Textual Relationships: On Perspective, Interpretive Discipline, and Constructive Ethics

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I. Initial Reflection: Ancient Texts, Contemporary Problems

This essay addresses, among other things, whether present day ethical-normative concerns drive the ways we see rabbinic texts, and whether rabbinic reasonings [1] can provide models for thinking about contemporary issues. I approach the matter as a constructive ethicist who draws deeply on rabbinic texts for her work, and so, perhaps unsurprisingly, my answer to these questions is a qualified yet enthusiastic "yes." [2] The topic of sex and public health offers ethicists an instructive example of how to use rabbinic reasonings as models for

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[1] I say "reasonings" in the plural because I want to avoid the impression that I think there is one, single way the rabbis reasoned. Rather, I think that there are certain traits and habits of reasoning that are particularly characteristic of rabbinic thought, multifarious as it is.

[2] Sections II and III of this paper are modified from the third chapter of my dissertation, *Safe, Sane, and Attentive: Toward a Jewish Ethics of Sex and Public Health,* Ph.D. diss., (University of Virginia, 2017).

thinking about contemporary issues in a nuanced and textually attentive way.

Our present-day ethical concerns drive the way we see rabbinic texts. No matter how carefully we attempt to occupy a position of studied and serious academic detachment, we will always be particular people, with particular formative experiences and core commitments, when we encounter those texts. There is no way for those commitments and experiences, at some level, not to color our encounter with the texts and to inform our understanding of what kind of entities those texts are. The influence of contemporary concerns upon our understanding of rabbinic reasoning, furthermore, is not unidirectional. Just as our contemporary commitments and the practical issues we face as contemporary reasoners affect the ways we read rabbinic texts, so, too, do the reasoning patterns we excavate as a result of our interactions with rabbinic texts affect the ways we "read" our contemporary issues. Rabbinic texts come out of a different time and place, but we read them with eyes all our own, and so they become different entities than they were in their original contexts. And when we condition our minds through the practice of reading those texts, the contemporary problems we consider take different shapes when viewed through the lens of that mental conditioning.

This is not to say that there is no way in which we, as scholars, can discipline our encounters with these texts so that the texts may have some chance to speak "for themselves." On the contrary—the fact that we have particular experiences and commitments that unavoidably shape our encounters with and interpretations of texts is an important datum in our processes of textual analysis. By paying attention to the particular ways in which our experiences unavoidably shape our interaction with the text, and how that interaction in turn shapes our perspective going forward, we can discipline our interpretive practices more carefully. We cannot distance ourselves from how our standpoints affect our interpretations, but we can try to understand those effects and steer them in constructive directions. The practice of engaging texts whose worldviews are so alien to our own should, in important ways, help us clarify the particulars of our own standpoints and convictions.

Good interpretive discipline also matters for the question of whether rabbinic reasonings have useful things to say to contemporary moral problems. I argue that they do, but that how well they address them depends upon how we, as contemporary readers, discipline our interpretations. If we are cognizant of the ways our standpoints affect our readings and, conversely, of the standpoints offered by the texts themselves, then those texts can offer valuable if sometimes unexpected resources for addressing contemporary problems.

What might these unexpected textual resources look like? One set of examples is Mishnaic ritual purity texts, which provide a relevant and illuminating lens through which to approach questions of contemporary sexual ethics and public health. I argue that ritual impurity, for the rabbis of the Mishnah, is best understood as a form of contagion that is an undesirable but ultimately inevitable consequence of social intercourse which, in turn, is desirable in its own right in spite of its risks. Ritual impurity, furthermore, is not a monolith. Within the class of "ritual impurity," there exist numerous types and degrees of impurity, each of which has different consequences and different mitigation protocols applied by the rabbis. Throughout, the consequences of transmitting impurity are not trivialized, but neither are they treated as something that is uncommon or shame-worthy. The moral implications of ritual impurity thus do not lie in the simple matter of being or not being impure; rather, they lie in the way persons discipline themselves so that they may best mitigate the consequences of being social actors in a world where impurity is an inevitable consequence of social interaction.[3]

In what follows, I will offer some methodological critiques of the ways modern ethicists have used rabbinic texts to address contemporary issues, and I will suggest some alternative methodologies that I believe allow for better and more nuanced understandings of both the texts we use and the contemporary problems for which we deploy them. One reading practice

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[3] For a detailed analysis of Mishnaic ritual impurity, see Mira Balberg, *Purity, Body, and Self in Ancient Rabbinic Literature* (Chicago, IL: University of Chicago Press, 2014), to which this paper is heavily indebted.

that particularly behooves the contemporary ethicist is to look beyond the simple plain sense of a given text's subject matter and to focus instead on how the text's subject matter *functions* in its own context. It is this function that the ethicist can more productively import to contemporary situations. Toward this end, I will then give a brief example of one such methodology in action from my own work, in which I use Mishnaic ritual purity discourse to think about managing sexually transmitted infections (STIs). Finally, I will offer some concluding reflections in order to describe and clarify the perspectival disciplines I have tried to put into practice in the body of the paper.

