

Just Peacemaking and Ethical Formation in Classical Rabbinic Literature¹

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Upon examining the texts of classical rabbinic Judaism, we find that two key elements frequently stand out with regard to questions of violence. On the one hand, in interpreting Scripture, these texts do accord a conceptual place for the notions of justified violence and killing. On the other hand, they make the practical enactment of such violence very difficult, if not functionally impossible. However, these two elements can easily seem contradictory: if such actions are to be made functionally impossible to implement, why should they be reasoned about conceptually? That is, why not reject such actions in principle as well as in practice? Conversely, if such actions are to be reasoned about conceptually, why should they be made impossible in practice? In fact, as this paper will demonstrate, it is precisely and importantly the “contradictory” nature of the rabbinic approach that enables a directing of intention and evaluation into a just peacemaking ethic.

In this study, I explore the rabbinic approach through close readings of two textual passages, the first from tractate Sanhedrin in the Babylonian Talmud, and the second from tractate Makkot in the Mishnah. By tracing out the details of the reasoning displayed in these passages, with close attention to literary and rhetorical structure, I seek to demonstrate that such rabbinic texts present an alternative to the “just war vs. pacifism” dichotomy. In addition to highlighting ways in which the engaged study of rabbinic texts can potentially function as a formational *practice* of just peacemaking, I will also indicate aspects of the texts that can provide a basis for constructing a *logic* of just peacemaking. As such, these texts can serve as a historical precursor to the development of just peacemaking while also providing rich, relevant resources for deepening such efforts in the present day. To be sure, two textual examples do not in themselves constitute proof of a wider

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trend. While a comprehensive exposition of such a trend in classical rabbinic literature lies beyond the scope of this essay, I will, in my penultimate section, point briefly to some indications that this pattern of reasoning may be broadly representative of this textual corpus as a whole.²

Just Peacemaking and Rabbinic Analysis

Just peacemaking (as formulated by Glenn Stassen *et al.* in *Just Peacemaking: The New Paradigm for the Ethics of Peace and War*), without explicitly rejecting or affirming the theoretical moral validity of warfare, instead seeks to cultivate practices that respond to injustice by combining “realism” with nonviolent initiatives.³ It thereby aims to differentiate itself from the two dominant paradigms for the ethics of peace and war, namely pacifism and just war theory. While not identical in all ways to Christian formulations of just peacemaking, the rabbinic approach also differs from pacifism and just war theory, and parallels important elements of this third paradigm. Both pacifism and just war theory can be viewed as presenting a “consistent” stance: pacifism rejects the legitimacy of warfare in principle and in practice, while just war theory allows for the legitimacy of warfare in principle and in practice.

In speaking of a *principled* stance with regard to pacifism, I do not imply that pacifism need always be based on a formalistic deduction from abstract principles or external rules. As Lisa Sowle Cahill emphasizes, many instances of pacifism can stem from a personal experience of conversion or a conception of discipleship as an embodied way of life.⁴ Instead, I use the term to emphasize the element of consistency, wherein a person grants no scope to violence as a legitimate means for establishing justice; in this sense, I seek to highlight the principle of the pacifist stance itself, whether

² Here, my focus is limited specifically to *classical* rabbinic literature, that is, the foundational body of texts ranging chronologically from the Mishnah (c. 200 C.E.) to the Babylonian Talmud (c. 550 C.E.). While the patterns of reasoning that I highlight may very well extend beyond this time period, they may also have undergone changes or alterations, and so I make no claims here one way or another in this regard.

³ See Glenn H. Stassen, ed., *Just Peacemaking: The New Paradigm for the Ethics of Peace and War* (Cleveland: Pilgrim Press, 2008).

⁴ See Lisa Sowle Cahill, *Love Your Enemies: Discipleship, Pacifism, and Just War Theory* (Minneapolis: Fortress Press, 1994), 13, 228-29, 233-35.

this stance originates from an abstract rule or from a discipleship-oriented way of life.

By the same token, in speaking of pacifism as a consistent stance, I may be guilty of an oversimplification. John Howard Yoder stresses the diversity of positions that can all potentially be grouped under the heading of “pacifism.” Indeed, he even describes “just-war pacifism” (which employs just war theory to object to military violence) as a form of “selective pacifism” in contrast to “consistent pacifism.”⁵ If both the selective and the consistent varieties can be forms of pacifism, then my description here is necessarily inadequate. Further, while I distinguish the rabbinic approach from both the just war and pacifist stances, Yoder’s more variegated description could easily accommodate the rabbinic approach under the broader category of “pacifism” – as Yoder himself does in describing “The Pacifism of Rabbinic Monotheism.”⁶

However, for the purposes of this study, I employ the simplified distinction between just war theory and pacifism in order to highlight the two basic responses to the question “Is violence sometimes a legitimate means for establishing justice?” If the answer is yes, I group this response under the just war stance; if the answer is no, I group this response under the pacifist stance. The former assigns some scope to justified violence, while the latter assigns it no scope. The rabbinic examples that I examine seem to fall in a paradoxical space between some and none: to say “sometimes” is assigning too wide a scope to justified violence, but to say “never” is assigning too narrow a scope.⁷

Unlike pacifism, the “inconsistent” rabbinic stance does not explicitly reject the moral legitimacy of warfare and violence on a principled basis; however, unlike just war theory, it functionally undermines the practical use of violence and warfare as tools of just action. Accordingly, the rabbinic

⁵ See John Howard Yoder, *Nevertheless: The Varieties and Shortcomings of Religious Pacifism* (Scottsdale: Herald Press, 1992), 26-27.

