

Article

“The Road of Payback” and Rabbinic Judaism

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Abstract: In *Anger and Forgiveness*, Martha Nussbaum argues against the claim that the suffering of the wrongdoer restores, or partially restores, what was damaged by the wrongdoing. Making this mental mistake sets a person on “the road of payback,” and following this path is normatively problematic. What contribution can the canonical writings of Judaism, the Talmud and Midrash, make to the case against payback, when these writings reflect the view that a single deity establishes a divine justice in the world, such that ultimately the good are rewarded and the bad punished? This article argues, in light of recent research into rabbinic law and judicial process, as well as rabbinic theology of divine justice, that several components of these sources can help to meet the challenge. The texts recommend particular subjective states in the context of the human judiciary procedure and in consideration of divine justice, which do not intend “the suffering of the wrongdoer.” Rabbis seek authority, control over uncertainty, and a correct judicial procedure in their legal processes. Regarding the human relationship to the deity, rabbis both prescribe reverence and protest questionable divine acts based on their own ethical standards.

Keywords: payback; Jewish law; capital punishment; divine justice; Mishnah; Talmud; Midrash

1. Introduction

In *Anger and Forgiveness*, Martha Nussbaum argues against “the mistake of thinking that the suffering of the wrongdoer somehow restores, or contributes to restoring, the important thing that is damaged.” Such beliefs “derive from deep-rooted but misleading ideas of cosmic balance, and from people’s attempts to recover control in situations of helplessness. But the wrongdoer’s suffering does not bring back the person or valued item that was damaged.” Making this mental mistake sets a person on “the road of payback” and, in Nussbaum’s view, following this path is normatively problematic (Nussbaum 2016, p. 5 and throughout). What contribution can the canonical writings of Judaism, the Talmud and Midrash, compiled by the rabbinic movement of late antiquity, make to the case against payback? Rabbinic sources appear to be highly implicated in “the road of payback.” The rabbis set out legal and judicial responses to crime that include financial penalties, corporal punishment, and capital punishment. Furthermore, rabbinic writings reflect a strong sense that a single deity establishes divine justice in the world, such that ultimately the good are rewarded and the bad punished. This article argues, in light of recent research into rabbinic law and judicial process, as well as rabbinic theology of divine justice, that several components of these sources can nonetheless contribute to a critique of the desire for payback. Rabbinic sources frequently reject or condemn anger as an emotion (Urbach 1979, p. 474; Fishbane 1998, pp. 113–14; Schofer 2005, pp. 71–74 and notes). Moreover, the texts recommend particular subjective states in the context of the human judiciary procedure and in consideration of divine justice, which do not intend “the suffering of the wrongdoer.” Rabbis seek authority, control over uncertainty, and a correct judicial procedure in their legal processes. Regarding the human relationship to the deity, rabbis both prescribe reverence and protest questionable divine acts based on their own ethical standards.

2. Materials and Methods

The rabbinic movement emerged in the wake of the destruction of the Second Jewish Temple in 70 CE. Students of the early first century sages Hillel and Shammai, particularly Rabban Yohanan ben Zakkai, established disciple-circles for the teaching and learning of legal and other traditions, as aspiring leaders of Jews in the Roman Empire. There is some debate concerning the historical influence of the movement over the course of the first millennium CE. However, the year 200 CE was clearly a watershed for Judaism, due to the leadership of Rabbi Judah the Nasi (“Patriarch,” or Roman-appointed political leader of the Jews) and his role in compiling the legal corpus, the Mishnah. It is also undisputed that by the middle of the tenth century CE, rabbinic leaders had defeated significant rivals and were overseeing many Jewish communities, such that Judaism from that point forward was rabbinic Judaism. The texts created by the rabbinic movement included the Mishnah and Talmudic commentary, which became the basis of a legal system that sought to adapt, for the changing circumstances of the rabbis’ times, the laws attributed to Moses in the Pentateuch. Other relevant texts centered on Midrash, the distinctive form of rabbinic biblical interpretation. This article argues that recent scholarship by Gary Anderson, Beth Berkowitz, Chaya Halberstam, Jonathan Schofer, and Dov Weiss, addressing rabbinic judicial processes and theology, present canonical Jewish writings that resist “the road of payback”.

