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Consent, Agency, and the Semantics of Sexuality in the Babylonian Talmud

In 1975, Susan Brownmiller articulated a clear, concise, feminist definition of rape, one which brings the woman and her consent to the fore: "If a woman chooses not to have intercourse with a specific man and the man chooses to proceed against her will, that is a criminal act of rape."[1] The experience of the victim is the critical factor; rape is "A sexual invasion of the body by force, an incursion into the private, personal inner space without consent...a deliberate violation of emotional, physical and rational integrity...a hostile, degrading act of violence..."[2] Brownmiller also noted, however, that "Through no fault of woman, this is not and never has been the legal definition....Rape could not be envisioned as a matter of female consent or refusal...Rape entered the law through the back door, as it were, as a property crime of man against man."[3] The biblical record certainly bears out this claim, for as Deut. 22:23-29 makes clear, what matters is less the nature of the act committed by the rapist than a) the virginity of the victim, b) the betrothal status of the victim, and c) the location of the rape, which is used as a determinant of whether the woman resisted or consented. Not the violence against the woman but the questions of lost virginity and which male or males have control over the woman

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1. Susan Brownmiller, *Against Our Will: Men, Women and Rape* (New York, Toronto, London, Sydney, Aukland: Bantam Books, 1975), 8.

2. Ibid., 422.

3. Ibid., 8.

determines the punishment meted out to the rapist; if the victim is betrothed, he will be put to death, but if she is still under the sole jurisdiction of her father, he pays a fine and is compelled to marry his victim. The rape of a non-virgin is not even discussed.

Interestingly, Brownmiller cites talmudic legislation as an advance for women. Noting (somewhat inaccurately) that the fine which biblical tradition mandates be paid to the father may in rabbinic law be paid to the victim herself, she writes: "In time the award came to be seen as punitive damage for *injury to a female's body*, as well as payment for enjoying sexual intercourse with a virgin."[4] Brownmiller is not, nor does she claim to be, an expert in rabbinic texts or the Jewish legal tradition, but she is not alone in this assessment. Moreover, other writers explicitly raise the issue of consent. Rachel Biale, in her book *Women & Jewish Law* writes, "Postbiblical law...amended [the law of Deut. 22:23-27] to include more complex considerations of the issues of consent and compulsion."[5] Indeed, the very terminology used by rabbinic texts to discuss this crime would appear to make consent integral to defining rape; the rabbis create a new term, אונס, from the root אנס, which is defined by Marcus Jastrow as follows: "*to bend, force; to do violence; to outrage &c.*"[6] One is thus tempted to follow the reading of Judith Hauptman, who derives from this linguistic choice that "[The rabbis] view all cases of forced sex as rape, without regard to where the act took place."[7]

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4. ; Brownmiller, *Against Our Will*, 14 emphasis in the original. See also Judith Hauptman, *Rereading the Rabbis: A Woman's Voice* (Boulder, Colorado, Oxford: Westview Press, 1998), 84-85; Hauptman, while aware (in a way Brownmiller is not) that the payments go to the woman in only certain, limited circumstances, nonetheless reads this innovation with an emphasis on its progressiveness that is very similar to Brownmiller's.

5. Rachel Biale, *Women and Jewish Law: An Exploration of Women's Issues in Halakhic Sources* (New York: Schocken Books, 1984), 242.

6. Marcus Jastrow, *A Dictionary of the Targumim, the Talmud Babli and Yerushalmi, and the Midrashic Literature*, reprint, 1886 (New York: The Judaica Press, Inc., 1996), 86. The biblical terms are usually either תפס (to seize) or ענה (to humble/shame). אנס appears only once in Bible, in a usage having nothing to do with rape (Esth. 1:8).

7. Hauptman, *Rereading the Rabbis*, 80.

In the course of what follows, however, I want to interrogate and problematize this interpretation of rabbinic materials, through the lens of (feminist) linguistic analysis. I will examine the word אנס and the language of purity and impurity as used by rabbinic texts for rape and other events, and then turn more broadly to the issue of how sexuality in general is linguistically constructed in rabbinic Hebrew. First, however, I want to include a few words about my choice of methodology and the titling of this work as a study of "the semantics of sexuality in the Babylonian Talmud." The "turn to language" in the humanities and social sciences is by now an established trend; with the recognition among many feminists scholars that ideas and "truths" about gender, sexuality, and the body are to a greater or lesser degree socially constructed, it is not at all surprising that language and discourse should be identified as key sites where that construction takes place.[8] Thus Janice Moulton:

> Sexual activities, as with most social behaviors, are stylized, deriving much of their immutability from the language that describes them. For each new generation of humans, lacking the instinctual control of other species, the 'rediscovery' of sexual activity is greatly influenced by information carried by spoken and written language.[9]

Feminist linguistics provides a particular set of tools for examining language and the creation of meaning – that is, semantics – that I have found very revealing when used to examine rabbinic

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8. "We have known for a long time that language is not a neutral, descriptive medium but is deeply implicated in the maintenance of power relations." Rosalind Gill, "Relativism, Reflexivity and Politics: Interrogating Discourse Analysis from a Feminist Perspective," in *Feminism and Discourse: Psychological Perspectives*, edited by Sue Wilkinson and Celia Kitzinger (London, Thousand Oaks, New Delhi: SAGE Publications, 1995), 166. See also Maria Black and Rosalind Coward, "Linguistic, Social and Sexual Relations: A Review of Dale Spender's *Man Made Language*," in *The Feminist Critique of Language: A Reader*, edited by Deborah Cameron (London and New York: Routledge, 1990), 111 Deborah Cameron, "Gender, Language, and Discourse: A Review Essay," *Signs: Journal of Women in Culture and Society* 23, no. 4 (1998): 947, 962, Nelly Furman, "The Politics of Language: Beyond the Gender Principle?" in *Making a Difference: Feminist Literary Criticism*, edited by Gayle Greene and Coppélia Kahn (London and New York: Routledge, 1985), 48, Dale Spender, "Defining Reality; a Powerful Tool," in *Language and Power*, edited by Cheris Kramerae, Muriel Schulz, and William M. O'Barr (Beverly Hills, London, New Delhi: Sage Publications, 1984), 194, Dale Spender, *Man Made Language*, Second ed. (London and New York: Pandora, 1985), 3.

9. Janice Moulton, "Sex and Reference," in *Sexist Language: A Modern Philosophical Analysis*, edited by Mary Vetterling-Braggin (Totowa, New Jersey: Rowman and Littlefield, 1981), 191.

discourse around the intersecting realms of gender and sexuality. As I am using it here, semantics, the creation of meaning, encompasses both words – what we might refer to as the available vocabulary, or lexis, of a language – and words as used in context, for meaning ultimately must be established contextually. Lexis – which linguistic resources and meanings are easily available in a given language and which are not – is an important tool for examining all sorts of cultural beliefs held by its users, including but not limited to gender and sexuality:

> The culture we live in determines, to a large extent, how we categorize the world and understand the things we perceive because it is culture that provides the vocabulary from which we choose our words, including the information about which vocabulary choices are the preferred terms for talking about certain situations and events.[10]

Semantics also encompasses, however, vocabulary as used; as the linguist Cate Poynton has observed, the assumption that it is lexis alone which conveys meaning "ignores other linguistic units and levels, all of which work together to make meaning."[11]

To turn now to rabbinics: I would like to begin by adapting a question Dale Spender asks about the English word "rape": "[T]here is only one name for this event, and therefore only one question to ask: whose name is it? Whose meanings are encompassed in the...word, *rape*?"[12] As

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10. Julia Penelope, *Speaking Freely: Unlearning the Lies of the Fathers' Tongues* (Pergamon Press, 1990), 46. Muriel Schulz elaborates: "A rich vocabulary on a given subject reveals an area of concern of the society whose language is being studied. The choice between positive and negative terms for any given concept...reveals the presence or absence of prejudicial feelings toward the subject. The presence of taboo reveals underlying fears and superstitions of a society. The occurrence of euphemism...or dysphemism...reveals areas which the society finds distasteful or alarming." Muriel R. Schulz, "The Semantic Derogation of Woman," in *The Feminist Critique of Language: A Reader (1st Ed.)*, edited by Deborah Cameron (London and New York: Routledge, 1990), 134. See also Sally McConnell-Ginet, "Linguistics and the Feminist Challenge," in *Women and Language in Literature and Society*, edited by Sally McConnell-Ginet, Ruth Borker, and Nelly Furman (New York, Westport, Connecticut, London: Praeger, 1980), 5.

11. Cate Poynton, *Language and Gender: Making the Difference* (Oxford: Oxford University Press, 1989 (originally published 1985)), 6.

