



March 2024

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Recommended Citation

Cohen, Aryeh. "Moving Torah into the Street." *Journal of Textual Reasoning* 15, no. 1 (2024): 205-225.
<https://doi.org/10.21220/RPWZ-7N63>.

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MOVING TORAH INTO THE STREET

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Introduction

I lead a double life. I teach Talmud to rabbinic students during the day, but after a quick visit to a handy phone booth, I am the Rabbi-in-Residence at a Jewish social justice organization in which I teach Torah (in the widest sense of the term) to activists, and proclaim Torah on the streets to audiences ranging from ten to fifteen people to crowds of hundreds and sometimes thousands. In my rabbinical school teaching, especially in a seminar called “Issues of Justice,” I would like my students to, in some way, see the street as the context of the text that they are studying.

What I mean by “the street” is the ethical setting of a given injustice which would serve as the trigger for a campaign to rectify that injustice. That campaign could and most likely would involve various tactics, including advocacy to elected officials (“lobbying”), door knocking (“canvassing”), calling voters (“phone banking”), and also street demonstrations (“direct action”), to bring pressure on a decision maker, whether that is a legislator, a corporation or corporate leader, or the public reputation of a corporate or institutional bad actor.

Nonviolent direct action is the backbone of social justice movements. While only one of a number of tactics, it is important in that it accomplishes a number of things. First, it dramatically stages public

unhappiness with a given state of affairs. The opposition to a policy (investing money in a corporation which owns and runs private prisons, for example) is no longer abstract or theoretical, or “merely” names on a petition. The opposition is embodied in this group of people right here and right now.

Second, if staged well, direct action will gain free publicity via coverage by print and televised news media. This publicity will serve to shame and pressure the bad actors, publicize the cause, and attract more people to rally behind the movement for change.

Finally, if the situation warrants it and people risk arrest in acts of civil disobedience, a new level of narrative is dramatically written. A nonviolent direct action which includes people risking arrest is an open demonstration that, for example, the state is using coercive force in the service of corporations and against ordinary people; or perhaps the direct action challenges the criminal legal system to do in the light of day in the glare of a media spotlight what they would rather do behind closed doors or in the relative privacy of a back alley. At its deepest symbolic moment, the act of risking arrest calls into question the legitimacy of the law that is used in the service of injustice. When the law jails those who challenge injustice, it is the law itself that is challenged.

In this article, I am reflecting on the very basic issue of using nonviolent direct action *as a response* to questions of injustice. The story of Rabbi Aqiva taking to the street is a way for my students to see their way to that type of political acting as something that they could and perhaps should do.

Before getting too far into the analysis and discussion, I will introduce the story I am referring to. Here I will paraphrase it; later I will quote it in full and then analyze it.

The Empire declares that the study of Torah is a capital crime. Aqiva, in response, organizes a crowd of people in the public space and teaches them Torah. Pappus confronts him, telling him that he should not so brazenly confront Empire. Using a parable, Aqiva makes the point that if the Jews stop studying Torah, they are as good as dead anyway—and, of course, Aqiva continues his teaching. Soon after, Aqiva is arrested for his

actions, and not long after that, Pappus is also arrested, and they meet in jail, where Pappus admits to Aqiva that he was right in the first place (Berakhot 61b).

That is the story, and the students that I teach it to are training for the rabbinate. They are going to be rabbis, and the general tenor of the rabbinate, and the pressure of congregational boards, friends, professional associations, etc., reinforces the etiquette, the practices, the customs of what has come to be known as “respectability politics.” Rabbis don’t get arrested. Rabbis teach Torah, preach values, marry and bury, comfort and celebrate with their congregants. Every bone of their professional bodies reacts against the very notion that the legal institutions might be wrong; that the laws by which we order our life and society might actually be unjust.¹

This oppositional role is the role that the character of Aqiva’s friend Pappus plays in this story, saying to Aqiva: “Are you not fearful of this nation?” In other words, do you not know that we are occupied? That we are ruled by a powerful empire, and they create laws which we must follow?

Aqiva’s reaction to this actually comes earlier in the story. We meet Aqiva when Pappus first sees him. Aqiva has already taken the step of denying the might of the Empire to dictate that he behave unjustly, or that he follow unjust laws. This, then, is the path that I am opening for my students: the path that leads to the street, to the confrontation with the unjust law.

At the same time, I am mapping the process of finding grounding, justification, and inspiration for this path in the Talmud. The text, then, is both source and analogue.

When confronted with an injustice, I would want my students to seek some guidance in the Talmud. At the same time, I want them to analyze the Talmud with a critical and scholarly eye so that they may be discerning in their choices. That is, I would want my students to be able to

¹ It is worth noting that I am teaching mainly white Ashkenazi male and female, gay and straight students.

understand the text or story or *sugya* in its context (as much as is possible given the historiographical constraints) before understanding it or utilizing it in their context. This requires using the accepted tools of the discipline: source criticism and historical criticism, in addition to literary criticism and a familiarity with the way the early tradition commented upon the text.

