Self-Expression, Disobedience and Resistance to Rabbinic Rulings

by Nonexperts in Bavli Adjudicatory Narratives

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Introduction

This article describes the ways that ordinary, non-rabbinic Jews advocated for their desires in rabbinic court settings in the Babylonian Talmud. I focus on narratives of the briefest kind: adjudicatory narratives which depict rabbinic judges giving rulings to people in front of them. While the majority of such narratives (they number in the thousands) omit any details about interactions between judge and petitioner beyond the claimant appearing in court and the judge ruling, this article describes all of the examples when the initial ruling is disappointing or the court proceedings appear to be leading to a bad outcome, and the petitioners act. These (usually) unnamed Jewish men and women disobey rulings or disregard directives, cry aloud or protest in public, use trickery or act as rogues, criticize and even curse the judge. These are methods that legal non-experts are portrayed using to nudge the ruling in a favorable direction, or to mitigate the effects of an unfavorable ruling by a rabbinic judge.

I collect and categorize all the examples of legal nonprofessionals trying to get a different judgment within the unassuming genre of adjudicatory narrative for several reasons. First, I offer the texts to legal scholars outside of Jewish law as an invitation. I invite legal scholars to compare and reflect on how subjects of law react to legal authority and the means they have to improve their circumstances even without being conversant in how the rules and principles work together. A contemporary example of the challenges non-experts face in using law to improve their circumstances is articulated by Justfix, a non-profit organization in New York City. It created a web application to help tenants in their efforts to get positive rulings against negligent landlords.¹ The founders of Justfix noticed that tenants could not bring successful complaints in housing court because the processes were unfamiliar, they could not identify legally significant evidence, and as outsiders to legal practice, they

¹ https://www.justfix.nyc/about/press
did not present their circumstances in ways that had impact in housing court. The Justifx app guided tenants to collect photographic evidence and file paperwork properly, so that courts heard their voices more effectively.

This contemporary initiative exemplifies a persistent inequity in using courts: people who are not lawyers or do not know the law are disadvantaged compared to those with lawyers. Already in the 1990s, legal ethnographers John Conley and William O’ Barr observed that in small-claims courts in the United States, the verbal arguments of legal non-experts were less effective than the statements of lawyers about the same facts. The ethnographers recorded many instances of judges and lawyers rephrasing the claimants’ words, which emphasized how effective it is to know how to speak the way the law expects. Furthermore, their study showed that if a claimant presented the details that the judge found legally relevant in an expected order, the outcome was better for them, irrespective of the merits of their claims. Framing claims in reference to relationships or to fairness, on the other hand, standards that were not legally significant to judges, was less effective.

The challenge for non-experts to successfully advocate for favorable outcomes is exacerbated in legal contexts in which there are no professional advocates. In Bavli narratives that portray rabbis judging cases, judges sometimes advise petitioners on how to strengthen their claim, recognizing, it seems, a similar challenge for ordinary Jews seeking remedies before rabinic courts. However, in the overwhelming majority of adjudicatory narratives, petitioners do not speak or do more than appear for judgement, and the judges do not do more than render a ruling.

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3 Yonatan Pomerantz argues that this happens more when the litigants are relatives of rabbis and I concur, though this article includes an example of a rabinic judge advising taking the case to a different judge and the petitioner is not a rabinic relative. Pomerantz, *Dissertation*, pp. ADD.
The topic of legal non-professionals advocating for their interests in court is important for several reasons. First, the imbalance of knowledge in legal systems continues to the present. Recognizing the persistence of this challenge can lead to actions such as those of the organization Justfix. This issue is also important because while the majority of adjudicatory narratives in the Bavli do not show how the ruling “landed” in the lives of those it affected, these stories do just that. Their inclusion reflects Talmudic editors’ interest in exploring the friction judges may experience in the everyday business of judging while giving voice - a mediated voice to be sure, but nonetheless a sometimes startlingly affecting voice - to ordinary people’s dissatisfaction with legal decisions. The narratives forefront the possibility of people subject to rabbinic law being able to argue back, act in opposition and occasionally even prevail against an adverse ruling. Finally, even in cases where their oppositional responses do not achieve their goals or end up harming the petitioner, the narratives are a reminder of the power non-experts can take for themselves in the face of systems they do not fully understand.

The Genre – Adjudicatory Narrative

I present twenty-eight examples from adjudicatory narratives. Constituting just a few sentences each, adjudicatory narratives (“ההוא דאתא” type stories) are among the briefest legal narratives in the Babylonian Talmud. The fabric of Bavli sugyot includes thousands of such narratives. The stories are made of recurring elements: “a man,” “a woman” or some other (usually) unnamed individual

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4 These narratives are a tiny fraction of the larger group of adjudicatory narratives the Bavli, of which there are thousands. The vast majority follow a common formula, of X person came before Rabbi Y, and [the rabbi] ruled in Z way. The narrative tends to be preceded by a brief statement of details deemed pertinent by the Talmudic narrator, though occasionally these case details can be longer. For more on the genre of adjudicatory narratives, and other scholarship on case stories, halakhic stories, see Lynn Kaye, “Protesting Women: A Literary Analysis of Bavli Adjudicatory Narratives” Nashim 38 (2018), pp. 131-157.

5 I present a longer discussion of this genre and my methods for collecting all such examples as I know of in Kaye, “Protesting Women” pp. ADD.
“came before Rabbi X, and he ruled Y.” The non-rabbinic Jews who appear in court are not generally quoted in direct speech, though the rabbinic judges often are. Only a few hundred such narratives have dramatic details beyond the literary formula. I do not count legal hypotheticals or laws presented in casuistic form (“if a person does X, the ruling is Y”), such as this narrative in Bava Batra 153a:

That gift deed in which was written, “In life and in death,” Rav said, “Behold this is like a deathbed gift,” and Shemuel said, “Behold this is like the gift of a healthy person.”

I also omit compositions of the Talmudic editors in which case details are stated, (“a certain woman did x, y and z”), followed immediately by a comment by a rabbi (“and about that Rabbi Y said X.”). Neither of these related genres portray scenes of adjudication, or give opportunities to depict the reactions, tensions and relationships between judge and litigants.

