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Murder by Shunning

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MURDER BY SHUNNING

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There was a certain rabbinical student who had a poor reputation…

So begins a Talmudic tale (b. Mo'ed Qattan 17a) in which rumors, power, community, and extrajudicial punishment intersect. The subject of this particular narrative is *shamta*—sometimes translated as shunning, or excommunication. The tale is rife with ethical issues, as we shall see, and as such, it serves us well as an ethical prompt, both personally and in a classroom.

I. Reading the Story: My Process

How do we use the Talmud's strange, complicated, and ethically messy *sugyot* as a prompt for our own thinking about ethics? And what do I mean by "ethical prompt" rather than "ethical model"? In short, I mean that I want to explore the ethical issues that come up in these texts as a way of thinking about ethical issues that arise in our own lives. What do these texts have to say to us, and what do we want to say back to them?

What I will not do here is present the rabbis (those who appear in the texts or those who narrate them) as paradigms of ethical behavior. I see them, instead, as human beings—with ethics that at times match mine and at times are informed by a radically different value system. While we might account for their different values by invoking their different

cultural/historical context, that is irrelevant for the purposes of this project, in which the Talmud is a prompt for *our* context. The rabbis are fallible, often troubled and sometimes troubling, and even dangerous (as when they connive to get others into trouble, when they burn up their surroundings, or when they perform extra-judicial killings).[1] This makes them perfect for a project on Reading the Talmud as Ethical Prompt.

For this article, I delve into one Talmudic story to think through how it might open up questions about ethics. I use all of what this story offers, not just what works for a particular ethical position, and I excavate it for what decisions were made that raise ethical questions, what values might have motivated those decisions, whom those decisions served and whom they ignored, and only in the end, whether (and why) we would or would not consider them ethically defensible decisions.

This methodology has some advantages while also presenting some challenges. One of its great advantages is that it is an effective pedagogical tool for tackling ethical issues. Rather than presenting (or even leading towards) a foregone conclusion (which has limited pedagogical benefit[2]), this methodology allows for the learner to engage in a conversation in which they are invited to think about many different aspects of a case. Its primary challenge (for some) is that it does not *answer* questions, but instead *raises* questions. My goal is not to solve problems, but to encourage ethical thinking. As you read this article, if this methodology is working, then you will find yourself raising questions not named here, and pushing back on some of mine.

That is not to say that this method leaves us with no ethical stance. After aggregating and reviewing the evidence in the story and considering the ethical issues that derive directly from the narrative itself, I reject a more popular reading of this text that positions the student as a sexual harasser, and I land on two ethical issues that this text can help us to think

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[1] See, for example, b. Ber. 57a, b. Shabb. 33b, b. BK 117a, b. BM 59b.

[2] Either the learner will already agree, and thus we will have achieved nothing, or they will disagree, in which case a Talmudic story which presents the opposite opinion will have limited persuasive power.

through critically: the abuse of power by institutional leaders who sacrifice individuals on the altar of institutional reputation and the control that communities exert on the gender and sexuality of their members. Both of these use shaming and shunning as part of their toolkit.

I argue that this story speaks more authentically to those issues than to the context in which it has been invoked more recently, as Sarah Zager puts it, "in the public square."[3] The narrative, that is, has been mobilized in multiple arenas as a "#MeToo text" to suggest (explicitly or implicitly) that the rabbis were responding to a case of sexual harassment, and by extension, that the text advocates for victims of harassment.[4] I think, however, that the use of this text in that context focuses on certain elements of the story to the exclusion of others in order to illustrate a particular point (or to advance a particular agenda). That methodology is not unique to the #MeToo project, but although it provides more serviceable answers, it too poses some challenges. By offering us concrete answers to our ethical questions, this approach overlooks aspects of the

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[3] Zager's paper is an analysis of the limitations of the two main methodologies applied to the reading of rabbinic materials to think about responses to harassment. My paper is an attempt at employing both her suggestion that "the academic conversation can help to clarify the theoretical basis for methodologies that can then be tested out in more public fora" and that "Jewish ethical work in the public sphere may also utilize methods that are worthy of academic exploration or critique." 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): 69, https://doi.org/10.21220/s2-t85d-dr58, accessed July 30, 2021.

[4] See, for example, Gary Rosenblatt, "What The Talmud Can Teach Us About The #MeToo Moment" *Jewish Week*, February 21, 2018 (accessed March 22, 2024), https://www.jta.org/2018/02/21/ny/what-the-talmud-can-teach-us-about-the-metoo-moment; Josefin Dolsten, "How to understand the Kavanaugh accusations, according to rabbis," *JTA*, September 27, 2018, https://www.jta.org/2018/09/27/united-states/understand-kavanaugh-allegations-according-rabbis (accessed March 22, 2024); Stewart Weiss, "To Tell Or Not To Tell, That Is The Question," *Jerusalem Post*, March 30, 2008; Megan Doherty, Sefaria source sheet, "#MeToo and the Talmud: based on a d'var Torah by Sara Ronis," https://www.sefaria.org/Moed_Katan.17a.13?ven=William_Davidson_Edition_-_English&vhe=Wikisource_Talmud_Bavli&lang=bi&p2=sheet&s2=154736&lang2=en (accessed July 22, 2021); Joshua Yuter, "Jewish Justice and #MeToo," February 20, 2019, https://www.thelehrhaus.com/commentary/jewish-justice-and-metoo/ (accessed July 22, 2021).

text that sometimes belie its conclusions. I return to both of these points at the end of this article.

Before I get to the story, it is only right that I explain what I mean by *ethics*. How we define the word *ethics* is a sticky subject. The words *morals*, *ethics*, and *values* are often used synonymously, and even when they are not, their meanings vary in different contexts. Thus, there is no foolproof definition. For the purposes of this chapter, then, *ethics* means that which is motivated by the question, "Taking all stakeholders into account, what is the right thing to do in this case?" I want to posit that the moment that question is asked, we are engaged in a conversation about ethics. It is when the question is not asked, when the only stakeholders that we are taking into account are ourselves or those we most value, that ethics is forsaken. That is the measure that I will use in thinking about this text.

And with that, let me begin.

