

#Problematic: Attempting to Redeem the Most Problematic Texts of the Talmud

Session Two – Non-Jews in Rabbinic Texts

1) Teresa M. Bejan, Now Explain What the Problem Is, The Atlantic, October 2, 2021

<https://www.theatlantic.com/ideas/archive/2021/10/problem-with-word-problematic/620289/>

Academics like me love to describe things as “problematic.” But what do we mean? We’re not saying that the thing in question is unsolvable or even difficult. We’re saying—or implying—that it is objectionable in some way, that it rests uneasily with our prior moral or political commitments.

For instance, when I described applying Ancient Greek free-speech ideals to social media as “problematic” in a recent article, I wasn’t saying that Socrates’s audience was impossible to please. I was saying that these practices were premised on exclusion in a way that modern egalitarians won’t like. Or when my Oxford colleague Amia Srinivasan describes stand-up comedy in Los Angeles as “problematic,” she’s not saying that she struggled to understand the jokes. She’s saying that they relied on sexism in a way that she—and everyone—should find morally bad.

In principle, every usage of the term *problematic* should be followed by an explanation. Is the situation or person in question unjust, immoral, or unfair? Racist, sexist, or otherwise bigoted? Wrongheaded, perhaps, or just plain wrong? All too often, the explanation never comes...

Problematic may have escaped the academy, but scholars and teachers still bear a lot of responsibility for its current use. Like any casual Twitter user, academics use *problematic* as an innuendo, or better yet, an “insinuating.” Rhetorically, this usage divides our audiences between those who know already what our commitments are—in many cases because, on a politically homogeneous campus, they share them—and so are presumptively in the know about what we find objectionable. To this audience, *problematic* indicates *where* the problem is; they do not need to be told *what* it is.

Yet for those who, for whatever reason, don’t belong to this community of judgment, the effect is very different. *Problematic* implies that they, themselves, may present a problem. They are offside, and they better get onside, and quick—whether they understand the objection or not.

In effect, *problematic* communicates that those who don’t share our commitments at the outset are not worth arguing with, let alone persuading. It relies on a subtle sort of bullying in place of mutual justification. It excludes, rather than explains.

To say that *problematic* functions as an exclusionary rhetorical strategy implies intent, but I blame intellectual indolence more than malice. In my field of political philosophy, we like to do things with words; we are less attuned to the ways in which words do things with us. Academics are also human beings, often with imposter syndrome, and we come to rely on words such as *problematic* precisely because they are vague enough to preempt objection. Students, especially, would rather agree with us than admit that they don’t understand what we mean.

In this way, *problematic* is highly efficient. But it is also disastrous for learning.

This is why I find the word *problematic* to be, well, problematic. I object to its proliferation not simply because it **encourages sloppy thinking and poor communication among scholars and students alike, but because it divides audiences into in-groups and out-groups based on unstated, but assumed, commitments.** Moreover, by failing to express our own specific objections, we academics insulate ourselves from critique. We make ourselves *unchallengeable* as teachers and so fail our students and ourselves...

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2) Charlotte Elisheva Fonrobert, Feminist Interpretations of Rabbinic Literature: Two Views, Nashim: A Journal of Jewish Women's Studies & Gender Issues (4) Fall 5762/2001, p. 7-14

Unless the interpreter reflects consciously on which aspect of talmudic literature establishes its authoritativeness to him or her and why, interpretations will always be caught between the polarized fronts of polemic and apologetic and thus remain highly politicized.

Polemicists accuse the Talmud of sexism or misogyny at worst or exclusivism at best, both in its discourse and in the institutions based on it. It thus becomes meaningless to them for constituting a meaningful Jewish identity today.

Apologists defend the rabbinic texts; their exclusivism is explained and thus always already justified to a certain degree.

