Changing the Subject: Rabbinic Legal Process in the Absence of Justification

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Abstract

This essay explores how changing the subject can function as a valid legal process in classical rabbinic literature. In order to do so, it first establishes standard rabbinic legal procedure, in which the legal reasoning for arguments is debated and either supported or refuted. Next, it discusses cases that do not fit this pattern: namely, those in which a rabbi, faced with a contradictory or complex argument, changes the subject rather than his reasoning or ruling. Through a discussion of such cases, this essay argues that, while not preferable, changing the subject can in fact be a valid rabbinic legal process.

Keywords

Rabbinic Literature – Rabbinic Law – Legal Process – Talmud

Winston Churchill is reported to have said: “A fanatic is one who can’t change his mind and won’t change the subject.”1 The ancient rabbis were certainly fanatical about certain things (purity and pagan wine are obvious examples), though they displayed a willingness to change their mind in the face of contradictory or superior evidence. The question remains, however, whether they were willing to change the subject.

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1 Whether Churchill ever uttered these words is unclear. For a discussion that concludes that he probably did repeat, though did not coin, this phrase, see: http://quoteinvestigator.com/2014/02/01/fanatic/ (accessed on 16 July 2014).
This essay concerns changing the subject as a rabbinic legal strategy. But before we turn to this topic, we need to clarify standard rabbinic legal process. In general, rabbinic law, halāḵâ, is established via a process of legal reasoning, in which rabbis debate the rationale for and the limits of the law. As part of this process, rabbis present dissenting views. These halakhic discussions, whether explicitly or tacitly, are often based on their interpretations of the Hebrew Bible, which they consider to be divine, inerrant, and authoritative. When they go beyond the limits of the biblical corpus, which is quite often, they understand themselves to be acting authoritatively as divinely ordained legal scholars. They trace this authority back to Moses, whom they call “Moses our Rabbi,” and who himself was admitted to the ancient bar association by God.

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2 The classical rabbinic corpus that I draw from in this essay is comprised of documents edited roughly from the third-seventh centuries C.E. in Palestine and Babylonia. For an accessible introduction to this corpus, see the many excellent essays in Charlotte Elisheva Fonrobert and Martin S. Jaffee, eds., The Cambridge Companion to the Talmud and Rabbinic Literature (New York: Cambridge University Press, 2007). For a recent survey of procedure for the adjudication of rabbinic disputes, see Richard Hidary, Dispute for the Sake of Heaven: Legal Pluralism in the Talmud (BJS 353; Providence: Brown Judaic Studies, 2010), pp. 43–80, and passim. Unless otherwise noted, all translations from rabbinic texts in this essay are my own.

3 Many of these discussions open with, “What is the reason [ma’y ṭa’amā’] for a given law/legal opinion?” (e.g., B. Suk. 21b). In general, see Shaye J.D. Cohen, who states: “The Mishnah constructs legal categories, which often appear to be theoretical and abstruse, and then discusses, usually in great detail, the precise definitions and limits of those categories. It creates lists of analogous legal phenomena, and then proceeds to define and analyze every item on the list. It posits legal principles, and devotes much attention to those objects, cases, or times, which seem to be subject to more that one principle at once, or perhaps to none of the principles at all. These modes of thinking and writing, which can be characterized as scholastic, are endemic to the Mishnah, from one end to the other, and are not found in any pre-mishnaic Jewish document. Here we have come not to a source of mishnaic law but to the distinctive contribution of its creators” (“The Judean Legal Tradition and the Halakhah of the Mishnah,” in Cambridge Companion to the Talmud and Rabbinic Literature, pp. 134–135, original emphasis). While Cohen comments here on the beginning of this trend in the Mishnah, the scholastic approach permeates the subsequent rabbinic corpus.

4 That being said, on occasion, the rabbis display awareness of the tenuous nature of some of their legal claims. To offer a fascinating example, the rabbis acknowledge that some of their laws are “like mountains suspended by a hair” (M. Hag. 1:8; Sifre Deut. 335). On these texts, see Steven D. Fraade, From Tradition to Commentary: Torah and Its Interpretation in the Midrash Sifre to Deuteronomy (Albany: State University of New York Press, 1991), p. 119; Michal Bar-Asher Siegal, “Mountains Hanging by a Strand?: Re-reading Mishnah Ḥagigah 1:8,” in Journal of Ancient Judaism 4/2 (2013), pp. 235–256.
The rabbinic corpus carefully records these debates. Further, the editors of these documents are interested in both preserving dissenting and minority positions (which, as in other legal systems, are preserved for the purposes of making additional legal rulings)\(^5\) and in inciting even more debate where at first there might have been more consensus. In short, the rabbinic corpus is marked by rabbinic legal give and take (or in Aramaic šaqlāʾ w*e-ṭaryāʾ). This (sometimes contrived) dialogue is a defining feature of rabbinic legal process.\(^6\)

