

## ***Finding A Home for Critical Talmud Study***

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# Finding A Home for Critical Talmud Study

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Our method for learning Talmud can be summarized in the following question: “What is it saying and what is it saying?” In order to make this question intelligible, we have to define what we mean by three crucial terms, “it”, “saying”, and “saying”. The first two have been well developed by the academic world. However, since that consensus is not widespread in the *yeshivah* world, I will summarize them here. It is the third where we have something to contribute to the discourses both of the *yeshivah* and of the academy. Through defining these terms, we will see that the method consists of 1) identifying the different layers of the Talmudic *sugya*, 2) reading each layer in its own context, and 3) evaluating what values are reflected by each particular statement and the larger editorial structure of the *sugya*. Through this approach, we get a glimpse of the intellectual history of the *sugya* and, more importantly, we inherit a wide range of halakhic values that operate in the Talmud—values that guide the binding halakhic interpretations of the Talmud and that can and should operate in our own thinking and decision-making.

## “It”

The Talmud is a composite document reflecting numerous voices from various places, spanning over 500 years. Consciousness of this fact is the crux of the method. It

bears emphasizing that the Talmud does not attempt to hide this feature of its composition. The formal sources of the Talmud—*mishnayot*, *baraitot*, and *memrot* of *amoraim*—are formulated in terse, legal format and in the enterprise’s “official” language, Hebrew. Later glosses, comments, and discussions—the *stama de-gemara*—are recorded in conversational style and in the colloquial language of the time, Aramaic (just as today, students of Talmud discuss and comment on the text in English, modern Hebrew, Yiddish, etc.). Furthermore, not only are the individual sources linguistically distinct, but the editors of the Talmud even use specific terminology for the kind of sources they are bringing (e.g., *de-tanya*, *tenan*, *teno rabbanan*, *itmar*). The first task in learning a *sugya* is identifying its component parts.<sup>2</sup>

Comparison of the printed edition to manuscripts reinforces sensitivity to this characteristic of the literature. One rarely finds significant variations in halakhic sources of the *tanna'im* or *amora'im*. One constantly finds variations—often substantial—among different textual witnesses for the stammaitic give-and-take of the *sugya*. Knowing this, we read the tannaitic and amoraic sections differently than the stammaitic ones. The former are legal source material, fastidiously transmitted in an official format. The latter are commentarial glue that

<sup>1</sup> I gratefully acknowledge my student, Aryeh Bernstein, for his hard work in bringing this article to fruition. I also thank my colleague, Rav Elisha Ancselovits, for his astute editorial comments.

<sup>2</sup> I will not attempt to rehash here a full methodological program for identifying and reading the layers of the Talmud. The most basic and thorough presentation of such a program that I know of is Prof. Shamma Friedman’s seminal “*Mavo Kelali ‘al Derekh Heqer ha-Sugya*”, in *Mehqarim u-Meqorot*, vol. 1, ed. H.Z. Dimitrovsky, New York: Jewish Theological Seminary, 1978.

<sup>3</sup> I am neither describing the historical process of the composition of the *stam* nor indicating who these editors/commentators were. We still lack an answer to this enigma. For example, it remains an open question whether all of the *stam* is the latest editorial layer of the Talmud or if there are also earlier stammaitic sections. Since we already find Aramaic and give-and-take between Abbaye and Rava, my own intuition is that there are different layers of *stam*, a small portion of which already date to around their time.

interpret and contextualize the source material as they transmit it. These layers of commentary and scrutiny—the *stam*—are already embodiments of the learning process, and are, phenomenologically, the same process in which we engage in our *batei midrash*.<sup>3</sup> Awareness of this distinction invites a different conception of the genre of the Talmud.

### “Saying”

Once we comprehend the Talmud’s genre (“it”), our first task in learning a *sugya* is to identify and separate its strata. As we do so, we listen to what each voice is “saying”, that is, what each one means in its own context. This task requires expanding our study of primary texts, including the Tosefta, midrashic literature, and the Talmud Yerushalmi. We learn the positions found in a *mishnah* in the context of relevant parallels—not only in *baraitot* in the Bavli, but also in the Tosefta and the halakhic *midrashim*—in order to appreciate the nuances and range of tannaitic positions. We can then understand what Rabbi Yehudah ha-Nasi was saying by recording certain positions and not others, and by recording them in certain contexts and not others. The same goes for amoraic statements. Instead of accepting the Bavli’s formulations *carte blanche*, we first study *memrot* (statements) as they appear in the less edited Yerushalmi. This increases our ability to appreciate the character and significance of the positions themselves.<sup>4</sup>

