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RABBIS AND “GUERRILLA GIRLS”: THEMATIZING THE FEMALE (COUNTER) VOICE IN THE RABBINIC LEGAL SYSTEM

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Introduction

It is no new insight to note that rabbinic Judaism, like its biblical ancestor, created a system of laws and legal categories that generally functioned to put women at a social and material disadvantage. Intriguingly, then, rabbinic sources also include scattered stories of women, in their own rabbinic context(s), confronting and finding ways to maneuver within the details of those laws so as to attempt (and even to succeed) to secure a favorable result. A jumping-off point for my exploration of this topic, in fact, is a scholarly debate about a story in *b. Niddah* 20b, in which the character Yalta appeals one rabbi’s ruling regarding a blood sample:

Yalta brought blood before Rabbah bar bar Hana, and he declared it impure for her. She then brought it before Rav Yitzhak the son of Rav Yehudah, and he declared it pure for her.

But how could he have done this? But it is taught [in a Tannaitic source]: A sage who declared something impure, his colleague is not permitted to

declare it pure; [if he] forbade [something], his colleague is not permitted to allow [it]!

Originally he [Rabbah bar bar Hana] had declared it impure, but she said to him [Rav Yitzhak]: “Every [other] time he [Rabbah bar bar Hana] declared [blood] of this type pure for me, and this time he has a pain in his eye.” He [Rav Yitzhak] [then] declared it pure for her. (*b. Niddah* 20b; author’s translation)

Yalta is one of the few women who are named and who appear in multiple locations in the Babylonian Talmud. She is frequently associated with Rav Nahman, a prominent third generation Babylonian Amora, and is traditionally identified as his wife. At issue here is the question of whether her blood is to be considered menstrual, and thus whether she and her husband (be he Rav Nahman or someone else) are forbidden to engage in sexual relations. It is notable that rabbinic Judaism understands the answer to this question—that is, whether a particular sample of blood that a woman has seen or found on her body or clothing is menstrual blood—to be under the jurisdiction of a rabbinic arbiter and not something for the woman herself (or another woman) to determine about her own body. Yalta is, then, already functioning within these constraints when she brings her blood sample to Rabbah bar bar Hana. Yet, as the story progresses, both in the initial incident and in the Talmud’s examination of it, she exerts significant influence over the final determination of her status. First, she seeks a second opinion and then, as the Talmudic discussion has it, she makes a compelling argument to that second rabbi (Rav Yitzhak) in favor of changing the original outcome.

As Rachel Adler notes, there are (at least) two ways to interpret Yalta’s response to Rabbah bar bar Hana’s ruling, “one of which is considerably less destabilizing than the other”:

One could argue that Yalta is merely asking for accurate assessment of evidence and consistency in judgment. ... But a darker, more ironic reading results if we assume that Yalta’s account of Rabbah bar bar Hana’s judicial record and indisposition is a calculated attempt to manipulate the system and that her motivation for turning to a second

judge is not an intellectual distaste for legal inconsistency but a desire to avoid the stigma of impurity.¹

According to the latter reading strategy, Adler suggests, Yalta may be understood as a trickster figure, or, put another way, as a "legal guerrilla." In this role, Yalta functions to point at the often veiled human fallibility that is inescapably embedded in the rabbinic interpretation of what it understands to be divine law, and the injustices which may (or even inevitably) result:

Yalta's legal guerrilla tactics are predicated upon her skepticism that the authorities are dispensing justice. ... Yalta reminds us that what grounds authority is power, and power has social investments. Power can use authority to include and empower broadly. But power can also exercise authority to stigmatize, to subordinate, and to exclude. Yalta as legal guerrilla strips away the mask of justice, revealing the cruel face beneath.²