Longer, developed aggadot also depict opposition or emotional expressions, but I focus on adjudicatory narratives for three reasons. First, their style purports to represent some sort of reality of lived adjudication and therefore an opportunity to explore how public dissent manifests in the imagined life of rabbinic judges. Second, this corpus of texts is extremely common in the Bavli, but not yet well-documented and analyzed. Finally, the brevity of these stories means they are less obviously composites created by the Talmudic editors from earlier building blocks, though, as I have

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6 There are only male and female petitioners in these stories, no named cases of people who have what contemporary people might recognize as intersex or disorders of sexual development, or transgender identities. Alyssa Gonzalez at the Yale Workshop in Ancient Judaism first asked me this question. I wondered whether their absence meant that such figures only appear in rabbinic legal documents as subjects of study and classification, but then I realized (thanks to Alexander Kaye) there is another option, that some who are named simply, “he or she who come before a rabbi for judgement” may have had more complex situations regarding biological sex, but that the rabbinic law itself genders these figures male or female, and so perhaps the adjudicatory narratives include people who elsewhere might be called seris bammah, agyonit and so on without naming them as such in cases where those facts are not pertinent. For more on those legal categories in rabbinic literature see Sarra Lev, Max Strassfeld, Charlotte Fonrobert, Gwynn Kessler. ADD TITLES

7 That is, excluding rabbis and women who are their close female relatives – wives, daughters, mothers, sisters.
shown elsewhere and will also demonstrate here, these narratives do show evidence of literary craft and recurring features.

Before I analyze the narratives, a note on methodology. This article is primarily concerned with legal theory as opposed to social history. Because narratives are preserved within an internal discourse by and for rabbis about their own rule-making and judging, we cannot read them transparently as records of how particular people acted in legal contexts. Nevertheless, as Yonatan Pomerantz, Stuart S. Miller and Catherine Heszer have shown in work on the Yerushalmi and the Bavli, rabbinic texts do offer historical information about the interactions of rabbis and “ordinary” or non-rabbinic Jews in late ancient Palestine and Mesopotamia. My interest differs from those historians, however. This article is about how people relate to a legal regime that they may have chosen for adjudication. I am interested in the relationship between jurist and litigant as portrayed in the narrative, and the means judges and the judged had to achieve their aims. I maintain a dual perspective of the dramatic, interpersonal dynamics portrayed, and the significance of telling such a story in the legal context in which it appears.8


9 These stories suggest that there is some element of choice in appearing before a rabbinic judge, for example, one might choose a different judge in some cases, or a different legal jurisdiction, see section below “forum shopping.” Therefore, these stories depict the degree of binding authority understood by litigants to rabbinic law that in some cases it is clear they subordinated themselves to, and the options that remain to resist the binding authority of rabbinic rulings. The portrayals of non-rabbi litigants reacting to the imposition of unfavorable rulings, or acting to ensure a favorable ruling, characterizes rabbinic judicial authority as contingent and in relationship to the non-expert petitioner who subjects themselves to the judge. The stories also suggest that accepting judges’ authority to adjudicate does not preclude litigants resisting authority. In the US, scholars theorize resistance to legal authority in light of civil disobedience and disobedience of orders in military contexts. These stories are different, consisting as they do of civil cases, which might be understood in American terms as brought for arbitration, or even civil law courts. The phenomena I describe here are reactions to unfavorable decisions pertaining to particular people, and the role such narratives of resistance might play in rabbinic legal thinking since they are crucial aspects of halakhic sugyot.

10 These stories come up in what American law would call civil case, financial disputes mostly, and not with ritual law like Shabbat or kashrut. There are many stories of people coming to rabbis with ritual questions but they are then answered, I did not find parallel examples of talking back or protesting. Worth considering if this might be significant, that perhaps ordinary Jews have more confidence in their intuitions of what should be the outcome of a civil case, or
This group of narratives portrays unnamed litigants saying in a variety of ways that they oppose an unfavorable ruling. These reactions take place in public or the litigants’ opposition is direct confrontation with the judge. The litigants express dissatisfaction with the ruling, or they express the emotional effect the ruling has had on them, or they negotiate with the judges. The effects vary, but in most cases these expressions do not lead to revising the ruling. On the other hand, the protest or other reactions are recorded and transmitted within rabbinic legal discussion, meaning they are significant, if not effective for the individual depicted.

1.1 Fiery Language and Bothersome Presences

The first sub-group is four narratives: three depict female unnamed litigants bothering, cursing or insulting rabbinic judges. A fourth depicts a woman returning to a rabbi for redress of the financial loss he caused her, with favorable results. The narratives do not posit a causal link between the tone or method of opposition and whether the ruling is revised and this may be due to the narrators’ primary interest being the significance of the ruling for subsequent legal tradition. However, the inclusion of these details reflects some interest in how people react to rulings.

The first narrative depicts a woman receiving a financially adverse ruling, and persistently returning to Rava, urging him to change his mind. Eventually he decides to mislead her so she goes away. In a discussion about promises of gifts, the Talmud distinguishes between gifts given on a person’s deathbed, possibly reversible if the giver recovers, and gifts made by healthy people, which are irreversible. Rava had a comparatively stringent view on the matter. He thought that if a dying

some other difference in attitude to these sorts of laws, since after all, prohibitions relating to Shabbat or kashrut can also have monetary effects on a person.
person deeded over their property using the terms “in life and in death” the gift is not treated like a deathbed gift. So, if the person recovers they cannot retract their gift. Rava apparently ruled in that manner for a woman, and she responded by “bothering” him incessantly.

1. Bothering and Cursing: Bava Batra 153a (Hamburg 165)

A woman came before Rava. Rava ruled for her according to his tradition. She was bothering him. He said to Rav Papa, his scribe, the son of Rav Hanan, “Go and write for her (what she wants) and write in it, “one may hire at their expense or trick them.” She said to him, “may his ship sink, he is trying to trick me!” Rava put all his clothes in water, but despite that he did not escape drowning.11

This narrative offers two ways an ordinary petitioner might speak up for themselves in the face of rabbinic judgement: she persists and “bothers” the judge to get a different decision, and then she sees through his deception and punishes him with an effective curse. The story seems to have sympathy with her cause, since the curse holds, but on the other hand Rava’s ruling also remains unchanged. This narrative has significant alliteration of the letter tet, and repeated clusters of the letters tet-ayin, tet-bet and tet-aleph. The repeated sounds weave the actions of the woman and Rava closer together. This may heighten the sense there is some measure-for-measure justice in Rava not escaping the woman’s curse for his attempted deception.

The phrase that Rava intended to use to deceive the woman is a ruling found in Mishnah Bava Metzia 6:1. It says that a landowner whose workers quit before time-sensitive work is complete can

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11 Hebrew texts from ma’agarim.org, from The Academy of the Hebrew Language.
hire new workers and charge their wages back to the first workers, or deceive the workers by promising a higher wage. This reference to a landowner using superior legal knowledge to achieve his financial goals at the expense of workers offers an interesting parallel with Rava. He could be seen as like the deceptive landowner who acts with superior knowledge to his advantage. The fact that Rava’s magic defensive actions did not avert her curse suggests that Rava was wrong to try to trick the woman to get her to stop complaining.

The following example also portrays a female unnamed litigant who answers back to the judge and curses him. Mishnah Gittin 4:3 rules that widows may only collect their ketubah from orphans who inherit the property of her husband if she swears that she has not previously collected. The Mishnah notes, however, that rabbis did not administer those oaths, which leaves the woman unable to collect.

