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The Meaning of History According to the Covenant

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Abstract: This essay describes a problem for covenant theology and proposes a solution. The problem is that the suffering of a covenanted people exists and is not always deserved, and that such suffering would also seem to constitute falsifying evidence against any and every claim that a covenant between God and a people is in force. The solution is for the covenant *theologian* to write differently, to be self-consciously fallibilist when representing the content of the covenant between God and a people. That attempt aims to produce a consensus that simply is a utopian view of a covenanted community. Instead, covenant theologians should accept disagreement, that members of communities fight to verify their senses of what a covenant with God entails. In those conflicts, a community that sees itself in relationship to God sees itself in and through the relationships between its members, and covenant theology takes concrete shape in the human order in which, and through which, the content of the covenant with God is mediated.

Keywords: Covenant, Judaism, Theodicy, Abraham Joshua Heschel, Martin Buber, David Hartman

Zusammenfassung: In diesem Aufsatz wird ein Problem für die Bundestheologie dargestellt, und eine Lösung wird vorgeschlagen. Das Problem besteht in der Existenz des Leidens eines Bundesvolkes, ein Leiden, das nicht immer verdient ist, und das eine Widerlegung jeder Behauptung, es gäbe einen Bund zwischen Gott und einem Volk, darzustellen scheint. Die Lösung für eine Bundestheologie besteht darin, auf eine andere Weise zu schreiben, wenn der Inhalt des Bundes zwischen Gott und einem Volk dargestellt wird, nämlich im Bewusstsein der eigenen Fehlbarkeit. Denn jener Versuch zielt auf einen Konsens ab, der eine utopische Vorstellung einer Bundesgemeinschaft darstellt. Stattdessen sollten Bundestheologen akzeptieren, dass es zu Meinungsverschiedenheiten kommen kann, und dass Mitglieder von Gemeinschaften darum ringen, ihre Vorstellungen von der Bedeutung eines Bund mit Gott zu verifizieren. In diesen Konflikten kann sich eine Gemeinschaft, die sich in Beziehung zu Gott sieht, in und durch die Beziehungen zwischen ihren Mitgliedern

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verstehen, und Bundestheologie nimmt in der menschlichen Ordnung konkrete Gestalt an, in der und durch die der Inhalt des Bundes mit Gott vermittelt wird.

Schlüsselwörter: Bund, Judentum, Theodizee, Abraham Joshua Heschel, Martin Buber, David Hartman

The popularity of the theme of covenant in English-speaking Jewish theological circles is most likely a direct response to the influence of liberal political philosophy, notably that of John Rawls (1921–2002). In Rawls's account of justice, made most famous in the 1971 book *A Theory of Justice*, the theory of why members of a social group should agree on principles of justice as fairness depends on a thought-experiment about the best procedure for that agreement, the "original position" in which we imagine ourselves to be covered by a "veil of ignorance" in which we know that our fellow citizens have contingent interests (whether based in religion or some other form of identity) but we do not know what those interests might actually be.[1] One of the key issues here is that in the original position, we take ourselves as atomized individuals; it was Michael Sandel who pointed out that Rawls's conception of the person both disempowered the self by detaching it from various aims and visions that "provide a fixity of purpose [and] form a plan of life," and deranged the self by making self-knowledge an impossible and frustrating task.[2] Given that Rawls, especially in his later work, was taken to be unfriendly to religious citizens, as a result of his demand that they translate their commitments into that language of public reason,[3] this set up an opposition on the part of many of Rawls's readers in which Rawls's individualism and putative secularism became the opponent of the communitarianism of Judaism and Christianity. When the Jewish philosophical theologian David Novak (*1941) first began writing on covenant theology in the late 1980s, it was because he thought that citizens' rights were best conceived in the light of a covenant between God and humans, a covenant that also had natural-law implications. While Rawls was not explicitly mentioned in these early articles, the anti-Rawlsian direction of Novak's thought became clearer in his later work.[4] Novak is not the only covenant theologian in the Jewish theological tradition; a fuller treatment would take account of works both by David Hartman (1931–2013) and Eugene

1 Rawls, *A Theory of Justice*, 15–19, 118–19, 131.

2 Sandel, *Liberalism,* 54–59.

3 Rawls, "Idea of Public Reason" and "*Commonweal* Interview," 573–622.

4 Novak, "Natural Law," 22–44 (an essay that originally appeared in a 1988 volume of the *Jewish Law Annual*); Novak, *Covenantal Rights*, 20–21; Novak, *Jewish Social Contract*, 3n6.