⁶ *Ibid.*, 122-25.

⁷ In addition, the simplified division between just war and pacifism is the one presented by Stassen et al. See, e.g., *Just Peacemaking*, 9. Since my study seeks to draw parallels between the rabbinic approach and that of just peacemaking, I follow their example of emphasizing the distinctive characteristics of a third way by contrasting it to a (perhaps oversimplified) portrayal of the two other competing approaches.

approach can avoid certain dangers and temptations to which pacifism and just war theory are often subject. (Note that, as temptations, they represent *potential* problems or tendencies rather than necessary outcomes or inherent failings.) Because pacifism is based on a principled, a priori rejection of violent warfare, there is the danger that it can “degenerate into withdrawal.”⁸ Since one “already knows ahead of time” that violence is never justified, this can sometimes lead to a weakening of one’s initiative to examine the concrete, nitty-gritty details of justice in the conflict situation at hand.

Conversely, because just war theory holds that violence is sometimes justified but sometimes not, it contains an internal motivation to probe the particular details of each particular situation to see whether it would fit the criteria for a just war. However, because just war theory starts out with the assumption that violent warfare constitutes an appropriate practical response to certain situations, its deliberations can sometimes tend towards a “tunnel vision” that privileges military action over nonviolent preventative approaches to injustice.⁹ Pacifism, by contrast, is not subject to the danger of a distorting focus on military action. As such, a temptation of pacifism is to lose sight of the justice component, while a temptation of just war theory is to lose sight of the peacemaking component.

The rabbinic approach stresses a critical assessment of justice and injustice: What situation would constitute a just act of violence? What situation would constitute an unjust act of violence? What if such-and-such were the case? What if factor A were present but not factor B? How would the addition of factor C affect the situation? This approach avoids the temptation of withdrawal, and instead demands that one both cultivate detailed conceptions of the differences between justice and injustice (avoiding vague abstractions) and learn to apply those conceptions in evaluating the concrete situation at hand. This mode of habit-formation helps to shape a mindset in which the observation or consideration of a conflict situation should generate “moral energy” that actively seeks to *judge and evaluate* competing claims of justice while also prompting the evaluator actively to initiate means of *correcting for* injustice and *restoring* justice. In itself, however, the presence of this moral energy could easily lead to violent means of addressing

⁸ Stassen, *Just Peacemaking*, 2.

⁹ *Ibid.*

perceived injustices. In order to ward off such possibilities, the rabbinic texts put in place restrictions that redirect this energy away from such violent means, yet without taking away from the pressing conceptual awareness and acknowledgment of injustice. The generated moral energy will accordingly remain undiminished while simultaneously being redirected into alternative nonviolent modes of peacemaking and reconciliation.

The Stubborn and Rebellious Son

A prime example of this mode of reasoning is found in tractate Sanhedrin of the Babylonian Talmud, in an extended passage discussing the “stubborn and rebellious son.”

This concept takes its starting point from Deuteronomy 21, verses 18 through 21, which declare:

¹⁸ If a man has a stubborn and rebellious son, that will not hearken to the voice of his father, or the voice of his mother, and though they chasten him, will not hearken unto them; ¹⁹ then shall his father and his mother lay hold on him, and bring him out unto the elders of his city, and unto the gate of his place; ²⁰ and they shall say unto the elders of his city: “This our son is stubborn and rebellious, he does not hearken to our voice; he is a glutton, and a drunkard.” ²¹ And all the men of his city shall stone him with stones, that he die; so shalt thou put away the evil from the midst of thee; and all Israel shall hear, and fear.

In its biblical context, this passage seems clearly to express a concern for maintaining the stability of the social order. Such a rebellious individual, who spurns the obligation of respect for his parents, may eventually end up spurning the laws of society altogether.¹⁰ As such, he generates a situation of conflict and disruption that must be addressed by the forces of justice in order to restore social harmony. Now, while we might acknowledge that such a situation represents a real problem, we might feel that the proposed solution leaves something to be desired. Is stoning to death really the proper way to deal with social conflict? One natural response to such apparent brutality could be to say: such violence is profoundly unethical; therefore,

¹⁰ See BT Sanhedrin 72a.

we hereby reject violence as a means of addressing social conflict.

While such a principled response has much to commend it, it can also risk failing to address the real threat to others posed by the rogue, inebriated rebel. In contrast, a second response could point out that the willingness to address the situation with violence at least acknowledges the severity of the initial problem. Further, the weightiness of the prescribed punishment can reinforce the need for a serious investigation: one will be sure to examine all the details of a potential case in order to determine whether an accused individual has indeed crossed the line and become a stubborn and rebellious son. The possibility of justified corrective violence corresponds to an active weighing of the concrete factors of justice.