2. Persisting and Cursing: Gittin 35a (Vatican 130)

A woman came before Rabba son of Rav Huna. He said to her, “What can I do for you? For Rav does not allow widows to collect their ketubot and my father, my master, does not allow widows to collect their ketubot. She said to him, “Give me my support.” He said to her, “You are also not due support, for Rav Yehuda said in Shemuel’s name, “One who claims her ketuba in court does not get support [from the estate any longer].” She said to him, “May his chair be overturned, you did me twice [Rashi: you ruled against me according to two

12 Medieval commentators and the PT and BT explore this deception and put some limitations on it.
different rabbis].” They overturned [the chair] and stood it back up but nevertheless he was not saved from the weakness.

Once more, despite the rabbi-judge’s defensive actions, the narrative reports that he is afflicted – her curse sticks. Both stories warn judges about the emotional cost (and resulting personal cost) of rulings that leave petitioners, and specifically female petitioners, without property. I have not found adjudicatory narratives in the Bavli where non-rabbinic Jewish men respond to adverse rulings with curses. While the rabbis in both narratives ruled correctly according to precedent, these narratives portray the disadvantages of the positive law, a role scholars have long recognized for longer aggadot in sugyot. However, while the curses are effective, the unfavorable rulings also remain. These narratives depict a situation where the misery of cruel rulings is shared by the judge and the litigant. Bothering, complaining and cursing are not effective ways to combat an adverse judgement according to these stories.

The next narrative presents another aggressive response to an adverse ruling by a female litigant: the woman uses salty language, expresses rebellion and is disrespectful of the judge’s teacher. In this narrative, however, it is not the woman who curses. The rabbi curses this woman and she suffers death as a result. This story’s immediate context is a sugya about respecting Torah scholars, and the narrative does not specify the legal matter that was judged.

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13 The phrase עביד בך וכו תרתי appears elsewhere, including in Bava Qama 99b where it initially (and in the narrative itself likely means) giving a butcher, in that case a ruling that was twice bad, bad on two different legal counts, stringent against him in two ways. The Talmud decides that since two rabbis who told the butcher this would have been acting improperly if they meant that, they must have been referring to two positive rulings their colleague delivered.

14 Wimpfheimer, Watts-Belser, Rubenstein etc.

15 Rubenstein, Culture of the Babylonian Talmud on violence of the Bavli, Kaye, “Great Man” article on the externalization of rabbinic anger in harmful ways.
3. Invoking Higher Authorities and Insulting: Nedarim 50b (Munich 95)

She came before Rav Yehuda in Neharde’a and he judged her liable. She said to him, “Would Shemuel your teacher have judged me this way?” He said to her, “You knew him?” She said to him, “Yes. Very short and with a big belly, dark and with big teeth.” He said to her, “You came to insult? This woman shall be excommunicated.” She broke open and died.

The sugya in which this appears establishes the value of Torah above wealth and beauty.

Immediately before this, a Roman woman compliments Rabbi Yehudah on his knowledge but observes it is housed in an ugly container. Using a parable, the Rabbi proves that the container’s utility is what counts, not its appearance. In context especially, the woman’s jeering at Shemuel’s unattractive appearance seems wrong. But her question, “would your teacher have ruled that way?” is a way of questioning the Rabbi’s authority and the certainty of the ruling.

In a fourth story, a woman asks a rabbi to take responsibility for financial consequences she had in following his advice about a piece of questionable currency. She asks for him to refund her and he does.

4. Demand for Restitution: Bava Qama 99b (Hamburg 165)

J Watts Belser in Gittin book has refs on dark as ugly in rabb lit.

Find out if this happens more to female people than male in Bavli/Yerush, they “break open”.

16 J Watts Belser in Gittin book has refs on dark as ugly in rabb lit.
17 Find out if this happens more to female people than male in Bavli/Yerush, they “break open”.
A woman showed a dinar to Rabbi Hiyya. He said to her, “it is good.” Later she came and said to him, “I went and showed it and they said to me, ‘It is inferior’ and cannot be spent by me.” He said to Rav, “Go and change it and write in your notebook, ‘a bad transaction.’”

Before this narrative the Talmud cites two contradictory baraitot: one said that an expert money changer is exempt from liability for errors but non-experts are liable. The other said that whether expert or not, money changers are financially liable for their errors. It is possible that the narrative on its own illustrates the second baraita’s position and regardless of Rabbi Hiyya’s expertise, he owed the woman money. However, in the context of the sugya, the authors seem concerned that Rabbi Hiyya’s paying the woman could indicate that he was not an expert money changer, unlike coin experts Danko and Issur. To save Rabbi Hiyya from appearing less competent than those individuals, the story gives way immediately to the Talmudic narrator commenting that Rabbi Hiyya was an expert money changer, technically exempt from paying, but he paid the woman out of “kindness” (גמילות חסדים). I cite this narrative as an example of an ordinary person who returned to a rabbinic judge with a complaint about how his ruling badly affected her, and in this case, the result is favorable for her. This case differs in another way from the previous three: here the other party to this financial dispute is the judging rabbi, not a non-rabbi. While in the other narratives there is reference to a law or precedent that he applied, in this case it is precisely his mistaken judgement that costs her money, not his application of a law.

1.2 Expressing Pain and Demanding Attention

In the next section two stories describe unnamed male figures who cry publicly, which results in the rabbinic judges responding to them. This does not necessarily mean the judges revised their ruling but crying publicly demanded responses of the community and some kind of justification by the adjudicating rabbi.
A child came before Rav Nahman for judgement. He said to him, “Have you witnesses?” He said to him, “No.” “Have you proof?” He said to him, “No.” Rav Nahman required him (to pay a debt incurred by his father). He was going around and crying. People heard him. They said to him, “Why are you crying?” He said to them, “I went for judgement before Rav Nahman and he said to me, ‘Have you proof’ and I said to him, ‘No’ and he obligated me.” They said to him, “We know about the affairs of your father.” They came before Rav Nahman. Rav Nahman said to them, “About cases like this we say, ‘If after a time he found witnesses or he found proof, it is nothing.’” This statement applies to an adult, who knows the affairs of his father. But a minor, even the sages would agree that he knows nothing of the affairs of his father (so if further evidence arose it is admissible).

The way I read this narrative, the story itself appears to finish with Rav Nahman’s ruling, which is that his previous judgement stands – the orphan child has to repay a loan on behalf of his father’s estate, even though subsequent evidence arose about which the child could not have known. Yet the Talmudic editorial voice appears to continue Rav Nahman’s statement, mitigating its application, to the benefit of the child petitioning here. However, the narrative does not show Rav Nahman reversing his ruling.¹⁹

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¹⁸ This same page as another protesting narrative below. Maybe gather it sukkah 31, gittin 35 and one of the bavas? And see how work as sugyot?

