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THE STUDENT AS “ETHICAL PROMPT”

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The historical-critical approach to Talmud study plays a pivotal role in the way I teach my students how to read Talmudic texts. Viewing these texts as documents that are themselves compilations of earlier sources, this method has enabled scholars to divide up Talmudic passages into their constituent parts, contextualize these sources, and, through a process of comparing them one to the other, make determinations regarding the historical development of rabbinic concepts, laws, and ideas.¹ When scholars can pinpoint instances where rabbinic ideology on a given matter shifts in a more humane direction, especially with regard to matters involving women, their work reveals an ethical fiber running through Talmudic literature.² In a sense, a source-critical methodological approach can work favorably to present the rabbis as men invested in positive

¹ This article was written several years ago and does not consider some of the newer challenges to the historical-critical approach and how these challenges effect my teaching. For example, see Max K. Strassfeld, *Trans Talmud: Androgynes and Eunuchs in Rabbinic Literature* (Oakland: University of California Press, 2022) and Monika Amsler, *Late Antique Book Culture* (Cambridge: Cambridge University Press, 2023).

² See, for example, Judith Hauptman, *Rereading the Rabbis: A Woman's Voice* (Boulder: Westview Press, 1998), where she charts changes in rabbinic law. See specifically her chapter on marriage law, 60–76.

change driven by ethical sensibilities.³ For teachers like myself who teach courses in Jewish marriage to rabbinical students, the ability to point to these shifts rooted in a source-critical approach to Talmud study promises a degree of redemption with respect to some of the most difficult Talmudic texts about marriage found in tractate Ketubot.⁴

That said, when my students think about their own contemporary Jewish experience, they are not so convinced by where modern critical methods of Talmud study about women and rabbinic marriage point. Many do not view the exercise of reading more positive sources about women alongside more negative sources, or charting the history of these sources, as a means of redeeming Talmudic texts.⁵ Nor are they comforted by the use of historical-critical Talmud scholarship for locating something in the Talmud that they can label as a positive ethical shift. The students also bring their gender identities and attitudes toward sexuality to bear upon texts pieced together by late antique male scholastics who value heterosexual marriage and the commandment to procreate. My students are consistently reminded that central to rabbinic marriage is a legally binding *ketubah* (marriage contract) that values women based on their sexual status. Virgin brides are worth more than non-virgins—in fact, double the amount (M. Ketubot 1:2; T. Ketubot 1:2-3). Singledom, male-male and female-female marriages, marriages involving transmen and

³ See Michael Rosenberg, *Signs of Virginity: Testing Virgins and Making Men in Late Antiquity* (New York: Oxford University Press, 2018), especially 119–147, and Joshua Kulp, “‘Go Enjoy Your Acquisition’: Virginity Claims in Rabbinic Literature Revisited,” *Hebrew Union College Annual* 77 (2006): 33–65, for their use of the historical-critical method specifically on the topic I am examining here.

⁴ See, for example, Tsila Rådecker, “Exposed and Concealed Sexuality: Virgin Records in the Eighteenth-Century Ashkenazi Protocols of Amsterdam,” *European Journal of Jewish Studies* 6.2 (2012): 249–273, and her discussion of the ways that Jews continued to reinvolve the significance of virginity and virginity tests well into the eighteenth century. This stands in contrast to Rosenberg’s observations in *Signs of Virginity*, where he points to a development favoring women in the case of virginity tests when comparing *amoraic* and *stammaitic* layers of b. Ketubot (119–147).

⁵ According to Luciana Lederman, a PhD student and instructor at Jewish Theological Seminary, one of her students commented, “We are giving the rabbis too much credit!”

transwomen, first marriages to non-virgin brides, and childless marriages are not offered as models of a life “rabbinically” best lived.⁶ Therefore, my students are the “ethical prompt” that drives me and my teaching practice when faced with sources such as those that appear in tractate Ketubot. The lives they live, the people they are, and the relationships they form, not to mention the people whom they will one day lead, make ethical demands on the way I read rabbinic texts with them. If our sole goal is to find the mechanisms within the Talmudic texts themselves and use historical-critical skills to redeem troubling texts, we risk closing ourselves off to the pain and suffering that students feel in grappling with these texts as they experience life in the present.⁷ In fact, the gap between the text and the

⁶ See Edward Vacek, “Case Method Strategies for Teaching Sexual Ethics to Relativists and Skeptics,” *Teaching Theology and Religion* 20 (2017): 127, for a description of the “obstacle-filled terrain” that today’s students navigate.

⁷ Stephanie M. Crumpton, “Trigger Warnings, Covenants of Presence, and More: Cultivating Safe Space for Theological Discussions about Sexual Trauma,” *Teaching Theology and Religion* 20 (2017): 142, in her reference to the work by Liora Gubkin, points out that educators tend to look for ways to redeem their sources, wanting to create a positive learning experience, especially in dealing with trauma. Rather, she argues, we need to let the troubling moments—whether in our texts or in the lives of our students—speak for themselves. Also see Liora Gubkin, “From Empathetic Understanding to Engaged Witnessing: Encountering Trauma in the Holocaust Classroom,” *Teaching Theology and Religion* 18 (2015): 103–120. And see Julia Watts Belser, “Drawing Torah from Troubling Texts: Gender, Disability, and Jewish Feminist Ethics,” *Journal of Jewish Ethics* 6 (2021): 140–152, where she argues that there are moments when rabbinic texts are simply not redeemable, especially for those who are disabled. Interestingly, she speaks about the experience of being a rabbinical student and learning b. Ketubot 17a, where the question is asked, “How does one dance with the bride?” I too have studied this source with my students in the hopes of finding something redeemable within it, with little success. Aryeh Cohen, like Belser, points out that some texts are just too troublesome to study in “Dealing with Troubling Texts,” <https://www.myjewishlearning.com/article/dealing-with-troubling-texts/>, accessed August 2021. Additionally, Christine Hayes argues: “There are many people who when they open the Bible for the first time, they close it, in shock and disgust, and the shock comes from the expectation that the heroes of the Bible are somehow being held up as perfect people. That is not a claim that is made by the Bible itself. Biblical characters are real people with compelling moral conflicts and ambitions and desires and they can act shortsightedly and selfishly but they can also, like real people, learn, and grow and change ... If we work too hard and too quickly to vindicate Biblical characters, just because they are in the Bible, then we miss all the good stuff: the moral sophistication and deep psychological insights ... the Bible is not for naive optimist ... it speaks to those who are courageous enough to

students' day-to-day experience can draw them into a generative dialogue with the text. A form of interpretation can surface that does not operate to excuse the rabbis necessarily, or to rationalize their ideas by attributing them to another time unlike our own. Rather, teachers can use rabbinic texts to provoke students into thinking about the ethical framework of their own lives and communities.⁸