12. Spender, *Man Made Language*, 179; emphasis in the original.

well as asking "whose meanings are encompassed" in the word אנס, I would like to ask which meanings the name encompasses. Recall that Jastrow's definition of אנס does not include the word "rape" (although "to outrage" might be a euphemistic reference to this meaning). Rape is only one meaning of a term which covers a number of events of different sorts in rabbinic literature; in fact, a search of the Bavli for uses of אנס in its many forms – among which I include verbal forms, participles functioning as adjectives (i.e. אנוסה), and nominalizations (that is, nouns created out of verb forms), for the action (i.e. אונס),the man who commits the action (האונס) and the victim of the action (האנוסה) – reveals that there are less than half as many instantiations used to mean rape as there are of instantiations bearing other meanings.[13]

A few examples are sufficient to demonstrate the many meanings אנס can carry depending on context. אנס can be used to signify compulsion to perform a forbidden act, under the threat of violence, so that one might not be held liable for that act. Thus one finds the case of "ישראל שאנסוהו עובדי כוכבים והשתחוה לבהמתו" – an Israelite who was compelled by idolaters and he bowed down to his animal.[14] אנס may also indicate a forcible (though sometimes legal, as in the collection of a debt) seizure of property, from something as significant as a house to a smaller items such as a wine-skins and casks.[15] However, much less violent and/or intentional occurrences may also be signified by אנס, such as accidents and unexpected events which hinder a person's ability to fulfill some intended action or which result in damage to someone's property. Thus in b. Ket. 2a-b we find the term applied to a wedding which does not occur because one of the participants fell ill or because the bride unexpectedly began to menstruate[16]; on the latter page, missing a ferry such that one fails to arrive somewhere by a stipulated time is

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13. The proportion is more even in Mishnah - nearly half of the instantiations of אנס bear a meaning of "rape."

14. b. A.Z. 54a. Interestingly, this passage is ambivalent as to whether אונס as it appears in a beraitta should be understood as "compulsion," or "seizing" (see below).

15. b. Git. 44a and A.Z. 33a-b respectively. See also b. Hul. 131a (grain) and A.Z. 54a (an animal).

16. Similarly a rabbinic ordinance which delays the marriage may be designated by אנס.

designated not only אונסא, an accident, but perhaps even אונסא דשכיח, an accident which is common. Similarly, m. B.M. 7:9-10 lists a series of uncontrollable events, such as an attack by predatory animals, which absolve a herdsman of liability if one of the flock under his care should die. There are risks associated with אונס שינה, being overtaken by sleep; one might fail to recite evening prayers, priests may not be motivated to participate in early morning Temple rituals, a man's wife may become repulsive to him if he is required to have sex only at night.[17] Finally, a woman may be forced into things other than rape. For example, she may sell her ketubbah (that is, the prospective right to collect her marriage settlement should her husband predecease or divorce her) because "זוזי אנסוה" – her immediate need of money compelled her into this action.[18] In b. Hul. 31b we find the question, "הכי דמי נדה שנאנסה וטבלה" – how can we find a case in which a menstruous woman was forced and immersed. That is, how can we imagine a case in which a woman immersed as would be required after her period, but did so completely without intention, hers or anyone else's? The text proposes such answers as she fell off a bridge into the water, or that she went to the shore to cool herself (and fell into the ocean); the "אונס" in these examples are pure accidents.

Spender writes of English, "Despite the violent nature of the act, there is an absence of force in the name rape, which is evidenced by its usage in polite conversation and by the fact that it can also be used metaphorically without distaste[19]...Neither has rape been subjected to euphemistic treatment – the fate of many words which make users uncomfortable. It seems that there is a form of neutrality about the word *rape*."[20] It is my contention that rabbinic Hebrew, by different but not unrelated means, also encodes a form of neutrality around rape. The linguistic

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17. b. Ber. 4b, Yoma 22a, and Nid. 17a respectively; see also Rashi, ד"ה אונס שינה, on the last of these (he suggests that the man's ardor for his wife will be dimmed so that he makes love to her only out of obligation).

18. b. Ket. 53a, B.K. 89b

19. Spender is referring to the ease and comfort with which phrases such as "the rape of Kuwait" are used.

20. Spender, *Man Made Language*, 178-79.

grouping of rape with "acts of God," with unavoidable accidents, with unexpected impediments to a desired action (such as a man missing a ferry, or a woman getting her period on her wedding day), thereby blunts the violence and willful violation of a woman's wishes – by a man – which define rape. The lack of a term specific to sexual coercion is suggestive of the degree to which this crime is seen (or not) by the users of the word as unique, uniquely significant, or uniquely heinous.

While discussing the rabbinic term אנס, I want to raise another, related linguistic issue, that is, the question of collocation. Collocation is "the tendency for certain words to occur with or near other words with higher frequency than chance,"[21] and is relevant to feminist language study in that "there are many ways in which collocation works to create limits to the depictions of women and of men, to reinforce stereotypes and to lull users into lazy and unthinking linguistic ruts."[22] Thus, not only do more than half of all usages of the root אנס refer to something other than sexual compulsion, but even in those cases where the meaning of sexual force is intended, there is a high rate of collocation of אנס with the root פתה, meaning "to persuade, entice," and corresponding in its connotations with the English "seduce." I tested for collocation (in this case in Mishnah and Bavli) by conducting computer scans to find variants of the two words within five words of each other, further attempting to sort the results for cases in which the two terms appeared as part of the same phrase, clause, or sentence.[23] Collocation of אנס and פתה is by far the rule rather than the exception in Mishnah; over three-quarters of the instantiations of אנס are accompanied by an instantiation of פתה. While the occurrence of collocation in the Bavli is far less frequent, it still manifests itself in approximately one third of the instantiations of אנס.

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22. Gibbon, *Feminist Perspectives on Language*, 68.

23. Thus, for example, the passage in m. Ket. 4:3 – מה בין האונס למפתה? האונס נותן את הצער והמפתה אינו נותן את הצער... (What is the difference between the rapist and the seducer? The rapist pays the [indemnity for] pain [suffered by his victim] and the seducer does not pay the [indemnity for] pain) – would be counted as two instances of collocation, since although the first occurrence of מפתה(ל) appears in immediate proximity to the second occurrence of אונס(ה), they are part of separate linguistic units.

This collocation, not surprisingly, disrupts the ability of rabbinic discourse to define and recognize (the lack of) female consent. Treating the two together in this way creates a discursive link between them, blurring the question of consent which would seem to distinguish between them.[24] Moreover, because the rabbinic law of seduction applies only to an unmarried and unbetrothed virgin still below the age of legal independence, rape comes to be discussed largely within this context as well; the rape of non-virgins and adult women, particularly those not married, becomes less visible.[25] Certainly these are not entirely new observations; feminist scholars of rabbinics are well aware that rabbinic texts tend to read these two cases together.[26] Judith Romney Wegner, for example, writes,

> The sages view the victim of rape or seduction from the father's economic standpoint. Defloration reduces her value by the same amount no matter how it happened...This perception of the violated girl as damaged goods takes no account of her as a person. Above all it ignores the greater heinousness of rape as compared with seduction.[27]

The linguistic approach helps confirms this already noted linkage.

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24. Although agency and consent are also complicated where seduction is concerned. First, both the English "seduce" and the Hebrew "פתה" generally function, in their sexual meanings, as sex-marked predicates, semantically demanding male agents and female objects. Second, each carry connotations of *persuading* their object (i.e. the woman), implying a lack of immediate consent on her part (see Mills, *Feminist Stylistics*, 152). Finally, both have more generalized meanings (outside of the sexual realm) of enticing a person to commit some act of wrong-doing or faithlessness. Nonetheless, seduction does imply that some form of consent is sought by the seducer, rather than ignored as in the case of the rapist.

25. However, Léonie Archer's claim that "The legal codes do not treat of rape of widows or divorcees...that is, of those women independent of any male control and assumed non-virgins, or indeed of any adult woman who had never married," is overstated: Léonie J. Archer, *Her Price Is Beyond Rubies: The Jewish Woman in Graeco-Roman Palestine*, Journal for the Study of the Old Testament Supplement Series (Sheffield: Sheffield Academic Press, 1990), 54, note 1. See below.

26. Whether these are two separate cases biblically (Ex. 22:15-16 for seduction, Deut. 22:28-29 for rape) is open to debate. See, for example Archer, *Her Price Is Beyond Rubies*, 51-2 or Hauptman, *Rereading the Rabbis*, 79-80. On the Greco-Roman and Jewish-Hellenistic approaches to these two categories, see Michael L. Satlow, *Tasting the Dish: Rabbinic Rhetorics of Sexuality*, Brown Judaic Studies (Atlanta, Georgia: Scholars Press, 1995), 134-35.

27. Judith Romney Wegner, *Chattel or Person? The Status of Women in the Mishnah* (New York, Oxford: Oxford University Press, 1988), 24.

However, I would like to suggest that the linguistic approach also brings to light an important and relatively unnoticed phenomenon in feminist writings on rabbinic approaches to rape. That is, I would like to suggest that so strong is the power of the rabbinic collocation that ironically it often is repeated and reproduced at the very time it is being critiqued, so that attention is diverted from consent and female sexual agency[28] and towards rabbinic concerns – to questions of shame, indemnity, the value of virginity. Thus, for example, Wegner discusses rape in the chapter on "The Minor Daughter," in two subsections entitled "Seduction and Rape: Criminal Penalties," and "Seduction and Rape: Civil Damages," while Hauptman dedicates an entire chapter to "Rape and Seduction," in which she discusses the seduction or rape of an unmarried, unbetrothed virgin and sex with a minor. Only in the last paragraph of her chapter does Hauptman ask "How does one deal with the rape of an *un*betrothed *non*virgin, such as a widow or divorcee?"[29] But when we allow ourselves to be guided by the Mishnah's understanding that virginity lost outside of marriage can only be the result of either seduction or rape, the possibility of an active, agentive female sexuality is obscured. As a result, for all that the rabbis may be castigated for failing to distinguish sufficiently between the woman who is raped and the woman who is seduced (and I do not wish to downplay the importance of this distinction, which is significant), the distinction between a woman who is the object of male sexuality (whether more or less willingly) and the woman who might take control of her own sexuality is lost.[30] Note that in the quote from Wegner above, we can distinguish between the

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28. The issue of agency will be discussed in detail below.