At this point, I would like my students to grapple with how this text would translate into our street; how the problem we are facing a millennium and half later resonates with this text from Sassanid Persia. I am not looking for an ethical or a halakhic (Jewish legal) prescription. I am looking for an obligation which is born of identification. It is what Edith Wyschogrod calls “walking in the footsteps” of the text, laying the text over the current situation and then allowing the text, or the characters in the text, to impact the situation,² to guide our action.

In some situations, one can be sitting innocently at one’s desk, studying the discussion in b Baba Bathra 8b, for example, which seems to articulate a demand for worker justice, and wondering if those conversations might have an applicability to contemporary situations.³ However, on the whole, the world hits one first. Then, when one starts to articulate a response, if one is also drawn to Talmud and the rabbinic tradition, one looks to the text for guidance, inspiration, or a place from which to grapple.

The classroom study is methodological preparation for this eventuality, not a catechism of proper responses to all eventualities, à la

² As I’ve written elsewhere, this also allows the situation to impact the text. See Aryeh Cohen, “Enacting Resistance: Encountering Rabbi Aqiva in the Bet Midrash and on the Streets,” *The Journal of Textual Reasoning* 10:1 (2018): 72-84. <https://doi.org/10.21220/s2-xqyg-a685>. Martin Luther King makes a similar move in his reading of the parable of the Good Samaritan in, e.g., his “I’ve Been to the Mountaintop” speech, which was his last (<https://www.rev.com/blog/transcripts/i-have-been-to-the-mountaintop-speech-transcript-martin-luther-king-jr> at the 32:04 time stamp. Accessed 12.31.21).

³ See e.g., my *Justice in the City: An Argument from the Sources of Rabbinic Judaism* (Academic Studies Press, 2013), chapter 6.

Kant.⁴ By this I mean that in the classroom, one has the time, the peace of mind, and the resources to think through a response to an instance of injustice without the urgency of the need for immediate reaction. Rehearsing this method here paves a way that students will be able to follow as rabbis in other instances.

Finally, what is injustice, or, what is justice? In my book *Justice in the City*, I defined a just city this way:

A just city, a city that is defined as a community of obligation, is a polis in which the residents open themselves to the possibility of hearing the cries of the Stranger—and being compelled by those cries to respond... The obligation is first, to set up our cities such that others' needs will be urgently pressing upon the body politic....

Second, as a practice of both politics and piety, we ought to treat others as members of our community.

Justice, as it is found in a city, is a situation where everybody's needs are everybody's obligation. Every person, as Levinas might say, is obligated to respond to the vulnerability of the Other person, the person whom they meet. A city must mediate that interaction on a grand scale such that the needs of a mass population are seen and met.

Finally, there is also an obligation to respond to injustice: "The web of relationships which results from the desire to respond to the (anonymous) other in the community of obligation also leads to the demand that residents protest against injustice."⁵

This obligation to respond to injustice is essential to creating a just city or state, but it is also perhaps the most demanding as it leads one to transgress the commonly accepted barriers of civilized behavior, of public and private, legal and illegal. In the following, I am hoping to take my

⁴ See Immanuel Kant, *The Metaphysics of Ethics*, trans. J. W. Semple, T. and T. Clark, 1796. sec. 51: "The first and most necessary instrumental for conveying ethical information to the altogether untutored, would be an ethical catechism." (<https://oll.libertyfund.org/titles/calderwood-the-metaphysics-of-ethics>)

⁵ Cohen, *Justice in the City*, 88–89.

students through a process of recognizing in a story of Aqiva's resistance to empire an etiology of nonviolent direct action within a Jewish context.

I. The Aqiva Story of Resistance and Arrest Is an Independent Story

My first point, which is necessary for the rest, is that the Aqiva story of resistance and arrest is an independent Babylonian story that stands on its own and was only later attached to the martyrdom narrative. Lest anyone assume that I am bursting here into an open door, many scholars assume that the two stories are one. The most prominent of these scholars is perhaps Daniel Boyarin, who argues that the story "is a story of contention over martyrdom between rabbinic and Christian Jews."⁶ While other scholars do not impute the possible Christian significance to the interaction that Boyarin does, they also assume that the public resistance to the Roman prohibition led immediately or eventually to Aqiva's martyrdom.⁷

Here is the story:

Our Rabbis taught: Once the evil kingdom decreed that [Jews] should not study Torah, and that all who study Torah would be stabbed with a sword. Pappus Ben Yehudah came and found R. Aqiva, who was sitting, and teaching, and gathering crowds in public [*ba-rabim*], and a Torah scroll was in his lap. Pappus said to him: "Aqiva, are you not fearful of this nation?" [Aqiva] replied: "You are Pappus ben Yehudah of whom it is said that you are a great sage? You are nothing but a fool. I will explain with a parable. A fox was walking along the shore and saw fish who were schooling. He said to them: 'Why are you schooling?' They replied: 'For fear of the fishing nets which people have deployed to catch us.' He said: 'Come up onto the ground and we shall live together you and I, as our

⁶ Boyarin, *Dying for God*, 103.