¹⁹ Vilna cuts what rav nahman says and just has his saying even the rabbis would agree. need more MS work here.
The other example of an adjudicatory narrative where the unnamed affected party weeps publicly also concerns a Jewish man. The story is part of the Bavli discussion around Mishnah Yevamot 8:3, which rules that mamzerim (male and female) are forbidden to marry a Jewish partner, no matter how many generations have passed. The sugya considers whether females might be able to enter the community after a number of generations. The Tanna Rabbi Eliezer and the Amora Rav Huna both proclaimed that mamzerim do not survive to have descendants, so the question is moot. Rav Yehudah apparently added further details, namely, that if a mamzer’s status was publicly known, he would survive, if his status was totally unknown, he “would not survive” but if his status was “known and not known” he would have no more than three generations of descendants. In this context the following story is told.

2. Public Weeping: Yevamot 78b (Munich 141)

He that lived in Rav Ami’s neighborhood, had a mamzer status of known and unknown. He declared publicly that he was a mamzer. He was going around crying. He said to him, “I gave you life!”

While the man’s expression of pain did not result in a change of ruling, it did prompt a response from the judge. He gives what is to my ear to be a hollow comfort – you will live a long life, because now that your mamzer status is public you will not be cut off in your prime by God, since there is no chance he will marry into the Jewish group. This man had partially known status, which according to Rav Yehudah would not have incurred short life, but would have meant no more than a few generations of descendants. The definition of “life” as more than three generations of descendants seems forced. “I gave you life” sounds more like “I prevented your untimely death,” which Rav
Yehudah’s tradition states will happen if someone is an unknown mamzer. This narrative on its own may reflect a view that partially known mamzerim, like unknown mamzerim, would die young so they did not mix with the other Jews. In any event, the rabbi’s response appears to me to be more of a justification or comfort to the rabbi himself, since a long life without the ability to marry and make a family among your community seems sufficient cause for crying.

3. Protesting Before the Judge (גזרה)

With incessant public crying (the verb האי and the verb היין), the unnamed non-rabbi petitioner explicitly expresses the pain he feels. The crying demands attention and redress, without being a form of direct engagement such as “bothering” someone. In another group of five narratives that I examined elsewhere, non-rabbi Jewish female figures “protest” or call out (גזרה) before a rabbi who is acting as a judge.20 While some dictionaries and translations present this verb as “screaming” or “crying,” it is not weeping but a vocal expression of dissatisfaction without specific argumentative content.

The law is never changed as a result of “calling out” or “protesting” in these narratives. Often the rabbi is depicted “not paying attention” to the female figure’s protests.21 Sometimes the rabbi responds verbally, explaining that he cannot rule differently to help her since precedent or positive law restrains him. In one of those narratives the woman’s protesting seems to irritate Rav Nahman because he calls her a “screamer,” rules that his colleagues do not need to listen to her, but he provides for some financial compensation for her stolen property. That narrative, though, does not describe her actions as “bothering” the judge.

20 Lynn Kaye, “Protesting Women.” B. Bava Batra 54a (unfavorable result), B. Sukkah 31a (female figure insulted, some compensation given), B. Ketubot 80b (unfavorable result), B. Eruvin 25a (unfavorable result). ADD REST AND REFS TO OTHER ARTICLE

21 There is just one example of a non-rabbi male figure attributed with this verb in a judicial context and its form I slightly different from that applied to the female figures. See Kaye, “Protesting Women” p. ADD
I wonder why the narrators of these stories included the fact that these figures were “protesting,” given that it made no material difference in the cases. In one case the Talmudic editors debate the legal significance of Rava’s ignoring of her protests (b. Ketubot 80b), so that explains why later authors included the protest. But in the other narratives, the story could have been told without reporting that the dissatisfied petitioners were persistently objecting. The Talmudic editors chose to portray the friction that comes with judging ordinary Jews when they dramatize futile opposition. Another possible reason to include ineffective protests could be Rabbi Yehudah’s opinion about why they record minority opinions in Mishnah Eduyot 1:6:

To annul them, so if someone says, “Thus I have received” it will be said to him, “You heard according to so and so.”

Perhaps the protests, even when they do not result in changed law, are recorded in adjudicatory narratives, because they affirm that even despite opposition, that is the law. This would also explain responses like “What can I do?” which appear in a number of these adjudicatory stories, which expresses the judge’s lack of discretion. This might enhance future rabbis understanding of the precedent.

1.3 Flagrant Disobedience

An eye-catching example of defiant, roguish behavior appears as an adjudicatory narrative: Wicked Hanan responds to a financial penalty imposed by a rabbinic judge by repeating the same crime.

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22 Moshe Halbertal, *People of the Book*, p. 52 observes that Rabbi Yehudah’s explanation is itself presented as a minority view, creating a “circular paradox” where the minority opinions says minority opinions should be forgotten while the majority opinion says the opposite.
1. Making a Mockery: Bava Qama 37a (Hamburg 165)\(^{23}\)

Wicked Hanan hit a certain man. He came before Rav Huna. He [Rav Huna] said to him: Go give him half a גני (as compensation). He had with him an underweight גני. He wanted to give him half a גני from it, but he [the latter] did not take it. He hit him a second time and gave it [all] to him.

As I have written elsewhere, Hanan followed Rav Huna’s order to pay his victim monetary compensation, but he wanted to use a questionable coin and to have his victim make change.\(^{25}\)

When the other man would not accept the underweight coin, Hanan hit him again, as if to incur the identical fine a second time – and get his money’s worth. In fact, if the coin was bad, he got a bargain. I sense in this narrative a playfulness in the depiction of Wicked Hanan’s behavior. His title establishes him as a stand-out character, inviting the reader to see the exploits of a “bad guy.” Hanan’s behavior displays disregard for his victim to be sure, but in context it also reflects the narrator’s concern that financial penalties may not deter bad actors from causing damage. Striking

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\(^{23}\) This case story appears in terser form in b. Bekhorot 50b–51a, where it fits in as part of a discussion of different coins. The version in b. Bava Qama has more narration. For example, all the early texts of b. Bava Qama have Rav Huna ordering Hanan, “Give him a half גני,” as opposed to the narrator in b. Bekhorot: “Rav Huna said to him: half a גני.” These additions help the version in Bava Qama flow better as a narrative, and they reflect how adjudicatory narratives, like longer aggadot, are retold in slightly different forms as they are transferred to different contexts in the Bavli.