Borowitz (1924–2016).[5] But those books too can be contextualized in a moment in postwar Jewish thought when American Jewish theologians took an anti-secular stance at the same time that Jewish Americans were suburbanizing, and when many of them feared that a secularizing America took Judaism as having nothing to contribute toward answering fundamental political questions.

As the previous footnote signifies, I have a long-gestating book on covenant in the Jewish philosophical-theological tradition, developing a series of articles I've published over the last two decades.[6] For a variety of reasons—administrative duties at my institution, and a broader malaise after my fiancé passed away in 2007—it is likely that that book will never appear. The argument of that book might be re-assembled by readers of those articles, but because I published them in purposefully obscure places (*Festschriften*, expensive edited volumes, journals with small circulations, any place where they might not be judged), I owe readers an account of why I do what I do, and why I think it is important *not* to do certain sorts of covenant theology that, in my view, cannot avoid being enacted in authoritarian and harmful ways.

This project is centered on three claims. First, one cannot have a covenant theology, at least in the Jewish tradition, without having some account of how one's historical status serves to verify (or falsify) a claim that a covenant between God and a people is in force. History is a locus of meaning for anyone and everyone who thinks covenantally. There is, in my view, just no way around that. Second, this means that covenant theology has a problem with undeserved suffering. The world is a site of suffering, yet undeserved suffering is also falsifying evidence against any and every claim that the covenant is in force. Indeed, it suggests that God and a people are no longer covenant partners, whether that be due to the sins of the people or the tyrannical whims of a God who has abandoned that people. Third, it does *not* follow from this that covenantal thinking is illegitimate. It just means that it is necessary to view covenantal thinking as *human* thinking. In the giving and taking of reasons, a community works out how to interpret and understand its covenant with God. Because the content of the covenant is worked out by human communities interpreting together, and is not a direct record of divine speech, covenants become frameworks by which people hold one another accountable for their commitments. That relieves the pres-

5 Hartman, *A Living Covenant*; Borowitz, *Renewing the Covenant*. For a fuller treatment of Hartman (and Novak), see Kavka, "Perils of Covenant Theology: Hartman and Novak," 227–53; for a fuller treatment of Borowitz, see "Perils of Covenant Theology: Borowitz," 92–113.

6 See the two articles of mine that I cite in the previous footnote, as well as Kavka, "The Meaning of That Hour"; "Verification (*Bewährung*) in Martin Buber," 71–98; "Verification (*Bewährung*) in Franz Rosenzweig," 167–83; "Rational Neopragmatist Rabbis," 151–69; "Levinas's Accounts of Messianism," 361–81; "For It Is God's Way," 43–67. Some of the material in this essay condenses material from those earlier essays of mine that I cite here.

sure from a system that tends either to blame people for their own suffering or to produce suffering by hurriedly creating a culture that some take to be godly. Indeed, we can see signs of this human-centered approach to covenant in some important Talmudic stories. (In other words, I propose to solve the problem of suffering in traditional covenantal theology through a sort of Feuerbachean move, insisting both that anthropology—an account of how communities understand their covenantal obligations, and fight over their norms—is theology, and insisting that this move is religiously traditional. Another way to phrase this point is to say that applying covenantal norms in a community is something that involves members of a community making inferences about how best to interpret a claim from the religious past. The religious past is not self-interpreting, and so applying covenantal norms is "anthropological," even if the content of the covenant is "theological.")