For example, when students study texts on Jewish marriage, the rabbis' gender biases come to the fore, provoking students' discomfort. Arguably, what we look for today in terms of gender parity in our relationships and what we recognize as ethical behavior between partners does not emerge in rabbinic literature, where grooms initiate betrothal (*kiddushin*) and wives are subject to virginity tests.⁹ One-sided suspicions that lead to husbands' accusations of adultery and rape undergird the system of marriage from its first days simply because the virginity test is believed to offer reliable evidence. However, instead of dismissing these texts on the grounds that the rabbis do not promote an ethic that informs our relationships today, I would like to suggest an alternative. In place of making content choices that intentionally avoid teaching these troubling texts, we can think about the project of reading Talmudic texts as more than an exercise in naming what is missing or what is disturbing to us within them. As teachers, whether in the rabbinical school classroom or in the university, we can hold up rabbinic texts to our present-day experiences and pinpoint what continues to remain problematic today. These texts can set students up to think about whether we, as Jews (as

acknowledge that life is rife with pain and conflict just as it is filled with compassion and joy ... the Bible explores moral issues but rarely moralizes." I think we could say the same about rabbinic texts. See Christine Hayes, "Lecture 1: The Parts of the Whole," from *Introduction to the Old Testament* (Yale University RLST 145), <https://www.youtube.com/watch?v=mo-YL-lv3RY>, accessed May 2021).

⁸ I am building upon Sarra Lev, "Talmud that Works Your Heart: New Approaches to Reading," *Learning to Read Talmud: What It Looks Like and How It Happens*, ed. Marjorie Lehman and Jane L. Kanarek (Boston: Academic Studies Press, 2016), 176–77.

⁹ Sarah Zager, "Beyond Form and Content: Using Jewish Ethical Response to #MeToo as a Resource for Methodology," *Journal of Textual Reasoning* 1.11 (2020).

people) in modern-day communities, have moved far enough in an ethical direction. When we encounter rabbinic texts of the late antique world that do not reveal present-day normative guidance regarding marital relationships or other partnerships, such texts can provoke discussions about whether we have progressed beyond them.¹⁰

Thinking with rabbinic texts about marriage can and should make space for why the rabbinic embrace of heteronormative marriage continues to be held up as the first-best way of living a committed Jewish life. Is the structure of marriage the sole way of carving out a space for oneself in a present-day Jewish community? Why does the nuclear family continue to play such a dominant cultural role when our students today are enmeshed in multiple and more complex systems of relation?¹¹ Many students have shared with me that they feel pressured and judged in ways that reinvokethe central rabbinic value of heteronormative marriage. Additionally, why does female virginity, so significant to the rabbis, continue to be valorized as a primary religious and cultural value prior to marriage? Why are we not doing enough to talk about the ethical need to define marriage more broadly, to embrace various types of relationships, or even the decision not to marry at all?

Just as we critique the rabbis when viewing them through our own ethical lenses, we also need to look more closely at ourselves and our communities and do the same. Troubling rabbinic texts, when held up to our present world, help us to recognize the work we still need to do—from the stereotypes we need to dismantle to the very narrow rabbinic understanding of acceptable relationships that we must unsettle. Like Sarra Lev has argued, the study of the Talmud's "unfriendly" passages can cultivate kinder, more compassionate, empathetic, and self-reflective individuals, that is, if we devote ourselves to such an exercise. As she points out, rabbinic texts "summon" us. At the precise moment when the rabbis push our buttons, they provoke us into conversation, not by telling

¹⁰ Zager, "Beyond Form and Content."

¹¹ Judith (Jack) Halberstam, *The Queer Art of Failure* (Durham: Duke University Press, 2011), 72.

us what should be, but by summoning us to interact with them as we think about the people we want to be in the world.¹² Ultimately, the goal is to reduce the distance between the texts and the world of today, not only by using source criticism to find instances where the *amoraim* shift betrothal from a unilateral system initiated by men to one where a woman's consent is needed (b. Kiddushin, 2b; 9a; 44a),¹³ but by using rabbinic texts to spark the difficult discussions we need to have today. How are we to understand the nature of our own relationships and that of others if we do not have a lens through which to view them? By comparing rabbinic texts with our own experiences, we are better able to judge how far we have come, but more important, how far we need to go.¹⁴

If I am to imagine what is, at a minimum, a moral classroom, I would say that Talmud study enables us to create such an environment. The Talmud is constructed as a reactive document. In other words, its dialogic back and forth enables us to observe a group of men who take nothing at face value. They push back. They take down the opinion of another. They prompt us to keep asking why they argue as they do. At each point, it is as if they are asking us to give them chances to be heard. Mira Wasserman argues that the rabbis' close readings or reading practices display mind patterns that inform our own ethical reasoning. In this way, Talmudic discourse shapes the ethical subject; its very study guides us toward reading practices that enable us to read our own experiences more slowly

¹² Lev, "Talmud that Works Your Heart: New Approaches to Reading," 176–77.

¹³ Hauptman, *Rereading the Rabbis*, 69–71.