29. Hauptman, *Rereading the Rabbis*, 97. One might add the question of how one deals with the rape of a married woman. While we must grant that there is very little rabbinic discourse on these questions, there is some, notably on the issues of a woman's reliability to testify that she has been raped (m. Ket. 1:6, 3:5-6, Ned. 11:12, for example), whether, if married, she is permitted to remain in her marriage (b. Ket. 51b, for example; see below), and any future marriage such a woman might enter (m. Ket. 3:5-6, for example). The Talmud also forbids a man to force his wife into sex (i.e., rape her), though the proposed punishment – immoral children – provides the wife no legally enforceable recourse (b. Eruv. 100b, Ned. 20b). Hauptman does not address these texts; Wegner does not even ask the question. See, however, Daniel Boyarin, *Carnal Israel: Reading Sex in Talmudic Culture*, The New Historicism: Studies in Cultural Poetics, no. 25 (Berkeley, Los Angeles, Oxford: University of California Press, 1993), chapter 4.

"greater heinousness of rape as compared with seduction," but we cannot conceptualize a situation in which a woman is not the victim of predatory male sexuality. Hauptman goes even further in constructing both as cases of victimization: "the rabbis posit the existence of two different sex crimes against unbetrothed women, seduction and rape."[31] As Deborah Cameron has rightly warned, it is not enough for women to gain access to previous restricted discourses (such as rabbinics). Many of these discourses are permeated with sexist assumptions; "Indeed this sexism often continues even when women nominally gain access to the language in question...Within these domains, sexism is part of everyone's way of understanding and talking about the world..."[32] So subtly encoded may it be in some cases that even feminists reproduce it without meaning to.

Similar phenomena to those just noted regarding אנס are also evident in another area of rabbinic terminology regarding rape. The usage in question is of particular interest because it is presented in several cases by the text as the direct linguistic choice of the woman herself. In m. Ket. 2:5-6, for example, we read,

> אמרה נשביתי וטהורה אני נאמנת שהפה שאסר הוא הפה שהתיר...שתי נשים שנשבו זאת אומרת נשביתי וטהורה אני וזאת אומרת נשביתי וטהורה אני אינן נאמנות. ובזמן שהן מעידות זו בזו הרי אלו נאמנות.
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> [A woman] said I have been taken captive and I am pure, she is believed, for the mouth that forbade is the mouth that permitted [2:5]...Two women who were taken captive and

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30. Levitt makes a similar observation when she notes that the rabbinic discourse of pain associated with rape, which "presume[s] that even desired intercourse is painful," thereby "effaces the possibility of sexual pleasures for women..." Laura Levitt, *Jews and Feminism: The Ambivalent Search for Home* (New York and London: Routledge, 1997), 48.

31. Hauptman, *Rereading the Rabbis*, 80. In fact, when the rabbinic texts deny indemnity for pain to the woman who was seduced (based on male rabbis' reports of women's experiences of pain in first intercourse; b. Ket. 39a-b), Hauptman claims that the voices of the text "fail to recognize that seduction is a crime by men against women even if women, at some point, consent." (88). See also Levitt, *Jews and Feminism*, 42-49 on this passage.

32. Deborah Cameron, *Feminism and Linguistic Theory*, Second ed. (London: Macmillan, 1992), 197.

> this one says I was taken captive and I am pure, and this one [the other] says I was taken captive and I am pure, they are not believed. And when they testify one for the other, they are believed. [2:6]

What the women in this passage are testifying to is whether they have been raped while being held hostage, something that was presumed to have happened (probably not without reason) without evidence otherwise. The practical import of such testimony is whether the women may marry (in the future) or stay married to men of the priestly caste, who were forbidden to be married to women who had had sexual contact with improper partners (such as disqualified priests, or non-Jews, as the captors in this situation are presumed to be), under any circumstances, including rape. This source has understandably been addressed in regards to women's testimony,[33] but less noticed, and of interest here, is the language the women use to describe the event to which they are testifying.[34] The women use the language of ritual purity; moreover the application of the full sphere of language of ritual purity to this situation is confirmed by the Tosefta, which introduces the inverse, **טמא** to refer to a case in which a rape has taken place (including in the discourse of the women themselves). For example:

> ...שׂתי נשׂים זאת אומרת אני טמאה וחבירתי טהורה נאמנת אני טהורה וחבירתי טמאה אין נאמנת אני וחברתי טמאות נאמנת על עצמה ואינה נאמנת על חברתה אני וחברתי טהורות נאמנת על חברתה ואין נאמנת על עצמה...
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> Two women [who were captured]; this one says I am impure and my companion is pure, she is believed. [If she says] I am pure and my companion is impure, she is not believed. [If she says] I and my companion are impure, she is believed regarding herself and is not

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33. See, for example Wegner, *Chattel or Person?*, 122-23, and Hauptman, *Rereading the Rabbis*, 204-05.

34. One work I am aware which does address the language itself is a dissertation by Jonathan Klawans: Jonathan Klawans, "Impurity and Sin in Ancient Judaism" (New York: Columbia University, 1997). It should be noted that Klawans has recently reworked his materials on this subject and published them in book form. So recently has the book come out at the time of this writing, however, that I have not been able to review it for this work. I therefore make no claims that Klawans continues to hold any of the views discussed and critiqued here.

> believed regarding her companion; [if she says] I and my companion are pure, she is believed regarding her companion and is not believed regarding herself. [T. Ket. 2:2]

Yet despite the linguistic associations, the concern of these texts is clearly not the intricacies of ritual purity law (for example, there is no discussion of transmitting her impurity).

This linguistic choice is further curious in that it suggests that what is at issue here is neither a) what has been suffered by the woman against whom the crime of kidnapping and possibly rape has been committed or b) the moral and/or legal responsibility of the man or men who committed the crime. The woman does not even speak directly of an act that has been committed ("I was raped"), let alone a perpetrator who committed it ("My captor raped me"). The use of an adjectival form (as opposed to even something like a passive formation, such as **נטמאתי**, I was made impure[35]) means that what has been done to her is suppressed and transformed linguistically into an essence inhering in her, presumably for all time (she will never be able to marry a priest[36]), of either purity or impurity. As the linguist Julia Penelope notes, adjectives or words functioning in a sentence as adjectives (for example, passive participles functioning as modifiers) tend to be interpreted as "inherent characteristics of the nouns they precede."[37] What matters linguistically and legally about this possible rape, then, is its

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35. Klawans is thus inaccurate in translating a piece of the toseftan passage cited in part above with "she was captured, and *she was defiled*": Klawans, "Impurity and Sin," 237, note 177 (emphasis mine).

It should be noted that there is one example in Mishnah (Ter. 8:12) of non-Jews *actively* threatening to defile a woman:

נשים שאמרו להם גוים תנו אחת מכם ונטמאה ואם לאו הרי אנו מטמאים את כלכם יטמאו את כלן ואל ימסרו להם נפש אחת מישראל...

...Women to whom non-Jews said 'Give us one from among you and we will defile [literally "make impure," i.e., rape] her, and if not we will defile all of you,' let them [the men, reading יְטַמְּאוּ, the future tense of the active *pi'el* form] defile all of them [the women], and they [the women/Jews] should not hand over to them [the non-Jews] a single soul from Israel.

(I would add that I find Klawans inaccurate again when he translates **יטמאו** as "they are all to defile themselves," referring to the women; even if Klawans is reading יִטָּמְאוּ, the passive *nifal* form, a more accurate translation would be "they all are to [let themselves] *be defiled*.")

36. This, by the way, is another distinction from ritual impurity, which is always – when the Temple cult is functioning, a presumed ideal of the Mishnaic system – ultimately remediable

37. Penelope, *Speaking Freely*, 169.

ramifications on the woman's availability to male members of the rabbinic community, indeed not even all of them, but rather a small subsection of them, i.e., male members of the priestly caste.

Moreover, a linguistic association exists between this usage and the occassional use of the language of purity to indicate the (metaphorically) defiling nature of sin and forbidden activity. As Klawans has delineated in detail, ancient Jewish texts, beginning with the Bible, use the language of purity and impurity to indicate "moral impurity" brought on by sin, as well as ritual impurity. Tannaitic texts, however, Klawans found, greatly restrict this usage, rarely using terminology of ritual defilement in reference to sin: "The tannaim strive to separate the conception of ritual impurity from the conception of sin...Sin does not produce ritual impurity, and ritual impurity does not render one sinful...[T]he tannaim are also notably careful with their use of purity terminology."[38] Yet (as Klawans discusses in some detail) the tannaitic texts, as well as using the language of purity and impurity in reference to rape, as noted above, also apply it to adultery, notably adultery committed by a woman. As in the case of rape, this language when used for adultery is often put into the "direct" discourse (mediated by the rabbinic texts, of course) of the woman or other persons knowledgable about her activities.[39] Thus, throughout m. Sotah, for example, which deals with the trial by ordeal which may be invoked by a husband who suspects his wife of adultery, one finds repeated usages of טמא and טהר to refer to the wife who is or is not guilty of adultery. One example is sufficient to make the usage clear:

אם אמרה טמאה אני שׁוברת כתובתה ויוצאת. ואם אמרה טהורה אני...

