

Beyond Form and Content: Using Jewish Ethical Responses to #MeToo as a Resource for Methodology

*Sarah Zager
Yale University*

Wasserman's thought-provoking paper responds to a recent methodological shift in Jewish ethics: while earlier Jewish ethicists mined rabbinic texts for normative guidance about specific ethical questions, more recent work in the field has focused instead on analyzing the formal structure of rabbinic debates, using the rabbinic penchant for multivocality as a basis for ethical reflection. Wasserman offers us a third methodological option, which she takes to mediate between formal and content-based approaches: she argues that the kind of "close reading" that the Talmud requires of its readers forms ethical subjects.

This is a promising proposal. Wasserman recognizes that much of the most interesting and innovative work being done in contemporary Jewish ethics uses neither a purely formal nor a purely content-based approach. Many scholars who were heavily influenced by the "formal" or "theoretical" turn in rabbinics scholarship deploy formal and theoretical tools precisely in the service of understanding the content of rabbinic texts; these thinkers then deploy their new understanding of the content of rabbinic texts to inform their work on a range of ethical and meta-ethical questions. Thus, Wasserman is correct to argue that in order to understand how and to what end rabbinic texts are being deployed in this kind of Jewish ethical work, we need a theoretical paradigm that "mediates" between form and content.

My response to Wasserman's paper addresses whether close reading is the best way to achieve this kind of mediation between form and content. To do this, I turn to one specific example of recent work in Jewish ethics using rabbinic texts, conducted by both Wasserman herself and others in the field: the robust conversation about rabbinic texts related to sexual assault, #MeToo, and whisper networks that has developed over the past few years in a variety of public fora including lectures, op-ed pieces, and social media posts. I argue that these materials deploy versions of the close reading methods that Wasserman describes, but at the same time, they also demonstrate its limits as an explanatory category for helping us to understand how rabbinic texts can and should be used in contemporary Jewish ethics.

My analysis treats material from two different areas of discourse: Wasserman's academic defense of the role of rabbinic texts in Jewish ethical thinking, and the way that Jewish ethical thinking is carried out in the public square. While obviously related, these discourses may be driven by different concerns and address different audiences. Despite their differences, however, both of these areas share a perceived need to justify the turn to rabbinic texts; it is not obvious that, as Wasserman puts it, the view of "late antique male scholastics"¹ ought to have any normative pull today. While academics may feel a more pressing need to justify the turn to specifically *Jewish* texts rather than some other body of literature, there may be increased

¹ Mira Beth Wasserman, "Talmudic Ethics with Beruriah: Reading with Care," *Journal of Textual Reasoning* 11, no. 1 (June 2020).

pressure in the broader public sphere to explain why any old texts should be brought to bear on a contemporary conversation.

The way that these anxieties are managed in each arena can be instructive for the other; the academic conversation can help to clarify the theoretical basis for methodologies that can then be tested out in more public fora. Similarly, Jewish ethical work in the public sphere may also utilize methods that are worthy of academic exploration or critique. In addition, if academic analysis shies away from forms of thought that seem compelling to the very same ethicists when they write in the public sphere, then that academic analysis may have been too quick to reject some important methodological tools. This essay offers one example of how these two arenas of discourse might interact productively with one another.

Before turning to those materials, I begin by giving a fuller account of the disciplinary shift that Wasserman identifies. Wasserman turns to Emily Filler's discussion of the shift from approaches that focus on "conceptual content" to those that focus instead on "discursive features like style, voice, and form."² Filler's own articulation of this shift contains important nuances for our purposes. Even as Filler turns to Louis Newman as the representative of the older "content-driven" approach, she also highlights Newman's claim that rabbinic texts do not contain a single ethical insight or normative verdict. Instead, Filler writes, Newman gives a "persuasive argument for literary subjectivity."³ Nonetheless, Filler maintains that Newman's argument "remains largely in the realm of textual content."⁴