¹⁴ Vacek, "Case Method Strategies for Teaching Sexual Ethics," 131. Also see Rebecca J. Epstein-Levi, "Textual Relationships: On Perspective, Interpretive Discipline, and Constructive Ethics," *Journal of Textual Reasoning* 10.1 (2018), who writes: "Just as our contemporary commitments and the practical issues we face as contemporary reasoners affect the ways we read rabbinic texts, so, too, do the reasoning patterns we excavate as a result of our interactions with rabbinic texts affect the ways we "read" our contemporary issues. Rabbinic texts come out of a different time and place, but we read them with eyes all our own, and so they become different entities than they were in their original contexts. And when we condition our minds through the practice of reading those texts, the contemporary problems we consider take different shapes when viewed through the lens of that mental conditioning."

and carefully as well as more critically.¹⁵ This can contribute to the development of a more discerning student.

For me, in thinking about the design of a moral classroom, I want my students to develop the kind of empathy that comes from asking themselves why they think the way they do. Why do they react a certain way when a classmate makes a particular argument? Why do they disagree? What is it about their own life experiences that lead them to think one way or another, and are any of their ideas problematic to the formation and sustenance of ethical Jewish communities? Stephanie Crumpton sums up this approach well when she writes:

While your first instinct might be disbelief, become curious--When your first response is to lash out in response to something that offends you, rather than judge, become curious. "I wonder why they believe that?" Or, more importantly, "I wonder why I'm having such an intense reaction to what I just saw or heard. What can I learn from what I'm feeling?"¹⁶

I want my students to unpack their reactions because, in the end, studying Talmud can be about trying to locate the obstacles that continue to exist and prevent us from building ethical communities today. Given the degree to which students today are inundated with images of traditional marriages, romance, and the value of the nuclear family (made ever more pronounced in a world driven by social media), rabbinic texts can help us to prompt our students to take a more critical look at the world around them. Turning to a few texts from a course on marriage law and ritual that I teach at the Jewish Theological Seminary, I will discuss not only the ways that they unsettle my students, but equally so the ways that they can spark discussions about prevalent ethical issues as the students negotiate their understandings of marriage in their own lives. Indeed, this is also an approach that is useful in university classrooms where students enter bearing a host of concerns about the environments they come from and

¹⁵ Mira Wasserman, "Talmudic Ethics with Beruriah: Reading with Care," *Journal of Textual Reasoning* 11.1 (2020); Ariel Evan Mayse, "All the Knots of Jewish Thought: Ethical Formation, Close Reading, and Theological Reflection in the Study of Talmud," *Journal of Textual Reasoning* 11.1 (2020); and Epstein-Levi, "Textual Relationships."

¹⁶ Crumpton, "Trigger Warnings," 141.

presently navigate. However, my engagement with students who will themselves be future clergy or will take on leadership roles in the Jewish community makes this exercise vital to their education. It prompts them to think not only about themselves and their personhoods, but about how they will traverse the communities they will one day serve.

Part I: Grappling with the Power Dynamics of Marriage in Tractate Ketubot

Talmud and Rabbinics courses at the Jewish Theological Seminary where I am a professor introduce rabbinical students to texts about all aspects of family law. As part of this curricular goal, we spend a lot of time discussing what rabbinic texts have to say about marriage. Difficult texts are unavoidable. For example, the very first mishnah of tractate Ketubot presents them with a discussion about when couples should marry. Marriage on certain days is necessary so that husbands can readily bring virginity claims to a court when it is in session. Such a mishnah invites all sorts of challenging questions about how such a text could ever relate to or speak to them:¹⁷

בְּתוּלָה נִשְׂאָת לַיּוֹם הָרְבִיעִי, וְאֵלְמָנָה לַיּוֹם הַחֲמִישִׁי שֶׁפְּעָמִים בְּשַׁבָּת בְּהֵי דִינֵין יוֹשְׁבֵין
בְּעִירוֹת, בַּיּוֹם הַשְּׁנִי וּבַיּוֹם הַחֲמִישִׁי, שְׂאָם הִיא לֹו טַעֲנַת בְּתוּלִים, הִיא מְשָׁכִים לְבֵית
דִּין

A virgin is married on Wednesday and a widow on Thursday because twice a week courts convene in the towns, on Monday and Thursday, so that if he [the groom] had a claim concerning [the bride's] virginity he would rise early [the next day] to [go to] court [and make his claim].¹⁸ (m. Ketubot 1:1)

¹⁷ See Kathleen C. Kelly, *Performing Virginity and Testing Chastity in the Middle Ages* (London: Routledge, 2000), 119–141.

¹⁸ Kulp, “Go Enjoy Your Acquisition,” 45. Also compare this to y. Ketubot 1:1, 24d, and see Kulp, 45, n46.

Students learn that lodging claims against brides in a court is connected to the commodification of women. Their virginity is linked to a specific monetary value represented by the *ketubah* (marriage contract), as follows:

וּמִכֶּת עֵץ, כְּתוּבָתָן מֵאֲתֵימ, דְּבָרֵי רַבֵּי מֵאִיר. וְחֻכְמִים אֹמְרִים, מִכֶּת עֵץ, כְּתוּבָתָהּ
מִנָּה

...and a woman who had her hymen ruptured by wood, [for all these women] their marriage contract is two hundred, [as their legal status is that of a virgin]. This is the statement of Rabbi Meir.