Shamta = Death

The narrative that I examine here, which begins at the top of page 17a of Mo'ed Qattan, opens the final third of a much longer conversation about *shamta*—that is, excommunication, or shunning, or ostracism. I want to begin my discussion here, however, at the bottom of 17a, that is, at the end; an end in which, after several pages of discussion and stories about *shamta*, the rabbis finally ask a question that seems better fit to the beginning of the conversation: "What is meant by *shamta*?"

> What is *shamta*? Rav says, "*sham mitah*"—"there (*sham*), is death (*mitah*)." And Shmuel says, "*shemamah yihiyeh*"—"it shall be (*yihiyeh*) desolation (*shemamah*), and it shall have an effect upon him like fat lining an oven." (b. Mo'ed Qattan 17a)

Here, Rav and Shmuel play on the sound of the word *shamta* to create fictive etymologies. Rav's "etymology" lets us know that shunning is equivalent to death; Shmuel's equates it with desolation. It is unclear which is the worse decree. Furthermore, the *stam* (often considered the later editorial layer of the Talmud) adds that the effects of *shamta* are like

the fat that lines an oven. If it is not clear to the reader what this means, the medieval commentator Rashi (1040–1105) explains that *shamta* is

> "like fat with which they line an oven," which is absorbed into it, and never comes out. That is to say, it is a trauma (literally, a blow) for anyone on whom they place a *shamta*, for it never leaves them. (b. Mo'ed Qattan 17a)

After Rav, Shmuel, and the *stam* have opined on just how devastating a matter *shamta* can be, the *stam* mitigates the previous statement with the opinion of Reish Lakish:

> This [opinion] disagrees with Reish Lakish, for Reish Lakish said, "just as [the *shamta*] enters into [each and every one of a person's] two hundred and forty-eight organs, so too, when it departs, it departs from [all of their] two hundred and forty-eight organs… (b. Mo'ed Qattan 17a)

Even Reish Lakish's mitigation, however, draws attention to the extent to which *shamta* can affect a person. Although he does not agree that the effects of *shamta* are permanent, he does believe that they are all embracing—entering a person's every organ. We might hold to Shmuel's opinion, that this mode of shunning is permanently absorbed into the shunned person's body as enduring shame, or what we might now call "post-traumatic stress." Or we might accept Reish Lakish's opinion, that the grave effects of *shamta* withdraw with the removal of the *shamta* itself (though psychologists would differ with him, some even using Rav's language to describe its effects).[5] Either way, it is clear that for all involved, shunning has a profound physical/psychological effect. Even for Reish Lakish, who considers the effects temporary, being shunned is a full-body experience.

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[5] See Kipling D. Williams, *Ostracism : The Power of Silence. Emotions and Social Behaviour* (New York: Guilford Press, 2001); Kipling D. Williams and Steve A. Nida. *Ostracism, Exclusion, and Rejection*. (New York: Routledge, 2017). As to modern psychology's support for Rav's opinion, ostracism and shunning are typically referred to as "social death," and even found to be associated with actual death thoughts (see Caroline Steele, David C. Kidd, and Emanuele Castano, "On Social Death: Ostracism and the Accessibility of Death Thoughts," *Death Studies* 39.1 (2015): 19–23).

Bringing Us into the Fold

Let us return to the beginning of the story as we walk through it together:

> There was a certain rabbinical student who had a poor reputation. (b. Mo'ed Qattan 17a)

No sooner has the story begun than we get our first ethical prompt. The narrator takes our metaphoric elbow and pulls us aside, inviting us into the rumor mill—informing us that we should be wary of a certain someone. Reputation, of course, is dependent on the grapevine, and so the narrator is both storyteller and participant in that rumour mill.[6] This rumour-mongering is particularly noticeable given the various injunctions in the two Talmudim against gossip (*rekhilut*) and, in particular, gossip that involves negative speech about another (*hotza'at shem ra* and *lashon hara*). Alyssa Gray, for example, points out that although the Mishnah rules that a woman's marital status may be determined merely by the fact that the "talk around the town" (*yatza shemah ba'ir*) is that she is married or divorced, both the Palestinian and the Babylonian Talmuds demonstrate visible discomfort with that ruling. The later rabbis effectively limit the practice and present narratives which belie its use.[7] Gray also notes that it is not only untrue statements that the rabbis eschew, but even the spread of true but unfavorable information. This frame of reference should make the narrator's participation in the practice all the more noticeable.

By positioning us as the hearers of this rumor, the narrator also aligns us with a particular stakeholder—the community in which the student's poor reputation has spread (a community which the narrator himself

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[6] Aptly, what I (and others) have translated as "had a poor reputation" – סנו שומעניה – translates literally to "the things that were heard about him were hateful."

[7] Alyssa M. Gray, "Jewish Ethics of Speech," in *The Oxford Handbook of Jewish Ethics and Morality*, ed. Elliot N. Dorff and Jonathan K. Crane (Oxford: Oxford University Press, 2013), 433–44.

identifies with).[8] Whether intentional or not, the narrator's act inducts us into the "in crowd"—those who are "in the know." The story's opening gives us two options, then: believe that the student comes by his poor reputation honestly or question the talebearer's tale and search for more information so that we may judge for ourselves.

The question is not simple. While ethical action (defined as I have above) would require that we consider all stakeholders, that is not possible under every circumstance. Let me begin with us, representatives of the community who are hearing this information. Do we evaluate the actions of the student based on what we have been told, or do we wait to judge for ourselves? Are there trustworthy talebearers, or does every talebearer have an agenda? When someone we trust presents us with defamatory information about a person we are unfamiliar with, what actions should we take? Should we listen differently if we ourselves must make a decision as a stakeholder (for example, should we hire him? Should we set him up with our friend? Should we befriend him?)?

And what of the narrator who divulged this information to us?

When do we ourselves feel compelled to share this kind of information? Whom do we share it with? What motivates us when we do? Under what circumstances is it an ethical imperative to share this information, and under what circumstances is it imperative not to? Is the narrator protecting us? Trying to establish a connection? Gossiping? Setting up context for what is to come? Was the context necessary?