Let me start with the first claim. It is not news to say that the covenantal framework in the Five Books of Moses is one that describes an exchange. While God liberated the people of Israel from slavery for no other reason than graciousness, the covenant made at Sinai promises that God will continue to bless the people of Israel if they perform a set of commanded acts. If mitzvot, then blessings. If not, then curses. We see the conditional nature of the covenant at Sinai in Exodus 19, where we find more detail on what it means when God says in Exodus 6:7 "I will take you to be My people, and I will be your God"; Exodus 19:5 adds the important caveat "if you will obey me faithfully and keep my covenant (*'im tishmo'a be-qoli u-shmartem et-ha-briti*)." Exodus omits an articulation of what should befall the people of Israel should it depart from God's covenant. But other parts of the Pentateuch add the blessings-and-curses element that is taken to be common to the covenantal framework: we find a brief and somewhat sketchy version of that element in Leviticus 26, but we find a very long list of blessings and curses in Deuteronomy 28, where God delineates both the blessings that the people of Israel will receive if they adhere to the commands that God gives in making a covenant with them (28:3–14), and the horrors that will befall them if they do not (28:15–68). "These are the terms of the covenant which the Lord commanded Moses to conclude with the Israelites," as Deuteronomy 28 ends (28:69). To think of God's covenant with Israel, made through Moses, in this fashion is by now introductory: it appears both in Jon Levenson's classic introduction to biblical theology *Sinai & Zion*, published in the early 1980s, and it is also apparent in various German-language scholarship that found its clearest expression in Gerhard von Rad's *Old Testament Theology*, published in 1957 (a book that is not without its supersessionist issues, but which sees the form of the Mosaic covenant rightly).[7]

7 Levenson, *Sinai & Zion*, 23–56; von Rad, *Old Testament Theology*, I:192–94, II:267–68.

It is worth emphasizing that the blessings that result from Israel living a covenantal life are always blessings of Israel *in its history*, in the here and now, whether those blessings have to do with fertility and agriculture (Deuteronomy 28:4, 11, 12), or with what we would now call "international relations," referring to the relationships between Israel and the nations of the world (Deutreronomy 28: 7, 10, 13). This emphasis on history—on the view that betting on covenant now will lead to better lives for a covenanted community—remains in the twentieth-century philosophical-theological tradition. The best way to get into this point, it seems to me, is to look at a text that the famous Jewish thinker Abraham Joshua Heschel (1907–72) gave in various versions between 1938 and 1954. They were all calls to audiences—and not strictly Jewish audiences—to think covenantally *so that history could redirect itself and improve*, in other words, so that people could thrive. In 1938, under the title "Search for a Meaning," Heschel argued in Frankfurt to an audience composed largely of Quaker leaders that the evil apparent in his day was a sign that the West had turned away from God. "The spirit of God speaks out of the events of history," Heschel said, "and our life is either an intimacy with this spirit or its negation." The answer was then to respond to evil appropriately, by turning back to God. Quoting the Baal Shem Tov, the founder of Hasidism, Heschel wrote that "if a person sees something evil, he should know that it is shown to him so that he may realize his own guilt and repent."[8] This text was revised extensively after Heschel immigrated to US, and was published in Jewish journals in 1943 and 1944. But it is best known today for its appearance in the closing pages of Heschel's 1954 book *Man's Quest for God*, as an epilogue entitled "The Meaning of This Hour."

It's a fascinating text; here, I want simply to give evidence for two points. The first is that Heschel here is engaged in covenantal thinking because he believed that Western culture, after the Second World War, needed it. The text of "The Meaning of This Hour" ends as follows, with a recapitulation of the scene of Israel at Sinai, now extended to the entirety of Heschel's Jewish and non-Jewish audience in this book, but filtered through a reference to a famous story from the Babylonian Talmud, on page 88 of tractate Shabbat, trying to parse a difficult Hebrew word in Exodus 19:17. Heschel's words: "The martyrdom of millions demands that we consecrate ourselves to the fulfillment of God's dream of salvation. Israel did not accept the Torah of their own free will. When Israel approached Sinai, God lifted up the mountain and held it over their heads, saying, 'Either you accept the Torah or be crushed beneath the mountain.' [That scene, of Israel standing not at the foot of Sinai, but literally underneath it, is famously imagined by one rabbi in the Talmud.]