And the Rabbis say: The marriage contract of a woman whose hymen was ruptured by wood is one hundred. [Since her hymen is not intact, she is no longer a virgin]. (m. Ketubot 1:3)

In the absence of producing blood the first time a woman has sexual relations with her husband, the rabbis question whether she is entitled to a *ketubah* valued at 200 *zuz*, given to all virgin brides, or 100 *zuz*, given to those who are no longer virgins. According to Rabbi Meir, virginity is determined anatomically. Without a hymen, her *ketubah* should be valued at 100 *zuz*. For the rabbis, a woman loses her virginity only when she has sexual relations, and therefore she is entitled to 200 *zuz* (M. Ketubot 1:2).¹⁹

Whether one follows Rabbi Meir or the rabbis, the mishnayot in the first chapter of tractate Ketubot indicate that an attitude of suspicion is built into the legal process of marriage. Men suspect women and not the other way around. A new husband possesses the right to come to court and accuse his wife of lying about her sexual status as a virgin, claiming that he did not see hymenal blood the first time they had sexual relations.²⁰

¹⁹ See Rädicker, "Exposed and Concealed Sexuality," 255–257, where she argues that virginity was a constantly renegotiated aspect of a woman's sexuality and continued to serve the dominant structures of society, 251. She disagrees with the position of Howard Zvi Adelman, "Virginity: Women's Body as a State of Mind: Destiny becomes Biology," *The Jewish Body, Corporeality, Society, and Identity in Renaissance and Early Modern Periods*, eds. Maria Diemling and Giuseppe Veltri (Leiden: Brill, 2009), 210–213, who reads the same records as employing the category of the *mukat etz* as a legal fiction working to eliminate virginity as an issue.

²⁰ Note that according to t. Ketubot 1:3, a girl who is beyond the age of 12 ½ is referred to as a *bogeret*, and she is not subject to a virginity claim. This would deem the material in m.

As part of this process, according to the opinion of the rabbis, a woman can try to defend herself. She can argue that she is *mukat etz*. This is a status where no hymenal blood appeared because at some point before her marriage, as m. Ketubot 1:7 argues, she “encountered” a piece of wood, that is, her hymen was ruptured without sexual penetration.

M. Ketubot 1:6 introduces another possible defense offered by a bride when her husband lodges virginity claims against her, as follows:

הַנוֹשֵׂא אֶת הָאִשָּׁה וְלֹא מָצָא לָהּ בְּתוּלִים, הִיא אוֹמֶרֶת, מִשְׁאַרְסִתְּנִי נְאֻמְסִי,
וְנִסְתַּחֲפָה שְׂדֵד. וְהוּא אוֹמֵר, לֹא כִי, אֶלָּא עַד שְׁלֹא אֲרִסְתִּיד, וְהִיא מְקַחִי מְקַח
טְעוּת. רַבִּן גַּמְלִיאֵל וְרַבִּי אֶלְעָזָר אוֹמְרִים, נְאֻמְנָת. רַבִּי יְהוֹשֻׁעַ אוֹמֵר, לֹא מִפִּיהָ אֲנִי
חִיּוֹ, אֶלָּא הָרִי זוֹ בְּחֻקַּת בְּעוּלָה עַד שְׁלֹא תִתְאַרֵס, וְהִטְעַנּוּ, עַד שֶׁתִּבְיֵא רְאִיָּה
לְדַבְרֶיהָ

If a man marries a woman [assuming she is a virgin] but he does not find [evidence of her] virginity—she says [to defend herself], “After you betrothed, I was raped and [therefore, it is as if] your field has been flooded [that is, this is your misfortune, and I should still receive a ketubah of 200 *zuz* as virgins do]—and he says, “Not so, but rather [you had sexual relations] before I betrothed you, and [therefore] my acquisition was an acquisition in error [for I married you assuming you were a virgin].”

Rabban Gamliel and Rabbi Eliezer say: *She is believed*.

Rabbi Yehoshua says: We do not live from her mouth. Rather, this [woman assumes] the presumptive status of one who engaged in

Ketubot as irrelevant for women betrothed beyond the age of 12 ½. That said, b. Ketubot 36ab, in the name of the third century *amora*, Rav, argues that even a *bogeret* had to produce blood when she had sexual relations for the first time with her husband. See Kulp, “Go Enjoy Your Acquisition,” 46, and also Räddecker, “Exposed and Concealed,” 250–251, who argues that as late as the eighteenth century, communities kept “virgin records” that delineated the reasons for a girl’s loss of virginity. *Pinkasim* (communal ledgers) recorded the names of girls who had been accidentally deflowered, making allowances for them to marry as virgins even though they could not produce blood when they had sexual relations for the first time with their husbands. It does not appear that these women were younger than 12 ½ when they married. And see Eve Krakowski, *Coming of Age in Medieval Egypt: Female Adolescence and Ordinary Culture*, 115–128, about the ambiguity of the category of the *bogeret*.

intercourse when she was not yet betrothed and she misled him, until she brings proof [otherwise] supporting her statement.

Rabbi Yehoshua represents the hardline view: the testimonies of wives regarding their virginity status, unless they bring witnesses, are inadmissible. The tannaitic statement, “We do not live from her mouth,” communicates that without witnesses, women’s voices are silenced in cases regarding their own sexual status.

The cases are murky at best. While it appears that women can make a claim in their own defense, the absence of hymenal blood makes it difficult, if not impossible, to prove this claim about their own experience. While husbands are believed regarding the claims they make about their wives’ status, according to Rabbi Yehoshua, it does not seem possible that husbands could prove conclusively, or courts could prove irrefutably, that a woman was a virgin at the time of her betrothal to her husband, that is, at the time of *kiddushin*, a first-stage legal act which binds a husband and wife in advance of their actual marriage. Hymenal membranes can be ruptured without sexual relations. Some women are born without them.²¹ As m. Ketubot 1:6 suggests, it is also possible that she was raped. Furthermore, Rabbi Yehoshua’s requirement that women bring witnesses only leads to further ambiguity. What exactly did these witnesses see? Upon what is the testimony of these witnesses based? We are left to wonder—what exactly holds up in court in order for women to be believed?

In contrast, the position of Rabban Gamliel and Rabbi Eliezer offers students a moment to consider that some rabbis thought women should be “believed.” Women were taken at their word despite a lack of proof that they were raped after *kiddushin* and before *nissuin* (the second stage of the marriage process, when they consummate their marriages).²² In other words, a woman makes the argument that indeed she was not a

²¹ Kelly, *Performing Virginity*, 9–11, regarding the invention of the hymen and the shift from the hymen as a figural image to one that becomes “pseudo-factual.”

