

Subversive Aggadah: The Demotion of Imagination and Narrative in the History of Halakhic Development. The Context of the Rav Rehumi Aggadah

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An excellent example of aggadic narrative appears in the context of the mishnaic *sugya* discussing Talmudic tractate Ketubot 5:6, which states:

Torah students may go forth to Torah study for thirty days without (their wives') permission. Workers (may do so for) one week.

The conjugal obligations imposed by the Torah are: For men of leisure: daily. For workers: twice weekly. For donkey drivers: once weekly. For camel drivers: once (missing punctuation?) For sailors: once in six months. These are the words of R. Eliezer.¹

The Jewish wedding contract (*ketubah*) specifies that a man owes his wife conjugal rights at her discretion. The mishnah's purpose in this passage is to detail what a woman may reasonably expect in the way of frequency of sexual intimacy. Those expectations generally correspond to how physically taxing her husband's occupation is, or to the extent his business takes him away from home for long periods of time. It also indicates that some husbands may leave their wives for what might be described as spiritual retreats or professional development opportunities without asking their permission, though this would mean denying the wives their sexual prerogative under the terms of the *ketubot*. Though left implicit in the mishnah, in general the wives of Torah students could expect their husband's intimate attention on Friday evenings when they are free from the intensity of their study and its consequent physical impact.² Nevertheless, the mishnah is clear: Students could leave their wives for thirty day study sessions without their wives' agreement. Even a worker, who theoretically owed his wife sexual intimacy twice a week, could leave for a one week Torah study event without asking his wife. The list is undisputed and attributed to R. Eliezer.³

¹ משנה ו, משנה מסכת כתובות פרק ה'
תלמידים יוצאין לתלמוד תורה שלא ברשות שלשים יום הפועלים שבת אחת העונה האמורה בתורה הטיילין בכל יום הפועלים ...
שתיים בשבת החמרים אחת בשבת הגמלים אחת לשלשים יום הספנים אחת לששה חדשים דברי רבי אליעזר

² bKetubot 62b and Maimonides, Laws of Marriage 14:1-2 are the Talmudic and Codes sources for a Torah student's sexual obligation to his wife. During the weekday when study was the center of the Torah student's life, the mental effort put into his study was viewed as physically exhausting as that of any worker. This says a lot about the Sages' view of the mind-body connection. I myself and others who have studied in a *bet midrash* have had the experience of literally sweating over a Talmudic passage.

³R. Eliezer b. Hyrkanos is a second generation *tanna*, i.e., a contributor to the Mishnah. He lived c. 90 CE. The classical modern work on R. Eliezer is Yitzchak D Gilat, *R. Eliezer Ben Hyrcanus - a Scholar Outcast* (Ramat-Gan: Bar-Ilan University Press, 1984).

Without going into further detail regarding this mishnah, let us turn to the talmudic passage that discusses this rule governing students, which I will paraphrase.⁴ The passage begins with the rule that a woman who marries a sailor can reasonably expect sexual intimacy with her husband only once every six months. After all, sailing around the Mediterranean basin would probably bring him home only every half year. But the *sugya* quickly turns from this mishnaic concern to the final words of the mishnaic list of *ketubah*-guaranteed conjugal rights: “these are the words of R. Eliezer.”

The fact that R. Eliezer’s views are not contested in the mishnah suggests that his outline of the conjugal rights a woman can expect from her husband is accepted as law. And indeed, the first speaker in the *sugya* says as much: “Rav Beruna said in the name of Rav: The law follows R. Eliezer.” Of course it would be inconsistent with the tradition of talmudic discourse to leave things at that, especially since another major amoraic scholar received a different tradition from Rav: “Rav Ada bar Ahava said in Rav’s name: These (rules regarding different professions and conjugal rights) are the words of R. Eliezer, but the Sages say, ‘A student may leave for Torah study for two or three years without (his wife’s) permission.’”

At this juncture in the Talmudic discussion we are faced with a problem. Two second generation amoraic teachers (c. 250), Rav Beruna and R. Ada bar Ahava, have cited their master, Rav (c. 220), one of the major figures of first amoraic generation; but the traditions they have cited are in conflict. Should Torah students follow R. Eliezer, or should they accept the view of the majority of Sages? The difference between the two positions is significant: the first permits a Torah student to leave his wife without her consent for thirty days, an effectively minor exception to the normal *ketubah* arrangement. The second view—that of the Sages—allows a man who studies Torah to leave his wife without her agreement for two or three years at a time. Such an arrangement renders the *ketubah* stipulations regarding her conjugal rights essentially meaningless.

Following the enunciation of these two traditions of Rav, the Talmud provides a report by Rava, one of the most significant *amoraim* of the fourth generation (c. 340) about how Torah students actually behaved. I will explain his comment according to its literal meaning in Babylonian Talmudic Aramaic first and according to Rashi’s commentary next. Rava reports, רבנן אדרב אדא בר אהבה ועבדי עובדא בנפשייהו. סמכו. Translated idiomatically this would mean, “The students relied upon R. Ada bar Ahava, and they themselves acted accordingly.” In other words, the practice was for students to leave their wives for years at a time. Rava, at least according to this understanding of his words, merely describes the actions of Torah students. He does not comment on whether the law they established by voting with their feet was fair or unfair to wives, inconsiderate of their needs or feelings, or an unethical violation of the *ketubah* contract. It is simply halakhah by virtue of its widespread acceptance by the Torah students.⁵

⁴ bKetubot 62b

אחת לששה חדשים, דברי ר' אליעזר. אמר רב ברונא אמר רב: הלכה כר"א. אמר רב אדא בר אהבה אמר רב: זו דברי ר' -הספנים
בל חכמים אומרים: התלמידים יוצאין לת"ת ב' וג' שנים שלא ברשות. אמר רבא: סמכו רבנן אדרב אדא בר אהבה ועבדי אליעזר, א
עובדא בנפשייהו. כי הא דרב רחומי הוה שכיח קמיה דרבא במחוזא, הוה רגיל דהוה אתי לביתיה כל מעלי יומא דכיפורי. יומא חד
השתא אתי, לא אתא, חלש דעתה אחית דמעטא מעינה, הוה יתיב באיגרא, משכתייה שמעתא, הוה מסכיא דביתהו השתא אתי
אפחית איגרא מתותיה ונח נפשיה.

⁵In a case where a variety of halakhic options were available the authoritative rule was often determined by what the people were doing. See bBerakhot 45a and b-Eruvin 14b. These grassroots decisions based on known rabbinic halakhic dicta had the full force of law.

The last word of Rava's report, הובנפשיי, means in Aramaic "by themselves" or "they themselves" since נפש in Aramaic is equal, at least in this context, to the Hebrew עצם, "self".⁶ In Hebrew, however, נפש has the exclusive meaning of "soul," and it is in this sense that Rashi, the eleventh century biblical and Talmudic commentator, chose to understand the word. He writes in his Talmud commentary:

והוא בא להם ליטול מהם נפשות, שנענשים ומתים.—כוותיה. בנפשייהו-עבדי עובדא

"They (the students) actually acted": according to him (i.e. Ada bar Ahavah). "At the cost of their soul": And (following him) caused them to have their souls taken from them because they were punished and died.

