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TALMUD LOMAR THE ETHICAL: A RETURN TO THE ORIGINAL *STAMMA*

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> How can even an intelligent youngster – who cannot yet perceive the issues that sexual intercourse raises – learn the laws of marriage and incest, of betrothals, of marriage contracts and divorce? How can a child – who has not yet negotiated over money, has not felt the difficulty of earning enough for sustenance, and has not experienced the desire for money as a means to acquire recognition and honor or to acquire power over others – learn civil law which deals with the deceit and trickery that people invent out of greed?
>
> R. Yaakov Emden (1697–1776)[1]

Introduction

Regardless of one's philosophical approach, ethics in the end is about consequences.[2] Because ethics is about caring. And yet every ethical de-

[1] Interview by Yehezkel Feivel ben Ze'ev Wolf, *Toldot Adam* (Lemberg: B. Larje, 1864), 17a.

[2] Even Kant finally defended his universal principle to forbid lying in all scenarios, including to save someone from a murderer, by arguing from consequences. He argued that the consequence of allowing some lying is worse than the consequence of having a society that

cision is a decision to allow some harm to someone. Any decision that is good to someone and to some human need will harm someone else and some other human need. And neither a "male" turn to basing ethics on values and principles nor a "feminist" turn to situational ethics of relationship[3] can silence the harmful consequence of an ethical decision. Even when we raise the volume on the rightness of our ethical decisions, the silenced Voice of truth reverberates (1 Kings 19:11–12). Thus, our only hope for making ethical decisions and yet living non-defensively with our consciences is to avoid silencing the validity of any human need. And that is where studying the *stamma* can be useful.

The *Stamma*

The multi-layered *stamma* curriculum was designed to teach future religious leaders and judges to think with nuance. It followed the path of the Ancient Near Eastern and biblical legal cultures of limited bureaucratic power that existed before the *stamma*, in which elders and priests judged. It followed the path of the similar Second Temple through tannaitic cultures[4] and amoraic legal cultures (see below) that existed before the *stamma*. The designers of the *stamma* curriculum—or curricula—viewed accepted laws as instructive responses to typical situations—as default examples of how to address life's challenges—rather than as blanket rulings—rather than as statutes. As readers may recall, an exhortative teaching attributed to two different students of Rebbi, R. Yannai (y. Sanh. 4:1) and Rav (b. Sanh. 17a), posits that an ideal rabbinic scholar must be able to appreciate why it can make sense experientially to view as repulsive (*ta'me*[5]) that which is viewed by default

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fails to be adamantly honest (Immanuel Kant, "Über ein vermeintes Recht aus Menschenliebe zu lügen" [1797]).

[3] Carol Gilligan, *In a Different Voice: Psychological Theory and Women's Development* (Camridge MA: Harvard University Press, 1982), 18.

[4] As I have discussed elsewhere.

[5] As I have discussed elsewhere.

as acceptable and why it can make sense experientially to view as acceptable that which is viewed by default as repulsive. Otherwise, in a reality of limited bureaucratic power, society refuses to view one as fit to judge others or to make decisions that affect others.

Thus, rather than teach jurisprudence as a science, as a system based on concepts and proof texts, the *stamma* curriculum designers developed[6] a teacher's guide for teaching how a law or norm balances competing human needs and desires. This curriculum guided teachers on how to teach students both to understand why a given law is the default balance for typical circumstances and to reflect on the competing human needs and desires that each and every law inherently weighs—from the most serious criminal law down to the most personal norm—so as to sometimes balance them differently. The *stamma* curriculum guided teachers to help students internalize the vast number of competing insights of a vast number of norm examples on a range of human issues and scenarios. It provided the competent among the students with knowledge about life so that they might make wise decisions.[7] This was an ethical project.

Clearly, there is no way to prove in the limits of an essay the validity of what is, for both academic and *yeshiva* scholars, a new historical finding about the nature of the *stamma*. Nor can one short essay show how this (seemingly) new paradigm is validated by its ability to dissolve all the seeming examples of poor reasoning presently read into the *stamma*. We can see, however, how the following method of reading allows the Talmud to serve as a vehicle for teaching ethics.

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[6] The differing levels of sophistication in the *stamma* of various tractates of the Babylonian Talmud reflect a historical development. (Without entering into specifics, see – for instance – David Halivni, "Aspects of the Formation of the Talmud," in Jeffrey L. Rubenstein, ed. *Creation and Composition: The Contribution of the Bavli Redactors (Stammaim) to the Aggada* [Tübingen: Mohr Siebeck, 2005], 355.)

[7] Cf. Karl Nickerson Llewellyn, *The Common Law Tradition: Deciding Appeals* (Boston MA: Little Brown and Co., 1960), 127, 357.

Shabbat

In order to illustrate how to read the *stamma* as a curriculum on ethics, we will examine one of the strangest Talmudic passages, one that both seems to be about nonsense and seems to argue nonsensically. We will examine a seemingly nonsensical *stamma* discussion of a Shabbat proscription.

Second Temple and Tannaitic Background

As I have published elsewhere on biblical through Second Temple and tannaitic Shabbat observance, the learned varieties of Second Temple through tannaitic Judaism agreed that on the weekly day of rest (1) work is forbidden—even by personal choice[8]—so as to fulfill the biblical mandate to avoid oppressing by failing to let others rest; and (2) all oppression (power/*reshut*) over another person is forbidden—such as collecting a debt from a debtor, trials, judicial enforcement of rights against a debtor, raising work-related demands with a dependent or employee, and divorcing a spouse[9]—let alone wounding or killing a human being or even an animal.[10]

Most relevant to our discussion below, although participation in dignified behavior and activity is required—undignified and harmful behaviors and activities are forbidden.[11] Second Temple Zadokites (and

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[8] CD 10.14–11.15; Philo, *Migr.* 91.