In the essay that serves as the basis of Filler's analysis, Newman uses Jewish ethical writing about euthanasia as a case-study to understand how rabbinic texts might be used. He observes that ethicists working on these questions write "as if the tradition relates directly to contemporary moral issues. But this is not the case."⁵ Here, Newman sides with Wasserman in opposing an unmediated content-based approach. Newman, too, thinks that we need to move "beyond" an approach that just assumes that normative judgments about contemporary issues can simply be "read off" of the text. Newman also points to several historical and formal features of rabbinic discourse that thwarts attempt to read straightforward normative conclusions off of rabbinic texts, noting that "traditional sources do not come to us pre-labeled to indicate which are relevant to the particular contemporary dilemma we happen to be facing."⁶ We cannot assume, Newman argues, that a rabbinic story about the effect of sound of a woodchopper on a nearby dying man is somehow analogous to contemporary end-of-life questions.⁷ Even for Newman, an appeal to the content of rabbinic texts must also be informed by the literary and historical forces that drive what Filler and Wasserman identify as the "formal" school. This suggests that the boundaries between the "formal" and "content-based" approaches are rather porous.

² Wasserman, "Reading with Beruriah."

³ Emily Filler, "Review: Classical Rabbinic Literature and the Making of Jewish Ethics," *Journal of Jewish Ethics* 1, no. 1 (2015): 155, <https://doi.org/10.5325/jjewiethi.1.1.0153>.

⁴ Filler, 155.

⁵ Louis E. Newman, "Woodchoppers and Respirators: The Problem of Interpretation in Contemporary Jewish Ethics," *Modern Judaism* 10, no. 1 (1990): 32.

⁶ Newman, 32.

⁷ Newman, 21.

Newman's own methodological proposal asks Jewish ethicists to alter both their methodological assumptions and their rhetorical practices. Newman writes:

I would propose that contemporary Jewish ethics be conceived not as an attempt to determine what past authorities would say about contemporary problems if they were alive today, but as a dialectical relationship in which finally no sharp distinction can be made between our voices and theirs. What we discover through this relationship with sages of the past certainly will not be less valid just because it cannot be finally attributed solely to the authorities of past generations. Any reading of the texts that we produce, and any conclusions we draw from them, are as much our work as theirs. Those engaged in contemporary Jewish ethics surely need not quite reading texts, but just as surely they need to make more modest claims on their behalf.⁸

While it does not quite amount to a “mediation between form and content,” the approach Newman recommends here does draw on both formal and content-based elements. Even as he suggests, following many proponents of the “theoretical turn,” that “no sharp distinction can be made between our voices” and those we hear in the text, he nonetheless suggests that we should continue to turn to rabbinic texts in the course of Jewish ethical reflection, provided that we think carefully about which ones we choose to use as precedents. In this way, Newman's approach could serve as a resource for building a new way of “mediating between form and content” in Jewish ethical work using rabbinic texts.

Wasserman offers a different proposal for understanding the role of the form and content of rabbinic texts in Jewish ethics, arguing that close reading forms us into more attentive ethical subjects. She identifies three different ways that close reading can produce this kind of ethical formation. The first two are largely borrowed from Jane Gallop's account of the use of close reading in English courses. The first advantage Gallop identifies is pedagogical. She writes, “Close reading facilitates the learning process because it impels students to attend to knowledge and perspectives that are new and challenging.”⁹ Second, and more importantly, Gallop identifies an “ethical” effect of close reading. Close reading, she argues, trains us to listen to other speakers, thereby affording them a unique kind of ethical respect.¹⁰ “I believe it is our ethical obligation” Gallop writes, “to fight against our tendency to project our preconceptions, that it is our ethical duty to attempt to hear what someone else is really saying.”¹¹ According to Wasserman, close reading helps us understand the importance of this “ethical duty,” and it gives us an opportunity to hone the necessary skills to do this kind of listening in ethically-charged settings beyond the *beit midrash* (house of study) or seminar room.

⁸ Newman, 37.

⁹ Quoted in Wasserman, “Talmudic Ethics with Beruriah.”

¹⁰ Close reading many not always yield this outcome. In fact, the rabbis are masterful close readers but are also quite able to use their close reading in order to distort the voice of the biblical text in ways that make it sound just like their own; this allows them to use even texts that appear to disagree with them in the service of their own intellectual, social, and religious goals.

¹¹ Quoted in Wasserman, “Talmudic Ethics with Beruriah.”