II. Content, Form, and Function:
Thinking and Writing with the Rabbis

As Emily Filler has noted, the extensive reference to and use of classical rabbinic sources is a "nearly ubiquitous feature of Jewish ethical reasoning."[4] Yet too often, these texts are used as though they contain simple, one-to-one analogues to the problems with which contemporary ethicists grapple. As Louis Newman, who provides perhaps the most extensive internal critique of what we might call the "prooftexting" of rabbinic sources by contemporary Jewish ethicists, puts it, "virtually all exegetes employ a model of textual interpretation which assumes first, that texts themselves contain some single determinate meaning and second, that the exegete's role is to extract this meaning from the text and apply it to contemporary problems."[5] Such assumptions, per Newman, are "questionable, if not altogether untenable."[6] Similarly, within the discipline of rabbinics, Elizabeth Shanks Alexander, Beth Berkowitz, Mira

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[4] Emily A. Filler, "Classical Rabbinic Literature and the Making of Jewish Ethics: A Formal Argument." Paper presented at the Annual Meeting of the Society for Jewish Ethics, January 9-12, Seattle, WA, 1.

[5] Louis E. Newman, "Woodchoppers and Respirators: The Problem of Interpretation in Contemporary Jewish Ethics," in *Contemporary Jewish Ethics and Morality,* eds. Elliot N. Dorff and Louis E. Newman (Oxford, UK: Oxford University Press, 1995), 141.

[6] Ibid.

Balberg, and Charlotte Fonrobert, among others, have all argued convincingly that it is problematic to try to straightforwardly deploy the content of rabbinic texts in the service of contemporary ethical-normative claims.[7] To do so, they note, is to miss the fundamental theme of the literature: rabbinic texts are primarily about the rabbis and their world, and only secondarily about the subject matter they think with.

Beth Berkowitz offers a particularly strong exposition of this problem. In *Execution and Invention: Death Penalty Discourse in Early Rabbinic and Christian Cultures*, Berkowitz examines the modern reception history of rabbinic texts that deal with the topic of capital punishment. According to Berkowitz, American Jewish writers "want to know: What is the traditional Jewish perspective on capital punishment?"[8] She identifies a tradition, beginning in the late nineteenth century, of reading Talmudic texts on criminal justice as models of humanitarianism. Using a passage from Mishnah *Makkot* 1:10 as his central prooftext —"R. Tarfon and R. Akiva declare that, had they been members of the Sanhedrin, a sentence of death would never have been passed"—an obscure rabbi and lawyer by the name of Samuel Mendelsohn "goes so far as to say that the Talmud's ethics were not only progressive by modern standards, but even more progressive than modern standards."[9] This prooftext continues to

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[7] See, for example, the epilogue of Elizabeth Shanks Alexander's *Gender and Timebound Commandments in Judaism*, (Cambridge, UK: Cambridge University Press, 2013), the introduction and chapter one of Beth Berkowitz's *Execution and Invention: Death Penalty Discourse in Early Rabbinic and Christian Cultures* (Oxford, UK: Oxford University Press, 2006), and the introduction to chapter 2 of Charlotte Fonrobert's *Menstrual Purity: Rabbinic and Christian Reconstructions of Biblical Gender* (Stanford, CA: Stanford University Press, 2000).

[8] Berkowitz, 49.

[9] Idem, 30. Berkowitz notes that these characterizations of the rabbinic stance as either abolitionist or pro-death penalty (and as, in either case, notably enlightened in its stance on the matter) have significant rhetorical force in both intra-Jewish disputes and in discourse between Jews and non-Jews. Mendelsohn, for example, is addressing both Jewish critics of the Talmud who saw rabbinism as an irrational distraction from the "pure" ideals of the Hebrew Bible, and "Christian supersessionist criticisms of rabbinic Judaism that it represent[ed] a desiccated form of religion in comparison with its biblical heritage and that heritage's apparent Christian successor" (Berkowitz, 28). It would seem that the practice of making sweeping claims about the stance of "the rabbis" on contemporary ethical problems

appear in abolitionist writings through the twentieth century, usually omitting, as Mendelsohn did, the very next phrase of the mishnah: "Rabbi Shimon ben Gamliel said, they"—Akiva and Tarfon, by abolishing the death penalty—"would thereby have increased bloodshed in Israel." There is also a counter-tradition, which Berkowitz grounds in mid-twentieth century Israeli thought but which also influences American thought, including such writers as Walter Jacob and David Novak who argue that "the Rabbis were fundamentally in favor of the death penalty despite several statements [in rabbinic sources] to the contrary."[10]

Such writers, Berkowitz argues, miss the actual trees for an impressionist painting of a forest. First, each side is likely to underrepresent texts that complicate their case; abolitionist readers, for example, tend to ignore the final clause of *m. Makkot* 1:10, while readers who advocate for capital punishment similarly tend to minimize texts that express opposition not only to frequent executions but also to any executions at all. Even where writers represent this dialectic more fairly, they tend to focus largely on the texts about *whether* capital punishment should occur, at the expense of those texts that describe the rabbinic rituals of execution themselves. "Looking at what happens *after* conviction," Berkowitz writes, "makes it possible to move beyond either/or thinking about rabbinic criminal execution [to] explore the rabbinic death penalty as a social, political, and religious practice."[11] Such exploration, she argues, yields the conclusion that rituals of execution are ultimately about rabbinic discourses of power, and about the power of rabbinic discourse, "not just about criminals and courts but about the power of the Rabbis to redeem any Jew."[12] That such power to redeem was in all likelihood imagined—since, as members of a minority culture the rabbis would not, in fact, have had political authority to carry out executions—further

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may be as much a rhetorical response to the challenges of modernity as it is a hermeneutical commitment for its own sake.