⁷ Reuven Hammer attempts to square the circle by seemingly disconnecting the first and second stories by time and placing in between the arrest and the execution the several stories of Aqiva in prison teaching and deciding law. Hammer also creates a moment where Aqiva is transferred to a prison near Caesarea so that he (Hammer) can weave in to Aqiva's life story the tales of the Aqiva-Tinneus Rufus debates. See Reuven Hammer, *Aqiva: Life, Legend, Legacy* (Philadelphia: Jewish Publication Society, 2015), 156ff..

ancestors did.’ They replied: ‘You are fox, about whom it is said that you are the wisest of the animals? You are, rather, a fool. If now, when we are in the place that supports our life, we are thus [endangered]; if we were to go up on dry ground, the place which is our death, all the more so would we be [endangered].’ So too, you [Pappus]. If now when we are studying Torah of which it says: ‘For it is your life and the length of your days,’ we are thus [endangered]; if we sit idle how much the more so [would we be endangered].” It was said that it was not many days and they arrested R. Aqiva and incarcerated him in prison. They arrested Pappus and incarcerated him with [R. Aqiva]. Said R. Aqiva to him: “Pappus, why did they bring you here?” Said Pappus to him: “Happy are you R. Aqiva for you were arrested for words of Torah. Woe is to Pappus who was arrested for idle matters.”⁸

The story follows upon a midrash which elaborates upon a theme articulated in m. Berakhot 9:5.

A person is obligated to bless an evil occurrence in the same way as one blesses a good occurrence; for it says: “For you shall love God your God with all your heart, and with all your soul, and with all your might.” “With *all* your heart”—with both of your inclinations, the good inclination and the evil inclination.⁹ “With *all* your soul”—even if [God] takes your soul (i.e., your life).

This midrashic reading of Deuteronomy 6:5 is also found in t. Berakhot 6:7 (ed. Lieberman, p. 35) attributed to R. Meir; and also in *Sifre Deuteronomy Va-Ethanan* 32 (ed. Finkelstein, p. 55) anonymously.¹⁰

Bavli Berakhot attributes this midrash to R. Meir’s teacher, R. Aqiva, as part of a longer pericope.

It is taught [in a tannaitic text]: Rabbi Eliezer says: “If it [i.e., Scripture] says ‘with all your soul’ why does it say ‘with all your strength?’ If it said ‘with all your strength,’ why does it say ‘with all your soul?’ Rather, if

⁸ b. Berakhot 61b. The translation follows Oxford Opp. Add. fol. 23. For a literary analysis of this story see Yonah Fraenkel, *Darkhey Ha’agadah VeHamidrash*, 351–353.

⁹ Ishay Rosen-Zvi, *Demonic Desires “Yetzer Hara” and the Problem of Evil in Late Antiquity* (Philadelphia: University of Pennsylvania Press, 2011).

¹⁰ Interestingly, in *Sifre Deut.*, a different midrash on this verse is attributed to Rabbi Aqiva.

there is a person whose body is more precious to him than his wealth—therefore it says ‘with all your soul.’ If there is a person whose wealth is more precious to him than his body—therefore it says ‘with all your strength.’” Rabbi Aqiva says: “‘With all your soul,’—even if [God] takes your soul.”

In *Sifre Deut.*, Rabbi Eliezer’s midrash immediately precedes R. Aqiva, as here. However, in *Sifre*, the midrashic comment “even if [God] takes your soul” is cited anonymously prior to R. Eliezer’s comment, and a completely different midrashic comment is attributed to R. Aqiva. This text in *Berakhot*, therefore, is the only place where these two comments follow one upon the other, and the only place where the comment “even if [God] takes your soul” is attributed to R. Aqiva.¹¹ Since this midrashic pericope is the framing device for the story that follows, it is important that here the midrash is attributed to R. Aqiva. There is no connection, however, to the story quoted above.

The narrative itself builds quickly to a climactic confrontation, then slowly descends to the conclusion. There is an evil decree by the “kingdom” banning Torah study. Pappus finds Aqiva gathering large crowds of people in public [*in the rabim*].¹² Pappus confronts Aqiva about his brazenness or his daring. Aqiva’s somewhat quizzical¹³ but forceful response is that if the Empire wants to stop Jews from studying Torah, they would have to do it themselves. Jews (or at least sages) would not go quietly into the night.

In the next scene, Aqiva is arrested, and subsequently, Pappus is arrested. Pappus seems to admit that Aqiva’s arrest for teaching or

¹¹ In the Yerushalmi *Berakhot* parallel to the martyrdom story, Aqiva’s comment about this verse is very different. There he says: “I loved [God] with all my heart. I loved [God] with all my money. But ‘with all my soul’ I have not been tested.” That is, R. Aqiva might have an understanding of the martyrological implications of the verse, but he does not articulate them midrashically.

¹² I will return to this phrase at length further on.

¹³ Scholars debate the exact referent of the various characters in the parable.

studying Torah was more meaningful than Pappus' arrest on a trivial matter.¹⁴

To this point, there is no "martyrdom" or *kiddush hashem*/dying for the sanctification of God's name. There is a decree, a threat ("would be run through with a sword"), a public abrogation of the decree, a dispute over the prudence of this action, two arrests, and a vindication of the original action.

There is an internal literary structure to this story. Pappus challenges Aqiva: "Do you not fear this nation?" In the end, Pappus is brought to realize that *everybody* must fear this nation, whether or not they are abrogating a specific ordinance. Aqiva articulates his position that if Jews are "idle" [*b'taylim*] from Torah study, they are already in their place of death. In prison, Pappus says that he was arrested for "idle" things, while Aqiva should be happy for being arrested for, as it were, not being idle.