Wasserman embraces these features of close reading, but she also adds what she calls a “stronger claim on behalf of the Talmud.”¹² Wasserman argues:

[T]here is something special about the forms and styles of Talmudic discourse that recommend it for cultivating the kind of curiosity and concern that Gallop attributes to close reading. While Gallop attributes an ethical orientation to a specific reading practice, I am attaching this orientation to a specific text.¹³

It is through this “orientation to a specific text” that Wasserman promises us a mediation between form and content: “The Talmud’s form, content, and language work together to train its readers to read slowly and carefully, and in teaching us this, they provide a model for relating to the world outside ourselves with humility, curiosity, and respect.”¹⁴ Here, the meaning of the terms “form” and “content” have shifted slightly. In her initial picture of the recent shift in scholarly methodology, Wasserman uses “content” to refer to the specific normative claims advanced in the text of the Talmud, but here, she uses “content” to refer to the kinds of close reading that the rabbis (and other figures like Beruriah) perform. Puzzlingly, the most important ethical ideas that we learn from this kind of “content” are to be found in the “form” that the rabbis use to structure their reading of text. Here, “content” in its original sense—the normative questions addressed by the speakers who populate the pages of the Talmud—has dropped out.

Thus, we can distinguish between two kinds of “content” operative in Wasserman’s analysis. First, there is the substantive issue that is discussed by the participants in rabbinic dialogue: I call this “primary content.” These questions—be they general questions about how sinners ought to be treated, or about the ethical responsibilities of woodchoppers—are considered by partisans of the original “content-based approach.” Using these discussions as a resource for contemporary ethical thinking faces all of the challenges that Newman describes: the case being considered in the Talmud will almost always differ significantly from the contemporary ethical issue under consideration.

Wasserman’s analysis points us toward a second level of “content” in rabbinic texts: I refer to this as secondary content. This kind of content is drawn from *how* rabbinic debates take place. When she analyzes Beruriah’s interaction with Rabbi Meir on B. Berakhot 10a, Wasserman suggests that this passage presents us with ethical “content” that is drawn from the way that the two characters interact with one another. Beruriah, Wasserman contends, teaches us to be patient, careful listeners to those around us, even as we are passionate voices for our ethical commitments. This kind of “content” is to be found primarily in the “formal” features of talmudic discussion.

In calling these kinds of insights “content,” we may repeat some of the problems that Newman outlines. Significant interpretive work, including work using “formal tools,” has to be done in order to extract this kind of content. And, as Newman argues, the need for this kind of interpretive work arises precisely when there are significant gaps between contemporary realities

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

and those in the text. In the case of Berakhot 10a, these gaps may be especially acute when it comes to the social, political, and gender relations between the two characters. We may need to heed Newman's call for "more modest claims" on behalf of the content of rabbinic texts as much on this second level as on the first.

Turning our attention to secondary content does not thereby present us with an answer to our initial question about what role the primary content of the Talmud—what it is that the Talmud, or the figures depicted within it *says* about some ethical question—has to play in contemporary Jewish ethics. In turn, this makes it very difficult to answer the most pressing methodological question that Wasserman raises in her essay: the question of "why and how the teachings of late antique male scholastics should offer normative guidance to contemporary readers."¹⁵

This question is often motivated by concerns about the primary content of the Talmud. These "late antique male scholastics" may seem unfit to give us normative guidance because, in the primary content of the Talmud, they express views that seem antiquated, old-fashioned, misguided, and perhaps even chauvinistic, violent, or cruel. Responding to these anxieties simply by recourse to close reading, and the secondary content that Wasserman takes it to reveal, begs the question: why should we model our reading and thinking on a text that consistently makes sexist (heteronormative, as well as xenophobic) assumptions? This question is sharpened in light of recent scholarship that has addressed how the rabbis used their scholastic practices to construct their masculinity.¹⁶ Given the general nature of the ethical insights that Wasserman derives using the secondary content of rabbinic texts, we might ask whether the same ethical insights that Wasserman draws from her close reading of the Talmud might be more productively drawn from a text whose primary content did so often work against the ethical goals we are pursuing through claims about secondary content.

In contrast, Jewish ethicists hoping to respond to the #MeToo movement found themselves directly confronting some of the disparities between the Talmud's primary content and contemporary ethical intuitions. It is rather counterintuitive to seek ethical resources to help us understand how to respond to allegations of sexual misconduct in our own culture from a tradition that largely did not understand women to be full intellectual, religious, and economic participants. In addition, many of the allegations that made headlines in the #MeToo movement may not have even registered to the rabbis as inappropriate or ethically troubling. These challenges make responses to #MeToo that use rabbinic texts especially useful case studies for our purposes.