[9] CD 10.14–11.15; Jubil. 50:12; Philo, Migr. 91; m. Beza 5:2. [For elaboration on how some of these activities can be viewed as oppressive, see Catherine M. Murphy, *Wealth in the Dead Sea Scrolls and in the Qumran Community* (Leiden: Brill, 2002), 379-382.]

[10] Jubil 50:12; Sifrei Devar 218:18; t. Shabb. 8:4, 8:23; t. Shabb. 15:4; and baraita in y. Ber. 2:6, y. Yoma 1:1; b. Ketub. 6b. This includes a proscription of endangering one's own life—t. Shabb. 15:13 and m. Shabb. 16:5).

[11] CD 10.14–11.15; 4Q Halakhah B (cf. 1QS 6.7–8 and 8.11–12); 4Q264a 3.7 (as combined with 4Q421 12); Jubilees chs.2, 50), Philo *Spec.* 2:64–69; *Mos.*2:30, 215–216, 219; *Somn.* 2:123–127; *Legat.* 156; *Contempl.* 3:30–33); Josephus (A.J. 16:27, 43; C.Ap. 2:175, cf. 1:160); 4QHalakha B "Sabbath Laws" as reconstructed in Jassen 2014, 88–89; and Christian works (Acts 13:14–15; 15:21; Luke 4:16–17); t. Ber. 5:29 with m. Shabb. 6:3; t. Shabb. 13:1; 10:9–10; 16:22; m. Meg. 4:2;

Sadducees) even completely forbade mingling casually on Shabbat,[12] including with one's close neighbors.[13] And while the *tannaim* permitted mingling casually with one's close neighbors, the same as they permitted it all week,[14] they also were wary. Everyone forbade music on Shabbat.[15] The majority of the *tannaim* considered any public celebration a violation of Shabbat and even of holidays,[16] with some also condemning private feasts in which mere singing became too spirited.[17]

The important point to notice is the following: just as killing was forbidden explicitly on Shabbat (above) despite already being forbidden all week, so other inappropriate activities were forbidden explicitly on Shabbat despite already being forbidden all week. Based on a historical survey of human societies that have had designated days of rest or holidays (and based on pagan anti-Jewish polemics[18] and on mutually Late Antiquity Jewish–Christian polemics about who should and who should not rest every week), it is easy to see why activities that are always inappropriate were forbidden explicitly in relation to Shabbat; idle days

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t. Meg. 3:11. Also compare the report about the Essenes that they viewed any contact with skin-moisturizing oil as *tamei*/repugnant (*B.J.* 2:8:3).

[12] 4QHalakhah B (4Q264a 3.7) as combined with 4Q421 12 (in Qimron 2013, 2:203) explicitly forbids leaving the house for no good purpose, meaning for a casual rather than religious purpose. Moreover, CD 11.4-5 explicitly forbids mingling (e-r-v) volitionally – in contrast out of necessity such as religious services – and for the translation of the root e-r-v as mingle, see both 4Q274 1 i.5's and 4Q397 14-21.8's use of e-r-v for people mixing.

[12] Mekhilta, Vayisa par2; m. Eruvin 6:1

[13] Compare CD 11.7–9's injunction against carrying food and items out of the home—echoed by the Sadducees (m. Eruv. 6:1)

[13] Mekhilta, Vayisa par. 2; m. Eruv. 6:1

[14] t. Sota 5:9.

[14] This Zadokite-forbidden practice of neighbors eating together in the courtyard involved families bringing food out to the courtyard from their homes.

[15] See 4Q264a 1 4–5 as reconstructed from 4Q421a 2–3. Cf. Philo, *Hypothetica* 7:12-13.

[16] m. Sukka 5:1; t. Arak. 1:13.

[17] y. Betza 5:2. Compare Clement of Alexandria's *Protrepticus* ch.1.

[18] Such as Ovid, *Art of Love* Book 1.

lead to violence and harmful sexual activity. For a fascinating illustration, consider that the legal Jubilees-based[19] section of the much later *Te'ezâza Sanbat* (10:19[20]) of the *Beta Israel* Jewry of Ethiopia includes as an appendage to *Jubilees* 50:12's proscription of killing a person on Shabbat, a proscription of adultery on Shabbat.

This last point is critical to our discussion. The Shabbat proscriptions that are beyond work proscriptions were also viewed as problematic all week. For instance:

1. The *tannaim* forbade men to wear clothing or accoutrements that are thuggish and condemned them for wearing weapons. They forbade women to wear jewelry that is attractive and condemned them for wearing jewelry that is seductive.[21] And the interrelatedness of these two phenomena had already been noted as far back as the *Book of the Watchers* (1 Enoch 8:1–2).
2. While some *tannaim* merely forbade men and women to beautify themselves, other *tannaim* condemned this as liable, and all *tannaim* condemned as liable one who tattoos his or her body[22]—a practice observed by the lowest class prosti-

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[19] On the legal section of *Te'ezâza Sanbat*'s dependence on *Jubilees*, see the agreement between scholars of radically different opinions regarding the history of Ethiopian Jewry—from Steven Kaplan, *The Beta Israel (Falasha) in Ethiopia: From Earliest Times to the Twentieth Century* (New York NY: New York University, 1992), 74, to Michael Corinaldi, *Jewish Identity: The Case of Ethiopian Jewry* (Jerusalem: The Magnes Press, 1998), 61–62.

[20] The line numbering here is from Yosi Ziv, *Halachot Shabbat of Beta Israel according to Te'ezaza Sanbat* (PhD Dissertation, Bar-Ilan University, 2008), 28.