Significantly, the opening framing of the story, the midrash in which R. Aqiva is quoted interpreting "with *all* your soul" to mean "even if God takes your soul," is irrelevant to this story, in which nobody was either reciting the *Shma* or being killed.

In fact, as we see above, the first part of the story has a totally different midrash which serves well as an anchoring text. The verse "for it is your life and the length of your days" is deployed here to contrast with the

¹⁴ An important though incidental issue in the interpretation of this story is whether one stresses the opening scene in which Aqiva is found by Pappus as being *makhil kehilot barabim*, as I implied above, or alternatively stresses Pappus' statement here that he was arrested for *devarim beteylim*. Daniel Boyarin has argued that focusing on *devarim beteylim* leads one to the story of Rabbi Eliezer who is caught (*nitpas*) for sectarianism (*minut*) and is accused by the *hegemon* of involving himself with these frivolous things (*devarim beteylim*). Boyarin claims that the accusation there is "explicitly a reference to Christian sectarianism" in *Dying for God*, 104) If the point of the story is an argument about sectarianism, then a competition over martyrdom may be reflected in the tension between Pappus and Aqiva, as Boyarin argues (43). However, the phrase *devarim beteylim* itself is used many times in the Bavli, and it is hard to argue that most of them refer to Christianity (see, e.g., b. Berakhot 45a: "Just as one cannot have wheat without chaff, so too can one not have a dream without *devarim beteylim*."). On the other hand, the phrase *makhil kehilot barabim*, together with *sefer torah becheiko*, is found in only one other place in the Bavli, b. AZ 18b, in a story of confrontation with the Empire similar to ours.

seemingly meaningless life without Torah, or the fact that “death hath no dominion” if one is actually killed for studying Torah, which is the “real” life.

Moreover, there is an earlier version of the execution story in *y. Berakhot* 9:5 (14b).

Rabbi Aqiva was being tried by Tinneas Rufus the evil one. The time for saying the *qriyat shma* arrived. He [Aqiva] recited the *qriyat shma* and laughed. He said to him: “Old man, you are either deaf or you discount suffering.” [Aqiva] said to him: “That man should die! I am neither deaf nor do I discount suffering. Rather, all my days I have read this verse and I have been pained and said ‘when will all three come to my hand?’ ‘And you shall love the Lord your God with all your heart and all your soul and all your wealth.’ I loved him with all my heart. I loved him with all my wealth. However, I was not tested concerning with all my soul. Now that ‘with all my soul’ has arrived, and it is the time to recite the *qriyat shma* and I was not distracted. Therefore I recited and laughed.” He did not suffice to say it and his soul flew away.

This version does not include the decree forbidding Torah study, nor does it include the gathering of people in the *rabim* or the confrontation with Pappus, nor does it include the *mashal*, and it obviously does not include either Aqiva’s or Pappus’ arrest.

This seems to establish the martyrdom story as separate from the resistance/arrest story. In that story, Aqiva is tried before Turnus Rufus, with whom he has a colloquy based on Deuteronomy 6:5.¹⁵ It is possible that the last line of the story, as some scholars have suggested, is a later addition. However, it seems to be foreshadowed in Aqiva’s statement “Now [*k’don*] that ‘with all my soul’ has arrived...”.

¹⁵ But see Paul Mandel, *Was Rabbi Aqiva a Martyr? Palestinian and Babylonian Influences in the Development of a Legend*, in which he convincingly argues that the last (Hebrew) line of the (Aramaic) story was not original to the story, and that the Yerushalmi narrative was also not a martyrdom story. Rather, “Aqiva was able to turn the simple act of saying the *Shema* into political drama...” 317–318 and notes 22–23.

II. Other Examples of This Phenomenon: Rabbi Shimon ben Yohai and Rome

So far I have argued from literary-historical reasons that the resistance/arrest story is separate from the martyrdom story. Our next move is to see this story as a prompt for action. How do we get from Aqiva to the street, as it were? We are on the way there, but first, in order to reinforce the analysis that the Aqiva story in the Babylonian Talmud is a completely new story even though appended to a pre-existing Palestinian tradition, we will look at other stories in which we can identify the same phenomenon.

A story is told in *b Shab. 33b* in order to explain R. Yehuda bar Ila'i's title "the first speaker in every place."¹⁶ The first part of this story (as the first part of the story concerning R. Aqiva in *b Ber. 62b*) does not appear in the "parallel"¹⁷ story in *y. Shev.*

For Rabbi Yehudah, Rabbi Yosi, and Rabbi Shimon were sitting and Yehudah the son of converts was sitting next to them. Rabbi Yehudah began: "How beautiful are the actions of this nation! They established markets, they built bridges, they built bathhouses." Rabbi Yosi remained quiet. Rabbi Shimon bar Yohai replied, saying: "All that they built, they only built for their own needs. They built marketplaces to place prostitutes in them; bathhouses to pamper themselves; and bridges in order to collect tolls." Yehudah the son of converts went and related their words, and they were heard by the authorities. They said: "Yehudah, who praised, shall be raised in stature. Yosi, who was silent, shall be exiled to Sepphoris. Shimon, who demeaned, shall be killed."