The Jewish ethical responses to #MeToo are also instructive for our purposes because they cut across the form/content distinctions that Wasserman lays out. Whether in newspaper articles, public lectures, or in social media fora, these Jewish responses did not assume that the

¹⁵ Ibid.

¹⁶ See for example Michael L. Satlow, "'Try to Be a Man': The Rabbinic Construction of Masculinity," *The Harvard Theological Review* 89, no. 1 (1996): 19–40. Being more explicit about these underlying concerns might also deepen our analysis of the Beruriah story: Wasserman writes that both the printed and manuscript versions of the story "portray her as a paragon of virtue who exposes shortcomings in Rabbi Meir's vision of punitive justice." (Wasserman, 11). While this may be a sustainable reading locally, it stands in stark contrast to Beruriah's complex reception in Rabbinic Judaism more generally.

rabbinic texts would provide decisive normative conclusions about, say, whether Brett Kavanaugh was fit to serve on the Supreme Court, or whether the testimony of a single witness of a sexual assault is sufficient to remove a person from public leadership. However, they do often make use of rabbinic texts that directly discuss quite similar scenarios. Many of these responses focused on a text from B. Moed Katan 17a, which describes R. Yehudah removing a student from the *beit midrash* on the basis of reports of inappropriate sexual behavior. This text is a rich one, and it is not possible to give a full reading of it here. But in order to understand the examples of Jewish ethical work that I consider below, it is helpful to have a basic outline of the story, which begins as follows: “There was a certain Torah scholar about whom rumors were spread. Rav Yehudah said: What should we do? The Sages need him, [but] not to excommunicate him would desecrate the name of heaven.” After other sages offer interpretations of what they take to be relevant verses, Rav Yehudah decides to excommunicate the scholar. Several years later, the unnamed scholar dies of an insect bite on his penis; many (including Wasserman)¹⁷ have read this as a literary indication that the accusations against the scholar were indeed true.

Because it offers such a close parallel to many accusations of sexual misconduct, this text presents an interesting opportunity for returning to the “content-based” approach to Jewish ethics. The problems that Newman encounters in trying to apply a text about woodchoppers to contemporary medical ethical cases involving respirators do not appear as starkly here. But this does not mean that this text can be understood as clearly providing a single ethical conclusion: Rav Yehudah’s behavior is only one option presented by the text, and it is not clear that it is the ethically preferable one in the eyes of the characters in the story or the text’s redactor. To understand it fully, we need, *pace* Wasserman, a “mediation between form and content.”

Someone of the Jewish ethical responses to #MeToo followed Wasserman in suggesting that a kind of close reading applied to these texts might make us better readers of and listeners to the contemporary conversation about sexual assault. Nonetheless, they gravitated toward texts that addressed situations they took to be similar to those in public conversation about sexual assault. In this way, these examples may steer us back toward something resembling Newman’s model: they investigate what rabbinic texts have to say, without also assuming that they provide clear normative answers or have the last word. In what follows, I discuss three examples from this broader body of work in order to capture several trends that can provide relevant models for thinking about the role of rabbinic texts in contemporary Jewish ethics.¹⁸ This diverse body of

¹⁷ Mira Wasserman, “Does the Torah Require Us to Publicize Names of Sexual Abusers?” *The Forward*, March 2018, <https://forward.com/life/faith/397539/is-there-a-jewish-ethical-imperative-to-publicize-names-of-accused/>.

¹⁸ I have had some affiliation with the institutions that produced two of these examples. I was a fellow at the Shalom Hartman Institute’s David Hartman Center from 2018 until 2020, and I have studied at the Hadar Institute.

thinking continues to grow, so I do not claim to give a full account of all of the different approaches that Jewish ethicists have taken for answering this question.¹⁹