\(^{24}\) The textual variations among the manuscripts and early printed editions for b. Bava Qama 37a are minor and do not affect its interpretation.

the man a second time and saying, in our terms, “keep the change!” turns a financial penalty into paying to do an action he wanted to do.26

2. **Arguments**

These narratives are interesting because they depict successful strategies that unnamed litigants use to change the outcome of their cases. The first narrative has unnamed interested parties offering a series of what they hold to be legally relevant details, hoping to undo a legal transaction. Eventually they hit upon a fact that the judge uses to invalidate the sale. The narrative depicts a symbiotic relationship between the litigants and the judge, where they offer facts and the judge interprets their legal impact. The dialogue also highlights the contrasting knowledge between the petitioners and the judge.

**1. Exhibiting the Evidence: Gittin 52a (Vatican 130)**

Orphans relied on a certain older woman. They had an ox, which she took and sold on their behalf. Its value increased. Their relatives came before Rav Nahman and said to him, “How could she sell it?” He said to them, “It is taught, ‘Orphans that rely on a head of household [must pay tithes on their behalf].’ (M. Gittin 5:4).” “But behold it increased in value!” “It increased in value while in the property of the buyer.”

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26 It is reminiscent of the experiment in Haifa day-care centers where late-pick up fees were introduced and teachers found parents arrived late more often since now they could pay for the privilege of picking up their children late. Uri Gneezy and Aldo Rustichini, “A Fine Is A Price” *Journal of Legal Studies*, vol. 29 (January 2000)] ADD PP.
money!” He said to them, “In that case, Rav Hanilai son of Rav Idi’s tradition in the same of Shemuel applies: ‘Orphans are like consecrated property, they only sell with money.”

The litigants are relatives with an interest in the orphans, but who are not themselves looking after them. The orphans and the caretaker do not appear nor do they speak. Structurally, the exchange is bracketed by Rav Nahman citing two different rules. The drama is how the relatives manage to move Rav Nahman from seeing the first rule as the relevant law, to seeing the second rule as applicable instead. The narrator’s omission of “he said” and “they said” from the intervening dialogue creates quick movement and immediacy, contrasting with the slower pace in the the beginning and ending citations. Through this dialogue, the relatives learn what is legally relevant, as do the story’s audiences.

The petitioners in the next two narratives deploy a different strategy. They suggest it would be hypocritical for the rabbi to judge a certain case. While invoking the judge’s conduct does not give the litigant a more favorable outcome in these narratives, it does prompt a response from the judge to correct his behavior. In other words, the petitioner’s criticism has an effect, being heard both within the plot of the narrative and in the transmission of the narrative in subsequent generations: judges are vulnerable when their conduct is questionable, best to fix that conduct to ensure judicial authority.

2. Impugning the Judge: Bava Batra 60a-b (Hamburg 165)


27 Subject to checking all MS evidence. The fact that the initial case-details include the ox rising in value suggests that this middle piece is not a later addition, despite its omission of he said etc., but an important part of the discussion between the relatives and Rav Nahman.
Rabbi Ami had an architectural feature that protruded into the alley and a man also had an architectural feature that protruded into the public thoroughfare. The people of the thoroughfare were trying to restrain him (from keeping it there). He came before Rabbi Ami. He said to him, “Go and cut [it].” He said to him, “But behold Master also has one!” “Mine protrudes into the alley, the alley’s people permit me. Yours protrudes into the public thoroughfare, who can give you permission?”

Rabbi Yanai had a tree that leaned into the public thoroughfare and a man had a tree that leaned into the public thoroughfare. They were restraining him (from keeping it). He came before Rabbi Yanai. He said, “Go away now but come (back tomorrow.” Rabbi Yanai sent (someone) to cut back his own (tree). The next day he came before him. He said to him, “Go and cut (it) back.” He said to him, “Master also has one.” He said to him, “Go and look, if it is cut back, cut (yours too), but if not, don’t cut (yours).”

These two stories focus on challenges that rabbis face when they are entangled in comparable cases to those they are judging. They do not consider passing the case to another rabbi, though there may not be another one in town. Rather, in the first story the rabbi claims his case is different, making a distinction between a semi-private area and a public area, where no “public” can categorically grant

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permission. In the second, the rabbi delays the case until he can personally follow the judgement he plans to give the next day.

My focus is on how the unnamed petitioners argue their side: they know the rabbi’s own conduct mirrors their own and they insist that if he is not following this rule, he should not force it on them. They call the rabbi “master,” so it seems their claims are made politely, if insistently. The stories use the same words to describe the rabbi’s and petitioner’s circumstances and the word “also” emphasizes the parallels. But the men’s arguments about rabbinic hypocrisy do not result in a better ruling for them. The narratives are occasions for the rabbinic narrators to depict the rabbinic judge’s triumph in argument or cleverness.

An unnamed guardian tries a different argument in the next narrative. When the judging rabbi holds him liable for property damage, he claims the damage was beyond his control. He was negligent but was under duress and should not be liable to pay.

3. Claiming Duress: Bava Metsia 93b (Hamburg 165)

Bar Ada “Sequla” was leading animals across the bridge of Naresh when one animal pushed another, threw her into the water and she drowned. He came before Rav Papa, who ruled him financially responsible. [Bar Ada] said to him, ‘What could I have done?’ He said to him, “You should have taken them across one by one.” He said to him, “Do you know

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29 The manuscripts and early printed editions differ on the spelling of this word. Some translate it as related to his profession or his place of origin. See Sokoloff, *Dictionary of Jewish Babylonian Aramaic*, p. 809.
any of your sister’s sons that could take them across one by one?” He said to him, “Your predecessors have already protested before me, and no one paid attention to them.”

Bar Ada has a name, unlike most of these petitioners, and he argues back twice against this ruling. First he uses the phrase, “what could I have done?” which is a recurring element of this sugya, and sometimes does mean the person is exempt from responsibility. Rav Papa answers him; there was something he should have done to avoid the animal’s death. The man responds that Rav Papa’s suggestion is unrealistic, but the judge is unmoved. Nevertheless, we see further examples of types of arguments non-professionals might make in rabbinic court. First, he offers a rabbinic legal argument, one is exempt from negligence if one had no way of preventing the damage. Then he argues from experience – shouldn’t the judge’s view of what is possible conform to lived experience?

In the next cluster of three narratives, women seeking divorce in order to remarry and have children make successful arguments that do not appear to be rabbinic legal arguments. Instead they respond to an unfavorable ruling with a recapitulation of their circumstances, namely, if you rule this way I will be left in an untenable situation. While in the previous narrative Bar Ada engaged with the logic of the rabbinic rule, these cases depict female speakers reframing the case. The legal context for these narratives is Mishnah Yevamot 6:6, which exempts women from the obligation of having children, but also includes Rabbi Yehoshua Ben Beroqa’s opinion that women, like men, are obligated to procreate because of Genesis 1:28, “be fruitful and multiply.” The Bavli identifies the same dispute among Amoraim, and it tries to figure out which Amora ruled like Rabbi Yehoshua ben Beroqa. The judges in these narratives say to these women that they are not obligated to have children, therefore even if they want children, there are no grounds for divorce in a childless marriage.
4. Raising Extra-Legal Values: Yevamot 65b (Munich 141)

As she who came before Rabbi Ami. He said to her, “You are not obligated [to have children].” She said to him, “What will become of this woman?” He said, “In a case like this we certainly force [divorce].”