And what of the way that the narrator conveys this information? What does he communicate with the words "poor reputation"? What is gained or lost by providing more, or less, information? Under the guise of "not wanting to say too much," might the narrator have inflicted far greater damage to the student's reputation? By giving us no further information, the narrator has left our minds to wander through multiple possibilities,

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[8] I include here a note from Ariel Drescher Mayse, who suggests (in accordance with the prevailing theory that these narratives belong to the later *stammaitic* layer of the Talmud) that the narrator also has a stake as "the literary inheritors of that tradition who must choose when, how and why to mobilize it."

running scenarios (after all, why are we being told this information?), although in fact, we have learned nothing substantial.

Rav Yehudah's Dilemma

In the next section, the text introduces another stakeholder—Rav Yehudah—and the narrator fades into the background. Rav Yehudah was the head of the yeshiva in Pumbedita (one of the three primary *yeshivot* in Babylonia), and as such, represented the rabbinic institution and his community. He opens this section with a short soliloquy in which he himself poses an ethical question:

> Rav Yehudah said, "what shall we do? [we cannot place a] *shamta* on him, [because] the rabbis need him, [but if we] do not [place a] *shamta* on him, it will defile the name of God." (b. Mo'ed Qattan 17a)

Unpacking Rav Yehudah's dilemma is a complicated task, because we are given very little information. Why, for example, does Rav Yehudah say that the rabbis "need" the student? Although Rashi suggests that the student served as the local school-teacher, part of the power of this tale is that we *do not*, in fact, know why he is needed. If we follow Rashi's suggestion, we might posit that they could recruit another teacher, but what if he were the only medical expert for miles around? How great is their need? Are there different ethical considerations that would take effect depending on the answer to that question?

We should notice (since we will come back to it at the end of this chapter) that Rav Yehudah's understanding of the community's need focuses on the student's benefit to the community and the harm that might be caused by his removal. While the community might have great need of the student's services, however, depending on the nature of the student's alleged transgressions, the community may have an equally pressing need to remove the student from their midst.

Rav Yehudah weighs whether his community needs the student more than the name of God is tarnished by the student's poor reputation. That these are his two considerations may suggest that the student's poor reputation did not involve a victim or an aggrieved party (and so there is

no need to fold the needs of an aggrieved party into his calculation). Alternatively, it might suggest that Rav Yehudah simply does not consider the needs of the aggrieved party to be more important than those of the community as a whole, or than the need to preserve "God's good name." Regardless, in the end it becomes clear that Rav Yehudah's top priority is to preserve the sanctity of God's name by placing a *shamta* on the student.

What is it, however, that Rav Yehudah believes would defile God's name? We might understand "defiling God's name" as something like the categorical imperative—someone has transgressed, and this requires action, regardless of other factors. Alternatively, assuming that Rav Yehudah's motives are pure (that is, that he is not motivated by self-interest), he might worry that a lack of action would defile God's name by fomenting distrust of the rabbis. How can they possibly represent God's will if they do not respond to these rumors?!

When considering these questions, we have assumed that Rav Yehudah has heard more about the nature of the student's bad reputation than we have; but how much information do we need in order to take action against a person who we believe has transgressed? Does it matter where that information comes from or how we have acquired it? Would we respond differently to Rav Yehudah's dilemma if we knew how much he knew or where he had learned the information? What difference might those answers make to an ethical evaluation of Rav Yehudah's predicament?

Rav Yehudah Seeks Advice

> He said to Rabbah bar bar Hana, "have you heard anything regarding this?" He said to him, "R. Yochanan said this to me, 'what is the meaning of what is written, *for the lips of the priest shall guard knowledge, and they shall seek Torah from his mouth, for he is a messenger of the Lord of hosts*?[9] If a rabbi is similar to a messenger of God, they will seek Torah from his

[9] Malachi 2:7.

> mouth, and if not they will not seek Torah from his mouth.'" (b. Mo'ed Qattan 17a)

Rav Yehudah's question to Rabbah bar bar Hana is vague. Is he asking whether Rabbah bar bar Hana has heard the rumours, or is he asking whether Rabbah bar bar Hana has heard anything regarding what one should do in a situation such as this? Regardless, Rabbah bar bar Hana must make a decision about how to respond. What are some of his ethical considerations? He might help his colleague to do the right thing (which would necessarily also help Rav Yehudah's community). He might sidestep the question, thereby abstaining from gossip. He might reprove Rav Yehudah for engaging in gossip or for responding to unsubstantiated rumours. What are the factors that would contribute to an ethical decision under these circumstances?

Rabbah bar bar Hana's response is a cryptic interpretation of a verse from the prophet Malachi, which can be understood in (at least) two different ways. In one interpretation, the priest whose "lips shall guard knowledge" is the student. Rabbah bar bar Hana, in this interpretation, explains that people will not seek Torah from this scholar who, by his actions, has rendered himself no longer a messenger of God.[10] In a second interpretation, the priest is Rabbah bar bar Hana himself. In this version, Rabbah bar bar Hana uses this verse to tacitly admonish Rav Yehudah for his question, essentially saying, "If I want my colleagues to seek Torah from my mouth, *I* must be a 'messenger of God,' and 'guard knowledge,' *not* engage in rumors."

The *Shamta*

> Rav Yehudah placed a *shamta* on him. (b. Mo'ed Qattan 17a)

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[10] See Rashi, *s.v.*, ואם לאו אל יבקשו תורה. The same midrash appears in b. Hag. 15b to pose the question, "how was R. Meir permitted to learn from Acher, the heretic?" Although this seems more in line with the first interpretation, it does not negate the second. That is, the verse poses the question, "how can we learn Torah from a sage who acts inappropriately?" Rabbah bar bar Hana suggests that weighing in on Rav Yehudah's question would be acting inappropriately.

Rav Yehudah either thinks that Rabbah bar bar Hana is equating the student with the priest, or he makes his own decision, thinking his colleague unwilling to engage in the conversation. In either case, Rav Yehudah decrees a *shamta*, never taking the second important stakeholder—the student—into account. He does not initiate an investigation, nor do we have any indication that either rabbi has even spoken to the student. As the community leader, Rav Yehudah has already determined the ideal outcome (*shamta*), were it not for the community's need of the student, which he worries might throw a wrench into his plan. This raises another set of related questions. Are there ethical considerations that a community leader must make that overrule other ethical factors? Does the sanctity of God's name (which might be equivalent, in Rav Yehudah's mind, with the reputation of the institution) overrule a search for the truth? Is there a threshold after which we, or Rav Yehudah, may presume rumours to be true? Is there a threshold after which we *must* presume them to be true?