Why is Rashi's interpretation of this passage so different from the plain meaning of Rava's report? The answer lies in the aggadah about Rav Rehumi that follows Rava's description of student behavior in the Talmud. A critical reading of that story and its relationship to the rest of the *sugya* will show that it is, in fact, a redactional addition to the material preceding it. The original material ended with Rava's nonjudgmental description of students leaving for Torah study for two or three years at a time without their wives' agreement. But in the additional story of Rav Rehumi it is indicated that abandonment of one's wife for extended periods of time—even time devoted to Torah study—may cause tragedy rather than growth in learning. The following is that story:

ב רחומי הוה שכיח קמיה דרבא במחוזא, הוה רגיל דהוה אתי לביתיה כל מעלי יומא דכיפורי. יומא חד משכתייה ר שמעתא, הוה מסכיח דביתהו השתא אתי השתא אתי, לא אתא, חלש דעתה אחית דמעטא מעינה, הוה יתיב באיגרא, אפחית איגרא מתותיה ונח נפשיה.

This translation-outline of the story points out the discrete sections that form its "scenes":

- 1) Rav Rehumi was to be found before Rava in Mehoza.
- 2) It was his regular practice to go to his home each eve of the Day of Atonement.
- 3) One day [of Atonement] a traditional teaching drew him in.
- 4) His wife was intently watching for him [saying,] "Now he will come. Now he will come." [But] he did not come.
- 5) She became depressed. She caused a single tear to fall from one eye.
- 6) He [Rav Rehumi] was sitting on a roof.
- 7) The roof fell in beneath him and he died.

Some Initial Interpretive Issues Related To The R. Rehumi Story

The Rehumi story is introduced by the Aramaic words כּי הָא דְרַב רְחוּמִי meaning "like that case of Rav Rehumi." Here the "case" functions as a cautionary about students who go away from

⁶ See as examples of this usage in the singular (בנפשיה) bBerakhot 61b; bPesahim 110b; bMegillah 11b; bMo'ed Qatan 16a; bYebamot 64b; bKetubot 22b; bBaba Batra 88a. Examples of the use of the plural (בנפשייהו) appear in our *sugya* and in b'Avodah Zarah 28a. The meanings range from "by themselves" to "to themselves."

their wives for long periods of time. The Rehumi narrative is not a statement by Rava saying that the students' decision was taken at the risk of their lives. Rather, the story itself includes Rava as a character, though not as the main protagonist. Note, the story says that "Rav Rehumi was to be found before Rava in Mehoza." It does not say, "And just to show you what risk these students who follow R. Ada bar Ahavah are at, I, Rava, will tell you about a member of my academy, Rav Rehumi who did this, and what happened to him."

Further, close reading of the Rav Rehumi story shows that there is no real analogy between Rav Rehumi's behavior and that of the students referred to by Rava in the preceding passage. Rav Rehumi, unlike the students, returns home annually right before the beginning of Yom Kippur. This is his regular practice, and his wife expects his annual return. Hence, he was never away from her for "two or three years." Nor does he seem to leave without her permission.⁷ This is rather the regular arrangement they have worked out between them. Indeed, it is so regular that she is expectantly watching for his arrival saying, "Now he will come. Now he will come." It is his failure to arrive at the appointed time that shatters the contract between them and causes her breakdown. And it is her breakdown and falling tear that causes the roof to crumble beneath Rav Rehumi.

Though the Talmud cites the legal views of an actual Rav Rehumi five times in halakhic contexts,⁸ in this aggadah his name is used in ironic fashion and is based on the Aramaic verb, "to love." As the scenes progress, we see Rehumi involved in an unloving violation of an expectation his wife has of him. Due to the placement of this narrative in a Talmudic conversation about dedicated Torah students, Yonah Fraenkel understood Rehumi's name as a sign of his love for spiritual Torah, a love that overcomes the human love of a physical wife. I disagree with Fraenkel⁹ and the many who have chosen to follow him.¹⁰ Rather, I would suggest

⁷ Assuming that Rehumi's wife had given him permission to leave her to study Torah, he could remain away from her for as much time as she had agreed to. See bKetubot 61b. His failure to return at the appointed time would violate his halakhic agreement with her. That should have been the punishable offense. The story makes clear, however, that the halakhic violation was not the cause of Rehumi's death. Rather, his wife's disappointment and the tear it engendered caused his demise. In this way the Rehumi aggadah is particularly subversive: his "aggadic" offense was deadlier than his halakhic one!

⁸ b'Eruvin 11a; *ibid.* 14b; Pesahim 39a; Zevahim 77a; Hullin 89a. The Babylonian Talmud knows of two sages named Rehumi. One is a fourth generation *amora* (c. 310-340 CE); the other is a sixth to seventh generation *amora* (400-460 CE). The protagonist of our narrative is the first Rehumi since the narrative connects him to the major sage of the fourth generation, Rava.

⁹ Yonah Fraenkel, Professor of Talmud at Hebrew University, was the father of the literary critical study of the "miniature" Talmudic story. His seminal works are *'Iyyunim B'olamo ha-Ruhani shel Sippur ha-Aggadah* (Tel Aviv: Hakibbutz ha-Meuḥad, 1981) and *Darkei ha-Midrash veba-Aggadah* (Givatayyim: Yad ha-Talmud, 1991). Fraenkel deals with the Rehumi narrative in *'Iyyunim B'olamo ha-Ruhani shel Sippur ha-Aggadah*, pp. 100-103.

¹⁰ Others who have used Fraenkel's method to interpret the Rehumi story for a variety of purposes are Ari Elon, "Alma Di," *Shedemot* 114:83-85 (no place of publication: The Kibbutz Movement, 1990); (Yair Barkai and Udi Li-On, *Sippur ha-Aggadah* (Jerusalem: The Schoen Institute for Creative Jewish Education and The Ministry of Education and Culture, 1984), pp. 4-5; Jeffrey Rubenstein, *The Culture of the Babylonian Talmud* (Baltimore and London: Johns Hopkins University Press, 2003), pp. 104, 106, 108, 110-111, and 118; Shulamit Valler, *Women and Womanhood in the Talmud*, *Brown Judaic Studies* 321, trans. Betty Sigler Rozen (Providence: Brown University Press, 1999), p. 53-54.

that this story is in fact a criticism of Rehumī, and indicates that while he loves his public appearance as a Torah student his behavior renders the sincerity of that behavior questionable.

My contention is based on two factors that I think were missed by Fraenkel in his rather brief interpretation of the story. First, there is the fact that Rehumī is not called Rava's student. Rather, the Talmud describes him as "one who was to be found before Rava." Had he been a student he would have been called "R. Rehumī, the student of Rava" (*R. Rehumī talmidei de-Rava*). Second, Fraenkel assumes that a phrase in the story *yoma had* means "one Yom Kippur" since that day is the main temporal context of the story. However, *yoma had* throughout the Talmud means simply "one day," not "one Yom Kippur." How this makes a difference will be discussed in our analysis of the Rehumī narrative.