She who came before Rav Nahman. He said to her, “You are obligated [to have children].” She said to him, “What will become of this woman?” He said, “In a case like this we certainly force [divorce].”

She who came before Rav Nahman. He said to her, “You are not obligated [to have children].” She said to him, “Does this woman not need a staff in hand and a hoe for burial?” He said, “In a case like this we surely force [divorce].”

A question that shapes my interpretation is whether the women are appealing to a different rabbinic grounding for divorce, namely, the relational or financial support that comes from adult children, or whether the women are accepting that there is no pre-existing rabbinic rule that would force their husbands to divorce them, but when the rabbinic judge accepts their arguments, their grounds become part of the rabbinic norms for divorce. Thus while my title for this text is “extra-legal values” the relationship between these women’s arguments and rabbinic divorce law is more complex than internal versus external.
This cluster of narratives depict women unwilling to accept a ruling that disadvantages them. They all want to be freed of their marriages in order to have the chance to have children. They do not “protest” or “bother” the judge, nor do they curse. Instead they argue from reality and based on the importance of relationships, irrespective of legal obligations to procreate. Their statements insist that the judge recognize the need for mother-child relationships in a woman’s life and act to force a divorce. The narratives succinctly demonstrate how the initial judgement is overturned in the face of the women’s claims. The frame for the rabbinic rulings in each case is “obligation” while the women’s responses are all about what following that ruling will mean for their lives. Talking back from outside the legal norms is effective for the women in these cases.

The next section collects narratives that depict effective and ineffective actions before rabbinic judges, as opposed to the arguments they make.

3. Legally Significant Actions

3.1 Forum Shopping

I begin this section with an action that is familiar to scholars of many legal traditions: forum shopping, or choosing one jurisdiction over another because you think it will be more sympathetic to your case. The first narrative contrasts rabbinic law and “Persian law” to the advantage of rabbinic law. It is the Exilarch, a Jewish figure who is presented judging according to “Persian” norms, which is part of rhetorical elements of the Bavli that depict rabbinic ambivalence about the closeness of the Exilarch to Persian elites. This story is not about Jews seeking judgement in

30 For more on arguments from rules and arguments from relationships see Conley and O’Barr mentioned earlier, Carol Gilligan and Tova Hartman books and articles by Charles Taylor.
Persian courts, according to Zoroastrian laws. In this narrative, choosing rabbinic court is advantageous to the petitioner. His financial liability is decreased because of the rabbinic principle that an animal’s damage to real estate is calculated in relation to an area sixty times greater.

1. Exilarch’s “Persian” Law and Rabbinic Law: Bava Qama 58b (Hamburg 165)

That man who cut down his fellow’s date tree. Some say: That man who cut three of his fellow’s (date trees). He came for judgement before the Exilarch. He said to him, “I saw those and there were three trunks and they were worth a hundred zuz. Give him thirty and three and a third.” He said, “Why should I come to the Exilarch who judges Persian law.”

He came before Rav Nahman. He said to him, “Out of sixty (assess the damage in relation to the loss of value of an area sixty times its size).”

Rav Nahman, who is elsewhere criticized in the Bavli for being too close to the Exilarchate, nonetheless appears here as a (local) court alternative with an approach to assessing property damage that helps the perpetrator. The Exilarch increased the cost of the damage based on his knowledge of the area and his characterization of the tree as three separate trees. On the other hand, Rav Nahman finds a way to lessen the financial burden by considering the trees in their field. The narrative depicts choosing the rabbinic different legal regime as effective to get a favorable judgement.

overlapping relations. Rava and Rav Nahman in particular are depicted as close to the Exilarch, and geographically they are associated with Machoza, near the seat of Sasanian imperial power in Ctesiphon.
In the next narrative a rabbinic judge sends a petitioner to a more advantageous legal forum: the court of a different rabbi. In the same sugya as we mentioned above about deathbed gifts, the following narrative describes Rav Nahman sending an unnamed man to a different rabbi in a different town because that judge held a more legally favorable view for this petitioner.

2. Different Rabbinic Judge: Bava Batra 153a (Hamburg 165)

ההוא דאתא לקמיה דרב נחמן לנהרדעא שדריה לקמיה דר' ירמיה בר אבא לשום טמיא אמר הכא אתרא דשמואל היכי

tebidik veyochu derb

He who came before Rav Nahman, to Neharde’a, he sent him to go before Rav Yirmiya bar Abba, to Shum Tamya. He said, “Here is a place of Shemuel, how can we rule according to Rav?”

With the previous narrative, this narrative indicates that forum shopping, either personally initiated or at the advice of a rabbinic judge can be a way to positively affect one’s legal outcome in court.

The next story depicts an unnamed petitioner arguing for his interests by mentioning that another rabbi ruled differently for his case. This is not effective for him. It seems that citations of other rabbinic authorities is not effective dissent for ordinary Jews, but could useful for litigants when rabbinic judges exploit those differences.

3. Citing Judicial Dissent: Hullin 132b (Vatican 122)
Rav Tavla’s innkeeper was a priest. He was suffering economic hardship. He came before Rav Tavla. “[Go] and become a financial partner with those non-priest Jewish butchers, since because of you they will be exempt from allotting priestly portions and will invite you into the partnership (because of that).” He came before Rav Nahman, and Rav Nahman obligated him to pay (priestly portions). He said to him, “But behold Rav Tavla exempted us!” He said, “Go, remove (priestly portions) and if you don’t I will remove Rav Tavla from your ear!”

And why did Rav Nahman do this?... “For two-three weeks a priest-butcher is exempt from giving priestly portions, after that he is obligated.”

It is not clear what brought this innkeeper before Rav Nahman, but presumably the priests who expected their portions from the butcher sued him because the partnership had ceased sending food. Perhaps the case came before Rav Nahman because he judged more of these than Rav Tavla; as a judge Rav Nahman is well-represented within the tens of adjudicatory narratives with unnamed petitioners that have more to them than the literary formula. The innkeeper tried to cite a different rabbi’s legal advice as defense against an adverse judgement, but it does not help. Rav Nahman emphasizes his rejection with a word play on the verb to separating priestly portions – “remove” them, or I will “remove” Rav Tavla from you as an advisor!