It is the engineering feats by which the Romans are known, or which mark the provinces as Roman, which are the focus of Rabbi Shimon bar Yohai's criticism. (It is suggestive that in another, though perhaps related,

¹⁶ R. Yehuda is a Palestinian sage, as are all the characters in this story; however, this title is never applied to R. Yehuda in the PT.

¹⁷ More on whether the parallel story is actually a parallel story below.

halakhic context, Rava cites the State seizing trees and building bridges as an example of *dina de-malkhuta dina*/the Law of the State is the law.)¹⁸

This story, as mentioned above, is told to explain the origins of Yehudah Bar Ila'i's name: "the first speaker in every place." While this title is used in several places in the Babylonian Talmud, this story is only told here.¹⁹ The story not only reinforces the dialectic tension of rabbinic Romanness, or the marking of that tension centuries later in Sassanian Persia, but the story also succeeds in then rereading that very tension into the halakhic discourse in which Yehudah bar Ila'i appears. In other words, once Yehudah bar Ila'i is named as a beneficiary of Roman benevolence or gratitude in the bestowal of this permit, the proficient readers of the Bavli will always read the domestication of that marker as they read Yehudah's contribution to rabbinic discourse. Shimon bar Yohai's opposition to Rome, then, stands in opposition to the quotidian romanness of other rabbis—and even in their rabbinic function as purveyors of the tradition.

The continuation of the story in the Babylonian Talmud, a dramatic escape to a cave where Shimon bar Yohai and his son stay for twelve years, does have something of a weak parallel in the Palestinian Talmud. Looking at the two texts in parallel, we see that they are only loosely connected, at best.

y. Shevi'it 9:1 38d

I. *Rabbi Simeon ben Iohai was hidden in a cave for thirteen years, in a carob cave, until his body was covered with rust. At the end of thirteen years he said, should I not go out and see what voice is in the world? He went and sat at the entrance to the cave. He saw a catcher out to catch birds spreading out his net. He heard a heavenly voice saying "acquitted," and [the bird] was saved. He said, no bird will be adjudicated*

b. Shab. 33b

I. For Rabbi Yehudah, Rabbi Yosi, and Rabbi Shimon were sitting and Yehudah the son of converts was sitting next to them. Rabbi Yehudah began: "How beautiful are the actions of this nation! They established markets, they built bridges, they built bathhouses." Rabbi Yosi remained quiet. Rabbi Shimon bar Yohai replied saying: "All that they built, they only built for their own needs. They built

¹⁸ b. Baba Kama 113b.

¹⁹ b. Berakhot 63b, b. Menahot 103b.

without Heaven, so much less a human. When he saw that words of intercession were given, he said, let us go down and warm ourselves in the public baths of Tiberias.

marketplaces to place prostitutes in them; bathhouses to pamper themselves; and bridges in order to collect tolls." Yehudah the son of converts went and related their words, and they were heard by the authorities. They said: "Yehudah, who praised, shall be raised in stature. Yosi, who was silent, shall be exiled to Sepphoris. Shimon, who demeaned, shall be killed."

II. He said, we need to do something like our forefathers (Gen. 33:18): "He graced the entrance to the city," they were putting up duty free shops and selling at wholesale prices. He said, let us purify Tiberias. He took lupines, cut them up, and threw them down in irregular fashion. Where there was a corpse, it was floating and came to the surface. A Samaritan saw him and said, should I not make fun of this old Jew? He took a corpse, went, and buried it at a purified place. He came to Rebbi Simeon bar Ioḥai and said to him, did you not purify place X? Come, and I shall take out [a corpse] from there! Rebbi Simeon bar Ioḥai saw by the Holy Spirit that he had put it there. He said, I decree that the upper ones shall go down and the lower ones come up. So it happened to him. When he passed by Magdala, he heard the voice of the scribe who said, so bar Ioḥai purifies Tiberias? He said, it should come upon me if I did not hear that Tiberias once will be purified. Even so, you did not believe

I. Rabbi Shimon bar Yoḥai and his son, Rabbi Elazar, went and hid in the study hall. Every day Rabbi Shimon's wife would bring them bread and a jug of water and they would eat. When the decree intensified, Rabbi Shimon said to his son: Women are easily impressionable; there is concern lest the authorities torture her and she reveal our whereabouts. *They went and they hid in a cave. A miracle occurred, a carob tree was created for them as well as a spring of water.* They would remove their clothes and sit covered in sand up to their necks. They would study Torah all day. At the time of prayer, they would dress, cover themselves, and pray, and they would again remove their clothes afterward so that they would not become tattered. *They sat in the cave for twelve years.* Elijah the Prophet came and stood at the entrance to the cave and said: Who will inform bar Yoḥai that the emperor died and his decree has been abrogated?

me! Immediately he turned into a bone heap.

The story in the Babylonian Talmud continues and eventually comes to a piece of narrative that is parallel to the purifying graves in Tiberias. Shimon bar Yohai also kills an opponent, and finally delivers a coup de grace to the very same Yehudah son of converts who, purposely or not, instigated the episode: “Rabbi Shimon went out to the marketplace and he saw Yehuda, son of converts. Rabbi Shimon said: This one still has a place in the world? He directed his eyes toward him and turned him into a pile of bones.”

