Justice without Judgment: Pure Procedural Justice and the Divine Courtroom in *Sifre Deuteronomy*

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The book of Job, one of the most famous protests against cosmic injustice in world literature, imagines a path out of despair: a fair trial. “O that I had someone to give me a hearing; / O that Shaddai would reply to my writ, / Or my accuser draw up a true bill! / I would carry it on my shoulder; / Tie it around me for a wreath” (Job 31:35–36). While a trial will not necessarily restore Job’s family, health, and fortune (one takes one’s chances), it may provide outcomes of considerable significance: it may “preserve the honor of both parties [to the dispute]”; it may establish truth and “get the story right”; and it may “restore a possible sense of agency to Job,” who feels persecuted and powerless before the omnipotent deity. The “happy ending” of the book of Job, in which God reinstates Job to his prior position of wealth and comfort rings hollow, because God does so by fiat; God is still an autocrat, only now a benevolent one. A trial, however, would feel different. In the courtroom, “God . . . could conceivably be envisioned as . . . provisionally setting aside the terrifying overwhelmingness of his own power in order to allow his opponent at law to speak.” Job’s hypothetical trial with God emerges, essentially, as a fantasy of procedural justice.

One place in which the rabbis wrestle with such a fantasy of procedural justice is in the tannaitic commentary to the last book of the Torah, *Sifre Deuteronomy*. There the rabbis offer us almost comical depictions of the divine courtroom, discovering in heaven an adherence to formal or even bureaucratic procedures. Despite the otherworldly setting, and despite the presumption of divine omniscience and omnipotence, rabbinic authors dispense with splendour and ministering angels flanking the divine throne and instead concentrate on procedural details like numbers of witnesses and their fitness to testify. While it may appear that the rabbis simply attempt to correlate worldly justice and heavenly justice, there is a fundamental absurdity to the formalism in

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1 Quotations from the Hebrew Bible follow the NJPS English translation.
2 C. A. Newsom, “The Invention of the Divine Courtroom in the Book of Job,” this volume, pp. 257, 256, and 253, respectively.
3 Ibid., 251.
these texts that invites us to probe more deeply and ask what theological, philosophical, or theodical work these images of heavenly procedure are doing.4

This essay will argue that John Rawls’ distinction between types of procedural justice can help shed light on the conceptual difference between rabbinic procedural justice in ordinary courtrooms and as a relational model for God. As the rabbis transfer their robust concept of “justice as fairness” into the heavenly realm, a choice is made to relate to God in ways that emphasize agency, participation, and, indeed, the predictability of law—many basic elements of human dignity, according to modern thinkers, and the type of recognition for which Job desperately hungered. It comes, however, at the expense of what one might see as substantive justice: the ability to assess the justice of the aftermath of fair procedures, to determine whether a person’s, or the community of Israel’s, current circumstances, are, indeed, just. In several passages in Sifre Deuteronomy, the rabbis appear to depict “pure procedural justice” as a model for relating to God and making sense of suffering, but they also begin to apprehend its limitations.

1   John Rawls and Procedural Justice

John Rawls’ A Theory of Justice, a philosophy of political society built on the social contract and steeped in liberal, enlightenment thought, is surely not easily applicable to the ancient world. However, Rawls’ basic premise—justice as fairness—is founded in procedural justice, and as such his theory may be useful as a heuristic tool to understand early rabbinic concepts of justice, which similarly emphasize procedural fairness. In his seminal work, Rawls distinguishes between “perfect,” “imperfect,” and “pure” procedural justice. “Perfect” procedural justice can be exemplified by the classic cake-cutting dilemma: how does one divide a cake equally between several people so that no one feels cheated? The “obvious solution” (as per Rawls): have the one who cuts the cake choose his or her piece last. This model reveals

two characteristic features of perfect procedural justice. First, there is an independent criterion for what is a fair division, a criterion defined

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4 As Meira Kensky observes regarding the image of the divine courtroom, “the reader is in the judicial position, and it is the judge and the process itself which are being adjudicated. When man is tried, it is truly God who is on trial.” M. Z. Kensky, Trying Man, Trying God: The Divine Courtroom in Early Jewish and Christian Literature (WUNT 2/289; Tübingen: Mohr Siebeck, 2010), 5.