8 Heschel, "Versuch einer Deutung," 11–13, quotations at 12. For a take on the Talmudic story that differs markedly from Heschel's, see Novak, "Natural Law," 28.

The mountain of history is over our heads again. Shall we renew the covenant with God?"[9] For Heschel, only a covenantal politics could get the West out of its destructive habits.

The second point I want to make is that Heschel thought that such a politics, in America, would lead to America's thriving. From the same epilogue: "God will return to us when we shall be willing to let Him in—into our banks and factories, into our Congress and clubs, into our courts and investigating committees, into our homes and theaters."[10] After God does return, Heschel promises—with perhaps surprisingly maximal language—that the West will finally achieve "brotherhood" and "humanity" and reflect the presence of God in society; it will not just "survive," but also be "great in goodness." (As an aside, I want to mention that this text of Heschel's is difficult to teach now. I have tried to teach it as a way to show students what the religious liberalism was like in the 1950s and 1960s, but going back to the George W. Bush administration in the US, my students have long taken Heschel's words to be far closer to the stance of the contemporary religious right than to any liberal position.)

All of this is to show that in Jewish thinking, covenantal thinking portrays itself as a kind of repair for the West. This stresses something about the covenant that the great covenant theologians in the Jewish tradition in the late twentieth century (Borowitz, Hartman, Novak) do not always emphasize. Covenant is not only about obligations that humans owe God, but also about how fulfilling those obligations will lead God to act on God's promise to bless godly people. In other words, history serves as the sphere in which the covenant is *verified*. How do we know that the covenant is true? Because when humans act in accordance with its terms, the world shows the benefits of having done so. History is the site of signs of election in Heschel's biblical thinking. But Jews are hardly unique in this regard; this is also the case for the Calvinists whom Max Weber analyzed in *The Protestant Ethic and the Spirit of Capitalism*.[11]

So, history matters. Nevertheless, in moving on to the second claim of my book, it would be dangerous to have history matter too much. This is because it would be all too easy to look around at history, especially when one is being persecuted, and infer that the failure to thrive is a sign that the covenant between God and the people of Israel is passé. I'd like to give two examples here, from the modern Jewish philosophical-theological canon, of thinkers who struggle—in my view, deeply unsatisfactorily—with this problem. The first is Martin Buber (1878–1965), in the clos-

9 Heschel, *Man's Quest for God*, 151.
10 Ibid., 150.
11 Weber, *Protestant Ethic*, 83.

ing pages of what is often taken to be his most important work, *I and Thou*, originally published in 1923. Buber, like Heschel, was a thinker of verification; the last part of *I and Thou* is really about techniques that communities might use to show not only that meaning exists, but that the long-promised redemption is on its way. It is a liberalized (and perhaps for some readers, secularized) version of "if mitzvot, then blessedness." For him, if we engage in acts of "pure relation" in which we do not objectify others, then we can take the presence of the divine—what Buber sometimes called the "eternal You"—that is implicit in those acts and verify it in the world, giving it shape through those very acts of relation. The stakes of this verification for Buber are, again, manifesting the divine presence in the world in concrete form: "man can do justice to the relation to God that has been given to him only by *actualizing* God in the world in accordance with his ability and the measure of each day, daily."[12]

Buber, however, knew that he had to deal with the falsifying power of the world. Some humans might work to verify the divine, but Buber was enough of a realist to acknowledge that that work would decay of its own accord. The ideas that seek to verify God might become an ideology to be parroted. God might become an ossified object or text. Relational moments will come to an end. But this was how Buber thought history was supposed to work: thus goes "the course and countercourse of the eternal and eternally present word in history" that is revelation.[13] As a result, "doom" was always a historical possibility, and Buber seemed to think it was more likely as history continues: "Doom becomes more oppressive in every new eon, and the return more explosive [...] History is a mysterious approach to closeness. Every spiral of its path leads us into deeper corruption and at the same time into more fundamental return. But the God-side of the event whose world-side is called return is called redemption."[14] On that note, *I and Thou* ends.