II. Teaching the Story: My Process

Now that we have some text under our belts, and now that I've explained my reading process, let me take a moment to step away from the story and explain how what I have done so far in this article would work with students (since part of my goal is to think about how using Talmud as an ethical prompt manifests in a classroom). Because my students are not in the room with me as I write this piece, I am performing both the role of teacher and the role of student here. If I were to do this in a classroom, this would take place in stages, and the students, not I, would be generating the questions that I bring you here.

Defining Our Terms

Before reading the text with my students, I would use some of my first session to define what we are going to mean in the context of this course when we say the word *ethics*. For the sake of creating a working methodology, I would offer the definition that I included above, along with any emendations that arose during the classroom conversation. That

definition allows us to begin with the question: "Who are the stakeholders in each step of our *sugya*?" and to ask what it means to "do right" by each of them and whether there are circumstances in which that should not be a consideration.

Determining the Ethical Questions

Next, I progress through a text analysis one small piece of text at a time, as I do here. For each stakeholder, we would ask: What are the ethical questions or issues that emerge from each move in the story? Part of this process is to continually "check" our work, always asking what makes these "*ethical* questions." In our case, for example, the stakeholders are Rav Yehudah, the community (represented, perhaps, by the narrator), and the student.

One of the ethical questions that emerges from the start is when we should or should not tell others what we have heard about another person's behaviour. One element that makes this question into an "ethical question" is that the student's quality of life depends on others' decisions to speak or not to speak, and then to *shamta* or not to *shamta*.

Evaluating Behaviours: Values & Ethics

Once we have had these initial conversations, we might go in multiple directions. Depending on where we have gotten to in the preceding conversation, I might ask my students how we *evaluate whether* a particular behaviour is ethical. Is it on the basis of intention/reasoning? Of impact? Of who it does or does not take into account? Or, we might think about the competing values that underlie the ethical decisions that a character makes. Rav Yehudah, for example, has made a decision, which he has based on his deliberation.

Before we begin to evaluate whether these moves were, in fact, ethical, I would begin by asking the students to approach each player with curiosity rather than judgment, and to ask themselves what ethical motivations lie behind each of the deliberations or decisions in the story thus far. Would Rav Yehudah explain his decision, for example, by saying

that the community as a whole comes before any individual member? Would the narrator claim that by sharing this information, he is protecting us from trusting the student? We might also try to determine what factors (assumptions, life circumstances, etc.) play a part in our own answers to these questions.

Finally, we might further break down the ethics of the situation to consider not only *what* we do, but *how* we do it. For example, if the narrator decides that it is an ethical imperative to share this information, or if Rav Yehudah decides that it is an ethical imperative to *shamta* the student, *how* might they do so in the most ethical way? Only at the end would I entertain the question of whether and why a particular moment in the narrative should be considered ethical behaviour/thinking, or not.

Presentism

In this process, there will inevitably be an element of presentism. Someone in my class might, for example, posit that the scholar was known for discriminating against others based on their lower economic status or that he was a sexual harasser. In turn, I might interject that although classism and sexual harassment were not transgressions that would have been on Rav Yehudah's cultural radar, principles that lie behind those concerns might have been. I might ask the students to articulate those principles, with the goal of distinguishing between ethical foundations that we share (or, in some cases, do not share) and particular applications of those foundations that we might or might not share. In this way, we can, to the best of our ability, read the text on its own terms while still applying it to our own ethical questions.

Let us return to the story for the second act.

Rav Yehudah's Illness

The narrator follows up Rav Yehudah's short consultation with Rabbah bar bar Hana by telling us that "ultimately, Rav Yehudah grew ill." This scene finally brings the two main stakeholders face-to-face:

> Ultimately, Rav Yehudah grew ill. The rabbis came to inquire after him and he (the scholar who had been excommunicated) came with them.

> When Rav Yehudah saw him, he laughed. He (the scholar) said to him, "is it not enough that you excommunicated this man (i.e., me)? You also have to laugh at me?!" He (Rav Yehudah) said to him, "I'm not laughing at you, rather, when I go to that world, I will rejoice that I did not favor[11] a man like you." Rav Yehudah died. (b. Mo'ed Qattan 17a)

The opening of this scene is an excellent example of how the practice of reading Talmud as an ethical prompt also requires that we ask the type of questions that a close reading demands. Reading to tease out the narrator's agenda further engages the narrator himself as an ethical player and opens the question of whether the players themselves (again, including the narrator) have opinions on the behaviours of other players in the story. In this case, the unnecessary word "ultimately" evokes that question: What is the narrator telling us? Is this merely a time marker, or is he implicitly critiquing Rav Yehudah—connecting his illness with his decision to decree this *shamta*?

When Rav Yehudah grows ill, the student comes to visit him along with the rabbis. Let's start by assuming, again, that the stakeholders' motives are worthy (in this case, that is, that the student has not come to gloat at Rav Yehudah's illness). Is he, then, performing the *mitzvah* of

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[11] The Vilna edition of this text is confusing. On the one hand, the student is described as צורבא דרבנן, which usually implies a young rabbinical student. Rashi's suggestion that he is a schoolteacher supports this reading, as do the multiple narratives that precede this, and the power dynamics between those who place someone in *shamta* and those who are placed in *shamta* (though there are a couple of exceptions). On the other hand, in this scene in the Vilna edition, Rav Yehudah states, "I will rejoice that I did not toady *even* to a man like you." In other manuscripts, the word "great" modifies the word man. These seem to conflict with the image of this man as a young rabbinical student. In my translation, I use the various manuscripts to reconstruct what the original text might have been. The Munich manuscript reads "דאפי' גברא כוותיך לא חניפי ליה." "אפי" can abbreviate the word אפילו (even) or אפיה (his face). Although most manuscripts either abbreviate or choose the former, the British Library's manuscript (Harley 5508|400) has אפיה spelled out, reading "דאפיה לגברא רבא כוותך לא חניפי ליה," using the term "חניפת אפיים" (lit., something akin to "favouring one's face"). Yalkut Shimoni (תהלים רמז תתיג) uses the same term in Hebrew, "חנופת פנים." I have used the reading אפיה rather than אפילו in my translation, which I believe solves the problem of the conflict between the two portrayals of the student.

visiting the sick)?[12] Is he coming to seek resolution and to be released from his *shamta*, fearing Rav Yehudah will die before resolution is reached?