The Hartman Institute of North America's "Created Equal" research team has produced a series of materials and curricula surrounding questions of gender and Judaism; their work both relies on close reading practices that are similar to the ones that Wasserman describes, while also displaying significant interest in the primary content of rabbinic texts that deal with issues related to #MeToo. These materials collect a wide range of rabbinic texts about gender, sexual assault, and communal power dynamics and present them as "source sheets" or curricula to be used in a variety of Jewish educational settings, while at the same time rejecting the idea that these Jewish texts can directly "answer" contemporary questions about these ethical issues. In a January 2018 webinar about the "Created Equal" team's work, Elana Stein Hain suggested that the series of op-ed style pieces that tried to "respond to the #MeToo movement by asking 'What Jewish tradition has to say to #MeToo?'" were implicitly "trying to think about the question of how we look at an actual cannon [sic] and tradition that does see male orientation as the default orientation in order to speak to [the current] moment where we're actually criticizing that kind of male privilege."²⁰ This helps explain why virtually no one responding to the #MeToo movement through rabbinic texts turned exclusively to the content-based approaches that both Newman and Wasserman criticize; the gender politics of the rabbinic textual world share many of the features of the sexual culture that the #MeToo movement seeks to criticize.²¹

These concerns motivated Stein Hain to turn to other sources for thinking about issues related to #MeToo. While Stein Hain and her team did produce material on many of the "classic" #MeToo texts, including Moed Katan 17a, they also gathered material on ethical change and precedent, "scandal," and the power dynamics between teachers and students, or between

¹⁹ For a sampling of this response see: Aviva Richman, "#Metoo Meets Torah?" *EJewish Philanthropy*, January 28, 2018, <https://ejewishphilanthropy.com/metoo-meets-torah/>; Merissa Nathan Gerson, "What the Talmud Can Teach Us About Sex and Consent," *Tablet Magazine*, October 3, 2018, <https://www.tabletmag.com/scroll/271835/what-the-talmud-can-teach-us-about-sex-and-consent>; Meesh Hammer-Kossoy, "#MeToo—The Ethics of Anonymously Sourced 'Whisper Networks,'" *Elmad*, <https://elmad.pardes.org/2018/08/metoo-the-ethics-of-anonymously-sourced-whisper-networks/>; Abby Citrin et al., "The Atonement Prayers We Should All Say, In The #MeToo Era," *The Forward*, accessed September 19, 2019, <https://forward.com/life/faith/409841/the-atonement-prayers-we-should-all-say-in-the-metoo-era/>; Sarah Wolf, "Agency in the #MeToo Moment," *The Times of Israel*, October 11, 2018, <https://blogs.timesofisrael.com/agency-in-the-metoo-moment/>; Rebecca Epstein-Levi "Beer, Sex, and Risk: What the Kavanaugh Hearing Told Us About Risk, Power, and Who Gets To Have Them," *Feminist Studies in Religion*, October 19, 2018, <https://www.fsrinc.org/beer-sex-risk/>; Avi Strausberg, "The Halakhah of Whisper Networks," *Hadar Institute*, <https://www.hadar.org/torah-resource/halakhah-whisper-networks>; Mijal Bitton, "'And He Shall Rule Over You': The Genesis of #MeToo," *The Forward*, October 19, 2017, <https://forward.com/life/faith/385625/the-genesis-of-metoo/>; Avital Chizhik-Goldschmidt, "No, Modesty Won't Protect You from the Harvey Weinstens. But This Might," *The Forward*, October 17, 2017, <https://forward.com/opinion/385424/no-modesty-wont-protect-you-from-the-harvey-weinstens-but-this-might/>. I also contributed my own piece to this conversation: Sarah Zager, "When Law Fails Us: Lessons from Rabbinic Responses to Crimes We Cannot Punish for the #MeToo Movement?" *The Lehrhaus*, March 15, 2018, <https://thelehrhaus.com/commentary/when-law-fails-us-lessons-from-rabbinic-responses-to-crimes-we-cannot-punish-for-the-metoo-movement/>.

²⁰ Elana Stein Hain, "On the Jewish Canon and Male Privilege," *Shalom Hartman Institute of North America*, January 29, 2018, https://shi-webfiles.s3.amazonaws.com/ESteinHain_transcripts.pdf.