The Story Of Rav Rehumī: Narrative Art And Imagination

There is a strong fairy tale aspect to the story. Rehumī "is to be found before Rava in Mahoza." This phrase is odd since Rava, his school, and its connection to Mahoza was so well known that it was unnecessary to mention the teacher along with his city.¹¹ Thus, the story seems to be about a fictional "Rabbi Love" "who could be found" before a generic teacher (Aram., *rava*) in any place (Aram., *mahoza*).¹² These features of the Rehumī narrative begin to turn it into a tale about the rabbinic class in general.

¹¹Rava's connection to Mahoza is a given. He is mentioned around a dozen times in relation to Mahoza. See, for example, bBerakhot 59b; Shabbat 12a; *ibid.* 109a; *ibid.* 147b; `Eruvin 47b; Pesahim 5b; Rosh ha-Shanah 17a; Mo`ed Qatan 23b; Ketubot 105b; Baba Mez`ia` 59a; Baba Batra 9a; and *ibid.* 36a. This, however, is small number since Rava is mentioned about 4000 times in the Babylonian Talmud without mentioning that he is a Mahozan.

¹²ר' פלוני הוה שכיח קמיה דר' אלמוני "Rav X was to be found before Rav Y," appears when Rav X is portrayed as a second class disciple or a disloyal or insensitive one.

See bBerakhot 10a where R. Shimi bar `Ukba or Mar `Ukba "were to be found before R. Shimon b. Pazi." According to most manuscripts, R. Shimon b. Pazi was an expert aggadist. The students "who were to be found before him" were therefore studying less difficult material than halakhah.

In bTa`anit 9b R. Shimi b. Ashi "who was to be found before R. Papa" is portrayed as a student whose many sharp questions embarrassed Rav Papa, his teacher.

In bTa`anit 23b R. Mani "who was to be found before R. Isaac b. Elyashiv" makes a number of self-serving requests that he hopes his Rabbi's prayers will help realize. The prayers of the Rabbi are answered but ultimately to the disadvantage of the student who asks the Rabbi to pray for the return of the original situation. Two students "who were to be found" before the same Rabbi pray for wisdom. Rabbi Isaac says he has run out of prayers. Why does this say about the intellectual talents of the students?

On the same page and the one following R. Yose b. Abin forsakes the teacher "before whom he was to be found" and gives his allegiance to R. Ashi. When R. Ashi him why he left his former teacher, R. Yose badmouths his former mentor declaring him pitiless to his family members.

bKeritot 8a relates another desertion of a teacher, Bar Kappara, by R. Hoshayya "who was to be found before him." When Bar Kappara meets him and asks him a question, R. Hoshayya shows his inability to think through the problem.

The narrator provides a detail about Rav Rehumi's personal life: it was his regular custom to go home every eve of the Day of Atonement. Behind this seemingly innocuous detail lurks a sad reality. Since one is forbidden to have sexual relations on Yom Kippur, his arrival on the afternoon preceding that day essentially means that he can avoid intimacy with his wife after being away for a year. There is simply too much to do in advance of the coming fast. There is food preparation and the pre-fast meal to consider.¹³ Beyond all that there is the rabbinic prohibition on having sexual intercourse in daylight.¹⁴ After a year of Rehumi's physical absence, his homecoming seems to continue for his wife exactly the same conditions that she has lived with. Whatever physical and sexual tenderness Rehumi's wife might desire is highly unlikely under these circumstance and there will be no relief on the holy day itself. Yet, Rehumi's wife seems satisfied with this arrangement as long as Rehumi comes home from year to year.

All seems well until one day, described in the Aramaic of the narrative as *yoma had*, Rehumi gets caught up in the study of a Talmudic tradition. His attention to his learning is so intense that it leads to his failure to keep what amounts to his "contract" with his wife. Now it is true that *yoma* can mean Yom Kippur: the mishnaic tractate that deals with Yom Kippur's laws is called *Yoma*. So, *yoma had* could mean "one Yom Kippur." Nevertheless, there is a double-entendre here: *yoma had* can mean simply "one day" and in the Talmud that is its usual meaning.¹⁵ Herein lies a joke that tells us a great deal about Rav Rehumi, namely, of all the years he "was to be found before Rava in Mahoza" only one day in all that time did a traditional teaching catch his attention in a serious way. This is how the narrative indicates that Rehumi is not a truly ambitious student of Torah. He is merely "to be found" before some teacher in some place of study and only rarely inspired to learn.

Rehumi's Wife

The narrator now shifts from Rehumi to his wife, who is actually the central figure in the story. The typical Aramaic description of her and other Rabbis' wives mentioned in the Talmud is *דביתהו*, "[the significant one] of his house." This begins the narrator's construction of wife as a symbolic house.¹⁶ This construction will be extremely important as the narrative reaches its denouement.

¹³ bYoma 81b.

¹⁴ bShabbat 86a; bNiddah 17a. A sage could darken the room by using his clothing to put up a shade, but that takes time that is not particularly available on Yom Kippur afternoon.

¹⁵ *Yoma had* appears about 80 times in the Babylonian Talmud. Only in the Rehumi narrative does it have the possible meaning of Yom Kippur. In all other cases it means "one day." I would suggest that *yoma had* here is of different in meaning than elsewhere in the Talmud.

¹⁶ See mYoma 1:1 where the High Priest's wife is referred to as "his home." See also Barkai and Li-on, p. 4. The surrealist drawing by Louise Bourgeois (1911-2010), "House-Woman" graphically portrays the idea in our Talmudic story, though the artist was doubtless unaware of the Rehumi narrative. My reference to Bourgeois only indicates how common a trope "woman as house/home" is in art and literature.

Our narrator describes Rehumī's wife as intently watching for her husband's return one Yom Kippur eve. She says to herself, "Now he is coming. Now he is coming." In a narrative of a mere five lines, repetition signals the deep longing Rehumī's wife has for her husband. The breathy and erotic sound of the Aramaic "*hashta atei, hashta atei*" ("Now he is coming. Now he is coming.") only adds to the sense of her yearning expectation. This is the story's climax. But Rehumī's wife's hopes are dashed by the narrative's curt "*la atei*," "He didn't come," which begins the story's conclusion.

Denouement

In reaction to Rehumī's failure to arrive for Yom Kippur, his wife is devastated and falls into depression. In this state she causes one tear to fall (Aram., *ahit*) from one eye. This is a strange detail—it would seem more natural for her to cry profusely upon being disappointed so cruelly. There are three possibilities for this reserved expression of sorrow: 1) She is so depressed and shocked that she has no strength. She can only manage to push forth one tear from one eye for relief; 2) Rehumī's "abandonment" of her has caused her to abandon her love for him. In short, he is not worth more than one tear from one eye; or 3) Just as Rehumī is a fake scholar his wife is a fake scholar's wife. Since the rabbinic community was an elite one, Rehumī reaps the benefits of being part of that group. His wife also gains the elite status of a *talmid hakham's* spouse. The "perks" that go with these statuses tempt both Rehumī and his wife to play roles that are not true to who they are. We will consider these possibilities once we have considered Rehumī's punishment for disappointing his wife.

