

CONTEMPORARY JEWISH THEOLOGY IN LIGHT OF DIVERGENT BIBLICAL VIEWS ON REVELATION'S CONTENT

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Introduction

Over the past two decades or so, discussion amongst critically oriented biblical scholars has been mounting regarding the possibilities of engaging in what is referred to as "Jewish biblical theology." Of course, though some important books and articles have given voice to much debate and deliberation, no consensus has emerged as to what a Jewish biblical theology might look like, or what it ought to attempt to accomplish.¹ Without denying the legitimacy of the various suggestions and approaches that have been put forward, I would like to present here my own conception of how a theological engagement with the Hebrew Bible might proceed, specifically within a Jewish context.²

¹ Amongst the many noteworthy contributions to this discussion we mention only a few representative works: Marvin Sweeney, *Tanak: A Theological and Critical Introduction to the Jewish Bible* (Minneapolis: Fortress, 2012); Benjamin D. Sommer, "Dialogical Biblical Theology: A Jewish Approach to Reading Scripture Theologically," in *Biblical Theology: Introducing the Conversation*, Leo Perdue (ed.) (Nashville: Abingdon Press, 2009), pp. 1-53 and 265-285; Ziony Zevit, "Jewish Biblical Theology: Whence, Why and Wither?" in *Hebrew Union College Annual (HUCA)* 76 (2005), pp. 289-340; Isaac Kalimi (ed.), *Jewish Bible Theology: Perspectives and Case Studies* (Winona Lake: Eisenbrauns, 2012); and James Barr, *The Concept of Biblical Theology* (Minneapolis: Fortress, 1999), pp. 286-311.

² Cf. also David Frankel, "Israelites and Non-Israelites in the Land of Promise: The Use of Biblical Models in the Construction of a Jewish The-

In order to illustrate my approach, I have chosen to focus on divergent biblical accounts of the revelation in the wilderness of Sinai. I will not be concerned with the question of *how* the divine will was thought to have been conveyed (verbally or in some other form) and to whom (Moses or Israel or various combinations of the two) in the different Pentateuchal accounts. This has been the subject of significant recent attention.³ I will focus, rather, on a less talked about issue within the theological context: the question of *which specific demands* were said to have been conveyed in the different and conflicting biblical accounts of the foundational revelation. This is the kind of question that is usually left in the hands of the biblical critics who attempt, on the basis of these materials, to reconstruct the history of ancient Israelite law and religious institutions. The divergences and conflicts have not, as a whole, been employed constructively in contemporary Jewish theology. Indeed, the great Jewish theologians of the recent past continually underscored the unity of the biblical message and either ignored or downplayed elements of internal incongruity.⁴ In my view, this one-sided emphasis on unity is unfortunate. The identification of divergent or conflicting biblical views on any issue, including the one to be discussed below, provides rich resources not only for the historian, but also for the theologian. While the historian may see various historical developments behind the conflicting texts, and the sociologist may see behind them various social groups vying for power, the theologian can go beyond this. He or she can discern in the conflicting texts divergent and even antithetical theological orientations the differences of which are not fully accounted for by reference to the specific historical circumstances within which they were expressed. Most important, these conflicting theological orientations may still be instructive for our own contemporary situation. The attempt to harmonize the texts in pursuit

ology of Coexistence," in *Jewish Studies: Forum of the World Union of Jewish Studies* (forthcoming).

³ See Benjamin D. Sommer, *Revelation and Authority: Sinai in Jewish Scripture and Tradition* (New Haven and London: Yale University, 2015).

⁴ See, for example, Franz Rosenzweig, "The Unity of the Bible: A Position Paper Vis-à-vis Orthodoxy and Liberalism," in Lawrence Rosenwald and Everett Fox (eds.), *Scripture and Translation*, (Bloomington: Indiana University, 1994), pp. 22-26. Martin Buber, "On Translating the Praisings," in Lawrence Rosenwald and Everett Fox (eds.), *Scripture and Translation* (Bloomington: Indiana University, 1994), p. 91.

of a unified biblical message often serves only to flatten them. In sum, the identification of distinct and contrary theological views in the bible provides the constructive theologian with more working material in which to ground his or her inquiry and discussion and with more “choices” that are grounded in Scripture. It also allows the critically minded reader of the bible who is not a “professional” theologian to engage with Scripture in a way that is both intellectually honest and, at least potentially, engaging and meaningful.

The relevance of conflicting biblical texts for contemporary Jewish thought cannot, to be sure, be presented without extracting the abstract conflicting theological principles from their concrete and specific expressions in the texts. These conflicting principles may then be correlated with ones that appear in different garb in later Jewish literature, down to our own day. Finally, it is also of vital importance to show how these principles may be brought to bear on the various challenges facing us today.⁵ The following, then, is an attempt to demonstrate in a rudimentary way how all this might be done with reference to a single topic, the divergent biblical views concerning the content of the founding revelation given in the wilderness.

Is Child Sacrifice One of the Commandments? Jeremiah vs. Ezekiel

The first important point that needs to be established is that the question of what content was related to Israel in the founding covenant revelation was in fact the subject of radical disagreement in the Bible. This becomes most evident when we investigate some prophetic passages outside the Pentateuch.⁶ One of the most striking texts in pro-

⁵ A significant collection of essays that attempt to extract theological principles from the laws of Lev 25 and discuss how those principles might be applied in today’s world is Hans Ucko (ed.), *The Jubilee Challenge: Utopia or Possibility? Jewish and Christian Insights* (Geneva: World Council of Churches, 1997).

⁶ An interesting example of prophetic disagreement over the law concerns the use of foreigners as cultic personnel in the Temple service. According to Ezekiel 44:6–8 this is a violation of the covenant (see also Zechariah 14:21). In verse 9, the prophet issues a further prohibition against the very entrance of foreigners into the Temple. In contrast, according to Isaiah 56:5–9, YHWH promises to repay foreigners who

phetic literature is that of Ezekiel (Ezek) 20. This oracle presents Israel's earliest history as an unending story of rebellion against God and God's good life-giving commandments. God continually considered wiping out Israel completely both in Egypt and the wilderness, but, then realizing that this would reflect negatively on God's reputation, God stayed God's hand (as told in vv. 5–17). In Ezekiel's unique and unparalleled historical narrative, the second generation of Israelites in the wilderness disobeyed God's good commandments that God had given to their fathers. Thus, the second generation continued the path of rebellion initiated by the first (vv. 18–21). After realizing, once again, that destroying Israel would be counterproductive, God instead decided then and there to disperse the second generation's descendants among the nations at some point in the distant future (vv. 22–24). God also decided on a further response. In Ezek 20:25–26, that they might know that I am the LORD."⁷ In other words, after the Israelites rejected God's good commandments, God proceeded to give them *bad commandments by which they could not live*. God did this so as to punish them for their rejection of God's good laws. The prophet then gives a specific example of one of the bad laws that God gave in the wilderness. As recognized

have accepted the covenant with service at the Temple. According to J. Schaper, this disagreement reflects divergent interpretations of the laws concerning who may enter the community of YHWH of Deuteronomy 23:2–9. This proceeds from the assumption that the prophets agree on the content of the founding revelation and merely disagree on the interpretation of that content. See Joachim Schaper, "Re-reading the Law: Inner-biblical Exegesis and Divine Oracles," in Bernard M. Levinson and Eckart Otto (eds.), *Recht und Ethik im Alten Testament: Studies in German and English in Honor of Gerhard von Rad, Altes Testament und Moderne* 16, (Munster/London: LIT 2002), pp. 125–144. It is also possible, however, that the prophets disagree more fundamentally on the very contents of the revelation.

⁷ Translations in this paper are mine.

by Moshe Greenberg,⁸ Jon Levenson⁹ and others,¹⁰ the Hebrew words *ואטמא אותם במתנותם בהעביר כל פטר רחם למען אשימם* (“and I defiled them with their gifts, with the giving over of everything that opens the womb, so that I may devastate them”) refer to the divine command to sacrifice firstborn children to God! This may allude to the somewhat ambiguous command of Exodus (Exod) 22:28–29, to other written texts that were not incorporated into the Torah, to oral tradition, to earlier versions of our Torah text, or to some or all of the above.¹¹ In any event, for Ezekiel, who speaks in the name of the God of Israel, child sacrifice was one of God’s *mitzvot*!