A way out of this battle is hard to find. However, a starting point for the way out from between these two fronts would be the assertion that **a text, in and of itself, never simply is sexist or misogynist, unless we endow it with power over us, or unless institutions use the text to support a given power structure. Talmudic texts certainly lend themselves to such a use, and they have been used in Jewish cultural history, for instance, to exclude women from the most prized aspect of a Jewish religious life, that of learning. Nonetheless, the most powerful claim brought forth by feminist thinking in the Jewish context has perhaps been the claim that these texts belong to women also, that they are part of women's heritage, religious commitments and aesthetic pleasures.**

This claim already defies women's historical and in some cases institutional exclusion from learning Talmud. This claim and the related emergence of women scholars of Talmud already has begun to change the "face" of the text, as women move from being spectators in the talmudic beit midrash to being participants in it. To cite but one example from my own work: Polemicists regard the discussions in Tractate Niddah as sexist, in their most basic assumption of menstrual "impurity," while apologists - in what I would call the "perpetual honeymoon" apologetic, generated already by the Talmud itself - regard them as providing the basis for a couple's healthy sexual life. However, their much more problematic aspect is that even here, in discussions of menstruation, women are excluded from participation. A different kind of investigation might ask what aspects of the discourse, such as the objectification of women's bodies, contribute to the exclusion of women, and, furthermore, how the rabbis established their authority as menstrual experts. Did these strategies, indeed, remain uncontested? These questions take me out of the realm of ideological dogmatism about the practice of hilkhot niddah, which some women find meaningful, and some do not. **They put me in the position of regarding the rabbinic discussions of women's bodies as irrevocably part of the web of our collective Jewish imagination, which we continue to spin. Only, we pick up threads that have been left hanging and continue to spin with them, adding different colors and textures to the web.**

One way this may happen is for women to train as halakhic counselors, as they do at the Nishmat seminary in Jerusalem, thus changing the face of rabbinic authority in Israel.

Another is for us to use the texts as a springboard for philosophical and poetic reflections on the function of the body in religion. **Either way, the Talmud will have a different future, and the talmudic beit midrash will change its collective face in ultimately unpredictable ways.**

3) Sifrei Devarim 143

Another interpretation of God came from Sinai - When God revealed Himself to give the Torah to Israel, He revealed Himself not only to Israel, but to all other nations as well.

First He went to the **Children of Esau**. He asked them: 'Will you accept the Torah?' They said to Him: 'What is written in it?' He said: 'You shall not murder.' They replied: 'It [i.e. murder] is our very essence; our father was a murderer, as it says 'But the hands are the hands of Esau,' and "By your sword you shall live.'

He then went to the children of **Ammon and Moab**, and asked them: 'Will you accept the Torah?' They said to Him: 'What is written in it?' He said: 'You shall not commit adultery.' They replied: 'Our very essence is adultery, as it says 'And so were the daughters of Lot with child by their father.'

"He then went to the children of **Ishmael**, and asked them: 'Will you accept the Torah?' They said to Him: 'What is written in it?' He said: 'You shall not steal.' They replied: 'Our very essence is theft; our father was a thief, as it says 'And he shall be a wild-ass of a man; his hand *ba'kol* [i.e. in everything], and every man's hand against him.' And the same is true for every single nation: God asked them all if they would receive the Torah. As it says 'All the kings of the earth shall praise You, God, for they have heard the utterances of your mouth.'

Perhaps they heard and even accepted them? Scripture therefore teaches, 'And with anger and fury I will wreak vengeance upon the nations, who did not obey [or listen].' It was not enough that they did not listen [to these utterances], but they did not fulfill even the seven Noahide commandments which they had accepted; [rather,] they cast them off.

Since he saw this (that the other nations would not accept), he gave them to Israel.

A parable: A man took his donkey and dog to the granary, and loaded a letekh upon the donkey and three se'ah upon the dog. [Note: 1 letekh=15 se'ah] The donkey went on its way, while the dog panted. He removed one se'ah from upon the dog and placed it on the donkey. And so for the second, and so for the third.

So too Israel accepted the Torah, with its explanations and details; furthermore, they even took on those seven commandments which the "children of Noah" could not withstand and had cast off. Therefore it says, 'And he said: God came from Sinai, and rose from Sinai unto them.'