However, while there is mention in the Palestinian Talmud that Shimon bar Yohai hid in a cave for twelve years, the BT story that we are discussing, the discourse among the rabbis which precedes the hiding in the cave, has no parallel in the PT.²⁰ The phrase that is used to introduce the story, “For X, Y, and Z were sitting, and A was sitting next to them,” only ever appears in the Bavli in relation to (usually Babylonian) *amoraim*, except in this story, in which it refers to *tannaim*.²¹ In other words, this is a literary marker of a late Babylonian story.

III. Another Example of This Phenomenon: Rabban Gamliel and Rabbi Yehoshua

A more complicated example of this phenomenon follows. I cite this example as further proof that oftentimes stories that appear in the BT and

²⁰ The story in y. Shevi’it 9:1 38d follows a story of RaShBI confronting a man who is harvesting during the Sabbatical year. RaShBI curses him, and the man dies of a snake bite. The cave story is then related. It is possible that the death of the Sabbatical harvester is the reason for hiding in the cave, but it is in no way certain. The only hint that RaShBI was hiding for a reason is given in the phrase *kad hama deshadrkhan milaya*, which Sokoloff translates, “when he saw that matters had calmed down.” Shoshani, following Felix’s comments on the PT, claims that this is referring to the Roman death sentence; however, it could just as easily, and arguably more logically, refer to the immediately preceding story. In any event, our story does not appear, nor would it make sense in that context.

²¹ It is also possible that the introductory phrase of the story was added by the editor as a bridge to the previous story. This once again reinforces that the story itself was created apart from the story that follows it.

have roots or parallels in the PT, are actually new stories with their own agendas. Also, this is a good example that, sometimes, we can only get to the moral core of the story if we see that which is new about it.

One of the most famous and persistent rivalries in rabbinic literature is that between Rabban Gamliel, the head of the Sanhedrin, and Rabbi Yehoshua. Their disagreements on many points of law are found throughout the Mishnah. Their disagreement becomes political and perhaps personal when (m. Rosh Hashanah 2:8–9) Rabbi Yehoshua challenges Rabban Gamliel's ruling in a case which would decide when Rosh Hashanah and Yom Kippur would fall out. Rabban Gamliel very dramatically forces Rabbi Yehoshua to publicly bow to his authority and appear before him with staff and money on the day that Rabbi Yehoshua had determined to be Yom Kippur.

This is all background to a truly astounding literary piece found in b. Berakhot (27b–28a).

The story itself is longer than the average Talmudic tale, but on the surface it is about the comeuppance of an authoritarian, intimidating leader who is determined to humiliate a fellow sage. The "authoritarian" is, of course, Rabban Gamliel. The humiliated sage is Rabbi Yehoshua. This is the whole of the story as it is told in the earlier version in the Palestinian Talmud (y. Ta'anit 4). Rabbi Yehoshua is asked a halakhic question by a student, to which he replies. The student then asks Rabban Gamliel that same question, and Rabban Gamliel gives an opposing answer. The student informs Rabban Gamliel that Rabbi Yehoshua had told him different. Rabban Gamliel tells the student to wait till the next day and ask his question in the study house in front of all the students and sages.

The next day the student asks the question, Rabban Gamliel answers. The student replies that Rabbi Yehoshua had said the opposite. Rabban Gamliel confronts Rabbi Yehoshua, and Rabbi Yehoshua denies it. Rabban Gamliel then forces Rabbi Yehoshua to stand while the lesson continues, with Rabban Gamliel ignoring Rabbi Yehoshua in an act of humiliation. Finally, all those present have had enough, and they stop the lesson, stand

and remove Rabban Gamliel from his position, and nominate Rabbi Elazar ben Azaryah to be the head of the *yeshivah*.

The story continues, and Rabban Gamliel ultimately sees the error of his ways and apologizes to all present. He finally goes to Rabbi Yehoshua's house to apologize, and in the ultimate confrontation, he is shocked that Rabbi Yehoshua is impoverished. At first Rabbi Yehoshua refuses his apology, saying: "Do you not need to know this? Woe is to the people that you are their leader." Finally, Rabbi Yehoshua is appeased.

This version of the story, the Yerushalmi version, is a story teaching that leaders should not obdurately occupy their own positions and humiliate their opponents, since that will lead to unwanted consequences. In this telling, it is a story of the importance of pluralism for leadership and institutional strategy or guidance.²²

The Bavli reworks this story in a dramatic fashion—by adding in chapters that were not present in the Palestinian version. The most spectacular addition to the Bavli story is in the middle section. Thus, we miss the point if we read the story linearly, since the beginning and the end were already present to the Babylonian author. We must read the addition as the later part of the story and the point of the author.