Charlotte Fonrobert, on the other hand, re-opens the first of Adler's possible readings, only to show that it too does not rest easily with the rabbinic gender ideology that constructs male rabbis as the observers and evaluators of female blood: "Yalta is not represented as fabricating a story in order to circumvent the rabbi's authority. Rather, she can be read as making a coherent argument, quite acceptable within the terms of rabbinic culture."³ In Fonrobert's reading, Yalta's conversation with Rav Yitzhak (as imagined by the Talmud) is a second "ruse," the first being that she appeals to him for a reversal of the original ruling. In the second, she presents a cogent legal argument, or an even innovation derived from the rules of diagnosing skin disease, that one who evaluates blood must have the fully functional use of both eyes to do so. In this reading too, then, Yalta presents a challenge to androcentric discourse around women's bodies, although in a somewhat different manner: "Reading the story

¹ Rachel Adler, *Engendering Judaism: An Inclusive Theology and Ethics* (Philadelphia, Jerusalem: The Jewish Publication Society, 1998), 57.

² *Ibid.*, 58.

³ Charlotte Elisheva Fonrobert, *Menstrual Purity: Rabbinic and Christian Reconstructions of Biblical Gender* (Stanford, California: Stanford University Press, 2000), 120.

from this angle, we see her not as circumventing the authority of the self-fashioned experts, but as competing with it.”⁴

Thus, despite the difference in their readings, one may also observe that both Adler and Fonrobert present Yalta and her actions as a challenge to the rabbinic system of menstrual laws in which men are the arbiters over women’s blood and thereby women’s sexuality. And both, citing alternate sources of definition while clearly being in conversation with each other, invoke the concept of the “trickster” and the ruse to elucidate the role Yalta plays in this story. In this article, I will examine two additional stories in the Bavli about another female figure that might speak to this theme. Can we identify her, along with Yalta, as yet another female character who might function as trickster and “legal guerrilla”?

When Are Twins Not Twins? *B. Yevamot 65b*

This story appears as part of a sugya addressing the question of whether women are obligated to procreate, something which rabbinic Judaism considers unequivocally obligatory for men:

Yehudah and Hizkiah were twins. The form of one was completed at the end of nine [months, of their mother’s pregnancy], and the form of the other was completed at the beginning of seven [months]. Yehudit [the mother of the twins], the wife of Rabbi Hiyya, had pain/difficulty in giving birth. She changed clothing and came before Rabbi Hiyya. She said: Is a woman commanded in procreation? He said to her: No. She went and drank a sterilizing drug. Eventually, the matter was revealed. He said to her: If only you had borne for me one other womb(ful)! (*b. Yevamot 65b*; author’s translation)

⁴ Fonrobert, *Menstrual Purity*, 120. Similarly 121: “The text ends up putting Yalta on equal footing with the rabbis and makes her a participant in talmudic discourse, instead of its mere object.” It should be noted that Fonrobert proceeds to demonstrate how the continuation of the passage reframes its picture of Yalta and her actions, first by asking directly “and is she believable?” (although the answer is, at least at first, yes; note, however, that this move may be relevant to the ambiguity about female reliability that surfaces in *b. Qiddushin 12b*, discussed below), and then by retelling the story with the ultimate conclusion that Rav Yitzhak did not actually accept Yalta’s report/reasoning, but “relied on his own tradition.”

According to a related text in *b. Niddah* 27a, although Yehudah and Hizkiah were gestated together as twins, one was born three months before the other, at the beginning of the seventh month rather than the end of the ninth month. In this episode, their mother, Yehudit, thus disguises herself with the rather clear intent to deceive her husband as to her identity, so as to elicit a particular ruling from him in his role as rabbinic legal authority that he would not want to have implemented in his own marriage (as his response when the ruse is revealed indicates). Disguise is widely recognized as one of the features of trickster behavior; William J. Hynes, for example, includes "shape shifter" in his list of trickster traits, while Barbara Babcock-Abrahams writes that tricksters "have the ability to disperse and disguise themselves" in her list of defining features. The story is so terse in detail that the reader does not learn who Yehudit disguised herself to be;⁵ the directness of her halakhic question to the rabbi might even mimic that of a student to a teacher, and it is possible that she disguised herself as male, gender-crossing being another trickster trait/tactic.⁶ Yehudit's act, as Judith Hauptman intuits, may also be reminiscent of the disguise assumed by Tamar (and the lack of recognition on the part of the male character) in Gen. 38, a story recognized as a biblical example of a female trickster figure.⁷

