

WHY TEXTUAL REASONING?

ARYEH COHEN

University of Judaism

The question which titles this essay disguises and discloses several assumptions. To ask the question in the first place is to feel a need to answer the one who might ask: Why is there a need for reasoning in the context of textual study? The questioner, of course, refers to a formal system of reasoning, whether post- or Modern, theological or philosophical. Is it not so, this questioner pushes her challenge, that Talmud-Jewish text study *par excellence* –generates and is dependent upon its own reasoning? Once you subject your textual study to the gaze of foreigners you have truly gone to graze in alien fields. No longer might you claim the mantle of Talmudist—you are at best a *darshan*, a preacher, and at worst a charlatan who feeds on the latest fad of the academic world and whose work is the latest form of *megaleh panim batorah shelo kahalakhah*, uncovering facets of Torah which are not legitimate.

We might evade the heart of the question by replying that all textual understanding is framed by some form of reasoning, whether ideological or philosophical, theoretical or historical. If we proclaim our theoretical investments before we start, we are both more accountable and less obfuscatory in our readings. With this answer, however, we run the risk of our readers challenging us: You have deflected this questioner with a thin reed. She of the positivist inclinations is distracted when forced to

confront the theoretical investments she did not know she had when investigating the “text in itself”. What would you say to us who do not sit in that place, and yet still ask: Why Textual Reasoning? Are you not making the Talmud a means to an end? Are you not using the language and rhetoric of Talmud merely as a vehicle for your philosophical goals?

For this questioner we offer the following. As a Talmudist the language I speak is that of the Talmudic tradition. The Talmudic texts are those that offer themselves when thought arises. However, it is the claim of the ethical and philosophical concerns that draws me as a textual reasoner. That is, the realization that one must look out of the four cubits of the study hall, lest one be mired in an amoral solipsism, is the move to textual reasoning. The Talmudist brings her texts and their conceptual vocabulary and her theoretical framework to the table of ethical and philosophical discussion. Drawn there by the same pull that the philosopher or ethicist feels, the Talmudist who is a textual reasoner does not claim primacy for her texts, yet cannot think without resort to them. They are the clothes that reason wears and the language reason speaks when reason works its way through and from her.

The engagement in the conversation that crosses borders established by the discipline of Talmud study also challenges the textual reasoner who is a Talmudist to turn a critical eye on her own study hall. The ominous warning of the American legal theorist Robert Cover hovers over her study: “Legal interpretation takes place on a field of pain and death.”¹ This is the motivation for keeping one eye fixed on the world outside the *bet midrash*, even while being engaged in matters that are “at the heights of the universe.” Reading in this way forces the Talmudist to tarry at those textual breaks which send one out to engage with the world standing at the gates.

I offer the following as an example of such a reading/reasoning.

¹ “Violence and the Word,” in *Narrative, Violence and the Law: The Essays of Robert Cover*, eds. Martha Minow, Michael Ryan, and Austin Sarat (Ann Arbor: University of Michigan Press, 1992), 203.

Mishnah

One is coerced to [participate in the] building of a gatehouse and a gate for the [joint] courtyard.

Gemara

This implies that the building of a gatehouse is a laudable thing. However, there is [the story of] that righteous person whom Elijah spoke with [regularly]. He built a gatehouse for his house, and Elijah no longer spoke with him. [This implies that the building of a gatehouse is problematic.]

It is not a difficulty. This one [built by the person Elijah stopped speaking with] was inside [the gate], and this one [in the Mishnah] was outside [the gate]. Or, if you wish to say that both [refer to gatehouses that] were outside, it is still not difficult. This one [in the Mishnah] had a door, and this one [built by the person Elijah stopped speaking with] had no door. Or, you wish to say that both [refer to gatehouses that] had doors, it is still not difficult. This one [built by the person Elijah stopped speaking with] had a lock on it, and this one [in the Mishnah refers to a door that] had no lock on it. Or, you wish to say that both [refer to gatehouses that had doors] with locks on them, This one [built by the person Elijah stopped speaking with] had its lock [and key facing] inside, and this one [in the Mishnah] had its lock [and key facing] inside.²