There is a lot to the artistry of the Bavli story which will have to be glossed over. The Bavli author weaves Rabban Gamliel's slights toward Rabbi Yehoshua found in the Mishnah and even in the Talmud²³ into the complaint of the assembled sages prior to their removing Rabban Gamliel from his position. Then we are presented with this dramatic scene, which is totally absent from the Palestinian story:

It is taught: On that day they removed the gatekeeper and gave permission to the students to enter. For Rabban Gamliel had announced: All students whose outside [i.e., their robes indicating their status] did

²² In fact, the only mishnah cited is Yadayim 4:2, a mishnah which relates that Rabbi Elazar ben Azaryah was seated as head of the *yeshivah*. In a certain way, this story is told to explain that one line in the mishnah. The mishnaic disputes between Rabban Gamliel and Rabbi Yehoshua (aside from the specific one which forms the core of the story) are not mentioned.

²³ Another hint that this story is later than all the others.

not match their inside [i.e., their vocation as sages] shall not enter the study hall.

That day many benches were added to the hall. ...

Rabban Gamliel felt faint. He said: Perhaps, God forbid, I prevented Israel from Torah study. They showed him in his dream white cisterns filled with ashes [i.e., that the new students coming in were not worthy]. But that was not true. That was shown to him merely to calm his mind.²⁴

It is taught that *on that day* Mishnah Eduyot was taught. And every place [in Mishnah] where it is written *on that day*, it was that day [i.e., the day of the removal of Rabban Gamliel]. And even Rabban Gamliel himself was present in the study hall every hour.

Rather than a lessening of the quality of the Torah that was taught once Rabban Gamliel and his gatekeepers were removed and the people (“many benches”) gained entrance, there was an increase in study and understanding of Torah. Every law that is recorded as having been taught “on that day” is claimed for the day of the deposing of Rabban Gamliel, and this in addition to all of m. Eduyot.²⁵

In the final scene in this latest part, the Bavli author weaves in the story of Yehudah the Ammonite convert. This story is found in m. Yadayim 1:4. There is a biblical prohibition against Ammonites converting to Judaism. Yehudah the Ammonite convert came before the study hall and asked if he was allowed to “enter the community.” Rabban Gamliel follows the simple understanding of the verse and decides that he cannot. Rabbi Yehoshua argues the opposite and for various reasons claims that the prohibition against Ammonites no longer applies and Yehudah is welcome. Rabbi Yehoshua carries the day.

By placing this story at this point, the author makes the strong case that Rabbi Yehoshua is no longer intimidated by Rabban Gamliel, and this results in even more students of Torah (i.e., Yehudah the Ammonite

²⁴ Jeffrey L. Rubenstein shows that the phrase “but this was not true” is a marker of the *stam*. See Rubenstein n. 26.

²⁵ “On that day” laws: Sotah 5:2–5, Yadayim 4:1–4, t. Shabbat 1:17–19.

Convert) entering and studying Torah. This dramatic climax, to the astute reader of the Bavli, makes the point that it is the opening of the doors of the study hall to the masses that, rather than inviting chaos, increases the study of Torah.

To drive this point home even further, the addition to this story, which admits the unnamed masses of students who add so much Torah, is itself written and inserted by the anonymous author/editor, the so-called aggadic *stam*.²⁶ The Babylonian/stammaitic story is not only different, but contrary to the Palestinian story.

In order, then, to understand our story, the story of Aqiva and the decree to desist from teaching Torah, we need to understand that the story in the BT is a new story and not merely an addition to a PT story.

IV. *Mak'hil Kehilot Barabim* / Gathering Crowds in the *rabim*

The choice of the author to use the phrase *mak'hil kehilot barabim*²⁷ is not coincidental. It is highlighted by the fact that a later version of this story, in the Tanhuma,²⁸ uses a different locution. There, after the "Greek kingdom" decreed that Israel not study Torah, "R. Aqiva and his comrades went and *studied* Torah."²⁹ In the face of a prohibition against Torah study, Aqiva went off with his comrades and studied Torah. In our story, however, he does so much more. He gathers crowds in the *rabim* and studies and/or teaches Torah.

It is important to properly emphasize the difference between *mak'hil kehilot barabim* and "R. Aqiva and his comrades went and studied Torah." While the latter might take fortitude and courage, an ability to overcome risk and the threat to life and limb, the former is an act of public organizing; it is a process of convincing others that they too should risk

²⁶ See Jeffrey L. Rubenstein, "Criteria of Stammaitic Intervention in Aggada," in *Creation and Composition: The Contribution of the Bavli Redactors (Stammaim) to the Aggada*, ed. Jeffrey L. Rubenstein (Tübingen: Mohr-Siebeck, 2005), 417–40.

²⁷ Which appears in all MSS.

²⁸ *ki tavo* 2.

²⁹ *halakh rabi aqiva vahaveirav ve'asqu batorah*.

life and limb, that the act of resistance at hand is worth whatever consequences might come in its stead. These are two totally different activities.

This brings us to *barabim/in the rabim*. If the very act of gathering crowds in contravention of an Imperial decree was not political enough, I want to suggest that the fact that this act happened in the *rabim* marks it as happening in resistance to Rome.³⁰ What is the *rabim*? Boyarin (and others³¹) translates “in public,” ignoring the definite article “the.” But “in public,” or “publicly,” as Moti Arad points out, is redundant here, as what is being described is gathering crowds. By definition, crowds are public. The Talmud (b. Sanhedrin 72a–b) defines *farhessya*/public as ten people or ten Jews. Again, this would be redundant in our story. Arad adds that *rabim* and *farhessya*, of which *rabim* is the Hebrew equivalent, connotes “confronting the rulers, and in spite of the prohibition against gathering, and not being idle from work, and not reading the Torah.”³² As Arad shows, *barabim* assumes a political confrontation³³ with the non-Jewish powers.