Just as we can rarely be sure of the motives of the people in our own lives, we are not told the student's motive here, which allows us to ask ethical questions on several levels. Are there times, for example, that performing even a *mitzvah* of the highest order can cause distress to another person? In such a case, is performing the *mitzvah* still the "right" thing to do? If the student arrived at the sick rabbi's house looking to satisfy his own need for resolution, it raises the question "How do we balance our own needs against the needs of others?" As we shall see, not reaching such a resolution has grave implications for the student. When balancing his own needs against those of Rav Yehudah, what should the student do? Alternatively, perhaps the student was concerned with the need of the community to which Rav Yehudah referred in his musings. Would this alternate motivation change the ethical status of his act? Finally, what if the student did, actually, come to gloat? When we believe we have been treated unjustly, what are the ethics behind our responses? Do we exhibit what power we have, as little as it may be, or does the ethical imperative towards all stakeholders include our "tormentors"?

One of the ways that we have not yet mentioned in which a *sugya* might serve as an ethical prompt is by causing the reader cognitive dissonance—binding questionable behaviour to figures whom we are meant to think of as role models. Is this one of those moments? Rav Yehudah sees the student … and he laughs. Recall that Rav (whose opinion, Rashi explains, is considered more weighty than other *amoraim*[13]) considers *shamta* equivalent to death. When the student points out that this behaviour doubly wrongs him, rather than apologizing, Rav Yehudah tells the student that he is not "laughing at him." However, the gravely ill

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[12] This is considered a *mitzvah* of the highest order. See, for example, ARN 30, *s.v.* הוא היה, b. Shabb. 127a.

[13] See b. Beitz. 9a, in which Rashi explains why Rav's opinion poses a problem for another *amora*. There, Rashi says that, "although Rav is an *amora* himself, they (the *stam*) pose a difficulty from his opinion, because he was the leader of all of the Diaspora in his generation, aside from Shmuel."

rabbi summons the energy to go on to mock him, telling him that his laugh is a manifestation of his self-satisfaction—he will enter the world-to-come knowing that he made the right choice.

I had a difficult time finding a way to give Rav Yehudah the benefit of the doubt here, returning to the question of *how* a decision is implemented—yes, there is a *shamta* on the student, but how does one behave towards him while he is under *shamta*? Even if Rav Yehudah felt that he had made the right choice, it is difficult to defend his decision to publicly mock the student.[14] Did he have a responsibility to behave differently under these circumstances? If ethical behaviour is defined as that which takes all stakeholders into account, I would suggest that he did.

The final line of this scene again raises the question "Does the narrator agree?" This time, the narrator breaks in just following this exchange to inform us that Rav Yehudah has died. Once again, it is unclear whether he is connecting Rav Yehudah's death with his response to the student, but this moment in the story might pull us up short, demanding of us to examine our own behaviour towards those we feel *deserve* to be treated poorly.[15]

Inside the Babylonian *Beit Midrash*

Still unsure, as readers, of whether the student deserved to be put under *shamta*, we are transported to the *beit midrash*, where the rabbis sit following Rav Yehudah's death.

> He (the student) came to the *beit midrash*. He said to them, "release me (from this *shamta*)." The rabbis said to him, "there is no man as important

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[14] Multiple locations in the Talmud cite the imperative to "choose a good death" for someone guilty of a capital crime. On b. Sanh. 45a, for example, they debate regarding stoning a man whether the individual would prefer being spared the humiliation of being naked over the slow death of being stoned clothed. If the rabbis consider the psychological needs of a person convicted of a capital crime, how much more so should we expect them to consider the needs of a person who merely has a poor reputation.

[15] See Deborah Kerdeman, "Pulled up Short: Challenging Self-Understanding as a Focus of Teaching and Learning," *Journal of Philosophy of Education* 37.2 (2003): 293–308.

> as Rav Yehudah here that may release you. Rather, go to R. Yehudah Nesiah so that he may release you." (b. Mo'ed Qattan 17a)

In this scene, the student appeals to the rabbis to release him from his *shamta*. The rabbis claim that they cannot. They explain that since Rav Yehudah, the leader of the community, initiated the *shamta*, only one who is his equal in stature may release the student. Only if the student travels to Rabbi Yehudah Nesiah, the Patriarch of the land of Israel, can he be released.

Though there was travel between Palestine and Babylonia, this would not have been an easy trip. If the only matter that was tying their hands was Rav Yehudah's standing, were there other options that these rabbis might have offered? It is hard to know, but regardless, the question arises as to whether these rabbis had other ethical obligations to the student, either as his superiors or simply as others in his community. Is a bystander just a bystander, or does that person too have an ethical obligation? Under what circumstances should one act (or not act) to support, or even to express sympathy for, someone in distress? How does the answer change (or not) if the distress is caused by a leader of our community? What if we too are leaders in the community?

Inside the Palestinian *Beit Midrash*

> He (the student) went before him (R. Yehudah Nesiah). He (R. Yehudah Nesiah) said to R. Ami, "go and investigate his case. If we should release him, release him." R. Ami investigated his case and concluded that [they should] release him. (b. Mo'ed Qattan 17a)

In this scene, we learn that the trip, however arduous, was worth making. The student arrives before R. Yehudah Nesiah, who does not render judgment one way or the other; rather, he charges R. Ami to investigate the case. Although R. Ami is also a rabbi (and therefore officially a colleague of the deceased Rav Yehudah), he lives in a different (and distant) community and would not have been likely to have heard anything about the case prior to this. Moreover, his charge is to *investigate* before he comes to a decision.

Rabbi Yehudah Nesiah's directive stands in stark contrast to Rav Yehudah's original handling of the issue. Even if Rav Yehudah, being closer to the matters at hand, might have known more of the details of the case, he is also what we refer to as *noge'a badavar*—an interested party (lit., "close to the matter"). At this point, the story raises the further question of not only whether investigation should take place on the basis of rumour but also by whom the investigation should be done. Do the differences between Rav Yehudah and Rabbi Yehudah Nesiah represent a difference in their access to information, or do they indicate different ethical approaches (and if so, how would we characterize those approaches)? Are there ethical considerations that go into Rabbi Yehudah Nesiah's decision to appoint a subordinate both to collect the information and to evaluate it, rather than doing it himself, as Patriarch, or is it a utilitarian decision? Should he have decided otherwise? Is this decision meant to raise doubts about the Babylonian rabbis' claim that only Rabbi Yehudah Nesiah himself could overturn Rav Yehudah's decision?