[21] m. Shabb. ch.6 and t. Shabb. ch.4.

For norms of public elegance by upper class Hellenistic women, see Sheila Dillon, "Hellenistic Tanagra Figurines," in Sharon L. James and Sheila Dillon, eds., *A Companion to Women in the Ancient World* (Malden MA: Wiley-Blackwell, 2012), 231–234.

[22] m. Shabb. 10:6; t. Shabb. 9:13; m. Shabb. 12:4; t. Shabb. 11:15.

tutes of the Roman Empire, slave-prostitutes.[23] And this too was viewed as problematic also during the week.[24]

That is why the *tannaim* also forbade all disgusting behavior on Shabbat:

3. The *tannaim* forbade both checking one's clothing in public for vermin as well as vomiting in public.[25]
4. Although the *tannaim* exempted someone who carries an object in a public thoroughfare in their mouth,[26] the *tannaim* considered as liable a person who disgustingly chews food in the public throughfare[27]—a behavior considered disgusting all week.[28]
5. The *tannaim* forbade urinating or spitting from the public thoroughfare into someone's private property (which some people do in order to avoid the shame of being caught having left urine or spittle in the street) and from private property into the public thoroughfare (which some people might do in order to keep the property clean if the urinal pots[29] were full, if they were lesser-status guests who had no urinal pots,[30] or if they were egregiously uncouth[31]).[32] This proscription was in line with the Second Temple through tannaitic view that

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[23] On Roman tattooing slave-prostitutes, see Jennifer A. Glancy and Stephen D. Moore, "How Typical a Roman Prostitute Is Revelation's 'Great Whore'?" *Journal of Biblical Literature* 130 (2011): 559.

[24] t. Sot. 3:3; y. Shabb. 8:3; b. Shabb. 80a; b. Ketub. 54a.

[25] t. Shabb. 16:22.

[26] m. Shabb. 10:3.

[27] m. Ker. 3:4.

[28] baraita b. Qidd. 40b.

[29] On private urinal pots, see y. Ber. 3:5.

[30] Although I do not recall any ancient sources (Jewish, Greek, or Roman) that bother to note a lack of chamber pots, that lack is noted by Shakespeare of Tudor England (*Henry IV*, Part 1 Act 2, Scene 1).

[31] Demosthenes, *Against Conon* 54.4

[32] m. Eruv. 10:5.

> public spitting, let alone urinating, is disgusting.[33] Thus, although the polluted cities of the Roman-Empire[34]/Eretz-Israel created a need to spit regularly, the cities did accordingly provide spittoons[35] and public urinals and lava-tories[36] that a civilized person could seek out.

Notice further that the *tannaim* never forbade these actions as forms of work. Although the Second Temple Damascus Document referred colloquially to wearing inappropriate clothes as carrying the garments on oneself,[37] just as people across cultures refer to wearing inappropriate dress and accessories pejoratively as "carried about,"[38] the *tannaim* nowhere discussed any one of these actions in a term that might sound like it is about work.

Amoraic Background

Amoraim maintained the Second Temple through tannaitic approach to Shabbat. The only difference was that they so focused on communicating with people that they used picturesque idioms. For instance, consider the following three illustrations. One is from Eretz Israel, and two from Babylonia.

Around 260–265 CE, R. Yose b. Hanina reestablished an academy in the re-flourishing Latin-Hellenistic city of Caesarea. In response to Greco-Roman—or simply upper-class-urban—behaviors that this southerner viewed as inappropriate, he emphasized the proscriptions against excessive sexualization of the public sphere on the weekly day of rest. As

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[33] DSS [1QS] 7.13; *B.J.* 2:147; m. Ber. 9:5; t. Ber. 6:19 and y. Ber. 3:5.

[34] For instance, see Filip Havlíček and Miroslav Morcinek, "Waste and Pollution in the Ancient Roman Empire," *Journal of Landscape Ecology* 9.3 (2016): 33–49.

[35] m. Sheqal. 8:1.

[36] m. Meg. 3:2.

[37] CD 11.4.

[38] Without even considering the insult type of slang terminology throughout history, illustrations of such daily usage range from the Akkadian "*nasû*" to the German "trägen."

R. Abin later related it, R. Yose b. Hanina had considered applying eyeliner liable as writing, using a face mask liable as painting, and temporarily attaching hair extensions liable as weaving. This was in line with the attitude of those Eretz-Israel rabbis who insulted Mary Magdalene, or a conflation of her with Mary mother of Jesus, as an adulteress who "extended" or "enlarged" her hair (b. Shabb. 104b–105a/b. Sanh. 67a; cf. b. Hag. 4b–5a). Rabbis in Caesarea, however, argued against this teaching. They argued that one cannot be liable for beautification. In response, the more Hellenistically integrated but still socially conservative[39] R. Abbahu of Caesarea restated R. Yose b. Hanina's teaching in different terms. Although R. Abbahu still pointed out that placing eyeliner is forbidden because of writing, R. Abbahu responded that R. Yose b. Hanina would consider the other two beautifying practices as liable for building[40] rather than as liable for painting and weaving.[41]

This was not a debate about work categories. R. Yose b. Hanina did not mean that women who beautified themselves were liable for the actual work tasks of writing, painting, and weaving. After all, the *tannaim* had ruled that one who writes with fading inks, paints with fading colors, or twists ropes together impermanently is exempt because one is not actually working. Likewise, R. Abbahu did not mean that women were liable for the work task of building. After all, the *tannaim* had ruled that one who builds impermanently is not liable. Moreover, it would have been silly of R. Abbahu to simply replace one work category, which the rabbinic wives of Caesarea argued does not forbid beautification, with another work category that they would also not accept.

