Divine Concessions in the *Tanhuma* Midrashim*

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Introduction

Ever since Leopold Zunz inaugurated the critical study of rabbinic literature in 1818, scholars of the school of midrash known as *Tanhuma-Yelammedenu* (*TY*) have given priority to analyzing questions of textual history, dating, aesthetics, form-critical issues, and the literary qualities of these texts.[1] This scholarship has focused on questions of form rather than content; for the most part, the distinctive ideas of these texts, their values and theologies, have yet to be explored. In an article devoted to form-literary issues in aggadah, Yonah Fraenkel argues that "indeed there were also changes in the [*Tanhuma*'s] ideas, like their ethical and social values and their overall world view . . . these types of issues need further research."[2] Unfortunately, very few scholars have responded to Fraenkel's call.[3] In

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[1] For an overview of the history of *Tanhuma-Yelammedenu* scholarship, see Marc Bregman, *The Tanhuma-Yelammedenu Literature: Studies in the Evolution of the Versions* (Piscataway, N.J.: Gorgias, 2003) 3–19 (Hebrew section).

[2] Yonah Fraenkel, "Remarkable Phenomena in the Text-History of the Aggadic Stories," in *Proceedings of the Seventh World Congress of Jewish Studies: Studies in the Talmud, Halacha, and Midrash* (ed. Israel Gutman; vol. 3 of *Proceedings of the Seventh World Congress of Jewish Studies: Held at the Hebrew University of Jerusalem, 7–14 August 1977*; Jerusalem: World Union of Jewish Studies, 1981) 45–69 [Hebrew].

[3] The few scholars who do address the *Tanhuma*'s content include Ira Chernus, who has shown how the *Tanhuma*'s editors reshape earlier rabbinic traditions towards a more nationalistic orientation (see Ira Chernus, "On the History of a Pericope in the Midrash Tanhuma," *JSJ* 11 (1980) 53–65),

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fact, two excellent scholarly works on rabbinic thought have ignored the content of the *TY* altogether: neither David Kraemer's *Responses to Suffering in Classical Rabbinic Literature* nor Ishay Rosen-Zvi's recent work, *Demonic Desires*, engage *TY* texts.[4] While Kraemer and Rosen-Zvi extensively discuss sixth- and seventh-century Babylonian texts, such as the Babylonian Talmud, they do not do the same with sixth- and seventh-century Palestinian texts, such as many *TY* texts. These two important studies exemplify how, in a more general sense, late Palestinian midrashim have been conspicuously neglected by scholars of rabbinic literature working on content-based projects.

This paper attempts to redress this scholarly lacuna by uncovering a distinctive motif in the *TY* literature that has been unnoticed by prior scholarship: that of humans challenging God over morally problematic divine laws or behavior. In these midrashic confrontations, biblical heroes are often depicted as teaching or counseling God to adopt a more ethical approach to governing the world. In the more than fifty such instances in which *TY* authors use this motif of protest, the midrashic parallels from earlier texts generally do not contain such confrontations. In the cases where earlier texts do contain parallel confrontations, the *Tanhuma* invariably has dramatized the imagery or radicalized the language.[5] With this claim, this paper nuances David Kraemer's argument that the Babylonian Talmud (ca. sixth and seventh centuries) is more willing than earlier Palestinian midrashim to legitimate challenges to God.[6] It argues that the valorization of the protest motif occurs not only in late Babylonian texts (as Kraemer shows), but, even more prominently, within late Palestinian texts of *TY*.[7]

Accordingly, after I introduce the *TY* genre of literature, I explore some of the examples of these confrontational midrashim, accounting for the motif's emergence and highlighting its implications for the history of theology.

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and Jeffrey Rubenstein, who has demonstrated how myth is more developed in the *Tanhuma* corpus than in its classical counterparts (see Jeffrey L. Rubenstein, "From Mythic Motifs to Sustained Myth: The Revision of Rabbinic Traditions in Medieval Midrashim," *HTR* 89 [1996] 131–59).

[4] David Charles Kraemer, *Responses to Suffering in Classical Rabbinic Literature* (New York: Oxford University Press, 1995); Ishay Rosen-Zvi, *Demonic Desires: Yetzer Hara and the Problem of Evil in Late Antiquity* (Divinations: Rereading Late Ancient Religion; Philadelphia: University of Pennsylvania Press, 2011).

[5] Scholars treating the motif of protest have not noticed this tendency. See, for example, Joseph Heinemann, *Prayer in the Talmud: Forms and Patterns* (SJ 9; Berlin: De Gruyter, 1977) 193–211; Abraham Joshua Heschel, *Heavenly Torah: As Refracted through the Generations* (trans. Gordon Tucker; New York: Continuum, 2005) 137, 138, and 209–16; Kraemer, *Responses to Suffering*; Alan L. Mintz, *Ḥurban: Responses to Catastrophe in Hebrew Literature* (New York: Columbia University Press, 1984) 77–78; and David Stern, *Parables in Midrash: Narrative and Exegesis in Rabbinic Literature* (Cambridge: Harvard University Press, 1991) 130–45.

[6] See Kraemer, *Responses to Suffering,* 184–210.

[7] Moreover, Kraemer deals exclusively with rabbinic theodicy, while this paper, more broadly, treats the protest motif in general (even when not related to the suffering of the innocent).

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Range of Corpus

The term "*Tanhuma-Yelammedenu* midrashim" should best be understood as a genre or group of rabbinic texts that share the same general form and characteristics, rather than as referring to a specific set of books.[8] Texts from this genre can be found in the following midrashic works: 1) *Midrash Tanhuma*, both the standard and Buber editions; 2) *Exodus Rabbah* II, chapters 15–52; 3) *Numbers Rabbah* II, chapters 15–23; 4) *Deuteronomy Rabbah*, both the standard and Lieberman editions; 5) *Pesiqta Rabbati*, chapters 1–14, 19, 25, 29, 31, 33, 38–45, 47, and supplements 1 and 2; and 6) hundreds of *TY* fragments found in the Cairo Genizah.[9] Indeed, the plethora of *TY* texts and manuscripts testifies to its popularity in late antique Palestine—and explains why so few midrash scholars have dared to produce a critical edition.[10]

Dating and Compositional Strata

In the past, scholars have dated *TY* literature from as early as the fourth century C.E. to as late as the ninth century C.E.[11] Most contemporary scholars, however, rely on the recent findings of Marc Bregman, who argues for a more complex dating of the *TY* corpus. According to him, we can divide the *TY* midrashic material into several developmental strata:

> 1) The *early stratum* of *TY*, produced in Palestine around the fifth century C.E., contains a large amount of Galilean Aramaic as well as Greek and Latin

[8] See M. D. Herr, "Tanhuma Yelammedenu," *EncJud* 15:794–96; and Ephraim Urbach, "Tanhuma-Yelamedenu Fragments, *Kovetz Al-yad* 6.16 (1966) 3–54.

[9] There is even some *TY* material that has been deposited in *Genesis Rabbah* and *Pesiqta de Rab Kahana*. For a listing of all extant *TY* texts and manuscripts, see Bregman, *Tanhuma-Yelammedenu Literature*, 20-96.

[10] To date, we have an unpublished critical edition to the first twenty chapters of *Tanhuma*, Exodus; see Allen David Kensky, " 'Midraš Tanhuma Shmot: A Critical Edition of 'Midrash Tanhuma Shmot' (Standard Edition) through Beshallah, Based on Manuscripts and Early Editions, with an Introduction and Commentary" (Ph.D. diss., Jewish Theological Seminary of America, 1990) [Hebrew]. Marc Bregman's dissertation also contains critical editions to the texts he analyzes; see Marc Bregman, "Sifrut Tanhuma-Yelammedenu" [The Tanhuma-Yelammedeunu literature] (Ph.D. diss., Hebrew University of Jerusalem, 1991). Also see Rivka Ulmer, *Pesiqta Rabbati: A Synoptic Edition of Pesiqta Rabbati Based upon All Extant Manuscripts and the Editio Princeps* (3 vols.; vols. 1–2: South Florida Studies in the History of Judaism 155, 200; vol. 3: Studies in Judaism; vols. 1–2: Atlanta: Scholars Press, 1997–2000; vol. 3: Lanham, Md.: University Press of America, 2002) [Hebrew].

[11] On the dating of the *TY* literature, see Bregman, *Tanhuma-Yelammedenu Literature*, 1–5; idem, "Tanḥuma Yelammedenu," in *Encyclopaedia Judaica* (ed. Michael Berenbaum and Fred Skolnik; 22 vols.; Detroit: Macmillan, 2007) 19:503–4; Chernus, "History of a Pericope," 53–65. Zvi Meir Rabinowitz, "Kerovot Yanai to Exodus 7:8 and the Problem of the Ancientness of the Midrashim of Tanḥuma-Yelammedenu," *Bar-Ilan University Yearbook* 1 (1963) 207–9; Rubenstein, "Mythic Motifs," 131–59; Hermann Leberecht Strack and Günter Stemberger, *Introduction to the Talmud and Midrash* (trans. Markus N. A. Bockmuehl; Minneapolis: Fortress, 1996) 302–6; and Leopold Zunz, *Haderashot beYisra'el vehishtalshelutam hahistorit* [Sermons of the Jews in their historical development] (trans. Chanoch Albeck; Jerusalem: Bialik, 1954) 108–17.

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loanwords, and is roughly contemporaneous with the Jerusalem Talmud and the classical midrashim (*Leviticus Rabbah* and *Genesis Rabbah*).

2) The *middle stratum* developed towards the end of Byzantine rule in Palestine (sixth and early seventh centuries) and represents the vast majority of the *TY* material we have today. Unlike the early stratum, it avoids Galilean Aramaic wherever possible, replacing it with Hebrew. *TY* works produced in this period include *Exodus Rabbah* II, *Numbers Rabbah* II, both versions of *Deuteronomy Rabbah*, and portions of *Pesiqta Rabbati*.

3) The *late stratum* includes minor accretions to the *TY* material added after the Islamic conquest (such as large sections from *Sheiltot*). In contrast to the earlier strata, it seeks to eliminate all Greek and Latin loanwords. *TY* texts of this period consist of the standard edition of *Midrash Tanhuma* (probably redacted in Babylonia), and the Buber edition of *Midrash Tanhuma* (probably redacted in Europe).[12]

Forms and Characteristics

TY texts generally commence with a halakic proem that poses a simple question of Jewish law, often introduced with the phrase "let our master teach us [ילמדנו רבנו]." (The designation of these works as "Yelammedenu" derives from the Hebrew word "teach us." Since these teachings often cite Rabbi Tanhuma, a fourth-century sage, they are also designated as the "Tanhuma" midrashim.) A *TY* midrash will typically begin the answer with the statement "thus have our rabbis taught us [כך שנו רבותינו]" or "thus have the sages taught us [כך שנו חכמים]." After the specific query has been solved by quoting a Tannaitic legal text, the midrash connects the legal issue to a nonlegal teaching and then links the entire discussion to a verse from the beginning of the weekly Torah portion. Usually, the legal proem is followed by one or more nonlegal proems, similar to those found in the earlier homiletical midrashim, such as *Leviticus Rabbah* and the *Pesiqta of Rab Kahana*. These non-legal proems begin by citing a remote passage from the Hagiographa and then creatively connecting it again to a local passage from the weekly Torah lection. Finally, the peroration usually contains a statement about the redemption and the coming of the Messiah.