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38. Klawans, "Impurity and Sin," 247.

39. Klawans notes that these usages are frequently "employed by the tannaim when they characterize the ways in which common people speak to each other." He thus tentatively suggests that "the tannaim would have preferred to avoid this usage...but were compelled otherwise by common usage." (239) Klawans also points to biblical usages of purity language in regards to both rape (see Gen. 34, the rape of Dina) and adultery (see Num. 5, the laws of the sotah; see also Deut. 24:4 in which this terminology appears in a law forbidding a man to remarry a woman he divorced if she subsequently remarried). Yet whatever the reason for their usage, the terms clearly are part of rabbinic discourse, and therefore can be assumed to assert influence on their users' (including rabbis) conceptions of rape and female sexuality.

> If she said, I am impure [i.e., admits to having committed adultery], she forfeits [literally, "gives a receipt of payment for"] her marriage settlement and goes out [from the marriage; i.e., is divorced by her husband]. And if she says I am pure...[m. Sot. 1:5]

Once again, a particular act(s) taking place at a particular time and place, with particular participants, is transformed into an enduring (the woman may never return to the husband to whom she was unfaithful), essential state of a woman. Her agency in this act is backgrounded and her partner is nearly eliminated from view; nowhere is there ever any discussion of the purity or impurity of a man who commits adultery. Once again, what is at issue is the rabbinic male's concern with a woman's continued marital/sexual permissibility to a husband.

The deep similarities in the way these two connotations of purity language are used creates an association between them. The distinction between the woman who is the innocent victim of a crime committed against her and the woman who is guilty of an active sexual betrayal is linguistically collapsed. Indeed, the very fluidity between these two meanings is well illustrated by the last mishnah in m. Ned. (11:12) and the gemara thereto. The mishnah delineates three cases of women who make claims that would originally would have entitled them to divorce without losing their marriage settlements, including האומרת...טמאה אני לך, the woman who says, I am impure to you; this law was later changed, according to the mishnah, שלא תהא אשה נותנת עיניה באחר ומקלקלת על בעלה, so that a woman would not cast her eyes upon another [man] and injure [thereby] her husband [or "behave immorally regarding her husband"]. Note that the text has thus already cast aspersions on her morality and fidelity. Yet, as is noted in the gemara (b. Ned. 91a), taking טמאה in this text to indicate adultery is problematic, in that elsewhere in tannaitic law it is made clear that an adulterous wife is not entitled to a marriage settlement (as in the text cited above from m. Sot.). If the term is taken to refer to rape, on the other hand, other sources indicate that a wife who is raped is generally still permitted to her husband (see, for example, m. Ket. 4:8); ultimately the source is defined as referring to the raped

wife of a priest. The very fact that this question is raised, however, indicates the availability of both connotations, and the possibility of confusion and/or association between them. And again, like scholars writing on rape and seduction, Klawans is led rather uncritically by this construction to treat rape and adultery together, and to write of "sexual sins perpetrated *by or upon* women,"[40] as if a neat symmetry existed between the two. Women's sexual agency is obscured by lumping the two events together under the rubrics of "sexual sin" or a woman's "sexual history." Klawans thus fails to ask what it might mean to label (that is, stigmatize) the *victim* of a sin[41] as impure as a result of that sin. In the section following the one in which he discusses rape and adultery, Klawans addresses texts which propose that an idol which has been worshipped becomes a source of impurity. Perhaps then we should pose the question thus: is the woman who was raped, like the idol, to be thought of as an object that may be rendered impure by having been improperly used?

The issue of understanding rape is further complicated by what is revealed in a linguistic analysis of rabbinic vocabulary to describe "normal" sexual activity. Such an analysis reveals that the linguistic resources of rabbinic Hebrew frequently encode a sex-based dichotomy, in which males are active and females passive in the sexual sphere. In preparing this paper, I analyzed the frequency of use for the three most prominent rabbinic terms for sexual activity,[42] derived from the roots בא על (literally, "to come to"), בעל (see just below), and שמש ("to

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40. Klawans, "Impurity and Sin," 239; emphasis mine. A similar construction also appears on 235.

41. One might indeed ask if "sin" is an appropriate category when applied to an act, even a morally and criminally culpable act, committed by someone who is not bound by the religious system (in this case rabbanic Judaism) defining sin. On the other hand, non-Jews themselves are sometimes portrayed in rabbinic texts as sources of impurity; see Klawans, "Impurity and Sin," 279-81.

42. There are, of course, a great number of terms and euphemisms found in rabbinics to denote sexual activity, but no one of them appears with the frequency of any one of the three discussed here; see for example Ezra Z. Melamed, "לשנא מעליא וכנויי סופרים בספרות התלמוד," in *Benjamin De Vries Memorial Volume: Studies Presented by Colleagues and Pupils*, edited by E. Z. Melamed (Jerusalem: Tel Aviv University Research Authority and Stichting Fronika Sanders Fonds, 1968), 119-48, and Ezra Z. Melamed, "לשון נקייה וכינויים במשנה," *לשוננו* 47 (1982-83): 3-17.

use/serve"). The first two have biblical roots, the third is a rabbinic neologism. Before turning to the substance of that analysis, I would note that one of the three, בעל raises rather immediate linguistic concerns, due to its obvious associations with the noun בעל, which has interrelated meanings of husband, owner, and master. One hardly needs to be a linguist or in any way familiar with the work of feminist linguists to perceive the implications: "The husband's right to perform sexual intercourse, is called *liv'ol* (to take what is one's property) and the wife's status of "married woman" is referred to as *be'ulat ba'al* (i.e. she belongs to the owner)."[43]

To continue: I have done an informal count[44] of the appearances of each of the three terms in Mishnah, Tosefta, Yerushalmi, and Bavli, counting the same forms as delineated above regarding אנס, that is verbal forms, participles functioning as adjectives, and nominalizations.[45] I found that in all four documents, variants of בא על were most common; they appeared approximately a third to a half again more frequently than variants of בעל. In the Mishnah, Tosefta, and Yerushalmi, variants of בעל in turn outstripped variants of שמש by more than double; in the Bavli the uses of שמש are just over half of those for בעל.[46]

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43. Naomi Graetz, *Silence Is Deadly: Judaism Confronts Wifebeating* (Northvale, New Jersey, Jerusalem: Jason Aronson, Inc., 1998), 67-68. See also Cynthia Baker; citing Jastrow (Jastrow, *A Dictionary*, 182) she observes: The mastery involved in husbandry thus characterizes cohabitation as well. בעל (*baal*) in its verb form means 'to enter into, take possession, to have sexual intercourse.'" Cynthia M. Baker, "Rebuilding the House of Israel: Gendered Bodies and Domestic Politics in Roman Jewish Galilee c. 135 - 300 C.E." (Duke University, 1997), 60.

44. Both by paper (concordances) and machine (computer). I did not attempt in these counts to come up with an exact, accurate figure, but rather intended to get a general idea of the frequency of each term.

45. Including בועל for a woman's (usually illicit) sexual partner, but not occurrences of בעל in its meaning of "husband" (see above), as many if not most instantiations are in contexts having no immediate associations with sexual activity (the proliferation of instantiations and the constraints of time, moreover, made it highly impractical to attempt locating and sorting out usages which explicitly involve sexual activity). Obviously, had the appearances of בעל as husband been included, the disparity between instantiations of בעל and בא על on the one hand, and שמש on the other, would have been even greater.

46. Variants of שכב are also not uncommon in Bavli, though appearing less frequently than those of שמש; in addition, nearly half of the instantiations of שכב are biblical quotes, while many others adopt biblical language as they respond to biblical passages. שכב also frequently marks non-"normative" sexual encounters, such as those between men (משכב זכור), between humans and animals, or between persons forbidden to each other by laws of incest and/or adultery (שכב is used both for Reuven's relationship with his father's concubine Bilhah, and Potiphar's wife's desired relationship with Joseph; in both cases, biblical language is also an influencing factor).

What makes these differences in frequency significant are the different ways in which each of the terms is used. In particular, these terms raise questions around the issue of what linguists term "agency," described by Poynton as: "whether or not one is presented as doing or being done to, as causer of actions/events or merely acted upon, what one is presented as acting upon, whether events are presented as occurring with or without agency."[47] Poynton goes on to describe the sorts of ways agency must be subjected to gender based analysis:

> The most obvious issues to investigate are:
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> • the frequency of women compared to men in the role of agent;
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> • the nature of the processes involved;
>
> • the nature of what is at the receiving end of the of doing agents; and
>
> • what kinds of agents involved in what kinds of processes get deleted.[48]

Each of these questions will prove to be revealing in regards to rabbinic terminology in the area of sexuality, and to have important ramifications for rabbinic attempts to understand and define female consent to sexual activity.

Let us turn first to the intertwined questions of who serves as an agent for sexual activity, and who or what (if anyone or anything) is "at the receiving end of the doing agents." Of the three terms examined here, לשמש is the only one for which we find both male and female agents. The term may be used with or without an object (although the object may be implied when not

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47. Poynton, *Language and Gender*, 62. See also Sara Mills on "transitivity choices" Mills, *Feminist Stylistics*, 143-49.