ספרי דברים פסקא שמג

דבר אחר ויאמר ה' מסיני בא, כשנגלה הקדוש ברוך הוא ליתן תורה לישראל לא על ישראל בלבד הוא נגלה אלא על כל האומות. תחילה הלך אצל בני עשו אמר להם מקבלים אתם את התורה אמרו לו מה כתוב בה אמר להם +שמות כ יב+ לא תרצח אמרו כל עצמם של אותם האנשים ואביהם רוצח הוא שנאמר +בראשית כז כב+ והידים ידי עשו +שם /בראשית/ כז מ+ ועל חרבך תחיה הלך אצל בני עמון ומואב אמר להם מקבלים אתם את התורה אמרו לו מה כתוב בה אמר להם +שמות שם כ/ יב+ לא תנאף אמרו לו כל עצמה של ערוה להם היא שנאמר +בראשית יט לו+ ותהרין שתי בנות לוט מאביהן הלך אצל בני ישמעאל אמר להם מקבלים אתם את התורה אמרו לו מה כתוב בה אמר להם +שמות שם כ/ יב+ לא תגנוב אמרו לו כל עצמם אביהם ליסטים היה שנאמר +בראשית טז יב+ והוא יהיה פרא אדם וכן לכל אומה ואומה שאל להם אם מקבלים את התורה שנאמר +תהלים קלח ד+ יודוך ה' כל מלכי ארץ כי שמעו אמרי פיך יכול שמעו וקבלו תלמוד לומר +מיכה ה יד+ ועשיתי באף ובחמה נקם את הגוים אשר לא שמעו לא דיים שלא שמעו אלא אפילו שבע מצות שקבלו עליהם בני נח לא יכלו לעמוד בהם עד שפרקום

כיון שראה הקדוש ברוך הוא כך נתנם לישראל,

משל לאחד ששילח את חמורו וכלבו לגרן והטעינו לחמור לתך ולכלב שלש סאים היה החמור מהלך והכלב מלחית פרק ממנו סאה ונתנו על החמור וכן שיני וכן שלישי

כך ישראל קבלו את התורה בפירושה ובדקדוקיה אף אותם שבע מצות שלא יכלו בני נח לעמוד בהם ופרקום באו ישראל וקבלום לכך נאמר ויאמר ה' מסיני בא וזרח משעיר למו

Questions for consideration:

- What is this text telling you about the Rabbinic views of Non-Jews?
- What is problematic to you about this text? Please be specific in your critique.
- Do you recognize any voices in this text that are self-critical? In what ways?

Deuteronomy 33:1-5

- 1) This is the blessing with which Moses, God's agent, bade the Israelites farewell before he died.
- 2) He said: God came from Sinai, And shone upon them from Seir; [God] appeared from Mount Paran, And approached from Ribebboth-kodesh, Lightning flashing at them from [God's] right.*
- 3) Lover, indeed, of the people, their hallowed are all in Your hand. They followed in Your steps, accepting Your pronouncements,
- 4) When Moses charged us with the Teaching, as the heritage of the congregation of Jacob.
- 5) Then [God] became King* in Jeshurun, when the heads of the people assembled, the tribes of Israel together.

דברים לג:א-ה

וְזֹאת הַבְּרָכָה אֲשֶׁר בֵּרַךְ מֹשֶׁה אֶיִשׁ הָאֱלֹהִים אֶת־בְּנֵי יִשְׂרָאֵל לִפְנֵי מוֹתוֹ:
 וַיֹּאמֶר יְהוָה מִסִּינַי בְּאֵרְצוֹת מִשְׁעֵיר לָמוֹ הוֹפִיעַ מִקֶּרַךְ פְּאִלֹן וְאֵתָה מִרְבֶּכֶת קָדֵשׁ מִיַּמִּינֹו (אֲשֶׁר דָּת] לָמוֹ:
 אֶף חֶבֶב עַמִּים כָּל־קוֹשֵׁיוֹ בְּיַגְדוֹ וְהֵם תָּפְנוּ לְרַגְלֶךָ יִשְׂאֵא מִדְּבַר־תִּיבִיד:
 תוֹרָה צִוְּה־לָנוּ מֹשֶׁה מוֹרֶשֶׁה קִהְלַת יַעֲקֹב:
 וַיְהִי בִישְׁרוּן מִלֶּךְ בְּהַתְאַסְפֵי רְאִשֵׁי עַם יִחַד שִׁבְטֵי יִשְׂרָאֵל:

4) Mishna Tractate Bava Kamma 4:3

An ox of an Israelite that gored an ox belonging to the Temple, or an ox belonging to the Temple that gored an ox of an Israelite, the owner is exempt, as it says, "The ox belonging to *his neighbor*" (Exodus 21:35), and not an ox belonging to the Temple.
 An ox of an Israelite that gores an ox of a gentile, the owner is exempt.
 And an ox of a gentile that gores the ox of an Israelite, whether the ox is harmless or an attested danger, its owner pays full damages.