In the course of identifying original voices, the learner

should utilize the wide corpus of manuscripts of the Bavli and other Rabbinic texts.<sup>5</sup> Not infrequently, one finds variants that clarify difficult passages in a *sugya*.<sup>6</sup> The printers of the Talmud did, indeed, perform an invaluable service to the Jewish world in their stunning accomplishment of preparing editions of our most important literature that could be accessible to the masses. However, they made interpretive choices in deciding among variants in the manuscripts before them. They also frequently emended the texts on the basis of the “corrections” of the Maharsha<sup>7</sup>, whose notes were insightful, but not necessarily based on textual traditions. Since Daniel Bromberg<sup>7</sup>, the widow Romm of Vilna<sup>8</sup> and all those in between did not have *Ruah ha-Qodesh*, we should read their texts alongside other textual possibilities that stood before them (and before the *rishonim* and *aharonim*, for that matter). In this way we can come closer to reclaiming the original voices.

Using these lower-critical tools is important, but insufficient without the appropriate consciousness in reading. The linchpins of our method are paying attention to the strata of the text and reading each stratum in its own context, without the comments or qualifications of later voices. Reading an amoraic source in the dressing given to it by the *stam* prevents the learner from understanding the *amora* himself. It further shrouds perception of just what was bothering the *stam* and what legal or conceptual development he heralded.<sup>9</sup> The same is true regarding amoraic extensions of tannaitic sources and

<sup>4</sup> I am forever indebted to my teacher, Rav Yisrael Ze’ev Gustman, zt”l, for bringing to my attention the importance of learning the Tosefta, *midreshei halakhah*, and the Yerushalmi. Only years later could I appreciate the deepest implications of this commitment to understanding *peshat*.

<sup>5</sup> I am perplexed to no end by the taboo that accompanies manuscripts in much of the contemporary *yeshivah* world. One need only peruse the *haskamot* to Rav Raphael Natan Nata Rabbinovitz’s *Diqduqei Soferim* to be impressed by what a radical innovation this taboo is and how valued manuscript comparison was to many of the *gedolim* of a century ago. This work, published between 5627 and 5646 (1867-1886), lists variants between the printed edition and the significant Munich manuscript of the Talmud and scattered other manuscript references, and includes his long essay on the history of printing of the Bavli. It received the glowing *haskamot* of no less than Rav Shlomo Kluger, zt”l, Rav Yoseph Shaul Ha-Levi Natanzohn, zt”l, Rav Ya’aqov Ertlanger, zt”l (the “Arukh la-Ner”), Rav Avraham Shemuel Binyamin Sofer, zt”l (the “Ketav Sofer”), Rav Yitsaq Elhanan Spektor, zt”l, and Rav Shimon Sofer, zt”l (the “Mikhtav Sofer”).

<sup>6</sup> Comparing versions of a *gemara* between manuscripts often also clarifies positions of *rishonim* that seem not to square with the text. The *rishonim* do not rule out of a vacuum, but in interpretation of the *sugya*. To comprehend their legal concepts, we must read them in context of the texts they explain.

<sup>7</sup> The Christian Daniel Bromberg printed the first full edition of the Talmud in Venice between 5280-83 (1520-23).

<sup>8</sup> The widow Deborah Romm and her brothers-in-law printed the Vilna Sh”as, which we use to this day, between 5640-46 (1880-86).

<sup>9</sup> Opponents of the academic method sometimes criticize it for showing disrespect to *bazal* and the Talmud. I think the opposite. It is *because* of our reverence for the *tannaim*, *amoraim* and the editors, that we insist on understanding all of them. If they spoke up, they deserve to be heard and appreciated.

Rashi's commentary on the "final" text.<sup>10</sup> Reading the Talmud synchronically misunderstands the genre and loses the nuances, or even the entire thrust, of many of *Hazal's* voices.

### "Saying"

The contemporary learner is deeply indebted to the insights of academics for focusing our attention on what the Talmud—"it"—is and on what its sources are "saying". However, Talmudic scholarship exposes itself to a potent critique, articulated often in the *yeshivah* world: "So what?". Too often, academics labor to identify the contextual meaning (*peshat*) of every source and to trace the arrangement of the *sugya* without asking what halakhic concept is adduced or what values are at play in a legal ruling, textual interpretation, or editorial choice. Sometimes this lack is merely a missing step that we can fill to supplement the critical analysis. Sometimes, though, it challenges the veracity of their conclusions, because they have reached them without attending to the issue at hand. In our eyes, any explanation of a ruling or interpretation that is unconscious of the issue at hand is suspect. The core question on any text is, "What is it *saying*?" Our employment of all other features of the critical method is ultimately to enable us to address this question most responsibly and confidently.