²² This is complicated by the fact that according to m. Kiddushin 1:1, sexual relations is a way to effect *kiddushin*, although post-tannaitic literature advises against it, preferring that money transfer hands instead (b Kiddushin 3b–4a).

virgin at the time of her marriage, but she was a virgin when they were initially betrothed (at the moment of *kiddushin*). The reason: she was raped between the time of *kiddushin* and the time they consummated their marriage (*nissuin*), and not prior to *kiddushin*. Rabban Gamliel and Rabbi Eliezer believe her and she remains entitled to a *ketubah* valued at 200 zuz. However, as my students notice immediately, a wife’s rape claim is inconsequential. She is only believed regarding the fact that she was a virgin at the moment of her *kiddushin*. The time of the rape—whether before she was betrothed as a virgin to her husband or afterward—matters more than the fact that she was violated. Believing the wife also means that she must remain in a marriage to a man who suspects her of lying. He arrives in court ready to either reduce the amount of the *ketubah* or, in some cases, to dissolve his marriage to her altogether. This wife is never asked whether she wishes to remain with her husband, who has also failed to acknowledge her rape claims. His focus is only on the idea that she was not a virgin bride when he had sexual relations with her. In fact, Rabbi Yehoshua’s point prevails—“we do not live from her mouth”—even though this is not stated explicitly by Rabban Gamliel and Rabbi Eliezer.

The students cannot overlook the profoundly disturbing linkage that is made in m. Ketubot between the absence of hymenal blood and rape.²³ Virginity claims are somehow connected to rape allegations, highlighting that a woman’s sexual status is paramount, most especially for the purposes of getting and remaining married. A man’s virginal status is irrelevant.²⁴ Thus, whatever happens to a woman’s body does not, in effect, happen to her; it happens to her husband. *His* reputation is at stake. If she is a victim of rape, her husband’s reputation is damaged more than

²³ Aviva Richman, “The Inner Scream: Rabbinic Voices on Sexual Assault,” *The Times of Israel*, November 14, 2016, <https://blogs.timesofisrael.com/the-inner-scream-rabbinic-voices-on-sexual-assault/>.

²⁴ See Kelly, *Performing Virginity*, regarding discussions in ancient and medieval sources about men and virginity, 91–94.

hers.²⁵ To believe her claim, as Rabban Gamliel and Rabbi Eliezer propose, results in protecting the husband and their marriage, arguably from a public court of reputation.²⁶

In fact, amoraic and stammaitic source material brought to comment on the mishnayot in the first chapter of Bavli Ketubot seem to support the position taken by Rabban Gamliel and Rabbi Eliezer to believe her. The rabbis orchestrate ways to protect a woman's status as a virgin and her marriage, despite their husband's claims. Sheets laundered in search of minuscule drops of blood, the awareness of families whose daughters were born with no hymens, claims that men were not performing sexual intercourse correctly, all pushed back against husbands so as to ensure that marriages did not dissolve, despite grooms who might have wanted things otherwise (b. Ketubot 9b–10b). For the rabbis, marriage is a safeguard and the cornerstone of Jewish communal life. If it falls apart, it brings shame on the couple and threatens the community, not to mention the couple's standing within it. Better to preserve marriages, even among husbands who do not trust their wives' claims. Maintaining social control is paramount.²⁷

On the other hand, Rabbi Yehoshua suggests that rabbinic men can use their authority to the detriment of women. If a man had second thoughts about the woman he married, he could try to use the legal system to dissolve his marriage with a virginity claim. If he wished for less financial responsibility, he had the means to manipulate the system to reduce the *ketubah* value by half—the *ketubah* of a non-virgin bride is worth half that of a virgin bride. In some cases, her *ketubah* had no value at all. Additional types of virginity tests were proposed in the post-tannaitic

²⁵ The threat of the virginity test and the possible loss of one's marriage contract in the wake of a failed test was all about creating a sense of authority without force. It threatened women with the destruction of their public reputations. For a larger discussion about honor and shame and the role of the public or the "court of reputation," see Zeba Crook, "Honor, Shame, and Social Status Revisited," *Journal of Biblical Literature* 3 (2009): 591–611.

²⁶ Crook, "Honor, Shame, and Social Status Revisited," 591–611.

²⁷ Ruth Mazo Karras, *Unmarriages: Women, Men and Sexual Unions in the Middle Ages* (Philadelphia: University of Pennsylvania Press, 2012).

period that were far more subjective and gave husbands even more power over their wives' sexual status. For instance, a man could claim that his wife had a *petach patuach*, that is, an open or loose vaginal canal, suggesting that she had already had sexual relations (b. Ketubot 9b). He could place her on a wine barrel. If the wine could be smelled on her breath because odors permeated through her body in the absence of a hymen, she was a non-virgin (b. Ketubot 10b, b. Yevamot 60b). According to b. Yevamot 60b, a woman had to pass before the frontlet of the high priest known as a *tzitz*.²⁸ If her face turned sallow, only this could prove her chastity. Each test was tangible, experiential, and required the judgment of a husband, rabbi, or high priest.²⁹ Indeed, a woman's audible claim of her own status as a virgin was suspect and required physical proof, challenging Rabban Gamliel and Rabbi Eliezer.³⁰ Missing from these sources is a woman's personhood. She is her body, and her body is the object of investigation, not to mention the focus of extensive Talmudic discussion.³¹ The status of her body is something from which her husband stands to gain or lose. Either way, she loses far more. She has no control in the wake of accusations lodged against her by her husband. Decisions

²⁸ See Exodus 28:38.

²⁹ For a view of the constructed nature of the virginity test, see Kelly, *Performing Virginity*, 7–9.

³⁰ See Tsila Radecker, "Exposed and Concealed Sexuality," 255–257. The law regarding concern for a woman's virgin status continues well into the early modern period. Also see Michael Rosenberg, *Signs of Virginity*, 119–147, who sees the test of the *petach patuach* as a positive development for male sexuality. For Rosenberg, the shift in virginity tests from hymenal blood to relying on the openness of a woman's vaginal canal indicates that the Bavli constructs a less sexually aggressive male and "a revolution in sexual ideals." He argues that this move discourages men from feeling like they have to draw blood when they have sexual relations with their wives, hoping to prove that they are virgins. In this regard, he views rabbinic sources as improving ethically over time, rather than moving backward. Joshua Kulp also argues in his article "'Go Enjoy Your Acquisition,'" 56–62, cases presented in b. Ketubot 9b–10a and y. Ketubot 1:1, 25a present us with rabbis who are telling men to remain married to the wives whom they have accused.