One of the ways that the *TY* midrashim differ from the earlier homiletical Amoraic midrashim (ca. fifth century C.E.) is in their choice of language. Whereas earlier texts such as *Leviticus Rabbah* and the *Pesiqta of Rab Kahana* contain "a mix of Hebrew and Aramaic with a sprinkling of Greek terms," *TY* texts tend to use Hebrew.[13] Furthermore, Zunz recognized already in 1832 that *TY* midrashim have the tendency to record teachings anonymously by dropping the name of the tradent, or sometimes even "forging the names of certain earlier sages."[14] Marc

[12] See Bregman, *Tanhuma-Yelammedenu Literature*, 4–5.

[13] Jacob Elbaum, "On the Character of the Late Midrashic Literature," in *Proceedings of the Ninth World Congress of Jewish Studies: Jerusalem, August 4–12, 1985* (ed. Arnold M. Goldberg and David Assaf; 5 vols. in 9; Jerusalem: World Union of Jewish Studies, 1986) 3:57–62, at 57.

[14] Zunz, *Haderashot beYisra'el*.

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Bregman has also shown that *TY* texts tend to add "honorific titles, such as '*Ha-Levi*' and '*Be-rabbi*' to the names of sages."[15] These characteristics seemingly express a desire on the part of the *TY* authors to present their work as an earlier rabbinic commentary.

In recent years, scholars have noticed that the literary style of the *TY* represents a watershed moment in the history of rabbinic literature. Whereas early midrash tends to designate a biblical passage and then comment on it, later midrash, beginning with the *TY*, tends to integrate the passage and its interpretation into its own retelling of the biblical narrative. In these texts, there is little to no transition between the biblical passage and its interpretation, as the biblical passage is often embedded within the interpretation. At times, the biblical proof text is even omitted altogether. In other words, while early midrash presents itself as an explicit commentary on the Bible, late midrash is an attempt to re-narrate the Bible, blending together biblical verses and interpretation. The *TY* literature thus marks the beginning of the rabbinic "rewritten Bible" genre that reaches its apex with the writing of *Pirqe Rabbi Eliezer* (ca. eighth century).[16] In their retellings, the *TY*'s authors tend to combine many prior exegetical comments found in the classical midrashim (like *Genesis Rabbah* or *Leviticus Rabbah*) and weave them into one long and continuous narrative. In addition, to achieve this quality of a "rewritten Bible," *TY* midrashim generally do not present multiple interpretations of a biblical verse, as earlier midrashic texts do, but rather give only one interpretation—even though this reading draws, sometimes problematically, from the multiple interpretations of earlier rabbinic texts.[17]

Comparative Method

While they usually do not mark their sources, *TY* texts often rely upon—or at least are aware of—earlier rabbinic traditions. Consequently, to appreciate fully the distinctiveness of the *TY* midrashim and the ways in which they were historically constructed, we need to identify their textual parallels in pre-*TY* texts. Relying on Bregman's findings, we can suppose that extant *TY* texts were redacted either at the end of the Byzantine period in Palestine (the middle stratum—sixth or early seventh centuries C.E.) or soon after the Islamic conquest (the late stratum—eighth or ninth centuries C.E.). They thus postdate the Tannaitic works, such as the Mishnah, Tosefta, *Mekilta of Rabbi Ishmael*, *Sifre Numbers*, and *Sifre Deuteronomy* (edited ca. third century C.E.), and also generally postdate the Amoraic texts, such as the Jerusalem Talmud, *Genesis Rabbah*, *Leviticus Rabbah*, and the *Pesiqta of Rab*

[15] Bregman, *Tanhuma-Yelammedenu Literature*, 3 (English section).

[16] Jacob Elbaum, "From Sermon to Story: The Transformation of the Akedah," *Prooftexts* 6 (1986) 97–117; Avigdor Shinan, "Scriptural Exegesis to Liberated Narrative," *Jerusalem Studies in Hebrew Literature* 5 (1984) 203–20 [Hebrew]. Contra Elbaum, Joshua Levinson locates the beginnings of this genre transformation in *Leviticus Rabbah*; see Joshua Levinson, *Twice Told Tale: A Poetics of the Exegetical Narrative in Rabbinic Midrash* (Jerusalem: Magnes, 2005) 239–69 [Hebrew].

[17] Elbaum, "Sermon to Story."

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Kahana (redacted ca. fifth century C.E.). Throughout this paper I will compare and contrast *TY* texts to these earlier parallels.

As this study will show, *TY* texts sometimes produce new exegetical teachings not recorded in any prior rabbinic work. In these instances, one can reasonably assume that the *TY* author was aware of the earlier traditions and decided to take a new path. This approach implies a conscious privileging of one scriptural reading over another. Alternatively, even if we reject that assumption and argue that the *TY*'s author was unaware of the prior tradition, contrasting the exegeses provides a crucial way to highlight the distinctiveness of the *TY*.

Confrontations with God

As mentioned above, this article will focus on instances of biblical characters' challenging God in *TY* midrashim. Of course, the phenomenon of protesting or challenging God is not an innovation of the *TY*'s authors. The motif already appears in a variety of contexts throughout the Hebrew Bible and Second Temple literature: in the pentateuchal narratives (with Abraham and Moses), the prophetic writings (with Jeremiah and Habakkuk), the wisdom literature (with Job and various Psalms), and in apocalyptic texts (*4 Ezra*, *2 Baruch*).[18] The phenomenon also appears in some pre-*TY* rabbinic works of the fifth century (attributed to third- and fourth-century Palestinian sages, such as R. Levi, Reish Lakish, R. Isaac, R. Berekiah, and R. Haninah).[19] The vast majority of these latter confrontations are exegetical, however; while the rabbis do not confront God directly, they do so indirectly by placing

[18] On confrontations with God in the Hebrew Bible, see Sheldon Blank, "The Confessions of Jeremiah and the Meaning of Prayer," *HUCA* 21 (1948) 331–54; idem, "Men against God: The Promethean Element in Biblical Prayer," *JBL* 72 (1953) 1–13; David R. Blumenthal, "Confronting the Character of God: Text and Praxis," in *God in the Fray: A Tribute to Walter Brueggemann* (ed. Tod Linafelt and Timothy K. Beal; Minneapolis: Fortress, 1998) 38–51; James Crenshaw, "Popular Questioning of the Justice of God in Ancient Israel," *ZAW* 82 (1970) 380–95; idem, "The Sojourner Has Come to Play the Judge: Theodicy on Trial," in *God in the Fray: A Tribute to Walter Brueggemann* (ed. Tod Linafelt and Timothy K. Beal; Minneapolis: Fortress, 1998) 83–92; Berend Gemser, "The *Rib*—or Controversy—Pattern in Hebrew Mentality," in *Wisdom in Israel and in the Ancient Near East: Presented to Professor Harold Henry Rowley by the Society for Old Testament Study in Association with the Editorial Board of* Vetus Testamentum*, in Celebration of His Sixty-Fifth Birthday, 24 March 1955* (ed. M. Noth and D. Winton Thomas; VTSup 3; Leiden: Brill, 1955) 120–37; William L. Holladay, "Jeremiah's Lawsuit with God: A Study in Suffering and Meaning," *Int* 17 (1963) 280–87; Meira Kensky, "Trying Man, Trying God" (Ph.D. diss., University of Chicago, 2009); Yochanan Muffs, *Love and Joy: Law, Language, and Religion in Ancient Israel* (New York: Jewish Theological Seminary of America, 1992); and Claus Westermann, "The Complaint against God," in *God in the Fray: A Tribute to Walter Bruegemann* (ed. Tod Linafelt and Timothy K. Beal; trans. Armin Siedlecki; Minneapolis: Fortress, 1998) 233–41. Also see John Bright, "Jeremiah's Complaints: Liturgy or Expressions of Personal Distress?," in *Proclamation and Presence: Old Testament Essays in Honour of Gwynne Henton Davies* (ed. John I. Durham and J. R. Porter; Richmond, Va.: John Knox, 1970) 189–213; and Michael E. Stone, "Reactions to the Destruction of the Second Temple: Theology, Perception, and Conversion," *JSJ* 12 (1981) 200–2.

[19] See *Gen. Rab.* (Vilna) 22:9, 41:2, 49:10, 52:6, 53:13, 55:3, 56:5, 56:11, 56:12; *Pesiq. Rab Kah.* (Mandelbaum) 15:4, 19:2; and *Lam. Rab.* proem 24, 1:37, 3:1, 5:1.

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protests into the mouths of biblical characters. The sages rewrite biblical narratives where no such confrontations appear in order to produce full-blown dialogical encounters. To accomplish this, the sages do not merely imagine a confrontation, but they also anchor the new dialogical narrative in the words of Scripture.

While rabbinic confrontations appear sporadically in the Amoraic strata, they appear ubiquitously in the post-Amoraic writings of the *TY*. Indeed, the *TY* goes beyond its midrashic predecessors by not only intensifying the confrontational rhetoric but also by having God accede to the challenge—God declares that the dialogue has caused him to adopt a new position. This paper will present four paradigmatic cases of a biblical figure arguing with God and successfully swaying him to follow a different course of action.[20] In these midrashim, God's capitulation is transformative and substantial, reflecting an ongoing and fundamental change in God's attitude towards Jewish law and his governance of the world. Rather than a one-time concessional act of divine mercy, such as those we encounter in the Hebrew Bible,[21] these divine retractions found in *TY* literature become codified or systematized; they express an essential change in God's moral compass. The four examples I will discuss stand at the core of Jewish tradition and its relationship to divine justice, highlighting a distinctive rabbinic concern for ethics and divine responsibility.

Four Dialogical Confrontations in the *Tanhuma-Yelammedenu*

Transgenerational Punishment

Exodus 34:6–7 contains the oldest biblical formulation of the doctrine that children are punished for the sins of the parents: [22]

> 6) The LORD passed before him (Moses) and proclaimed: The LORD! The LORD! A God compassionate and gracious, slow to anger, abounding in kindness and faithfulness, 7) extending kindness to the thousandth generation, forgiving iniquity, transgression and sin; yet he does not remit all punishment, but visits the iniquity of parents upon children [פוקד עון אבות על בנים] and children's children, upon the third and fourth generations.[23]

[20] For more examples of this motif, see Dov Weiss, "Confrontations with God in Late Rabbinic Literature" (Ph.D. diss., University of Chicago, 2011).