"What is it *saying*?" is the nucleus of our method regarding each stratum of the *sugya* and is even more at hand in reading the edited *sugya's* literary *gestalt*. After identifying the *peshat* of each source, we can see that the meanings of these texts change through layers of inter-

pretation, such as when the *stam* limits the applicability of a *memra* with an *'uqimta*.<sup>11</sup> Academics often read these statements only structurally: the editor had two opposing traditions and could not discard one, so he reconciled them. Such an analysis is correct, but does not go far enough. It is true that the editor aimed to square away the material. But why did he do it this way and not another? Alternative editorial possibilities are often readily apparent; influencing the particular editorial moves are assumptions and values awaiting our analysis.

My approach is admittedly intuitive, which irks many academics, who demand strict proof and objectivity.<sup>12</sup> On the other hand, their methodological reduction ends up eliminating the main objective and sanctifying means as an end to themselves.<sup>13</sup> In any case, I agree that it is important to distinguish between readings about which we feel fairly certain and those that are more speculative. I constantly repeat to my students the unforgettable slogan of one of the prominent *rashei yeshivah* in Skokie, Rav Starr, zt"l: "Know what you know and know what you don't know, and know the difference!" However, I argue that admitting the gaps in our knowledge into the equation furthers discourse and engenders the possibility of increased knowledge through the interaction of the *beit midrash*.

In this way, we fill a crucial gap in prominent academic protocol, but we also differ from the dominant learning approaches of the *yeshivah* world. Today, most *yeshivot* proliferate the "Brisker *derekh*", the elegant and rigorous

<sup>10</sup> I have no formal, academic training in Talmud. The earliest seeds of my academic orientation were planted by Lithuanian *rashei yeshivah* who insisted that Rashi be read as a commentator, and not as a seamless part of the *gemara*. When I was in high school at the Skokie *Yeshivah*, then under the leadership of Rav Ahron Soloveitchik, zt"l, the *beit midrash* rang with a pedagogic slogan: "Rashi is a *rishon*!" When I was in *yeshivah gevohah* in Detroit, the *rosh yeshivah*, Rav Leib Bachst, shlit"l, put it a little differently: "Rashi did not have Rashi!" Both *rashei yeshivah* were warning us to pay careful attention to the Talmudic text itself before turning to the commentaries. Looking at Rashi as a commentator and not as the decisive read of every line allows for an awareness of the difficulties in the text. If Rashi needed to smooth out the Talmud, that means that the Talmud itself is rough. Confronting that roughness enables the learner to uncover worlds of interpretive possibility and to evaluate and appreciate the interpretive choices of Rashi and the other commentators. This reading attitude is Prof. Nehama Leibowitz, zt"l's contribution to the world of Bible study, where it is now the convention. We urge similar developments in Talmud study.

<sup>11</sup> "*Uqimta*" is the conventional term for an interpretive comment that limits the applicability of an authoritative statement to a particular range of situations.

<sup>12</sup> This is a frequent critique of Prof. David Weiss Halivni's work by his academic colleagues. In this regard, I side with Prof. Halivni. I frequently disagree with his conclusions, but intuitive speculation furthers discourse and engenders greater understanding. To refrain from it is to avoid our most important task.

<sup>13</sup> Moreover, as we pointed out earlier, by eliminating the essential questions—and, therefore, the issue at hand—they may open themselves up to interpretive errors.

analytical system innovated by Rav Hayim Soloveichik of Brisk, ז"ל. This method seeks the classification and description of the conceptual world of *halakhah*, without, generally, admitting the subjective world of values into the system.<sup>14</sup> In Rav Mosheh Lichtenstein's terms, it focuses on the "what", but not the "why".<sup>15</sup> However, even his recent proposal to consider the "why" after the "what" has been determined misses the point, because it assumes the independence of these two categories, in asking "why" only after "what" has been established. We differ, first, in offering different tools for how to analyze "what", as discussed above in the "It" and "Saying" sections. Second, it is our claim that the "why" is an integral component of the "what". The *tanna'im* and *amora'im* were not legal theorists proposing metaphysical systems. They were interpreters and jurists. True, it is often unclear whether the stage for an halakhic dictum is primarily the *beit din*, where the sage has to issue a practical ruling, or the *beit midrash*, where the sage has to interpret a difficult text. Either way, though, the ruling is local. Legal rulings are legal rulings before they can hope to be neo-Platonic abstractions.<sup>16</sup>