Rehumī's Questionable Scholarship and Literal Downfall

Following the scene of Rehumī's wife's breakdown the narrator "pans back" to Rav Rehumī, whom we find sitting on a roof. When his wife caused her tear to descend (Aram., *ahit*), the roof on which Rehumī is sitting falls in (Aram., *afhit*) causing his death. This rhymed pair—*ahit/afhit*—intimately connects the pushing forth of Rehumī's wife's one tear and the deadly collapse of the roof beneath him.

Literarily, it was equally plausible for the narrator to place Rehumī in a study hall (*bet ha-midrash*) or other setting where a roof might fall on him from above. The narrator's placement of Rehumī alone on a roof furthers the narrator's undermining of Rehumī's status as a true yeshiva student. Torah students are usually portrayed as learning in groups, in pairs, or in the *bet ha-midrash*, not in isolation. Further, it casts Rehumī as someone who considers himself "higher" than others and closer to Heaven.¹⁷ Our narrator seems to know quite well how people hide their deficiencies with arrogance, and in religious circles, with an attitude of spiritual superiority. This portrayal of Rehumī could not have been accomplished if the narrator placed him on the same level as others.

Putting Rehumī on a roof also brings back the image of his wife as a house. We have witnessed her collapse because of his desertion, and the sign of her collapse is her falling tear.

¹⁷ Barkai and Li-on, p. 5.

Rav Rehumi's "scholarship" has been bought, as it were, "on his wife's back." When he fails her, the human support that has propped him up year after year collapses and according to the rabbinic notion of "measure for measure"¹⁸ the building on whose back/roof he sits collapses under him and he dies.

The Problematic Ending Of The Rehumi Narrative

As readers we ought to consider whether the Rehumi narrative's ending is satisfying. Here we have several possibilities:

- 1) Rehumi's wife is caught in a dysfunctional marriage with someone who is a fake, a point she may not grasp because of his distance and absence. When Rehumi breaks his covenant with her and deals her the ultimate hurt, God takes pity on her and gives her a chance to enter into a better marriage.
- 2) If Rehumi's wife truly loves him, as the story suggests, his death would not benefit her. In that case, the story is an absolute tragedy in that both parties are punished, each in their own way. He dies, and she loses him. Perhaps she should have demanded that he stay home with her rather than return to Mahoza for a year at a time. Perhaps in that way she might have been a "house" or roof protecting him. Her failure to convince him to stay home and his failure to keep his promise to return each year call down punishment on both of them.
- 3) There is a third possibility, namely, that both Rehumi and his wife are frauds. She plays the rabbinically valued role of ever-loyal rabbinic wife sacrificing everything so her husband can study in the finest rabbinic academy and become a scholar.¹⁹ But in truth she does not really miss him much and her show of yearning for him is just that: a show. He is not making much progress in Mahoza, but who would know since he is far away? His return each Yom Kippur gives her the chance to enjoy the social prominence and elite status of a scholar's wife and to have her self-sacrifice recognized by her community. Rav Rehumi gets the chance to show that he has the rabbinically required "family" (i.e., a wife, but note: no children) and to be honored as a sage by his local society.

Though their marriage is a façade, their enabling of each other in their roles is not. Everything, however, comes apart when Rehumi does not return one fatal Yom Kippur. His "one day" interest in scholarship shows who he really is, and his world collapses. That "one day" failure also causes her world to collapse. They have each

¹⁸ For the Jewish source of "measure for measure" see bShabbat 105b; Nedarim 32a; Sanhedrin 90a (twice).

¹⁹ See bKetubot 62b-63a for the story of R. Akiba's wife, who willingly lived in abject poverty without her husband for 24 years because she desired him to become the greatest scholar of his generation. She becomes the iconic figure of the sacrificially supportive spouse of a Torah student. Akiba's wife continues to be embodied today in the women who raise large families and support their families financially in order to allow their husbands to study full-time in *yeshivot* in Israel, North America, and Europe.

gotten what they deserve by playing roles that rabbinic society considers ideal rather than living in a manner that is true to who they are. This seems the most reasonable ending to me.

The Message And The Medium

Our story is a critique of a type of member of the rabbinic class. Given the elite position of the Sage and his family, at least in his own circle,²⁰ it is not surprising that second-rate intellectuals and parties of unworthy character would try to associate with true Sages in order to advance themselves. If this narrative is a product of the rabbinic elite,²¹ its message is about the danger of posing as a Sage when one is not. In that case, the use of puns on his name, jokes and ridicule at Rehumi's expense, the (over?)dramatic depiction of his wife's yearning, and his punishment by death narratively express this danger. All these elements would cause the hearer to listen more intently if the narrative was performed orally. Indeed, the narrative has both a cadence and rhyme scheme that make oral performance easy and the narrative even more colorful.²² If, however, the story is read rather than heard, the insightful reader can still recognize the clever literary devices that are so much part of the story. Either way, this imaginative construction of persons, places, and dates into an extremely concise but morally weighty message was deemed worthy of inclusion in the Babylonian Talmud. And all this in a story of a mere three lines.

The Rehumi Narrative As Halakhic Case

²⁰ The Talmud notes that non-rabbinic Jews often held rabbinic personages in disdain, recording remarks such as, "What use are the Rabbis? They only teach Bible and Mishnah for themselves" or "What use are the Rabbis? They never permitted the raven nor prohibited the dove." Rava (c. 340) made a remark that shows that he thinks that the Rabbis should be a respected elite, but that comment is made in the context of the mockery to which they are subjected by the general population. He said, "How foolish are they who rise before the Torah scroll but not before a great man (i.e., a Sage)...." (bMakkot 22b).

²¹ The Rehumi narrative has both a rhyme and cadence. See n. 18. It is possible that it was street doggerel expressing disrespect for the rabbinic elite by mocking its odd lifestyle. Once this lifestyle was recognized as unnatural and harmful by the rabbinic redactor of the *sugya* in bKetubot 62b he may have had ready-made material to use in his critique of what he considered to be a bad rabbinic practice. The Talmud often cites folk material in the form of "people say" (דאמרי אינשינו יה). This phrase appears about 90 times in the Bavli.

²² Barkai and Li-on, p. 5.

The post-Talmudic afterlife of the Rehumi narrative is interesting. Though the narrative was aggadic fiction of great artistry and imagination, at least one halakhist, R. Natronai Gaon (Sura, second half of the ninth century CE), viewed it as proof that Torah students should not leave their wives for two and three years at a time. His language is quite strong:

Regarding that which we say (in the Talmud, Ketubot 62b): “R. Ada b. Ahavah said, ‘These are the words of R. Eliezer (who allowed students to go to study without their wives’ permission for thirty days), but the Sages say, Torah students may leave for Torah study for two or three years without permission” Rava has already refuted this. As he said, “The students relied on R. Ada b. Ahavah and acted at the peril of their souls” as was the case of Rav Rehumi.

But if they do leave without their wives’ permission, the court is permitted to rebuke them and enact that they return to their homes....²³

הא דרב (כי) “like the case of Rav Rehumi” No doubt the introduction to the story caused this early halakhic decisor to view this narrative as a factual event rather than a work of fiction. As such it could function as a support for the halakhah in the same way as a case (מעשה) does throughout formative rabbinic literature.²⁴

But the gaonic world changed and the Rehumi narrative’s status would be reviewed and downgraded to that of non-authoritative aggadah.