Section One: Textual

The mishnah that generates this *sugya* (talmudic discussion) is found in a chapter which discusses the obligations of neighbors one to another and then the obligations of citizens of a town to each other. The situation discussed here specifically is one which was, apparently, quite prevalent in Roman period dwellings in Palestine. The neighbors all owned connected dwellings which surrounded and faced on a courtyard. The entrance to the apartments was through the courtyard, and the entrance to the courtyard was by way of a gateway at one end of the courtyard. To get to their dwellings, the residents would have to pass through the joint courtyard into their own houses. Access of both residents and others to

² B. Baba Bathra 7b.

the courtyard could be limited by a gate and a gatehouse. Having a courtyard in joint ownership raises many questions familiar to anyone who has ever lived in a situation of joint ownership (i.e. condominium, joint tenancy, dormitories): Who is responsible for what? What might be stored in the joint area? If repairs or improvements “need” to be made, who decides that they need to be made? Who decides who must pay for them?

The *sugya* itself is apparently stammaitic. That is, it was apparently part of the latest anonymous editorial layer of Talmudic textual production. In the printed editions, this *sugya* is the first comment on our mishnah, followed by a line by line reading of the mishnah which introduces a different version of this mishnah apparently drawn from another source.³ In some of the manuscripts the order is reversed with this stammaitic *sugya* following the line by line reading. The *sugya* is in Aramaic and there are many textual variants. All this, according to accepted scholarly canons,⁴ seems to point to the fact that it is late in composition.

There are a number of questions that this short piece provokes. As we start reading the text, the *stam* (editor) draws what seems to be a valid conclusion from the Mishnah. Since the partners to a joint courtyard are mandated to coerce one another to pay for the building of a gatehouse, this must mean that building a gatehouse is good thing—both morally and financially. That is, the law would only mandate coercion in a situation where there was a material benefit (in this case, perhaps the protection of goods in the courtyard); and where the action mandated was not morally objectionable. In order to unsettle this notion, the story of Elijah and a certain righteous man is introduced. In that story Elijah stops consorting with the man after the man contributes to the building of a gatehouse (or

³ This part of the *sugya* is not reproduced above.

⁴ Summarized in the introduction to Shamma Friedman, “A Critical Study of *Yevamot* X with a Methodological Introduction,” in *Texts and Studies: Analecta Judaica*, ed. H. Z. Dimitrovski (New York: Jewish Theological Seminary of America, 1978), 1:277-441.

actually builds the gatehouse) in his own courtyard. This seems to imply that Elijah disapproved of the building of a gatehouse.

Two questions follow from this. First, what is the reason for the disapproval? Second, why is a story about Elijah quoted as a legal source on par with Mishnah in order to problematize the law found in the Mishnah? While a revelation from Elijah (*gilui Eliyah*) is considered an authority in later mystical circles, Rabbinic Judaism famously prides itself on being a legal system whose sources are traditions and study. What legal source is this Elijah story pointing to that is so important that the stam considered it on par with the Mishnah itself?

As for the first question, the medieval commentators are united in their understanding of Elijah's disapproval. The eleventh-century expositor of the Talmud, R. Solomon ben Isaac of Troyes (known by the acronym Rashi), is typical of the rest. Commenting on the phrase "And Elijah no longer spoke with him," Rashi comments:

For it [the gatehouse] gates off the poor people who are shouting [*tzo'akim*] [for money or assistance] and their voices are not heard.

Further on Rashi comments on the phrase "inside" (denoting that the gatehouse which Elijah deplored was inside). Rashi comments:

inside: the court. It is a deplorable thing since the gate of the courtyard is locked and the poor person shouts [*tzo'ak*] and the gatehouse which is inside buffers the voice.⁵

There is a unanimity among the medieval commentators that the reason that building the gatehouse is wrong is that it doesn't give the poor access for alms since their voices are not heard by those in the houses.