The covenantal logic that God will return to a godly people after they return to God is in force in that last clause; Buber's call to his readers is not all that different from Heschel's. But Buber's realism, his noble and important acknowledgment that history is not a path of linear progress, tied him into knots from which he could not escape. By saying that "history is a mysterious approach to closeness," one that incorporates and includes apparent doom, Buber in effect argued that any empirical evidence that humans' attempt to verify the covenant has failed is *actually* evidence that verification will actually be successful. But how could this be possible? Buber failed to articulate what real failure might be—a doom that would be the last word,

12 Buber, *I and Thou*, 163.
13 Ibid., 168.
14 Ibid.

with no redemption to follow—and trusted in redemption without any ground for doing so. Another way to phrase this problem might turn to the contours of Antony Flew's classic paper from the 1950s on theology and falsification.[15] There, Flew argued (among other things) that religious believers are only making meaningful assertions when they make faith-claims if they can articulate what states of affairs would, if they were to exist, falsify those faith-claims, or serve as evidence that would lead them to take those assertions as false and, as a result, give up those faith-claims. Applying that argument to *I and Thou*, we can say that if Buber could not describe a state of affairs that would be incompatible with his confidence that redemption is on its way, then any assertion of that confidence lacks meaning. It becomes unfalsifiable, and Buber ends up sounding (against his own wishes) as if he is making a meaningless faith-claim that can have no purchase on the world as it is, and therefore has no persuasive authority over readers. What Buber needed was an account of what the world would have to look like in order to entitle people to say that doom might actually have the last word.

If Buber ends up in philosophical problems because his notion of covenant ends up falling prey to an ungrounded optimism about history, even in the face of the suffering that he associated with "doom," covenant theologies can also fall prey to a tendency to blame the sufferers for their own sins. My example here is the late Jewish theologian David Hartman, who spent his life developing a covenantal theology influenced by the great twelfth-century Jewish philosopher and halakhist Moses Maimonides (1135–1204). The temptation of such an approach is easy to see: Maimonides's God is a creator God, but he is not the direct or proximate cause of any historical event. This allows for humans and their free decisions to be at the center of history, and detaches God from being responsible for humans' undeserved suffering (and thereby appearing to be a whimsical tyrant who enjoys causing pain for its own sake). However, Hartman stumbled over other aspects of Maimonides's theology. Maimonides thought that humans could make their world through the will to repent and turn to God: as Hartman stated, "central to Maimonides's philosophy of history and concept of hope is the belief that man can always do *teshuvah*," repen-

15 Flew, "Theology and Falsification," 96–99. Charles Guth rightly wonders whether turning to Flew here is justified, lest I suggest that only experience can verify or falsify normative and theological claims. The issues here are complex, but let me mention two points here. Firstly, to turn to Flew is not to turn to logical positivism, as Flew himself made clear in later reflections on the argument; see Flew, "'Theology and Falsification' in Retrospect," 269–83, esp. 271–73. Secondly, given that Buber's theological claim at the end of *I and Thou* is an implicit claim about history, experience seems to have a different valence in any debate over this theological claim than it does over others. Experience might have little to say in answering the question "Does God exist?" It has much to say in answering the question "Is God nearing us?"

tance.[16] Yet Hartman also ends up endorsing those bits from Maimonides where Maimonides denies the existence of anything like moral luck, the randomness that can determine whether or not I reap the rewards that I (and others) might believe I deserve for my actions. From a section of Maimonides's lawcode, the *Mishneh Torah*, which Hartman quoted in an early essay entitled "Sinai and Messianism": "As the community cries out in prayer and sounds an alarm when overtaken by trouble, everyone is bound to realize that evil has come upon him *as a consequence of his own evil deeds*, as it is written [in Jeremiah 5:25] 'your iniquities have turned away these things and your sins have withheld good from you,' and [is also bound to realize] that his repentance will cause the trouble to be removed."[17]