It is critical to note that the grammatical subject of a sentence is not always the agent of the action described by the sentence. This distinction is particularly significant in regards to passive constructions (for example, "a woman is betrothed"), in which what would classically be defined as the subject of the sentence ("a woman") is not the agent carrying out the activity described therein. The linguist Julia Penelope thus goes so far as to reject the dichotomy of subject/object found in many feminist writings; that is, while the claim that women have commonly been the objects of (male) discourse is true, the corresponding demand that women become subjects of discourse is insufficient. As the above example demonstrates, women may easily become grammatical subjects while men remain the agents of the activity described; the feminist goal must be for women to become discursive *agents*: Penelope, *Speaking Freely*, 128.

48. Poynton, *Language and Gender*, 62.

present). In some instances the object appears to be the subject's sexual partner. Alternately, the object may be either בית (house) or מיטה (bed). Exactly what the two object terms refer to is somewhat unclear, and the choice of object used may be determined by the gender of the subject of the verb.[49] Nonetheless, what stands out for my purposes here is that שׁמשׁ is a verb that may be used in the active form for both a male and female subject, that is, both males and females may be agents in this activity. Thus, as an example, we find in m. Ned. 2:1 a man making a vow to his wife, "קונם שאיני משׁמשׁך" – "I vow[50] that I will not have sex with you." Alternately, if a woman should declare herself sexually forbidden to all Jews, m. Ned. 11:12 directs that her husband "יפר חלקו ותהא משׁמשׁתו" – "he invalidates his part [i.e., the part of the vow that pertains to himself] and she will have sex with him."[51]

Gender symmetry in regards to agency is decidedly not the case, however, for either of the more frequently appearing terms בא על or בעל. In rabbinic usage, these verbs may be conjugated in the active, *kal*, form only for a male subject/agent (הוא בעל, הוא בא על). When the grammatical subject of a sentence using בעל is female, the verb will be conjugated in the passive, *niphal* form (היא נבעלת).[52] In the case of בא על even the passive conjugation is not an option; a noun or noun phrase designating a female will only appear as the grammatical object of the term.[53]

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49. For an extended discussion, see Cynthia M. Baker, "Rebuilding the House of Israel.".

50. A non-literal translation of קונם, a technical term indicating that what follows is the substance of a vow. See Jastrow, *A Dictionary*, 1335.

51. Ironically, her sexual agency in this particular example comes at the cost of denying her agency to make (some) vows, as Num. 30:4-17 grants a father/husband the right to invalidate vows made by his daughter/wife.

52. The distinction between the שׁוכב (the "active," i.e., penetrating, participant) and the נשׁכב (the "passive," penetrated participant) in the case of male homosexual intercourse (though both are considered equally liable by the rabbis), suggests that this dichotomy can also occur with the root שׁכב; that is, in the active form the verb indicates an act of penetration (see below), presumed to be done by a male to either a female or another male. Indeed, I found no instantiations of שׁכב in which a female subject served as the agent of the sexual act denoted by the term. Usages of שׁכב are commonly constructed with either עם or את (שׁכב עם...שׁכב את...); in the latter case the sexual "partner" again becomes the grammatical object of the subject/agent's activity.

It might be argued that this phenomenon should be classed under syntax, or grammar, rather than semantics. If, as Poynton has suggested, grammar represents "a socially constructed understanding of the relations between 'things' (including people, objects, and ideas) and 'events' (including doing, perceiving, saying, and even being),"[54] then the difference between male and female agency in the usage and application of rabbinic verbs for sexual activity is a matter of grammar, a difference in the syntax of sentences. Yet the grammar of rabbinic Hebrew does not demand this difference; that is, it is entirely grammatically possible to construct a sentence with a female agent following the usual rules of conjugation for female agents: היא בעלה, היא באה על. These sentences are not ungrammatical, rather, they appear to speakers/writers of the language as "non-sensical," they are not "meaningful."[55] In this way, we are again, rather, faced with an issue of semantics and meaning, the semantics of the verbs and adjectives we choose to use to express ourselves. In linguistic terms, we are dealing with predicates – "The part of a sentence or clause that says something about the topic, describes an action performed by the agent, or attributes some feature to the topic/agent"[56] – of which Penelope writes:

> Because they are the structural core of sentences, other options become impossible, or at least awkward, once we decide on a predicate. Because verbs and adjectives are

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53. In one case a woman may "bring" – הביאה, the *hiphil* construction of בא – an animal for an act of bestiality (m. San. 7:4, also a beraitta on b. San. 55a). There are no instances in which a woman "brings" a male human to a sex act. Moreover, the continued use of על with the verb in the Bavli beraitta maintains an image of the woman as acted upon, despite being the initiator of the action. Interestingly (but perhaps not surprisingly), the bulk of the Bavli's discussion of "passive" bestiality focuses on a male who causes or allows an animal to penetrate him, using the term שׁכב (see the previous footnote).

54. Poynton, *Language and Gender*, 55.

55. As McConnell-Ginet notes, "Although particular linguistic forms and structures are not sexist in themselves, the range of linguistic choices readily available in a community both reflects and contributes to maintaining traditional views of the sexes. The explanation is the same in both cases: namely, that language relies on (usually implicit) conventionalized models of the world." McConnell-Ginet, "Linguistics and the Feminist Challenge," 10.

56. Penelope, *Speaking Freely*, 263.

> *semantically* biased, limiting the types of noun phrase that can occur with them in sentences, our decision to use one predicate rather than another...determines our choice of agent and whether or not there will be an object.[57]

Terms like בעל and בא על may be identified as "sex-marked predicates," of which Penelope continues, "Violating the *semantic* properties of these predicates results in sentences that listeners find peculiar, ridiculous, or downright nonsensical because the violations contradict [patriarchal discourse's] version of the 'real world."[58]

Yet there is a fundamental truth in Poynton's observation: Hebrew grammar, as *applied* in the cases of בא על and בעל, does posit a very clear "understanding of the relations between 'things'" (in this case women and men) "and 'events'" (in this case sexual intercourse). When these terms are used – and between the two of them, they are used far more frequently than any other available term – men are related to the act of sexual intercourse in the role of actors and agents, women as the acted upon, as objects. This difference is well illustrated by a sugya in b. Yev. 111b-112a. The case is one in which a man has died childless, and his wife is now subject to marrying his brother under the laws of levirate marriage. Such a marriage may be effected by an act of sexual intercourse between the brother and the widow, without any further ritual or ceremony. In this case, the widow and brother make disputing claims at varying times as to whether such a sex act has taken place. What interests me for the moment is not the legal outcome of the dispute, but the way in which each, through the mediating voice of the rabbinic text, makes their claim. Thus a beraitta on 112a:

> יבמה שאמרה בתוך שלשים יום לא נבעלתי בין שהוא אומר בעלתי בין שהוא אומר לא בעלתי...היא אומרת נבעלתי והוא אומר לא בעלתי...

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57. Penelope, *Speaking Freely*, 180; emphasis mine.

58. Penelope, *Speaking Freely*, 185; emphasis mine.

> A sister-in-law who said within thirty days "I have not been subjected to sexual intercourse,"[59] whether he says "I had sexual intercourse" or he says "I did not have sexual intercourse,"...If she says "I have been subjected to sexual intercourse," and he says " I have not had sexual intercourse,"...

Though the widow and brother-in-law are making claims about the same sex act, the disparity between their positions extends beyond claims as to whether the act happened or not. Though the act in question requires two participants, one of them can make no claim for what she did or didn't do; she can speak only of what has or has not been done to her. Even when claiming to have been party to an act that he denies, she cannot speak directly of her own activity or agency.

Moreover, the claim which the text puts into her mouth, "נבעלתי (לא)," raises another issue regarding agency. This one or two word sentence (in Hebrew) is an example of a truncated passive, through the process which linguists term "agent deletion." That is, the widow is claiming that her brother-in-law has or has not done something to her, but his presence in her sentence is no more than implied; we are missing something along the lines of the phrase "על ידי יבמי," "by my brother-in-law." This brings us to another of Poynton's suggested areas of investigation regarding agency: "what kind of agents involved in what kinds of processes get deleted." Once again, the question is not precisely a grammatical one, for the ability of Hebrew (or any other language's) grammar to accommodate truncated passives is not in and of itself problematic, and may even be necessary in certain situations, as, for example, in a case in which the identity of the agent is unknown. The truncated passive may be used in discourse, however, with great rhetorical power, to consciously or unconsciously obscure the role of the agent in a particular action:

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59. The Hebrew has no good direct translation to English. While there are English terms which describe sex in terms of an active and a passive partner, these are usually vulgar and/or hurtful (screw, fuck) in a way not connoted by the Hebrew; alternately, a term such as "made love to" errs in the opposite direction, carrying connotations of emotional connection and generosity not present in the more prosaic Hebrew term.

> The process of **agent-deletion** leaves us with only the objects of the acts described by the verbs. Passives without agents foreground the objects (victims) in our minds, so that we tend to forget that some human agent is responsible for performing the action...remove the agent, shift the hearer/reader's focus to the victim.[60]

While in this particular case, the role of the brother-in-law is relatively clear (given that his claim immediately follows that of the widow), elsewhere the rhetorical effects are (or should be) more obvious. For example, on b. Yev. 61b, in the course of a discussion attempting to define the biblical "זונה," who is forbidden to marry a male member of the priestly caste, we read "וחכמים אומרים אין זונה אלא גיורת ומשוחררת ושנבעלה בעילת זנות" – "the sages say [the word] 'zonah' is only [referring to] a female convert, a female freed slave and a woman who has been subjected to sexual intercourse 'of z'nut.'" Leaving aside the tautology of defining "זונה" through an undefined "בעילת זנות," note that a) the agency of the woman involved is denied, and yet b) there is no male agent present who might be "blamed," or equally held responsible, so that discursively, at least, she being penalized and stigmatized for some sort of sexual activity of which she can only be the object.