משנה בבא קמא פרק ד משנה ג

שור של ישראל שנגח שור של הקדש ושול הקדש שנגח לשור של הדיוט פטור שנאמר (שמות כא, לה) שור רעהו ולא שור של הקדש
 שור של ישראל שנגח לשור של כנעני פטור ושול כנעני שנגח לשור של ישראל בין תם בין מועד משלם נזק שלם:

5) Babylonian Talmud Tractate Bava Kamah 38a

The mishna teaches: With regard to **an ox of a Jew that gored the ox of a gentile**, the owner of the belligerent ox is **exempt** from liability; whereas if a gentile's ox gores a Jew's ox, the owner is liable to pay the full cost of the damage.
The Sages said: This statement is difficult whichever way you look at it.

If the phrase "of another" is meant in a **precise** manner, and therefore the liability applies only if his ox gores the ox of another Jew, **when a gentile's ox gores that of a Jew he should also be exempt** from liability.
And if the phrase "of another" is **not** meant in a **precise** manner, then **even when a Jew's ox gores that of a gentile** the owner of the belligerent ox **should be liable**.

Rabbi Abbahu said that the reason for this ruling is that **the verse states: "God stood and shook the earth; God beheld, and made the nations tremble [vayyatter]"** (Habakkuk 3:6). This is homiletically interpreted to mean that God *saw the seven mitzvot that the descendants of Noah accepted upon themselves to fulfill, and since they did not fulfill them, God arose and permitted [vehittir] their money to the Jewish people, so that in certain cases Jews are not liable for damage caused to gentiles.*

Rabbi Yoḥanan said that the source for this *halakha* is **from here**: It is stated in reference to the giving of the Torah: "The Lord came from Sinai and rose from Seir unto them; **He appeared from Mount Paran**" (Deuteronomy 33:2), which is homiletically interpreted to mean: **From** the time God came from Mount **Paran**, when giving the Torah, **the money of** the gentile nations **appeared**, i.e., it was revealed and granted **to the Jewish people**.

תלמוד בבלי מסכת בבא קמא

לת.

שור של ישראל שנגח שור של כנעני פטור:

אמרי ממה נפשך

אי רעהו דוקא דכנעני כי נגח דישאל נמי ליפטור ואי רעהו לאו דוקא אפילו דישאל כי נגח דכנעני נחייב

א"ר אבהו אמר קרא (חבוקק ג, ו) עמד וימודד ארץ ראה ויתר גוים ראה שבע מצות שקיבלו עליהם בני נח כיון שלא קיימו עמד והתיר ממונג לישאל

רבי יוחנן אמר מהכא (דברים לג, ב) הופיע מהר פארן מפארן הופיע ממונג לישאל

What is Rav Yosef's exposition? It is as Rav Yosef says: "He stood and shook the earth; He beheld." What did He see? He saw the seven mitzvot that the descendants of Noah accepted upon themselves and did not fulfill, so He arose and permitted their prohibitions to them.

The Gemara asks: **Did they thereby profit**, in that their prohibitions became permitted to them? **If so, we have found a transgressor who is rewarded.** **Mar, son of Rabbana, says:** This is not to say that for them to transgress their mitzvot is no longer a sin; rather, it is **to say that even if they fulfill them, they do not receive reward for fulfilling them.**

The Gemara asks: **But do they not receive reward for fulfilling those mitzvot? But isn't it taught in a baraita that Rabbi Meir says: From where is it derived that even a gentile who engages in Torah is considered like a High Priest? The verse states with regard to the mitzvot: "Which if a person does, he shall live by them"** (Leviticus 18:5). **It is not stated:** Which if **priests and Levites and Israelites** do, they shall live by them, **but rather: A person**, indicating that all people are included. **You have therefore learned that even a gentile who engages in Torah study is considered like a High Priest.**

The Sages said in response: Rav Yosef meant that they do not receive the reward as does one who is commanded to perform a mitzva and performs it, but as does one who is not commanded to perform a mitzva and performs it anyway. As Rabbi Hanina says: One who is commanded and performs a mitzva is greater than one who is not commanded and performs it.