It is thus quite common to encounter rabbis arguing over the halakhic justification for a given legal decision. As such, there are standard rules for this legal process and technical terminology by which it is described.\(^7\) For example, if a rabbi’s argument is either proven false or a better interpretation/reason is found, he can simply retract (from the Hebrew root ḥzr or the Aramaic root hδr) his previous statement.\(^8\) Sometimes a retraction can occur for less than

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\(^5\) See M. Ed. 1:5; B. Eruv. 13b (where both opinions are “the words of the Living God,” though one is preferred); Martin S. Jaffee, *Early Judaism: Religious Worlds of the First Judaic Millennium* (Bethesda: University Press of Maryland, 2006), p. 163. A brief, accessible introduction to the work of the rabbinic redactor in regard to the Babylonian Talmud (to which the latter part of the above statement most applies) can be found in Jeffrey L. Rubenstein, *Talmudic Stories: Narrative Art, Composition, and Culture* (Baltimore: Johns Hopkins University Press, 1999), esp. pp. 15–22; also see nn. 56 and 57.

\(^6\) The importance of debating matters of law is often discussed in the rabbinic corpus. For example, see B. Shab. 106b; 113a; B. Eruv. 6oa; B. Bes. 24a; B. A.Z. 32b.

\(^7\) In addition to the subject of rabbis’ debating and changing their opinion, which this paper addresses, there is also a trend in rabbinic literature of acknowledging change over time, wherein “Formerly [ba-rishônâ], they used to do X, but now they do Y.” See, e.g., M. Shev. 43; M. M.S. 5:8; M. Bik. 3:7; M. Sheq. 1:2; M. Suk. 3:2; M. R.H. 1:3–2; 4:3. On these, and other examples, see Moshe Simon-Shoshan, *Stories of the Law: Narrative Discourse and the Construction of Authority in the Mishnah* (New York: Oxford University Press, 2012), pp. 194–219.

\(^8\) Such events are quite common throughout the rabbinic corpus. See, e.g., T. Hul. 812; B. Shab. 39b–40a; 66a; 11a; 118b (where we learn that R. Yose never had to retract anything he ever said!); B. Eruv. 14b; 47b; 52a; 101b; B. Pes. 17b–18a (which debates whether a rabbi did, in fact, retract; cf. B. Bes. 18b); 29a–b; 39a; 117b; B. Suk. 27a; B. Hag. 4a (conjectural retractions); B. B.M. 64b–65a; B. Hor. 2a and passim; Pes. Rab. 23/24 (which I include because, although I mainly reference the Mishnah and, to a larger extent, the Babylonian Talmud herein, it is worth noting that this concept appears throughout the classical rabbinic corpus); also see B. Ber. 40a, in which students ask a rabbi who appears to act in a contradictory manner to his own ruling whether he has retracted (ḥadar) his ruling, only to find out that the details of the case at hand differed, so his earlier ruling still stood. Sometimes a rabbi chooses not to retract his opinion, and instead either he or the editors offer logical reasons for maintaining his position (See, e.g., B. Eruv. 38b–39a; B. Pes. 40a). One can retract foolish (indeed, heretical statements, as well; e.g., M. San. 7:10). Retractions can also occur with slightly different wording.
pious reasons, as in M. Ed. 5:6–7, where a rabbi is offered political office in exchange for retracting a legal ruling. The rabbi refuses until he is on his deathbed, at which time he instructs his son to retract his opinion, since “it is better to leave the opinion of the individual and to hold to the opinion of the majority.” As the rabbi’s advice to his son indicates, retracting a legal opinion for a variety of reasons (social, legal, economic, political, etc.) is both licit and standard rabbinic procedure.