When Is a Betrothal Not a Betrothal? *B. Qiddushin* 12a-b

This is not the only Talmudic passage in which Yehudit is painted in potentially subversive hues. She appears once more elsewhere in *Qiddushin* 12b of the Babylonian Talmud, in an equally brief episode with

⁵ William J. Hynes, "Mapping the Characteristics of Mythic Tricksters: A Heuristic Guide," in *Mythical Trickster Figures: Contours, Contexts, and Criticisms*, ed. William J. Hynes and William G. Doty (Tuscaloosa & London: The University of Alabama Press, 1993), 34; Barbara Babcock-Abrahams, "'A Tolerated Margin of Mess': The Trickster and His Tales Reconsidered," *Journal of the Folklore Institute* 11, no. 3 (1975): 159.

⁶ See Babcock-Abrahams, "'A Tolerated Margin of Mess,'" 159.

⁷ Judith Hauptman, *Rereading the Rabbis: A Woman's Voice* (Boulder, Colorado, Oxford: Westview Press, 1998), 138.

strong affinities to the one presented above. Again, she confronts the same problem (difficult childbirth), and she similarly does not seem able to approach her husband directly to resolve the problem. The story is not brought as the centerpiece of discussion, but is cited as a kind of negative precedent in a case being heard before Rav Hisda (beginning on 12a), in which a woman's claim about the worth of an item might be determinative as to whether a man's attempt to betroth another woman with it was valid:

His mother⁸ said: But on the day when he betrothed her, it was worth a *p'rutah!* He [Rav Hisda] said to her [the mother]: It is not within your legal power [or perhaps: "you are not believed"] to forbid her [the bride] to the latter [man who betrothed her].

Is this not like [the case of] Yehudit, the wife of Rabbi Hiyya, who had pain/difficulty in childbirth? She [Yehudit] said to him [Rabbi Hiyya]: My mother said to me, "Your father accepted betrothal [money] for you when you were little."⁹ He said to her: It is not within your mother's legal power to forbid you to me. (*b. Qiddushin* 12b; author's translation)

Note that the example of Yehudit is brought to demonstrate that the claim of the mother in Rav Hisda's court is *not* sufficient or acceptable so as to influence the outcome of the case and thereby determine another woman's marital status. The nesting of this story in the frame of this case emphasizes the unwillingness of the rabbinic males to let a woman's words have a say in determining matters of marital status, a right they reserve instead for themselves. The story is ambiguous as to whether Rabbi Hiyya (and/or the storyteller) doubts the truthfulness of Yehudit's report from her mother, or whether he refuses to rule based on the mother's account even if Yehudit is conveying it accurately. The information the narrator gives as to Yehudit's apparent motives certainly leads the reader to suspect that this is her own stratagem with the goal of

⁸ It is unclear whose mother is meant. This could be either the mother of Rav Hisda, who (for whatever reason) was with her son in the court, or the mother of the man claiming that he had betrothed a woman with the item in question.

⁹ In keeping with the father's right to betroth his daughter during her minority. Such a betrothal would, then, make her later betrothal/marriage to Rabbi Hiyya invalid, indeed adulterous and forbidden.

avoiding additional pregnancies. Yet the parallel of the two mothers whose words could affect another woman's marital status in the primary case and Yehudit's story, in addition to the shared language of "it is not within your/her legal power," might lend itself to the possibility that Yehudit's account is simply not accepted as admissible evidence whatever its veracity. However understood, Yehudit is invoking biblical and rabbinic law of betrothals in such a way that if her account is accepted, she would necessarily be forbidden any further sexual contact with Rabbi Hiyya. If we presume that she is doing so with knowledge of the applicable halakhah and deliberately to this end, then we could reasonably say that Yehudit is acting as a "legal guerrilla" according to Adler's definition, albeit unsuccessfully.