This is a very powerful explanation and one can trace it back to the gaonic literature of the eighth to tenth century. Yet it does not have an obvious basis in the text. What is it that triggered this heremeneutical move, which was so strong that it was universally accepted? To strengthen the question, I point to the fact that more mundane parts of the discussion are under dispute. For example, the next generation of Rabbinic

⁵ And cf. *Yad Ramah* and *Tosafot ad locum*.

commentators, (Tosafot), disagree over whether the gatehouse itself was inside or outside the courtyard. This disagreement is a result of an ambiguity generated by the use of pronouns in the *sugya*. Nevertheless, no one challenges the assumption that the reason for the denigration of the gatehouse is that it does not allow for the residents of the house to hear the cry of the poor.

It should be noted that these commentators are cognizant of the radical demands of this prescription authored by Elijah. The obligation towards the poor overrides one's legitimate interest in protecting one's private property. The poor must be a factor taken into account when creating public policy on issues of personal security. This is a far-reaching demand. The question then stands: What is the source for this reasoning?

We can now turn to the other question I raised above. Why is a story about Elijah quoted as a legal source on par with Mishnah?

Elijah plays a number of connected roles in the Babylonian Talmud. His most prominent role seems to be mediator between heaven and earth. When Rabbi Yossi enters into a ruin in Jerusalem to pray (b. Berachot 3a) it is Elijah who has to inform him that he should no longer do that, and that the cooing of a dove that R. Yossi had heard was really God mourning. When R. Eviatar and R. Yohanan debate the meaning of a verse in Judges (b. Gittin 6b), Elijah appears to tell them that God studies the words of both.

Another role, connected to this one, is that of moral arbiter. B. Ketubot 106a relates that R. Anan (a student of Shmuel who was one of the founders of the Academies in Babylonia in the late third century) normally studied with Elijah. When R. Anan (who was a judge) acted in a way that might have been perceived as prejudicing a case before a colleague, Elijah stopped visiting him. It was after R. Anan repented that Elijah returned to continue their studies. It appears that Elijah clarifies the high standard to which judges must be put. His appearances serve as signposts, pointing to a higher order of morality. But our *sugya* differs from the case of R. Anan, since its implications are not played out for the moral elite, but make a claim on everyone. Elijah's appearance here, then, cannot be

explained by other *sugyot*, but the question it raises, like our first question, also still stands: To what does Elijah's appearance point us?

On its surface, the Talmud does not have answers to these two questions. In order to make sense of the text, the reader is called to another discourse. The reader is called to reason.

Section Two: Reasoning

Robert Cover writes the following:

No set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning. For every constitution there is an epic, for each decalogue a scripture. Once understood in the context of the narratives that give it meaning, law becomes not merely a system of rules to be observed, but a world in which we live.⁶

The challenge that flows from Cover's statement (which, as I have argued elsewhere and often,⁷ describes Talmudic law very well) is to find the narrative that might locate and give this law meaning. Wherein do we find the cry of the poor as a theologico-ethical grounding for law? I want to suggest that Rashi's reading of the *sugya* is based on what we might characterize as a Levinasian ethical understanding. Rashi's comments allude to a foundational moment in the religious history of God and Israel—a moment of hearing which grounds the ethical relationship.

It has become commonplace to accept Levinas' understanding of the Face of the other as the grounding moral summons.

The facing position, opposition par excellence can be only as a moral summons. This movement proceeds from the other. The idea of infinity, the infinitely more contained in the less, is concretely produced in the form of a relation with the face. And the idea of infinity alone maintains

⁶ "Nomos and Narrative," in *Narrative, Violence, and the Law*, 96.