When one speaks or quotes such Maimonidean words that presume all suffering is deserved, or words like them, to someone who has lost a family member to terrorism, or to a survivor of sexual assault or abuse, or to someone suffering from mental illness, one speaks obscenely. One blames someone for the things that another person has, or other persons have, done to them—or in the case of mental illness, that a disease has inflicted upon them—and compounds their suffering as a result. Such a claim ought to be uncontroversial. By the 1990s, Hartman had moderated his views somewhat in his magnum opus *A Living Covenant*. But there too, an individual's suffering was implicitly grounded in the faults of her own character. Quoting a passage from the Talmud (B. Berakhot 5a) that reads "if someone sees that painful sufferings visit him, let him examine his conduct. For it is said [Lamentations 3:40], 'Let us search and probe our ways, and return/repent [*nashuvah*] to the Lord,'" Hartman commented that "the covenantal spirit of Sinai is broadened and deepened when it is discovered that suffering can energize to strive actively for moral renewal."[18] Yet nowhere in this work, nor in other later essays, does Hartman develop how such energizing might work. What might happen when the suffering person fails to work up the requisite energy? How might we explain what is going on when the suffering person does strive actively for moral renewal *yet still suffers anyway*, compounding the suffering person's sense that their suffering is undeserved? In *A Living Covenant*, Hartman simply gave up and appealed to mystery: "the end of wisdom includes knowing the limits of what one can fully judge."[19] But as long as that end of wisdom includes countenancing the assertion that the survivor of abuse may very well be responsible for his having been abused—or that it is their responsibility to adopt a perspective from which they take their having been

16 Hartman, *Joy and Responsibility*, 247.
17 Ibid., 246. For the Maimonides quote, see *A Maimonides Reader*, 114.
18 Hartman, *A Living Covenant*, 196.
19 Ibid., 203.

abused as insignificant, or actually a blessing in disguise—the end of such wisdom fails to rise above obscenity.[20]

Part of the problem here is that the tradition of philosophical-theological thinking is attached to a notion of God as what the heterodox gadfly and Jewish theologian Richard Rubenstein once dismissed as "the Lord of history," a God who determines people's fate at every moment in accordance with their deserts.[21] It is true that the dominant strand of biblical texts, as well as many post-biblical Jewish texts, lend themselves to such a view. This can lead to the formulation of covenant theologies in which history becomes a realm where people express their eagerness for the covenant to be verified, rustling up political-theocratic will as Heschel did ("let God into our Congress and [...] courts"), or insisting with Buber that redemption is around the corner even though the world is falling to pieces right in front of our eyes. It can also lead to the formulation of other sorts of covenantal theologies that detach God from history, as Hartman did, but still cannot quite countenance the possibility that a transcendent God simply sits back and allows the righteous to suffer. As a result, Hartman clings to the idea that those who suffer are—somehow and despite appearances to the contrary—suffering on account of their own sin, and that only a return to God and mitzvot will bring the trappings of blessedness back to their lives. In these ways, it seems that as soon as we begin thinking about theodicy—or as soon as religious authorities start to tell us how we must think about theodicy, deaf to any cries we might want to utter—covenant theology falls apart.

Yet it is not obvious to me that this is all that the tradition of covenant theology is. I want to give two examples from the history of covenant theology—one Protestant, one Jewish—that signal that religious communities have long mediated God's claims on a community through the community's claims on each other. These two examples are part of my third claim, namely that covenant theology does not necessarily fall apart after the examination of political doom or individual suffering.

The Protestant example comes from the work of the deeply influential historian Perry Miller (1905–1963), who wrote several volumes from the 1930s to the 1960s about early American history, especially Puritan culture. In his doctoral thesis, published in 1933 as *Orthodoxy in Massachusetts 1630–1650*, Miller briefly analyzed the ability of Puritan congregations to select and depose their officers. Even though Puritan authorities were hardly champions of democracy, Miller pointed out that there was a democratic *logic* behind their organization. Puritan churches, on the

20 For a case in which those who are inadequately "sensitive" or "spiritual" are blamed for their having experienced suffering in concentration camps in World War II as suffering, see Frankl, *Man's Search for Meaning*, 36–38.