These two responses roughly correspond, respectively, to the orientations of pacifism and of just war theory. However, the Talmud's response sets out in a third direction that incorporates elements of both yet cannot be assimilated to either. While its discussion is too lengthy to reproduce in full, I will highlight the key elements in its chain of reasoning.¹¹ I should emphasize that the passage's extended length and its back-and-forth engagement are prime factors in reinforcing the practical orientation to which it ultimately points; as we shall see, the ethical concepts in question cannot be contained in any single statement or static principle. My analysis draws upon literary methods of talmudic analysis similar to those used by David Kraemer in *Reading the Rabbis: The Talmud as Literature*. These methods seek to assess a given talmudic passage as a literary whole: though it may be constructed from various historical source-texts, it can be read as combining and rhetorically reworking these sources in new ways to produce a "composite message."¹² Accordingly, I will focus on the ordering and arrangement of the discussion and the particular wording and phrasing of various statements along the way, with a view toward the broader ethical picture that emerges diachronically as the reader gradually progresses through the passage.¹³

¹¹ The discussion itself can be found in BT Sanhedrin 68b-71a. A summary of rabbinic texts relating to the law of the rebellious son can also be found in *Encyclopedia Talmudica*, ed. Shlomo Josef Zevin (Jerusalem: Yad Harav Herzog, 1992), vol. 4, 379-87.

¹² See David Kraemer, *Reading the Rabbis: The Talmud as Literature* (New York: Oxford Univ. Press, 1996), 9-11.

¹³ In addition to Mishnah Sanhedrin 8:1-5, upon which the Talmud directly comments here, a number of the source-pieces comprising this passage are also found in other earlier rabbinic

The talmudic discussion begins by apparently granting full legitimacy to the biblical law in question and to its prescribed penalty. It gives no outward indication that stoning a rebellious son would be ethically repugnant. Instead, its concern is simply to determine what sort of person and what sort of actions do and do not fall under the category of a “stubborn and rebellious son.” For those cases that do fall within this category, the justness of stoning is taken as a given. Thus, the Talmud first notes that since Scripture describes a rebellious *son*, and not a rebellious *man – ben, v’lo ish* – it is only an adolescent and not a full-grown adult who can fall under this category. Further, the Talmud states that since minors, those under the age of thirteen, are not yet held responsible for the commandments, then they also cannot fall under this category. Thus, only those who are older than thirteen yet have not reached the status of full adulthood – marked by sexual maturity – can potentially be stubborn and rebellious sons.

Through this act of restriction, two distinct processes are simultaneously being enacted. On one hand, the scope of legitimate violence is being restricted: if the suspected individual is outside this narrow age range, then stoning is *not* the proper response. On the other, the *idea* of stoning the rebellious son gains a reinforced legitimacy: by emphasizing that certain individuals fall outside this category and are not to be stoned, the passage refrains from calling the category itself into question and thus implies that those who do fall within it should rightly be stoned, as the law requires. Yet it is precisely the continued possibility of violence that serves, by contrast, to highlight the fact that violence is *illegitimate* outside of the narrowly defined scope. In such situations, therefore, an other-than-violent response is required, so that we now have a strange phenomenon that might

collections (e.g., Tosefta Sanhedrin 11:2 and Sifre Deuteronomy 218-19.) However, the distinctiveness of the Talmudic passage lies in its deliberate rhetorical *ordering* of its material so as to convey a specific account of the proper scope of justified violence. My analysis thus differs from that of Moshe Halbertal, who also examines the ethical implications of rabbinic interpretations of the biblical law of the rebellious son. His mode of analysis tends to break down the talmudic text in order to compare differences in the interpretive moves in the passage. Without disputing his analysis of the different pieces unto themselves, I maintain the talmudic text can and ought to be read as a literary whole in which the various parts have been consciously re-employed to serve an overarching, unified ethical communication. See Halbertal, *Interpretive Revolutions in the Making: Values as Interpretive Considerations in Midreshei Halakhah* [Hebrew] (Jerusalem: Magnes Press, 1997), 42-68, esp. 63-64.

be termed “nonviolent peacemaking through the conceptual reinforcement of violence.”

Now, merely from this initial age restriction, we might not be aware of a broader trend or pattern in the Talmud’s reasoning. Since all laws need some form of specification in order to be applied, we might think that this is simply a natural, sensible delimitation of a normal, unobjectionable legal statute. However, as the passage continues, the scope of the “stubborn and rebellious son” grows progressively more and more narrow. Thus, after a series of additional age restrictions that further reduce the duration of sonhood, we subsequently learn that an individual becomes classified as a “stubborn and rebellious son” only as a result of eating a specific amount of meat and drinking a certain amount of wine. No other behavior can bring him under this category. This certainly eliminates most of what we might initially think of as stubborn and rebellious behavior. The text next informs us that, in addition, the son is liable only if he buys the wine and meat *cheaply*. Then, as a further restriction, we are told that he is liable only if he eats *undercooked* meat and *undiluted* wine. We now appear to be narrowing the scope down to an absurdly miniscule scale. Yet, the passage still upholds the legitimacy of the law and, moreover, each successive delimitation places further emphasis on investigating concrete particulars.

Toward the end of the passage, we find still more restrictions, this time involving the parents of the individual. It is first noted that *both* parents must make the accusation against their son. Then – drawing upon the fact that verse 20 of the scriptural passage says “he will not listen to our voice” (*einenu shome’a be-kolenu*), with “voice” in the singular, rather than “to our voices” in the plural – the Talmud states that the mother and the father must be physically alike in voice, appearance, and height! With this, we must really have reached the peak of absurdity. How feasible would it be to find an actual instance of such identical parents? The scope of the law now seems as narrow as could possibly be conceived – its breadth is essentially infinitesimal! Yet, since it is not absolutely impossible that such parents could be found, the law and its justified violence remain in place, and so it could still be possible to find, judge, and stone a rebellious son. In actual practice, however, all the cases we come across happen for some reason not to fall into this category, and so we are compelled to address these cases through other-than-violent means.