In contrast, Exod 13:13 and 15 and 34:20 and Numbers (Num) 18:15 all insist that the firstborn son must be redeemed. Deuteronomy (Deut) 12:30–31 and 18:10 (and many other biblical texts) condemn child sacrifice as an abomination of the nations, which must not be adopted in Israelite worship of the Lord. There is not even any need, according to Deut 15:19–23, to redeem the firstborn. Moreover, when Ezekiel’s older contemporary, Jeremiah, condemns child sacrifice, he adds the threefold insistence that this form of worship is one “which I did not command, nor speak, nor even entertain in my mind” (Jeremiah [Jer] 7:31 and 19:5). This profuse denial clearly indicates that Jeremiah was rejecting his audience’s belief that child sacrifice was indeed commanded by God. This common belief, however, was not restricted to the crowds that partook in this cult. It was declared true by the God of

⁸ Moshe Greenberg, *Ezekiel 1–20*, AB (Anchor Bible) 22 (Garden City: Doubleday, 1983), pp. 368–370.

⁹ Jon D. Levenson, *The Death and Resurrection of the Beloved Son: The Transformation of Child Sacrifice in Judaism and Christianity* (New Haven: Yale University, 1993), pp. 3–17.

¹⁰ See, e.g., Michael Fishbane, *Biblical Interpretation in Ancient Israel* (Oxford: Clarendon, 1986), p. 185. For traditional Jewish interpretations of Ezek 20:25–26 see Rimon Kasher, *Ezekiel, Introduction and Commentary, Volume One, Mikra Leyisra’el: A Bible Commentary for Israel* (Jerusalem: Magnes, 2004), 404–406 (in Hebrew). See also, P. W. van der Horst, “I Have Them Laws That Were Not Good’: Ezekiel 20:25 in Ancient Judaism and Early Christianity,” in J. N. Bremmer and F. Garcia Martinez (eds.), *Sacred History and Sacred Texts in Early Judaism: A Symposium in Honor of A. S. van der Woude* (Kampen: Kok Pharos, 1992), pp. 94–118.

¹¹ See the discussion in Levenson, *Death and Resurrection*, pp. 3–17, for some of these possibilities.

Ezekiel,¹² even if as a form of punishment, "so that I may make them desolate, so that they might know that I am the Lord!"

A Theological Interpretation of the Debate

Let us now briefly examine this "historical" dispute over what God did or did not command in theological terms. The God of Ezek 20, like the God reflected in at least one reading of the story of the *Akedah* (the 'binding' of Isaac in Genesis [Gen] 22),¹³ is not constricted by ethical

¹² In my view, this evidence stands in the face of the sweeping pronouncement of Joshua Berman:

Perhaps the most significant observation we can make about the presentation of the various laws elsewhere in the Bible is this: no-where in the Hebrew Bible do we find a prophet, priest, or king—or even a biblical narrator—who argues in explicit fashion for the legitimacy of one version of a law over another... Alas, any trace of this supposed fight for supremacy between the schools is utterly absent from the extensive record of extra-pentateuchal biblical books.

See Joshua Berman, "Supersessionist or Complementary? Reassessing the Nature of Legal Revision in the Pentateuchal Law Collections," in the *Journal of Biblical Literature* (JBL) 135 (2016), p. 214.

¹³ See the provocative and compelling essay of Yehuda Liebes, "The Love of God and Divine Jealousy: On the Dualistic Dialectic that is the Heart and Essence of Religion" (אהבת האל וקנאתו: על השניות הדיאלקטית שהיא) (לבנה ומהותה של הדת" *Dimuy* 7 (דימוי) (1994), pp. 30-36 (in Hebrew). For a similar reading of the divine response to Job that is equally provocative and suggestive see Edi Tzemach, "What Did God Answer to Job?" (מה ענה אלהים לאיוב?), in *Moznaim* (מאונים) 69/9 (1988), pp. 14-17 (in Hebrew.) Attempts to interpret the story of the *Akedah* as a negation of the possibility of child sacrifice on the basis of the fact that God stays Abraham's hand falter in light of the fact that God in no way indicates that Abraham's intended act of obedience was problematic, let alone deplorable. On the contrary, Abraham's near slaughter of his son

constraints.¹⁴ The concerns of God in this theological picture are focused on the achievement of glory and a “great name” beyond all else.¹⁵ An analogous conception of the deity is clearly articulated in the Book of Daniel:

*All the inhabitants of the earth are accounted as nothing; and he does according to his will in the host of heaven and among the inhabitants of the earth; and none can stay his hand or say to him, “What doest thou?”*¹⁶

In accordance with the fundamental worthlessness of all of existence in the face of the divine, and the idea that no heavenly or earthly being can stay God’s hand or intimate what God should do, the God of Ezekiel decides to refrain from destroying Israel independently, and does not do so at the behest of Moses (*cf.* Ezek 20:9, 14, and 22 with Exod 32:11–13, Num 14:13–19, and Deut 9:18 and 26–29). Further, God’s considerations are thoroughly theocentric, related to God’s honor and reputation alone.¹⁷ Concomitant with this conception of the deity as radically other and beyond all human construal is a conception of God’s commandments as standing in a class that lies beyond the distinction be-

is taken as a positive sign of his great devotion and is therefore rewarded.

¹⁴ For the relationship between morality and the divine command, see Avi Sagi, “The Suspension of the Ethical and the Religious Meaning of Ethics in Kierkegaard’s Thought,” in the *International Journal for Philosophy of Religion* 32 (1992), pp. 83–103. For the Jewish context see, in Hebrew, idem, *Judaism: Between Religion and Morality* (יהדות בין דת למוסר) (Israel: Hakibbutz Hameuchad, 1998).

¹⁵ See on this D. A. Glatt-Gilad, “Yahweh’s Honor at Stake: A Divine Conundrum,” in the *Journal for the Study of the Old Testament (JSOT)* 98 (2002), pp. 63–74.

¹⁶ Daniel (Dan) 4:32. Italics added.

¹⁷ For a recent discussion of Ezekiel’s conception of God’s name, see Tova Ganzel, “Defilement of God’s Name in Ezekiel,” in Michael Avioz, Elie Assis, and Yael Shemesh (eds.), *Zer Rimomim: Studies in Biblical Literature and Jewish Exegesis Presented to Professor Rimom Kashner* (Atlanta: Society of Biblical Literature [SBL], 2013), pp. 206–219.

tween good and evil.¹⁸ To put it more precisely, God can give commandments that are just and good for the individual and for society, but God can also give “חֻקִּים לֹא טוֹבִים,” commandments that are neither good nor just nor beneficial for either. God is radically free, such that God can do as God pleases.¹⁹ And, since human life, like all of creation, is “accounted as nothing,” the command to sacrifice children to God is both beyond criticism and fully comprehensible. The command is given “so that I may make them desolate, in order that they know that I am YHWH” (v. 26).

In an admittedly limited, yet perhaps instructive way, the theological position of Ezek 20 is reminiscent of modern Jewish thinkers such as Yeshayahu Leibowitz and Joseph B. Soloveitchik. Leibowitz puts strong emphasis on absolute divine transcendence, the theocentric orientation of the divine commandments and the complete independence of religion from human concerns or the realm of the ethical.²⁰ And Soloveitchik, though less extreme, highlights the theme of surrender,

¹⁸ Contrast this with the insistence of Maimonides that “the laws of the Torah are not vengeance on the world but mercy and kindness and peace for the world.” He states this in support of the Rabbinic position that the Sabbath must be desecrated to save the sick. He then goes on to state:

Those heretics that say that desecrating the Sabbath is prohibited – it is concerning them that scripture states, “I too have given them laws that are no good and statutes through which they will not live” (Ezek 20:25).

See Mishneh Torah, Hilkhot Shabbat 2:3.

¹⁹ The idea of God’s radical freedom is also reflected rather clearly in Exod 33:19, “I show favor to the one to whom I show favor, and I show compassion to the one to whom I show compassion.”