[21] God concedes to a human challenge in Exod 32:14, Num 14:20, Exod 32:14, and Amos 7:1–3. There are also biblical moments of divine "regret" (נחם) that are not accompanied by a human confrontation. For example, God "regrets" (נחם) creating humanity (Gen 6:6), making Saul a king in Israel (1 Sam 15:11), and bringing evil upon Israel (Jer 42:10).

[22] For a more detailed analysis of the biblical material on transgenerational punishment, see Michael A. Fishbane, *Biblical Interpretation in Ancient Israel* (Oxford: Clarendon, 1985) 333–45; and Moshe Greenberg, *Studies in the Bible and Jewish Thought* (Philadelphia: Jewish Publication Society, 1995) 25–41, at 34–39.

[23] All translations of the Bible throughout this article are drawn from the NJPS.

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In these verses, God proclaims the attributes of kindness and mercy that characterize divine providence. And yet, while God graciously remits sin, God reserves the right to defer it to later generations. The doctrine of inherited guilt is also found in the context of the Decalogue (Exod 20:5), where God announces that, as an "impassioned God," he will "visit the guilt of the parents upon the children, upon the third and upon the fourth generations."[24] Notwithstanding possible differences between these two presentations,[25] both Exodus passages affirm, in principle, the principle of inherited punishment.

In contradistinction to these two Exodus passages, the prophet Ezekiel forcefully rejects the doctrine of transgenerational punishment. Justifying its abrogation through a revelatory experience, he declares: "A child shall not share the burden of a parent's guilt, nor shall a parent share the burden of a child's guilt" (Ezek 18:20). According to Jon Levenson, by innovating this new theology, Ezekiel communicates to the Judeans "that the guilt of the ancestors which caused the destruction of the Juhadite kingdom and the ensuing exile does not condemn their current descendants to unending misery."[26] And Ezekiel is not the only prophet to abrogate the older theology: Jeremiah does as well, although he argues that the abrogation will take place at some future time.[27]

Ancient Jewish interpreters of the Bible thus faced two problems when surveying the aforementioned biblical material. First, the Pentateuch, in Exodus 20 and 34, endorses a theology that punishes an innocent person for the sins of another. How does this punitive doctrine comport with God's attributes of mercy and kindness? Second, the Bible contradicts itself: while the Exodus passages affirm transgenerational punishment, the prophetic texts (and perhaps other pentateuchal texts as well[28]) reject it.

Some early rabbinic texts ignore the ethical and textual problems and simply affirm the theology of transgenerational punishment.[29] Others, like the following Tannaitic text, derive formal and textual clues from Scripture to solve the dilemma:

[24] The same version of the passage appears in Deut 5:9.

[25] In contrast to Exod 34:6–7, Exod 20:5 highlights the harsh consequences of sin: not only will sinners suffer for their transgressions, but their progeny will be punished as well. In this passage, the doctrine is about extending punishment, rather than delaying it. See Adele Berlin, Marc Zvi Brettler, and Michael A. Fishbane, *The Jewish Study Bible* (Oxford: Oxford University Press, 2004) 89, 149; and Muffs, *Love and Joy*, 16–22.

[26] Jon Douglas Levenson, *Resurrection and the Restoration of Israel: The Ultimate Victory of the God of Life* (New Haven, Conn.: Yale University Press, 2006) 277.

[27] Jer 31:28–29.

[28] Moshe Greenberg notes that while Deut 24:16 also rejects transgenerational punishment, that rejection only refers to punishments meted out in human courts, not by God. He writes that Deut 24:16 should be "recognized as a judicial provision, not a theological dictum. It deals with an entirely different realm than Deut. 5:9 and Exod. 20:5. . . . This is clear from the verb יומת, 'shall be put to death,' referring always to judicial execution and not to death at the hand of God" (Greenberg, *Studies in the Bible*, 35). Some rabbinic texts, however, see this Deuteronomic passage as rejecting even the transgenerational punishments administered by God, as we shall see.

[29] See, for example, the Tannaitic statement preserved in *Avot R. Nat.*, version B, 22.

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> *Visiting the guilt of the parents upon the children* [*upon the third and upon the fourth generations*] [Exod. 20:5]: During a time when there is no skipping [i.e., there is continuous evil behavior throughout the generations]. . . . What does this mean? An evil person [who is] the son of an evil person, [who himself is] the son of an evil person. (*Mek. R. Ishmael*, Bahodesh 7 [ed. Rabin/Horovitz])

The *Mekilta of Rabbi Ishmael* (ca. third century) posits that a child of the third generation would only be punished for the sins of a grandparent if there were a continuous line of evildoers from the grandparent to the grandchild. If the grandparent, parent, or child were righteous, then the child would not be punished for any of his or her ancestors' sins.[30] By limiting the applicability of transgenerational punishment to those who continue in their parents' evil ways, this Tannaitic text resolves the implicit moral problem: innocent children are not punished for the sins of their parents or grandparents.

In the subsequent Amoraic period (fourth- and fifth-century C.E. Palestine and Babylonia), most rabbinic texts affirm this Tannaitic "condition of continuity."[31] There is one talmudic teaching, however, that diverges from this reading with a novel solution: "Moses said: *Who visits the iniquity of parents upon children* [Exod 34:7], and Ezekiel came and nullified it: *The person who sins, only he shall die* [Ezek 18:4]."[32] This talmudic view, attributed to R. Yosi b. Haninah (third century Palestine), maintains that Moses decreed the doctrine of inherited punishment and Ezekiel subsequently annulled it. The teaching openly acknowledges that the Pentateuch's theological dictum only applied for a limited period of time; in other words, a clause from the Decalogue no longer applies! In addition, the institution of inherited punishment is attributed not to God but to Moses, who now becomes the proclaimer of the thirteen divine attributes (Exod 34:6–7).[33]

These aforementioned pre-*TY* texts solve the ethical problem posed by the doctrine of inherited punishment by either conditioning its application on the continuity of sin (*Mek. R. Ishmael*), or by attributing the annulled doctrine to Moses (*b. Mak.*). These approaches reject the idea that God could punish innocent children for the sins of others. In contrast, one *TY* text, found in *Num. Rab.* II (*TY*) 19:33, affirms the simple reading of Scripture, but then solves the ethical and textual problems with a dialogical confrontation between Moses and God:

[30] As a close reader of Scripture, the author of this ancient midrash derives this condition of continuity by noticing that the words "upon the third generation [על שלשים]" (v. 5) are superfluous. The lone words "upon the children" would have sufficed to teach that grandchildren would be punished for the sins of grandparents, since rabbinic literature uses the term "children" to include grandchildren. Thus, the extra words "upon the third generation" teach that for the punishment to apply, three continuous generations must be evil.

[31] See *Pesiq. Rab Kah.* 25:3, *b. Sanh.* 27b, and *b. Ber.* 7a.

[32] *b. Mak.* 24a.

[33] In the Bible itself (Exod 34:6–7), it is unclear whether Moses or God is the one proclaiming these divine attributes; see Fishbane, *Biblical Interpretation*, 335.

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> This is one of three instances where Moses said something before God and he responded: You have taught me something [למדתני]. . . . The second instance: When the Holy One, blessed be he, said to him: *Visiting the guilt of the parents upon the children* [Exod 20:6], Moses said: Master of the World, how many evil people give birth to righteous people? Shall they take [punishment] from the sins of the parents? Terah worshipped idols, and Abraham his son was righteous. And also Hezekiah was righteous, and his father Ahaz was a wicked man. And also Josiah was righteous, and his father Amon was a wicked man. Is it appropriate that righteous people should suffer for the sins of their parents [וכן נאה שיהו הצדיקים לוקין בעון אביהם]? God said to him: You have taught me something. By your life, I will nullify my decree and establish your word, as it says: *Parents shall not be put to death for children, nor children be put to death for parents* [Deut 24:16]. And by your life, I will write it in your name, as it says: *In accordance with what is written in the Book of the Teaching of Moses* [2 Kgs 14:6]. (*Num. Rab.* II [*TY*] 19:33, according to MS Paris 150)[34]

In this *TY* teaching, Moses rhetorically challenges God, asking, "Shall they [the righteous people] take [punishment] from the sins of the parents?" After providing a few biblical cases where righteous children are born to wicked men, Moses asks again, "Is it appropriate that righteous people should suffer for the sins of their parents?" Upon hearing Moses's critique, God concedes the point and nullifies the theology of inherited punishment. God declares, strikingly: "You have taught me something [למדתני]. By your life, I will nullify my decree and establish your word."[35]

This midrash depicts a dramatic confrontation between Moses and God that does not appear in Scripture. The new narrative solves the ethical problems with the early biblical doctrine by placing the different Torah passages in dialogue and decreeing that one has superseded the other. Ultimately, the ethical intuition of the human Moses emerges triumphant (albeit with God's consent). Although the *TY*'s authors likely knew of the nonconfrontational midrashic solutions found in the *Mekilta* and in *b. Makkot*, they preferred to use a confrontational model.[36] By adopting the literary motif of a confrontation, the *TY* does not attempt to resolve the moral problem by hiding behind formal exegetical reinterpretations, as found

[34] According to Buber, this passage also appears in the earliest printed editions of *Midrash Tanhuma* (prior to the Mantova printing; see Solomon Buber, *Midrash Tanḥuma* [Vilna: Rom, 1885] 130–30 n. 384) [Hebrew].

[35] Menachem Fisch emphasizes the radical nature of this midrash: "God is astonishingly described as having produced a morally deficient early draft of the Torah, [and then] Moses is portrayed as having refused to comply, and having challenged it on moral grounds . . . [the theology] is subsequently described as having been happily revised by virtue of God[']s accepting Moses' superior moral judgment!" (Menachem Fisch, "Judaism and the Religious Crisis of Modern Science," in *Nature and Scripture in the Abrahamic Religions: 1700–Present* [ed. Jitse M. van der Meer and Scott Mandelbrote; Brill's Series in Church History 37; 2 vols.; Leiden: Brill, 2008] 2:525–67, at 552).

[36] For another late midrashic solution to the biblical notion of transgenerational punishment, see Dov Weiss, "Between Values and Theology: The Case of Salvation through Children in Rabbinic Thought," *Milin Havivin* 3 (2007) 1–15.

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in the earlier strata. Furthermore, this text is theologically striking for its image of God being taught (לָמַד) the moral principle of individual responsibility.