Rather, R. Yose b. Hanina adopted the stricter tannaitic position (above) and judgmentally compared a woman who merely had applied eyeliner to a woman who had written on herself—the same word used to

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[39] Koh. Rab. 7:18.

[40] The Bavli passages reads "*boneh*." And the Yerushalmi passage both reads "*boneh*" in all extant manuscripts and is cited that way by the medieval rabbinic authorities. (I thank Itai Kagan for checking this and bringing it to my attention.)

[41] y. Shabb. 10:6; cf. b. Shabb. 94b–95a.

describe one who applied paint-filled tattoos found on the bodies,[42] as did the lowest class prostitutes of the Roman Empire, slave-prostitutes (above). R. Yose b. Hanina judgmentally compared merely rejuvenating one's face color, via the effects of a face mask, to the more sexual practice of painting one's face with rouge.[43] And he judgmentally compared extending one's hair to seductively wearing one's braided hair uncovered.[44] In response, the urbane rabbis (cf. b. Shabb. 80a) of the Latin-Hellenistic colony-city of Caesarea argued that such beautification is appropriate.[45] And R. Abbahu—also of Caesarea—acknowledged these rabbis' argument to a degree. He condemned these practices less severely. R. Abbahu asserted that while the more immodest practice of placing eyeliner is indeed liable in its similarity to writing/sexual-tattooing, woman who extend their hair are liable merely for "building." Hair-braiding was known colloquially as building one's hair (see R. Shimon b. Menasya, cited in b. Ber. 61a), as "extending" or "enlarging" the hair to beautify a woman (m. Shabb. 10:6). Accordingly, pointed out R. Abbahu,

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[42] m. Makk. 3:6.

[43] See t. Sota 3:3 and b. Ketub. 54a. For an instance in which a woman condemned herself morally for having painted her face with rouge, see Jerome, *Letters* #108§15.

[44] See Isaiah 47:2 and t. Sota 3:3. Also, the much earlier Akkadian *qadistum* woman (somewhat paralleling the biblically-derided *kedesha* woman) was also known as "the one with the braid" (I. M. Diakonoff, "Women in Old Babylonia Not under Patriarchal Authority," *Journal of the Economic and Social History of the Orient* 29 (1986): 234). For gentile sources from our general period of history, see 1 Peter 3:3 and 1 Timothy 2:9–10's condemnation of women who walk about with braided hair. Most telling for our discussion of using forceful—or exaggerated—images (depending on one's perspective), the sexually conservative Saul/Paul of Tarsus disparaged women who walk about revealing their beautiful hair as being repellingly comparable to a bald woman revealing her head (1 Cor. 11:5, following the proven correct translation of the passage as about a woman's head covering [Benjamin Endsall, "Greco-Roman Costume and Paul's Fraught Argument in 1 Corinthians 11.2–16," *Journal of Greco-Roman Christianity and Judaism* 9 (2014): 132) and *sans* the later editor's more politic explanation inserted in verse 6). Cf. Tertullian, *Cult. Fem.* 1.2.

[45] This divide between the urbane and the conservative can be compared to R. Hanina b. Hama teaching on the need to maintain a private home boundary (bBer15b) and R. Hanina b. Ham'sa and his student R. Simlai's condemnation of urbane Sepphoris' Jews for widespread adultery (yTaan3:4; ySota1:5).

extending hair is merely similar to braiding one's hair—rather than to uncovering one's hair. It is forbidden on Shabbat because women doing so were trying to inappropriately draw attention to themselves through building their hair, but it is not equivalent to going about with one's head uncovered.

For our purposes, the point is not whether one agrees or disagrees with these *amoraim's* judgmental attitude toward women adorning themselves on Shabbat. In fact, the *tannaim* through the *amoraim* themselves debated how to evaluate the phenomenon of women beautifying themselves.[46] The point is that these two *amoraim* spoke out the human issues that they noticed rather than taking refuge behind abstract legal categories.

To be sure, colloquialisms were not always so precise. For instance, R. Yohanan and Reish Lakish had previously arranged a long list of forbidden tasks and activities around each of m. Shabb. 7:2's thirty-nine work archetypes. This project made sense, inasmuch as the Mishna's list is merely a list of archetypes (*avot*), and a standardized longer list would ease students' memorization.[47] In keeping with their pedagogic goal, R. Yohanan and Reish Lakish generally placed a work task with its actual work archetype—such as cooking with baking. Nonetheless, R. Yohanan and Reish Lakish—like the subsequent R. Yose b. Hanina and R. Abbahu—sometimes placed tasks on the list by mere linguistic association. More tellingly, R. Yohanan and Reish Lakish sometimes used a broad and default colloquialism for miscellaneous problematic activities: they used the colloquial term of *hammering* (y. Shabb. 7:2). They used the term *hammering* similarly to how English speakers use the term *tinkering*. Although the word *tinkering* originally meant working with tin,[48]

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[46] See Gail Labovitz, "'Even Your Mother and Your Mother's Mother': Rabbinic Literature on Women's Usage of Cosmetics," *Nashim: A Journal of Jewish Women's Studies & Gender Issues* 23 (2012): 12-34.

[47] Cf. Shamma Friedman, "A Good Story Deserves Retelling: The Unfolding of the Akiva Legend," in Jeffrey L. Rubenstein, ed. *Creation and Composition: The Contribution of the Bavli Redactors (Stammaim) to the Aggada* (Tübingen: Mohr Siebeck, 2005), 71-100.

[48] Eilert Elkwall, "The Etymology of the Word *Tinker*," *English Studies* 18 (1936): 63-67.