²¹ R. Pesach Lerner's response in a survey of several rabbi's opinions on the Kavanaugh hearing provides a useful exception that helps bolster the general rule ("8 Rabbis Weigh in on Kavanaugh and Morality," *J. The Jewish News of Northern California*, September 28, 2018, <https://www.jweekly.com/2018/09/28/8-rabbis-weigh-in-on-kavanaugh-and-morality/>).

communal leaders and their constituents. This turn away from the explicit topic of sexual misconduct might seem like a move toward the kind of “formal” approach that Filler describes; in fact, they still retain significant interest in the content of the texts that they analyze. For example, Stein Hain argues that while “we’re not going to sit here and talk about how gender [in rabbinic texts] maps on exactly to 2017,” the “Created Equal” team is “going to mind [sic] Jewish tradition for what it has to say in general about how to make change around the ethical issues.”²² For this reason, the “Created Equal” materials turn to texts that describe situations that are similar or analogous to the ones confronted at the time, and they expect those who interact with them to evaluate how well these texts “fit” contemporary realities.

At the same time though, Stein Hain expresses significant concern that this “fit” might not be particularly close. In the webinar, Stein Hain argues that it would be inappropriate to claim that these texts offer definitive normative guidance on the issues at hand. She adds, “It’s because we’re trying to talk about the Jewish community. It’s not because I’m going to bring you a text that’s going to solve everything for the #MeToo...I’m not and I shouldn’t and that would be wrong and I think a misappropriation of the tradition.”²³ Thus, Stein Hain prioritizes the content of rabbinic texts, even as she argues that that content does not provide direct answers to contemporary normative questions. For Stein Hain, then, rabbinic texts serve as a shared point of departure that can help a group of people begin a broader ethical conversation.

In her own piece in *The Forward* from March 2018, Wasserman considers whether Jewish ethics encourages or discourages publicizing the names of those accused of sexual misconduct.²⁴ Wasserman begins her piece by noticing a communal reality on the ground. Wasserman notes that, at the time of her writing, “Since the start of #MeToo, not a single perpetrator from within the world of American Jewish institutional life has been publicly brought to account, and no one has stepped forward to offer a public apology.”²⁵ This leads Wasserman to ask, “Why are things playing out differently in the Jewish community than in other sectors of American society?” Wasserman then suggests, “Part of the answer seems to lie in Jewish ethics,” because Jewish ethical ideas like the prohibition on *lashon harah*, or speaking ill of others, has

²² Stein Hain, “On the Jewish Canon and Male Privilege.”

²³ Stein Hain.

²⁴ Wasserman, “Does the Torah Require Us to Publicize Names of Sexual Abusers?”

²⁵ Since then, major allegations have been made against prominent people in American Jewish institutional life, including philanthropists Michael Steinhardt and Leslie Wexner and sociologist Steve Cohen. See for example Hannah Dreyfus, “Hillel Investigating Allegations Against Major Philanthropist,” *The New York Jewish Week*, September 12, 2018, <https://jewishweek.timesofisrael.com/hillel-investigating-allegations-against-major-philanthropist/>; Hannah Dreyfus, “Harassment Allegations Mount Against Leading Jewish Sociologist,” *The New York Jewish Week*, July 19, 2018, <https://jewishweek.timesofisrael.com/harassment-allegations-mount-against-leading-jewish-sociologist/>; Sarah Ellison and Jonathan O’Connell, “Epstein Accuser Holds Victoria’s Secret Billionaire Responsible, as He Keeps His Distance,” *Washington Post*, October 5, 2019, https://www.washingtonpost.com/business/economy/epstein-accuser-holds-victorias-secret-billionaire-responsible-as-he-keeps-his-distance/2019/10/05/1b6baf6c-d0d3-11e9-b29b-a528dc82154a_story.html; Emily Steel et al., “How Jeffrey Epstein Used the Billionaire Behind Victoria’s Secret for Wealth and Women,” *The New York Times*, July 25, 2019, <https://www.nytimes.com/2019/07/25/business/jeffrey-epstein-wexner-victorias-secret.html>. The New York Times also reported that Leslie Wexner’s flagship company, Victoria’s Secret, created an environment rife with sexual harassment. See Jessica Silver-Greenberg et al., “‘Angels’ in Hell: The Culture of Misogyny Inside Victoria’s Secret,” *The New York Times*, February 1, 2020, <https://www.nytimes.com/2020/02/01/business/victorias-secret-razek-harassment.html>.

been used to stifle victim's efforts to speak out."²⁶ Here, Wasserman uses the term "Jewish ethics" differently than she does in her academic voice. Newman, Filler, and Wasserman's own academic voices take Jewish ethics to be first and foremost a conversation that uses Jewish sources or ideas in order to address particular ethical questions. But writing for *The Forward*, Wasserman asks how a Jewish ethical discourse, embedded in social, political and religious realities, has influenced facts on the ground in the broader American Jewish community. Crucially, this influence is mediated through primary content; debates about *lashon harah*, and not the overall structure of rabbinic texts or their patterns of argumentation, are responsible for this influence. "Jewish ethics," then, is not just a conversation about texts, but also social force. The question is not "What does Jewish ethics have to say about how we should talk about sexual assault allegations?" but instead, "Given that Jewish ethics is saying all kinds of things about these questions on the ground every day, how can we direct that ethical discourse in a productive way?"