3. Results

The cultural idea among Jews that sin or transgression generates a debt that must be paid back has origins in ancient Persia, with influences that impacted the later rabbinic Judaism. Gary Anderson has argued that the use of commercial or financial terms for wrongdoing, and human or divine responses to wrongdoing, has a distinct starting point in the Persian Empire of 538–333 BCE with the use of the language of Aramaic. Anderson contrasts the ritual of the scapegoat set out in Leviticus 16:21–22, in which sin is depicted as a “weight” to be lifted, with later accounts of sin as a debt to be paid:

Physical punishments ... came to be thought of as a means of paying for one’s crime. This idea comes from the experience of debt-slavery, which had a long legal precedent in the ancient Near East. In this tradition, anyone unable to repay a loan could work as a debt-slave for the creditor until the loan was paid off. Similarly, if a sinner committed a serious error and so incurred a “great debt,” the penalty imposed upon him was thought to “raise currency” in order to pay down what was owed. Although the punishments remained physical, the metaphors for sin became distinctly economic, having been influenced by the linguistic, legal, and historical specificities of that era. (Anderson 2009, p. 8)

Anderson argues that, in rabbinic Hebrew of the Roman Empire, there was “complete interchangeability between commercial and theological terminology,” and that the theological was intelligible only in light of the commercial. He discusses four prominent metaphors: “(1) The payment of a bill, (2) the act of collecting a payment, (3) the state of being indebted, and (4) the act of releasing someone from the obligation to repay a debt” (Anderson 2009, pp. 29–31). These metaphors concerned not only sin and debt, but also credit and merit, which led “to an increased role for the agency of human beings in counteracting the ravages of sin” (Anderson 2009, p. 10). In considering “the road of payback,” the key point here is that economic metaphors and images of heavenly accounting focused not only on transgression and debt, but also on ethically exemplary action and credit. More generally, Anderson’s analysis gives historical specificity to Nussbaum’s assertion that “the road to payback” reflects “deep-rooted but misleading ideas of cosmic balance” (Nussbaum 2016, p. 5). Rabbinic Judaism and the Hebrew language were shaped by the economic and social changes that generated the metaphor of “sin as debt” and virtuous action as payment or credit. Balance is achieved through avoiding debt and guilt and by achieving financial credit and legal innocence. Rabbinic recommendations of the appropriate attitude to take toward wrongdoers must be addressed in this specific framework.

The consideration of justice and the proper response to wrongdoing in classical rabbinic texts must also address both the human judicial process and divine justice. The Mishnah contains a number

of key passages that set out punishments for crimes, and these continued to be central to rabbinic law as Talmudic commentary expanded over the following centuries. The first relevant passage is not the most extreme but is perhaps the most important for everyday handling of matters of justice: Individuals are held responsible for owning or making entities that may cause damage to other people or other people's property (Mishnah Baba Qamma 1:1). Second, rabbis set out a five-fold financial penalty for direct injury of another person (Mishnah Baba Qamma 8:1). Third, the Mishnah articulates a death penalty (Mishnah Sanhedrin 7:4, 9:1). Fourth, the Mishnah also sets out a bodily punishment, whose severity is greater than financial penalty and lower than death penalty (Mishnah Makkot 3:1–2). It is important not to have anachronistic expectations concerning the power of rabbinic leaders to carry out punitive practices before the later Middle Ages. Similarly, when it comes to the death penalty, it is important to keep in mind that modern methods of incarceration and the judiciary process are products of developments in the 18th and 19th centuries in Europe (Foucault 1977, p. 7). Recent scholarship by Chaya Halberstam and Beth Berkowitz has highlighted well the complexities in rabbinic implementations of justice—complexities that show the value of several different motivations for exacting punishment but do not focus on the “road of payback” as described by Nussbaum.