[10] Idem, 61.

[11] Idem, 63.

[12] Idem, 70.

bolsters the claim that this discourse was not about social ethics so much as it was about the rabbis' own self-understanding.

Berkowitz's observations ring true for more than just death penalty discourse. Contemporary Jewish ethicists usually characterize rabbinic discourse as affirming sex and sexuality. This is a claim that holds regardless of the particular moral commitments of the writer. We find versions of this claim about Judaism's supposed sex-positivity from voices as diverse as the Chabad rabbi and popular writer Shmuley Boteach,[13] the Modern Orthodox rabbi Maurice Lamm,[14] the Conservative rabbi and ethicist Elliot Dorff,[15] and the feminist theologian and ethicist Judith Plaskow.[16] The rhetorical force of claiming sex-positivity is mainly apologetic, serving to paint Jews as more reasonable and enlightened than their Christian brethren. On the one hand, it serves to distinguish Jewish sexual teaching—especially more conservative teaching—from what scholars see as the dominant conservative Christian discourse on the topic, such that sexual restraint (which these Jewish voices understand as preferable) is not conflated with what these voices understand as sexual repression. On the other hand, it serves to demonstrate that "religious" teaching on sexuality is not monolithic, and it provides a potential incentive for readers, Jewish and non-Jewish alike, whose sexual politics are more relaxed to embrace or defend Judaism. However, for some more sexually expansive voices, this rhetoric is explicitly revisionist; their embrace of sexually affirming streams is framed in terms of reworking the

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[13] Shmuley Boteach, *Kosher Sex: A Recipe for Passion and Intimacy* (New York: Doubleday, 1999).

[14] Maurice Lamm, *The Jewish Way in Love and Marriage* (Middle Village, NY: Jonathan David Publishers, 1991).

[15] For example, in Elliot N. Dorff, *Matters of Life and Death: A Jewish Approach to Medical Ethics* (Philadelphia, Pa.: Jewish Publication Society, 1998); "A Jewish Perspective on Birth Control and Procreation," in *The Passionate Torah: Sex and Judaism,* ed. Danya Ruttenberg (New York: NYU Press, 2009), 152-168.

[16] Judith Plaskow and Donna Berman, *The Coming of Lilith: Essays on Feminism, Judaism, and Sexual Ethics, 1972-2003* (Boston, MA: Beacon Press, 2005).

tradition to foreground marginalized voices, or of reclaiming suppressed aspects of it for the same purpose.[17]

However, a closer look at the texts that engage sexuality specifically reveals that, within these texts, discourse on sex actually has less to do with sex for its for its own sake and more to do with establishing social, familial, and religious boundaries—and the rabbis' ability to define them—as well as setting the stage for stories of exemplary sagely conduct. Illicit sexual temptation, for example, becomes a venue for sages to display their virtue (such as when Rabbi Akiva is sent an attractive women by his Roman captors to entice him in *Avot de Rabbi Natan* A 16)[18] or to explore the limits of sages' discipline (such as in the story of Rabbi Hiyya bar Ashi in *Bavli Kiddushin* 81b). Sexual situations may also function as a means of illustrating the all-encompassing character of sagely discipline, as in the famous story in *Bavli Berakhot* 62a of Rav Kahana hiding under his master's bed while his master was having sex in order to observe the finer points of sagely bedroom conduct. To try to claim rabbinic texts as somehow sexually affirming is not only debatable at best, it is beside the point, because the text is not primarily about sex or sexuality. Rabbinic texts are primarily about rabbinic character and rabbinic authority. These texts are only about sex and sexuality inasmuch as those topics provide interesting cases or ways to think through a textual issue.

One might read Berkowitz as suggesting that, therefore, rabbinic texts are at best dubious resources for contemporary practical ethics. As I discuss below, however, I believe there are ways to use the questions Berkowitz asks of the text as guides for better and more nuanced engagement; further, I believe there is something about engaging the very strangeness of the rabbinic text that forces us to critically examine contemporary moral questions in new and nuanced ways. Yet to recover

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[17] Tamar Ross's taxonomy of revisionism within Jewish feminism, in part III of *Expanding the Palace of Torah: Orthodoxy and Feminism* (Lebanon, NH: Brandeis University Press, 2004), is useful here.