²⁰ See Yeshayahu Leibowitz, *Judaism, Human Values and the Jewish State* (edited and translated by E. Goldman), (Cambridge, Massachusetts and London: Harvard University, 1992). Eliezer Goldman, “Religion and Morality in the Philosophy of Isaiah Leibowitz” (”דת ומוסר בהגותו של”) (ישעיהו ליבוביץ”) in Avi Sagi and Daniel Statman (eds.), *Between Religion and Ethics* (בין דת למוסר) (Ramat Gan: Bar-Ilan University, 1993), pp. 107–114 (in Hebrew).

self-negation, and personal sacrifice in the worship of God.²¹ He also depicts those who would bring external sets of values to bear in evaluating the Halakha (Jewish law) as modern day followers of Korah (cf. Num 16).²² Of course, neither of these thinkers goes so far as to cite the

²¹ Though these themes appear throughout Soloveitchik's writings, they stand out in Joseph B. Soloveitchik, *The Lonely Man of Faith* (Northvale, N.J.: Aaronson, 1997) and *idem*, *Out of the Whirlwind: Essays on Mourning, Suffering and the Human Condition* (edited by David Shatz, Joel B. Wolowelsky, and Reuven Ziegler), (New York: Toras Ho-Rav Foundation, 2003). For a recent discussion of these works see Dov Schwartz, *From Phenomenology to Existentialism: The Philosophy of Rabbi Joseph B. Soloveitchik, Volume 2* (translated by Batya Stein), Supplements to the Journal of Jewish Thought and Philosophy (SJJTP) 19 (Leiden and Boston: Brill, 2013), pp. 227-289 and 319-363.

²² See Joseph B. Soloveitchik, "The 'Common-Sense' Rebellion Against Torah Authority," in Abraham R. Besdin (ed.), *Reflections of the Rav*, (Jerusalem: Department of Torah Education, 1979), pp. 139-149. See also Lawrence Kaplan, "Ethical Theories of Abraham Isaac Kook and Joseph B. Soloveitchik," in Elliot N. Dorf and Jonathan K. Crane (eds.), *The Oxford Handbook of Jewish Ethics and Morality* (Oxford: Oxford University, 2013), pp. 166-185. Note especially the discussion at pp. 178-179, where Kaplan cites Soloveitchik's statement regarding the disallowing of a marriage between a gentile girl who had converted and her fiancée, an assimilated Jewish man whom she had brought back to Judaism and who turned out to be a *kohen* (a male of priestly descent). Soloveitchik pronounced:

When you reach the boundary line you have to say, 'I submit to the will of the Almighty.' With sadness in my heart, I shared in the suffering of the poor girl. She was instrumental in bringing him back to the fold, and then she had to lose him. She lost him. She walked away.

As Kaplan points out, though Soloveitchik applauds the young woman for her heroic submission, he obscures the problematic fact that his own renunciation of the ethical in the incident (*i.e.*, his refusal or inability to issue a lenient ruling) had tragic consequences for somebody else. The difficulties confronting the *posek* (halakhic decisor) when a ruling would engender great suffering for the individual requesting a ruling is acknowledged and discussed frankly in Aaron Lichtenstein, "Mah Enosh:

bald formulation of Ezek 20:25–26. Yet significant traces of the Kierkegaardian ideal of the religious suspension of the ethical can be detected in their writings.²³

The position of Jeremiah, and of the many biblical texts that insist that God's commandments are good (Nehemiah [Neh] 9:13), just (Deut 4:8), and life-sustaining (Leviticus [Lev] 18:5) reflects, first and foremost, an antithetical conception of the nature of God. This is the God who ascribes great worth to humanity as is concerned to act on her behalf and benefit. This is the profound implication of the idea that humanity was created in the divine image (Gen 1:27 and 9:6).²⁴ Divinity and humanity are not radically incommensurate but, in a certain sense, fundamentally alike. Since humanity's worth is grounded in its divine

Reflections on the Relation between Judaism and Humanism," in *The Torah U-Madda Journal* 14 (2006–2007), pp. 1–61, at p. 50.

- ²³ The idea of the submission of own's own ethical sense to the higher authority of Halakha is prominent amongst Orthodox thinkers, even those that seek to highlight the centrality of individual ethical intuition. Note, for example, the following statement from Walter S. Wurzburger :

It would be the height of arrogance to challenge the validity of an explicit divine imperative on the ground that it runs counter to our own ethical intuitions. Indeed, to permit humanistic considerations to override divinely revealed commandments amounts to a desecration of the Divine Name. In the event of conflict with explicit halakhic requirements, all ethical, aesthetic, intellectual or prudential considerations must be set aside. (Walter S. Wurzburger, *Ethics of Responsibility: Pluralistic Approaches to Covenantal Ethics* [Philadelphia: Jewish Publication Society {JPS}, 1994], p. 29.)

For a critical discussion of Wurzburger's book, see David Shatz, "Beyond Obedience: The Ethical Theory of Rabbi Walter Wurzburger," in *Jewish Thought in Dialogue: Essays on Thinkers, Theologies, and Moral Theories* (Boston: Academic Studies Press, 2009), pp. 305–325.

- ²⁴ For a thoughtful reflection on the nature of humanity in light of general philosophy and Jewish sources that is centered around the idea of humanity as created in the image of God, see Alan L. Mittleman, *Human Nature and Jewish Thought: Judaism's Case for Why Persons Matter* (Princeton and Oxford: Princeton University, 2015).

likeness, people can confront and challenge God, in spite of the assertions of Dan 4:32. In the words of Abraham, who indeed challenges God over the destruction of Sodom, God is “Judge of all the earth” and God must, perforce, perform justice and righteousness (Gen 18:25).²⁵ If so, God’s commandments must also be just, good, and beneficial in simple human terms. If they appear to be otherwise, humans can and should scrutinize and challenge them (*cf.* Lev 10:16–20),²⁶ and even, at times, deny their purported divine authority. The various biblical affirmations that the laws are “good” are not only offered as pious platitudes. They are at least sometimes to be taken as adamant rejections of the alternative conception represented most clearly by Ezek 20:25. This rejection of Ezek 20 is also implicit in the well-known rabbinic gloss to Lev 18:5, **וְלֹא שִׁמּוֹת בְּהֵם**—**וְחַי בְּהֵם**—“‘You shall live by them’ – this indicates that one is not meant to die by them.”²⁷

In terms of the contemporary situation, it hardly needs to be demonstrated that the controversy over the relationship between Jewish law and universal ethics is far from settled. Not a few of today’s religious authorities, in continuity of a sort with Ezek 20 and Dan 4, insist that Judaism and its divine dictates (as they interpret them) stand above and beyond the bounds of “human” morality. Our place is not to judge but to comply submissively, regardless of the pain that may be inflicted on ourselves or others.²⁸ In this context, I would suggest that it is the

²⁵ For the prevalence of the theme of challenging God in the Bible, see Claus Westermann, “The Complaint Against God,” in Tod Linafelt and Timothy K. Beal (eds.), *God in the Fray: A Tribute to Walter Brueggemann*, (Minneapolis: Fortress Press, 1998), pp. 233–241; Sheldon Blank, “Men Against God: The Promethean Element in Biblical Prayer,” in *JBL* 72 (1953), pp. 1–13. For the continuation of this theme in rabbinic literature see Dov Weiss, *Pious Irreverence: Confronting God in Rabbinic Judaism* (Philadelphia: University of Pennsylvania, 2017).

²⁶ This text provides a striking example of Aaron’s dissension from Moses’ Torah instructions on the basis of his independent reasoning concerning what might be “right in the eyes of YHWH” in the unique situation at hand. The story provides a counterpoint to the story of Nadab and Abihu at the beginning of the chapter (Lev 10:1–3), which presents Aaron as silently acquiescing to Moses’ representation of the divinity.

²⁷ See Babylonian Talmud (b.), Yoma 85b.

²⁸ See Shlomo Aviner, “The Aqeda: Divine Command and Human Morality,” *Be’ahavah Uve’emunah* (**בְּאַהֲבָה וּבְאֵמוּנָה**) 121 (1998), pp. 1–4 (in Heb-

continuing task of the followers of Jeremiah to invoke his divine voice and proclaim: "I did not command; I did not speak thus; it never entered my mind."²⁹ I will return to this point at the end of this essay.

Disagreement Between Torah Sources Over the Contents of the Law

Let us now turn to the Pentateuch itself. As has been shown rather decisively by critical analysis, the various Pentateuchal law collections with their surrounding narrative frameworks largely reflect divergent accounts of the initial covenant between YHWH and Israel and the essential stipulations that that covenant entailed.³⁰ This is the

rew). For an instructive study of recent extremist, fundamentalist trends in Israel, see Motti Inbari, *Jewish Fundamentalism and the Temple Mount: Who Will Build the Third Temple?* (translated by Shaul Vardi) (New York: SUNY, 2009). A broader treatment in Hebrew of the conflict between democratic values and religious authority in Israel is Dov Schwartz, *Walking a Tightrope: Religious Zionism and Democracy* (על חבל) (דק: דמוקרטיה וערכיה בהגות הציונית הדרתית) (Jerusalem: Carmel, 2018).