Berkowitz examines rabbinic law concerning the death penalty with attention to practices, or in her terminology, “rituals” of execution. She identifies self-interested motivations in the sources, not simply disinterested aims of justice: The “rabbinic death penalty provides an education in rabbinic authority” (Berkowitz 2006, p. 18). Berkowitz does not focus on the belief that the suffering of a wrongdoer can generate an easy equivalence with the suffering of the victim or, as Nussbaum puts it, the wrongdoer's suffering can restore “cosmic balance.” However, she identifies, even for the specific death penalty of stoning, several other approaches and emphases across the texts:

The rabbinic sources on stoning display a variety of approaches towards spectacular execution The tannaitic midrash collections create a full-scale spectacle of execution along the lines of the Roman ones. The Mishnah, on the other hand, sidesteps spectacle; it hints that the public is in attendance at an execution, but it leaves their role ambiguous. The Tosefta, at the other extreme from the midrash collections, eliminates all reference to audience. Both the Mishnah and Tosefta, however, do call for a spectacle when it comes to punishing certain crimes, i.e., those addressed by Deuteronomy's deterrence clause: the enticer (Deut 13:12), the presumptuous man (Deut 17:13), the false witness (Deut 19:20), and the rebellious son (Deut 21:21). (Berkowitz 2006, p. 168)

While rabbinic rituals of execution would seem to be among the most likely legal standards and procedures to aim at the suffering of the wrongdoer, Berkowitz emphasizes that the core concerns of the rabbis center, instead, on asserting their own legitimacy.

In Berkowitz's analysis, accounts of the death penalty either recall earlier times in which judicial authority may have been greater, or they seek to set out prescriptions for future implementation. Jews of second-century Palestine did have degree of local judicial autonomy, but this point does not provide clear information about rabbinic teachers and students, who likely had even more limited judicial activity, particularly regarding criminal law. Rabbinic legislations concerning execution appear in a matter-of-fact tone, and do not name difficulties in implementing them. She writes, “We can only speculate whether rabbinic audiences, all too aware of the real problems of implementation, would have understood these legislations as the reflection of nostalgia for a past era or as an idealistic conjuring of what should be” (Berkowitz 2006, p. 17).

Often the assertion of rabbinic judicial authority included self-criticism: “When the Rabbis do identify themselves as judges . . . , that picture is also not uncomplicated... [Some] rabbinic narratives... are intensely critical of Rabbis who execute. Condemning Rabbis end up somehow condemning themselves in these narratives” (Berkowitz 2006, p. 210). In sum, the prescriptions for execution, which are among the laws most likely to raise the problem of Nussbaum's “road of payback,” are on this analysis less about revenge upon the wrongdoer than a recollection of past authority, the attainment of future authority, and opportunities for self-criticism.

Halberstam builds on Berkowitz's account to emphasize "an innate conflict in the normative world of the rabbis between a commitment to doing justice and an ultimate uncertainty about the world around them" (Halberstam 2010, p. 102). In analyzing capital punishment, Halberstam draws attention to "the recruitment of other responsible individuals" to serve as witnesses in capital cases. Mishnah Sanhedrin 4:5 prescribes the subjective state that a witness should maintain during judicial procedure: "By testifying, they are making themselves accountable for the outcome of the verdict, which may be death" (Halberstam 2010, p. 97). Jonathan Schofer draws an inference from the combination of legal and theological components of this Mishnah:

The Mishnah incorporates theology into legal practice regarding witnesses in capital cases. God's creation of Adam, God's concern for Abel, and God's distinct formation of each person all in the Mishnah highlight the immense importance of each and every person as deserving correct judicial procedure. (Schofer 2016, p. 58)

Capital punishment, in this context, becomes an occasion to emphasize not the suffering of the wrongdoer as retribution, but rather the need to motivate a correct procedure and accurate testimony, given the value of all human beings.