The Punishment of Excision (Karet)

In the priestly sections of the Bible, the narrator frequently declares that certain sins warrant the penalty of excision—*karet* (lit. "cutting off").[37] Indeed, in one relatively late biblical source, every sin willfully committed against God incurs this penalty (Num 15:30–31).[38] The priestly authors, however, never precisely define what they mean by *karet*. Whereas some modern scholars regard it as a punishment administered by the courts, such as excommunication or the death penalty,[39] the ancient rabbis understood *karet* as a divinely administered punishment, coming in the form of premature death,[40] infertility,[41] destruction of one's offspring,[42] or perdition.[43] Other modern scholars favor the rabbinic view.[44] Regardless of whether

[37] See, for example, Gen 17:14; Exod 12:15, 30:33, 30:38, 31:14; Lev 7:20–21, 7:25, 7:27, 17:4, 17:9, 18:29, 19:8, 22:3; and Num 9:13, 15:30–31, 19:13, and 19:20. Jacob Milgrom counts nineteen types of crimes that are punished by *karet* and notes that these punishments are only incurred for ritual crimes committed against God, not ethical crimes against humankind; see Jacob Milgrom, *Numbers* (JPS Torah Commentary; Philadelphia: Jewish Publication Society, 1990) 405–8. While Scripture calls the punishment ונכרתה, Jewish tradition calls it כרת. For possible grammatical explanations for the term, see William H. Propp, *Exodus 1–18: A New Translation with Introduction and Commentary* (AB 2; New York: Doubleday, 1999) 403.

[38] See Num 15:30–31. Michael Fishbane argues that these passages are a later, "revolutionary" reworking of Leviticus 4, and they reflect an attitude of "severity for all the minutiae of the law." He maintains that the "remarkable transformation of religious ideology" (that every sin incurs *karet*) was produced either by the exilic or postexilic Jewish communities; see Fishbane, *Biblical Interpretation*, 192–93. While some rabbinic texts read these passages as referring only to the sin of idolatry (*Sifre Num*. 111, 112), Aharon Shemesh shows that the majority of rabbinic texts accept the straightforward reading that Numbers 15 refers to all types of sin; see Aharon Shemesh, *Punishments and Sins: From Scripture to the Rabbis* (Jerusalem: Magnes, 2003) 91–93. Shemesh, therefore, reads *m*. *Ker.* 1:1, which isolates thirty-six sins that warrant *karet,* as only referring to types of sins that also incur the obligation of a sin-offering when committed unintentionally.

[39] See Marvin H. Pope, "Excommunication," in *The Interpreter's Dictionary of the Bible* (ed. George Buttrick; Nashville: Abingdon, 1992) 2:183–84; Gerhard von Rad, *The Theology of Israel's Historical Traditions* (trans. D. M. G. Stalker; vol. 1 of *Old Testament Theology*; New York: Harper & Row, 1962) 264 n.182; and Claus Westermann, *Genesis 12–36* (trans. John J. Scullion; vol. 2 of *Genesis: A Commentary*; Minneapolis: Augsburg, 1985) 266-67.

[40] See Rashi, *b*. *Shabb*. 25a, s.v. "we-karet" and the position attributed to Rabba in *b*. *Mo'ed Qat*. 28a, which claim that one who incurs *karet* would die before the age of sixty. *Y. Bik*. 2:1 claims that one would die before the age of fifty.

[41] Rashi, ibid.

[42] Ibn Ezra on Gen 17:14.

[43] Maimonides, *Mishneh Torah*, Teshuvah 8:1.

[44] Jacob Milgrom understands *karet* as either "extirpation of the entire line of the offender," or the inability to enter the afterlife after death; see Milgrom, *Numbers*, 405–8. For other treatments of this issue, see Baruch A. Levine, *Leviticus* (JPS Torah Commentary; Philadelphia: Jewish Publication Society, 1989); and Propp, *Exodus 1–18*.

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one views *karet* as administered by God or by the courts, it stands as one of the harshest penalties in the biblical legal system.

Haim Cohen and Aharon Shemesh both argue that the ancient rabbis could not morally accept a religious reality in which every willful sin would incur the *karet* penalty.[45] Such a system would inflict a devastating religious and psychological wound on the entire Jewish community. The Tannaim thus constructed a legal loophole of allowing thirty-nine lashes to substitute for *karet*. In order to accomplish this legal revolution, the rabbis needed to establish two principles. First, theological sins would not only incur the *karet* penalty, but would also incur lashes. To achieve this new punitive principle, the rabbis exegetically broadened the application of lashes far beyond its local biblical context—where lashes are only administered in a monetary "dispute between men" (Deut 25:1)—to include any violation of a negative prohibition.[46]

The second restructuring occurs when the Mishnah asserts that not only does one receive lashes for violating a negative prohibition, but that these lashes also exempt one from the harsher punishment of *karet*:

> All who have incurred [the penalty of] extinction [*karet*] obtain remission [נפטרו] from their punishment of extinction upon being flogged. For it is said: [*He may be given up to forty lashes, but not more, lest being flogged further, to excess,*] *your brother would be degraded before your eyes* [ונקלה אחיך לעיניך] [Deut 25:3]—which shows that whoever receives the flogging is [considered] "your brother" [מי שלקה הרי הוא אחיך]. These are the words of R. Hananiah b. Gamliel. (*m. Mak.* 3:15)[47]

To preserve human dignity, Deut 25:3 cautions that no more than forty lashes should be administered, lest the bodily disfigurement be too severe and "your brother . . . be degraded [ונקלה] before your eyes." By swapping the letters ק and ל, however, R. Hananiah b. Gamliel rereads the word not as קלה, "degraded," but לקה, "lashes." He thus reinterprets ונקלה אחיך לעיניך not as a rationale for limiting the number of lashes, but as a new and separate teaching: "Whoever receives lashes [מי שלקה] is [considered] your brother."[48] In a sense, by receiving lashes, a person rejoins the

[45] Haim H. Cohn, "The Elements of Jewish Penology," in *Proceedings of the Fifth World Congress of Jewish Studies: The Hebrew University, Mount Scopus, Givat Ram, Jerusalem, 3–11 August 1969* (ed. Avigdor Shinan and Pinchas Peli; 5 vols.; Jerusalem: World Union of Jewish Studies, 1972) 3:191–202, at 200–1 [Hebrew]. Cohn writes that "the Rabbis perceived that the threat of death by the hands of God was a punishment that was too difficult to carry, and even though it was a divine punishment, it was a punishment that was inhumane" [translation mine]. Cohn sees this loophole as one example of the "humanization of punishment" in the rabbinic period (99). Also see Shemesh, *Punishments and Sins*, 91–93.

[46] *Sifre Deut.* 286.

[47] I am translating from the Kaufman A MS 50 (Budapest) version of the Mishnah. A similar statement is found in the *Sifre*: "*Then your brother will be degraded before your eyes* [Deut 25:3]: Hence the sages said: As soon as those who are liable to the penalty of excision are beaten, they are immediately released from this liability" (*Sifre Deut.* 286).

[48] See also *b. Meg.* 7b: "Since he receives lashes [כיון שלקה], he is like your brother."

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Jewish fraternity. Since in numerous places Scripture describes those who have incurred *karet* as "being cut off from their people,"[49] R. Hananiah regards lashes as a method by which a person can return to the "brotherhood of Israel" and thus be exempt from *karet*.

Whereas this mishnah bases the doctrine that "lashes exempt one from *karet*" on formal, value-neutral hermeneutical principles, the *Tanhuma* explains the development in a different way. For the composers of the *Tanhuma*, this changed theory of punishment does not come from a mere play on words, but from a value-charged midrashic interaction where an impassioned Moses protests God's too-harsh penalty of *karet*. After citing the Mishnah's exegetical teaching, the *Tanhuma* adds:

> They [Israel] came to the desert and found one gathering wood on the Sabbath, but Moses did not know by what death he should be killed.[50] However, *they left him in custody* [*while waiting for a clarification from the mouth of the Lord*] [Lev 24:12; also see Num 15:34]. The Holy One said: *The person shall surely be put to death; stone him with stones outside the camp* [Num 15:35]. Immediately, Moses our teacher rose in prayer and said: Master of the World, if an Israelite has sinned, should he in fact be stoned [כך הוא נסקל]? If so, then they [Israel] would be totally destroyed [מתכלין]. Make another enactment [תקנה] for them. He [God] said to him: Let him be scourged with forty lashes, and he will have fulfilled his obligation [יצא ידי חובתו].[51] (*Tanhuma*, Numbers 23, according to MS Cambridge 1212)[52]

According to the *Tanhuma*, Moses challenges God's ruling that those committing certain grave sins, such as desecrating the Sabbath, should be stoned. While he approaches deferentially, praying and prefacing his remarks with the submissive invocation "Master of the World," Moses actually comes in confrontation: "If an Israelite has sinned, should he in fact be stoned? If so, then [Israel] would be totally destroyed." In this vignette, Moses boldly questions God and his decision to establish the penalty of stoning for Sabbath violation, since this would result in the death of countless Israelites. Seeing stoning as devastatingly harsh and concerned about the viability of the Jewish people, Moses pleads with God to "make another enactment [תקנה] for them." Partially conceding to the critique, God responds: "Let him [the sinner] be scourged with forty lashes, and he will have fulfilled his obligation."[53]

[49] See, for example, Lev 17:10, 18:29, 20:3, and 20:6.

[50] This line draws from an earlier tradition found in *b. B. Bat.* 119a.

[51] Also see *Tanhuma* (Buber), Numbers 28.

[52] The rabbinic manuscripts in this study have been obtained from the online Historical Dictionary Project of the Academy of the Hebrew Language (accessed February 2012, http://hebrew-treasures.huji.ac.il) and from the Sol and Evelyn Henkind Talmud Text Databank of the Lieberman Institute of Talmudic Research.

[53] As it stands, the version of this *Tanhuma* text is problematic because the rabbinic principle that lashes can substitute for the death penalty only applies to death at the hands of God (like *karet*) but not to a capital punishment administered by a human court (like stoning). Moreover, in Scripture, the gatherer of wood is eventually killed; his life is not spared through receiving lashes. Sensing

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Whereas the Mishnah derives our principle of exemption through an objective and formal exegetical teaching, the *Tanhuma* recasts it as the result of Moses's critique of the values of the original divine justice system. In other words, the Mishnah sees the "principle of exemption" as deriving from the objective will of God (as revealed through exegesis) and as having been given simultaneously with the laws of *karet*; our *Tanhuma* text, on the other hand, sees God's revised and perfected penal system, with its alternative to the death penalty, as developing through human input and confrontation.