Gaonic Decisions About The Authority Of Texts

In an insightful article Uzziel Fuchs raises the issue of how the *geonim* decided what was authoritative in the Talmud’s text and what was not.²⁵ The Talmud records thousands of legal opinions, but only rarely provides a decisive statement regarding their validity. The *geonim*, the legal decisors for the Jewry of Islamic countries for a period of about 300 years, had an agenda, which was to make the Talmud the constitution of the Jewish people. This meant that they had to determine what in the vast Talmudic compendium had the force of law and what did not.

Among the later *geonim* there already existed a general rule regarding the authority of aggadic texts in the Talmud: “Our Rabbis have said we do not rely on the words of the

²³ *The Responsa of R. Natronai Gaon*, ed. Brody (Jerusalem: Ofek Institute, 1994), *Even ha’Ezer* #350:

ודקאמרינן (שם סב רע"ב) אמר רב אדא בר אהבה זו דברי ר' אליעזר אבל חכמים
אומרים התלמידים יוצאין לתלמוד תורה שתיים ושלש שנים שלא ברשות, כבר פרכה
רבא, דקאמר (שם) סמכו רבנן אדרב אדא בר אהבה ועבדי עובדא בנפשייהו, וכמעשה
(שם) אבל אם יצאו שלא ברשות, בית דין רשאיין למחות בהן דרב (רחומי) [רחומי]
... ולגזור עליהם לחזור לבתייהו.

²⁴ This literature consists of the Mishnah, Tosefta, the Babylonian and Jerusalem Talmudim.

²⁵ (לפטירתו של אפרים א' אורבך לציון חמש שנים סוגיות במחקר התלמוד, "דרך ההכרעה, סמכות של טקסטים ומודעות עצמית" 108..p (2011), האקדמיה הלאומית הישראלית למדעים ירושלים:

aggadah.”²⁶ Notably, this statement was made in the context of what could have been viewed as a halakhic case, but the miraculous elements in the narrative persuaded both R. Sherira Gaon (Pumbedita, 968 CE) and his son, Hai Gaon (Pumbedita, 998 CE) that the selection was aggadic and of no use in determining halakhah. Some later authorities claimed that this view had been adopted earlier by R. Saadia Gaon (Sura, 928 CE).²⁷ This being the case it would not be long before the Rehum narrative would be demoted to purely aggadic status and rendered useless for halakhic purposes. Narrative imagination—no matter how much used as proof for a halakhic position in the period of the Talmud and the mid-gaonic era—withered under successive attempts at marginalization which corresponded to the rise of halakhah (strictly defined) as the favored discipline of medieval rabbinic Judaism.²⁸

Post-Gaonic Halakhic Codification Of Torah Students’ Exemption From *Ketubah* Obligations

Post-Gaonic Halakhic Codification of Torah Students’ Exemption from Their *Ketubah* Obligations: *Mishneh Torah, Tur, and Shulhan `Arukh*

Codification of Jewish law began with the *geonim*. It sought to end the indeterminate approach of the Talmud to halakhah and thereby to create a single standard of Jewish law to guide the actions of the Jewish community. Though codification failed to put an end to multi-vocal halakhic discourse, it did produce three classics of so-called “decided” Jewish law: Maimonides’ *Mishneh Torah*, R. Jacob b. R. Asher’s *Arba`ah Turim*, and ultimately *the Shulhan `Arukh* with its commentaries.²⁹ The last became the ultimate halakhic authority for most traditional Jews. As we study these pillars of halakhah it will become clear that R. Rehum of the aggadah did not fare well.

To show how the students’ permission to leave their wives for two or three years seems to have won the day I will cite the major codifiers, Maimonides (twelfth century), the *Tur* (fourteenth century), and the *Shulhan `Arukh* (sixteenth century), and their views on the subject.

²⁶ R. Hai Gaon cited in B. M. Lewin, *Ozar ha-Geonim* (Haifa: Ozar ha-Geonim, 1929), Responsa Section, Responsum #357.

²⁷ *Ibid*, Commentaries Section, p. 99 and n. 10.

²⁸ We should not discount earlier indications that the marginalization of aggadah was almost built into the system of formative Talmudic thought. See bSotah 4-a-b. Nor should we exclude the rationalist tendencies of many of the geonim as a factor in their regarding the aggadic imagination as unreliable for halakhic purposes.

²⁹ Maimonides completed the *Mishneh Torah* in 1170, edition princeps by Moses b. Shealtiel in Spain or Portugal before 1492 or 1497. R. Jacob b. R. Asher completed the *Arba`ah Turim* in 1343, edition princeps Constantinople, 1475. R. Joseph Karo completed the *Shulhan `Arukh* in 1563, edition princeps Venice, 1565.

As we will see, they all agree that the students' behavior created a halakhic norm. Let us begin with Maimonides' *Mishneh Torah*:³⁰

A woman may prevent her husband from leaving to do business save in a nearby place so that he does not deprive her of her sexual rights. He may only leave (her) with her permission. Similarly, she may prevent him from leaving one profession that allows for frequent sexual intercourse to a profession that only allows for infrequent intercourse. For example, a donkey driver who seeks to become a camel driver or a camel driver who seeks to become a sailor (may not do so). (However,) Torah scholars may leave for the sake of Torah study for two or three years without their wives' permission. Similarly, one who is delicate who becomes a Torah scholar cannot be prevented by his wife [from doing so] (Maimonides' Code, Laws of Marriage, 14:2).³¹

In coming to this decision Maimonides clearly ignores the R. Rehumi narrative. More than likely this is not because he totally rejected the notion that aggadah could influence halakhah.³² Rather, according to Maimonides, an aggadah containing a miraculous element like a falling tear causing a roof to collapse was not the kind of aggadah he would use to support halakhah.

The Rehumi Narrative As Cautionary--But Not Law

In the history of halakhic development it would be disingenuous to dismiss the imaginative and narrative power of aggadah as an ethical counterbalance to what might be viewed as a purely legalistic point of view. For example *Tur* cites a variety of views on this issue.³³ Given Maimonides' stature, the *Tur* cites his halakhic decision about Torah students as one of several

³⁰ הלכה ברמב"ם הלכות אישות פרק יד
יש לאשה לעכב על בעלה שלא יצא לסחורה אלא למקום קרוב שלא ימנע מעונתה ולא יצא אלא ברשותה, וכן יש לה למנעו לצאת ממלאכה שעונתה קרובה למלאכה שעונתה רחוקה, כגון חמר שביקש להעשות גמל או גמל להעשות מלה, ותלמידי חכמים יוצאין יום ושלוש שנים, וכן רך וענוג שנעשה תלמיד חכמים אין אשתו יכולה לעכבלתלמוד תורה שלא ברשות נשותיהן ש

³¹ Most commentators understand Maimonides to mean that a man of leisure whose sexual obligations are daily may become a Torah scholar thereby reducing his obligation to once a week. See *Tur Even ha-'Ezer*, 76, s.v. "וכ"כ הרמב"ם" and *Bayit Hadash* ad loc., אין האיש רשאי. These commentators reject the idea that this "delicate man" may then leave his wife for two or three years, and they claim that Maimonides did not permit this either.