Halberstam extends Bernard Jackson's analysis of "the roles of the divine and human in jurisprudence in both the Hebrew Bible and rabbinic literature" by examining the relation between rabbinic law and theology. She emphasizes that "alongside the human justice systems . . . both biblical and rabbinic authors imagine the God of Justice implementing his own rewards and punishments, vindicating his own knowledge of human behavior, and intervening in human history in a purposeful way." A core question, then, becomes: "How does God's role as an executor of Justice interact (or interfere) with the comprehensive human religious legal systems of the Bible and the rabbis?" (Halberstam 2010, pp. 109–10). Halberstam's framing of the issues helps us to avoid focusing exclusively on the human judicial process or, instead, on the theology of divine justice, and the error of thinking that the rabbis equated the two or saw them as continuous.

Rabbinic theology employs the metaphors of God as king and judge to convey the belief that the deity governs the world and assesses human action in ways that are similar to those of an ideal ruler who implements perfect justice, even as they explain that perfect justice generates complexities when dealing with the injustices of the world. These theological images must be set in the context of a wide range of images that the rabbis use to describe the deity, beyond king and judge. Arguably the most foundational theological claims regarding the deity center on the rabbis' God as the creator of the heavens and earth, as the redeemer who brought the Israelites out of slavery in Egypt through the Exodus, and as revealing new foundations for a society soon afterward at Sinai. These images run through the Jewish Bible and were crystallized in the Shema, a daily liturgical affirmation that was codified in the prayer-book of Amram Gaon in 850 CE (see for example Birnbaum 1995, pp. 71–82). The deity is also presented as a protector or shield, and the love of God for ancient Israel and later Jews is frequently reinforced. Given this multiplicity, when rabbis present God as a king or judge who implements perfect justice, they are not saying that such roles are the only roles for the deity or that such ways of relating to humans are the only ways.

Jonathan Schofer has argued that descriptions of justice in rabbinic theology have to be understood as part of the distinctive style of literary composition and conceptual expression developed by the rabbinic movement. Rabbinic presentation of theological concepts and stances tends to be oriented toward the exegetical and pedagogical goals of a particular passage, which need to be inferred and identified. Theological statements do not set out a systematic theology but rather numerous teachings, each of which has its own aim. Some passages, for example, aim to spur the most diligent aspiring leaders in their virtue. Others aim to give consolation in times of suffering. Still others may speak to practical concerns and compromises that are necessary (Schofer 2005, pp. 54–64; Schofer 2010, pp. 9–13). In this literature, one theological statement may present divine justice as "measure for measure" and convey a sense of ultimate justice, but other theological statements serve to incite the righteous to observe more exacting standards of behavior (Schofer 2005, pp. 121–46; Schofer 2010, pp. 77–140).

The implicit subjective motivations, on the part of humans, in a theology of divine justice appear to be self-interested desire and fear. Extensive presentations of reward for the righteous and punishment for the wicked seem to suggest that one should desire that reward and fear punishment. However, rabbinic literature also includes direct prescriptions regarding motivation and emotion in following the law. These prescriptions appear to recognize the danger that a theology of divine justice may reinforce self-interest, and they set out different standards. For example, a well-known passage from Mishnah Avot prescribes what Michael Fishbane calls an elimination of self-interest from motivation: “Antigonus of Sokho received from Simeon the Righteous. He would say, ‘Do not be like slaves who serve the master for the sake of receiving a food allowance. Rather, be like slaves who serve the master *not* for the sake of receiving a food allowance, and let the fear of Heaven be upon you’” (Mishnah Avot 1:3, emphasis mine; [Albeck 1988](#), 353; [Bickerman 1951](#); [Fishbane 1984](#); [Schofer 2005](#), pp. 154–55). This passage explicitly rejects self-interested desire and fear, emphasizing that proper action before the deity should center on divinely-oriented reverence and awe—the “fear of Heaven.” The fact that the text pays explicit attention to human emotion and motivation shows that, in responding to Nussbaum’s challenge to avoid false desires and demands regarding a wrongdoer, an analysis should not simply infer motivations from descriptions of divine action, but should also focus on passages that directly describe and prescribe relevant subjective responses to wrongs done.