"So what?" is not the only challenging question asked by non-academics of academics. Others challenge critical method as being disruptive to *halakhah*. According to this claim, if the academics intend for their *peshat* of Rav Huna's *memra* to be available for contemporary halakhic adjudication, the analysis becomes disharmonious to the

halakhic process, since no tradition exists for such a reading. Alternatively, if it is to have no bearing on practical *halakhah*, its revelation is irrelevant. Our response to this assertion is that it is coherent only if one looks at the ruling as a legal bottom line and nothing more. Such a view misunderstands the nature of law. All legal thought is, by its nature, an embodiment of values, so Rav Huna's statement is, actually, a translation of some nexus of values into the setting at hand. These values can be economic, social, political, moral, cultural, or spiritual, and usually some combination thereof. They can be conscious, when a *tanna* or *amora* actively grapples with a practical need in the community, or unconscious, when his general outlook informs how he interprets a text or situation.<sup>17</sup>

The bottom line of our method of learning is that the sages of the Talmud—those named and those anonymous—knew how to express themselves. We, as committed, Rabbinic Jews, have to train ourselves to hear them. That requires marshalling all available tools toward understanding the discussion at hand in a *sugya*. It requires sharpening our consciousness of the textual history of a *sugya* and of its conceptual underpinnings and remembering that before a *memra* is a text (according to academics) or a metaphysic (according to *lamdanim*), it is a legal ruling, which means that it is intimately connected to local concerns. When we ask, "What is it saying and what is it *saying*?", we equip ourselves to

<sup>14</sup> It is not within the scope of this article to present a thorough description or analysis of the Brisker *derekh*, nor am I the person most fit to do so. Rav Hayim's great-great grandson and my friend, Rav Mosheh Lichtenstein, recently published an insightful article on this topic, "What Hath Brisk Wrought: The Brisker *Derekh* Revisited", in *The Torah U-Madda Journal*, Volume 9 (2000). To my knowledge, the most important statement of the philosophical world reflected by the Brisker *derekh* remains Rav Joseph B. Soloveitchik, ז"ל's, *Halakhic Man*.

<sup>15</sup> This is not to say that all *yeshivah* "lomdus" ignores asking "why?". Rav Shimon Shkop, ז"ל, and his disciple and my teacher, Rav Yisrael Ze'ev Gustman, ז"ל, do emphasize "why" and, in my opinion, often carry their analytical, conceptual method to a more fruitful conclusion than do Rav Hayim or his descendants. I focus on the latter method, though, since it, in its different shadings, dominates contemporary *yeshivah* learning.

<sup>16</sup> I am not claiming that *memrot* are always restricted to their local contexts. However, when the *amora* wishes to make extractions to other contexts, he will tell us so. We see this phenomenon especially in statements of Rava and Abbaye and their disciples. A few examples come readily to mind. On *Sukkah* 7b, Abbaye sums up eight ostensibly unrelated positions regarding *sukkah* with the common demoninator "Sukkah dirat qeva ba'inan" (the *sukkah* must be a permanent structure). On *Qiddushin* 6b, Rava teaches that giving money to another person on the condition that s/he return it is ineffective for sales, betrothal, and redemption of the first-born son, while it is effective but prohibited for giving *terumah*. In BT *Nedarim* 6b-7a, Rav Pappa apparently connects five areas of halakhah—betrothal, separating the corner of one's field for the poor, *tsedakah*, unowned property, establishing a room as a lavatory—by asking whether a *yad* (an abbreviated expression) is effective in all of them. The academic Talmudists I know who actively engage the religious question steadfastly deny any applicability of their studies to halakhah. This position seems naive to me. If one thinks of one's learning at all in truth constructs, it is hard for it not to affect one's evaluation of halakhic positions, either in the direction of decision-making or, if not, in the direction of dissonance-building. Briskers often maintain the independence of their *haqiro*t from practical *halakhah* as well, but this is equally illusory. Perusal of Rav Herschel Schachter's book *Nefesh ha-Rav* will illustrate this point sufficiently.

<sup>17</sup> This approach, which sees *halakhot* as expressions of values, begins to answer a deeper critique of academic Talmud study as undermining of one's confidence in the worth or truth of the accepted *halakhah*. I hope to address this issue in the future.

hear the voices of the Talmud express themselves as translations of God's will into the setting at hand. This sensitivity not only affords the strongest reading of the

Talmud, but also best enables us to locate ourselves on the map of halakhic discourse.<sup>18</sup>

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