If we then read the account in *Yevamot* also in this way, here her trickster/guerrilla tactics are more successful, at least from her point of view. The way in which the story is told suggests that Rabbi Hiyya is not aware for some time that she is using the sterilizing drug, let alone how she came to do so. To be sure, as in the case of Adler's reading of Yalta, there is perhaps a more "benign" way to read Yehudit's interaction with her husband than as a deliberate ruse. She might have been seeking a genuine answer to the question with the intent of adhering to it, whichever way her husband ruled, but adopted the disguise to be sure that his personal partiality would not affect his response. For the disguise and halakhic question to work as a ruse, on the other hand, we must presume that Yehudit asked the question anticipating what the answer would be; moreover, she must have been able to reason that women's exemption from the obligation of procreation would imply that it would be permissible to take the sterilizing drug.¹⁰ Once again, we would have a picture of a woman functioning as a rabbinic trickster, *a la* Adler, and/or engaging in her own halakhic reasoning alongside (male) rabbinic authorities, *a la* Fonrobert.

¹⁰ See Hauptman, *Rereading the Rabbis*, 132-34, 139.

Rav Hiyya's response, when the full facts are revealed, also leaves room for evaluating Yehudit's actions in multiple directions. His comment certainly cannot be described as a happy one, but it could plausibly be placed anywhere on a spectrum from rueful acceptance to angry confrontation. Hauptman thus writes that "because R. Hiyya decided to rule against [an obligation for women], he brings frustration upon himself. When men exempt women from mitzvot...they do not necessarily anticipate the anguish that they may thus bring, indirectly, upon themselves." She thus asks, "Is the Gemara here warning men to think twice before treating women as less than equal in the religious sphere?"¹¹ Tal Ilan takes a slightly different focus when she claims, "This storyteller wanted to state that women were both entitled to procreate when they felt they needed it, and to abstain when the burden was too heavy."¹²

In fact, there is a sense in which the ruse of *Yevamot* (if we read it as a ruse) provides a far "better" solution to Yehudit's problem than the supposed ruse of *Qiddushin* had it succeeded. If Yehudit's testimony (or her mother's) were accepted, she would have not only forbidden herself to Rabbi Hiyya (both sexually and regarding their ability to stay together as a married couple), but she also would have in essence declared all sexual contact that they had had up to this point as adulterous. It follows, moreover, that the children she had borne to him already would have been declared *mamzerim* (as is the case for any child of an adulterous or incestuous pairing). The status of both Yehudit's marriage and children is at stake here. In the *Yevamot* story, on the other hand, there is no severing of the marriage or of sexual contact between husband and wife, while Yehudit has her own husband's ruling (though he does not realize it) on which she can base her choice to forego further childbearing.

¹¹ Hauptman, *Rereading the Rabbis*, 138.

¹² Tal Ilan, *Mine and Yours Are Hers: Retrieving Women's History from Rabbinic Literature* (Kinderhook, New York: Brill, 1997), 206, n. 79.

Conclusion

What is left to address, then, is this question: What might it mean for the Bavli to let these trickster characters and episodes, these female "legal guerrillas"—Yehudit as well as Yalta—into its discourse? Allow me to conclude with several suggestions. Following Hynes' attempt to delineate "a range of interpretive theses" regarding tricksters and trickster behavior, I must also add that "in conformity with trickster logic, they can be considered to be inclusive of one another or not."¹³ This approach has been quite fruitful in examining trickster behavior exhibited, for example, by biblical characters—often women, but also younger sons and other males in a position of subordination.¹⁴ Women, such as those depicted in the stories reviewed here, have no direct voice in the making of rabbinic law, and they find themselves at a disadvantage in the constructs of that system; they can only attempt to elicit a favorable response within the constraints already imposed on them. Doing so may demand strategies that are not fully normative within that system. This approach, though, is open to at least one serious critique as regards its application to either biblical or rabbinic literature. As Kathleen M. Ashley summarizes, "The problem with a straightforward sociological analysis comes when the tellers of trickster tales are no longer the powerless but the power brokers themselves. The Hebrew tales of deception occur within narratives constructed primarily by men in positions of moral and literary authority."¹⁵ So too, not only is rabbinic law a system constructed by men, but rabbinic literature itself is the product of those same men. In this light, there is one other explanation that would be in keeping with the negative