³¹ Rosenberg, *Signs of Virginity*, 125.

are left to him or are brought to rabbis/judges to decide (y. Ketubot 1:1, 25a; b. Ketubot 9b–10a).

Not surprisingly, my students are angered by the way that a woman's body is so central, as if she is only what her body is. The mishnayot distance them from these texts. But their discomfort also generates needed conversations about de-stigmatizing virginity, especially as it relates to women today. The students recognize that the back-and-forth discussions present in the mishnah (and the Gemara as well, see below) mean that, for the rabbis, virginity and sexuality were a matter of open conversation, hardly hidden from view.³² Surely, the nature of the discussion feels unsettling and uncomfortably depersonalized. However, acknowledging the very inclusion of these texts pushes the rabbis' discussions more easily into the forefront of classroom conversation.

In turn, holding up these mishnayot to our present culture then prompts the students to think about the ethical lines that are crossed when virginity continues to matter more for women than for men (or matter at all).³³ The idea that today virginity is revered in Jewish tradition as well as in other religious traditions, but also that women continue to be thought of as in danger of "losing" or as having their virginity "taken" from them by men, reflects just how culturally embedded virginity remains in our present-day.³⁴ It means that our bodies keep pointing to a world that we intuit is "of the past," but is, in actuality, the very one we continue to inhabit. Furthermore, when virginity continues to be gendered, the result is a "compulsory heterosexuality" that is reductive and exclusionary and therefore also ethically problematic.³⁵ As Judith Butler has observed, vir-

³² See Rebecca Epstein-Levi, "Textual Relationships," about the notion that rabbinic texts can offer a model for de-stigmatizing discourses around sexuality in the way that they are matter-of-fact and depersonalized.

³³ Kelly, *Performing Virginity*, 15.

³⁴ Kelly, *Performing Virginity*, 15. Also note that many *ketubot* still use language that labels the bride a "virgin," whether she is or not. There is no comparable language for a groom used in *ketubot*.

³⁵ Kelly, *Performing Virginity*, 15, who draws this term from Adrienne Rich, "Compulsory Heterosexuality and Lesbian Experience," *Signs* 5.4 (1980), 631–660.

ginity continues to exist "on the cusp between body and culture," exceeding its own physical boundaries.³⁶ As my queer students aptly argue, virginity continues to complicate their understanding of Jewish marriage and sexual relations, as well as the rituals associated with Jewish marriage, such as the *ketubah*.³⁷ It also complicates the way they relate to Jewish marriage today, pushing them to keep seeking ways to reinvent rabbinic marriage so that it mirrors who they are in the present.³⁸

In discussing this, my students also begin to think about the ways rabbinic women might have had greater freedom outside of marriage. They imagine the lives of women who did not marry and the freedoms that might have become available to them.³⁹ I assign them passages from

³⁶ Judith Butler, *Bodies that Matter: On the Discursive Limits of "Sex"* (London and New York: Routledge, 1993), ix, as discussed by Kelly, *Performing Virginity*, 16.

³⁷ One part of the course that I teach focuses on the history of the development of the *ketubah*. The students are fully aware that still today, the *ketubah* plays a central role in Jewish marriage ceremonies. Although some Jews have opted to change the language of the *ketubah*, they have not dispensed with the ritual altogether, and many still include language that refers to a man's marriage to a virgin bride valued at 200 zuz in cases of first marriages. If Talmudic tradition should inform marriage ritual, then what should we make of the fact that the tradition being invoked is so problematic? More to the point, by using the *ketubah*, does Jewish tradition cultivate relationships that evoke the problematic power dynamic where men hold the reins? Does it call attention to the sources in tractate Ketubot that are so troubling? And what are the ethics around the ceremonial reading of the *ketubah* publicly at a wedding where a woman's virginal status (if the traditional language is maintained), whether true or not, is made audible? Held up to present-day realities, there is the opportunity to use the *ketubah* to think about what marriage is today, but also what it is not. For the two individuals who have decided to incorporate it into their wedding ceremonies, the *ketubah* emerges as an opportunity to think about what they want their marriage to be and how they want to think about their relationship, religiously, economically, socially, and emotionally. I continue to find it interesting that many non-Jews have reappropriated the *ketubah* as well (Samuel G. Freedman, "Christians Embrace a Jewish Wedding Tradition," *The New York Times*, February 11, 2011, <https://www.nytimes.com/2011/02/12/us/12religion.html>).

³⁸ For one example among others, see Rachel Adler, *Engendering Judaism* (Philadelphia: The Jewish Publication Society, 1998), 169–207.

³⁹ Elana Stein Hain, "Home, Endangered: A #MeToo Midrash," *Sources: A Journal of Jewish Ideas* 1.1 (2021): 72.

Ruth Mazo Karras' *Unmarriages: Women, Men, and Sexual Unions in the Middle Ages*, which brings cases from medieval Europe of Christians who lived together but never married. I suggest that they look at material written by Elizabeth Castelli and others regarding the early church about women who chose to remain celibate in attempts to refrain from marriage, childbirth, and childrearing.⁴⁰ Both Michael Satlow and Daniel Boyarin indicate that there were options available other than heteronormative marriage in antiquity. However, the rabbis chose to privilege male–female marriage.⁴¹

All of this gives us a lens to think about the role of marriage in the Jewish community today and the ways that women, although men as well, feel confined and controlled by the deep-rooted commitment to marriage in the Jewish community despite favorable shifts in modern-day culture. They stew over the reasons why the rabbinical school curriculum at present emphasizes the study of heteronormative rabbinic marriage and why they are caught between valuing this choice (which they do) and feeling bothered by material that reinforces age-old stereotypes. Bringing this material into the present means using it as a moment to ask the students to explain to themselves and to one another what bothers them (or not) about their own perceptions of marriage. What stereotypes do they perpetuate, sometimes without even realizing it? These texts can set up meaningful and productive conversations about what types of relationships stabilize Jewish communities, strengthen them, and allow individuals to grow within them comfortably. Held up to present-day realities, there is the opportunity to think about what marriage is today. Where do changes still need to be made in the way we think about it?