[18] The story of Rabbi Akiva's temptation in *Avot de Rabbi Natan* A16 belongs to a broader rabbinic genre of "tempted sage" narratives; of particular note are the set of vignettes in *b. Kiddushin* 81a-b.

a nuanced and workable sexual ethic from Jewish tradition requires more than simply identifying and mapping the ways in which different streams of tradition at different points in history demonstrate different trends in their approach to sex and sexuality. Such a recovery requires a different hermeneutical approach, one which is attentive to the complex character of the various trends within Jewish traditions, of the equally complex character of its contemporary ethical subject, and of the specific claims and needs of the activity of articulating normative ethics. An empirically attentive approach to such textual engagement, therefore, should satisfy the following three conditions: first, one's textual analysis should stay true to the text as such without either revising or apologizing for its more problematic content. Second, one should demand an attentiveness to context, form, and style. Third, one should help articulate a particularly Jewish way of doing ethics that can nevertheless helpfully contribute to non-Jewish ethical discourses as well.

One methodology that satisfies these conditions, articulated by Emily Filler, is to use rabbinic—and biblical—texts in a formalist way: rather than drawing ethical conclusions about their content, one uses the ways rabbinic texts work through issues as models for ways of thinking about other issues contemporarily. Contrary to the assumption that "the *method* of employing classical texts for ethical means is more or less stable across traditions; only the texts in question change,"[19] Filler argues that the very structure of classical Jewish texts nudge the reader not only to interpret these texts differently than one would interpret texts from other traditions, but to situate them in a different mode of ethical reasoning as well. For her, "as much as anything, it is the *way* this content appears which defines [classical texts]—and defines the way they work (or do not work) in Jewish ethics."[20] Features of classical texts, such as "the preservation of discussion and debate in Gemara, the presentation of divergent opinions without an indication of whose opinion is accepted in the Mishnah, and

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[19] Filler, 4.

[20] Idem, 5.

in classical rabbinic Midrash, the assumption that a biblical word or phrase may have many different meanings or interpretations"[21] not only militate against univocal methods of interpretation; they trouble the assumption that the Jewish ethicist should seek discrete, text based solutions to singular problems to begin with.

Filler's approach is by definition attentive to style and form. Further, by focusing on form over and above content, it neatly elides the temptation to revise or make excuse for the texts' more problematic utterances. And, by focusing on methodological and formal features that are characteristic of rabbinic thought but that can be, potentially, learned and inhabited by non-rabbinic actors, it identifies a particular Jewish method of reasoning that is nevertheless not parochial. Additionally, it encourages the writer to think outside of the often narrow canon of texts heretofore employed by academic Jewish ethicists on their topic of choice. If the form is primary, rather than the content, then any subject matter may be arranged in such a way to be a potential source of guidance for a given problem. This method is a valuable tool for the contemporary Jewish ethicist, and I have employed it in other projects.

However, I do not believe that a strictly formalist approach is the *only* hermeneutical method with the above virtues that is available to the practical ethicist. Just because one cannot assume a one-to-one correspondence between the content of a rabbinic text and a contemporary ethical problem does not mean that the content is *completely* alien to contemporary concerns, or that it cannot do any useful work for a particular problem. In her critique of the contemporary deployment of rabbinic death penalty discourse, Berkowitz asks, in her capacity as text scholar and historian, questions of the text that can be equally useful guiding questions for the practical ethicist. When Berkowitz examines rabbinic descriptions of the ritual of capital punishment, she asks in a Foucauldian mode, "What work does this ritual of execution do? How is capital punishment mobilized? What is the political significance of [the

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[21] Ibid.

rabbinic] reluctance to execute an individual and their concern to preserve the body?"[22]

If we want to work with rabbinic content, and we accept the claim that the ultimate subject matter of rabbinic texts is the rabbis and their world, the next question should be, "how do the specific phenomena the rabbis discuss function within the world of rabbinic texts?" For example, sex in rabbinic text does not, as a rule, have the same social function as does sex in the contemporary world, but this does not mean that *nothing* in rabbinic texts will function similarly to any aspect of contemporary sexuality. As I discuss below, ritual purity, which seems on the surface to have little to do with any aspect of contemporary life, functions in rabbinic texts in ways that have significant implications for sexual health. Conversely, texts with explicitly sexual subject matter may have little to say to contemporary sexual ethics, but they might have a great deal to say, for example, about the ways in which daily disciplines affect how one responds to extraordinary circumstances. When one seeks rabbinic texts with which to think through a contemporary question, one should look beyond rabbinic content that seems immediately similar to the contemporary question one is asking. In doing so, one may find content which at first seems less related but which actually *functions* far more similarly to said contemporary phenomenon than does its more initially obvious analogue.

Such a functionalist approach,[23] in addition to satisfying the three criteria I discussed above, acknowledges Filler's caution against using a single set of interpretive techniques across different canons for which they may not be equally suited; it also shares her concern with *how* content is deployed, rather than simply asking *what* the content is. It has the

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[22] Berkowitz, 63.