²⁹ Samuel Hugo Bregman writes:

The principle should be that wherever there is a conflict between sanctified text and my own moral sense, I should sacrifice the text and not my intelligence or my feeling. Whenever we are told that God commanded something which we consider immoral, we ought to answer: it is inconceivable that God commanded it. (Samuel Hugo Bregman, *The Quality of Faith: Essays on Judaism and Morality*, translated by Y. Hanegbi [Jerusalem: Youth and Hechalutz Department, 1970], p. 29).

For a critique of this position, see A. Sagi and D. Statman, *Religion and Morality* (Bialik: Jerusalem, 1993), pp. 188–195 (in Hebrew). Of course, the more traditional strategy for resolving the conflict between divine text and morality is through a moralizing interpretation of the text. To a great extent, the pervasiveness of historical consciousness in contemporary society renders this approach of limited use.

³⁰ This argument is an extension of the thesis of Jacob Licht, "The Biblical Foundation Claim" ("טענת הכינון המקראית"), in *Shnaton: An Annual for*

best way to account for the multiple repetitions, inconsistencies, and outright contradictions that exist between both the various laws and law collections as well as between their various narrative frameworks.³¹ It was only when the final redactors combined these texts into a single, continuous narrative that the conflicting accounts of God's covenantal demands came to be seen as complementary ones.

In fact, these law collections and their narrative frameworks are best understood not only as divergent formulations of God's essential demands of Israel, but also, at least to a certain extent, deliberately disputatious and competitive. Thus, when we read, in Deut 4:44, "וְזֹאת הַתּוֹרָה אֲשֶׁר שָׂם מֹשֶׁה לִפְנֵי בְנֵי יִשְׂרָאֵל" ("This is the teaching that Moses set before the Israelites"), we should probably hear an emphatic *זֹאת* (*zot*, "this"). *This*, the teaching of Deuteronomy, is the Torah of Moses, and *not* the covenant texts of Exod 19–24, Exod 34, the Priestly teachings now found throughout the books of Exodus, Leviticus and Numbers,

Biblical and Ancient Near Eastern Studies (שנתון לחקר המקרא והמזרח הקדום) 4 (1980), pp. 98–128 (in Hebrew).

³¹ For a highly conservative approach to the issue, see, however, Joshua A. Berman, *Inconsistency in the Torah: Ancient Literary Convention and the Limits of Source Criticism* (Oxford: Oxford University, 2017). Berman presents a multipronged case for seeing the law collections both in their pre-redactional stages and at the redactional stage as intended and presented as complementary to earlier law collections, even as they sometimes stand in mutual contradiction. However, at least with regard to Deuteronomy, the text clearly presents itself as a repetition of the Decalogue and a first presentation on the plains of Moab of the additional Horeb laws that the people refrained from receiving from the divine voice (Deut 6:1 with reference back to Deut 5:31 (28)). This makes no sense if Deuteronomy was meant to complement Exodus. Moshe Weinfeld writes:

...he [the Deuteronomic author] makes it quite clear that at Sinai the Decalogue was proclaimed, whereas the law proper was given to Israel by Moses on the plains of Moab. In other words, Deuteronomy would be seen as replacing the old book of the covenant and not as complementing it. (Moshe Weinfeld, *Deuteronomy 1–11*, AB 5; [New York: Doubleday, 1991], p. 19.)

or other Mosaic covenantal law texts that are no longer extant. This claim to exclusive authority is implicit in Deuteronomy's insistence: "Be careful to follow everything that I command you; *you shall not add to it or take away from it*" (13:1; cf. 4:2). The passage implies that the Deuteronomic text is completely adequate unto itself, presenting the first and final word on God's covenant stipulations.³² Circumcision, it may be noted, is never enjoined by Deuteronomy as an obligation of the covenant, though Deuteronomy does affirm that which is, in its view, truly important, the symbolic circumcision of the heart (10:16). From Deuteronomy's perspective, then, the conversion of physical circumcision from an ethnic rite into a *Mitzvah*, indeed, into the very "sign of the covenant," may be an illegitimate addition to God's covenant de-

³² Note the comments of Michael Fishbane (*Biblical Interpretation*, p. 263) regarding this emphatic statement of Deut 13:1:

Following Deut. 12, which is a radical cultic revision of the rules of altar-building found in the Covenant Code (Exod. 20:24), and just as much a radical transformation of the rules of slaughter found in the Holiness Code (Lev. 17), such a remark is certainly as tendentious as it is programmatic. Moreover, because of the temporal generality of the verb "which I command" used in this verse, the restriction on innovations and deletions has a broader horizon, and point to the entire Deuteronomic corpus of law which follows.

See also Bernard M. Levinson, "You Must Not Add Anything to What I Command You: Paradoxes of Canon and Authorship in Ancient Israel," in *Numen* 50 (2003), pp. 1-51, at pp. 6-7. It must be stressed that Deut 13:1 does not imply that Deuteronomy contains *all the laws that Israel needs for its public life*, only that it constitutes the definite statement of *the terms of the covenant*. The same implication can be discerned in Deut 17:18-20 and 31:9-13 and 24-27. Deuteronomy alone is to be written and kept by the ark, read continuously by the king and read to the people every seven years, since it alone provides the correct account of the covenant stipulations. Instructions provided by the priests must be obeyed and are enforced by the death penalty (Deut 17:8-13), but they do not attain the status of covenant stipulations.

mands.³³ The Priestly law collection also claims that it provides the single correct version of God's Sinaitic demands. This is the strong implication of the formula that is frequently appended to Priestly laws, חקת עולם (לדורותיכם), "(for your generations) as an eternal command," or the like.³⁴ Thus, from the perspective of the Priestly law, which considers the marriage of a man to his late brother's widow an "abomination" (Lev 18:16 and 24–30 and 20:21), Deuteronomy's *mitzvah* of levirate marriage (25:5–10) is complete sacrilege! Though the Covenant Code of Exodus 19–24 makes no *explicit* claim to the enduring character of its laws, the fact that the blood of the covenant is sprinkled on the people after they proclaim "we shall do, and we shall listen" in response to the recitation of the "book of the covenant" strongly implies

³³ Of course, at Joshua 5:2–9, circumcision is presented as an important Israelite rite, commanded by God (v. 2). What is more, this text is often characterized as belonging to the work of an editor influenced by Deuteronomy, known as the "Deuteronomistic editor." However, scholars have pointed to the many points in which this editor diverges from the theology and ideology of Deuteronomy, so this could constitute one more example of this. See Bernard M. Levenson, "The Re-conceptualization of Kingship in Deuteronomy and the Deuteronomistic History's Transformation of Torah," in *Vetus Testamentum* 51 (2001), pp. 511–534. My own view is that the text of Josh 5:2–9 has undergone editing that was influenced, at least in part, by the Priestly approach to circumcision. According to the text in its original form, Joshua was the one who first introduced circumcision into Israel. See on this Alexander Rofé, "The End of the Book of Joshua According to the Septuagint," *Henoah* 4 (1982), pp. 17–36, esp. pp. 23–24. For a recent study of circumcision in the Priestly materials, see David A. Bernat, *Sign of the Covenant: Circumcision in the Priestly Tradition* (Ancient Israel and its Literature 3; Atlanta: SBL, 2009).