After reaching this point, the story is not quite over. The Talmud, seeming to drop its mask, then asserts: “There never has been a stubborn and rebellious son, and there never will be. Why then was the law written? That you may engage in study of the issue and receive reward (*d’rosh v’kabel s’char*).” Even here, there is no principled rejection of the statute and its violence. If you do come across such an individual, you are obligated to stone him. The Talmud simply says you are *not going to* come across such a person. Importantly, the passage stresses reward devolving from the act of studying and reasoning through the issue: only by gradually moving through the progress of the discussion can one maintain the necessary attention to the particulars and to the attitude of justice. Had the law simply been rejected out of hand, there would have been no place for examining and evaluating these particulars. Here, in contrast, even when the violence is suspended in terms of practical enactment, the pedagogical training conveyed by the various components of the extended passage depends on the continuous assumption that justified violence is indeed a live option.

To reinforce my claim that the rabbinic conception is dependent on avoiding *both* rejection *and* practical enactment of justified violence, I observe that “there never was one and never will be” does *not* represent the final word in the matter. Many if not most contemporary descriptions of the passage do simply end there, implying that the Talmud’s ultimate point is to render the law of the rebellious son “purely theoretical.”¹⁴ In this case, though, the double-sided nature of the conception would be lost, and it would fall consistently on the side of rejecting violence, thus abandoning its character as a paradoxical suspension. However, when we look at the text itself, we find that the discussion actually concludes with the following terse and somber pronouncement: “Rabbi Jonathan said: I saw him and sat on his

¹⁴ Naftali Brawer analyzes the talmudic treatment of the rebellious son as an instance of “restricted interpretation,” in a manner largely similar to the one presented here. However, by stopping after “never was and never will be,” he posits a dichotomy between “the world of ideas and the world of action” and between “the world of theory and the world of practice.” See Brawer, “Judaism and the Challenge of Sacred Text,” in *Faith-based Radicalism: Christianity, Islam and Judaism between Constructive Activism and Destructive Fanaticism*, ed. Christian Timmerman et al. (Bruxelles: P.I.E. Peter Lang, 2007), 96. In contrast, I argue that the logic of the rabbinic text maintains the connection between these worlds, but in a way that still ends up preventing the actual enactment of the prescribed violence.

grave.” In other words, there was indeed a rebellious son who was stoned for his actions, and Rabbi Jonathan saw him with his own eyes and even confirmed his experience physically by sitting on his grave.

It is certainly possible to see this statement as a counter-opinion, standing apart from and rejecting the progression of thought preceding it. However, Rabbi Jonathan’s statement can be appropriately viewed as a crucial component of the construction of the passage as a whole. Rather than negating the other statements, the tension produced by his statement helps preserve the “suspended” nature of the ethical-legal concepts in question. We can view the overall tendency of the passage as maintaining the full weight of the law while simultaneously making its scope as narrow as conceivably possible. In this regard, saying “there never was and never will be” can seem to reduce the scope to *zero* and thus undermine the law. Hence, the present statement insists: no, its scope is greater than zero! Yet, at the same time, it simply asserts a single empirical occurrence and does not provide any grounds or principles for widening the scope by any finite amount; it does not reject any of the restricting criteria previously put forth. Thus, the overall effect is that the scope of the law corresponds to a true infinitesimal: it is smaller than any finite scope you could possibly name – yet it is nevertheless greater than zero. This paradoxical notion cannot be contained within any single statement, and thus the underlying intended logic of the passage is to be found in simultaneously holding Rabbi Jonathan’s statement *together with* the statement that there never was and never will be a rebellious son. If any possibility of practical enactment remains, the scope is still too wide, but if no such possibility remains, then the scope is too narrow: both of these principled options are unacceptable.

Importantly, the extended dynamic movement of the passage as a whole does present a specific conception of the proper approach to violence, despite the impossibility of describing this third paradigm in consistent theoretical terms. The dialectical form of the passage is therefore no mere literary device; rather, it is crucial for the proper communication of its subject matter. My account thus differs from a reading often given to this and similar rabbinic texts, namely, that the rabbis really did want to get rid of the violence of the law but felt constrained by their pious commitment to the text of scripture. That is, they could not permit themselves a *de jure*

rejection of God's explicit commandment, which would have the effect of "imputing to the Lawmaker a defective moral awareness."¹⁵ Therefore, they instead employed an interpretive workaround to achieve a *de facto* rejection. Without gainsaying such a reading, I maintain that, in addition, the justified violence contained in the law is a crucial part of the ethical conception of justice and injustice that the rabbis seek to convey. To remove that violence would not simply violate their religious scruples; it would one-sidedly flatten the concept of justice and remove the moral energy behind their pedagogical deliberations.