Having recognized what she takes to be a set of problems with the social impact of "Jewish Ethics," Wasserman then turns to rabbinic texts in search of a corrective which will combat, or at least balance out, those Jewish ethical ideas that have "been used to stifle the victim's efforts to speak out." Focusing on B. Moed Katan 17a, Wasserman argues, "In some cases, Jewish ethics might actually support publicly disclosing the names of suspected abusers":

[T]he concerns of the Talmudic sages extended beyond the courts to embrace broader considerations about society and culture. Rav Yehuda recognized that rumors are an important measure of communal health and flourishing. The institution of the rabbinic ban effectively moved misbehavior from the shadowy realm of secrets and rumors into the light of public attention. Most of the time, the threat of public shaming was enough to deter abuses of power. But when there was reason to suspect that abuse was happening, rabbis did not hesitate to make their accusations public.²⁷

Focusing on this reading of Rav Yehudah allows Wasserman to argue for a revision of the Jewish ethical conversation. While it was previously dominated by concerns about *lashon harah* and talebearing, Wasserman presents a Jewish ethical picture that can shift the focus to the benefits of creating a culture in which sexual assault can be discussed publicly when necessary. "A Jewish community that attends only to the perspective of the accused," she concludes "betrays core Jewish commitments to truth and justice."²⁸

While Wasserman deploys many of the tools of close reading in this op-ed, neither close reading itself, nor the kinds of ethical formation that she takes close reading to encourage, are her primary ethical goals here. Readers of her piece in *The Forward* are not supposed to merely become better readers of rabbinic texts, or even more open to the opinions of others. They are supposed to recognize, and then act on, a Jewish ethical idea that might not otherwise have been

²⁶ Wasserman, "Does the Torah Require Us to Publicize the Names of Abusers?"

²⁷ Ibid.

²⁸ Ibid.

accessible to them. Wasserman turns to rabbinic texts to provide an articulation of that key ethical idea. In doing so, Wasserman also makes the implicit claim that because rabbinic texts have canonical weight in some communities, important ethical work can be done by mobilizing these texts to what we already take to be ethically productive ends. Thus, an appeal to close reading's ability to foster ethical formation does not capture the full range of ethical work that Wasserman does with rabbinic texts here.

To clarify, Wasserman does not deploy the kind of purely-content based approach that she identifies with earlier scholars, or the one that Newman associates with purely content-based approaches that claim to simply read ethical conclusions off of the texts. She does not argue that, because Rav Yehudah placed his colleague under a ban based on rumors of sexual misconduct, we ought to do the same in all cases. But she nonetheless uses this story to suggest that there might be a duty to "name names" in cases of sexual misconduct. Thus, in Wasserman's piece for *The Forward*, primary content plains an important, but not exclusive, role in the piece's ethical work.

From a scholarly perspective, it might be tempting to see Wasserman's analysis as falling well outside of any recognizable academic enterprise of the academic study of religion. To some extent, this is true by design: this is a popular piece, aimed at a religiously-defined audience. But Wasserman is also using one of the oldest tools in the scholar of religion's toolkit: she searches back through the historical archive of texts and attempts to correct what she takes to be a misconception of how that textual tradition is treated and represented in the public sphere.