English speakers use the term *tinkering* for working on any object and even for exploratorily or excessively fixing intellectual problems. Similarly, in line with the Koine use of the term *hammering* (*kopto*/*ekkopto* [κοπτω/εκκοπτω]) for affecting anything physically and even for affecting people emotionally, R. Yohanan and Reish Lakish connected to the term *hammering* any problematic activity that did not fit under a work archetype and for which a more precise colloquialism did not exist. This colloquialism still communicated that the activity was forbidden, either because it is work or because it annoys others, but this colloquialism communicated the point less forcefully.

Our second illustration is from Babylonia. In around 220 CE, Abba Arikha—better known as Rav —moved far west from Nehardea. And it was there that Rav's students elaborated on the Mishnah's ruling against urinating or spitting into the street or into a courtyard:

> R. Yosef said: One who urinates or spits is liable for a sin offering. (b. Eruv. 99a)
>
> R. Hiyya b. Ashi [taught]: One who spits merges it into his cloak without compunction; if he spat and the wind scattered it, he is liable for winnowing. (y. Shabb. 7:2[49])

Rav's students' severe condemnation of even inappropriate spitting is not surprising. After all, a third student of Rav—R. Adda b. Ahavah—similarly taught that one must not spit near where one is praying (y. Ber. 3:5 = y. Meg. 2:1). The Tosefta (t. Ber. 2:19) had merely forbade praying near one's smelly urine, but Rav's student forbade praying even near one's spit. That means that Rav's students—and thus probably Rav himself—considered disgusting spitting an issue worth opposing vigorously. Accordingly, they followed the *tannaim* in finding persons liable for violating other people's Shabbat rest by acting in a manner that was considered extremely offensive and disturbing.

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[49] I have not yet included the Talmud editor's insertion of a different teaching of R. Hiyya b. Ashi.

To be sure, R. Yosef taught that one is liable for a sin offering. But that makes sense. Inasmuch as there was no Temple any longer and Babylonian Jews had not in the past travelled *en masse* to Jerusalem to offer sacrifices for every sin they committed, the phrase "liable for a sin offering" does not refer to the actual Temple offering. Rather, the accepted view in Sassanian-Zoroastrian culture was that a fine paid for inappropriate urination is paid as an atonement to replace a punishment of one thousand lashes.[50] And R. Yosef expressed that view in rabbinic-colloquial terms. The only problem is how to explain R. Hiyya b. Ashi's condemnation of a wildly spitting person for winnowing.

To be clear, it makes no sense to consider someone who spits in the wind as liable for working at winnowing. Spitting in the wind is not work, let alone the farm chore of using the wind to separate edible grain from chaff.[51] Furthermore, having one's spit scatter in the wind does not even abstractly resemble separating grain from chaff. A person who spits in the wind does not separate two elements, in parallel to grain and chaff. Rather, a person who spits in the wind simply scatters the identical phlegm into multiple drops. To forbid spitting in the wind as an abstraction of the work of winnowing would make as much sense as ludicrously forbidding slicing a loaf of bread into multiple slices as an abstraction of sifting.

Based on our discussions above, fortunately, we understand that R. Hiyya b. Ashi was not being ridiculous. R. Hiyya b. Ashi permitted a person to spit discreetly into his or her own garment on Shabbat instead of walking around with spit in their mouth. This, despite the slight degree of disgust that such action arouses. It was only in response to the most

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[50] On fines as atonement in Sassanian-Zoroastrian culture for urinating inappropriately and other disgusting behaviors, see Claudia Leurini, "Hell or Hells in Zoroastrian Afterlife: The Case of Ardā Wīrāz Nāmag," in Philip Huyse, ed., *Iran: Questions et Connaissances – Vol. I: La Periode Ancienne* (Paris: Association pour l'Avancement des Études Iraniennes, 2002), 214, and Maria Macuch, "Law in Pre-Modern Zoroastrianism," in Michael Stausberg, Yuhan Sohrab-Dinshaw Vevaina, and Anna Tessmann, eds., *The Wiley Blackwell Companion to Zoroastrianism* (Chichester: John Wiley & Sons, 2015), 295.

[51] For example, see m. Shabb. 7:2 and b. Shabb. 73b.

offensive way of spitting in public that he pointed out that a person is liable for being exceedingly disgusting. R. Hiyya b. Ashi pointed that out by using a common idiom for scattering bodily liquids wildly—the idiom of "winnowing" (t. Nid. 2:6). With that one word, R. Hiyya b. Ashi expressed succinctly why people are annoyed by a person who spreads bodily fluids around wildly and, potentially, onto people. And just as tannaitic law forbade winnowing grain too close to a city or village (m. Bava Qam. 2:8), R. Hiyya b. Ashi considering a person liable for "winnowing" his bodily fluid about.

These explanations of the teachings of Rav's students, as speaking in colloquialisms, is important to recall when one turns to the third illustration. One generation later, R. Yosef's student, Rava, asked the following legal-boundary question. Rava asked what type of inappropriate urination into public should be considered liable:

> Rava pressed:[52] "What is the law if he is in a private domain and his urethral opening is in the public domain?" (b. Eruv. 99a)

At first glance, Rava seemingly asked a scholastic legal question. However, Rava derided scholastic questions.[53] Moreover, inasmuch as urinating is not a violation of work, into what alleged Shabbat category could one place it so as to ask a scholastic question about it? When we keep in mind that the problematic of urinating into the public domain on Shabbat is the fact that it is disgusting, however, Rava's query makes sense. It is a serious boundary question about degrees of responsibility to avoid disgusting behavior.

Based on our discussion until now, Rava was probably unsure of the following: Is the issue of urinating blindly into the public domain and thus possibly onto someone accidentally (similarly to spitting in the wind) the significant issue for which we consider a man liable? If that is the case: although we would forbid urinating into the public domain, we wouldn't consider one who urinates with an erect penis that is partially in the public

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[52] The term is always used to ask boundary questions.