(e.g., B. A.Z. 36b, where a rabbi instructs others to “set aside my words and seize the words of” another rabbi; B. Shab. 51a, in which a retraction is twice implied in the statement “The elder has given a ruling already” [kḥâr hórâ zâqen], but is never explicitly stated; and the rare idiomatic phrase “They strike it on the skull [mahû lah ‘amôhâ],” which appears twice on B. Meg. 19b). There is a series of texts in which the House of Hillel retracts its decisions in order to support the differing views of the House of Shammai; see M. Yev. 15:2; M. Ed. 132–14; M. Kel. 9:2; M. Oh. 53–4. An example of a similar type of argument occurs when a rabbi who, visiting the home of another rabbi, points out a halakhic problem with how his home is arranged, to which the homeowner replies “I did not know (that was how it should be done)” (la’w ‘ada’ta’; B. Ber. 26a). Further, a rabbi can simply change his mind. For an example of this, see Christine Elizabeth Hayes, *Between the Babylonian and Palestinian Talmuds: Accounting for Halakhic Difference in Selected Sugyot from Tractate A.Z.* (New York: Oxford University Press, 1997), pp. 35–42. In one interesting encounter, a rabbi not only changes his mind about his ruling, but (rhetorically, at least) submits to being whipped for even offering his argument in the first place! See Gen. Rab. 7:2 (and parallels). For a discussion of the latter text, see Hidary, *Dispute for the Sake of Heaven*, 278–280; Steven Fine, “Nabratein in the Ancient Literary Sources,” in Eric M. Meyers and Carol L. Meyers, eds., *Excavations at Ancient Nabratein: Synagogue and Environs* (Winona Lake: Eisenbrauns, 2009), pp. 3–14.

9 M. Ed. 5:7 (ed. Albeck 4:307; also see the discussion of M. Ed. 5:6 in Y. Meg. 112, 72b and B. Pes. 64b; and, for another deathbed retraction story, see B. Nid. 36b–37a; and on—rhetorically, at least—retracting after death, see T. Oh. 4:2 [quoted on B. Naz. 52b]). In this case, “the individual” is the soon-to-be-deceased father and “the majority” are those who disagree with him. In another case, rabbis consider whether to abrogate (l’haper) the ruling of a deceased rabbi; ultimately, they decide to allow his ruling to stand (see B. Eruv. 41a). However, since this essay is about individual rabbis and the legal process associated with their own legal rulings, I generally will not deal with cases in which rabbis assess, correct, nullify, etc. the rulings of other authorities, except where it has bearing on a case where a rabbi has the option to either argue for, nuance, alter, or retract his ruling, so as to place into relief the very few instances in which a rabbi chooses instead to change the subject rather than his ruling.

10 In Y. Yev. 10:4 (11a), a rabbi is threatened with being labeled a “rebellious elder” if he does not retract his ruling. However, we are not told whether he did, in fact, retract in the face of this threat. On this text, see Hidary, *Dispute for the Sake of Heaven*, pp. 326–327.
It should also be noted that rabbis cannot always convince one another of an opposing view. In this case, the rabbis tend to agree to disagree and therefore the text leaves the argument in unresolved tension. Sometimes, the editor will make a comment about the unresolved nature of the halakhic dispute. Examples of such editorial comments include:12 “There is nothing more (to say about this topic)”;13 “Let (the matter) remain (unresolved)”;14 and “It is a difficulty!”15 Other times, the editor will comment about which of the opinions he deems to be evident.16 In these instances, the editor is either leaving a

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11 See, e.g., M. Pes. 6:5. On this text, see Simon-Shoshan, Stories of the Law, pp. 51–52.

12 This is not an exhaustive list. For the purposes of this essay, however, this list need not be exhaustive; rather, I only need to show that there are multiple ways for handling unresolved disputes, in order to put the odd instances in which a rabbi changes the subject into their proper context.

13 We-tû lâ’ mîdî. See, e.g., B. Suk. 36a–b; B. Hor. 9b; B. Hul. 109a.

14 Têqû. See, e.g., B. Ber. 25b, 42b; B. Shab. 52a; 65b; 66b; 91a; 11b; 129b; B. Eruv, 46b; B. Yom. 47b–48a; B. Suk. 4b; B. M.Q. 4b; 15b; 22a; B. Yev. 102a; B. B.Q. 19a; B. A.Z. 41a; B. Hor. 7b, 11a, 14a; B. Zev. 19a. Tîba’ê [“Let (the matter) be asked”] functions in a similar manner (though rarer, as this particular usage is understood to occur in only three tractates: Nedarim, Nazir, and Temurah; e.g., B. Ned. 10b; B. Naz. 13b; B. Tem. 13b). Another rare phrase for an unresolved decision is when a rabbi is described as answering a halakhic argument in the following manner: “yes and no, and he was undecided concerning it” (‘ên wê-lâ’ wê-rapîā’ be-yadayha). See, e.g., B. Shab. 116a; for discussion of this text, especially in regard to its Babylonian setting, see Shai Secunda, The Iranian Talmud: Reading the Bavli in Its Sasanian Context (Philadelphia: University of Pennsylvania Press, 2014), pp. 51–56; and for additional references and for the translation that I use here, see Michael Sokoloff, A Dictionary of Jewish Babylonian Aramaic of the Talmudic and Geonic Periods (Baltimore: Johns Hopkins University Press, 2002), p. 109.