³² That Maimonides used aggadic sources to support halakhic decisions is a known phenomenon. See Joel Kraemer, "Maimonides the Great Healer," in *Maimonidean Studies* 5, p. 4, n. 12. The issue is, "What kind of aggadah did he use as support fir halakhah?" Generally speaking, they were *aggadot* that had a moral message or "historical" content. I have put quotation marks around "historical" because the Sages were less interested in history than in the didactic lesson it taught.

³³ The *Tur* was authored by R. Jacob ben Asher (Toledo, Spain, c. 1269-c. 1343). It was published first in Piove di Sacco in 1475.

opinions on the matter. However, it adds to Maimonides' view the more nuanced position of R. Meir ben Todros Ha-Levi Abulafia (Burgos, Spain, 1170 – 1244):³⁴

...and R. Meir ben Todros Ha-Levi Abulafia (*RaMaH*) decided that even without permission (a Torah student) can go to study, as R. Ada b. Ahavah said: These are the words of R. Eliezer who said that students may leave (their wives) without permission for thirty days, but the Sages said: a man may leave his wife without permission for two or three years to study Torah. Rava said: Students relied on R. Ada b. Ahava and acted at the risk of their lives, for they left without permission and were punished and died....

This decision recorded by the *Tur*, one of the three pillars of decided *halakhah*, shows that R. Meir Ha-levi took the aggadic re-reading of our talmudic passage into consideration, but only as a cautionary tale. As a matter of normative *halakhah*, however, he decided in favor of Torah scholars leaving for Torah study without their wives' permission for two or three years. Hence, after all is said and done, the Rehum narrative still possessed a modicum of significance, but it could not determine the law. At best it could serve as an admonitory note. Slowly but surely *halakhic* development was wearing away at the authority of *aggadah* as the moral counterweight to purely legal thinking.

The Mercy of Rabbenu Asher And The “Death” of the Rehum Narrative

The party who most clearly formulates the abandonment of wives for Torah study as a purely *halakhic* issue is Rabbenu Asher (acronym, *Rosh*, 1250 or 1259-1327, d. Toledo, Spain) as cited by his son, Jacob, author of the *Tur*:

My father, the *Rosh* wrote (regarding the rule that students may leave their wives for two or three years without permission to study Torah): R. Alfasi (Rif) did not cite the ruling of Ada b. Ahavah because (he held that) the law follows R. Eliezer. The *RaMaH* (R. Moses b. Todros Halevi Abulafia) decided according to R. Ada b. Ahavah since it says (in our talmudic passage) “The students relied on R. Ada b. Ahavah,” therefore the students agreed with R. Ada b. Ahavah and acted accordingly themselves.

Here however Rabbenu Asher adds:

And even though the law follows R. Ada b. Ahavah, students should not turn their wives into *agunot* (i.e., women chained to absentee husbands) to this degree, for since their tears come easily their sense of hurt (Heb., *ona'ah*) is immediate.³⁵

³⁴ בות סימן עוטור אבן העזר הלכות כתו
והרמ"ה פסק דאפי' בלא רשות יכול לילך ללמוד דאמר רב אדא בר אבהה זו דברי ר"א דאמר התלמידים יוצאים בלא רשות ל' יום
אבל חכ"א יוצא אדם ללמוד תורה ג' או ד' שנים שלא ברשות אמר רבא סמכי רבנן אדרב אדא בר אבהה ועבדי עובדא בנפשייהו
... יו נענשים שהיו יוצאין בלא רשות וה

As much as we may appreciate Rabbenu Asher's sensitivity toward Torah scholars' wives, nowhere does he mention the story of Rav Rehumi and his wife. Rather, he refers to the halakhic rubric of *ona'ah*. This term means "oppression" and in halakhic contexts can refer to behaviors running the gamut from conscious overcharging by a seller or conscious underpayment by a buyer to hurtful words or actions directed towards another person.³⁶ Rabbenu Asher's view is based on this halakhic rubric, effectively treating the Rehumi narrative as "dead". Thus the arc from R. Natronai, to Abulafia, to Rabbenu Asher is complete, with the complete elision of the narrative from the discussion of this questions.

Shulḥan `Arukh Reiterates Mishneh Torah

R. Joseph Karo's code, *Shulḥan `Arukh*, reiterates Maimonides' view. We must, however, remember the impact the *Shulḥan `Arukh* had on traditional Jewry. It became the focus of hundreds of commentators' attention from its publication in the sixteenth century until our day, and it still serves as the primary source of normative Jewish law for contemporary halakhically observant communities. In sum, codification of Maimonides' position in the *Shulḥan `Arukh* gave it especially strong backing.³⁷

Thus all the major halakhic codes agree that the law of two or three year's absence for Torah study without a wife's permission is the halakhic right of a Torah scholar. No Code makes direct mention of the Talmudic story of Rav Rehumi since it is aggadah, that is, "merely" the product of narrative imagination. The issue for the Codes is "What is the law?", and in a sense the codifiers read Rava's statement in the Talmud correctly. Once the Rehumi

³⁵ וכתב א"א הרא"ש ז"ל רב אלפס לא הביא דרב אדא בר אהבה משום דהלכה כר"א והרמ"ה פסק כרב אדא בר אהבה מדקאמר וסמכי רבנן אדרב אדא בר אהבה אלמא כל הני רבנן סברי כרב אדא בר אהבה ועבדי עובדא בנפשייהו ואע"ג דהלכה כרב אדא לא האי דמתוך שמדעתה מצויה אונאתה קרובה ע"כ. מיבעי להו לעגוני לנשותיהן כולי

³⁶ mBaba Metzia` 4:10.

³⁷ A woman may prevent her husband from leaving to do business save in a nearby place so that he does not deprive her of her sexual rights. He may not leave (her) without her permission. Even if she gives him permission he cannot tarry (away from home). Rather, (he may spend) a month away and a month at home. Similarly, she may prevent him from leaving a profession that allows for frequent sexual intercourse to a profession that allows only for infrequent intercourse. For example, a donkey driver who wants to become a camel driver or a camel driver who wants to become a sailor (may not do so). (However,) Torah scholars may leave for the sake of Torah study for two or three years without their wives' permission. Similarly, a man of leisure who becomes a Torah scholar may not be prevented by his wife (from doing so). And if a Torah scholar's wife gives him permission, he may go (to study) for as long as she grants him (*Shulḥan `Arukh*, Laws of Ketubot, 76:5).

שולחן ערוך אבן העזר הלכות כתובות סימן עו סעיף ה
יש לאשה לעכב על בעלה שלא יצא לסחורה אלא למקום קרוב, שלא ימנע מעונתה; ולא יצא אלא ברשותה. ואפילו אם נותנת לו למלאכה שעונתה וכן יש לה למונעו לצאת ממלאכה שעונתה קרובה... אין לו להתאחר, אלא חדש בחוץ וחדש בביתו רשות, רחוקה, כגון חמר שבקש להעשות גמל, או גמל להעשות מלה; ות"ח יוצאים לתלמוד תורה שלא ברשות נשותיהם ב' וג' שנים; וכן טייל שנעשה ת"ח, י אין אשתו יכולה לעכב. (ואם נותנת לו רשות, ת"ח יכול לילך בכל מה שתתן לו רשות.)

narrative had no legal significance, then **בנפשייהו**, understood by Natronai and Rashi as “at the expense of their souls,” took on its original Talmudic Aramaic meaning: “The students relied on the view of R. Ada b. Ahavah and conducted *themselves* accordingly.”