Genocidal War

The Pentateuch presents two different accounts of the Israelite conquest of the Amorite kingdom in Transjordan. In Num 21:21–35, the Israelites conquer the Amorite territory as an act of self-defense when Sihon, the Amorite king, refuses to let Israel pass through his land (v. 23). In Deut 2:24–37, however, the picture is more complex. As in the Numbers account, Sihon refuses to let Israel pass peacefully through his country (v. 26–30), but, unlike in the Numbers account, his refusal is orchestrated by God, who "stiffened his [Sihon's] will and hardened his heart in order to deliver him [Sihon] into your [Israel's] power" (v. 30). In addition, before Moses makes his request for peaceful passage (v. 26–29), God commands him: "Set out across the wadi Arnon! See, I give into your power Sihon the Amorite, king of Heshbon, and his land. Begin the occupation: engage him in battle" (v. 24).[54] In this passage, the occupation of Sihon's territory is described not as the result of a war of self-defense but as part of an offensive conquest of the land of Canaan. Finally, in contrast to the Numbers account, Deuteronomy applies the principle of

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this problem, I posit that some scribes (as reflected in *Tanhuma* MS Parma 261 and MS Jerusalem 597) replaced the vague phrase "and he will have fulfilled his obligation [חובתו]," as it appears in MS Cambridge 1212, with the more concrete and normative formulation "and he will have fulfilled his *karet* [penalty] [כריתן]." Through this rewording, the scribes may have been attempting to cover up the seemingly problematic claim that lashes would even exempt one from being stoned. Thus, to make sense of the *Tanhuma* formulation as it appears in MS Cambridge 1212, we need to reconstruct the dialogue in the following way: Moses complains that God's penal system is too destructive, as so many sins incur the death penalty (either at the hands of human courts or of God). In response, God constructs a new penal system that, while not diminishing the number of humanly imposed death penalties (such as stoning), will drastically diminish the application of the *karet* penalty. Not surprisingly, when *Num. Rab.* I 5:4, a post-*TY* medieval midrash, rewrites the *Tanhuma* text, it replaces the exemption of stoning with the *karet* penalty to bring the confrontational narrative in line with normative Jewish law: "When the Holy One, blessed be he, defined for Moses the thirty-six transgressions mentioned in the Torah that are punishable with *karet*, Moses said to the Holy One, blessed be he: 'Sovereign of the Universe! If men commit any of these sins shall they be so punished?' So the Holy One, blessed be he, said to him: 'Let them receive the forty stripes and escape the penalty of excision'" (*Num. Rab.*, Munich 97, 1418). For more on the reliance of *Numbers Rabbah* on *Midrash Tanhuma*, see Hananel Mack, "Midrash Numbers Rabbah Part One" (Ph.D. diss., Hebrew University, 1991) [Hebrew].

[54] This command is repeated in v. 31.

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herem (חרם), or annihilation of the entire population, to Sihon's kingdom: all their men, women, and children are killed, "leaving no survivor" (v. 34).

Critical Bible scholars solve these conflicting accounts by arguing that they reflect two different traditions on the status of Transjordan, an area that included Sihon's territory.[55] The older tradition, represented by Numbers, treats this area as outside of the promised land. As a result, Israel's conquering of Sihon's kingdom can only be justified as an act of self-defense, rather than as part of the rightful occupation of their given lands. By contrast, the later tradition (represented in part by Deuteronomy) views Transjordan as an integral part of the promised land.[56] Accordingly, like the other territories within the land of Canaan, this area falls under the divine command of occupation.[57] However, given that the Numbers narrative had already emerged as an established tradition, the Deuteronomic draftsmen attempted to retain it alongside the new tradition. Both traditions are thus reflected in Deuteronomy, albeit with some tension and inconsistency. On the one hand, echoing the older Numbers view, Moses sends "messengers . . . of peace" to request that Sihon allow Israel to pass (Deut 2:26). On the other hand, representing the newer view, God commands Moses to wage an offensive war to occupy Sihon's territory (Deut 2:24), to conquer this integral part of the promised land. It also seems that the Deuteronomic editor attempted to integrate the inconsistent accounts by claiming that the request for peaceful passage through Sihon's area merely served as a pretext for the ultimate war of conquest. Because God had already intended to harden Sihon's heart (Deut 2:30), Moses's request for a safe passageway would inevitably be futile, although it did provide Israel with justification for their military offensive. Finally, since the newer tradition sees Sihon's territory as part of the promised land, the Deuteronomic laws of *herem*, annihilation of the entire population,[58] apply here as well.[59]

As the ancient sages of the *Sifre* (ca. third century) assumed single authorship of Deuteronomy,[60] they could not solve the textual gap as critical scholars do. Instead, they regarded the inconsistency between God's desire for war (Deut 2:24) and Moses's call for peace (Deut 2:26) as an intentional moral teaching:

[55] See Moshe Weinfeld, *Deuteronomy 1–11: A New Translation with Introduction and Commentary* (AB 5; New York: Doubleday, 1991) 173–78.

[56] In this analysis, I follow those Bible scholars who see the Deuteronomic account as later than the Numbers account. For the opposite view, see John van Seters, "The Conquest of Sihon's Kingdom: A Literary Examination," *JBL* 91 (1972) 182–97.

[57] Weinfeld argues that this new tradition was established sometime during the reign of Hezekiah or Josiah (Weinfeld, *Deuteronomy 1–11*, 177). On the status of Transjordan in rabbinic literature, see *Sifre Num*. 159.

[58] The laws of *herem* are delineated in Deut 7:2, 7:26, and 20:17. For more on *herem* as a distinctly Deuteronomic legal doctrine, see Fishbane, *Biblical Interpretation*, 200–1.

[59] Ibid., 207–8.

[60] I exclude the last few verses in Deuteronomy, since even some rabbinic texts acknowledge its non-Mosaic authorship.

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> Great is peace, for even in a time of war people need peace, as it is said: *When you draw near a city to do battle against it, you will offer peace to it* [Deut 20:10]. [*See, I give into your power Sihon the Amorite, king of Heshbon, and his land. Begin the occupation: engage him in battle. . . .*] *So I sent messengers from the wilderness of Kedemoth to Sihon the king of Heshbon with words of peace* [Deut 2:26]. (*Sifre Num*. 42)[61]

Highlighting the importance of peace by noting that it appears in the context of war, this early midrash reads the Sihon narrative of Deut 2:24–35 as following the legal and ethical norms prescribed in Deut 20:10–18: war is only mandated when the enemy refuses a peaceful overture. The *Sifre*, then, harmonizes God's call for war (Deut 2:24) and Moses's call for peace (Deut 2:26) by implicitly claiming that God's call to war is predicated on the enemies' refusal to accept a peace deal (Deut 2:30). Although not stated explicitly in Scripture, Moses's sending of peaceful messengers (Deut 2:26) fully complies with God's will. While God chooses to harden Sihon's heart (Deut 2:30), the formal call for peace is nevertheless required to preserve the principle of seeking peace before waging war (Deut 20:10–18).

Rather than using this earlier hermeneutic of harmonization, a *TY* midrash solves the textual inconsistency by again generating a confrontation between Moses and God:

> Rabbi Levi said . . . in the days of Sihon and Og, God said: Go and fight with him and close up his water canal; but Moses did not do so [ומשה לא עשה כן], as it says, *and I will send messengers* [Deut 2:26]. God said: By your life, you have done appropriately[חייך עשית כראוי], for I agree [מסכים] with your actions. Therefore Moses warned the Israelites and said to them: *When you come to a city to fight against it, you shall call forth peace* [Deut 20:10]. (*Tanhuma*, Shoftim 19)

Instead of resolving the discrepancy between verses 24 and 26, the *Tanhuma* exploits it to claim that by sending messengers of peace, Moses *defies* God's wishes.[62] The inconsistency reflects two different points of view and an initial dispute between God and Moses: God commands war, yet Moses seeks peace. Significantly, the *Tanhuma* has God concede to Moses's approach and affirm a new policy of "negotiation first" for any future war. This new ethical approach to battle, codified in the biblical passage "when you approach a town to attack it, you shall offer it terms of peace" (Deut 20:10), reflects a divinely sanctioned Mosaic revision of God's earlier decree that mandated war *without* first seeking peace (Deut 2:24).

Although in this *Tanhuma* text, we are not told how—or even whether—Moses defends his act of defiance, another *Tanhuma* (Buber) text fills in this gap:

[61] See also *Midrash Tanna'im* 20:10.

[62] For other treatments of this *Tanhuma* text and its parallels, see Fisch, "Religious Crisis," 549–51; and Adiel Schremer, "Between Radical Interpretation and Explicit Rejection," in *Renewing Jewish Commitment: The Work and Thought of David Hartman* (ed. Avi Sagi and Zvi Zohar; 2 vols.; Jerusalem: Machon Shalom Hartman, 2001) 2:759–63 [Hebrew].

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> *This is the law of the sacrifice for peace offerings* [Lev 7:11]: This text is related to [*Wisdom's*] *ways are ways of pleasantness, and all her paths are peace* [Prov 3:17]. Whatever is written in the Torah is written (as an expression of) [meaning, to establish] peace.
>
> You find that the Holy One cancelled the decree [שביטל הקב״ה את הגזירה] [of utter destruction] for the sake of peace. When? When the Holy One said to Moses, *When you approach a town to attack it, you shall offer it terms of peace* [Deut 20:10].[63]
>
> Now concerning the whole matter, the Holy One had said that he would destroy them, as stated, *No, you shall utterly destroy them* [Deut 20:17]. However, Moses did not do so. Rather he said: Am I to go and smite them now [עכשו אני הולך ומכה]? I do not know[64] who has sinned and who has not sinned [איני יודע מי חטא ומי לא חטא]. Instead, I will come to them in peace, as stated, *Then I sent messengers from the desert of Kedemoth unto King Sihon of Heshbon with words of peace, saying. . .* [Deut. 2:26]. When he [Moses] saw that he [Sihon] did not come in peace, he smote him, as stated, *So they smote him, his children, and all his people* [Num 21:35].
>
> The Holy One said to him: I myself told you, *No, you shall utterly destroy them* [Deut 20:17]. Now you have come to them in peace. By your life, just as you have said, so will I do [חייך כשם שאמרת כך אני אעשה]. Thus it is stated: *When you draw near to a city to fight against it, you shall offer terms of peace unto it* [Deut 20:10]. Therefore, it is so stated: [*Wisdom's*] *ways are ways of pleasantness, and all her paths are peace* [Prov 3:17]. (*Tanhuma* [Buber], Tsaw 5)

Moses here justifies his defiance by acknowledging the moral legitimacy of his own ethical sensibilities. He asks God, "Am I to go and smite them now? I do not know who has sinned and who has not sinned [איני יודע מי חטא ומי לא חטא]! Instead, I will come to them in peace." Rejecting God's command, Moses seeks peace with Sihon's kingdom because not all of its people are sinners. He wishes to avoid a war that would inevitably cause the death of the innocent along with the guilty. As in the previous *TY* text, God accedes to Moses's ethical sensibilities and ratifies this less militant approach into law (Deut 20:10). Indeed, as in the case of inherited punishment, one version of this midrash has God telling Moses "you have taught me something [למדתני]."[65]

To sum up: In contrast to the earlier *Sifre* teaching, which harmonizes the textual inconsistency between Deut 2:24 and 2:26 with a moral teaching, these *TY* texts resolve the problem by generating a Mosaic protest against God.[66] The textual gap is not smoothed over, but remains as a reflection of two opposing views. Moreover,

[63] This translation follows Buber's (p. 16 n. 35) emendation. The manuscript erroneously cites the verse from Deut 20:19.