The next narrative involves unnamed petitioners seeking redress from a different rabbinic authority, likewise ending with a denial of the petition. In this case, the petitioners accept a ruling from one judge and then move on to a second judge to see if they can get the balance of the money they were owed. While the second judge indeed has a more favorable approach, he does not officially grant the petitioners his verdict because he will not overrule the first judge. The facts of the case were that a man who was known as “a mouse who rests on dinars,” a very wealthy man who did not spend
money, acknowledged certain debts while he was dying. After his death those lenders claimed
payment of the debts from his heirs.

4. Seeking Successive Rulings: Sanhedrin 29b (Yad harav Herzog)

They sued his children for a ruling before R’ Yishmael, son of R’ Yosei. He said to them,

“When we say a person is likely to (lie in order to) make himself appear satiated (i.e. rich),
this refers to when he is alive. But after death, this does not apply. Go and pay him half (of
the claimed amount).” They paid half. [The creditors] sued for the amount again before Rav
Hiyya. He said to them, “Just as a person is likely to (lie in order to) make himself appear
unsatisfied (i.e. poor), thus he is likely to (lie in order) to make his children appear unsatisfied
(i.e. poor).” They said to him, “Let’s go and get back that half!” He said to them, “No, the
elder has already ruled.”

This case turns on presumptions about the kinds of claims people tend to make, because there is no
witness or other material evidence besides the admission of debts by the dying man. Presumptions
like this one are one way that rabbinic law resolves cases of doubt.32 Is it more likely that someone
lies to make himself appear rich or poor? Another method for resolving doubt in this narrative is

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32 Another method for resolving competing claims when the facts are unknown is השנאה דרייתא, (the intuition of the
djudges) see b. Qiddushin 74a, for example, a third method is halving the claimed property as in this case and in others,
for example, b. Bava Mitsia 2a, and a fourth method for resolving indeterminacy in financial disputes is המוציא מחבירו עליוה הראיה,
(the burden of proof is on the one trying to extract money) in many contexts including b. Bava Qama 46a.
dividing the claimed amount, so that while the facts not conclusive, neither party completely loses out, which was Rabbi Yishmael’s ruling. This narrative shows claimants shopping for favorable rulings. Instead of appealing to the original judge as is the case in most of the other adjudicatory narratives, the claimants press on to another judge to see if they can recoup the entire amount they feel they are owed. The result is not favorable, but it is not punitive either. The second judge defers to the judgement of the first. Unlike the case with the woman who insulted the appearance of a rabbi, the second rabbi does not treat getting a second opinion as an insult to the first judge.

In summary, forum shopping is depicted as effective when a person moves towards rabbinic law and away from another set of norms, but within rabbinic law it is less predictable. Rabbis may suggest turning to a colleague who holds a more favorable view, but a rabbi refuses to rule in a case when another has ruled. These sources together suggest it is important to forum-shop among rabbinic judges before judgement is rendered for the best advantage.

3.2 Other Legally Significant Actions after Judgement

In this section, our first narrative comes from a sugya we have discussed above, with widows seeking payment of their ketubot. While the examples we saw earlier included bitter consequences, this widow woman reacts in two ways to being denied payment of her ketuba. First, she reasons aloud the underpinning of the law, and explains that it does not apply to her. This part of the story belongs among others including argumentation. She says essentially, I do not dispute the rule, but the rule does not apply here. Second, she takes the initiative with a legally significant act. She swears, unprompted, to the fact that she has never received payment. Her action is successful – the ruling changes in her favor.
1. Changing the Facts of the Case Post-Facto: Gittin 35a (Munich 95)

...the fact that came before Rav Huna. He said to her, “What can I do for you? Rav does not permit widows to collect their ketuba.” She said, “Isn’t the reason that I might have collected something from my ketuba? As the Lord of Hosts lives, I have not received anything from my ketuba at all!” Rav Huna said, “Rav agrees [she can take payment] when she takes the initiative [and swears].”

Rav Huna could have ruled “Rav does not allow widows to collect their ketubot.” His initial comment, “What can I do for you?”, however, indicates a face to face engagement in which Rav Huna grapples with his responsibility to this woman. His decides to prioritize his duty to legal precedent. This story is interesting because the woman actually answers the often rhetorical, “what can I do for you?” with a suggestion of what he can do for her: see that this rule does not apply to her. If that is true Rav Huna does not need to decide between following Rav and helping her. The thing is, Rav Huna can only reverse his decision if she acts without his instruction, independent of him and without knowledge of the rabbinic rule that while a rabbi cannot administer an oath in this case, if she willingly offers one she is believed and can collect the money. She changes the case by introducing a new legal fact, that is, an unprompted oath, which retroactively shifts the significance of the case and changes the outcome.33

33 The level of this woman’s knowledge is somewhat mysterious – she first gives her impression of the reason for the rule, and then does an action which is only effective because the judge presumes she did so without legal calculation. The rabbinic story is told such that the reader and woman have the same level of knowledge at this point in the sugya, which aligns the reader with this petitioner; the fact that a freely offered oath could help a woman in this situation has not been taught yet in the sugya. This story introduces it. If she was thought to know this legal loophole, her oath would not have succeeded, the oath needs to be seen by the judge not as calculated but as a truthful expression of her knowledge. After
3.3 Actions During Legal Proceedings

While most of the petitioners’ responses to rabbinic judgement begin after the ruling, in two narratives unnamed figures interrupt the court proceedings as a way to push the ruling in their direction. Sometimes this works and sometimes it does not. This first narrative is arresting. A woman refuses the procedural order to stand up for the legal proceedings. In doing so she affects the judge’s next questions, producing a favorable outcome: the judge tricks her prospective husband into releasing her from their bond. This narrative is part of a cluster in which rabbis release women who do not want to enter levirate marriages.\(^{34}\)

1. **Interrupting and Disobeying: Yevamot 106a (Munich 141)**

   A woman came before Rabbi Hiiya bar Abba. He said to her, “Stand, my daughter.” She said to him, “Say that her sitting is her standing. It is money that he sees in her and he wants to use up all that she has.” He said to her, “You do not wish (the marriage)?” She said to him, “No.” He said to him, “perform balitzah and by doing this you will marry her.” After he did balitzah he said to him, “Now she is forbidden to you (as a wife). Go and do a proper balitzah for her so she can be free to (marry) anyone.”

   This woman’s response is to refuse to stand and to narrate this disobedience, taking control of the

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\(^{34}\) Deut. 25:5-10. See Dvora E. Weisberg, *Levirate Marriage and the Family in Ancient Judaism* for discussion of this institution and the rabbinic sources. The narrative immediately following is about a female relative of a rabbi, though it does not include action by that woman on her own behalf. Yonatan Pomerantz Dissertation pp. ADD notes that rabbinic judges seem to act to help relatives of rabbis in these stories perhaps more than they act to help ordinary unnamed petitioners.
conversation at the outset. If she had stood, who knows when she would have another opportunity to explain to the judge about her prospective husband’s greed. She claims that the man only wants her money and will spend it all. The judge’s response is to take her lead. He does not insist on continuing the proceedings but instead asks a clarifying question: do you wish to marry him? In response to her, he tricks the man into performing a halitzah that makes her ineligible to marry him properly, in order to push the man to release her. Without the rabbi’s cunning, and without her refusal at the beginning, the narrative implies that the marriage would have depended on the man’s wishes.