Dov Weiss has provided an analysis of Tanhuma-Yelammedenu midrashic literature, a late exegetical genre and set of sources compiled mostly during and after the sixth century CE which highlights a distinct subjective response, on the part of humans, to divine action: Protest. Weiss argues that, as a style of literature, Tanhuma-Yelammedenu (TY) “represents a watershed moment.” While “early Midrash tends to designate a biblical passage and then comment on it, later Midrash, beginning with TY, tends to integrate the passage and its interpretation into its own retelling of the biblical narrative” ([Weiss 2017](#), p. 13). Employing this genre, rabbinic sages developed forms of protest against God that express rabbinic ethical stances. Weiss writes:

I argue that the sages often place challenges against God into the mouth of a biblical character to express their own struggles, ambivalences, and discomforts with morally troubling divine acts. Indeed, they provide a literary safe space for the sages to express their frustrations with God who, at times, acts capriciously, arbitrarily, and without due mercy. This act of ventriloquism does not solve the moral problem, but it does provide a cathartic outlet for the sages to work through their theological-moral anxieties. ([Weiss 2017](#), p. 125)

One very important example concerns Abraham and God, with reference to God’s decision to destroy the cities of Sodom and Gomorrah in the Book of Genesis.

Weiss begins his analysis by explaining that “Midrashic authors and editors often appropriate Abraham to voice ethical concerns” ([Weiss 2017](#), p. 130). The distinctive feature of the Tanhuma-Yelammedenu version of the story is the portrayal of Abraham being disturbed by the destruction caused by the flood in the time of Noah, with God revealing to Abraham the divine plan to destroy the two cities (Genesis 18:17). In Weiss’s characterization:

God reveals His destructive plans out of a concern to safeguard His own reputation. Abraham was morally disturbed by God’s drowning of most of humanity during Noah’s time. . . . Abraham does not communicate his ethical concerns to God. However, God is still aware of them; affected by it, God adjusts accordingly. To preclude Abraham from also criticizing the destruction of Sodom and Gomorrah, God discloses His plan to destroy those cities”. ([Weiss 2017](#), pp. 131–32)

The creators of the text “anxiously wondered whether God’s communal punishments could be justified; instead of ignoring the problem or justifying it through reinterpretation, they expressed their ethical struggles and doubts through the character of Abraham” ([Weiss 2017](#), pp. 131–32). Regarding the focus of the present article—the need to avoid the mistake of the “road of payback”—the key point

is that these rabbinic texts do not call upon the audience simply to accept the acts of God in the Bible or in the divine accounting of the rabbis; rather, they emphasize ethical assessment of the deity's actions and provide models of challenge and protest.

Weiss thus highlights a distinct and striking component of rabbinic culture—protesting against God—in a particular corpus of writing, the Tanhuma-Yelammedenu midrashic literature. Specific features of such a protest can be highlighted by contrasting his account of Abraham in this exegetical literature with two literary units within a long and highly-edited compilation that is roughly contemporary and shows more common forms of pedagogy and values: The homiletic midrash of Deuteronomy Rabbah 3:15. These passages begin with Moses at the time of the idolatry of the golden calf, and especially the moment when *Moses induced YHWH his God to show favor* (Ex. 32:11). The biblical text itself presents Moses calling upon God to remember the patriarchs of Genesis—Abraham, Isaac, and Israel—which leads to a later passage presenting Abraham at the time of God's decision to destroy Sodom and Gomorrah. These passages reject anger, call for compassion and forgiveness, and emphasize the rabbinic concept of “the merit of the forefathers” or “the merit of the Patriarchs” (Urbach 1979, pp. 497–98; Anderson 2009, p. 10), all of which contrast with the “road of payback.” At the same time, these more mainstream concepts and forms of instruction do not take a strong stance of protest against God.