21 Rubenstein, *After Auschwitz*, 8–9 and 201–09.

Congregationalist model, were voluntary associations. There covenants with God were also covenants with one another, as Miller showed in other works. As Richard Mather (1596–1669) phrased it, a covenant was "a solemn and public promise before the Lord, whereby a company of Christians do bind themselves to the Lord, *and one to another*, to walk together by the assistance of the Spirit."[22] The fact that members of this covenanted community had the right to depose their officers, should they come to the conclusion that those officers were contravening Christ's word, led Miller to "the inescapable conclusion [...] that since the people by their covenant had created the organization, in the final analysis the people were to decide whether any act of the society fell within the scope of the covenant."[23]

Why is this important? It's because it makes the issue of agency in the covenant murky. On the surface, Christ is the head of church government, not the congregation. But the community's need for stability means that the community can fill in, or apply, or interpret, the content of the covenant at every step of the way. Divine agency means nothing without human agency. History still matters, but insofar as a community takes it upon itself to determine how the covenant looks at any moment in time, *and is fully self-conscious of this act*, its act of covenanting with God is more than simply acting in accord with God's word, or doing acts that God has commanded.

In other words, a community that sees itself in relationship to God sees itself in and through the relationships between its members. The content of the "theological" takes on concrete shape in the human order in which, and through which, that content is mediated. Attempts to express one's faith in the public realm cannot be verified unless they are *acknowledged* as such by others in a community. (What a minister says is only authoritative, only passes as true, as long as his authority is recognized by his congregation.) The content of the covenant is always and everywhere historical; it depends upon what norms are taken as justifiable by members of a community at a given time. There are overlaps here with the neopragmatist philosopher Robert Brandom's notion of "deontic scorekeeping," in which members of a community keep track of one another's commitments, ensuring that they do not make claims that are incompatible.[24] That might lead one to claim that the Puritans were implicitly just good philosophers. But instead of going into the philosophical weeds, I want to take this emphasis on the human—for it is we who, in our religious communities, say what divine law is—and link it to a story from the Talmud, and situate it in the quotation from Heschel that I gave earlier, namely the end of *Man's*

22 Quoted in Miller, *The New England Mind*, 435.

23 Miller, *Orthodoxy in Massachusetts, 1630–1650*, 171.

24 Brandom, *Making It Explicit*, 141–43, 166, 188–90.

Quest for God: "The mountain of history is over our heads again. Shall we renew the covenant with God?"

That question is one in which theologians arrogate to themselves the right to determine how a nation should act. It assumes that what it means to "let God into our Congress and [...] our courts" is easily determined. It assumes that an author knows what the covenant entails, and that readers are entirely ignorant. But the Talmud is aware that such an attitude in which one purports to *represent* the covenant to others makes for unstable communities. It knows that those who simply preach the covenant and refuse to listen—especially to those who have suffered at the hands of the covenant—are simply not acting in accordance with Torah.

The Talmud has a series of stories about conflicts that allegedly occurred in the late first century CE between the head of the rabbinic court, Rabban Gamaliel, and another rabbi named Yehoshua. Conflicts over how to determine the beginning of a new month—important for ensuring that covenantally mandated festivals were observed properly—led Gamaliel to humiliate Yehoshua in a famous story that appears in the tractate devoted to the holiday Rosh Hashanah that is found in the Mishnah, the earliest stratum of rabbinic literature after the destruction of the Jerusalem Temple in 70CE. There are other stories of Rabban Gamaliel's autocratic attitude to legal rulings, and this comes to a head—so the story goes—a year after the original conflict with Yehoshua, when the two come to loggerheads again in a dispute over whether the evening prayer is obligatory or optional.