[64] The words "I do not know" do not appear in the *Tanhuma*, according to MS Cambridge 1212.

[65] *Num. Rab.* II (*TY*) 19:33, according to MS Paris 150.

[66] To support further the claim that Moses's defiance of God over the Sihon war is an innovation of the *TY*, compare *Lev. Rab.* (Vilna) 9:9 to *Tanhuma* (Buber), Huqqat 51.

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these *TY* passages do not limit the implications of Moses's defiance to the case of Sihon: rather, they see it representing a transformative moment in God's attitude towards war and peace. Before Moses's confrontation, God prefers war to peace, but now—after Moses's defiant and successful critique—God prefers peace to war in conflicts between Israel and its enemies.

Inadvertent Killing and the Cities of Refuge

The laws of the cities of refuge for inadvertent killers are delineated in Num 35:9–34 and Deut 19:1–13. These places of asylum grant protection to one who has killed unwittingly, protecting such from the victim's next of kin, the "blood-avenger" (גאל הדם), who could otherwise legally kill the inadvertent murderer with impunity. The cities of refuge thus significantly curtail the ability of the victim's family to avenge the death of their loved one, giving the unintentional killer an impenetrable safe space. Numbers 35 records this law:

> 9) The Lord spoke further to Moses: 10) Speak to the Israelite people and say to them: When you cross the Jordan into the land of Canaan, 11) you shall provide yourselves with places to serve as cities of refuge [ערי מקלט] to which a manslayer who has killed a person unintentionally may flee. 12) The cities shall serve you as a refuge from the avenger [מגאל], so that the manslayer may not die unless he has stood trial before the assembly. (Num 35:9–12)

In this account (as well as in Deuteronomy), the right of the blood-avenger to retaliate against his or her relative's killer is presumed (v. 12), although this right is not stated explicitly as a scriptural law. In apparent response to this practice, God commands Moses to establish the cities of refuge to temper the unbridled power of the blood-avenger (v. 11).

This seeming temporal discrepancy between the presumed law of the blood-avenger and the innovation of the cities of refuge may have motivated the *TY* to construct the following backstory:

> Israel declared before God [after being informed of the blood-avenger law]: Master of the Universe, is this an example of prolongation of days? A man kills another unwittingly and the avenger of blood pursues him to kill him, and both die before their time? God thereupon answered Moses: By your life, Israel speaks rightly [חייך יפה הן מדברין]. Go and set aside for them cities of refuge, as it is said, *Then Moses separated*. (*Deut. Rab*. 2:18)

According to the midrash, the law sanctioning "blood-vengeance" predates the divine decision to establish the cities of refuge. Initially, the victim's next of kin had the unrestricted right to avenge their relative's killer. But this unmitigated power in the hands of the blood-avenger seemed unjust to Israel; it contradicts the biblical principle that long life awaits those who follow God's commandments. Why should both the victim and the inadvertent killer die before their times? Thus, Israel argued, God should create a legal mechanism to protect the life of the innocent inadvertent

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killer. Recognizing the justness of their complaint with the words "Israel speaks rightly [חייך יפה הן מדברין]," God commands Moses to limit the rights of the blood-avenger with the cities of refuge. This divine decision curtails the capacity of the victim's next of kin to retaliate—and thus better preserves the sanctity of human life.[67] In this *TY* text, God only recognizes the need to amend morally a problematic law after a human protest. Not surprisingly, this reading has no parallels in pre-*TY* rabbinic literature; no other texts assume that the blood-avenger had ever been granted the unconditional right to kill the inadvertent killer. This *TY* text thus introduces two new ideas. First, it maintains that the laws surrounding unintentional killing evolved in two stages, with the law of the blood-avenger preceding the cities of refuge. Second, and more importantly for our purposes, it posits that a human ethical complaint propelled God to establish those cities of refuge.

Varieties of Divine Concession

The four cases presented above illustrate how *TY* authors reimagined the origins of foundational Jewish principles and beliefs. In the Bible God rejects inherited guilt (Ezekiel 18), requires Israel to seek peace before war (Deuteronomy 20), and institutes the cities of refuge (Numbers 35). Later, the Mishnah interprets the Bible to permit lashes to substitute for *karet*. Remarkably, however, instead of regarding these moral principles as emerging independently from God's insight, the authors of the *TY* midrashim imagine God as adopting these principles only after a human protest.

These *TY* narratives use different literary methods to illustrate the divine concession. The most subtle form—as seen in the case of lashes substituting for *karet*—has no explicit concessional language. When Moses demands that God "make another enactment for them," God merely declares, "Let him be scourged with forty lashes," without acknowledging the significance of this concession. The context, however, strongly suggests that God's amendment only emerges as a direct response to Moses's challenge; seemingly, without it, no legal loophole would have emerged. While many such implicit concessions appear in the *TY*,[68] the most striking example occurs when the Israelites complain to God that he unfairly

[67] Deuteronomy 4:40 declares that those who keep God's commandments will secure a long life (תאריך ימים); in the very next verse (4:41), Moses establishes three cities of refuge in Transjordan. As rabbinic hermeneutics often seeks deeper connections between neighboring passages (and certainly where the second passage begins with "then [אז] Moses set aside three cities . . ."), the *TY* author assumes that the notion of long life (for Torah observance) stated in v. 40 caused the establishment of the places of shelter presented in v. 41. That is, the Israelites exploit the value of long life to challenge the problematic unconditional right of the blood-avenger to kill the inadvertent murderer.

[68] For example, Abraham's concubine Hagar reprimands God over the welfare of her child, Ishmael, and then God "immediately" (מיד) saves the boy (*Tanhuma*, Wayetse' 5). God also accepts Sarai's complaint that God has neglected her, and forthwith God swears (חייך) that she will suffer no more harm (*Tanhuma*, Lekh lekha 5). Elsewhere, after Moses berates God for neglecting his promise to redeem Israel *personally*, God accepts the critique and swears (חייך) that he will stay true to his prior commitments (*Exod. Rab.* II [*TY*] 15:14). While these *TY* cases have God acquiesce

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punishes them for sins caused by the divinely created "evil inclination"; they then blame God for all human sin. In response, God appears to accept the critique and immediately thereafter promises to remove the "evil inclination."[69] Not surprisingly, no such protest or concession appears in earlier texts.[70]

Other *TY* expressions of God's acquiescence are more explicit, such as those that have God complimenting the protester with the phrase "you have spoken well [יפה]" before retracting. We encountered this form in the cities of refuge discussion, and it also appears in a *TY* elaboration of Numbers 16. In the biblical account of Korah's rebellion, God tells Moses and Aaron to "stand back from this community [העדה] that I may annihilate them in an instant!" (Num 16:21). Responding to God's destructive impulse, Moses and Aaron call out: "When one man sins, will You be wrathful with the whole community?" (Num 16:22). While Scripture does not have God formally conceding, it does, in the very next verse, have God telling Moses: "Speak to the community and say: Withdraw from the abodes of Korah, Dathan, and Abiram" (Num 16:23). Not surprisingly, instead of neutralizing God's troubling impulse, the *TY* dramatizes both the human critique and the divine concession:

> They (Moses and Aaron) said to him: Sovereign of the Universe! In the case of a mortal king, if a province rebels against him and rises and curses the king or his deputies, even if only ten or twenty of them have done so, he sends his legions there and carries out a massacre [אנדרלמוסיא], slaying the good with the bad, because he cannot tell which of them has rebelled and which has not, or who has honored the king and who has cursed him. You, however, know the thoughts of man and what the hearts and reins counsel. You discern the inclinations of your creatures and know which man has sinned and which has not [ואתה יודע מי חטא ומי לא חטא], who has rebelled and who has not. You know the spirit of each and every one. Accordingly it says, *The God of the spirits of all flesh, when one man sins, will you be wrathful with the whole community*? [Num 16:22]. The Holy One, blessed be he, said to them: You have spoken well [יפה אמרתם]! I shall make it known who has sinned and who has not sinned [אני מודיע מי חטא ומי לא חטא]. (*Num. Rab.* [*TY*] 18:11)

This *TY* passage heightens the confrontational rhetoric of Numbers 16 by having Moses and Aaron tell God that while human kings sometimes adopt a policy of communal punishment because they cannot detect the guilty party, an omniscient God has no justification for killing the many for the sins of the few.[71] Notably, the

to a moral challenge, the language adopted to describe the concession is relatively moderate. After hearing the critiques, God merely proclaims—sometimes with an oath (חייך) and sometime with urgency (מיד)—that he will fix the problem.

[69] See *Exod. Rab.* II (*TY*) 46:4, according to MS Jerusalem 5977.

[70] For a full analysis of the moral anxieties surrounding the "evil inclination" in rabbinic literature, see Weiss, "Confrontations with God," 187–203.

[71] See *Lev. Rab.* (Vilna) 23:9 and *Tanhuma* (Buber), Numbers 32.

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primary phrase that Moses uses to critique God—"you know which man has sinned and which has not [ואתה יודע מי חטא ומי לא חטא]"—is virtually identical to the *TY* phrase used by Moses to protest God's handling of the Sihon war: "I do not know who has sinned and who has not sinned [איני יודע מי חטא ומי לא חטא]." More importantly, in contrast to Scripture, this midrash has God formally conceding with the phrase: "You have spoken well [יפה אמרתם]." By using this formulation, *TY* dramatically presents Moses and Aaron as God's moral teachers. Here, too, God only commits himself to the ethical principle of individual responsibility after a human protest. A third *TY* passage appropriates the formulation "you have spoken well" when retelling how Moses challenges God not to destroy Israel after the golden calf incident. The midrash states that "God could not respond [לא היה יכול להשיבו]" to Moses's forceful arguments; to dramatize the concession, God then declares: "You have spoken well [יפה אמרת]."[72]

Another explicit formulation of divine retraction can be found in a *TY* rereading of Genesis 30. The midrash has a pregnant Leah, wife of the patriarch Jacob, angrily "chiding" (מתרעמת) God for failing to give more than one male child to her sister Rachel. Accepting the critique, God miraculously transforms Leah's fetus from a male to a female, declaring: "[Since] you [Leah] are merciful [to your sister], so I shall be merciful to her [את רחמנית ואף אני מרחם עליה]."[73] In contrast to the classical theological maxim of *imitatio dei*, where humanity imitates God's ethical traits ("just as God is merciful, so shall you be merciful"[74]), here, inversely, God learns to be merciful from a human being—*imitatio hominis*.[75] Remarkably, through her theological protest, Leah becomes an ethical role model for divine behavior.[76]

The most dramatic *TY* expression of concession occurs when God uses the didactic language of "teaching" (למד), such as in the examples of inherited punishment and the Sihon war presented above; in these instances, God tells Moses: "You have taught me something [למדתני]." While the *TY* uses this expression in several places,[77] one in particular stands out. In a *Tanhuma* rewriting of Genesis 18,

[72] *Exod. Rab.* II (*TY*) 44:9.