Within the context of the Eastern Empire (which is not where or when this story was written, but where it was supposed to have happened), the *rabim* was probably imagined as something like the forum, where the court would have convened and where Roman justice would have been meted out. “[T]he openness of judicial spaces was not just a matter of religious prescriptions, but a defining feature of the public realm in

³⁰ I’m not sure that this needs to be reiterated, but I am not making a historical claim about Aqiva ben Yosef who may or may not have lived. I am making a literary claim about this story, which became part of the assembled wisdom about Aqiva the heroic Sage.

³¹ Davidson edition: “in public”; Soncino edition: “publicly.”

³² Moti (Mordechai) Arad, *Sabbath Desecrator With Παρησια (Parresia): A Talmudic Legal Term and Its Historic Context* (New York and Jerusalem: The Jewish Theological Seminary of America, 2009), 230

³³ As also Paul Mandel, “Was Rabbi Aqiva a Martyr? Palestinian and Babylonian Influences in the Development of a Legend,” in *Rabbinic Traditions Between Palestine and Babylonia*, ed. Ronit Nikolsky and Tal Ilan (Leiden & Boston: Brill, 2014), 334.

Rome.”³⁴ When R. Aqiva was said to gather masses in the *rabim*, it was a political act. I want to suggest that situating the story of Aqiva and Pappus in the *rabim* marks the story as political and as a story of resistance in that it is set in an imaginary forum—the ultimate marker of Roman-ness—where the protagonists would be confronting the symbols of Roman power.³⁵

Why is this a story of resistance and not martyrdom? First, as I mentioned above, there is no martyrdom. The story ends at the arrest. The scene in the jail gives the story closure, as Pappus finds out that Aqiva is correct. This is signaled by Pappus’ use of the phrase *devarim beteylim* (frivolous or worthless things) when he explains why he was arrested. This parallels Aqiva’s use of the verb form *b’teylim* (idle) in his upbraiding of Pappus.³⁶ Further, Pappus learns the lesson that Aqiva set out to teach him: that the Empire will harass them anyway, so why acquiesce to their unjust demands?

Moreover, the staging of Aqiva’s protest was political rather than martyrological. By this I mean that the ultimate purpose of the action was accomplished independently of Aqiva’s execution. The ultimate purpose of the action was to disrupt the authority structure under which a prohibition against learning Torah was enacted. The action of gathering people to study Torah in a place of political import accomplished its disruptive goal. The arrest of Aqiva was merely the proof of that success.

V. Moving Torah into the Streets

It is at this point that the conversation in class (re)turns to contemporary nonviolent direct action. I would have had my students read Judith Butler’s monograph *Notes Toward a Performative Theory of*

³⁴ Francisco de Angelis, “Ius and Space: An Introduction,” in *Spaces of Justice in the Roman World*, ed. Francisco de Angelis (Leiden & Boston: Brill, 2010), 10.

³⁵ I would suggest that if the author of the story was Palestinian, he would know that there were no forums in the Land of Israel. cf. A. Rodrigez-Anton, J. A. Belmonte, A. C. Gonzalez-Garcia, “Romans in the Near East: The Orientation of Roman Settlements in Present-Day Jordan,” *Mediterranean Archaeology and Archaeometry* 16.4 (2016): 154.

³⁶ Cf. Fraenkel, Yonah. *Darkhei Haagadah Vehamidrash* (Jerusalem: Yad Latalmud, 1991), 352.

Assembly.³⁷ Butler describes and analyzes the way that those people and performances which are hidden from view (workers and undocumented immigrants, for example) are made visible in the space which is created by mass demonstrations and direct action. Butler also says

So when we think about what it means to assemble in a crowd, a growing crowd, and what it means to move through public space in a way that contests the distinction between public and private, we see some ways that bodies in their plurality lay claim to the public, find and produce the public through seizing and reconfiguring the matter of material environments; at the same time, those material environments are part of the action, and they themselves act when they become the support for action.³⁸

Butler shows that bodies in the street create a reality—a space of appearance or a space of politics which contests the authority of the government. The bodies in the street create an ideal world in which there is a solidarity, a community of support, among those who are on the street together. This is what ultimately is happening with Aqiva in the *rabim*—he is creating a world of Torah learning which wrests authority from the world of the “Empire.”

It is this connection which I hope resonates with the students in order to draw them from a place of passivity to a place of public action. Understanding what it might look like to “stage” Aqiva’s actions against the Empire, that is, to actually go out into the street and transgress the barriers between private and public, between civil and uncivil, and between legal and illegal, might move my students to have this possibility of political performance as part of their repertoire of ways in which to act in and impact the world.

³⁷ Judith Butler, *Notes Toward a Performative Theory of Assembly* (Cambridge, MA: Harvard University Press, 2015).

³⁸ Butler, *Notes*, 71.