> Rabban Gamaliel said [to the person who asked for a resolution on this legal issue], "it is compulsory." To the [other] sages, Rabban Gamaliel said, "Is there any person who opposes in this matter?" Rabbi Yehoshua said to him, "No." He [Gamaliel] said to him, "Isn't it in your name that they said to me that it was optional? Yehoshua, stand on your feet and let them be called as witnesses [against you]!" R. Yehoshua stood on his feet and said, "if I were alive and he [the witness] dead, the living could contradict the dead. But now, I am alive and he is alive. How can the living contradict the living?" Rabban Gamaliel was sitting and [continued to] lecture on the issue, and R. Yehoshua [continued to] stand, until a hum rose amidst all the people and they said to Hutzpit, [Gamaliel's] spokesman, "Stop!" and Gamaliel stopped. [The other sages] said, "How long will he go on distressing [R. Yehoshua]? On Rosh Hashanah last year, he distressed him; in the matter of the firstborn, with R. Tzadoq, he distressed him, even now he is distressing him. Come, let us depose him. Whom shall we install in his place?" (B. Berakhot 27b)

The nature of the insult here isn't completely clear. It seems that Yehoshua's "How can the living contradict the living?" is a rhetorical question meant to acknowledge that, if he is going to be put on trial for contravening authority, that the result of that procedure is already fixed in Gamaliel's mind; it is a show trial. But the more important point is that the rabbis resist a view that says that the content of the covenant is to be decided by Gamaliel and by him alone. Gamaliel refuses to take part in a communal process of inquiry.

That insistence on communal inquiry, on openness to others' reasons, leads to my concluding point. At a time when we live among authorities who tell us what God demands, who tell us that God is holding the mountain over our heads, that we must be a holy nation, and who aim to create a world that is indeed holy according to their understanding—there is no other way, in my opinion, of describing the contemporary moment in the US (or at least the state of Florida, where I teach and where the governor is pursuing various policies pertaining to health care and public schooling that reflect his view that all Floridians are to be holy in accordance with his definition of the term)[25]—the scholarly response ought to be that this gets the covenant wrong, that members of a religious community (and outsiders to that religious community who nonetheless know its grammar) have a right to assess claims about what holiness and piety entail. If a polity is a covenanted polity, that does not justify one group lording divine norms over others in order to produce a certain historical order that will not be able to avoid producing suffering for some citizens. Covenant is, at its best, a human framework for managing (but not eliminating!) disagreement; it is at least one strand of the Talmud that shows that its first rule is not to distress, or shame, one's fellow citizens.[26] And both the Talmud and the Puritans show that a Sandel-like vision of a community that is uniform is a myth; even in community, we are individuals fighting to verify our senses of what a community should be. There is no culture without contestation, and at least at times the intense contestation that goes by the name of "culture war." There is no community without disagreement between its individual members. Covenant theology, in the modern Jewish philosophical-theological tradition, has forgotten this simply because it sees no solution to the problems of history beside getting every citizen to agree with what a theologian says. That has not worked, and will not work. Perhaps it is in stories of atomized individuals—Rawlsian stories, secretly bubbling in our religious traditions—that a better future is to be found.

25 Other readers, with broader areas of expertise than I possess, may find that this dynamic is applicable to other areas of the globe. Or they may find it to reside not only in statehouses and legislatures, but also in some corners of scholarship that are marked either by Catholic neo-integralism or by a Protestant retrieval of "ethnic reasoning" in contemporary political theology. See Deneen, *Regime Change*; Vermeule, *Common Good Constitutionalism*; Koppelman, "'It Is Tash Whom He Serves'," 1525–58; Wolfe, *The Case for Christian Nationalism*. For an antiquity-based history of Christian ethnic reasoning, see Kimber Buell, *Why This New Race*. My thanks to a reviewer for this journal for pushing me to broaden my point beyond the borders of Florida.

26 For further examples on the Talmud's view of shaming others, see Jonathan Crane, "Shameful Ambivalences: Dimensions of Rabbinic Shame," *Association for Jewish Studies Review* 35.1 (2011): 61–84.

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