¹³ William J. Hynes, "Inconclusive Conclusions: Tricksters—Metaplayers and Revealers," in *Mythical Trickster Figures: Contours, Contexts, and Criticisms*, ed. William J. Hynes and William G. Doty (Tuscaloosa & London: The University of Alabama Press, 1993), 202.

¹⁴ See also Mieke Bal, "Tricky Thematics," in *Reasoning with the Foxes: Female Wit in a World of Male Power*, ed. J. Cheryl Exum and Johanna W. H. Bos (Atlanta: Scholars Press, 1988), 147.

¹⁵ Kathleen M. Ashley, "Interrogating Biblical Deception and Trickster Theories: Narratives of Patriarchy or Possibility?" in *Reasoning with the Foxes: Female Wit in a World of Male Power*, ed. J. Cheryl Exum and Johanna W. H. Bos (Atlanta: Scholars Press, 1988), 104.

evaluations of these narratives and the depictions of the women in them. Among the interpretations of the trickster listed by Hynes is the possibility that “tricksters reaffirm the belief system.” He explains that stories of trickster characters “can be a powerful teaching device utilizing deeply humorous negative examples that reveal and reinforce the societal values that are being broken.”¹⁶ Our stories that depict women functioning in subversive ways before the arbiters of the law may not be “deeply humorous,” but they nonetheless convey a message that women is a threat to the orderly learning and application of Torah, and to the men who are its protectors.

In a similar vein, trickster stories might be a place for the tellers, when they themselves wield the cultural power and capital to shape those stories, to consider and explore their own societal position. In Ashley’s words, “The ambiguities or paradoxes expressed through trickster figures make them ‘good to think with’ for their cultures.”¹⁷ Steinberg likewise writes, “It is therefore worth considering these narratives as speculation on power by the power brokers of the society. ... [T]he figure of the trickster suggests the vulnerability of those in power. The stories considered can be read as reflections on the instability of this power. Possibly their telling is motivated by the fear of losing this power.”¹⁸ These few narratives allow the rabbis to personify and play out questions about the exercise and limits of their power over women in the arena of the court, what it might mean and how one might respond when that power is challenged.

Yet one more permutation might flow from this strange aspect of rabbinic female subversive figures. Tricksters are slippery and two-edged; to depict them in order to demonstrate the threat they might pose to the system is, at the same time, to necessarily allow their challenge into the discourse. To admit these stories into the canon is to admit, as Adler puts it, that a woman who features in them appears “not merely as an object in

¹⁶ Hynes, “Inconclusive Conclusions,” 207.

¹⁷ Ashley, “Interrogating Biblical Deception,” 109.

¹⁸ Steinberg, “Israelite Tricksters,” 9.

a legal problem, but as a person with her own investment in the decision and its consequences."¹⁹ Hynes notes that "the trickster reminds us that every construct is constructed. ... No narrative, category, or construct is ever fully watertight. Each one leaks, some more than others."²⁰ And this is the moment that the trickster becomes, I might even suggest cannot help but become, the "legal guerrilla." To admit her and the ambivalence she brings in her wake is to admit that even divine truth, once it enters human hands, cannot guarantee its justice, its inevitability, its claim to be the whole truth.

¹⁹ Adler, *Engendering Judaism*, 57.

²⁰ Hynes, "Inconclusive Conclusions," 212.