we are better for it.

But we need to remember that this kind of learning is undermined when we use those legal standards to silence the very moral impulses that they are designed to cultivate. A substantive engagement with a legal tradition requires more than just blindly applying it everywhere else in our lives. We are not faithful to our legal principles when we turn our workplaces, schools, and newspapers into courtrooms, as if the differences between these spaces were not accounted for within the law itself. Instead, such an engagement requires both an appreciation for the potential and even beauty of legal norms, and a willingness to proactively address the often grotesque and violent conduct that lies beyond the reach of codified law, but nevertheless demands to be stopped.

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