A final observation before leaving aside this disputing couple: while in this case the man and woman do not agree as to whether sexual activity took place between them, even if they had mutually decided to engage in sexual activity, they would still have few other linguistic options with which to describe what had happened. So far as I have been able to determine, even among non-sex-marked predicates, rabbinic Hebrew has no term which can accommodate the mutual agency of a couple engaging in sexual intercourse, no way in which the participants could articulate something like the English "we made love."[61] In linguistic terms, this concept is not lexicalized; there is no ready vocabulary for it and it therefore constitutes a "lexical gap." What

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60. Penelope, *Speaking Freely*, 146.

61. And see Satlow, *Tasting the Dish*, 316: "Other terms that linguistically should imply a more mutual sexual relationship, such as נזדקק or נתעלל, are almost always employed in rabbinic literature in negative contexts."

meaning and significance should be assigned to lexical gaps is a complex question. The existence of gaps cannot mean that non-lexicalized concepts are entirely unexpressible, for as Cameron has noted:

> There is virtually no limit to the novel situation humans may encounter, and therefore to the communicational demands that may be placed upon them. To meet those demands, demands which cannot even be specified in advance,... language must be flexible and renewable; that is, it must be possible to make it mean new things...[62]

Yet while expressing a non-lexicalized concept should not be impossible, "finding an accurate description takes time and patience and some fluency with the language";[63] nor may such expression be possible "except by endless, inexact and timewasting circumlocution."[64] Moreover, if, as Poynton suggests, "What lexis does is to name activities or processes, people and things associated with those activities or processes, and characteristics or attributes of those activities or processes, people, and things, *in ways that are culturally salient*,"[65] then it seems reasonable that the existence of a lexical gap would suggest that something is *not* "culturally salient." Or, as Sara Mills has noted, concepts may be "'invisible' before being lexicalized, because there was no single term to represent them and no socially agreed place for that concept because it was not socially recognized within the system of available words..."[66] So too it may be argued that "socially recognized," "culturally salient," "normal" sexuality in rabbinic Judaism

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62. Deborah Cameron, *Feminism and Linguistic Theory*, Second ed. (London: Macmillan, 1992), 192.

63. Penelope, *Speaking Freely*, 204.

64. Cameron, *Feminism and Linguistic Theory*, 153.

65. Poynton, *Language and Gender*, 50, emphasis mine.

66. Mills, *Feminist Stylistics*, 122. A very obvious example of this is the word "sexism," created to lexicalize and make visible the concept which Betty Friedan identified as the "problem with no name."

was discursively constructed as something one participant does to or for the other, and more often than not something the male does to the female.

The semantics of rabbinic terms for sexuality meshes[67] with a fundamental legal principle in rabbinic legislation – sexual contact between two persons is defined by penetration. A sexual sin, for example, has not occurred until the moment of male penetration into the body (vaginally or anally) of another.[68] Penetration is, of course, another sex-marked predicate when used in this context; males actively penetrate and females (or occasionally other males) are passively penetrated. This focus on male sexual agency is confirmed by rabbinic texts which go so far as to question just how much penetration is to be considered legally significant, and answer with blunt descriptions of exactly which part of the penis must be inserted (see, for example, b. Yev. 55b). In the face of this wide-spread linguistic trope (not only in rabbinic Hebrew), it is easy to accept this picture as a statement of biological, physiological truth about sexual intercourse. Yet as has been pointed out many times, it is quite possible to conceive of the sexual process through very different metaphors; imagine, for example, how clearly the need for consent might be encoded if our sexual terms were something like "to admit" and "to be admitted" (a predicate sex-marked female!).[69]

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67. Michael Satlow describes the relationship between the linguistic and the legal as one in which the language "reinforces the impression generated by this legal observation." Satlow, *Tasting the Dish*, 316. I, however, wish to side-step the "chicken and egg" question as largely irrelevant; linguistic and cultural (including legal) practices continually mutually produce and reproduce each other. See Sally McConnell-Ginet, "The Sexual (Re)Production of Meaning: A Discourse-Based Theory," in *The Feminist Critique of Language: A Reader (2nd Ed.)*, edited by Deborah Cameron (London and New York: Routledge, 1998), 198-210.

68. See Satlow, *Tasting the Dish*, 41-42, 126-28, 192-93, regarding incest, adultery, and homosexual intercourse respectively; see also 316.

69. "Anatomical differences do not determine how we are to conceptualize the relation between penis and vagina during intercourse. Thus one can easily imagine a society in which the female normally played the active role during intercourse, where female subjects required active constructions with verbs indicating copulation, and where the standard metaphors were terms like 'engulfing'...It follows that the use of passive constructions for female subjects of verbs indicating copulation does not reflect differences determined by human anatomy but rather reflects those generated by human customs." Robert Baker, "'Pricks' and 'Chicks': A Plea for 'Persons'," in *Sexist Language: A Modern Philosophical Analysis*, edited by Mary Vetterling-Braggin (Totowa, New Jersey: Rowman and Littlefield, 1981), 177. This, of course, leaves aside the question of whether sexual intercourse, at whatever stage and however named, ought to be the defining event sexual contact. See Moulton, "Sex and Reference.".

Similarly, while rabbinic sources do not deny that women can and do feel sexual desire, they express severe discomfort should a woman choose to articulate or act upon that desire. A tradition found in b. Eruv. 100a and Ned. 20b limits female agency in expressing her desire for sexual relations even in the fully sanctioned sphere of marital relations. The various amoraic and stammaitic strands which make up these sugyot are not univocal on this point, a significant area of contestation which I do not wish to overlook,[70] but at the same time the clear direction of the sugyot in their final form is towards limiting female sexual discourse; sources which sanction female expressions of desire are reconciled with those that do not through the idea that what is appropriate for women is indirect, non-verbal expressions of desire. Women are thus deprived of agency in initiating sexual activity, as well as in participating in it. It therefore becomes men's task to define when women feel desire – for example, the reader is told on b. Eruv. 100a that a woman desires sex with her husband when he is about to leave on a journey – and to act on it; b. Yev. 62b stipulates in the name of Rabbi Yehoshua ben Levi חייב אדם לפקוד את אשתו בשעה שהוא יוצא לדרך, a man is required to visit (i.e., have sex with) his wife at the time he is going out on the road.[71] At first blush this may appear to be a solicitous law, requiring men to recognize and satisfy female desire.[72] Yet note that the text presumes her desire and consent; no provisions are forthcoming for ensuring that this is indeed the case.[73]

At this point I wish to turn to one linguistic site in which women are very certainly sexual agents which I have alluded to but not discussed in what has preceded. Although I have noted above that a woman may become linguistically designated as a "זונה" through an apparently

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70. See Boyarin, *Carnal Israel*, 129-31.

71. Similarly he should initiate sex close to the time of the beginning of his wife's menstruation (b. Pes. 72b).

72. Thus Boyarin: "[E]mblematic of the ideology of gender in the rabbinic culture is the fact that the interdiction on speaking her desire on the part of women was *not* supposed to create conditions of suffering and deprivation for her..." Boyarin does note that "The very consideration that *he* is supposed to show *her* is the marker of this magnanimous but confining patriarchy." Boyarin, *Carnal Israel*, 131.

73. Boyarin's claim that the law is meant to "impose a special obligation on her husband to be attentive and sensitive to her subtle signals," thus reads into the text somewhat Boyarin, *Carnal Israel*, 131.

agentless act of "בעילת זנות," זנה is in fact a root so much more commonly used for female agents than male ones (especially in the Bavli) that it might be thought of as an example of a predicate that is sex-marked female. Jastrow defines this root in the *kal* form as "1)...esp. *to run about as a prostitute, to be faithless, be unchaste*...2) *to commit an offense*," and in the *pi'el*, "same, also *to invite faithlessness, to excite the senses*"[74] זונָה presents difficulties similar to those faced by the rabbis cited above (p. 22); Jastrow suggests "1)...*one unfit to marry a priest*...2) *harlot*."[75] A more recent attempt at definition is that of Michael Satlow, who writes, "In rabbinic usage, activities termed *bî'ilat znut* usually fall into one of two categories, non-marital intercourse or non-procreative sex"[76] and "*Znut*...is a...[vague] grouping, roughly translating into 'licentiousness,' and usually indicates non-biblically prohibited sexual liasons that are strongly condemned by the rabbis...The use of *znut* almost always refers to some kind of non-marital, non-adulterous sexuality..."[77] Both Jastrow and Satlow make clear that the meaning of the root and its various instantiations are pejorative and stigmatizing; neither, however, have much to say about the gendered nature of these terms.[78]

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74. Jastrow, *A Dictionary*, 406.

75. Ibid., 388.

76. Satlow, *Tasting the Dish*, 121.

77. Ibid., 140.

78. But see also Michael L. Satlow, "'Texts of Terror': Rabbinic Texts, Speech Acts, and the Control of Mores," *AJS Review* 21, no. 2 (1996): 280-81, in which Satlow does address the gendered implications of the term זונָה.