The Death Penalty and the Murderous Court

Thus far, my analysis has focused on a single extended passage from the Babylonian Talmud, a document falling at the later historical end of the classical period of rabbinic Judaism. Because the Talmud is known for exhibiting a much greater degree of rhetorical and dialectical complexity than earlier rabbinic documents, we could easily suppose, from this one example, that this conceptually paradoxical approach to violence may be unique to this later strata of rabbinic literature. I therefore want to turn to a passage from the Mishnah, a document that constitutes the earliest representative of the collections that now make up the rabbinic canon. The Mishnah, moreover, is less known for dynamic narrative and dialectics, and its literary form is quite different from that of the Talmud. As such, discerning a similar pattern of reasoning within the Mishnah lends weight to the possibility that this logic represents a feature common to the conceptual framework of the broad historical span of classical rabbinic literature.

The opening chapter of Mishnah Makkot presents a detailed discussion of various scripturally-based situations in which a person may be put to death. From looking only at these passages, which never question the legitimacy of the death penalty itself, we might think that what we have here is a tradition that sees killing and violence as an acceptable response to perceived transgressions. After all, if they thought that imposition of the death penalty was morally problematic, they wouldn't spend all this time

¹⁵ 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), 167.

discussing it as though it were normal and legitimate. But then we reach the following passage, at the very end of chapter one of tractate Makkot:

A Sanhedrin that puts to death one person in seven years is called murderous. Rabbi Eleazar ben Azariah says: one person in seventy years. Rabbi Akiva and Rabbi Tarfon say: If we had been in the Sanhedrin, no one would ever have been put to death. Rabban Shimon ben Gamaliel says: So they would multiply shedders of blood in Israel.¹⁶

This passage, as Beth Berkowitz has documented in her recent study *Execution and Invention*, has been cited over the past century and a half by numerous writers who have seen it as a principled rabbinic opposition to the death penalty, and one of the earliest historical instances of such a principled opposition at that. However, as Berkowitz notes, almost all these apologetic attempts cite only the penultimate statement from Rabbis Akiva and Tarfon, and omit Rabban Shimon ben Gamaliel's final statement, which seems to inconvenience the claim of a straightforward opposition to the death penalty.¹⁷ By looking at the passage in its entirety, Berkowitz seeks to emphasize that the rabbinic attitude toward the death penalty was by no means unanimous and that conflicting opinions were held by Tannaitic (early rabbinic) authorities. This approach accords with a view of the Mishnah that sees it primarily as an anthologizing collection of various halakhic positions, preserving mutually incompatible stances for the sake of historical completeness without adjudicating between them with any permanent finality. Without denying the grounds for such an approach to the Mishnah, my analysis here will follow the approach of scholars such as Elizabeth Alexander, who highlights the marks of careful literary composition within the text of the Mishnah.¹⁸

¹⁶ Mishnah Makkot 1:10. "Rabban" is an honorific title meaning "our teacher"; it signifies a level of respect even higher than "Rabbi," which means "my teacher."

¹⁷ Beth Berkowitz, *Execution and Invention* (New York: Oxford Univ. Press, 2006), 31.

¹⁸ See Elizabeth Alexander, *Transmitting Mishnah* (Cambridge; New York: Cambridge Univ. Press, 2006). Alexander argues that the Mishnah is most properly seen as a pedagogical handbook with a strong emphasis on training its readers in particular modes of reasoning and analysis (119-23). Thus, she highlights how successive lines in a given mishnaic passage are frequently arranged as an ordered series, with the aim of progressively "refin[ing] the reader's understanding of the principle at hand" (148). The Mishnah often presents borderline cases in which "the legal reasoning behind the two (or more positions) remains unarticulated. The

Thus, with regard to Makkot 1:10, I read the passage not as a mere anthology of independent statements but as a unified literary construction with a progression that is deliberately arranged and ordered.¹⁹ First, it claims that one execution every seven years qualifies as murderous. The implication, though, is that a court that executed one person every *eight* years would be fully legitimate and just. So, while it restricts the scope of legitimate violence, it also reinforces the legitimacy of the practice itself. But then we encounter the second statement: once every seventy years is also murderous. Now the restriction is starting to become a bit ridiculous. Is it plausible to think that there could be a court system that possessed the option of the death penalty and yet enacted it only once every seventy years? Isn't that basically equivalent to not at all? Yet, importantly, the statement does not reject the death penalty in principle: it comes about as close as one could get to "not at all" yet stops short of asserting it outright. Then, however, we arrive at Rabbis Akiva and Tarfon's pronouncement: if they had been on the Sanhedrin, there would have been no executions at all. Thus, the space for legitimate violence by the court has evaporated. At the same time, they do *not* say – as we might have expected, given the preceding statements – "A court that *ever* puts someone to death is called murderous." Rather, they shift the focus to themselves personally: had they been there, no executions would have taken place.²⁰ They do not say, "Courts should never put someone to death" or "The

task of teasing out the legal reasoning is left for the students, readers, or listeners" (166). As a whole, her analysis focuses on the "performative effect" of mishnaic passages, an approach that "tries to imagine what would *result* from performing the materials" (169). These elements correspond nicely to the type of reading I give here to Makkot 1:10.