³⁴ Reference should also be made to the laws of Leviticus 17–26 (27), which many scholars view as a separate kind of Priestly material. Those who see it as an independent law collection that originally stood on its own emphasize the finality implicit in Lev 26:46: "These are the laws, rules, and instructions that YHWH established, through Moses on Mount Sinai, between Himself and the Israelite people." Cf. also Lev 27:34. For a clear and insightful discussion see J. Joosten, *People and Land in the Holiness Code: An Exegetical Study of the Ideational Framework of the Law in Leviticus 17–26*, Supplements to *Vetus Testamentum* (SVT) 67 (Leiden: Brill, 1996), pp. 1–28.

that a similar conception of finality is assumed. The text certainly does not reflect an expectation that the laws will be revised or supplemented, let alone abrogated in the future. The same may be said for the laws of Exod 34:10–26, which conclude with the statement of verse 27, “And the LORD said unto Moses, ‘Write these words—for, based on these words, I have made a covenant with you and with Israel.’” These words and no others form the foundation of the covenant and are preserved in writing for all of posterity.³⁵

Reading the Torah and its Laws as a Polyphonic Text

The question I would like to raise here concerns how we might conceive *reading* this conglomeration of repetitive and partly contradictory legal materials today. On the whole, two critical alternatives have been pursued. Most critics break up the present Torah text into putatively coherent and internally consistent, independent documents, each with their own legal collection. They proceed to read and analyze each document separately, following the assumption that the conglomerated whole is simply unreadable.³⁶ Others seek to read the entire Pentateuch as a continuous whole, and interpret the law collections that follow Exodus 19–24 as complementary applications and extensions thereof.³⁷ However, this synchronic reading of the Pentateuch and, particularly, of the legal materials in it often entails what many would

³⁵ On Exodus 34 in relation to the “Covenant Code,” see Shimon Bar-On, “The Festival Calendars in Exodus XXIII 14–19 and Exodus XXXIV 18–26,” in *Vetus Testamentum* (VT) 48 (1998), pp. 161–95.

³⁶ See, e. g., Joel Baden, “Why is the Pentateuch Unreadable?—Or, Why Are We Doing this Anyway?” in Jan C. Gertz, Bernard M. Levinson, Dalit Rom-Shiloni, and Konrad Schmid (eds.), *The Formation of the Pentateuch: Bridging the Academic Cultures of Europe, Israel, and North America*, FAT 11 (Tübingen: Mohr Siebeck, 2016), pp. 243–52.

³⁷ Aside from Berman, *Inconsistencies*, see Ekhardt Otto, “The Pre-exilic Deuteronomy as a Revision for the Covenant Code,” in *Kontinuum und Proprium; Studien zur Sozial- und Rechtsgeschichte des Alten Orients und des Alten Testaments*, *Orientalia biblica et christiana* (OBC) 8 (Wiesbaden: Harrassowitz, 1996), pp. 112–22; and Christophe Nihan, *From Priestly Torah to Pentateuch: A Study in the Composition of the Book of Leviticus*, FAT 2/25 (Tübingen: Mohr Siebeck, 2007).

consider forced and harmonistic exegesis. I would like to suggest a third alternative. The various law collections of the Torah with their surrounding narrative frameworks can be taken together as, among other things, a polyphonic amalgamation or anthology of alternative and competing claims regarding the stipulations of the covenant.³⁸ As a polyphonic text, this amalgamation is not read with an eye for narrative continuity and complete coherence, much less as a practical handbook on how to carry out the law,³⁹ but as a pastiche or collage of partly conflicting understandings of the scope and meaning of the founding covenant. A similar type of reading has been suggested for other biblical books that severely challenge attempts to find consistency and coherence, such as the books of Job⁴⁰ and Ecclesiastes.⁴¹ Following this approach to the Torah, we may identify in the various legal-collections alternative models for a host of significant theological issues—models upon which we may contemplate or synthesize, and from which we also may ultimately choose.⁴²

³⁸ For the Torah as an anthology see also Benjamin D. Sommer, “Book or Anthology? The Pentateuch as Jewish Scripture,” in Jan C. Gertz *et al.* (eds.), *The Formation of the Pentateuch*, pp. 1091-1108; and Jeffrey H. Tigay, “Anthology in the Torah and the Question of Deuteronomy,” in David Stern (ed.), *The Anthology in Jewish Literature* (Oxford: Oxford University, 2004), pp. 15-31.

³⁹ For the question of the relationship between the laws of the Torah and legislation see Anne Fitzpatrick-McKinley, *The Transformation of Torah from Scribal Advice to Law*, Journal for the Study of the Old Testament Supplement Series (JSOTSS) 287 (Sheffield: Sheffield Academic Press, 1999); Michael LeFebvre, *Collections, Codes, and Torah: The Re-characterization of Israel's Written Law*, The Library of Hebrew Bible/Old Testament Studies (LHB/OTS) 451 (New York: T&T Clark, 2006).

⁴⁰ See Carol A. Newsom, “The Book of Job as a Polyphonic Text,” in *JSOT* 97 (2002), pp. 87-108.

⁴¹ Mary E. Mills, “Polyphonic Narration in Ecclesiastes and Jonah,” in Katharine J. Dell and William L. Kynes (eds.), *Reading Ecclesiastes Intertextually*, The Library of Hebrew Bible/Old Testament Studies (LHB/OTS) 587 (London: Bloomsbury, 2014), pp. 71-83.

⁴² In essence, I see my suggestion as an extension of Soloveitchik's theological, biblical exegesis as exhibited in his classic work, *The Lonely Man of Faith*. Soloveitchik eschews the attempt to harmonize the two creation narratives of Genesis or to read them as a single, continuous narrative. Instead, he takes them as two conflicting accounts reflecting conflicting

Fixed Standardization vs. Spontaneity in the Laws of the Festivals

A brief example should prove instructive. One of the perennial tensions in Jewish life involves the twin values of "*keva* and *kavvanah*," that is, fixed standardization as opposed to inner intention.⁴³ To what extent should we strive for careful regimentation in religious life and to what extent should we encourage free-flowing spontaneity? While careful regimentation can invest religious life with structure, stability, and continuity, it almost inevitably leads to a certain degree of automation and a concomitant loss of personal sincerity and authenticity. The issue is not only a pragmatic one. It also entails a theological deliberation: Is divine service through obedience to the commandments meant to be a thoroughly theocentric enterprise, or might it be designed, at least in part, to serve as a vehicle for an existential relationship between God and God's people? Following the first understanding, one could hardly allow the considerations of the heart to disrupt the fixed structures of worship, but following the second understanding these considerations would be central. As is well known, Yeshayahu Leibowitz stood firmly in favor of the principle of *keva*, and, for support, he often cited the passage in Num 28:4 concerning the daily public offering of the *tamid* sacrifice: "the one lamb shall be offered in the morning and the other lamb shall be offered in the evening." This is indeed a thoroughly legitimate and appropriate use of the passage. The passage comes from a section of the Torah (Num 28–29; cf. also Lev 23) that determines all the festivals and sacred days that repeat themselves on the exact same date, year after year, and delineates the precise kinds and amounts of sacrifices that the people are required to provide to the sanctuary for each occasion. The section recognizes no possible divergences from this fixed, repetitive cycle because of changes in an indi-

theological orientations to humanity, which he interprets as standing in dialectical tension. I suggest that the law collections and their surrounding narratives can also be read discontinuously and interpreted as reflecting opposing theological stances.

⁴³ For this terminology, see Abraham Joshua Heschel, *God in Search of Man: A Philosophy of Judaism* (New York, Meridan, and Philadelphia: JPS, 1959), p. 342 and p. 383.

vidual's personal lot or in the nation's political history. Emotion of any kind is nowhere hinted at.

The central point I would like to make is that most of the Pentateuchal parallels to Num 28–29 contradict it in multiple ways. Most important for the issue at hand, the laws of the festivals in Exod 23:14–19 and 34:18–26 and Deut 16:1–17 make no reference to these fixed public offerings at all. Theologically speaking, the historical or sociological explanations for this divergence are immaterial. The fact is that these texts do not include the fixed public offerings in their versions of the covenant stipulations. Indeed, in these versions of the covenant stipulations, the festivals are *not* fixed in terms of calendrical dates since the timing is related to the situation in the field. The gifts that the worshippers bring to the sanctuary are freely determined by the worshippers themselves (Exod 23:15) in correlation with the degree of blessing received (Deut 16:10 and 17). Finally, the imperative of joy is continually underscored (Deut 16:11 and 14). We have in these texts, then, an alternative model of the worship of God that puts strong emphasis on spontaneity and *kavvanah*. This does not negate Leibowitz's model of Num 28–29. It merely clarifies that it is only one of several models. Of course, one may seek to bring these models together in a new theological synthesis, but there is no imperative to do so. Some may find the highly structured and uniform model of Num 28–29 with its strong theocentric emphasis compelling while others may find that the model of Exodus and Deuteronomy resonates more for them. The juxtaposition of the different models in the same Torah may be taken as an indication that we need not seek theological uniformity. In this instance, as in others, we might readily affirm, "these as well as these are the words of the living God."⁴⁴

Homosexual Sex: A Critical Review of Modern Accommodating Interpretations

Let us now consider a contemporary application of this reading strategy. The designation of the male homosexual act in Lev 18:22 and

⁴⁴ See Babylonian Talmud, Eruvin 13b and Gitin 6b. For the theological pluralism of the Jewish tradition, see Menachem Kellner, *Must a Jew Believe Anything?* (Oxford: Littman Library of Jewish Civilization, 2006).