Tal Ilan also recognizes זונָה as pejorative and as gendered, but makes the rather strange move of using the English "prostitute" to translate it, which then necessitates forcing the Hebrew term rather awkwardly into the more specific and limited connotations of the English: "Yet in their legal discussions, the rabbis were unsure how exactly to define a prostitute...[The] definitions of a prostitute have nothing to do with a woman who has sexual relations for profit; rather, the prostitute is the woman who has sexual relations forbidden by Jewish law...the rabbis were aware of the defintion of 'prostitute' as a professional woman who offered sexual services, but some preferred to broaden the definition...These rather broad definitions turn prostitution from a specific profession into an abstract concept which includes all sexual behavior deviating from societal norms." Tal Ilan, *Jewish Women in Greco-Roman Palestine: An Inquiry Into Image and Status* (Tübingen, Germany: J.C.B. Mohr (Paul Siebeck), 1995), 219.

The root appears relatively infrequently in the Mishnah and Tosefta (fewer than fifteen instantiations of each), although the verbal forms and nominalizations referring to the person performing the action that do appear are gendered female (i.e., forms of זנתה and זונָה appear). In the Bavli, on the other hand, the various usages of זנתה (the feminine past tense) alone appear over sixty times. The זונָה, or the plural form זונות, appears approximately 150 times. The Bavli does include instances of the term used to refer to a male agent, but these are significantly fewer than the references to female agents, numbering under ten. The Bavli once proposes the idea of a male זונֶה (b. Tem. 29b), however it does so in such a way as to suggest that he is in fact an unlikely, even non-sensical being.[79]

Where sex is stigmatized, women are usually the active participants, if such exist. Even where women do not serve as the agents of זנות, male participants are erased and the act is nominalized, as in the case of the woman "subjected to sexual intercourse that is בעילת זנות," as noted above.[80] Yet the erasure of male agents goes even deeper. We would expect the inverse of נבעלת בעילת זנות to be בועל בעילת זנות; indeed, a man performing an expected, sanctioned sex act is בועל בעילת מצוה (b. Ket. 4a and b, b. Nid. 64b, 65a and b). Yet such a form does not appear in the Bavli. Rather, we find the form עושֶׂה בעילתו בעילת זנות, he makes his sex act a sex act of זנות. And as in the case of the זונֶה, the man who makes his sex act זנות is negated at the very moment he is introduced, is presented as "non-sensical"; the form appears only in the context of the rabbinic "truism" אין אדם עישֶׂה בעילתו בעילת זנות, a man does not (as a matter of general practice) make his sex act a sex act of זנות (b. Yev. 107a, b. Ket. 73a). Where then does the agency lie, from where do our cases of זונות, women who are נבעלת בעילת זנות, arise? Perhaps we must turn to the rabbis themselves: in a series of cases in which the rabbis annul a

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79. The discussion is an extended attempt to define the אתנן זונָה, the fee of a prostitute, which may not be offered to the Temple/God (Deut. 23:19). At one point זונָה is read to exclude זונֶה, that is, the biblical law does not take into consideration the possbility of a fee paid to a man to have sex with a woman (see Rashi, ד"ה ולא זונה).

80. See also, for example, m. Ket. 5:1:
רבי מאיר אומר כל הפוחת לבתולה ממאתים ולאלמנה ממנה הרי זו בעילת זנות – Rabbi Meir says, anyone who reduces (the marriage settlement) for a virgin below 200 (zuz) and for a widow below 100, this is sexual intercourse of זנות.

marriage due to some form of inappropriate behavior on the part of the man, the Talmud tells us they are able to do so, even when the initial betrothal was created through sexual intercourse, because "שויה רבנן לבעילתו בעילת זנות," "the rabbis equate his sex act with a sex act of זנות" (b. Yev. 90b, 110a, b. Ket. 3a, b. Git. 33a, 73a, b. B.B. 48b). A man does not participate as an agent in זנות; only in extremis do the rabbis (retroactively) make that evaluation for him, and they do so as a form of punishment. And without male agents, it becomes "understandable" why it is the woman alone who not only participates in such an act, but is defined and essentialized as a זונָה by it (even if the act in question occured only once).[81]

And so, in all these ways, our widowed sister-in-law is discursively deprived of the chance to be a sexual agent (even in her own discourse!) without thereby being severely stigmatized. And this in fact corresponds to the law in m. Yev. 6:1, with which we return to the issue of rape and consent, our initial starting point:

> הבא על יבמתו בין בשׁוגג בין במזיד בין באונס בין ברצון אפי'...הוא אנוס והיא לא אנוסה היא אנוסה והוא לא אנוס...קנה
>
> One who has sexual intercourse with his sister-in-law, whether inadvertently or with sinful intention [rather than with intention of performing the biblical commandment], whether by compulsion or willingly, even if...he is compelled and she is not compelled, or she is compelled and he is not compelled...he has acquired [her as his wife].

This ruling is not altered by the later legal tradition[82]; indeed, the gemara (b. Yev. 53b) adds that sex which takes place while she is sleeping (and thus unable to consent) effectuates the marriage. A great deal of attention (53b-54a) is given to how a man can be compelled into this sexual

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81. Before leaving this subject, it is also worth making reference to t. Sotah 3. In this passage, the adulterous wife is presented quite forcefully as a sexual agent, acting for and upon her illicit sexual partner. The woman of this text is also graphically and violently punished (in discourse, at least), by the means of "measure for measure," for each of her agentive sexual acts. Once again, the illicit is associated with female agency and female agency is associated with the illicit; moreover, the outcome is a rabbinic "text of terror" (see Satlow, "'Texts of Terror'.").

82. See משׁנה תורה, הלכ' יבום, פ"ב הי"ג and שׁולחן ערוך אה"ע סי' קסו סעי' ז.

encounter, for as the amora Rava states (and his statement is clearly presented as authoritative by the redactor[s] of the text): אין אונס לערוה לפי שאין קישוי אלא לדעת" – "there is no compulsion [for a man] regarding sexual relations [literally, "nakedness," a term often used to denote forbidden sexual relations], for there is no erection [literally, hardening][83] without knowledge/consent." How it is that she may be compelled apparently needs no explanation. And perhaps we should ask, why should it? For as we have seen, she has no agency in this act in any case.

And as it is with the special case of the childless widow, so I would argue it is for women more broadly. As they are linguistically denied sexual agency in most cases, so defining their lack of consent in order to distinguish rape from a consensual sexual encounter becomes significantly complicated and compromised. Many feminist writers have linked attitudes towards male and female sexuality with attitudes towards rape. Thus Brownmiller, who provided us with a woman- and consent-centered definition of rape, writes, "The real reason for the law's everlasting confusion as to what constitutes an act of rape and what constitutes an act of mutual intercourse is the underlying cultural assumption that it is the natural masculine role to proceed aggressively toward the stated goal, while the natural feminine role is to 'resist' or 'submit.'"[84] Yet while overtly violent and aggressive metaphors of male sexuality are by and large not part of rabbinic discourse on sexuality,[85] I would like to suggest that the repeated denials of sexual agency for women, along with repeated ascriptions of that agency to males, with females as its objects, serves much the same purpose. In the words of Catherine MacKinnon, "If sex is

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83. Note the nominalization, which removes the male agent from view even as the statement makes claims about his agency.

84. Brownmiller, *Against Our Will*, 431-32.

85. Although Laura Levitt makes a convincing argument that in b. Ket. 39a, a text on the various fines paid by a man who rapes or seduces an unbetrothed virgin, "violence and sexuality are indelibly linked," in part by "making an analogy between rape and intercourse within marriage." Levitt, *Jews and Feminism*, 44, 45. See also Satlow, "'Texts of Terror'.", who argues that rabbinic texts addressing *female* sexuality often use a rhetoric of violence "to promote an atmosphere of intimidation whose function it was to enforce female sexual mores." (294)

normally something men do to women, the issue is less whether there was force than whether consent is a meaningful concept."[86] If women are normally passive in sex, how is one to distinguish the passivity of receptivity with the passivity of victimization? Moreover, when "normative" sexuality (within marriage, for example, or to effect a levirate marriage) for women is defined as passive, any non-"normative" activity (when a woman is not married, with a man other than the one a woman is betrothed/married to) risks being defined as active, i.e., consensual. In a situation of asymmetrical agency, consent can never be a straightforward matter: "If sexuality is relational, specifically if it is a power relation of gender, consent is a communication under conditions of inequality."[87]

I would like to conclude with a reading of a brief segment of a talmudic sugya which brings together many of the themes I have outlined here. The text is found in b. Ket. 51b,[88] and reads as follows:

> אמר אבוה דשמואל אשת ישראל שנאנסה אסורה לבעלה חיישינן שמא תחילתה באונס וסופה ברצון
>
> Samuel's father said, the wife of an Israelite[89] who was raped[90] is forbidden to her husband; we are concerned [or we suspect] lest the beginning [of the sex act][91] was by

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86. Catherine A. MacKinnon, *Toward a Feminist Theory of the State* (Cambridge, Massachusetts, London, England: Harvard University Press, 1989), 178.

87. Ibid., 182.

88. For other, more "generous" feminist readings of this passage and particularly Rava's opinion, see Biale, *Women and Jewish Law*, 249-50 and Hauptman, *Rereading the Rabbis*, 86-87.

89. As opposed to a priest, whose wife is always forbidden to him after having sexual contact with another man, no matter the circumstances.