One passage of this midrash begins by emphasizing the intimacy between Moses and God, which is portrayed in the Pentateuch in powerful terms through the statement: *YHWH spoke to Moses face to face* (Exod. 33:11; see also similar terminology in Deut. 34:10). In addressing the appropriate response to the idolatry of the golden calf, God directly instructs Moses not to imitate God's anger. The passage presents a notable twist on the common rabbinic theme that humans should imitate God. In simple and somewhat playful terms, and also through reworking of the imagery of the faces of God and Moses in Exod. 33:11, Deuteronomy Rabbah presents God as saying, “There will not be the case that two faces are in anger: When you see me put on hot water, you put on cold; and when you see me put on cold water, you put on hot.” Rather than expressing anger, Moses should “assuage with compassion.” If God's “face” is hot or angry again, Moses should balance or mitigate this anger with a cooling or compassionate demeanor toward the Israelites. Through the voice of God, the rabbinic midrash combines the grand biblical theme of Moses as the greatest prophet who enjoys a remarkable intimacy with the deity, with a simple image of mixing hot water and cold. The midrashic presentation of Torah addresses the audience, in responding to wrongdoers, with both sacred history and everyday imagery to teach the human leader to have compassion, even or especially when the deity is angry.

The general rabbinic rejection of anger is, in this case, integrated with both God teaching Moses to have compassion, and Moses seeking God's favor for Israel based on the merit of the forefathers:

When The Holy One, Blessed Be He, saw this, He said to him [to Moses], “Moses, the two faces in anger, I and you, [we are] angry at them,” immediately: *And YHWH spoke to Moses face to face, as a man speaks to his friend, and he [Moses] would return to the camp, and his chief assistant Joshua son of Nun, a young man, did not leave the midst of the tent.* (Exod. 33:11)

The Holy One, Blessed Be He, said to him [to Moses], “There will not be the case that two faces are in anger: when you see me put on hot water, you put on cold; and when you see me put on cold water, you put on hot.

Moses said, “Master of the World, how can this be?”

He said to him [to Moses], “You should assuage with compassion.”

What did he do? Immediately, And Moses induced YHWH his God to show favor, and he said, “Why, Lord, does Your anger burn against Your people, that you brought out from the land of Egypt, with great strength and with a mighty hand? Why will Egypt say, ‘In wickedness He brought them out to kill them in the mountains, to destroy them from

the face of the earth?’ Return from the burning of Your anger and be sorry for the ill done to Your nation. [Remember Abraham, Isaac, and Israel, Your servants, that You swore to them upon Yourself, and You said to them, ‘I will multiply your offspring like the stars of the heavens, and all of this earth of which I spoke, I will give to your offspring, and they will have [it] as a possession forever.’” And YHWH was sorry for the ill He said He would do to His nation] (Exod. 32:11–14). He [Moses] said to Him, “Behold, your children are bitter: sweeten them”. (Deut. R. 3:15)

Rather than Moses imitating God, such that for Israel “two faces are in anger”—the faces of God and Moses—Moses is instructed to balance God’s response, like putting cold water in a place where another has placed hot water. If God is angry, Moses should “assuage with compassion.” The redactor of the homily then quotes a key passage from the Book of Exodus in which Moses sought favor from God for the Israelites so that God’s “anger” would not “burn” against the nation. Moses pleads with God to remember leaders long past by the time presented in the story of the Exodus—the forefathers or patriarchs of Genesis (Abraham, Isaac, and Jacob who was renamed Israel)—and God’s covenant with Abraham in Genesis 12. This theme (the role of the forefathers in the time of Moses and beyond) is then expanded later in the homily.