⁴⁰ Elizabeth Castelli, "Virginity and Its Meaning for Women's Sexuality in Early Christianity," *Journal of Feminist Studies in Religion* 2.1 (1986): 61–88; and idem, "I Will Make Mary Male': Pieties of the Body and Gender Transformation of Christian Women in Late Antiquity," in *Body Guards: The Cultural Politics of Gender Ambiguity*, eds. Julia Epstein and Kristina Straub (Philadelphia: Routledge Publishing, 1991), 29–49.

⁴¹ See Michael Satlow, *Tasting the Dish: Rabbinic Rhetorics of Sexuality* (Atlanta: Scholars Press, 1995); Daniel Boyarin, "The Case of the Married Monk," *Representations* 36 (1991), 87–113; and Marjorie Lehman, "Rereading Beruriah through the Lens of Isaac Bashevis Singer's *Yentl*," *Nashim* 31.1 (2017), 123–145.

Part II: Who Will Hear Me? Who Will Believe Me?

No doubt, the image of how women were treated in m. Ketubot is triggering for my students. In reading these sources, I also acknowledge that there was once was a time in the ancient Jewish past when it was acceptable for men to make accusations against their wives' sexual status that may have had no foundation. There once was a time when men, including husbands, did not believe women who claimed to have been raped.⁴² Women's voices were barely heard. A husband would say one thing and a wife another, conjuring before us an image of our "he said, she said" world of today where accusations surface, but the truth cannot be firmly established. In class, the same mishnaic material in Ketubot summons us to discuss cases where men continue to be heard far more frequently than women, but equally so, cases where men are falsely accused. My goal is to create a context where we can begin to move our conversation to consider the ethics that inform who we believe and why we believe them. Indeed, this is the foundation of any solid relationship and the standard for any functioning community or institution.

Interestingly, m. Ketubot 2:1 prompts further consideration as my students think about what it means to take a side. As clergy, they will be thrust into situations of all sorts where they will need to make decisions about what to believe and who to trust. Talmudic literature purports to advise just how to make such determinations by citing the principle of "the mouth that prohibits is the mouth that permits," a legal principle that generates much student reflection:

ומוֹדָה רַבִּי יְהוֹשֻׁעַ בְּאֹמַר לְחִבְרוֹ שְׂדֵה זוֹ שֶׁל אָבִיךָ הִיְתָה וּלְקַחְתִּיהָ הֵימָנוּ, שֶׁהוּא נֶאֱמָר, שֶׁהִפָּה שְׂאֶסֶר הוּא הִפָּה שֶׁהִתִּיר. וְאִם יֵשׁ עֲדִים שֶׁהִיא שֶׁל אָבִיו וְהוּא אֹמֵר לְקַחְתִּיהָ הֵימָנוּ, אֵינּוּ נֶאֱמָר:

Rabbi Yehoshua concedes that [in the case of] the one who says to his fellow, "this field was your father's and I purchased it from him," he is

⁴² Kathryn D. Blanchard and Jane S. Webster, "Introduction," in *Lady Parts: Biblical Women and the Vagina Monologues*, eds. Kathryn D. Blanchard and Jane S. Webster (Eugene: Wipf and Stock, 2012), 13.

believed, since the mouth that forbids is the mouth that permits. But, if there are witnesses that the field belonged to his father, and the one who has the field in his possession says: "I purchased it from him," he is not deemed credible [and his claim is rejected]. (m. Ketubot 2:1)

According to M. Ketubot 2:1, in cases where there are no witnesses, the principle of the "mouth that prohibits is the mouth that permits" becomes operative. A person is believed on the basis of the fact that they could have made a claim or acted in a way that would have been more favorable for them. In this case, a person reaches out to the son whose father originally owned his land, informing the son of his purchase. Referred to as a *migo*, this is a case where the new owner could have said nothing. He could have kept quiet and not opened himself up to the possibility that the son of the original owner would search for witnesses to try to disprove the claimant's ownership. Because there exists a better possibility for the claimant, that is, remaining silent, his choice to inform the son that the original owner was his father — which might result in his loss of the land — generates the circumstances upon which we automatically believe him. As long as there are no witnesses to state otherwise, the son cannot take the land from the claimant.

In applying the same principle to a woman, we can imagine, as the Bavli's anonymous redactors argue, that she is believed when she says to her husband, "I was raped after *kiddushin* (betrothal) and before we were married (*nissuin*)" (b. Ketubot 16a). This would mean that at the moment of *kiddushin* she was a virgin and therefore her *ketubah* should remain the value of 200 zuz. When a woman makes this claim, she is also believed because of a *migo*. She too could have made a better claim and instead disqualified herself from ever being allowed to marry a *kohen* (priest). When she states that she has had sexual relations with someone who is not her husband while betrothed to him, for the rabbis, this is tantamount to *zenut* (promiscuity/harlotry), even though she was raped. In admitting to a sexual relationship with another man while she was already betrothed, her husband must divorce her if he is a *kohen* (per the law that priests cannot marry women who have committed adultery). If her husband is not a *kohen*, she remains married to him, but she cannot marry a *kohen* at any point in the future if her husband dies. Therefore, she has

made a less favorable claim, limiting who she can marry. She could have argued that her hymen was damaged not by sex with another man, but by means of an object (she was *mukat etz*). Such a claim would have enabled her to marry a priest, because she had never had sexual relations with anyone. It also would have dismissed the possibility that she was raped by another man, clearing her reputation. Because there is a better claim and she did not choose to make that better claim, this woman is believed to have been raped between the time of *kiddushin* and her marriage to the groom (if he is not a *kohen*), or so the Bavli suggests (b. Ketubot 16a). She remains in her marriage and is entitled to a *ketubah* valued at 200 *zuz*.