R. Ami collects the facts and announces the verdict, and it would seem that he either exonerates the student or, at the very least, decides that he has "served his time." But that is not the end of the matter, and suddenly the process that Rabbi Yehudah Nesiah laid out is turned on its head.

> R. Shmuel bar Nachmani stood on his feet and said, "if the rabbis did not treat lightly an excommunication [enacted] for three years by a servant woman of Rabi's house, how much the more so [should we act thus regarding an excommunication enacted by] our colleague Yehudah![16]" R. Zera said, "[observe] what is before us—that today this elder (R. Shmuel bar Nachmani) has come to the *beit midrash*, for how many years has it been that he has not come? We should learn from this that we should not release him." (b. Mo'ed Qattan 17a)

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[16] The *sugya* later explains this statement. In an entirely unrelated incident, Rebi's maidservant imposes a *shamta* on a man beating his grown son. The claim here is that if a lowly servant's *shamta* remains in place for three years, it would be disrespectful to the honor of the deceased Rav Yehudah to revoke his *shamta*.

Although we have not been told that R. Ami has made his announcement in the *beit midrash*, it quickly becomes clear either that he has, or that the rabbis have gathered in the *beit midrash* after word of the decision has come to them. One imagines a room crowded with rabbis, in which the elder R. Shmuel bar Nachmani rises to his feet to add extra impact to his declaration. His objection to R. Ami's decision, however, is not based on first-hand knowledge of the case, or on conflicting evidence. We do not even have an indication that he knows anything about the case itself. Rather, his objection is based on an appeal to the honour of the deceased Yehudah, who enacted the *shamta*.

R. Zera endorses this objection, out of respect, in turn, for R. Shmuel bar Nachmani himself. After all, R. Shmuel bar Nachmani, who is so old and frail that he no longer comes to the *beit midrash*, has come out on this day to hear the pronouncement. Surely this effort and inconvenience should play a part in the decision! Thus, although R. Ami's investigation supported an end to the *shamta* and these rabbis have no information about the case that would contradict that decision, they demand that the decision be reversed in deference to Rav Yehudah and, in the case of R. Zera, to R. Shmuel bar Nachmani as well.

The scene as a whole is a panorama of conflicting values, which again provides us the fodder to ask the question, "Do those values necessarily lead to ethical decisions in every case?" A judgment was rendered by an elder—a leader. Is it appropriate to second-guess a leader's decision? Should we be bound by Rav Yehudah's authority? This question arises routinely in parenting situations—for instance, one parent has made a decision without the full story in hand; does another overturn that decision in the interest of fairness, or does the other parent uphold that decision in the interest of not undermining parent #1? What is the role of evidence in such a case? Should a fuller picture trump a prior decision regardless of the decision-maker? And what if parent #1 is no longer in the picture? Are we still bound to their decision? And what if Rabbi Yehudah Nesiah himself had investigated, rather than his subordinate? Does our loyalty and respect of one leader overrule our loyalty to another? And what if those leaders live in different locations? Does loyalty to one's

own leader trump loyalty to a distant colleague? And what of the type of leadership? The Patriarch, after all, was a political leader rather than a leader of the rabbinic institution. Does "one's own" leadership trump that of another, even if "one's own" is from another location or sphere? What makes for the most ethical decision?

> They did not release him. He left in tears. (b. Mo'ed Qattan 17a)

The Student's Death

The next scene again leaves us wondering. After the student leaves the *beit midrash* in tears, the narrator immediately relates that

> A hornet came and stung him on his penis, and he died. (b. Mo'ed Qattan 17a)

The speaker, once again, is the narrator—the same narrator who recruited us, the readers, by forewarning us not to trust the student and thus ostensibly letting us know who "the good guys" are. And now, we are again privy to words that we might expect to be whispered behind the palm of a hand— "How did the student die?! A hornet stung his penis!"

The information reads, this time even more so, like gossip. Did we need to know this titillating information about the student's death? The narrator certainly has motivation to do so. Although the opening of the story provided no details about the scholar's tarnished reputation, the manner by which the student died hints to us that his transgression was somehow related to his genitals.[17] This hint at *midah keneged midah*—the early rabbinic notion that our punishments and rewards directly reflect our actions—moves the reader to believe (whether accurately or not) that the student's reputation was deserved: he must have transgressed in some way by means of his genitals.[18] Indeed, for more than a millennium, commentators have been explicit about this, taking the words to mean that he

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[17] The Tosafot write, "…there are those who interpret [this as a divine punishment of] 'measure for measure' because he was suspected of visiting sex workers" (Tosafot, *s.v.* וטרקיה).

[18] See t. Sotah, chapter 3.

was guilty of sexual transgression.[19] Through this literary device, the narrator implicitly informs us that Rav Yehudah's original decision was probably not without some grounds, whether he was aware of them or not. Does that motivation justify the *lashon hara*?

While the narrator seems to defend Rav Yehudah's decision here, this is also the narrator who, as we said above, could be read as implicitly critiquing Rav Yehudah's treatment of said student. The difficulty that we have putting our finger on the narrator's alliances supports our use of the narrative as an ethical prompt. If we do not know where the narrator stands, if we are not provided with easy answers—we cannot simply ally ourselves with one position or another. We can question Rav Yehudah's original decision (not to mention his subsequent behaviour) even though we have information that seems to support that decision (the hornet's sting).

This piece of information also forces us to make an important ethical decision—do we evaluate Rav Yehudah's original decision on the basis of a (retrospectively) "karmic" event related to us by a gossipy narrator? If, for example, this were happening in our own community, what pieces of information would be ethically relevant? We have come full circle in this story to the question: What is our ethical response to hearing information such as this?