20:13 as an “abomination” and a capital offense places many contemporary Jews in an embarrassing situation. Modern sensibilities make it nigh impossible to identify positively with these texts. And yet, they are an inherent part of our sacred writings, traditionally read on the holiest day of the year. One of the methods employed in dealing with this matter is to construe the texts as somehow saying something other than what they seem to be saying. The following is a critical review of some Jewish interpretations of this kind.

Jacob Milgrom, who was both a leading Leviticus scholar as well as an ordained Conservative rabbi, offers three different approaches. First, he argues that the biblical prohibition reflects the concerns of a precariously fledgling nation with its own preservation through human reproduction. In other words, biblical law prohibits homosexual relations between men because they threaten to thwart reproduction through heterosexual relations. Following this interpretation of the law, Milgrom goes on to assert that it is not applicable in the world of today, which struggles with the challenges of overpopulation. This approach, however, ignores the fact that the homosexual act is referred to as a *תועבה* (*to'evah*, “abomination”). It is preceded in Lev 18:21 by the law against child sacrifice and followed in Lev 18:23 by the prohibition against bestiality. If the issue were simply the concern to heighten procreation then why is there no prohibition of masturbation or non-procreative heterosexual sex? The category of “abomination,” as the adjacent examples show, surely reflects a deep aversion to something that is considered fundamentally offensive. It cannot be reduced to the level of rationalistic and pragmatic considerations concerning population growth.⁴⁵

Milgrom further argues that the prohibition is addressed to those living in the land of Israel and has no implications for the rest of the world. Obviously, this is hardly helpful for the people living in Israel. Beyond that, however, I would argue that this characterization of the laws in 18:5 implies that we are dealing with a law-collection that sees

⁴⁵ For a discussion of the biblical conception of “abomination” in terms of disgust see Eve Levavi Feinstein, *Sexual Pollution in the Hebrew Bible* (Oxford and New York: Oxford University, 2014), pp. 20–21 and 23 and passim. Her discussion on the ban on sex between men is found on pp. 174–76. According to Levavi Feinstein, “acting with a man as one would with a woman seems to violate the natural order assumed by the text, much like sex between a human and an animal” (p. 176).

itself as a representing a universal ethic: “You shall keep my laws and my rules, by the pursuit of which a person shall live, I am YHWH.” The fact that God’s laws are contrasted with the ways of both the Canaanites and the Egyptians, who permitted such activities (Lev 18:3 and 24), strengthens the impression that they are essentially seen as universal.

Lastly, Milgrom, following one of his students, suggests taking the prohibition of lying with a man *משכבי אשה* (*mishkevey ishah*, i.e., in accordance with, literally—and ambiguously—“the lyings of a woman”) as referring to the *prohibited heterosexual* relationships mentioned earlier in the text. In other words, the text indicates that just as a man cannot have sex, for instance, with his uncle’s wife, so may he not have sex with the male counterpart to her, his uncle. Homosexual activity with a man from outside one’s family would then be permitted. Milgrom himself acknowledges, however, that there is very little basis for this interpretation.⁴⁶

Rabbi Steven Greenberg interprets the biblical prohibition of Lev 18:22 as concerned basically with the active partner. The phrase “lyings of a woman” is taken as a reference to sex as an expression of “humiliation and violence.” Following this, Rabbi Greenberg suggests that the verse considers it an abomination for a man to have sex with another man only when it is “for the perverse pleasure of demeaning another man.”⁴⁷ However, there is no compelling reason to take “lyings of a woman” as a reference to violence and humiliation. Furthermore, the interpretation of Lev 18:22 is hardly helpful since Lev 20:13, which condemns both men to death, would thus be punishing a victim of an abusive sexual act for having been violently abused!

Rabbi David Greenstein suggests that the phrase *איש אשר ישכב אשה* (*ve’ish asher yishkav et zakhar mishkevey ishah*) refers to ‘a man who lies with a woman together “את זכר” (*et zakhar*, “with another man”):’ i.e., “A man who lies, together with another man, with a woman.” These two men, who have heterosexual relations with the same woman at the same time, are condemned to death. The woman is not

⁴⁶ Jacob Milgrom, *Leviticus: A Book of Ritual and Ethics: A Continental Commentary* (Minneapolis: Fortress, 2004), pp. 196–197 and 256.

⁴⁷ Rabbi Steven Greenberg, *Wrestling with God and Men: Homosexuality in the Jewish Tradition* (Madison, Wisc.: University of Wisconsin Press, 2004), pp. 205–206.

held accountable since she is considered a victim of rape.⁴⁸ However, the phrase ש-כ-ב את (sh-kh-v et) in the bible always refers to sexual relations *between* the individuals mentioned. Thus, the phrase וַיִּשַׁב אִישׁ אֶת זָכָר (ve'ish asher yishkav et zakhar) must refer to 'a man who has sex with another man.'

Finally, Richard Elliot Friedman and Shawna Dolansky bring an anthropological perspective to the issue. They argue that homosexual penetration of a person of equal or higher status was experienced by the receiver as a disgraceful feminization and lowering of status and was therefore prohibited. Penetration of persons of lower status, however, was not experienced by the receptive partners as a lowering of status and was therefore permitted. The Torah shared the concern to protect men from being disgraced through feminization. Since, however, the Torah considered all men to be of equal status before God, it prohibited penetration across the board, without regard to the relative social status of the partners. Today, when homosexual penetration is no longer experienced as degrading or as a lowering in status, there is no longer a need to prohibit it.⁴⁹

Let us assume that the anthropological analysis for the Ancient Near East is correct. Is it correct for the biblical material? Was homosexual congress prohibited because it feminized the recipient? Why, then, are both partners put to death? Why not just punish the active partner? And why is there no textual hint of this explanation? Perhaps, then, the act itself is considered an "abomination" having nothing to do with the act's *effects* in terms of feminizing the other?⁵⁰

In sum, it is of little use to attempt to make the text say something other than what it plainly says. An authentic grappling with the biblical text requires intellectual honesty and exegetical candor. How, then, might we accommodate for these texts?

⁴⁸ David Greenstein, "'A Great Voice Never Ending': Reading the Torah in Light of the New Status of Gays and Lesbians in the Jewish Community," in R. Lisa J. Grushcow (ed.), *The Sacred Encounter: Jewish Perspectives on Sexuality*, (New York: CCA Press, 2014), pp. 43–56.

⁴⁹ Richard Elliot Friedman and Shawna Dolansky, *The Bible Now* (New York: Oxford University, 2011), pp. 1–40.

⁵⁰ See also Levavi Feinstein, *Sexual Pollution*, pp. 174–176.

Is Homosexual Sex Among the Prohibitions? Another *Machloket* ('Dispute') in the Torah

The question of male homosexual sex may be seen as another issue that was subject to dispute between the various law collections. Leviticus 18 and 20 prohibit male homosexual congress in the strongest of terms, but both of these texts are part of one legal corpus, the Holiness Collection. No other law text says anything about homosexual relations.

The collection of curses to be recited on Mt. Ebal (Deut 27:9–26) is particularly instructive since it contains the only other list of sexual prohibitions in the Torah. Like the Decalogue, it mentions idolatry and the honoring of parents, but then goes on to address different matters, among them matters of sexual conduct. While bestiality and various forms of incest – all represented in Lev 18 and 20 – are mentioned, homosexuality is not.⁵¹ The silence of all sources but one on male homosexual congress stands in sharp contrast to the prohibition against bestiality, which appears in three separate legal collections (Exod 22:18, Lev 18:23 and 20:15–16, and Deut 27:21). Perhaps we may say that the Covenant Collection of Exodus and the Deuteronomic Curses on Mount Ebal recognize that bestiality and homosexuality cannot be classed together. While bestiality is a form of sexual release that degrades human dignity, a homosexual relationship between two human beings created in the divine image can be founded on mutual love and respect and can enhance human dignity. As many scholars have cogently argued, this approach, quite possibly, is reflected in David's public lament for Jonathan in 2 Samuel (2Sam) 1:26, "I grieve for you, my brother Jonathan, you were most dear to me. Your love was wonderful to me more than that of women."⁵² Of course, we cannot assume that all the authors

⁵¹ The significance of the omission should not, perhaps, be pushed too far. After all, the list of curses-prohibitions is hardly extensive and several severe prohibitions, such as adultery, are equally left unmentioned. In any event, the failure to mention homosexual congress in all the law collections is surely significant.