[73] *Tanhuma*, Wayetse' 8.

[74] *b. Shabb.* 133b.

[75] On the notion of *imitatio hominis* in rabbinic literature, see David Stern, *Midrash and Theory: Ancient Jewish Exegesis and Contemporary Literary Studies* (Rethinking Theory; Evanston, Ill.: Northwestern University Press, 1996) 73–94.

[76] Fisch correctly notes that "God [here] is depicted as having erred in indeed giving Leah a seventh male child. . . . God is astonishingly described as being corrected on moral grounds, admitting his mistake, and righting the morally flawed situation for which He was responsible. . . . God, the *Tanhumah* all but states openly, is simply *not* the all-perfect judge, and should not be treated as such by anyone!" (Fisch, "Religious Crisis," 558–59 [italics in original]). Leah's sister Rachel also becomes an ethical role model for God in proem 24 of *Lam. Rab.* (and *S. Eli. Rab.* 30/28). For other instances in rabbinic literature where God learns from humans how to behave ethically, see *Pesiq. Rab Kah.* 15:7 (where God learns to act ethically from the evil Nebuzaradan) 16:5; *Eccl. Rab.* 3:16 (where God learns from Nebuchadnezzar how to be merciful); and *Pesiq. Rab.* 30.

[77] See *Tanhuma* (Buber), Bo' 8 and the first example in *Num. Rab.* II (*TY*) 19:33, according to MS Paris 150.

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Abraham argues with God that his planned destruction of Sodom and Gomorrah will lead the nations of the world to say "that he kills all the generations with cruelty [במדת אכזריות]. He destroyed the generation of Enosh [and] the generation of the flood [with cruelty]," and now God "does not abandon his trade [and continues to kill with cruelty]." In response, instead of berating Abraham, God tells him: "And if it should cross your mind that I [in fact] acted unfairly, [then, Abraham] teach me and I will do accordingly [ואם תעלה על דעתך שלא עשיתי כהוגן למדני ואני עושה]." God, remarkably, announces his willingness to concede his moral errors should Abraham's "teachings" convince him.[78]

Factors and Contexts

We now turn to the crucial question of explanation. Why is the *Tanhuma* material decidedly more confrontational than its rabbinic predecessors? Why did this motif of human protest followed by divine retraction reach its zenith in sixth- and early seventh-century Palestine? I would propose four possible contributing factors or contexts to explain the motif's emergence. First, *TY* authors might have naturally developed the confrontational idea from earlier midrashim, where it appeared in embryonic form. Thus, rather than attributing its appearance to external (non-Jewish) influences alone, we should look internally for earlier rabbinic models and paradigms as well. Indeed, in another study, I have shown how *TY* texts radicalize the confrontational topos already found in pre-*TY* texts.[79]

Second, we could also attribute the intensification of this motif, at least to some extent, to what Jacob Elbaum calls the "radical innovation" of *Tanhuma* literature: *Tanhuma* midrash is less interested in terse exegetical comments and solutions and more interested in producing an elongated and continuous rewritten biblical narrative. This literary transformation would certainly account for the privileging of narrative solutions (confrontational ones included) over exegetical ones when resolving scriptural problems. This hypothesis, however, does not explain why so many narrative solutions are specifically confrontational and concessional. Could not the *TY*'s authors have drawn from other types of narratives? Moreover, these protests and retractions are not religiously neutral; they are theologically daring and potentially subversive, contrasting with the many rabbinic texts that prohibit one from challenging or critiquing the divine. In some traditional texts, God can never be mistaken or change an opinion in areas of justice and morality.[80] While the evolution in literary style is significant, the *TY*'s privileging of narrative cannot sufficiently explain the emergence of this theological motif.

[78] See also *Gen. Rab.* (Vilna) 49:10.

[79] See Weiss, "Confrontations with God," 185–243. Jeffrey Rubenstein makes a similar argument when demonstrating how *TY* literature develops in larger detail mythical statements found in pre-*TY* texts (Rubenstein, "Mythic Motifs").

[80] See, for example, *Sifre Deut.* 307; *Mek. R. Ishmael*, Wayehi 6 and Yitro 2; *Gen. Rab.* (Vilna) 28:4; *Tanhuma* (Buber), Wayetse' 5; and *Pesiq. Rab.* (*TY*) 31.

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Therefore, to develop this point further, it ought to be noted that *TY* texts do not merely privilege narrative over exegesis, but that they generate narratives of a dramatic and dialogical nature. There is a certain theatrical quality to the *TY* material, building suspense to produce a sensational and vivid retelling of the biblical story. Jacob Elbaum alludes to this characteristic when noting how *TY* passages add "new dramatic details" to the older narratives, and how they use "dramatic additions" or linking phrases such as "immediately" or "at that time" to create a continuous narrative. These literary tools keep the story line moving, vibrant, and exciting. We might posit then that the widespread use of human confrontations and divine concessions in *TY* literature is merely one instantiation of this general *TY* tendency. Conflict and change are integral components of drama as they elicit tension and intrigue, captivating and edifying the audience of readers. The theatrical quality of the *TY* also expresses itself through transforming earlier exegetical teachings or narrative story lines into first-person dialogues.[81] Indeed, the performative dimension of the *TY* can most starkly be seen in its framing: at the start of most sections, the audience poses a legal query to the spiritual leader with the phrase "let our master teach us [*yelammedenu*]," which leads the teacher cleverly to link the legal answer with the weekly Torah portion. The prose *TY* literature is not the only sixth- or seventh-century Jewish exegetical writing to evince a dramatic theatricality; as Laura Lieber has recently shown, Aramaic poetry of that period does so as well.[82]

Another contextual parallel to this literary quality can be found in fourth- to sixth-century poetic hymns and homilies produced by Syriac Christians, such as Ephrem the Syrian (306–373), Narsai (fifth century), Jacob of Serugh (451–521), and Romanos the Melodist (sixth century), who, according to Sebastian Brock, place "dramatic dialogues" of "dispute" into the mouths of rivaling biblical figures (such as Isaac and Ishmael or Abraham and Sarah).[83] In many instances, one of the characters seeks to persuade the other to adopt a theological or ideological position that has been rejected at the outset.[84] Like our dramatic *TY* dialogues, these Syriac

[81] For example, compare *Lev. Rab.* (Vilna) 20:1 to *Tanhuma* (Buber), Wa'ethanan 1; compare *Sifre Deut.* 349 to *Tanhuma* (Buber), Huqqat 32; and compare *y. Ta'an.* 3:4 (66:3) to *Exod. Rab.* II (*TY*) 46:4.

[82] Laura S. Lieber, "The Play's the Thing: Theatricality in Aramaic Piyyutim" (conference paper, International Meeting of the Society of Biblical Literature, Amsterdam, July 25, 2012).

[83] Sebastian Brock, "The Dispute Poem: From Sumer to Syriac," *Bayn al-Nahrayn* 7.28 (1979) 417-26; idem, "Dialogue Hymns of the Syriac Churches," *Sobornost* 5.2 (1983) 35–45; idem, "Dramatic Dialogue Poems," in *IV Symposium Syriacum, 1984: Literary Genres in Syriac Literature* (ed. H. J. W. Drijvers et al.; OrChrAn 229; Rome: Pontificium Institutum Studiorum Orientalum, 1987) 135–47; and idem, *From Ephrem to Romanos: Interactions between Syriac and Greek in Late Antiquity* (Variorum Collected Studies Series 664; Aldershot, U.K.: Ashgate, 1999) 39–51, 109–19.

[84] Brock, "Dialogue Hymns," 44, 45.

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poems and homilies seek to edify their audience and readers and to communicate their fundamental religious values.[85]

Fourth, and finally, the widespread appearance of confrontations and divine retractions in *TY* midrashim might be linked to the Greek cultural notion of *parrhesia*: literally translated as "frankness of speech," it refers to a person's right to express his or her opinions. Arnaldo Momigliano explores this term's connotations in different periods.[86] In the fifth and fourth centuries B.C.E., it only carried a public and political sense: every Greek citizen in a democracy should have the freedom to express his opinions. By the turn of the first millennium, however, the term carried a personal and moral connotation, referring to the idea that a person should be frank and honest with a friend. Because an act of *parrhesia* expressed a relationship of privileged intimacy and true friendship, flatterers and sycophants were avoided, and those friends who embodied *parrhesia* were valued. In many Greek philosophical sources, *parrhesia* was used to refer to unequal relationships, such as between ruler and citizen. David Konstan notes that "Plutarch draws almost all of his examples [of *parrhesia*] from the sphere of kings and courtiers, and it is usually the inferior party whose frankness is at issue."[87] In fact, late antique emperors sought advisors who would be prepared, when necessary, to offer honest and critical advice. And the person who assumed this role, the *parrhesiastes*, became an exalted and celebrated figure in the Greco-Roman world. Relevant to our purposes, Peter Brown highlights a critical transformation: in the first few centuries of the Common Era, the philosophers practiced the moral act of *parrhesia*. They candidly confronted the emperor, tamed his anger, and steered him in the right direction. By the fifth century, however, the Christian holy man emerged to replace the pagan philosopher in this role. It was now the bishops and monks who used their unique moral authority to confront the ruler, constrain him, and, as champions of the poor and downtrodden, courageously communicate their grievances to the emperor.[88] In addition, Momigliano claims that during this latter period, "*Parrhesia* becomes the right and privilege of the [Christian] believer . . . [and] faith and suffering give [one] a right to speak out—even to God!"[89] True Christians not only had the right to speak out against their human friends, but even chastise God, the Christian friend of humanity.[90]

[85] According to Brock, the "Syriac dramatic homily tradition" is more developed in the 6th cent. than in the 5th cent., which would chronologically correspond to the *TY* material presented here (Brock, *From Ephrem to Romanos*, 82).

[86] Arnaldo Momigliano, "Freedom of Speech in Antiquity," in *Dictionary of the History of Ideas: Studies of Selected Pivotal Ideas* (ed. Philip P. Wiener; 5 vols.; New York: Scribner's Sons, 1973–1974) 2:252–63.

[87] David Konstan, *Friendship in the Classical World* (Key Themes in Ancient History; Cambridge, U.K.: Cambridge University Press, 1997) 104.

[88] Peter Brown, *Power and Persuasion in Late Antiquity: Towards a Christian Empire* (The Curti Lectures, 1988; Madison, Wis.: University of Wisconsin Press, 1992).