⁷ Aryeh Cohen, *Rereading Talmud: Gender, Law and the Poetics of Sugyot* (Brown University Series in Jewish Studies, Scholars Press, 1998) esp. Chapter Five; "Giddul's Wife and the Power of the Court: On Talmudic Law, Gender, Divorce and Exile," *RLAWS: Southern California Review of Law and Women's Studies* 9:2 (Spring 2000), 197-226; "Beginning Gittin/Mapping Exile," in *Beginning/Again: Towards a Hermeneutics of Jewish Texts*, eds. Aryeh Cohen and Shaul Magid (New York: Seven Bridges Press, 2002).

the exteriority of the other with respect to the same, despite this relation. ... But what is produced here is not a reasoning, but the epiphany that occurs as a face.⁸

For Levinas, it is the face to face, the infinitely more that is in the face of the Other, which summons one to moral action.

Building on Levinas' insight that it is the presence of the Other which is a summons to moral action, I would like to suggest, following my reading of Rashi, that for Rabbinic law it is actually the voice of the other.

Rashi, as cited above, explains that the problem of building a gatehouse is: "For it [the gatehouse] gates off the poor people who are shouting [*tzo'akim*] [for money or assistance] and their voices are not heard." Why does Rashi insist on poor people whose cries are not heard? Rashi repeats this exact formulation again in the second comment cited above.

I want to suggest that the intertext for Rashi's comment is Exodus 2:23-24: "It was, many years later, the king of Egypt died. The Children of Israel groaned from the servitude, and they cried out (*vayiz'aku*); and their plea-for-help (*shav'atam*) went up to God, from the servitude. God hearkened to their moaning (*na'akatam*)."⁹ This verse marks the first turning point of the Exodus story. God's hearing of Israel's cries is the moment of moral summons—the moment that leads to the actions of the Exodus. This moment is enshrined later in the Biblical law of caring for the oppressed and the poor and the widow:

Exodus 22

20 Now a sojourner you are not to maltreat, you are not to oppress him, for sojourners were you in the land of Egypt. 21 Any widow or orphan you are not to afflict. 22 Oh, if you afflict, afflict them ...! For (then) they

⁸ Emmanuel Levinas, *Totality and Infinity*, trans. Alphonso Lingis (Pittsburgh: Duquesne University Press, 1969), 196.

⁹ Translation from Everett Fox, *Genesis and Exodus: A New English Rendition with Commentary and Notes* (New York: Schocken Books, 1990).

will cry, cry (*tza'ok yitz'ak*) out to me, and I will hearken to their cry (*tza'akatam*).¹⁰

The thing to note here is the congruence of the proscriptions against oppressing the stranger, the widow and the orphan, being in Egypt and crying out to God. You shall not oppress the sojourner, the widow or the orphan because when you were a sojourner and marginalized in Egypt you cried out (*za'akah=tza'akah=na'akah*) for help and God answered you. And if you do not hear the sojourner's cries (*tza'akah*—as Pharaoh did not answer your cries (*tza'akah*) (Exodus 5:15ff)—God will hear their *tza'akah* as God heard your *tza'akah*. The command again is the command of *imitatio Dei*.

Rashi's comment on our *sugya* links this discussion, the blocking out of the *tza'akah* of the poor, to the covenantal context—the originary Divine hearing in Egypt.

This, then, is what Elijah's appearance points to. The building of the gatehouse blocks the possibility of the moral summons, the ethical moment—the moment of hearing the cry of the Other. The story of Elijah's appearance and disapproval is brought to jar the reader into realizing the gravity of effacing that moment. It is because of that gravity—the originariness of the moral summons of the cry of the Other—that Elijah's disapproval is used to, and useful in, challenging a mishnaic text.

Conclusion

One might read Elijah as the intervention of theory, or perhaps Elijah's absence as the call to reasoning. Elijah's intervention, pointing at the grounding moment of the ethical summons, forces the reader not only to reason through and, thereby more clearly understand, this specific *sugya*. The reader/reasoner is also forced to hear the cry of the text as it confronts or intersects with her life outside the four cubits of the library or classroom or office. Elijah's disappearance not only serves to unsettle the Mishnah, it unsettles our lives outside the text. This thinking through texts to the claims of the world outside the *bet midrash* is Textual Reasoning.

¹⁰ Ibid.