In the first of a series of lectures at the Hadar Institute in January 2018, Aviva Richman makes a similar appeal to ethical work that rabbinic texts were already doing on the ground. Richman begins by quoting a friend who skeptically asked, "Does there need to be a Jewish frame on everything?" "The question is compounded," Richman adds, "when we are talking about a question of contemporary law or policy, and when the legal sources in the Torah are not in force." Richman's argument for the importance of using rabbinic and biblical texts to think about the #MeToo movement turns on the assumption that "[t]he power of law is deeply embedded in culture." For this reason, she argues, "Torah plays a pivotal role in Jewish culture." For Richman, this role can be quite varied:

Torah can be an important voice that sometimes affirms and sacralizes the ideas we might come to know through a contemporary outlet...And [it] sometimes productively differs, offers different language to challenge or qualify, or offer a little more nuance to something we might read about in *The New York Times* or in feminist theory class...If Torah is being what it should be it should be able to contribute to a broader discourse as a respected source of wisdom.²⁹

Here, Richman makes it clear that she is not seeking to simply "read off" what we ought to do from Jewish texts; instead, she acknowledges that these texts can both "affirm" and "productively differ" from what is going on in the contemporary conversation; in this way,

²⁹ Aviva Richman, "Rabbinic Voices on Sexual Assault: Leadership, Community, Authority," Hadar Institute, 2018, <https://www.hadar.org/torah-resource/rabbinic-voices-sexual-assault>.

Richman follows Newman in advocating a kind of dialogical relationship in which both the text and our own ethical intuitions are fully credentialed participants.

At the same time, Richman also makes it quite clear that we need to “confront what the Torah has said on this topic.” This is, Richman argues, “really about how we tell our most central stories...and what kinds of culture we create, when we cherish this Torah of ours.”³⁰ In this way, Richman rejects the premise of her friend’s question: it is not that we can “choose” to have a Jewish frame on this or that topic; instead, that Jewish frame, whether narrative, rabbinic, or otherwise, is already operative as a cultural force, it behooves those who live within it to make explicit what Jewish sources have to say on a given topic. Richman’s answer to the question, “What role of rabbinic texts play in contemporary Jewish ethical reflection?” is driven by the fact that those texts are already playing that role on the ground for her audience.

This does not mean that Richman simply assumes that everyone in her audience is already committed to a strong sense of the divinity of the Torah which cannot be assumed in more purely academic settings. Richman does not argue that we need to read the Talmud in order to understand how God wants us to respond to #MeToo, or even because it provides some sense of inherited wisdom that is somehow particularly useful for Jews. Instead, she undertakes a project of immanent cultural critique in which she tries to understand the sources, roots, and possibilities contained within a cultural tradition that continues to shape social realities. Thus, though she turns to different sorts of texts and uses them to answer slightly different normative questions, Richman’s understanding of the role of rabbinic texts is quite similar to the one that Wasserman deploys in her op-ed. For Richman, the primary content is relevant for contemporary Jewish ethics because it is already influencing ethical thinking.

These three examples offer a window into the similarities and differences between how Jewish ethical work is carried out in academic settings and within the broader public sphere. The question of the relevance and usefulness of rabbinic texts has gained traction in both academic and public conversations about Jewish ethics, but these two fields approach it very differently. Strikingly, the non-academic conversations that surveyed here use methods much more similar to those used by sociologists of religion and scholars of “law and culture” or law and sociology, while academic Jewish ethicists prefer approaches whose disciplinary homes are usually found in philosophy or literary theory. In her scholarly voice, Wasserman phrases her question about the relevance of rabbinic texts in an abstract way, one that seems willing to abandon the project of using rabbinic texts in Jewish ethics if their usefulness for either forming the subject or clarifying ethical conclusions cannot be affirmatively demonstrated. But, in the public arena, Wasserman and Richman use this question to highlight the role that these texts and ideas are already performing in American Jewish culture, and then to critically redirect the influence that Jewish sources already have. Ironically, though, this decidedly “non-academic” work draws heavily on one the key insights of academic work in both religious studies and legal theory in the past several decades—the idea that legal and religious discourses shape, and are shaped by, the cultures in which they live in myriad ways. Reading Wasserman’s academic essay alongside her op-ed allows us to begin to imagine what it would look like for academic Jewish ethics to take this insight on board as well; this helps us give an account of the role of rabbinic texts in Jewish

³⁰ Ibid.

ethics which begins by taking stock of how rabbinic texts already shape Jewish ethical discourse. While this might not lead us to do as Newman suggests and “make more modest claims on behalf” of Jewish texts, it might, nonetheless enrich our sense of what work those texts can do and are already doing. This might allow us to craft an answer to the question, “What do rabbinic texts have to say about contemporary ethical questions?”—an answer that addresses the core ethical intuitions behind the question, while drawing ethical insights from both primary and secondary content.