15 Qašyā’ [lit. “It is difficult”]. See, e.g., B. Ber. 29a; 41a; B. Shab. 22b; 91b; B. Yom. 18a; B. Suk. 11b; B. Hor. 9b. Alternatively, there could be an apparent problem between two rabbis that the editor can explain away, in which case the Talmud will exclaim: “it is not a difficulty!” (lâ’ qašyā’; e.g., B. Ber. 29a; B. A.Z. 11a; 68b; B. Hul. 15b–16a; B. Me. 16b).

16 M’hawartâ’. See, e.g., B. Zev. 55a; and the many examples cited in Sokoloff, Dictionary, p. 654. Another example of this is when an argument ends with the phrase “the halakhah follows Rabbi X’s opinion” (hâlâḵâ ki-rabbî X). Such a statement can be made by the anonymous editor or by a named authority (e.g., B. Ber. 27a; 29b; 30a; 30b; 52b; B. Eruv. 38b; 41a; 46b [which includes a list of preferences for whom the law follows when pairs of rabbis disagree]), though it can also be used in an unresolved dispute between two rabbis (e.g., B. Ber. 27b; B. Eruv. 13b). Similarly, the phrase “The halakhah follows the view of Rabbi X” (hilḵêṯâ’ kiwatêh rabbî X) supports one of multiple disputing opinions (e.g., B. Ber. 27b; B. Eruv. 28b [wherein the preferred authority actually praises the over-ruled authority; cf. B. Git. 77a]; B. Yev. 92b); it can also be phrased “The halakhah follows the former/latter version [ki-lîšnâ’ qammā’/batrā’]” (e.g., B. Suk. 19a; B. Git. 46a; B. Bek. 36b). Alternatively,
dispute unresolved, noting that the resolution remains elusive, or briefly glossing an otherwise unresolved argument.

In other instances, disputes end in what seem to be more tangible standoffs.\(^{17}\) For example, after a back and forth argument, a rabbi simply shuts up (šṭêq or ţîštâq) instead of offering a reply.\(^{18}\) In another text, a rabbi gets up and leaves the editor can state that the law does not follow either a single authority or multiple authorities (\(w^\sim\)-lêh hîlêh-tâ lâ' ki-rabbî X \(w^\sim\)-lêh ki-rabbî Y [Aramaic] / \(\text{en hîlêh-tâ ki-rabbî X [Hebrew]}\); e.g., B. Ber. 28b; B. Pes. 86b; 104b; B. Ket. 56a). Further, such statements can be followed by a common rabbinic clarification: “It is different [šânê]. There the case is X, but here the case is Y” (e.g., B. Ber. 42a). Such a statement establishes a distinction that allows multiple authorities/sources to be correct. Finally, if the logic of a statement attributed to another rabbi does not seem to work, the editor (or another rabbi) might suggest that the statement be reversed (\(\text{\'ipûk} \) and variations thereof; e.g., B. Eruv. 38b; on the multiple ways in which a reversal [\(\sqrt{pk}\)] can work, including multiple references to such instances, see Sokoloff, *Dictionary*, p. 156).

17 The same comment I made in n. 12 applies here, as well.
18 See, e.g., B. Shab. 53a; 72a; 80b; 130b; B. Eruv. 37b; 103a; B. Pes. 28a; 34a (in regard to multiple authorities); B. Sukkah 7a; 10b (which questions whether the fact that rabbis shut up indicates that they have retracted their opinion); B. Bes. 6a; 37b; B. Yev. 57a (wherein after shutting up, an authority answers another question, which he answers; I do not consider this tantamount to changing the subject, however, since he is asked another question by another authority rather than actively moving on to another topic himself); B. Ned. 77a–b (which, via a play on words, questions whether a rabbi shut up [\(\text{\'îštîq}\) or was drinking [\(\text{šatây}\)]]; B. San. 66b; B. Mak. 6a; B. Shev. 45b. A rabbi can also be shut up by others (e.g., B. Pes. 117b, which ultimately concludes that a rabbi was not actually shut up). Also see Y. Pes. 101 (37b), in which a rabbi ends a dispute by stating, “Until here I have heard” (\(\text{\'ad ka\'an šâma\'atî}\)). This ambiguous phrase can either acknowledge or dismiss the problem raised in the text. See Marjorie Lehman, “Women and Passover Observance: Reconsidering Gender in the Study of Rabbinic Texts,” in Leonard J. Greenspoon, Ronald A. Simkins, and Jean Axelrad Cahan, eds., *Women and Judaism: Studies in Jewish Civilization* 14 (Omaha: Creighton University Press, 2003), p. 65 n. 54; Jordan D. Rosenblum, “Inclined to Decline Reclining?: Women, Corporeality, and Dining Posture in Early Rabbinic Literature” in Dennis E. Smith and Hal E. Taussig, eds., *Meals in the Early Christian World: Social Formation, Experimentation, and Conflict at the Table* (New York: Palgrave Macmillan, 2012), p. 264. Sometimes, a rabbi remains silent and does not engage in debate because he does not know the answer to a question, and anyone who tries to show off by pushing him on the subject is depicted as acting inappropriately (e.g., B. M.Q. 16b). Silence is also an option when an observed practice is technically allowable, though not (at least according to some authorities) preferable (e.g., B. Hul. 116a).
(nistaleq), leaving the argument in aporia. In such instances, the argument remains unresolved.