¹⁹ Yair Lorberbaum also points to the deliberate arrangement of the "ascending order" in this mishnah. He reads the first three statements not as disagreeing with one another but as a single rhetorical unit, whose purpose is to express "a fundamental opposition to capital punishment." However, he reads the fourth statement as separate from and dissenting from this rhetorical unit. In contrast, I take all four statements as part of a unified arrangement. In this case, though, the passage as a whole conveys not a simple opposition to capital punishment but a construction in which the death penalty is given a functionally infinitesimal scope. See Lorberbaum, "Blood and the Image of God: On the Sanctity of Life in Early Rabbinic Law, Myth, and Ritual," in *The Concept of Human Dignity in Human Rights Discourse*, eds. David Kretzmer and Eckart Klein (The Hague: Kluwer Law International, 2002), 78-80. See also Lorberbaum, *Tselem Elohim: Halachah v'Aggadah* [Hebrew] (Tel Aviv: Shocken, 2004), 345-46, 349.

²⁰ David Weiss Halivni also points to this 'personal' formulation. See Halivni, "Can a Religious

death penalty is inherently illegitimate”; this would turn the matter into a comprehensive principle, which they specifically refrain from asserting.

Note, finally, the concluding statement from Rabban Shimon ben Gamaliel. In case the penultimate statement sounds too much like a principled removal of the death penalty, he emphasizes that it is *not* good to get rid of executions entirely. Notably, however, this statement does not explicitly *reject* the previous statements about a murderous Sanhedrin.²¹ We can view it, within the flow of the passage as a whole, as taking one minute step backwards so as to maintain the legitimacy of the principle, without contradicting the need to sharply restrict its practical enactment. We can reformulate the progression of the reasoning as follows: One execution every seven years is murderous. Fine. Once every seventy years is murderous. Fine. Once every seven hundred years is murderous. Fine. Once every seven thousand years is murderous. Fine. *Any* execution makes the court murderous. No, no, that’s going too far!

In other words, we can see the passage as restricting the legitimacy of execution to a scope smaller than any given finite frequency of occurrence – but without restricting it away entirely; it is not turned into an abstract principle. The final statement in the passage serves not to undermine the sentiment of the preceding lines but rather to *reinforce* it on a practical level while simultaneously ensuring that it remains grounded in the realm of concrete judgment. To enact the death penalty would be ethically illegitimate and would itself constitute a form of murder, but to negate the death penalty *as a principle* would also have ethically detrimental effects by detracting from the obligation to view bloodshed as an act of grave injustice that demands one’s serious engagement and response. Instead of coming down consistently on one side or the other, the passage upholds the two contradictory concerns simultaneously.

The two examples discussed above – the enactment of the death penalty and the problem of the stubborn and rebellious son – thus display

Law be Immoral?,” 167.

²¹ While historically speaking this statement may well have originated out of an opposing source, I analyze the mishnaic passage not in terms of the potentially diverse origins of its sources but in terms of its construction as a literary whole. In this regard, note that Rabban Shimon ben Gamaliel does not say that the others are wrong, nor does he put forth a competing norm for proper implementation of the death penalty.

a specific logic in which violence is *not* rejected on an abstract, principled level and yet, precisely by means of retaining violence in theory, it is all the more rejected as a normal and legitimate mode of response to injustice. We are therefore left with a strong awareness of and desire for concrete justice; yet, at the same time, this desire is forced to express itself through nonviolent means of peacemaking. In practical terms, the built-up moral energy will mean that, in order to have a legitimate outlet, we must find ways of addressing instances of social discord *before* they cross over into situations that seem to call for violence.

Broader Tendencies in Classical Rabbinic Literature

While I've discussed only two instances here, I want to gesture towards ways in which the logic they display can be found more broadly throughout classical rabbinic literature; these brief sketches may serve as a starting point for future studies. We can first take note of David Weiss Halivni's claim that the same basic pattern of consciously narrowing down the scope of a law to nearly nothing, while deliberately retaining the validity of the law itself, represents a general trend with a wide variety of instantiations in classical rabbinic texts.²² Thus, the two examples discussed above are by no means exceptional. However, there are multiple cases in rabbinic literature wherein a biblical law demanding killing is *not* restricted away but is apparently allowed to stand with an active practical scope. Nevertheless, these cases can also be brought under the general framework that I have described when we consider that classical rabbinic texts place an "impossibly" high standard on requirements for *convicting* a person of such crimes. For instance, the rabbis emphasize the importance of *hatra'ah* (warning), whereby a person can be convicted of a capital crime only if, immediately preceding the crime, the would-be criminal had been explicitly warned of the penalty attached to such a transgression and had also verbally acknowledged acceptance of that warning.

²² See Halivni, "Can a Religious Law be Immoral?", 166-67. In addition to the examples of the rebellious son and the murderous court, he also points to instances of this pattern in BT Nazir 51b and BT Kiddushin 18a. Notably, these latter examples relate, respectively, to cases of corpse defilement and thievery – legal situations that do not involve the death penalty. Thus, while I have focused on instances of justified killing, the pattern of reasoning seems also to extend in rabbinic legal thought beyond this specific sphere.

Likewise, an extreme burden is placed on eyewitnesses: for example, if they witness someone being stabbed to death by a sword, they must be able to testify that the victim did not die from a previously extant internal wound in the exact same place! Discussing these excessive requirements, Devora Steinmetz argues that they were deliberately imposed “as a way to make capital punishment impossible to implement.”²³ This is the now-familiar mode of affirming laws that call for killing (with their concomitant concern for justice) while simultaneously working to prevent their actual enactment.²⁴ Importantly, in these cases, too, fulfillment of the witness requirements still remains *theoretically* possible – it simply is infinitely unlikely to occur in *practice*.²⁵ In this sweeping move, each and every one of the biblical capital crimes is both preserved and also suspended, further reinforcing the just peacemaking ethic described above.²⁶

²³ Devora Steinmetz, *Punishment and Freedom: The Rabbinic Construction of Criminal Law* (Philadelphia: Univ. of Pennsylvania Press, 2008), 15. See also Steinmetz, 1-2, 15-17, and 124fn3 for further details concerning these laws.