I would like to clarify, however, that the argument presented here is not intended as an halakhic one. The halakhic issue must be confronted with the tools of halakhah, not biblical analysis.

⁵² See Saul Olyan, "'Surpassing the Love of Women': Another Look at 2 Samuel 1:26 and the Relationship of David and Jonathan," in *Social*

of the texts of the Torah that fail to prohibit homosexual sex would necessarily have approved of homosexual relations or relationships. But none of them deemed this matter relevant or worthy of mention within the context of the foundational covenant made between God and Israel.

Indeed, if we recall Deuteronomy's prohibition on adding or subtracting from its own list of covenant stipulations, we may conclude that Deuteronomy would see in the prohibition of homosexuality of Leviticus an illegitimate addition! If Deuteronomy can present levirate marriage, characterized by Priestly law an "abomination," as a *mitzvah* (see above), it can surely conceive of other alleged "abominations" in at least neutral terms. We have, then, a מחלוקת (*machloket*) in the Torah on male homosexual sex. While Lev 18 and 20 severely prohibit it, the other law-collections of the Torah do not deem it relevant to the covenant.⁵³

Is Sacrificial Worship Among the Commandments? Jeremiah vs. Leviticus and Deuteronomy

I would like to turn now to a final example of biblical disagreement concerning the specific contents of the founding covenant. In Jer 7:22 we read, "for I did not speak to your ancestors or command them at the time that I took them out of the land of Egypt concerning whole offerings and sacrifices." This bold statement has been the source of much perplexity. Lev 7:37–38 ends the first section of Leviticus by stating:

Inequality in the World of the Text: The Significance of Ritual and Social Distinctions in the Hebrew Bible (Gottingen: Vandenhoeck & Ruprecht, 2011), pp. 85–99.

⁵³ Might we not further associate this מחלוקת (*machloket*, "dispute"), at least from a modern Jewish perspective, with the earlier one about whether or not God could command laws that inflict severe pain and radically diminish life? Might we not also invoke the biblical-rabbinic principle of וחי בהם – ולא שימות בהם, particularly in light of the high suicide rates of homosexual youth? These considerations may have limited bearing on the principle issue of homosexual sex from an halakhic point of view. From a theological perspective that is grounded in the Jewish Bible, however, they strike me as potentially significant.

This is the law of the burnt offering, of the cereal offering, of the sin offering, of the guilt offering, of the consecration, and of the peace offerings, which the LORD commanded Moses on Mount Sinai, on the day that he commanded the people of Israel to bring their offerings to the LORD, in the wilderness of Sinai.

Leviticus is not alone in this conception. Deuteronomy similarly mentions the fact that God commanded that sacrifices be offered to God (Deut 12:6–7 and 11). How could Jeremiah contravene these passages? Many insist that Jeremiah was using hyperbole and that what he meant to say is that sacrificial worship is not what God was *really* concerned with at Sinai, though, of course, he did command it.⁵⁴ This is not the place to present a detailed rebuttal of the various “explanations” that have been offered to account for Jeremiah’s strong formulation. In general, however, it may fairly be stated that they reflect an apologetic concern to deny that the essential contents of the founding covenant might have been subject to serious debate among biblical authors.⁵⁵ In

⁵⁴ See C. Lattey, “The Prophets and Sacrifice: A Study in Biblical Relativity,” in the *Journal of Theological Studies (JTS)* 42 (1941), pp. 155–165; and Jack R. Lundbom, *Jeremiah 1–20* (AB 21A; New York: Doubleday, 1999), pp. 488–489. Against this interpretation see William L. Holladay, *Jeremiah 1* (Philadelphia: Fortress, 1986), p. 261.

⁵⁵ Moshe Weinfeld argued that Jeremiah was following the unique approach of Deuteronomy, according to which most of the divine laws, including those about sacrificial worship in the place that God would choose, were given on the Plains of Moab, in the fortieth year of the exodus, after the wilderness period. Only the Decalogue was given when the Israelites first left Egypt. Accordingly, Jeremiah was not denying that God gave commandments about sacrificial worship, but only that those commandments were given in the Decalogue at the time of the exodus. See Moshe Weinfeld, “Jeremiah and the Spiritual Metamorphosis of Israel,” in *Zeitschrift für Alttestamentliche Wissenschaft (ZAW)* 88 (1976), pp. 17–56, at pp. 52–55. The problem with this is that Deuteronomy identifies the laws given on the Plains of Moab with the time of the exodus. See, for example, Deut 4:45–46. Jacob Milgrom, “Concerning Jeremiah’s Repudiation of Sacrifice,” in *ZAW* 89 (1977), pp. 273–275, argued that Jeremiah refers to voluntary sacrifices offered by in-

light of all that has been said above, I believe that we must take Jeremiah as meaning precisely what he says: *God did not command Israel sacrificial worship at the time that the covenant was formed.* If religious authorities such as the authors of Lev 7 and Deut 12⁵⁶ claimed otherwise, they are simply misinformed! This does not necessarily mean that the prophet deemed animal sacrifice thoroughly worthless, nor even that he denied that it was commanded through the priests at some juncture in Israel's later history. Sacrificial worship was not, however, a component of the foundational covenant between God and Israel. As such, it must not be deemed to have theological primacy.

The text of Jer 7:21–22 has often been cited together with other prophetic texts as an indication of the prophetic belief in the primacy of ethics and social action as opposed to ritual.⁵⁷ In fact, these specific verses do not present ethics as the alternative to sacrifice. Verse 23 reads: “But this command I gave them, ‘Obey my voice, and I will be your God, and you shall be my people; and walk along the whole way that I will command you, that it may be well with you.” According to this verse, what God commanded Israel, and what served as the foundation of the covenant, was no specific laws or instructions at all!⁵⁸ It was

dividuals rather than the communal sacrifices that go on throughout the year. The prophet thus emphasized to individual worshipers at the Temple that they are involved in an activity that was never made obligatory. He in no way challenged the claim that the Temple's public service was commanded at Sinai. For a good critique, see Jonathan Klavans, *Purity, Sacrifice, and the Temple: Symbolism and Supersessionism in the Study of Ancient Judaism* (New York: Oxford University, 2006), pp. 81–82.

⁵⁶ Note that even Exod 20:24 presents a divine instruction to offer whole offerings and well-being offerings on altars of earth.

⁵⁷ For a recent reevaluation of the prophetic critique of the cult, see Klavans, *Purity*, pp. 75–100.

⁵⁸ This position should not surprise us, as the presentation of a law collection within the framework of a covenant with a deity is largely anomalous in the Ancient Near Eastern context. See Joosten, *People and Land*, pp. 20–22. It is also worth noting that the separation between the founding of the covenant and the giving of the laws is also represented in Ezek 20. First, YHWH establishes the covenant with Israel in Egypt (vv. 5–7) and only afterwards does YHWH give the laws and commandments in the wilderness (vv. 10–12). See on this Abraham Ahuvia, *As it*

rather that the people obey God. Further, it was that the people obey that which God *will* command in the future. From the continuation of the text in verses 24–28 it becomes clear that “all My servants, the prophets” were God’s designated agents for relaying to the people the divine “ways,” and they are the ones God commanded Israel to obey.⁵⁹ The theological implications of this position are, indeed, far-reaching and deserve to be carefully and thoroughly teased out. The following discussion presents a modest beginning.