Now that we have seen how, when faced with an alternative argument, legal decisions can be retracted or simply left unresolved by the rabbis, we are ready to examine an anomalous case: one in which a rabbi chooses to change the subject rather than admit defeat. Such instances are exceedingly rare, as I have only been able to find two examples throughout the classical rabbinic corpus. I argue that these cases teach us that changing the subject can be a valid—though perhaps not a preferable—rabbinic legal process and can be used to make a subtle rhetorical point or even just to avoid participation in a given argument.

The first instance of this phenomenon is found amidst a rabbinic conversation about the permissibility of cheese made by a non-Jew. This is a significant discussion because the rabbis introduce innovative food legislation that expands well beyond what is commanded in the Hebrew Bible. The rabbis must somehow justify these regulations. Sometimes, these new justifications are rejected and the law is changed. But in one instance, the law is neither justified nor changed. What is changed, however, is the topic.

[A] R. Judah said: R. Ishmael inquired of R. Joshua when they were walking along the road:

[B] He said to him: For what reason did they prohibit [the consumption of] gentile cheese?

[C] He replied: Because they curdle it with rennet of carrion.

[D] [R. Ishmael] said to him: But is not the rennet of the burnt offering subject to a more stringent restriction than the rennet of carrion, and yet, they said: “A priest who is not squeamish may suck it out raw”?

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19 See, e.g., Sifre Num. 188. For commentary on this text (from which I take the word “aporia”), see Azzan Yadin, Scripture as Logos: Rabbi Ishmael and the Origins of Midrash (Philadelphia: University of Pennsylvania Press, 2004), pp. 88–93.

20 Though it should be pointed out that each of the examples I cite has parallel or variant versions. Regardless, the fact remains that such cases are rare.

21 In general, see Jordan D. Rosenblum, Food and Identity in Early Rabbinic Judaism (New York: Cambridge University Press, 2010).


23 Using the rennet of an animal that died of natural causes (carrion or, in Hebrew, nēḇēlā) is prohibited in M. Hul. 8:5. Interestingly, in T. Hul. 8:12, this very law is retracted (ḥazrū)! For further discussion, see Hayes, Between the Babylonian and Palestinian Talmuds, pp. 33–35.
(But they did not concur with him, but rather said: One may not derive benefit [from it], but one [who does so] is not [obligated with regard to transgressing the] laws of sacrilege.)

[R. Joshua] retracted and said to him: Because they curdle it with the rennet of calves [sacrificed to] idolatry.

[R. Ishmael] said to him: If so, why did they not prohibit it with a [prohibition against deriving] benefit?

[R. Joshua] changed the subject.

He said to him: Ishmael, my brother, how do you read [this following verse from Song of Songs 1:2]: “For your [masculine] love is better than wine” or “For your [feminine] love is better [than wine]”?  

He replied to him: “For your [feminine] love is better [than wine].”

[R. Joshua] said to him: The matter is not so. For behold, its neighbor [Song of Songs 1:3] teaches concerning it: “Your [masculine] ointments have a pleasing aroma.”

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24 This statement is in parenthesis since it is a later editorial addition to the text. The logic here is that ab initio, this is not allowed, but ex post facto, those laws are not applied; see Hayes, Between the Babylonian and Palestinian Talmuds, pp. 33–34.

25 Ḥāzar. This verb is not present in all manuscripts.

26 R. Ishmael correctly notes that early rabbinic law allows Jews to derive benefit from the cheese of non-Jews (e.g., M. A.Z. 2:4; T. Shev. 5:9).

27 Hišî'ô lê-dāḇār 'aḥēr.

28 Dodêḵā (masculine) vs. dôdayiḵ (feminine).

29 Šemānêḵā (masculine).

While this is a rich and complicated text, I would like to focus on two parts: the actions in sections F and H. This text begins as a debate between two rabbis about the rabbinic prohibition against consuming cheese made by a gentile. A reason is offered for this prohibition (in unit C), but that reason is easily refuted (D). As a result, R. Joshua retracts his rationale (F). Note that he does not retract his ruling, only his legal reasoning.31 R. Joshua then offers another possible explanation for this rabbinic prohibition, which is also parried quite easily. Rather than retract either the ruling or the reasoning again, R. Joshua does something rather odd: he changes the subject (H)! I leave aside the technical matter of the interpretation of the biblical verse.32 Rather, what matters for my discussion is that, given the chance of retracting—an action that he has already taken—a rabbi chooses to change the subject rather than change his ruling.