The Ethics of Reading

Before we enter the final scene, I want to return to the question of reading. There are, of course, multiple ways to read this story. We could read it, for example, from the point of view of any one of the characters in the story. We could read it with the assumption of an omniscient narrator who is not himself a rabbi, or as a story about the sacrifices we must make in order to enable a fragile institution to successfully lead a community. This brings me back to a point that I raised at the beginning of this

[19] 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): 1–12, https://scholarworks.wm.edu/jtr/vol11/iss1/5/, accessed July 30, 2021.

article—if I am using these texts as ethical prompts, should I not also think about what it means to engage in an ethical *reading process*?

Let me highlight two imperatives that my own reading process demands of me that might winnow down some of these readings, including those that understand the rabbis as responding to a sexual harasser. First is the imperative to raise ethical questions—beginning by giving all players the benefit of the doubt while reading through a lens of ethical inquiry that does not let anyone off the hook, including those with whom we identify, as well as ourselves. Second is the imperative to remain faithful to the text as it is related by the gemara—not ignoring or omitting any part of it in our analysis in order to meet an agenda, even an ethical agenda.[20] In what follows, I will first present (and dismiss) the reading that sees the rabbis as the champions of victims of harassment (though I understand the pull of this reading) on the grounds that it does not meet my second imperative. Following that, I will suggest two alternative lenses through which we might read this story.

Burial Caves and the Ethics of Reading

Since reading this narrative as a tale of a sexual harasser extrajudicially brought to justice has become so prevalent in liberal communities, let us examine it under the microscope of these imperatives. In a recording in which Meesh Hammer Kossoy teaches this text, for example, she explains that for a sexually harassed woman,

> it's really tough to prosecute, and she's likely to suffer very much in the attempt to prosecute if she tries it. And … if the court system can't really fix the problem, let's turn to institutions. Jewish institutions have to step up to the plate even in the case of rumours … they maybe can't prosecute the person but they have to take action to make sure that their institutions

[20] For example (and this is true of most such teachings that I have heard), Meesh Hammer Kossoy, in a teaching on this subject, ends the story with Rav Yehudah's laugh. See Hammer Kossoy, Meesh, "#MeToo–The Ethics of Anonymously Sourced 'Whisper Networks,'" podcast, https://elmad.pardes.org/2018/08/metoo-the-ethics-of-anonymously-sourced-whisper-networks/, accessed July 30, 2021.

> are safe. They have to work on a different set of proof, because they are responsible for what's happening within the walls of their institution. And we saw the amazing work that Rav Yehudah did in the name of kiddush hashem …[21]

I support Hammer Kossoy's goals wholeheartedly—victims of sexual harassment must be protected by their institutions. It is also not the presentism of this endeavor to which I object—that is an inevitable outcome of thinking about Talmud through the lens of ethics and is, I believe, a *desired* outcome of this particular methodology (with the caveats that I described earlier). It is, rather, two elements of the story that simply do not fit the bill. Hammer Kossoy is by no means alone in her interpretation, but I will use her teaching as an example here. In that teaching, Rav Yehudah's motives are unexamined, and the student is assumed to be guilty of harassment despite a lack of evidence, both of which conflict with ethical reading imperative #1. But that is not the only issue.

If we read this text as a model rather than as a prompt, *shamta* becomes a solution under circumstances in which a case does not meet the legal standards to function within the judicial system. What is problematic about the distinction that Hammer Kossoy makes between "the court system" and "Jewish institutions," however, is that Jewish institutions are themselves direct stakeholders in these cases.[22] Granting extrajudicial power to those with an explicit stake in the outcome allows leaders to disregard due process, as is demonstrated in this narrative. When R. Yehudah Nesiah does call for an investigation, the extrajudicial concerns prevail—and those concerns are not about justice.

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[21] Hammer Kossoy, Meesh, "#MeToo–The Ethics of Anonymously Sourced 'Whisper Networks,'" podcast, https://elmad.pardes.org/2018/08/metoo-the-ethics-of-anonymously-sourced-whisper-networks/, accessed July 30, 2021.

[22] I do not want to imply here that the judicial system in the United States as it is currently constituted does not have a myriad of implicit biases, and thus implicit stakes. The distinction that I am making is between explicit stakes and implicit ones.

On a more visceral level, if we read this narrative as a life lesson for communities to deal with sexual harassers, the final scene, in which the student is brought to be buried, should horrify us:

> They brought him into the [burial] cave of righteous people [to be buried] and they did not accept him. They brought him into the cave of judges, and they accepted him. (b. Mo'ed Qattan 17a)

It is true that the student is rejected by the burial cave that harbors righteous sages, but he is *accepted* into the judges' cave, understood as an honor in and of itself (even if not the highest honor he might have received).[23] Is the text informing us that a sexual harasser (or worse) was inducted into the cave of judges? Probably not. As I stated earlier, harassment (or even rape) never appears as a transgression in the rabbinic texts, and there is no indication in this story that there is a victim or an aggrieved party.[24]

However, even if the Talmud is not suggesting that the student was a harasser, two important questions remain. First, a question to us as the readers: If we are thinking of the text as an ethical prompt, can we not overlay the story on to our own concerns and draw ethical lessons from it as Hammer Kossoy does, even if the gemara would not have considered harassment a crime? Second, a question to the text itself: Even if the student is not a harasser, why would he have been afforded any honor at all? Hasn't he still committed a sexual transgression (as evidenced by the manner of his death)? Both questions are addressed by the final paragraph in the story.

The gemara itself is surprised:

> What is the reason? He acted according to R. Ilai. For it is taught in a baraita, "R. Ilai says, 'if a man realizes that his inclination is overwhelming him, he should go to a place where they do not recognize

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[23] By whom he is rejected remains unclear. Is it the dead who reject him? Is it the living who guard the cave? There are several stories that position a figure at the opening of the burial cave, including Elijah the prophet (b. Sanh. 98a), and snakes (b. BK 117a, b. BM 85a).

[24] That is not to say that these crimes would not have been reasons for *shamta*, but we have no narratives relating that they were..