[89] Momigliano, "Freedom of Speech," 262.

[90] Konstan, *Friendship*, 167–73.

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This Byzantine phenomenon may provide us with a cultural parallel to the confrontational and concessional theme that emerges in late rabbinic literature. Palestinian Jews in the sixth and early seventh centuries did not have religious leaders perform *parrhesia*. They had no political power, and no emperors of their own. I argue that through biblical interpretation, the *TY*'s authors were able to produce Jewish holy men who became veritable figures of *parrhesia*. Moses and other biblical heroes were now anachronistically imagined to have assumed these roles. Furthermore, by generating these exegetical confrontations, the sages were able to produce for the community Jewish leaders who shared an intimate friendship with God. These Jewish leaders championed the underprivileged, confronting the King of kings with unusual courage. I speculate that the explosion of the confrontational motif in *TY* texts might be related to the emergence of the image of the Christian holy man who, just a century or so earlier, began boldly to challenge the emperor and, at times, even God. At this same time, Jews also produced religious figures of *parrhesia*—not in the world of history, but in the world of the exegetical imagination.

Theological Implications

The *TY* proclivity to generate human confrontations and divine concessions also has important theological implications. I note that this is not a systematic consistent theology à la Augustine or Origen, but rather an informal and fragmentary one, as is true of much rabbinic theology. In late rabbinic tradition, conceptions of God are not derived from logical principles; more often they are presented in narrative form and show the interpretive imagination of their authors. Indeed, this paper has demonstrated how the theological voice of the *TY* sages surfaces more through rewritten biblical narratives than through normative or propositional formulations.[91] Furthermore, while these unsystematic theologies are significant, they likely were not constructed for the purposes of theological education. Other textual, cultural, or literary dimensions and pressures might have fueled the production of these remarkable narratives, such as the wish to solve scriptural problems, the development of literary forms, or the desire for dramatic and entertaining narratives to excite the synagogue crowds.

Nonetheless, we should not sideline or discount the theological content embedded within these texts. The authors of these midrashim would not have sacrificed their foundational religious commitments—their conceptions of God—on the altar of literary form, rhetorical drama, or exegetical cohesiveness. As the

[91] "There are no abstract summations of rabbinic belief in philosophical categories. One can discern definitive trends in Jewish theology, but only by examining the concrete stories about interpersonal and divine-human encounters" (Richard L. Rubenstein, *The Religious Imagination: A Study in Psychoanalysis and Jewish Theology* [Brown Classics in Judaica; Indianapolis: Bobbs-Merill, 1968; repr., Lanham, Md.: University Press of America, 1985] 28; page numbers taken from the reprinted edition.)

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character of God would have been treated with utmost seriousness, these depictions of the divine should not be regarded as mere literary conceits but also as reflecting a bold religious sensibility in pre-Islamic Byzantine Palestine.

So what are the theological implications of these *TY* texts? Besides privileging the motif of divine protest, these texts present a striking vision of God: a deity who welcomes confrontation and at times revises his past decisions. In these narratives, the *TY*'s authors implicitly valorize the notion of confronting God. They never imagine God as castigating the character's irreverent act or as rejecting the details of the human critique. More importantly, the widespread motif of divine moral concessions in *TY* should move scholars to modify their assumption that the sages imagined God to be morally perfect. In the first half of the twentieth century, Arthur Marmorstein argued that the Tannaim adamantly defended the existence of an ethically infallible God to counter the Marcionite "heresy" that viewed the Hebrew Bible's God as ruthless and unjust.[92] Like Marmorstein, David Weiss Halivni asserts that the rabbis never consciously privileged their own sense of morality over a straightforward reading of a "difficult" biblical law, since this would imply that God's morality was in error—and the "Perfect Law Giver" could never err.[93] Despite challenging Halivni's sweeping claim by showing examples to the contrary—where Tannaim did rely on their moral intuitions to reinterpret problematic texts radically—Moshe Halbertal nevertheless, like Halivni, still maintains that the ancient rabbis conceived of God as a perfectly righteous being. For Halbertal, even those Tannaim who did grant immense interpretive weight to their own moral convictions (even to the point of countering the plain sense of Scripture) did so only because they confidently believed that their own ethical sensibilities mirrored those of God's.[94]

As the *TY* texts presented in this paper have God acquiesce to a number of moral critiques, they present a different conception of God than do the rabbinic texts adduced by the Marmorstein, Halivni, and Halbertal. Constructing a God who is not morally perfect, these radical images sharply contrast with the unchanging and morally perfect God championed by much of Greek philosophy, early Christian thought, and medieval Jewish philosophy. In these *TY* texts, although God is concerned with and committed to justice and morality, he also recognizes his limitations and fallibility. Most radically, God is willing to change his methods of governing the world after

[92] Arthur Marmorstein, *Studies in Jewish Theology* (London: Oxford University Press, 1950) 1-71. For rabbinic texts supporting this thesis, see *Mek. R. Ishmael*, Wayehi 6, 307; *Sifre Deut.* 307; and *Gen. Rab.* (Vilna) 44:1. On Marcion, see Adolf von Harnack, *Marcion: The Gospel of the Alien God* (Durham, N.C.: Labyrinth Press, 1990) 53–63; and Sebastian Moll, *The Arch-Heretic Marcion* (WUNT 250; Tübingen: Mohr Siebeck, 2010).

[93] David Weiss Halivni, "Can a Religious Law Be Immoral?," in *Perspectives on Jews and Judaism: Essays in Honor of Wolfe Kelman* (ed. Arthur A. Chiel; New York: Rabbinical Assembly, 1978) 165–70.

[94] Moshe Halbertal, *Interpretive Revolutions in the Making: Values as Interpretive Considerations in Midrashei Halakhah* (Jerusalem: Magnes, 1999) 185 [Hebrew].

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receiving human input. Unlike the image of God presented throughout most of the Bible, the *TY*'s God is not the unchanging and impassable ultimate moral sovereign. Rather than following God's own actions, the rules of ethical conduct now emerge through dialogues between God and various biblical heroes. In addition, while these texts imply a profound lesson about divine morality and change, they also point to a theology of human dignity and empowerment: God reaches the pinnacle of ethical action through his dialogues with humanity. Indeed, these *TY* texts grant significant religious value and dignity to human ethical intuitions and sensibilities.

In recent years, scholars of Jewish studies have demonstrated how aggadic literature tends to humanize God in ways that go well beyond the biblical narrative. Both David Stern and Arthur Green argue that the sages, generally speaking, sharpen and intensify the anthropomorphism and anthropopathism of the Hebrew Bible.[95] In the rabbinic imagination, God assumes human character traits never encountered in Scripture. More specifically, Michael Fishbane details how some sages imagine God as suffering with his people. Whereas the Hebrew Bible presents a God who saves and punishes, rabbinic texts boldly imagine God (as the Shekhinah) to be in exile with Israel, remaining in physical bondage until the redemptive moment.[96] As Jews experience suffering, so does the rabbinic God. In a similar fashion, Moshe Halbertal shows how in rabbinic literature, God often plays the weaker party in the human-divine analogy: God becomes the metaphorical wife, daughter, debtor, defendant, and even servant. Conversely, humans assume the more powerful role of husband, parent, creditor, judge, and master, inverting the standard biblical hierarchy.[97] Lastly, both Moshe Idel and Yehuda Liebes demonstrate the theurgic component in rabbinic thought: Jewish fulfillment of divine law automatically affects God.[98] Through the performance of mitzvot, righteous Jews can cause God's power to increase and his attribute of mercy to overcome his attribute of justice. According to these sages, human rituals mechanistically effect positive changes within God's nature.[99]

[95] Arthur Green, "The Children in Egypt and the Theophany at the Sea," Judaism 24 (1975) 446–56; David Stern, "*Imitatio Hominis*: Anthropomorphism and the Character(s) of God in Rabbinic Literature," *Prooftexts* 12 (1992) 151–74.

[96] See Michael A. Fishbane, *Biblical Myth and Rabbinic Mythmaking* (Oxford: Oxford University Press, 2005) 160–73.

[97] Moshe Halbertal, "If the Text Had Not Been Written, It Could Not Be Said," in *Scriptural Exegesis: The Shapes of Culture and the Religious Imagination; Essays in Honour of Michael Fishbane* (ed. Deborah A. Green and Laura S. Lieber; Oxford: Oxford University Press, 2009) 146–61.

[98] Moshe Idel, *Kabbalah: New Perspectives* (New Haven, Conn.: Yale University Press, 1988) 156–72; Yehuda Liebes, *Studies in Jewish Myth and Jewish Messianism* (SUNY Series in Judaica; Albany: State University of New York Press, 1993) 1–64. By presenting and unpacking these rabbinic texts, Idel and Liebes seek to challenge Gershom Scholem's claim that the Jewish origins of theurgy can only be traced back to the medieval period. See, however, Shalom Rosenberg, who seeks to demythologize these rabbinic texts ("The Myth of Myths," *Jewish Studies* 38 [1998] 145–79).

[99] Also see Jonathan Garb, "Kinds of Power: Rabbinic Texts and the Kabbalah," *Kabbalah: Journal for the Study of Jewish Mystical Texts* 6 (2001) 45–71.

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The common thread that runs through these scholarly works is the appearance of a power or hierarchical inversion.[100] Generally speaking, in relation to biblical thought, rabbinic theology empowers humanity and disempowers God, to a certain extent. Fishbane's analysis of divine pathos, in which God is "enchained with Israel," blatantly underscores God's vulnerability. On the flip side, Idel's and Liebes's work on rabbinic theurgy highlights a theology of human empowerment, as the extent of divine power depends upon human action. Halbertal's article on the shifting of relational analogies emphasizes both sides of the theological coin. As humans play the superior roles of judge, husband, and creditor, these texts accentuate human empowerment; conversely, as God assumes the inferior roles of wife, debtor, and defendant, these texts underscore divine disempowerment.

In conclusion, this article has sought, inter alia, to highlight another type of power or hierarchical inversion in rabbinic literature, one that emerges in the writings of the *TY*. Rather than the traditional narrative of God's educating humanity, these *TY* texts show human beings who, through confrontation, teach or persuade God to adopt different moral positions. As a result, these midrashim grant humanity significant persuasive and moral power in relation to God; at the same time, they further humanize God by depicting him as a character open to moral education and change. This paper thus challenges the suggestion made by leading midrashic scholars that while the *TY* corpus marks a revolutionary shift in literary form, it "lacks . . . profound . . . theological dimensions of thought."[101] Contra this view, I have argued that the *TY* literature is highly significant both for the history of theology, in general, and for the history of Jewish thought, in particular.

[100] The formulation of a "hierarchical inversion" I heard from Moshe Halbertal in spring, 2010.
[101] Elbaum, "Sermon to Story," 107.

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