[53] b. Bava Bat. 23b; y. Mo'ed Qat. 3:1.

domain to be liable. After all, such a man must have made sure that the area is empty—that nobody would bump into his erect penis, and all the more so that nobody would catch him urinating inappropriately—and is not going to spray anyone accidentally. Or: is the dirtying of the public thoroughfare with urine the significant issue for which we consider a man liable? If that is the case, the location of his penis is irrelevant, since we consider him liable for standing in private property and dirtying the public thoroughfare.

Rava did ask a boundary question, but he asked a real-life boundary question—not a conceptual scholastic question. Moreover, Rava had good reason to ask this question. His own teacher, R. Yosef, had taught leniently that disgustingly killing lice on Shabbat is permitted.[54] Moreover, Rava himself[55] permitted spitting onto the dirt floor of a syn-agogue (b. Ber. 62b). In light of these leniencies, Rava—either as an advanced student of R. Yosef and a teacher of teenagers or as himself a teenager—asked his teacher a boy's question. He asked a question that was intellectually arcane but was reasonable in real life.

The Stamma

With this background, we can now turn to discover how to read the stammaim as ethical designers of a project to teach students to develop nuanced thinking about issues. We will see that the stamma did not simply repeat the traditional exhortations against behaving inappropriately on Shabbat. Nor did it merely one-sidedly explain the concerns that underlie forbidding such behaviors—such as one finds in the Tanhuma- Yelamdenu literature. Rather, the stamma guided the student to recognize the competing tensions that underlie every norm. That way, the student could learn gradations in ethical judgment—to react differently to the same action in different circumstances.

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[54] b. Shabb. 107b.

[55] For the identification of the author of that teaching as Rava (rather than Rabba), see idem the identities of the *amoraim* who are identified as having contested his teaching.

In order to see this, we begin with a pericope in the Jerusalem Talmud. It is built around R. Hiyya b. Ashi's teaching (above). The original quote is in bold. The teaching inserted by an editor is in non-emphasized font, and the stamma words are in italics:

R. Hiyya b. Ashi [taught]: One who spits merges it into his cloak

- R. [A]bba in the name of Hiyya bar Ashi: "R. Hiyya the Elder and R. Simeon b. Rebbi argued. One said, 'A person spits and rubs [the spit on the floor.' The other said, 'A person does not spit and rub.'"
    - *What do they dispute? When there is no mosaic there [on the floor], but if there is a mosaic there, he spits and rubs.*

If he spits and the wind scattered it, he is liable for winnowing.

- *And any [action] which depends on the wind is liable for winnowing.*

(y. Shabb. 7:2)

R. Hiyya b. Ashi's original statement speaks of two extremes—permitted spitting and liable spitting. Implicitly, both textually and, more importantly, in real life, there is some gradation between these poles. And the editor indeed cited another teaching that refers to a middle-ground scenario of spitting and rubbing the spit on a floor. Such spitting and rubbing can be viewed both as permitted and as forbidden. This is an important lesson because it teaches the student to realize that there is a middle scenario with regard to this question. Under some conditions, it makes sense to lean toward permitting spitting and rubbing, while under other conditions, it makes sense to lean toward forbidding spitting even with rubbing.

The editor, however, is not done. Just in case the student missed that nuance or had difficulty imagining when to permit versus when to forbid, the editor took a further step. On the one hand, the editor pointed out explicitly when spitting and rubbing is permitted. On the other hand, the editor pointed out forcibly that the only time to throw the book at—or impose a fine on—a person is if they do something that scatters in the

wind—meaning something that can seriously annoy and even hurt people.

By the end of this process, the student would have come to think with more nuance. He would have recognized that there are two separate and unequal problematic issues underlying spitting—namely, potentially hitting people and creating a disgusting environment. Moreover, the student would have come to realize that a momentarily disgusting scenario (quickly rubbed away into the mosaic) is acceptable, even as it makes sense to sometimes forbid a more extended disgusting scenario (of trying to rub away on a smooth floor). Such a student would then have been able to apply the law wisely. For instance, such a student presumably would have permitted spitting into a dirt floor.

Most importantly, the student would have arrived at becoming a wiser decisor despite—or precisely because—the passage fails to include any abstract principles. The student was shown rather than told. Yes, the text theoretically could have used better connecting words. However, if the text was intended for the teacher rather than for the student, such words would be unnecessary—and annoying. The teacher realized that he must show, must use inflection and body language (below); that was what the study of norms was all about.

This approach to law continues in the Babylonian Talmud. Admittedly, the Babylonian Talmud's *stamma* may seem to be different. The Babylonian *stamma* project's *terminus ante quem* would seem to be when the Tiberian academy ceased producing its own model of education—in, let us say, 550 CE—and may have continued to be improved upon as late as 750 or 800 CE. The implication is that the better-supported Babylonian academies built up generations of curricula designers who managed to thoroughly interweave anonymous segments throughout the passages of collected teachings to create a highly edited pedagogic work. Nonetheless, the *stamma* of both the Talmud of Eretz Israel and the Babylonian Talmud were designed similarly to guide teachers to teach.[56] (This can be seen from the immediate clarity that arises

[56] Admittedly, there are differing legal conclusions between the Talmud of Eretz-Israel and the Babylonian Talmud. However, these are relatively few. Moreover, these differing legal

if one reads the Eretz-Israel Talmud's many seemingly strangely juxtaposed sources that have no *stamma* as if they have a *stamma*. But that is not the topic of this paper.)