In this expansion, the homiletic midrash emphasizes the ongoing significance for ancient Israel, and for the rabbis’ own contemporaries, of the faith and actions exemplified in Genesis by Abraham, Isaac, and Israel in response to God. This second passage begins with Moses speaking to God about the Israelites after the idolatry of the golden calf, and Moses is portrayed as connecting this event to Abraham at the time when God decides to destroy Sodom and Gomorrah:

Moses said before Him, “Think of them as like Sodom.” What did You say to Abraham: And YHWH said, “If I find in Sodom fifty righteous men in the midst of the city, then I will forgive the whole place on their account” (Gen. 18:26). And you added more to him until ten [righteous men were needed]. Where? As it is said, And he said, “May it not anger my Lord, and let me speak one more time, “Perhaps ten [righteous men] will be found there.” And He said, “I will not destroy [the city of Sodom] on account of ten [righteous men found there]” (Gen. 18:32). And I produce for you, from these [from the Israelites at the time of making the golden calf], eighty righteous men. He [Moses] said before Him, “Master of the World, behold seventy of the elders, as it is written, And YHWH said to Moses, Gather to Me seventy men from the elders of Israel that you know, for they are the elders of the nation and its officers, and take them to the Tent of the Meeting, and they will station themselves there with you, and I will come down and speak with you there, and I will set apart some of the spirit that is upon you, and place it on them, and they will bear with you the burden of the people, and you will not bear it yourself (Num. 11:16–17). Aaron, Nadab, and Abihu, Eleazar, and Ithamar, Phinehas, and Caleb [see Exod. 6:23, 25; Num. 32:10–12], behold seventy-seven. The Holy One, Blessed Be He, said to him, “Thus Moses, where are another three righteous men?” And he [Moses] did not find one. He [Moses] said before Him, “Master of the World, if these are among the living, and none of them can stand themselves in this gap, let the dead stand.” He said before Him, “Make use of the merit of the three forefathers [or, Patriarchs], and behold eighty. Remember Abraham, Isaac, and Israel your servants.” When Moses reminded Him of the merit of the forefathers, immediately He said to him, [And YHWH said,] “I pardon, as you have asked”. (Num. 14:20) (Deut. R. 3:15)

The redactor of Deuteronomy Rabbah 3:15 recognizes that Abraham, prior to Moses, sought God’s forgiveness for others, here focusing on the role of a small number of righteous men in a community, whether fifty (Gen. 18:26) or ten (Gen. 18:32). Moses, in this midrashic elaboration of the biblical stories of his leadership, claims that “eighty righteous men” can be found among the Israelites, and he names the seventy elders emphasized by God in the Book of Numbers, along with Aaron and six descendants (generated from Exod. 6:23, 25; Num. 32:10–12), to make seventy-seven. Where do the remaining three

come from? From the three forefathers, whose merit brings God's pardon for transgression named in the Book of Numbers (Num. 14:20). The righteous men of a given time, and the accumulation of righteous men in a society over time, here become crucial for determining the proper response to transgression in a given moment.