Halakhic Exegesis Of Older Sources As A Means to Halakhic Change: The Circuitous Path Of *Helqat Mehoqeq*

Despite the Rehumai narrative’s “death” as a force in halakhic decision making, its spirit still roams the world of later halakhic decisors. For example, R. Moshe b. Yaakov Yitzchak Lema, (1605?-1658, Lima, Poland) took a strong stance against Torah students leaving their wives for long periods to study Torah.³⁸ For our purposes the means by which he arrived at a prohibition of the practice is the most important aspect of our study. For him as for some of his predecessors the halakhic category of “a Torah student whose study is his total occupation” becomes the means to redress the social and ethical ills arising from students leaving their wives’ for two or three years of Torah study.³⁹

Amelioration Of The Law By The Law

Maimonides’ Code, the *Tur*, and the *Shulhan `Arukh* eventually evolved into the basic sources of normative Jewish law, and they all agreed that Torah students absenting themselves from their wives for two or three years was normative. Yet, one notices R. Moshe b. Yaakov Yitzchak’s discomfort with this ruling. In the citation below of his commentary *Helqat Mehoqeq* (Krakow, 1670) on *Shulhan `Arukh*, he provides a good example of a late commentator’s methodology for ruling against the “Torah students law.” It is this style that by R. Moshe’s time is standard

³⁸See my citation of his commentary, *Helqat Mehoqeq, Even ha-`Ezer, 76:10* in n. 33 below. Among earlier authorities who rejected or modified the opinion that Torah students could leave their wives for two or three years were R. Isaac Alfasi in his *Talmud Qatan, Ketubot*, p 75; R. Abraham b. David (RAbAD) cited in *Tur, Even ha-`Ezer, 76; Responsa of R. Shelomoh b. Shimon Duran*, ed. Sobel (Jerusalem: Jerusalem Institute, 1998). Alfasi decides in favor of R. Eliezer who allowed students only thirty days away from home for Torah study. The other authorities held that the two to three year rule was for Torah students “whose only occupation was Torah study.” See n. 31 for some of the perquisites granted to full time students of high attainment.

³⁹ Full time Torah students (**צורבא מרבנן**) have many privileges and are exempted from certain obligations, for example, they are exempted from reciting the bedtime Shema` and from taxes. They are privileged in having their litigation heard before that of “commoners” and are allowed to sell their wares before regular businessmen. For these and other perquisites see bShabbat 119a; bTa’anit 21b; *ibid.*, 28b; bMo`ed Katan 16b-17a; bHagigah 5b; bNedarim 62a; and bShevu`ot 30a-b.

halakhic discourse for preventing these students' "abandonment" of their wives as well as settling other similar ethical and social matters. These are his words:

R. Abraham b. David (twelfth century, Provençal critic of Maimonides) wrote: "A Torah student whose study is his full time occupation may go to study for as long as his wife gives him permission." Since R. Abraham b. David wrote "a Torah student whose study is his full time occupation" this implies that such people did not concern themselves about typical arrangements (i.e., a month away and a month home).⁴⁰ Rather, with permission such perspicacious students could study away from home for extremely long periods of time. But for people such as ourselves, we must consider what are the typical arrangements and so even with permission one should not abandon her (i.e., one's wife) more than is fit (i.e., for thirty days at most). Even according to those Sages who held that one (who is a Torah student) may leave for two or three years, that is a matter of theoretical law or for those whose Torah study is truly their full time occupation (*Helkat Mehokeq, Even ha-`Ezer*, 76:10).⁴¹

Here we see how a commentator who seems to believe that we can learn nothing about halakhah from *aggadah* struggles to arrive at a fair decision on behalf of women, who under what had become normative law ran the risk of their scholarly husbands abandoning them for years at a time.

Using *Helkat Mehokeq* as our example, let us analyze how he goes about the work of ameliorating the "Torah students law." First he cites a well respected early authority, R. Abraham b. David Provence, who claims that scholars can leave to study Torah for as long as they want on two conditions: 1) they engage in nothing else but Torah study; and 2) they receive their wives' permission. R. Moshe emphasizes that these rules only apply to those whose study is their one and only activity. People like R. Moshe's contemporaries, who generally do not fit this category, must follow more normal lifestyles. Hence, even a man whose wife gives him permission to leave her to study Torah should not leave for more than 30 days, as specified originally by R. Eliezer. 3) Further, R. Moshe suggests that Ada b. Ahavah's rule was merely theoretical law, or only meant for the special class of "those whose Torah study is their full time occupation" despite the fact that the students discussed in the Talmud relied on it as a class. All in all, the blanket permission to leave wives for long periods of Torah study so clearly stated in Maimonides, advanced as the majority view in *Tur*, and presented as normative in *Shulhan `Arukh*, has for all intents and purposes been nullified by this latter day halakhist.

Why did the author of *Helkat Mehokeq* go through these circuitous exercises to reach his conclusion and more significantly, why did he accept the singular view of R. Abraham b. David of Provence against the majority of normative Codes? I believe he did so because he recognized that this law harmed families in general and women in particular. But for him there was no direct route to support that decision. The halakhic discourse of his time did not allow him recourse to the aggadic "biography" of Rav Rehumi and his disastrous end as a support for a rejection of the "Torah student law." Rather, only the law itself could ameliorate its own rulings.

⁴⁰ bKetubot 62a.

⁴¹ חלקת מהוקק סימן ע"ק י'
כתב ת"ה שתורתן אומנתן לא חשו לאורחא דמילתא משמע אבל כגון אנו צריכין הראב"ד-ואם נותנת לו רשות ת"ה יכול וכו'
לחוש לאורחא דמילתא ואף ברשות אין לעגנה יותר מן הראוי ואפי' לדברי חכמים דס"ל דאף שלא ברשות יוצא ב' או ג' שנים היינו לדינא או למי שתורתו אומנתו.

Meta-halakhah Or Normative Halakhah Alone?

The nature of *Helkat Mehoqeq*'s critique of the *Shulhan 'Arukh* helps us to understand two schools of halakhic thinking. One is willing to draw on sources outside purely halakhic ones in order to influence halakhic outcomes. To quote R. Natronai Gaon cited earlier, "R. Ada b. Ahavah's rule has been undermined by Rava and the case of Rav Rehumi." Yet, for the great pillars of halakhic codification, Maimonides, the *Tur*, and the *Shulhan 'Arukh*, pure *aggadah* is not a source for a halakhah.⁴²

The debate about how one determines halakhah is ongoing. It expresses itself in contemporary disagreements between those halakhists who believe that codified halakhah is the sole source for determining what a Jewish ethic is,⁴³ and those who posit an ethical meta-halakhah, often aggadic in its origins, that informs the outcome of halakhic decision-making.⁴⁴ This ongoing debate within the Conservative and Orthodox communities is not the product of a nineteenth or twentieth century revamping of halakhic discourse. Rather, it has its origins in at least our talmudic passage, the Rehumi narrative, in which halakhic and aggadic material intermingle in the discussion of a single subject, the obligation of Torah students to their wives.