Be that as it may, we turn to the following Talmudic pericope. We turn to this pericope because it seemingly is one of the strangest and most inexplicable. It is built around the statements (above) of the teacher-and-student pair R. Yosef and Rava. The original quotes (or formulaic statements) are in bold. The *stamma* words are in italics:

> **R. Yosef said: "One who urinates or spits is liable for a sin offering."**
>
> *But there is no uprooting from an area of [at least] 4[x4] [i.e., a domain], which is required [for liability for transporting between domains]!*
>
> *His intent makes it [the penis] equivalent to a domain. …*
>
> **Rava pressed:[57] "What is the law if he is in a private domain and his urethral opening is in the public domain?"**
>
> *Do we follow the [location of] uprooting or the [location of] transfer?*
>
> *Teyku*.
>
> (b. Eruv. 99a)

Putting aside the strangeness of some of the arguments, this pericope immediately makes no sense formally. It makes no sense to equate urinating with transporting. The transporting that *tannaim* considered liable was a work form.[58] Moreover, its proscription applies only to materials that are intentionally stored or used for work in the new location.[59]

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conclusions are merely the result of different politico-socio-economic realities calling for differing appropriate application of shared Torah wisdom rather than of any alleged differing styles of legal reasoning (contra scholars such as Christine Elizabeth Hayes, ***Between the Babylonian and Palestinian Talmuds: Accounting for Halakhic Differences in Selected Sugyot from Tractate Avodah Zarah*** **[Oxford: Oxford University Press, 1997], 95**). But this is a point that I will prove in future publications.

[57] More simply: "asked." However, the term is always used to ask boundary questions.

[58] m. Shabb. 7:2.

[59] m. Shabb. 7:3–4, 8:2–7, 9:5.

Thus, even if one were to detach Shabbat violations from work and transform them into abstract concepts, urinating would still have to be exempt. It does not involve transporting the substance (urine) in the ways that such substance would normally be transported for storage or work.[60] Yet the *stamma* editor questions his own equation of urinating with transporting on the basis of the fact that the urine is not uprooted from an actual domain—rather than on the basis of the more basic problem that the urine being transported onto the ground is not fit for storage. Worse, however, the editor offers arguments that are simply nonsensical formally. The editor strangely answers that the problem of the missing domain, of uprooting, is resolved by the urinator's intent. Somehow intent transforms the urinator's penis into a domain.

Even worse, the editor explains Rava's borderline query strangely. He explains Rava as debating whether to follow the location of "uprooting" or the location of "expulsion." Nowhere in all the work categories of Shabbat, let alone in the category of transport, did the rabbis have a concept of a location of "expulsion." They discussed only locations of uprooting and locations of placing down.

Fortunately, by now we know to read the editor as discussing the issue of liability for disgusting behavior. We also know that *amoraim* had used colloquialisms to discuss disgusting behavior. Accordingly, we will read this pericope as if we were hearing it orally—as we know the Talmud originally was studied.[61] We will read as if the teacher is providing phonetic, bodily, and context cues[62] and we the students are drawing on lived ("encyclopedic") knowledge of the different meanings that a given term

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[60] m. Shabb. 10:3.

[61] Even if one is of the view that these texts were preserved in writing at some early point, the consensus from the evidence is that these texts were originally taught orally.

[62] On the importance of the full range of contextual cues for interpreting meaning over even mere prosodic cues, see Michael K. Tanenhaus, Chigusa Kurumada, and Meredith Brown, "Prosody and Intention Recognition," in Lyn Frazier and Edward Gibson, eds. *Explicit and Implicit Prosody in Sentence Processing: Studies in Honor of Janet Dean Fodor* (Cham: Springer International Publishing, 2015), 99–118.

carries in different contexts.[63] For instance, if we were to meet in person and I said that I hope this book will be a "hot" bestseller, or you said that you bought the book "hot" off the press, neither of us would confusedly think that the other is referring to the book's temperature. Similarly, we will listen to the editor of this *stamma* pericope without letting the colloquial terminology confuse us.

Once we read that way, the passage makes immediate sense. We only have to keep two points in mind:

- Urinating was referred to in Babylonia as "excreting/transporting out" from Sumerian times[64] to as late as the last Jews of the Aramaic-speaking community of Betanure.[65] Moreover, the rabbinic editor's usage of this euphemism is also found in tannaitic sources. Tannaitic sources regularly refer to feces as excrement—that which is excreted/transferred out (*tzo'a*)[66]—and some sources even refer to the biological process with such a verb. For instance, "one who eats excessively excretes excessively (*mar'be le-hotzi*)," and animals "excrete (*motzi'in*) fertilizer for the garden."[67] More to the point, a baraita describes the penis as

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[63] For this article, it suffices to recall merely the older studies of H. Paul Grice, "Logic and Conversation," in Peter Cole and Jerry L. Morgan, eds., *Syntax and Semantics – volume 3: Speech Acts* (New York: Academic Press, 1975), 56–57, on generalized conversational implicature and Eleanor Rosch, "Principles of Categorization," in idem and Barbara B. Lloyd, eds. *Cognition and Categorization* (Hillsdale, NJ: Lawrence Erlbaum Associates, 1978), 39.

[64] To wit, *kàš-sur* (expelling a liquid).

[65] Entry #103 in Hezi Mutzafi, *The Jewish Neo-Aramaic Dialect of Betanure (Province of Dihok)* (Weisbaden: Harrasowitz, 2008), 166.

[66] Sifra, Tzav 1:1:1 and Tazria 5:15:4; m. Ber. 3:5; m. Shabb. 16:7; m. Avod. Zar. 4:5; m. Avot 3:3; m. Mikw. 9:2, 4; m. Makhsh. 5:6; t. Ketub. 7:11; t. Kelim 3:3; t. Mikw. 6:10, 17.