The next narrative also includes a female party to a dispute. Her refusal to change venues for the case results in the rabbi summoning her. The narrative thus depicts an unnamed litigant refusing to comply with procedural orders for rabbinic court, but it is unclear what effect the summons has on her.

2. *Disobeying: Rosh Hashana 31b (JTSA, EMC, 319)*

A woman was summoned for judgement before Amemar in Neharde’a. Amemar went to Mahoza but she did not follow after him. He wrote a summons against her.\(^35\)

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\(^35\) Writing a summons appears in other Bavli narratives when parties do not appear in court, e.g. B. Bava Qama 113a, 112b. While the same word appears as a write of excommunication in other contexts, I do not see evidence that it means this here, agreeing with Sokoloff, *Babylonian Aramaic* p. 947.
I note this brief narrative because it demonstrates one method of opposition available to parties to disputes: not to appear in court. This particular case examines the requirement of parties to disputes to follow the judges if they change locations. The relevance for us, though, is that when the judge moved, the woman decided that she did not want to follow him to another city, and the onus fell to him to respond and exert his authority to judge.

The next narrative is not clear about whether the female petitioner gains the advantage she seeks when she negotiates with the rabbi. Nonetheless, it depicts, like the two narratives before, an unnamed female person fighting a legal case that would go against her if she does not resist it. This narrative appears in a sugya made up of many short narratives about people being obligated to make oaths in order to avoid paying a debt. Many of those narratives involve women and several include women who are not trusted.

3. Negotiating Procedures: Ketubot 85a (Vatican 130)

A woman was required to take an oath (in a financial dispute, saying she did not owe money) in the court of Rav Bibi bar Abaye. Her opponent said to her, “Let her come and take the oath in my place, maybe she will be ashamed and admit (that she does owe the money). She said to him, “Write me a verdict in my favor, so that when I take the oath it will be in my hands.” “Write it for her” (said the judge).

The woman’s opponent wants her to move the place of judgement to a location that he thinks will be advantageous to him. It is not clear if she thinks the change in location will be good or bad for her, but she responds to this demand by negotiating the terms. Her condition is that the judge writes
a document prospectively attesting to her oath, which will be given to her once she swears. Against
the background of being doubted, the female party in this dispute asks for and receives a guarantee
that if she submits to a change in location, her oath will be accepted. This narrative shows both
litigants negotiating the way the case will proceed, each to their own advantage.

Finally, this narrative depicts one other kind of action a person might take during the court
proceedings in order to subvert judgement and gain advantage: deceit. It fails, and while there is no
rabbinic response within the plot action to the trickery involved, preserving and telling the story is a
rabbinic response itself. It warns judges about the guile some litigants bring to court.

4. Tricks: Nedatim 25a (Munich 95)

This is meant to exclude the “cane of Rava” which was when a man who claimed money
from his fellow. They came before Rava. He said to the borrower, “Go pay him.” He said, “I
paid him!” He said, “If so, go swear to him.” He went and brought in a staff and he put that
sum inside it. He leaned on it as he came into the court. He said to the lender, “Take this
staff in your hand.” He then lifted the Torah Scroll and swore, “I swear to you that all which
I owe to that lender is with him.” His fellow was angry and broke the staff and all that
money spilled out and it was apparent that he had sworn truthfully.

This story was so memorable and presumably re-told enough to garner its own title – “Rava’s cane.”

The conclusion, “it became apparent that he had sworn truthfully” is loaded. What is unsaid is that
his oath was technically accurate, but deceitful. The lender’s honest emotional reaction, angrily
breaking the cane, revealed the deceit, which is a fitting resolution. The legal context discusses how
to interpret the language people use when making oaths, how much credence should a judge give to
idiosyncratic meanings of words or private thoughts, versus conventional meanings of words. That
theme is strong here, but so is the amazement at how audacious the borrower was. For my purposes,
the story depicts a final method a legal non-professional might use to affect the court procedures.
Here the fraud discovered, but the story suggests the court’s vulnerability to bold liars.  

Summary and Conclusion

These narratives describe the self-expression, self-advocacy and public responses within judicial
proceedings and after rulings by rabbis. They display a wide range of actions that (mostly) unnamed
parties enact on their own behalf. A few stories show the rabbinic judges working with those parties
to help them make the most of the potential legal options of which they are aware. The stories
indicate that insulting a judge is not an effective way to change a ruling, but that there is no
immunity for judges, in the shape of heavenly protection, from personal attacks that occur in the
wake of harmful judgements. Just because a judge’s decision is correct does not mean that the
litigants will accept it, or that the judge himself is shielded from the negative repercussions. The
stories also show a lot of examples of persistent resistance. The narratives with female petitioners (in
all but one case) either “protesting” (צוח, or “bothering” (טרד), or simply responding persistently
suggest that petitioners could be a formidable presence even when the rules were not on their side.
Their presence is marked by the narrators and rabbis responded, even if the response was “ignoring”
(לא אשגח) or cursing. It is important to recognize that even the narratives where the judges do not
change their decisions in response to these persistent demands, are depictions of insistent advocacy.

36 Julia Watts Belser has article about trickster tales (cite) but it is about rabbis and their wives, not regular folks and criminals.
The narratives also depict winning strategies that unnamed non-experts use to affect legal decisions. There appears to have been some familiarity with rabbinic rules and reasoning and some of the stories show petitioners working with rabbinic judges to give them the facts they need to produce the right answer. This could include trickery, but more predominantly, multiple attempts at producing legally useful information, interrupting or redirecting the proceedings and using the available forums for judgement to their advantage. However, rabbinic judges in these stories uniformly stand up for the authority of other rabbinic judges – forum shopping appears as a successful strategy only when it either prefers rabbinic law to another alternative, or before any rabbinic judge has ruled. The narrators of these stories show that citing the conflicting rulings of a colleague or seeking a second opinion after the first judgement is rendered will not produce a better result.

The narrative depictions of how judges respond to the petitioner’s emotional expressions, insults and advocacy require their own article. These judicial responses include aggression and indignance, expressed in cursing and insulting. They also include a spectrum of ways that judges take responsibility for their position of power (advising a change in location, responding to an unusual act in court with direct engagement), to expressions of exasperation and powerlessness before precedent or more powerful legal authorities. The advocacy, persistence, negotiation and resistance by unnamed non-professionals in rabbinic courts must be considered alongside the depictions of the business of judging, since it is the diverse interactions between judge and litigant that color our understanding of relationships between judges and regular folks in these brief narratives.