I have demonstrated how the codifiers, commentators, and respondents of the past provide us with a means of understanding the interpretation (or lack of interpretation) of the aggadic genre, and the significance of this evolution for the formation of a Jewish ethic in the present and future. For the time being we may conclude that the narrative imagination of aggadah is overwhelmingly the province of literary critics of the Talmud, though in extremely rare circumstance it surfaces as a factor in halakhic decisions of great social and ethical import.⁴⁵

⁴² To say that the codifiers did not include any aggadah in their codes is to overstate the matter. There are *aggadot* that do not demand action or strongly suggest certain beliefs or attitudes. Yet there are certain views described by some as aggadah that do. Since they are in a sense "commanding" are they aggadah or halakhah? For example, *Pirqei Avot* is described as the one tractate of the Mishnah without halakhah. See R. Ovadiah Bertnuro, *Mishnah Commentary*, mAvot 1:1: אומר אני, לפי שמסכת זו אינה מיוסדת על פירוש מצוה ת. This view has been accepted widely. Yet many of its aphorisms are codified. For example, (mAvot 3:2) mAvot 3:2 states that prayer for one's government is required. This is codified in *Pithei Teshuvah*, *Hoshen Mishpat*, 108:1). mAvot 4:12 requires a teacher to honor his students, and *Mishneh Torah*, *Laws of Torah Study*, 5:12 and *Shulhan 'Arukh*, *Laws of Torah Study* 242:33 codify this rule. mAvot 4:10 prohibits one from judging a case alone. *Mishneh Torah*, *Laws of the Sanhedrin*, 2:11, *Tur*, *Laws of Judges*, 3, and *Levush*, 3:3 all rule that this is the halakhah.

⁴³ Adiel Schremer, "Toward Critical Halakhic Studies," *Tikvah Center Working Paper*, 04/10 (New York: New York University School of Law, 2010), pp. 10-18 and notes ad loc.

⁴⁴ Eugene Korn, "Legal Floors and Moral Ceilings: A Jewish Understanding Of Law and Ethics," *Edah Journal* 2.2 (New York: Edah, Inc.: 2002), pp. 2-19.

⁴⁵ R. Moshe Feinstein, one of the most well-known halakhic decisors of the middle-late twentieth century, pointed to the aggadah of the martyrdom of R. Hananiah b. Teradion as a source for allowing a non-Jew to relieve the suffering of a mortally ill Jew even if that meant shortening his life. See *Responsa Iggerot Moshe*, *Yoreh De'ah*, vol. 2, responsum #174. In that aggadah a Roman soldier offers to alleviate the Rabbi's pain from the fire in which he burned by removing wet wool that had been placed on the Rabbi's heart to keep him alive and in anguish. In return the Roman soldier asked the Rabbi to promise him that he would enter the world-to-come. The Rabbi accepted the soldier's offer and promised him a place in the world-to come. Once the wool was removed the Rabbi died. The soldier leaped into the flames, and a

What is clear is that to the degree that halakhic imagination and creativity flourished and became central to Judaism, aggadah ceased to inform obligatory Jewish practice. The tales came to be deemed worthy for study or reading only by “illiterate men (*amei ha-aretz*) and women,” but not Torah scholars. This cultural norm became so ingrained that even today when a teacher of Talmud (*yeshiva rebbe*) and his students reach a Talmudic aggadic passage it is standard practice for him to instruct them to skip the aggadah and renew their study at the next halakhic section.

But why did this cultural norm develop? I believe it is the potential for subversiveness that aggadah possessed that made it suspect and stimulated its marginalization. While the world that created these tales may have seen them as spiritually moving or as incentives to improvement of their society, later generations came to fear the daring quality of these tales or found their moral instruction insulting to the heroes of the early Talmudic period.⁴⁶ Worst of all was the possibility that an aggadic passage taken seriously might not always serve halakhah well, or worse, undermine it altogether.⁴⁷

This denigration of the narrative imagination of aggadah has left traditional and non-traditional Jewry intellectually and spiritually poorer and has reopened Judaism to the charge that it is a purely legalistic religion and culture. We should rejoice in the fact that significant scholars are reintroducing aggadah to Jewish and non-Jewish readers in significant popular and scholarly English and Hebrew works. These include Daniel Boyarin, *Carnal Israel*, Ari Elon’s *’Alma Di* and its translation *From Jerusalem to the Edge of Heaven*, Yonah Frenkel’s *Darkei Ha-aggadah ve-*

Heavenly Voice proclaimed that both the Rabbi and the soldier had entered the world-to-come. R. Feinstein nevertheless is not sure whether this “ruling” may be used in practice.

R. Feinstein’s use of this aggadah as a “halakhic case” is based on the notion that R. Hananiah would not have allowed the soldier to act as he did if it wasn’t halakhically permissible. This is an excellent example of how technology has created end of life situations unimagined by earlier generations. In this case the issue is about how technology can prolong life and suffering almost interminably. Present day halakhic praxis requires precedents for decisions. In this case an aggadah was turned into a legal case in order to function as such a precedent. R. Feinstein might have ignored this source as “merely aggadah,” but given the paucity of sources on end of life issue he chose to engage it as a matter of Jewish law.

⁴⁶See the stories of R. Amram Ḥasida and R. Ḥiyya bar Ashi in bKiddushin 81a-b. The former almost succumbed to improper sexual temptation but saved restrained himself, though in an embarrassing way. The latter actually did succumb to sexual relations with a woman he thought was a prostitute.

⁴⁷ See Sanhedrin 75a where there is a story of a debate between doctors and rabbis about whether to allow a lovesick man any sort of relief either by intercourse, seeing the woman naked, or just hearing her from behind a partition. The Rabbis refuse to allow the man any of these “cures” and say, “Let him die” rather than do any of these acts. One view in the Talmud is that the woman was unmarried, so there would not have been any violation of the halakhah that requires that one die rather than violate the prohibitions of incest or adultery. Assuming the woman was not married, this aggadah undermines traditional halakhah that places life before the violation of most commandments.

Interestingly enough one halakhic work, the *Talmud Katan* of R. Isaac Alfasi, includes this story as halakhah. Alfasi does not justify the Rabbis’ decision not to save the lovesick man on its aggadic value but on the halakhic matters of either unjustifiably the woman’s family or on the prohibition of making the Jewish women into prostitutes.

See for a more intensive study of this passage, Barry Scott Wimpfheimer, *Narrating the Law: A Poetics of Talmudic Legal Stories* (Philadelphia: University of Pennsylvania Press, 2011), ch. 2.

Hamidrash and 'Iyyunim b'Olamo ha-Ruḥani shel Sippur ha-Aggadah, Jeffrey Rubenstein's *Stories of the Babylonian Talmud* and *Talmudic Stories: Narrative Art, Composition, and Culture*. Let us hope that their work will influence traditional Jewish communities and their jurists to recognize the potential influence of aggadah on halakhah, stimulating halakhic discourse that takes the narrativeness of the Talmud seriously as sources of ethical and moral authority.