The Sages taught the following story in the context of the aforementioned *halakha*: **And the Roman kingdom once sent two military officials [sardeyotot] to the Sages of Israel, and ordered them in the name of the king: Teach us your Torah.** The officials **read** the Torah, **and repeated** it, **and repeated** it again, reading it for the **third** time. **At the time of their departure, they said to the Sages: We have examined your entire Torah and it is true, except for this one matter that you state, i.e., that with regard to an ox of a Jew that gored the ox of a gentile, the owner is exempt from liability, whereas with regard to the ox of a gentile that gored the ox of a Jew, whether it was innocuous or forewarned, the owner pays the full cost of the damage, whichever way you look at it.** **If** the phrase **"of another"** is meant in a **precise** manner, that the owners of both oxen must both be Jewish, then **even when** the ox **of a gentile gores the ox of a Jew** the owner of the ox **should be exempt** from liability. **And if** the phrase **"of another"** is **not** meant in a **precise** manner, and the oxen of all are included, then **even when** the ox **of a Jew gores the ox of a gentile** the owner **should be liable**. They added: **But we will not inform this matter to the kingdom.**

מאי דרב יוסף דא"ר יוסף עמד
וימודד ארץ ראה וכו' מה ראה
ראה שבע מצות שקיבלו עליהם
בני נח ולא קיימום עמד והתירן
להם
איתגורי אתגר א"כ מצינו חוטא
נשכר
אמר מר בריה דרבנא לומר
שאפילו מקיימין אותן אין מקבלין
עליהן שכר

ולא והתניא ר"מ אומר מנין
שאפילו נכרי ועוסק בתורה שהוא
ככהן גדול ת"ל (ויקרא יח, ה)
אשר יעשה אותם האדם וחי בהם
כהנים ולוים וישראלים לא נאמר
אלא אדם הא למדת שאפילו נכרי
ועוסק בתורה הרי הוא ככהן גדול

אמרי אין מקבליים עליהן שכר
כמצווה ועושה אלא כמי שאינו
מצווה ועושה דא"ר חנינא גדול
המצווה ועושה יותר ממי שאינו
מצווה ועושה :

ת"ר וכבר שלחה מלכות רומי שני
סרדיוטות אצל חכמי ישראל
למדונו תורתכם קראו ושנו
ושלשו בשעת פטירתן אמרו להם
דקדקנו בכל תורתכם ואמת הוא
חוץ מדבר זה שאתם אומרים שור
של ישראל שנגח שור של כנעני
פטור של כנעני שנגח שור של
ישראל בין תם בין מועד משלם
נזק שלם
ממ"נ אי רעהו דוקא אפילו דכנעני
כי נגח דישאל ליפטור ואי רעהו
לאו דוקא אפילו דישאל כי נגח
דכנעני לחייב ודבר זה אין אנו
מודיעים אותו למלכות

6) Jerusalem Talmud Tractate Bava Kamma 4:3

It happened that the [Roman] government sent two officials to study Torah with Rabban Gamliel. They learned from him Bible, Mishnah, Talmud, practice, and homilies. At the end, they told him: All of your teachings are beautiful and commendable except two things which you say:

“A Jewish woman shall not act as midwife to a Gentile, but a Gentile woman may act as midwife for a Jewish woman;

a Jewish woman shall not nurse the child of a Gentile, but a Gentile woman may nurse for a Jewish woman with her consent; what was robbed from a Jew is forbidden but from a Gentile it is permitted

At that moment Rabban Gamliel decreed that what was robbed from a Gentile be forbidden because of *Hillul HaShem* (desecration of God’s Name).

“The bull of an Israel which gored a bull of a non-Jew is not liable,” etc. But we shall not inform the government of this. Nevertheless, by the time they reached the Tyrian ladder they had forgotten everything.

ירושלמי בבא קמא ד:ג

מעשה ששילח המלכות שני איסרטיוטות
 ללמוד תורה מרבן גמליאל.

ולמדו ממנו מקרא משנה תלמוד הלכות
 ואגדות. ובסוף אמרו לו. פליתורתכם נאה
 ומשובחת חוץ משני דברים הללו שאתם
 אומרים.

בת ישראל לא תיילד לנכרית אבל נכרית
 מיילדת לבת ישראל.

בת ישראל לא תניק בנה שלנכרית אבל נכרית
 מניקה לבת ישראל ברשותה.

גזילו שלישראל אסור ושלנכרי מותר.

באותה שעה גזר רבן גמליאל על גזילות נכרי
 שיהא אסור מפני חילול השם.

שור שלישראל שנגח לשור שלנכרי פטור
 כול. בדבר הזה אין אנו מודעין למלכות.

אפילו כן לא מטון לסולמיה דצור עד דשכחון
 כולו.