²⁴ Chaya T. Halberstam argues that the rabbinic texts (as illustrated by Mishnah Makkot 1:10 in particular) are characterized by a tension between “a commitment to doing justice” and “an ultimate uncertainty about the world around them” that makes them skeptical about their ability to make reliable judgments in death penalty cases. See Halberstam, *Law and Truth in Biblical and Rabbinic Literature* (Bloomington: Indiana Univ. Press, 2010), 102. While I agree with her highlighting of a tension in the texts, I maintain it may be not only a matter of justice vs. uncertainty; it may also stem from a concern to combine a commitment to justice with an awareness of the infinite value of individual life. In this latter vein, Yair Lorberbaum argues that the classical rabbis held that “capital punishment is a form of murder and therefore it is prohibited, irrespective of the guilt of the suspect” (“Blood and the Image of God,” 79).

²⁵ David Weiss Halivni’s formulation, with its careful insertion of “nigh,” captures this sensibility well: “[T]he Rabbis retained capital punishment in principle but hedged around the carrying out of capital punishment with so many prerequisites that for all practical purposes it became nigh impossible to execute anyone.” Halivni, “Can a Religious Law be Immoral?,” 167.

²⁶ Rabbinic law does make room for certain types of justified killing outside the context of capital crimes. For instance, if one individual is pursuing another with the intent to kill, a third person (or the pursued person himself or herself) is obligated to prevent the pursuer, even at the cost of the latter’s life. However, even here a close analysis of the relevant talmudic passage indicates a logic similar to the “infinitesimal scope” that we have seen above. Thus, if the third person could have prevented the pursuer through other means but killed him anyway, the killing is unjustified: the third person is now guilty of murder and is subject to the death penalty. While the law of justified killing remains in full effect, the weighty burden of “other means” limits its direct applicability. See BT Sanhedrin 73a-74b.

We can also note a similar pattern with regard to rabbinic messianic-eschatological conceptions. The biblical text contains a number of institutions that seem inextricably bound up with the exercise of violence as a means of “solving problems.” There are kings, representing the centralized executive power of the state, who use violence to maintain their control over society. There are standing armies whose primary purpose is to use violence and killing to achieve the aims of those who command them. There are the penal system and its courts which, particularly in capital cases, seek to maintain their concept of order by exerting power over life and death.

Instead of rejecting or endorsing these violent social institutions by means of a timeless ethical principle, classical rabbinic literature relates to them through a specifically temporalized approach. When it examines the biblical context, it does not say that the kings, wars, armies, and high courts were inherently wrong. Nor does it rule out the idea of such institutions being restored in the messianic future. However, during the present intervening period of exile, after the destruction of the Temple but prior to the coming of the Messiah, those institutions are suspended.²⁷ Thus, in *practical* terms, the classical rabbinic sources rule out the legitimacy of Jewish collective violence – and yet they continue to *study* the concrete details of those same suspended institutions!²⁸

In an important sense, it is precisely by retaining the conceptual

²⁷ This approach enables the rabbis simultaneously to embrace two apparently contradictory streams within the biblical text. Alongside the pro-kingship, pro-centralization attitudes described above, there are also streams that voice direct opposition to such institutions and would seek to reject them. The rabbis find a way of heeding both: like the pro-kingship and pro-centralization voices, they affirm the legitimacy of such institutions in principle, but with regard to normative stipulations for the present period, their practice mirrors the ethic of the anti-kingship, anti-centralization voices.

²⁸ Cf. BT Sanhedrin 51b, where the same phrase – “study and receive reward (*d’rosh v’kabel s’char*)” – used with regard to the rebellious son is also applied to the question of institutions to be restored only in the messianic future. For more on the exilic suspension of Jewish collective violence as a broad theme within classical rabbinic literature, see, e.g., Michael S. Berger, “Taming the Beast: Rabbinic Pacification of Second-Century Jewish Nationalism,” in *Belief and Bloodshed: Religion and Violence across Time and Tradition*, ed. James K. Wellman, Jr. (Lanham: Rowman and Littlefield, 2007); Jacob Neusner, *Vanquished Nation, Broken Spirit: The Virtues of the Heart in Formative Judaism* (Cambridge; New York: Cambridge Univ. Press, 1987).

validity of those systems that the rabbis can avoid the violence and killing that they entail while simultaneously retaining attention to and concern with the particular details of justice. Their temporal approach contrasts with an atemporal ethical system that must *either* reject violence in theory as well as practice – and could thus lose sight of justice – *or* allow for the practical enactment of “justified violence” in our own time.²⁹ The temporal suspension of violence in rabbinic thought also finds parallels in the passages discussed above, where the approach to violence is not stated ahead of time or in abstract propositions but is displayed through the temporal progression of the discussion.