Continuous Prophetic Law vs. Written Mosaic Law

Jer 7:24–28 refers to “all my servants, the prophets” without any reference to Moses or his Torah. Thus, the text implicitly stands in opposition to the idea that Moses was the greatest of all prophets and that he formulated God’s covenantal demands in a fixed, written, and eternally binding form. It is no coincidence that Deuteronomy’s warning against adding to or diminishing from the law of Moses appears right before the law concerning wayward prophets (13:1 and 2–6), or that its assertion of the superiority of Moses over all other prophets appears just following the report of the installation of the next prophetic leader, Joshua (34:9–12; cf. Num 12:6–8). Prophets, by their very character as spokespersons for the divine, pose a serious threat to the stability and reliability of all fixed formulations of the divine will. Jeremiah, as opposed to Deut 34:10–12, places all prophets throughout the generations on the same footing. And Jeremiah is not a lone prophetic voice in this matter. The prophet Zechariah, for example, similarly refers to the laws of First Temple times as “**My words and laws which I commanded to My servants the prophets**” (1:6, and cf. 7:12).⁶⁰ If Moses is at all thought

is Written... (בכל הכתוב) (Tel-Aviv: Sifriyat Poalim, 1977), p. 168, n. 1 (in Hebrew).

⁵⁹ A very similar approach is implied in Deut 18:15–19. Note that future prophets here are referred to as similar to Moses. This text thus stands in tension with the assertion of Deut 34:10.

⁶⁰ For biblical texts that refer to prophetic law see Sara Japhet, “Law and ‘The Law’ in Ezra-Nehemiah,” in Japhet, *From the Rivers of Babylon to the Highlands of Judah: Collected Studies on the Restoration Period* (Winona Lake: Eisenbrauns, 2006), pp. 137–151. For the issue in rabbinic literature, see Ephraim. E. Urbach, “Halakha and Prophecy,” in *The World of*

of here, he is at least not mentioned by name and must be considered just one in a long series of prophets through whom God revealed God's laws. This approach implies that God's covenantal demands cannot be formulated in once-and-for-all terms in a single written book. As Israel's situation evolves and changes, God's demands change as well. The medium of the prophets is chiefly that of oral teaching and transmission rather than writing, for orality more readily allows for "adding and removing" from God's previous demands in accordance with God's current will.⁶¹ In sum, Jer 7:21–23 denies much more than the idea that God commanded sacrificial worship to the exodus ancestors. The prophet denies the idea of a fixed and final, Mosaic Torah, probably as represented by the book promoted in his times, (Proto-)Deuteronomy. In place of this, he calls upon the people to obey God's voice as it is currently expressed by the prophet, that is, by Jeremiah himself. This, then, is a מחלוקת between Jeremiah and Deuteronomy concerning whether God revealed fixed covenant stipulations or rather demanded obedience to his continuously evolving demands.

Elements of this biblical debate echo in the writings of Martin Buber. In a manner that is reminiscent of Jer 7:21–23, Buber rejected the idea that God commanded (or commands) fixed rituals of religious worship.⁶² Further, Buber's emphasis on God's ever-present call to the individual in his or her unique situation in the present is not unlike Jeremiah's conception of the prophet as the bearer of the uniquely fresh

the Sages: Collected Studies (מעולמם של חכמים: קובץ מחקרים) (Jerusalem: Magnes, 1988), pp. 21–49 (in Hebrew). A recent book-length treatment of the issue from a source-critical perspective is Jeffrey Stackert, *A Prophet Like Moses: Prophecy, Law and Israelite Religion* (Oxford: Oxford University, 2014).

⁶¹ See J. Blenkinsopp, *Prophecy and Cannon: A Contribution to the Study of Jewish Origins* (Notre Dame: University of Notre Dame, 1977), pp. 80–95.

⁶² For an instructive and accessible treatment of Buber's position see Paul Mendes-Flohr, "Law and Sacrament: Ritual Observance in Twentieth-Century Jewish Thought," in Arthur Green (ed.), *Jewish Spirituality: From the Sixteenth-Century Revival to the Present*, World Spirituality 14 (New York: Crossroad, 1989), pp. 317–435.

and contemporary divine communication.⁶³ Elements of Jeremiah's theological stance have particular relevance in today's Jewish world. Many individuals, for example, often seek to address complex contemporary political and social challenges primarily if not exclusively on the basis of ancient sacred texts. In response to this, one might maintain, with Jeremiah, that God *did not* anticipate all future situations and seek to address them in the initial revelation. Thus, we cannot determine God's will for us today strictly or even chiefly on the basis of what God said yesterday.⁶⁴ Of course, the position which places emphasis on the finality of the Mosaic Torah is also one that speaks to the contemporary situation. It can be taken as a reminder that any living tradition that relinquishes meaningful grounding in the stable structures of the past runs the risk of losing its bearings. Once again, then, biblical debates over the contents of the foundational covenant may be brought into contemporary discourse on Jewish theology.

Closing

I would like to close this study with a final citation from Martin Buber. In an essay in which he responded to various critiques of his thought, Buber noted Jeremiah's profuse denial that God commanded Israel to offer sacrifices. In connection with this, he pointed to the important passage of Jer 8:8: "How can you say, 'We are wise, and the

⁶³ See Martin Buber, "False Prophets (Jeremiah 28)," in Nahum N. Glazer (ed.), *On The Bible: Eighteen Studies by Martin Buber* (New York: Schocken Books, 1982), pp. 166–171.

⁶⁴ The debate analyzed here is related to another biblical debate over the question of whether God changes God's mind (as in Gen 6:6; Exod 32:14; 1 Sam 15:11) or not (as in Num 23:19; 1 Sam 15:29). The position that maintains that God does not corresponds nicely to the idea that God could define the terms of the covenant in a definitive form at the time of the exodus. The position that maintains, on the other hand, that God does change God's mind corresponds to the idea that God continually makes God's will known through prophets in each generation. The biblical debate on God's ability to change God's mind is discussed in Alexander Rofé, *The Prophetical Stories* (Jerusalem: Magnes, 1988), pp. 164–170.

Torah of the LORD is with us'? But behold, *the false pen of the scribes has made it into a lie.*" Following this citation, Buber wrote (my italics):

We do not know which "Torah"-texts Jeremiah had in mind when he says (8:8), "the lying pen of the scribes" has been active in it. They may be texts which afterward were not taken into the canon; *it could also be otherwise.* But in any case, the prophet can here hardly mean anything else by "lies" than that *human will was passed off for the divine within the "Torah,"* which the people call their own to an apparently not insignificant extent. Thereby "laws" appeared as an absolutum that were none... *I must agree in this matter.*⁶⁵

I do not wish to get involved here in Buber's overall position on the relationship between law and commandment. I rather want to note Buber's daring contention that Jeremiah openly and explicitly alleged that Torah-texts that conflicted with his own prophetic views were nothing less than scribal forgery. Though the text and meaning of Jeremiah 8:8 is difficult and disputed, this interpretation is not impossible.⁶⁶ Most important for a contemporary engagement with the biblical "commandments," Buber takes Jeremiah's stance as providing a precedent for contemporary readers of the Bible. If Jeremiah could reject the claims to divine authority of at least certain biblical commandments, we may similarly scrutinize them today. Though a modest individual might prefer to balk at such a daring enterprise, the presence of deeply disturbing commandments—such as the complete annihilation of the

⁶⁵ Martin Buber, "Replies to my Critics," in Paul A. Schlipp and Maurice Friedman (eds.), *The Philosophy of Martin Buber*, The Library of Living Philosophers 12 (London: Cambridge University, 1967), pp. 728–729.

⁶⁶ See, especially, Baruch Halpern, "The False Torah of Jeremiah 8 in the Context of Seventh Century BCE Pseudepigraphy: The First Documented Rejection of Tradition," in Amnon Ben-Tor, J.P. Dessel, William G. Dever, Amihai Mazar, and Joseph Aviram (eds.), *"Up to the Gates of Ekron": Essays on the Archaeology and History of the Eastern Mediterranean in Honor of Seymour Gitin* (Jerusalem: The Israel Exploration Society, 2007), pp. 337–343. For alternative approaches see Fishbane, *Biblical Interpretation*, pp. 33–36 and n. 51; and Moshe Weinfeld, *Deuteronomy and the Deuteronomistic School* (Oxford: Clarendon, 1972), pp. 159–161 and n. 8.

Canaanites (Deut 20:16–18) or the injunction, “You shall cut off her hand; you must show her no pity” (Deut 25:11–12) – renders this enterprise, in my view, unavoidable. I would add in support of Buber’s position, that Jeremiah’s claim that certain Torah-laws are not authentic is itself rooted in a claim to divine authority! The religiously engaged reader of the bible is thus called upon *by the divine voice in the Bible* to attempt to distinguish between the “divine” and the “scribal,” within its conflicting reports about what God commanded.

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