[23] My use of the terms "functionalist" and "functionalism" ought not be confused with the school of thought in philosophy of mind that specifically defines *mental states* according to their function rather than their structure. Similarly, Filler's account of formalism ought not be confused with the theory of legal formalism, according to which legal rules should be applied to cases without regard for social or political concerns.

additional advantage of making it relatively difficult to make essentialist claims about "what or how the rabbis thought,"[24] because it is necessarily case-based and because its primary objects of inquiry are the details of particular phenomena in their textual context. It is not concerned with making sweeping moral claims on behalf of the rabbis; rather, it does its moral work by identifying the ways the rabbis figure certain phenomena as functioning socially, ritually, and morally and then carefully comparing them to social, ritual, and moral aspects of the contemporary problem under discussion. This comparison, in turn, provides a basis for the ethicist to ask how one could improve the contemporary situation. Such a comparison might suggest that the way the rabbinic analogue functions may, indeed, be preferable. This is true of the case I treat below, where the rabbinic example of calm, regular, detailed discussion of social contagion is vastly preferable to the shame-laden climate of silence around STIs that remains distressingly prevalent in contemporary contexts. Conversely, problems in the functioning of the rabbinic analogue may serve to elucidate comparable problems in the contemporary situation. More likely, either possibility will be true depending on the aspects of each case under consideration.

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[24] This is a pitfall to which the formalist approach can still be vulnerable. For example, one formal feature of rabbinic texts that may be quite appealing for ethicists, and which I myself invoke, in this paper as well as others, is the polyvocal character of rabbinic discourse (Rebecca J.E. Levi, "A Polyvocal Body: Mutually Corrective Discourses in Feminist and Jewish Bodily Ethics" *Journal of Religious Ethics* 43, no. 2 [June 2015]). However, the actual extent of this polyvocality is a matter that is very much in dispute among rabbinic scholars, especially with regard to halakhic midrash. See, for example, Natalie Dohrmann, "Reading as Rhetoric in Halakhic Texts," in *Of Scribes and Sages: Later Versions and Traditions*, ed. Craig A. Evans (London and New York: T&T Clark International, 2004), 90-114; Azzan Yadin, *Scripture as Logos: Rabbi Ishmael and the Origins of Midrash* (Philadelphia, PA: University of Pennsylvania Press, 2004); and even the Talmud (see Daniel Boyarin, *Socrates and the Fat Rabbis* [Chicago, IL: University of Chicago Press, 2009]).

III. Ritual Impurity and STIs:
A Case Study from *Mishnah Zavim*

The topic of sex and public health offers one example of how this "functionalist" approach might work in practice. Mishnaic discourse on ritual impurity—and here, I focus on *zivah,* the ritual impurity contracted as a result of irregular discharge from the penis and transmitted by various forms of direct and indirect contact—treats it as a form of ultimately unavoidable, yet manageable social contagion that is a result of desirable forms of social interaction.

The social functions of ritual impurity as discussed in the Mishnah, as it turns out, map onto contemporary sexual health astonishingly well. Sex is a species of social intercourse that is fundamentally important to the flourishing of most people, and there is no foolproof method of preventing all sexually transmitted infections. Thus, STIs, like ritual impurity, also represent a form of contagion that is an ultimately unavoidable consequence of certain forms of social interaction that are desirable in their own right, in spite of their risks. Like ritual impurity, STIs are also not generalizable; they vary in severity, virulence, and potential routes of transmission. Therefore, rabbinic methods of managing the social risks of impurity translates quite well to contemporary questions about how sexual agents and public health systems ought to act in the face of STI risk.

Let us consider, for example, some texts from *Mishnah Zavim*, which deals with impurity caused by irregular genital discharge. *Zavim* makes clear that one important factor in the ongoing management of ritual impurity is that, because of the ubiquity of impurity and the inevitability of intimate human interaction, the *ethical management of impurity is characterized by a multifactorial process of diagnosis and response*. Correct diagnosis enables correct mitigation and, as Mira Balberg has noted, self-examination and self-inventory are integral parts of the rabbinic ethic of impurity. Thus, accurate assessment of one's impurity status and type of

impurity is a discipline in and of itself. [25] There are three pivotal components of this process. First, when diagnosing impurity, one must determine *impurity status* (whether someone is impure), *type of impurity* (to which biblical source one's impurity can be traced), and *degree of impurity* (how severe one's impurity is, and thus whether one must perform the full biblical purification ritual or an abbreviated and less onerous one). Second, this differential diagnostic process must account for the *physical and temporal details of the impurity's precipitating event,* as well as the *circumstances of exchange with one's environment* at and around the time of the event. Finally, when responding to a diagnosis, one must consider the *contextual virulence of a given impurity*—that is, by how many routes and into what hosts that particular impurity can spread. I borrow the term "virulence" from the language of infectious disease to underscore the ways in which impurity maps onto more contemporarily familiar forms of social contagion. *Type* and *degree* of impurity will affect how "contagious" a given impure person is, but so will the specifics of that person's interactions with their fellows and their environment.