While the Talmud provides various reasons for this change of subject, some scholars have argued that, by changing the subject, R. Joshua makes a subtle argument: he tacitly suggests that one should not question the rational basis for these laws.33 Thus, by changing the subject, R. Joshua is accepting the ruling, but rejecting the need to rationalize it.34 It is about choosing love for God over gentile cheese, the verse implies, though the reason why this food regulation demonstrates love for the divine is far from clear. Changing the subject here thus serves to answer the general question of why gentile cheese is prohibited while, at the same time, it deflects attention from the fact that the answer itself lacks rational justification.

31 This point is missed by the Talmud. See B. A.Z. 35a–b. Also, it is worth noting that not all manuscripts (and also not in Song Rab. 1.2.1) record that such a retraction even occurred.
32 On these, see especially Henshke, “‘For Your Love.’” Song of Songs is only cited twice in the Mishnah (the other citation occurs in M. Ta. 4:8; Song of Songs is also mention in M. Yad. 3:5). On rabbinic interpretations of Song of Songs in general, see Jonathan Kaplan, My Perfect One: Typology and Early Rabbinic Interpretation of Song of Songs (New York: Oxford University Press, forthcoming).
33 For the Talmud, see Y. A.Z. 277, 41c; B. A.Z. 35a–b (also see the reasons that appear in the version of this text in Song Rab. 1.2.1). The scholarly argument can be found in Gvaryahu (citing Naeh; see above, n. 30), “New Reading,” pp. 210–211.
34 In my current book project (in progress), I argue that the earliest group of rabbis, the Tannaim (the group to which these rabbis belong), justify biblical food laws on the grounds of revelation, not reason. Therefore, this opinion accords with their overall opinion on such matters.
The second example is found in the midst of a complicated debate about the impurity conveyed by the marrowbone of a carrion animal. Does such a bone impart impurity just from physical contact or also from being carried (“by carriage”), regardless of whether one actually touches the bone itself? At the center of this complex discussion, the following narrative appears:

[A] R. Avya the Elder inquired of Rabbah bar R. Huna:  
[B] [Regarding] a closed marrowbone [from a carrion animal], according to R. Ishmael, does it impart impurity [by carriage]?  
[C] [Alternatively,] might R. Ishmael hold the opinion that that which comes into the category of [impurity by] contact, comes into the category of [impurity by] carriage;  
[D] that which does not come into the category of [impurity by] contact, does not come into the category of [impurity by] carriage?  
[E] And here the basis for [R. Ishmael’s] reasoning is that it comes into the category of [impurity by] contact from its front.  
[F] Or perhaps [R. Ishmael] does not [hold in accordance with this principle].

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35 There is a parallel to this text in B. Bes. 21a. Though the subject of the debate is different, the mechanism for changing the subject is the same, as are the rabbis (though in the latter it is R. Huna and not Rabbah bar R. Huna), so I will only discuss one text and will note this parallel.  
36 Rabbah bar R. Huna’s name is consistent neither in the manuscripts nor in the parallel text.  
37 Since the marrowbone is closed, none of its marrow can leak out, which would affect the status of the person who touched the bone. On these laws, see, e.g., M. Hul. 9:5 (and commentaries on this and on 9:4, of which our present text is one).  
38 Some manuscripts add “by carriage.” As will be discussed below, this is the same R. Ishmael that we encountered in our previous text. The view that is being inquired about is found in M. Hul. 9:4 (which is the mishnah upon which this gemara comments).  
39 Some manuscripts omit clause C.  
40 The view suggested in C–D is a quote that appears anonymously in M. Hul. 9:5.  
41 This refers to an earlier argument made by R. Ishmael, not cited in the text above, that two half-olive’s bulk of carrion meat combine together to form an olive’s bulk, which constitutes the minimum amount necessary to convey impurity (in this case, by carriage but not by contact, as discussed in M. Hul. 9:4).  
42 In regard to a closed marrowbone, one would never touch the marrow (see above, n. 37), whereas one who touches “from the front” of a bone would touch pieces of meat that might add up to an olive’s bulk.  
43 I.e., that contact is necessary to convey impurity, in which case even a closed marrowbone would do so.
[G] [Rabbah bar R. Huna] said to him: [Look!] A raven flew by!

[H] Rava, his son, said to him: But was that not R. Avya the Elder from Pumbedita, whom the master praised before us as a great man?