Notably, these temporal features of the classical rabbinic approach can also enable an interesting reconsideration of John Howard Yoder’s account of rabbinic Judaism.³⁰ Some critiques of Yoder have argued that he misrepresented rabbinic Judaism by projecting his own pacifist/exilic values onto it, whereas examination of the rabbinic texts themselves reveals elements of both violence *and* nonviolence, of both exile *and* return.³¹ While these criticisms of Yoder may have validity, his account of rabbinic Judaism may be more accurate in important ways than his critics tend to acknowledge. That is, while classical rabbinic Judaism does take a both-and approach to violence and nonviolence, it does so in a *very specific* way, such that, as I have shown, its mode of reasoning restricts justified violence (especially in collective/institutional terms) to an infinitesimal scope that also corresponds to a temporally-specific conception. While Yoder may have misjudged

²⁹ Though it avoids an atemporal rejection, the rabbinic suspension of collective violence until the coming of the messiah might seem to lose sight of justice by pushing it off to a far-away, distant future. Note that the rabbis also held, theologically, that the messiah could come at any moment – even the very next moment (see, e.g., BT Sanhedrin 98a). Such a notion can function to keep the idea of justice alive and present, and the conceptual tension between now and not-now parallels the ethical tension generated by the infinitesimal reduction of the scope of justified violence.

³⁰ See especially his *The Jewish-Christian Schism Revisited*, ed. Michael G. Cartwright and Peter Ochs (Grand Rapids: Eerdmans, 2003).

³¹ See, e.g., Peter Ochs’s commentary in *The Jewish-Christian Schism Revisited*, 120; Daniel Boyarin, “Judaism as a Free Church: Footnotes to John Howard Yoder’s *The Jewish-Christian Schism Revisited*,” *Crosscurrents* 56.4 (Winter 2007): 15-17. See also Ochs’s more recent reconsideration of Yoder’s thought in *The Free Church and Israel’s Covenant* (Winnipeg: CMU Press, 2010), 16-23.

significant conceptual features of rabbinic thought, he may nevertheless have been on-target with regard to key practical rabbinic commitments.³²

Concluding Reflections

In its attempt to stake out a third paradigm alongside pacifism and just war theory, just peacemaking theory has tended to stress *practices* of just peacemaking. In part, this focus stems from a recognition that while pacifists and just war theorists may be unable to come to agreement on the theoretical question of whether war is ever justified, they *can* agree on practices that can foster peaceful relations, preventatively address injustice, and reduce the likelihood of war.³³ In this regard, in light of the above analysis, we can view the engaged study of rabbinic texts as a parallel practice that can help shape and train one's faculties of ethical judgment, forming moral habits wherein situations of injustice call forth responses that are both proactive and nonviolent.³⁴ While as a practice it may be on a smaller scale than many of the practices emphasized by just peacemaking theory, its role in daily habit-formation may nevertheless function as foundation for facilitating one's drive and ability to participate in other forms of peacemaking. That is, it could serve as a meta-practice enabling more active engagement in those other, larger-scale, practices. While the active study of classical rabbinic texts is obviously likely to be most appealing to adherents of rabbinic Judaism, these observations could encourage members of other religious traditions to uncover or seek out similar meta-practices in their own traditions as well.

Furthermore, while the classical rabbinic texts do put forth a distinct and specific form of ethical reasoning, its logic cannot be subsumed under either pacifist or just war modes of thought. Thus, in addition to

³² The notion of practical convergence, despite theoretical divergence, in Rabbinic and Anabaptist theopolitics is intriguing, and I hope to explore this question in further depth in future work.

³³ See Stassen, *Just Peacemaking*, 9.

³⁴ My exploration of the peacemaking potential of rabbinic logic does not mean that the study of these texts will always or automatically instill this type of reaction. Further research is necessary to determine more precisely when, why, and how such practices of text-engagement can translate or have translated into practical habits of moral judgment and response. A more detailed look at this issue is found in Peter Ochs, "Morning Prayer as Redemptive Thinking," in *Liturgy, Time, and the Politics of Redemption*, ed. Randi Rashkover and C. C. Pecknold (Grand Rapids: Eerdmans), 50–87.

complementing the pragmatic emphasis of just peacemaking, I suggest that it could also provide a starting point for developing an ethical paradigm that could contribute theoretical, in addition to practical, resources for breaking the stalemate between just war and pacifism.³⁵ Perhaps a more general argument could be made for the importance of maintaining justified violence “in theory” *precisely in order* to functionally eliminate it in practice and to direct one’s actions towards nonviolent deeds. While this counterintuitive approach may lack a certain type of consistency with regard to conceptual principles, its “principled resistance to principles” could enable a unique combination of orientation towards both justice and nonviolence. In contrast, it may be that the “principled consistency” (on a logical level) of both just war theory and pacifism is precisely that which generates the temptations which, as described above, can undermine our ability to engage in just peacemaking. Thus, while much work in this area remains to be done, contemporary attempts to formulate a theory of just peacemaking can both illuminate and be illuminated by the rabbinic efforts to grapple with the question of violence in the context of late antiquity.

³⁵ Stassen *et al.* emphasize “practices, not principles” (*Just Peacemaking*, 34) and might be quite wary of claims to address the theoretical side of this stalemate, as it may destabilize the practical consensus they have succeeded in achieving. However, this problem cannot be sidestepped indefinitely, and the desire to put forth just peacemaking as a robust third paradigm for the ethics of war and peace will also eventually require conceptual theorizing.

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