[67] Avot Rabi Nat [A] ch.28; and ibid. ch.1 = [B] ch.1. (Since gardens were right near the homes, Shechter erred in deciding to read this to mean that the animals are used to transport the fertilizer out to the gardens and thus to change droppings "from them for the gardens" to "transport fertilizer out via them [the animals] to the gardens." Such textual change is unnecessary and unsupported.)

an organ that excretes/transports out (*motzi*) urine and semen (b. Bekh. 44b). Moreover, the Talmudic editor of a different Talmudic passage used the same euphemism for excreting sperm.[68]

- The *tannaim* used the term *reshut* in Shabbat laws to refer both to a domain, whether controlled/owned by individuals or the public, and to the range of actions of power and control (above). The editor of our passage, accordingly, merely used the *reshut antanaclastically.* He drew on the language of transporting from a private domain into the public throughfare to speak about the fact that a (healthy) man has conscious control and choice in emptying his bladder inappropriately into the throughfare or into a courtyard.[69]

The passage now reads sensibly as follows:

> **R. Yosef said: One who urinates or spits is liable for a sin offering.**
>
> *But he is not [choosing to be] picking up an object from one domain and placing it in another domain {= the uprooting* [of the urine from the bladder/penis] *is not under his control}!*
>
> *His intent* [to urinate here and now] *makes it equivalent to done by choice.…*
>
> **Rava pressed (ba'i):**[70] **"What is the law if he is in a private domain and his urethral opening is in the public domain?"**

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[68] b. Nidd. 13a–b.

[69] On the dependence of ethical obligation on capability, see James Smith, "Impossibility and Morals," *Mind* 70 (1961): 362-375; Walter Sinnott-Armstrong, "'Ought' Conversationally Implies 'Can'," *The Philosophical Review* 63 (1984): 249-261; and Bart Streumer, "Does 'Ought' Conversationally Implicate 'Can'?" ***European Journal of Philosophy*** 11 (2003): 219-228. This dependence has also been recognized throughout rabbinic history, such as by Maimonides (discussed in Lenn Evan Goodman, "Bahya and Maimonides on the Worth of Medicine," in Idit Dobbs-Weinstein, Lenn Evan Goodman, and James Allen Grady, eds. *Maimonides and His Heritage* (Albany NY: SUNY Press, 2009), 61-93. And I discuss it in my upcoming publications.

[70] The term is always used to ask boundary questions.

> *Do we follow the uprooting* [= the bladder] *or the expulsion* [= the point from where the urine spray begins]*?*
>
> teyku [= the editor considers such behavior as borderline liable[71]]
>
> (b. Eruv. 99a)

To explain:

1. The editor first asked, "Since one urinates inappropriately only because one is urgently emptying the bladder, why is one—or how can one be—considered liable?" The editor answered that since people can choose—"intend"—when to urinate, urinating in public is relatively willful.
2. Then—after raising an awareness of both the fact that improper urinating is usually done out of urgency and that negligent urgency is not a valid excuse—the editor explained Rava's question of whether to exempt less inappropriate public urination: Do we follow the location of the expulsion of the urine—in which case we condemn as liable only callous urination that may possibly spray someone in the public domain but not someone who had made sure that the public domain is empty? Or do we follow the location of the uprooting from the bladder—in which case we condemn as liable anyone who chooses to release his urine into an inappropriate space? As we saw (above), this is a valid question since moral judgments about Shabbat disturbances are not necessarily so black and white.

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[71] Contra Louis Jacobs, *Teyku – The Unsolved Problem in the Babylonian Talmud: A Study in the Literary Analysis and Form of the Talmudic Argument* (London: Cornwall Books, 1981), 295–300, and Yaakov Elman, "Striving for Meaning: A Short History of Rabbinic Omnisignificance," in Sheldon Pollock, Benjamin A. Elman, and Ku-ming Kevin Chang, eds., *World Philology* (Cambridge MA: Harvard University Press), 89, that a *teyku* conclusion is the result of a legal inability to resolve the question. Anyone who adopts a semiotic approach to law recognizes that there are always sources available to answer a question. And a glancing overview of all the Talmudic passages that end with the term *teyku* reveals that the behavior is always viewed as less problematic than that which is forcefully forbidden but as still problematic.

3. In the end, the editor accepted that despite the propriety of morally condemning one who urinates into the street at all, the slight justification for urinating carefully in a case of negligent urgency suffices to leave the behavior merely borderline liable.

In other words, the stamma editor provided a text for an adult male teacher to teach up and coming young men to reflect well on the underlying issues of this disgusting behavior.

The beauty of this strange-topic and seemingly strangely-worded pericope is that it discusses even non-legal matters in a weighty fashion. This illustrates that law for the *stamma* was about practical wisdom. Moreover, the *stamma* editor did not engage in "seeking truth" through exclusionary logical exclusion. In fact, the *stamma*'s questions and answers in this passage had nothing to do with abstract concepts, not even with attempts to misuse legal concepts. Instead, the *stamma* pericope commonsensically elaborated the varied angles underlying, and permutations thereof, of the Mishna's law example that forbids urinating into a courtyard or into the street.

Conclusion

In this article, I have illustrated the possibility that the *stamma* editors may have followed the tradition of Second Temple sages through *tannaim* and *amoraim*. They may have tried to teach students norms and laws—tannaitic through amoraic—as wise examples. Moreover, they may have provided a curriculum to teach students to reflect on various competing human concerns that every law balances so that some students might become sages who will apply the insights of the laws wisely to additional cases. Instead of arguing dialectically about principles, they showed students that it is only by studying detailed examples of nuanced moral thinking that one can judge ethically. And this is an important lesson for all of us. Even if most of us will not be rabbinic sages, we all must make sagacious decisions about the ethical.