I will focus here on a text that explicates the final component of the process—the *contextual virulence* of a given impurity—although this is a model for grappling with the other mishnaot in *Zavim* as well. Both the particular impurity diagnosed and the particular social and physical context in which the subject is located at a given time will also affect the appropriate response to the diagnosis, in terms of the proper treatment procedures and in terms of the subject's potential for transmitting their impurity to others. Accurate assessment of the implications of a given impurity therefore requires attending not only to the source's *absolute virulence,* but also to the circumstances that affect its *contextual virulence.* Absolute virulence refers to the cumulative power of transmission of a given impurity outside of any particular case of transmission, and it is determined by factors such as total number of routes of transmission, the degree of secondary impurity communicated by contact with the source,

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[25] See Fonrobert, *Menstrual Purity,* chapter 4, for more on the rabbis' assessment of impurity as a discrete discipline.

and the directness of contact with the source required for transmission. Contextual virulence, by contrast, refers to a given impurity's power of transmission in a particular case. Contextual virulence, as we shall see, does not always correspond with absolute virulence. A source that is less absolutely virulent may still have routes of transmission that are particular to that source, routes which in a given situation may be more likely to come into play than the potential transmission routes of a more absolutely virulent source. A given impurity may be more virulent than others in one case and less virulent in another.

One significant factor in the contextual virulence of a given impurity is the set of routes by which that impurity can be communicated. In the Mishnah, each source of impurity has its own set of standardized routes; while there is overlap among sources, a given source will be at least somewhat different from others in terms of the set of routes by which it may transmit. Further, the possible routes may vary depending on what the impurity is being transmitted to. Semen, for example, can transmit impurity to persons and objects by direct touch, and to pottery through the air.[26] *Zivah*, as *Mishnah Zavim* 2:4 tells us, has five possible routes of transmission:

> The *zav* conveys impurity in five ways, so that a person and their clothing are impure: to what he stands on, what he sits on, what he lies on, what he hangs on, and what he leans on.

> And what he lies on conveys impurity to a person so that they in turn convey impurity to garments by standing, sitting, hanging, leaning, touching, or carrying.

The Mishnah goes on to specify *zivah's* routes of secondary transmission: in addition to direct contact with a *zav*, a lesser degree of *zivah* impurity can be spread by contact with something a *zav* lay upon, and that person in turn communicates impurity (although a lesser degree of it) through one more route than does the *zav* himself. This is an example of what

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[26] *M. Kelim* 1:1.

Balberg refers to as a broader "graded system of impurity,"[27] in which the initial source, referred to as the "father" of impurity, has the strongest power to transmit. Someone or something that the "father" of impurity touches becomes a "first" of impurity, and diminishes the power to transmit; someone or something the "first" touches is a "second" of impurity with even further diminished power, and so on. So in this case, the *zav* is the "father" of impurity (the *av tumah*), what he lies on is a "first," a person who touches what he lies on is a "second," and so on.

Some sources have more absolute power to communicate impurity—that is to say, they are more virulent than others. The main textual source for this hierarchy of absolute virulence is the first chapter of *Mishnah Kelim*, which ranks sources according to their routes of contagion: the more routes of transmission, the more virulent the source. *M. Kelim* 1:3-4 addresses the *zav's* place in this hierarchy:

> **1:3.** Higher than [a dead reptile, a recovering *metzorah*, an animal that died without kosher slaughter, and one who has sex with a menstruant]: the discharge of a *zav*, and his saliva, and his semen, and his urine, and the menstrual blood of a *niddah*, since they communicate impurity by touching and by carrying. Higher than these: a saddle, since it communicates impurity to what is under a heavy stone. Higher than a saddle: what one lies on, since touching it is equal to carrying it. Higher than what one lies on: a *zav*, for a *zav* communicates impurity to what he lies on, and what he lies on does not convey impurity to what it in turn lies on.

> **1:4.** Higher than the *zav:* the *zavah*, since she communicates impurity to one who has intercourse with her. Higher than the *zavah:* the *metzorah,* since he communicates impurity by entering. Higher than the *metzorah*: a bone fragment the size of a barley grain, since it communicates seven-day impurity. More virulent than all of them: a corpse, since it communicates impurity by overhang, through which none of the rest communicate impurity.

M. Kelim thus ranks the *zav* as a more virulent source than a number of others, even more than his own bodily fluids, but it ranks a *zavah* (a

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[27] Balberg, 28-30.

woman with abnormal genital discharge), a *metzorah* (someone with an impure skin condition), a small bone fragment, and a corpse as more virulent than a *zav*. This ranking, combined with what we learn from *Zavim* 2:4 about the *zav's* five modes of transmission and the graded impurity of those persons and objects to which *zivah* impurity is communicated, seems to tell us fairly conclusively that the *zav* is moderately contagious among other sources of impurity.

Zavim 4:6, however, complicates this ranking of virulence. It describes a hypothetical case in which a *zav* and pure food or drink are sitting in the pans of a balance-scale. If the *zav's* weight causes the food to move, the food is thereby rendered impure:[28]

> If a *zav* were in one pan of a set of scales, and food or drink were in the second pan, they are impure; but if a corpse [were in the first pan], anything [in the second pan], save a person, remains pure.

> This is a case where greater stringency applies to a *zav* than to a corpse. But greater stringency is also applied to a corpse than to a *zav*. For a *zav* renders impure anything under him that is fit for lying or sitting on, such that it in turn renders persons and garments impure; he also conveys *madaf*-impurity [another term for indirect contact impurity] to whatever lies above him, such that it in turn conveys impurity to food and drink– impurity which a corpse does not covey.