In the contrast between the appropriation of Abraham in the Tanhuma-Yelammedenu literature, as analyzed by Weiss, and the presentation of Moses and Abraham in Deuteronomy Rabbah 3:15, two approaches to the wrongdoer appear, both of which resist "the road of payback." Weiss emphasizes that Tanhuma-Yelammedenu midrashic literature presents "voices of anxiety and struggle." The texts offer "no moral resolution" but instead the rabbis "express their deep ambivalence and irritation" by questioning God's actions through "the mouths of biblical characters" (Weiss 2017, p. 130). In the case of Abraham at the time of God's decision to destroy Sodom and Gomorrah, the midrash portrays Abraham's critical reflection and emotional response regarding the earlier destruction at the time of the Flood. In Deuteronomy Rabbah, the midrashic homily avoids "the road of payback" by extending Abraham's act of seeking righteous people in a population that God decides to destroy. Moses, at the time of the idolatry of the golden calf, finds eighty righteous men among the Israelites within the Pentateuch, integrating passages from the Books of Genesis, Exodus, and Numbers. The midrashic homily thus looks in three directions, through Moses: Forward in time to leaders such as the seventy righteous elders; back in time to the merit of the forefathers Abraham, Isaac, and Israel; and out to the deity and divine forgiveness for human transgression.

Part of Moses' role in leading the Israelites following the Exodus, especially after the events at Mount Sinai, was to generate leaders within Israelite society. The redactor of Deuteronomy Rabbah 3:15 highlights to the audience that Moses and God identified over the course of the Pentateuch seventy leaders in addition to Moses, who became a key part of building the society. Moses also exemplifies, even at that early stage of ancient Israelite sacred history, the importance of remembering his own predecessors. As Moses pleads with God to limit punishment, Moses reminds God of Abraham, Isaac, and Israel as depicted in the biblical text. The rabbinic redactor of Deuteronomy Rabbah 3:15 builds upon this point in several ways, with verses that convey a key moment of Abraham also calling upon God to limit punishment. The rabbinic midrash reinforces this exegesis with the phrase "merit of the forefathers," which is a distinctively post-biblical call for God's pardon and forgiveness. These late midrashic collections, both following the Talmudic commentary of 500 CE, reject "the road of payback," whether through protest or through elaboration of the exemplary model of Moses highlighting the foundational role of the righteous in ancient Israelite society.

4. Discussion

The overall picture of the rabbinic legal process, and rabbinic theology, presented in this article is not necessarily appealing to a modern reader, and the aim of the analysis is not to select from rabbinic sources simply those elements that fit today's priorities and interests. The core point is that rabbinic standards for both the human implementation of law and the human relation to the deity resist the mistake of desiring and seeking the suffering of the wrongdoer, what Nussbaum calls "the road of payback." Rabbinic responses to individuals who are deemed criminal sometimes serve to reinforce rabbinic authority, in the present, looking back into the past and forward into the future. In addition, the rabbis' responses serve to acknowledge uncertainty in evidence and understanding. Furthermore, the admonition to witnesses in capital cases (Mishnah Sanhedrin 4:5) strongly reinforces that individuals should attend to the importance of each and every human life—whether those accused of crime or those hurt by crime—and direct that focus toward a proper and diligent procedure in court. At the level of theology, rabbinic accounts of divine justice are shaped by a historical context in which the metaphor of "sin is debt" was elaborated through intricate connections between commercial and theological terms. Rabbis do embrace traditional images of God as ideal king and judge, and they confirm that human beings are subject to divine power, divine judgment, and divine accounting. However, the idea of balancing is conveyed, not only in terms of the payment of a debt, but also in

terms of the accumulation of virtue, which establishes innocence before the judge and payment or credit in the accounts. The primarily prescribed subjective response to God's justice is not to desire rewards and the minimization of punishment for the self, or to desire the suffering of the wicked, but rather to purge self-interest in light of reverence for God (Avot 1:3) and, based on the Shema, the love of God. Rabbis also express ethical values by upholding critical considerations of God's actions, or through creative ways of portraying biblical characters who respond to God, as exemplified in the midrashic elaborations of Abraham and Moses both in the Tanhuma-Yelammedenu literature and in the homiletic midrash of Deuteronomy Rabbah. Whether in the bold presentation of protest against God, or in honor of the ways that Abraham and Moses sought to induce God's favor for Israel in the Pentateuch, rabbinic midrash counters the prioritization of God's destruction of the wicked, in favor of seeking to identify and uphold the righteous.

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