[I] Rabbah bar R. Huna said to him: I am today [feeling weak, as exemplified in the verse from Song of Songs 2:5] “Sustain me with raisin cakes, Refresh me with apples, For I am faint with love,” and he inquired of me concerning a matter that requires [complicated] reasoning.

Once again, I am more interested in the ending than the technical discussion at hand. What is of particular interest appears in section G: faced with a difficult question, a rabbi chooses not only to change the subject but to do so by pointing to a raven that happens to be flying through the air! When his son

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44 Some manuscripts omit “from Pumbedita.” Pumbedita was a Babylonian town famous for its renowned rabbinic academy (cp. Cambridge in England and New England).

45 In B. Ber. 43b, Rav Papa uses a quote he attributes to Rava to justify an act that is not in accordance with halakhah. However, the editor immediately alerts the reader that Rava never said this and that Rav Papa invents a tradition as an excuse for his incorrect actions. (According to the medieval commentator Rashi, this was out of shame for his error [B. Ber. 43b, s.v. w*-lo’hi’]; on B. Ta. 12a, the same phrase is used as an “excuse” to get out of a dinner invitation!). While Rava almost certainly would not have approved of this false attribution (especially given what he says in the text above), I do not consider this text to constitute a change of the subject. Rather, Rav Papa is simply trying to justify an incorrect action by inventing evidence. Curiously, the fact that he commits perjury is ignored by the text.

46 I have supplied the translation for this verse from the JPS translation, since the verse is so well known. However, this is probably not the best way to translate the verse. See Michael V. Fox, The Song of Songs and The Ancient Egyptian Love Songs (Madison: University of Wisconsin Press, 1985), pp. 106–109. Some manuscripts quote more of the verse (as I do in brackets, above). Other manuscripts introduce the quote thusly: “Why did I do this to him? I am (today) . . . .”

47 B. Hul. 124b (cp. the parallel on B. Bes. 21a; discussed above, n. 35), emphasis added.

48 Whether this is a literal or metaphorical raven does not affect my argument. One (very conjectural) reason that a raven appears in this context is that the Temple is described as having a sharp-edged roof to keep off unclean birds, which were known in Hebrew literally as “keeping off the raven” (kolę̄ ‘orēv). See M. Mid. 4:6 (cp. Josephus, Jewish War, 5.224); Saul Lieberman, Hellenism in Jewish Palestine (New York: Jewish Theological Seminary of America, 1994 [1950]), pp. 172–177 (who calls them “raven-scarers”). Since this is a discussion about impurity, this might explain why the raven was the bird that “flew” by at that precise moment. Ravens also appear in the midst of other purity discussions elsewhere (e.g., B. Nid. 4b; B. Bek. 10b). Additionally, the sudden appearance of a raven (to be more specific, “an Egyptian raven”) is used to solve a halakhic taxonomic question in Gen. Rab. 65:3 (ed. Theodor and Albeck 714). Flying birds appear in at least
asks him why he does this (H), his response (I) is one with which any teacher can sympathize: I am too tired and hungry to answer such a difficult question. It is worth taking a moment to unpack this response. First of all, the text is not saying that an answer is impossible to provide; rather, it claims that it is too complicated for a tired and hungry rabbi to elucidate. Second, once again a quotation from the biblical book Song of Songs is used as part of the change of subject. Perhaps the erotic nature of Song of Songs is deployed like a magician utilizes misdirection: to distract the audience from the trick. Only, in this instance, it is the subject that disappears into thin air and not a (non-kosher) rabbit. Ultimately, I am not sure what to make of this, but it is worthy to note. Third, this excuse seems to be accepted by the audience. Legal exposition should occur neither without proper rest nor on an empty stomach. In the absence of both, one can excuse oneself from justifying one’s opinion, even if it seems to be disrespectful to a colleague (H–I).49

Taken together, what do we learn from these texts? Though standard rabbinic legal process allows one either to retract one’s opinion or to leave the argument unresolved, in at least two cases a rabbi chooses an alternative option: he changes the subject. In the first case, the change of subject can be read as a subtle argument against the need to justify food prohibitions—a view that accords with trends encountered elsewhere in contemporaneous rabbinic documents.50 In the second case, the change of subject allows a rabbi to avoid having to provide a complicated answer on an empty stomach and without

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49 Throughout the rabbinic corpus, the rabbis hold in high esteem the need to treat one another with respect even in the face of heated legal debate. For example, see the famous case about the Oven of Akhnai found in B. B.M. 59a–59b.