90. Note the use of passive voice and agent deletion.

91. Following Rashi. The term תחילתה literally means "her beginning," and cannot refer to the rape, as אונס is grammatically masculine; the reference may be to the woman involved, or, as Rashi suggests, תחילתה של בעילה, the beginning of the sex act, בעילה being grammatically feminine.

force [rape] but its end by desire/free-will.

איתיביה רב לאבוה דשמואל אם תשתבאי אפרקינך ואותבינך לי לאינתו

Rav raised an objection to Samuel's father: [The text of the ketubbah reads] If you are taken captive, I will redeem you and take you back as my wife. [It is presumed that the wife was raped while in captivity, yet the husband promises to keep her as his wife]

אישתיק...מאי אית ליה למימר בשבויה הקילו

He [Samuel's father] was quiet...What should he have said? In [the case of] a female captive, they [the rabbis] were lenient [whereas in all other cases, they would not be so permissive].

ולאבוה דשמואל אונס דשריא רחמנא היכי משכחת לה כגון דכאמרי עדים שצווחה מתחילה ועד סוף

And according to Samuel's father, a case of rape which is permitted [i.e., in which the wife is permitted to return to her husband], how would we find [such a thing]?[92] It is like when witnesses say that she cried out from the beginning to the end.

ופליגא דרבא דאמר רבא כל שתחילתה באונס וסוף ברצון אפי' היא אומרת הניחו לו שאלמלא (לא) נזקק לה היא שוכרתו מותרת מ"ט יצר אלבשה

And this is in dispute with Rava, for Rava said every instance where the beginning is by force [rape] and the end is by desire/free-will, even if she says 'leave him be,' such that if he had not attacked her, she would hire him [to have sex with her], she is permitted [to her husband (and is not considered to have committed adultery)]. What is the reason? A passion took hold of her/ overpowered her.

While the opinions of Samuel's father (and the anonymous voice of the gemara on his behalf) and of Rava appear to be diametrically opposed, I see them as being based on the same fundamental dilemma: the rabbinic male has discursively precluded himself (by and large) from having any solid grounds by which to distinguish female consent from lack thereof. Having

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92. Which we know must exist, as the known distinction between the priest and the Israelite in this regard would otherwise be meaningless.

removed female agency from the sexual realm, he has no means for distinguishing the passivity of acquiescence from the passivity of coercion. Thus it is that Samuel's father (or the voice of the gemara in his name) must demand continued, unceasing, and male observed[93] resistance. Rava finesses the dilemma in a different manner – he removes whatever vestige of female agency that remained. A passion – somehow divorced from the selfhood of the woman who experiences it – compelled her.[94] With this move, the possibility of the woman's understanding of her consent or lack thereof being meaningful is completely removed, and perhaps becomes impossible.

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93. Legally acceptable witnesses, unless otherwise specified, must be two or more males.

94. For other examples of a woman being overcome (to particpate in sexual activity) by a "יצר," see b. Kid. 54a and Kid. 81b. Indeed, Satlow has argued that the ability to control oneself and one's "יצר" (generally understood as one's "desires and other carnal impulses"; 27) is a key factor distinguishing and defining "manhood" and "being a man" in rabbinic discourse, whereas women lack this quality of self-restraint: Michael L. Satlow, "'Try To Be A Man': The Rabbinic Construction of Masculinity," *Harvard Theological Review* 89, no. 1 (1996): 19-40.

Bibliography

Archer, Léonie J. *Her Price Is Beyond Rubies: The Jewish Woman in Graeco-Roman Palestine.* Journal for the Study of the Old Testament Supplement Series. Sheffield: Sheffield Academic Press, 1990.

Baker, Cynthia M. "Rebuilding the House of Israel: Gendered Bodies and Domestic Politics in Roman Jewish Galilee c. 135 - 300 C.E." Duke University, 1997.

Baker, Robert. "'Pricks' and 'Chicks': A Plea for 'Persons'." In *Sexist Language: A Modern Philosophical Analysis*, edited by Mary Vetterling-Braggin, 161-82. Totowa, New Jersey: Rowman and Littlefield, 1981.

Biale, Rachel. *Women and Jewish Law: An Exploration of Women's Issues in Halakhic Sources.* New York: Schocken Books, 1984.

Black, Maria, and Rosalind Coward. "Linguistic, Social and Sexual Relations: A Review of Dale Spender's *Man Made Language*." In *The Feminist Critique of Language: A Reader*, edited by Deborah Cameron, 111-33. London and New York: Routledge, 1990.

Boyarin, Daniel. *Carnal Israel: Reading Sex in Talmudic Culture*. The New Historicism: Studies in Cultural Poetics, no. 25. Berkeley, Los Angeles, Oxford: University of California Press, 1993.

Brownmiller, Susan. *Against Our Will: Men, Women and Rape*. New York, Toronto, London, Sydney, Aukland: Bantam Books, 1975.

Cameron, Deborah. *Feminism and Linguistic Theory*. Second ed. London: Macmillan, 1992.

------. "Gender, Language, and Discourse: A Review Essay." *Signs: Journal of Women in Culture and Society* 23, no. 4 (1998): 945-73.

Furman, Nelly. "The Politics of Language: Beyond the Gender Principle?" In *Making a Difference: Feminist Literary Criticism*, edited by Gayle Greene and Coppélia Kahn, 59-79. London and New York: Routledge, 1985.

Gibbon, Margaret. *Feminist Perspectives on Language*. London and New York: Longman, 1999.

Gill, Rosalind. “Relativism, Reflexivity and Politics: Interrogating Discourse Analysis from a Feminist Perspective.” In *Feminism and Discourse: Psychological Perspectives*, edited by Sue Wilkinson and Celia Kitzinger, 165-86. London, Thousand Oaks, New Delhi: SAGE Publications, 1995.

Graetz, Naomi. *Silence Is Deadly: Judaism Confronts Wifebeating.* Northvale, New Jersey, Jerusalem: Jason Aronson, Inc., 1998.

Hauptman, Judith. *Rereading the Rabbis: A Woman’s Voice.* Boulder, Colorado, Oxford: Westview Press, 1998.

Ilan, Tal. *Jewish Women in Greco-Roman Palestine: An Inquiry Into Image and Status.* Tübingen, Germany: J.C.B. Mohr (Paul Siebeck), 1995.

Jastrow, Marcus. *A Dictionary of the Targumim, the Talmud Babli and Yerushalmi, and the Midrashic Literature*. 1886. New York: The Judaica Press, Inc., 1996.

Klawans, Jonathan. “Impurity and Sin in Ancient Judaism.” New York: Columbia University, 1997.

Levitt, Laura. *Jews and Feminism: The Ambivalent Search for Home.* New York and London: Routledge, 1997.

MacKinnon, Catherine A. *Toward a Feminist Theory of the State*. Cambridge, Massachusetts, London, England: Harvard University Press, 1989.

McConnell-Ginet, Sally. “Linguistics and the Feminist Challenge.” In *Women and Language in Literature and Society*, edited by Sally McConnell-Ginet, Ruth Borker, and Nelly Furman, 3-25. New York, Westport, Connecticut, London: Praeger, 1980.

------. “The Sexual (Re)Production of Meaning: A Discourse-Based Theory.” In *The Feminist Critique of Language: A Reader (2nd Ed.)*, edited by Deborah Cameron, 198-210. London and New York: Routledge, 1998.

Melamed, Ezra Z. “לשׁנא מעליא וכנויי סופרים בספרות התלמוד.” In *Benjamin De Vries Memorial Volume: Studies Presented by Colleagues and Pupils*, edited by E. Z. Melamed, 119-48.

Jerusalem: Tel Aviv University Research Authority and Stichting Fronika Sanders Fonds, 1968.

------. "לשון נקייה וכינויים במשנה." *לשוננו* 47 (1982-83): 3-17.

Mills, Sara. *Feminist Stylistics*. London and New York: Routledge, 1995.

Moulton, Janice. "Sex and Reference." In *Sexist Language: A Modern Philosophical Analysis*, edited by Mary Vetterling-Braggin, 183-93. Totowa, New Jersey: Rowman and Littlefield, 1981.

Penelope, Julia. *Speaking Freely: Unlearning the Lies of the Fathers' Tongues*. Pergamon Press, 1990.

Poynton, Cate. *Language and Gender: Making the Difference.* Oxford: Oxford University Press, 1989 (originally published 1985).

Satlow, Michael L. "'Texts of Terror': Rabbinic Texts, Speech Acts, and the Control of Mores." *AJS Review* 21, no. 2 (1996): 273-97.

------. "'Try To Be A Man': The Rabbinic Construction of Masculinity." *Harvard Theological Review* 89, no. 1 (1996): 19-40.

------. *Tasting the Dish: Rabbinic Rhetorics of Sexuality*. Brown Judaic Studies. Atlanta, Georgia: Scholars Press, 1995.

Schulz, Muriel R. "The Semantic Derogation of Woman." In *The Feminist Critique of Language: A Reader (1st Ed.)*, edited by Deborah Cameron, 134-47. London and New York: Routledge, 1990.

Spender, Dale. "Defining Reality; a Powerful Tool." In *Language and Power*, edited by Cheris Kramerae, Muriel Schulz, and William M. O'Barr, 194-205. Beverly Hills, London, New Delhi: Sage Publications, 1984.

------. *Man Made Language.* Second ed. London and New York: Pandora, 1985.

Wegner, Judith Romney. *Chattel or Person? The Status of Women in the Mishnah*. New York, Oxford: Oxford University Press, 1988.