> him and dress in black and wrap himself in black and do as his heart desires rather than defiling the name of God in public.'" (b. Mo'ed Qattan 17a)

Hammer Kossoy stops short of including this passage in her teaching, and for good reason. This explanatory addendum confirms the quagmire that we enter into by interpreting this text as a tale of rabbinic heroism, championing victims of harassment. The narrator assumes that the student was guilty but explains that the student received this honour for having abided by R. Ilai's prescription to disguise himself, go to a place where he is unknown, and satisfy his needs there, rather than "defiling the name of God *in public*." If we read the *entire* text (as imperative #2 requires) according to Hammer Kossoy, then we must contend with the fact that the student is honored for committing his crime in a place in which he is unknown, rather than in his own community. Is this an ethical message regarding harassment that we wish to learn from this text? Do we wish to honor a harasser who "at least" went to harass women in a different community, in private? I would hope not. And yet, this is the lesson with which our story appears to end.

Two Roads Less Travelled

If the story does not offer guidance for cases of harassment, what *can* it offer? When we use the text as an ethical *prompt*, not as an ethical *model*, it suggests two other ways that we might read this text, both of which raise poignant issues for our own communities.

First, we may read it as a tale about fragile egos, extrajudicial processes, and institutional self-preservation. This contention is supported, first of all, by the details of the story itself. To reiterate, in this tale, the only person who investigates the details of the case, R. Ami, recommends lifting the *shamta*. And yet the *shamta* is kept in place out of respect for the honour of two elder rabbis. Furthermore, R. Ilai's ruling—that if one must, they should simply go elsewhere to transgress—does not prevent a scholar's poor behaviour but only prevents any potential damage to the immediate community, and presumably to the reputations of the rabbinic academy and his fellow scholars (and perhaps, to the

transgressor himself). This coda communicates exactly who and what is being protected. The narrative shows no sign of concern over how more powerful persons might injure less powerful persons. The only concern that we see expressed throughout is the concern for the honor of the powerful, whether that be God (since "it will defile the name of God"), the institution (which purportedly represents God), or individual rabbis such as Rav Yehudah and R. Shmuel bar Nachmani.

My contention is supported also by the narrative context into which this story falls. Prior to this narrative are several statements asserting that a rabbi's colleagues (though not his superiors) must honor a *shamta* that that rabbi places on someone who has insulted him. The gemara even goes so far as to spell out that this ruling implies that an excommunication declared by a student for his own honor, with no juridical process, is indeed valid (שמע מינה תלמיד שנידה לכבודו נידויו נידוי). The series of stories that precedes this one describes scenarios that confirm this ruling. In each, someone with less status disrespects someone with greater status. A *shamta* is placed on a butcher who insults a rabbi, a student who disrespects a teacher, a scholar who disrespects a Patriarch, and a woman who disrespects a scholar.[25]

Second, we may read this as a tale about the control of communities over the gender and sexuality of its members. The student's manner of death, if read as a narrative hint, probably indicates a sexual crime (as many commentators have read it over the pass millennium) or, in our current culture, we might read it as a gender crime. The list of rabbinic sexual transgressions that might qualify for Rav Yehudah's response is vast. Sex with men (m. Kid. 4:14), sex with idolatrous women (b. Sanh. 82a), sex with a consenting "available" (i.e., single) woman (t. Kid. 1:4), and even secluding oneself with a woman (m. Kid. 4:12) are all deserving of rabbinic censure. So too dressing in the clothes of the other sex was

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[25] It is, in fact, only following this story that a tale is presented of a servant woman (albeit, a well-respected servant woman) who declares a *shamta* on a man. This stands in stark contrast to what we see up until then, as well as to what follows. Furthermore, that tale is only invoked to preserve the power relations in our story.

considered a transgression by the rabbis. The wasp sting, then, would likely have been read by the rabbis of the time as a hint that the student was having a relationship with another man, or visiting sex workers, and not that he was harassing women. While for our modern liberal sensibilities the idea of the rabbis declaring "as long as you have sex with another man elsewhere, we will look the other way" is still highly problematic, it is not the equal to the rabbis declaring "as long as you harass women elsewhere, we will look the other way." Instead, bringing rabbinic sensibilities to bear on the narrative, the tale turns us to the question of communities that regulate the sexuality (and, by extension, the gender) of their members. It becomes a tale of how communities actively shun those members who do not conform to their norms, refusing to allow them visibility.

In the context of a classroom, the process that I described here would look much like it does in this article. I would break the narrative (or the *sugya*) down, exploring with the students first what ethical questions are evoked by each part and what values (or other motivations) lie behind the actors'/tradents' decisions. In a narrative, this would include both the narrator and the "characters," and in a halakhic *sugya*, the individual *tannaim* and *amoraim*, and the *stam*. In each case, we would explore how each character/tradent might contend with a conflict in values

I might then ask what contemporary situations this story/*sugya* could inform. In the case of our narrative, for example, we might ask whether we parent like R. Shmuel bar Nachmani and R. Zera or like Rabbi Yehudah Nesiah? Do we challenge the institutions to which we belong or with which we identify when we believe they are wrong, or do we stand by them, knowing that their standing in the public affects their reputation or their funding? Might this narrative inform how we enable power dynamics within our institutions? Does this story change how we think about our parenting, about our leadership, or about our membership in our own communities?

As a prompt rather than a model, this is a cautionary tale that pushes us to consider issues of power, of justice, of loyalty, of the individual over against the community, of needs over against moral imperatives, of

institutions over against individuals, and, if we follow the lead of the commentators, of non-conforming sexuality (and perhaps even gender) over against social/sexual/gender norms. It also raises questions (as Hammer Kossoy suggests) of what sanctions are available and what actions should (or should not) be put into place when we have no hard evidence. Based only on rumours, in the service of protecting the powerful, a rabbinical student is punished by his superiors with *shamta*, and *sham mitah*—there is death. And indeed, though not as an explicit effect of the *shamta*, two deaths occur in this short story.

Throughout this process, I have raised a great number of ethical questions (questions that my students would be trained to generate, were we in a classroom). And so it is that I end as I began, by raising yet more questions. How do we hold ourselves and our leaders accountable as mass communication makes the tactics of shunning and shaming more widespread? Under what conditions do we use or condemn these tactics? How do communities support sexuality and gender diversity, even when they believe it may "reflect poorly" on them? How do we respond to rumors? How do we ensure fair investigations? What types of processes are just? What do we do to control vested interests and the egos of those in power? And how do we assure that the penalties for misdeeds are not, as Rashi explains, "like the fat with which we line an oven, which is absorbed into us, and never comes out"?