50 See above, n. 34.
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proper rest. While there are some commonalities, I am not sure that we can draw too strong of conclusions from these two instances. Is Song of Songs cited because it is such an erotic love book that it might distract a rabbi from halakhic debate? This is possible, though serious discussion of Song of Songs appears elsewhere and it is not understood to be distracting. Are R. Ishmael’s opinions so annoying that it is easier to change the subject when debating with him than to deal with the questions he raises? If this were the case, why, of the numerous passages in which R. Ishmael and other rabbinic authorities disagree, are these the only two that end in this manner? And what do we do with statements elsewhere in rabbinic literature such as “the general custom is to follow R. Ishmael”? Rather, I would argue that we learn from these cases that changing the subject can be a valid—though not a preferable—rabbinic legal process, one that might serve to make a subtle rhetorical point or simply to avoid an argument one would rather not have (at least at that time). They also remind us of the limits of reason, as sometimes revelation must suffice as an answer, and other times one is simply too tired to argue.

The fact that this is a valid legal process does not mean that this is a preferable rhetorical strategy. Note, for example, that Rava takes his father Rabbah bar R. Huna to task for seemingly disrespecting R. Ayva the Elder. While Rabbah bar R. Huna’s answer provides an excuse, it does not claim that Rava was wrong to questions his father’s actions towards “a great man.” As in other cases in which a rabbi’s actions are technically kosher but not in accord with best practices, this indicates that changing the subject is allowable but not ideal. This understanding goes a long way towards explaining the rarity of this practice: we should not be surprised to only rarely find evidence for a legal strategy that is undesirable, though licit.

This essay focused on instances in which a rabbi explicitly changed the subject during a halakhic debate. There are many instances in which a rabbi perhaps implicitly changes the subject. While I found a myriad of such

51 In general, see Kaplan, My Perfect One.
52 See, e.g., M. Hul. 94, upon which the second Talmud passage comments. Additional examples can be found in Yadin, Scripture as Logos.
53 See, e.g., B. Ber. 50a. On this text, see Hidary, Dispute for the Sake of Heaven, pp. 138–139 (where he mistakenly locates this text in tractate Shabbat.).
54 For example, see B. A.Z. 35b, wherein Aivu follows the letter but not the spirit of rabbinic law.
55 Further, there is even at least one instance where a text notes that a rabbi did not, in fact, change the subject. See T. Yev. 31 (cp. B. Yom. 66b; B. Suk. 27b–28a), which notes that a rabbi was not being evasive [from יֹּדַע, meaning to divide or divert], but rather he refused to offer new laws that he had not heard from his own teachers.
cases while researching this article, it was often hard to decide whether such instances actually amounted to changing the subject. Given the potential ambiguities of such texts, I decided to focus on unambiguous examples of changing the subject. Now that we have established that this is a valid (though not preferable) legal process in rabbinic literature, we can read other potential instances with this possibility in mind.

Further, one could cite the myriad of times that the anonymous redactors of the Talmud use their editorial privilege to interject tangential comments, whole arguments, narrative twists, etc.\textsuperscript{56} I decided to exclude these manifold examples (indeed, one could find examples of this on nearly every page of the Talmud!) because they strike me as a different phenomenon. Such interjections are the work of a heavy-handed redactor, who is sifting and winnowing every \textit{sugya} in order to frame arguments and to highlight (or conceal) certain traditions, legal rulings, etc.\textsuperscript{57} They are not explicit changes of the subject in the middle of an argument (real or imagined) between two rabbis, but rather they are implicit pushes (and sometimes shoves) in another narrative direction via the (not always so invisible) hand of the editor(s).

Having explored texts in which rabbis explicitly change the subject in the midst of legal discourse, we learn that, whether turning to grammar or a raven, such actions—albeit rare and by no means preferable—can be justifiable.\textsuperscript{58}


\textsuperscript{57} Further, see the recent work of Moulie Vidas, \textit{ Tradition and the Formation of the Talmud} (Princeton: Princeton University Press, 2014).

\textsuperscript{58} Earlier versions of this article were presented in 2013 at the AAR conference; at a law conference at the University of Wisconsin-Madison; and at the Judaica Electronic Workgroup. I thank the organizers and participants for their feedback. In particular, I would like to thank the following people who provided specific feedback and useful comments at various stages of this process: Beth Berkowitz, Catherine Bonesho, Don Davis, Lewis Freedman, David Freidenreich, Gregg Gardner, Jonathan Kaplan, Eitan Kensky, Philip Lieberman, David Shyovitz, and Karl Shoemaker. In addition, I would like to thank Alan Avery-Peck and the article’s anonymous reviewer for their insightful suggestions that pushed me in new directions. Any mistakes that remain should be attributed solely to the raven that flew by my window in the midst of my writing this sentence. This work was supported by the Wisconsin Alumni Research Foundation (WARF).