The Bavli (b. Ketubot 16a), in commenting on Rabbi Yehoshua's position about the field in the mishnah above (m. Ketubot 2:1), attempts to link the case of the field and the case of the woman, claiming that both are *migos*:

דמגו דאי בעיא אמרה מוכת עץ אני תחתיך דלא קא פסלה נפשה מכהונה וקאמרה
נאנסתי דקא פסלה נפשה מכהונה משום הכי קאמר ר"ג דמהימנא וקאמר רבי
הושע לר"ג בהאי מגו דהכא מודינא לך בההוא מגו דהתם פליגנא עילווד

This is a *migo*! That she could have said, "While I was under your jurisdiction [betrothed to you], I was struck by a tree." [If she had said that], she wouldn't have been excluded from marrying a *kohen*. [Instead], she said "I was raped," and thereby excluded herself from marrying a *kohen*.

And therefore it says [in the mishnah that according to] Rabban Gamliel she is believed and Rabbi Yehoshua would say to Rabban Gamliel that regarding this *migo* [here] I agree with you [that is, the *migo* about the field in the M. Ketubot 2:1 above], but regarding the *migo* there [above in the first chapter of M. Ketubot] I disagree with you [the case where the woman says "I was raped after we were betrothed" is not a *migo* and therefore she is not believed]. (b. Ketubot 16a)

The anonymous *stammaim*, in the latest layer of the Bavli, clarify. Rabban Gamliel would argue that the case of the field and the case of a woman defending her virginity are similar. Rabbi Yehoshua, however, would argue that only the case of the field is a *migo*:

הכא אין שור שחוט לפניך התם הרי שור שחוט לפניך

Here [in the case of the field] there is not a slaughtered bull before you,
there [in case of the woman] there is a slaughtered bull before you.

In the end, the Bavli argues that Rabbi Yehoshua's position stands and that we cannot apply the case of "the mouth that prohibits, is the mouth that permits" to a woman who is defending herself in a case of virginity claims lodged by her husband. This is because the evidence provided by the husband is tantamount to a "slaughtered ox." Like the dead ox cannot be brought back to life, so too the absence of blood discovered by the husband is incontrovertible evidence. Without hymenal blood, the law does not consider his wife a virgin.

Arguably, the Bavli's anonymous interrogation of the mishnah does not yield much support for Rabban Gamliel and Rabbi Eliezer's position. However, The Bavli's discussion helps us to think about why we, like the rabbis, still struggle to determine what is true in cases where there is no evidence. On what basis do we believe the victim, the accuser, or the one to whom the report was made? How should we hear each story in order to recognize the credible threads, especially when everything is hearsay? How do we make such determinations when so much is at stake? The rabbis thought in terms of "*migos*," but what about us?

To this day, women's voices are dismissed as untrue more readily than men's. Today, women know that the burden of proof is on them and they are rarely "just believed." If there is any doubt, many in our society tend to err on the side of protecting men, just as the mishnah does. Preserving a man's reputation is often more important than exposing something negative about his character, especially when an accusation can destabilize the institution of which he is a part. Will he be able to get a job in the future? Remain married? Be trusted as a father, partner, brother, or friend? But when women speak out, they bring damage upon themselves as well, just by giving voice to their experience.⁴³ To borrow a phrase from

⁴³ Here is one example of a woman who did not feel as though she could name those who sexually harassed her in the Jewish community. Danielle Berrin, "Jewish-American Journalist: Prominent Israeli Journalist Sexually Assaulted Me," *Haaretz*, October 27, 2016, <https://www.haaretz.com/israel-news/jewish-american-journalist-prominent-israeli-journalist-sexually-assaulted-me-1.5453792>.

Jennifer S. Hirsch and Shamus Khan's work about abuse on college campuses, cultivating "sexual citizenship" means that we work to undo the power dynamics that enable men to be trusted more than women.⁴⁴

Mishnah and Bavli Ketubot remind my students that we may still be resisting a needed shift in mindset. When my students can compare rabbinic sources to what they see and experience around them, they are reminded of the degree to which we continue to fall short ethically. Speaking through the lens of the principle of the "mouth that prohibits, is the mouth that permits" reveals that we may not be listening closely enough to the people around us. When the rabbis constructed the idea of *migo*, they did so to explain to themselves who was to be believed and who was not. But even if we disagree with the workability of the concept of *migo*, the rabbis prompt us to ask and think more deeply about why we believe what we do. As Crumpton instructs, we need to remain curious rather than judgmental, inquisitive rather than indifferent.⁴⁵

In thinking back to my students' interaction with the sources in tractate Ketubot, I find that they locate the gender inequities and the rabbis' desire to assert power and social control over women with ease. They interrogate the sources they encounter critically, building an image of rabbinic society in their minds. But they struggle with how to navigate our present world when it continues to be fraught with similar power imbalances that result in our ability to hear some voices and not others. While it is painful to read a Talmudic text where only days after a woman marries and claims to have been raped, she is not believed by her husband, hearing similar cases in "real" time is equally unsettling. Rabbinic texts continue to reinforce a male/female binary where men have authority and women are passive recipients. Men betroth women, and women are betrothed. The psychological impact of socially conditioning students to recognize this binary without pointing out how it continues to play out in our own world to its detriment creates more opportunities to

⁴⁴Jennifer S. Hirsch and Shamus Khan, *Sexual Citizens: A Landmark Study of Sex, Power, and Assault on Campus* (New York: W. W. Norton and Company, Inc., 2020), 228, 247–251.

⁴⁵ Crumpton, "Trigger Warnings," 141.

compartmentalize experiences of self and others into unworkable categories that are far too neat. Without unpacking our own experiences with marriage and sexuality, we fail to teach our students how to apply the same critical skill they use when reading rabbinic texts to reading the world of which they are very much a part.