> But greater stringency applies to a corpse, because a corpse conveys impurity by overhang, and it conveys seven days' worth of impurity— impurity which a *zav* does not convey.

This direct comparison to corpse impurity complicates a straightforward ranking of impurity sources in terms of their virulence. Even though a corpse can communicate impurity through more routes than a *zav*, a *zav* can nevertheless communicate impurity in a specific manner that a corpse cannot. M. Kelim 1:4 ranks a corpse as the most *absolutely* virulent *type of*

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[28] This is an example of transmission by "shift" (*heset*). There are other modes of transmission by indirect contact: "treading" or "leaning" (*midras*), for example, is invoked in a case where a *zav* and someone who is pure sit together on a boat or ride an animal together, even though they are not physically touching in either circumstance (*M. Zavim* 3:1).

impurity, because it can transmit impurity through "overhang" and makes anyone who touches it impure for seven days, which no other source can do. In other words, it is capable of transmitting a higher *degree of impurity* (seven-day) through a more indirect route of transmission than any other source. *M. Zavim* 4:6, however, points out that a *zav* can, depending on the circumstance, have greater *contextual virulence* than can a corpse. A *zav* can communicate impurity in a way a corpse cannot: a *zav* can convey impurity by indirect contact to items that lie above him, such that they can then contaminate food and drink. Here, even though the general rule—that a corpse is a more virulent transmitter of impurity than a *zav*—applies, there are circumstances in which a *zav* is the more virulent transmitter. Different impurities, in short, have different traits, and those particular traits may be more helpful in understanding which source is a greater concern in a given situation than is an abstract ranking of virulence.

Context also matters when analyzing the risks different STIs pose. While the Mishnah focuses largely on contextual versus absolute *virulence*, its logic can be extended to both virulence and severity in the case of STIs. Abstractly speaking, HIV is among the most *absolutely severe* STIs known, and it also has fairly high absolute virulence. Untreated, it is almost invariably fatal, and it is also easily transmissible through blood and semen. However, contemporary antiretroviral treatment not only turns HIV into a chronic, manageable condition but also significantly reduces its virulence. Someone who has been on antiretroviral drugs long enough to bring their viral loads down to undetectable levels is, for most practical intents and purposes, no longer contagious.[29] Responsible use of barrier methods and prophylactic drugs lower the risk of infection even further. By contrast, gonorrhea does not have high absolute severity: while it can

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[29] See, for example, Susan M. Schader and Mark A. Wainberg, "Insights into HIV-1 Pathogenesis through Drug Discovery: 30 Years of Basic Research and Concerns for the Future," *HIV & AIDS Review* 10, no. 4 (December 2011): 91-98.

lead to significant complications if left untreated, it is unlikely to be fatal.[30] Because it is a bacterial STI, however, it is one of the commonplace conditions whose treatment is increasingly affected by the growing problem of antibiotic resistance.[31] Although most people manage to clear even drug-resistant gonorrhea on their own, reinfection is common. One of the easiest ways to spread drug-resistant gonorrhea is by way of fellatio, which, ironically enough, is reputed to be a safer-sex practice through which one can reduce one's risk of contracting HIV. So, in certain contexts—communities where HIV rates are well under control and people have access to effective treatment—gonorrhea certainly has greater *contextual virulence*, may well have greater *contextual severity*, and may thus be a greater overall risk than HIV.

Mapping the categories of Mishnaic impurity onto sexual contagion provides an important corrective to much modern and contemporary STI discourse. Too often, frank and medically accurate discussions of STIs and the best ways to manage them are stymied by shame, stigma, and misinformation. The Mishnah's exhaustive, matter-of-fact, detailed, and depersonalized patterns of discussing social contagion—nearly *ad nauseum!*—offer a model for de-stigmatizing STI discourse and making it so commonplace as to be unthreatening. The specific features I have treated in this essay—the Mishnah's recognition of multiple types and subtypes of impurity, and its understanding that different types of impurity have different levels of virulence and severity and require different types of treatment—are a particular corrective to the modern and contemporary West's tendency to treat all STIs as the same terrifying affliction: one is either "clean" or "infected." The Mishnaic model reminds

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[30] See Kara A. McElligott, "Mortality From Sexually Transmitted Diseases in Reproductive-Aged Women: United States, 1999-2010," *American Journal of Public Health* 104, no. 8 (August 2014): 101-5.

[31] This is not to say that drug resistance does not also affect HIV: it does, especially when patients fail to take their antiretroviral drugs regularly. It is to say, however, that antibiotic resistance seems to be a much more widespread and rapidly developing problem for the treatment of gonorrhea.

us that this is a gross oversimplification and shows us a way to think about the realities of social contagion that is attentive to detail and nuance and has the potential to be far more humane than our current default.

More broadly, thinking about contemporary social contagion through the lens of these texts reminds us that something so seemingly arcane as the specifics of ritual purity in a bygone age can tell us a great deal about how we think of contagion and vulnerability in our own lives. These texts are alien, with a different worldview and different accounts of ontology and causality. Yet, the thing about them that seems at first glance *most* alien—their preoccupation with the social transfer of contagion—becomes, upon further study, the thing about them that is most relevant to our contemporary world. And some of the moral difference between our world and that of the text turns out, upon that further study, to challenge us, in our day, to use their models as guides for our own moral improvement.

IV. Concluding Reflection: Know Thy Text, Know Thyself

In my introductory reflection, I spoke of the importance of understanding and disciplining our standpoints and the ways in which they affect our practices of reading. What, then, are the disciplines I have demonstrated?

To begin with, I would argue that the first discipline I have attempted to demonstrate here is the simple recognition that not only my values, but even—and, I would suggest, more importantly—my ontological understandings of the phenomena under discussion are at least in part alien to the texts' understandings of those phenomena. There is, for example, nothing about STIs as such in the rabbinic material I have used here;[32] rather, the social function impurity plays for the rabbis happens to

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[32] While it is true that the kind of irregular discharge described in *Mishnah Zavim* sounds quite like a symptom of what we would today diagnose as a bacterial STI such as chlamydia or gonorrhea, there is no textual evidence that the rabbis of the Mishnah (who, after all, lived well prior to the widespread acceptance of germ theory) connected such discharge to sexually transmission. Even more importantly, the etiology of the discharge seems to have

be morally instructive for contemporary readers who are thinking about STIs. This claim that the texts' understandings are alien to mine may seem a truism, but the beginning of an honest and ethical conversation of any kind is the acknowledgement that it is necessarily occurring across some kind of difference. Such acknowledgment thus recognizes the ever-present possibility of misunderstanding and error, and so (one hopes) it acts as at least a partial check against interpretive hubris. To confront such an alien perspective, however, also clarifies my own perspectives—both their strengths and their shortcomings.

By the same token, by consenting to work with these texts in spite of the above-acknowledged differences, I am also acknowledging the possibility that a perspective that is at least partly alien to my own, morally and ontologically, may nevertheless have something of value to teach me regarding the problem I am attempting to address. That is, by consenting to engage, I am also consenting to the possibility of being taught, and thereby being changed, corrected, and unsettled by this alien perspective—and that disturbance is a productive irritant, goading me to investigate my own perspective on the question further, and from more angles, than I otherwise might.

Because I have acknowledged that the texts' ontological understanding may be alien to mine, I can thus be open to the possibility that the resources that may be most helpful for my current problem are not necessarily where I would first expect them to be. It is not just that the rabbis' values about sexuality are different than mine, it is that the rabbis understood sexuality to be a different sort of thing than I understand it to be, with a different function than I understand it to have. It is therefore unlikely, despite the initial, surface-level recognition, for rabbinic texts that explicitly treat sexuality to be of much use for my work in contemporary sexual ethics. By the same token, however, the rabbis understood social contagion to be a different sort of thing than I am used to understanding it as—and because I have acknowledged that the texts'

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no bearing whatsoever on its implications for the ritual status of the person who has it or those who come in contact with him.

perspective is alien to mine in some important way, I can also be open to the possibility that the text permits connections between phenomena that the perspective with which I encountered the text might have precluded.

Another critical discipline here is to have a thorough understanding of where one's own moral and ontological convictions are more and less flexible. I know myself, as a human and as a scholar, well enough to know that my own basic beliefs about the nature of sex and, by extension, about sexual morality are unlikely to conform to those I find in rabbinic text, not least because those views are formed by my own lived experience as a queer, neuroatypical woman. By knowing what my convictions are and where they came from, I am better able to sort out my own convictions from those I see in the text, and to evaluate the latter on something slightly closer to their own terms. I also know, however, that I am far less committed to a particular moral and ontological understanding of other aspects of social intercourse, and so I am therefore more open to being shaped and taught by the texts regarding those aspects.

None of these practices are, by themselves, sufficient for doing good text work or good constructive ethics. They are, however, helpful and important practices for religious ethicists who wish to use rabbinic texts in this way. They also establish that the practice of using religious texts to address contemporary problems is not a unidirectional relationship, but rather a conversation. Rabbinic texts are not resources to be mined. They are dialogue partners.[33] The encounter with rabbinic text is one from which no party comes away unaltered.

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[33] I am far from the first person to make this claim, some version of which has purchase across a number of subdisciplines within Jewish studies. See, among others, Elizabeth Shanks Alexander, *Transmitting Mishnah: The Shaping Influence of Oral Tradition* (Cambridge, UK: Cambridge University Press, 2006); Susan Handelman, *The Slayers of Moses: The Emergence of Rabbinic Interpretation in Modern Literary Theory* (Albany, NY: SUNY Press, 1983); Jay M. Harris, *How Do We Know This? Midrash and the Fragmentation of Modern Judaism* (Albany, NY: SUNY Press, 1995). And for a statement that articulates exactly this claim and yet at the same time directs us back to the caution expressed at the outset of this essay, I turn to Peter Ochs, as quoted in Steven Kepnes', Peter Ochs', and Robert Gibbs' *Reasoning After Revelation: Dialogues in Postmodern Jewish Philosophy* (Boulder, CO: Westview Press, 1998), 13: "We cannot read our own paradigms into rabbinic Judaism, however much we may discover that rabbinic texts are our best dialogue partners."