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COVENANT AND COMMANDMENT

Jewry finds itself in a situation in which it cannot evade the task of theological exposition and still remain creative. It is no coincidence that Jewish philosophy for two millennia has flowered preeminently in those environments in which Torah was most challenged from without, for it is the mutual interpenetration of cultures that causes a people to take stock of itself, to sort out and organize its body of belief, in short, to attain a level of self-consciousness at which it can reformulate its identity. At least in North America, Jews live in an environment in which they often encounter an openness to Jewish tradition on the part of both nontraditional Jews and Gentiles who would once have dismissed Torah summarily. The new openness presents both a hope and a threat. The hope is that the cause of Torah will prosper in the lives of many who have forgotten it or never known it. The threat is that traditionists will fail to take advantage of the situation by proving unable to articulate Judaism in such a way as to render it accessible to those whose minds have been shaped largely outside it. This idea of reaching out is, of course, practiced already by the Lubavitcher Hasidim, whose method stresses teaching Jews to do the *mitsvot*, with special emphasis upon certain very tangible, conspicuous acts, such as lighting candles on Shabbat or laying *tefillin*. In the Lubavitch approach, these *mitsvot* serve as the cutting edge of Judaism, which blazes a trail over which the rest of tradition can travel; "one *mitsvah* draws another in its train" (Avot 4:2). In many instances, the method works remarkably well.

For many individuals, however—perhaps most—a period of sustained thought must precede any change in practice. What they

demand is not instruction in the “how” of Jewish observance, but rather, a sophisticated theology of Judaism. They will not set foot on the scaffold of the *mitsvot* until they know the structure is sound. It is useful to reflect upon the question of what such a structure should be in order to accomplish its purpose. The prime requirement is that it must relate *aggadah* and *halakhah*, narrative and norm, story and statute, *mythos* and *ethos*. Should it fail to describe this relationship, the image of Judaism that emerges will be distorted and ultimately a source of frustration rather than fulfillment. The theology must show how Jewish morality grows organically out of Jewish experience, especially out of our common sacred history. It will not do merely to amass citations of commandments or to substitute praising the values they supposedly represent for analyzing the “why” of observing anything.

Morality should not be presented through moralism. Devices smacking of arbitrariness, such as allegories, will not persuade intellectually sophisticated Jews to take that next step. What is needed is a central focus for Torah that can appeal to and utilize universal experience without dissipating what is particularly Jewish in Judaism.

In the 1950s and 1960s, some expositors of liberal Judaism thought they had found the key in the concept of “covenant.”¹ In their minds, covenant theology provided modern man a metaphor in terms of which he could understand and justify a deeply personal relationship with God, one that involved the people Israel collectively and distinctly, not simply the individual. Much fine work came from their hands, and some people as a result were moved closer to an authentic affirmation of Judaism. The fact remains, however, that there are good reasons why the flurry of interest in covenant theology has not had wider impact. The major one is that its understanding of covenant owed more to Martin Buber than to the central books of Jewish tradition. The theologians spoke stirringly about “dialogue” and “relationship,” and “responsibility,” but much less about *halakhah*. In fact, from their work one would hardly have suspected that covenant was a notion primarily legal in character. The covenant theology could not sustain itself because it did not lead its audience into the texts that are the lifeblood of Jewish existence. Its ideas lacked that constant reconfirmation, that wide and deep resonance in the literature, that give theology body and soul—and the capacity to animate a community. That type of covenantal theology failed largely because it was not exegetical, but eisegetical. It read the ideas

of existentialist philosophy into Judaism, wherein they failed to take root. An authentic Jewish theology must continually draw nourishment from the sources; it must be, like its forebears, an enterprise in exegesis. It is my contention that a covenantal theology more rooted in the historical expression of the Jewish people can yield insights the Buberian theologians failed to develop.

II

The idea of a covenant is especially well known to us from texts dating from the Late Bronze Age (ca. 1500–1200 B.C.E.) of the Near East.² These texts make clear that a covenant is a treaty, a contract between states. Where those states are more or less equal in power, we speak of a “parity” covenant. Where one dominates the other, the covenant is one of “suzerainty.” Henceforth, we shall consider only suzerainty treaties. In essence, the treaty is an instrument of diplomacy through which the stronger king, the “suzerain,” who in these texts is often called “the great king,” establishes his control over the weaker party, the “vassal.” The study of many of these profane covenants has enabled scholars to identify a progression of thought, called the “covenant formulary,” in other words, the formula for drawing up a covenant. The formulary in these documents probably reflects a ceremony in which the suzerain acquired his vassal. Very few covenants manifest all items in the formulary, and the order of items is not always the same. Still, we can speak loosely of six parts to a covenant.

The first part has been termed the “preamble.” It is a short identification of the suzerain. Next comes the “historical prologue,” in which the suzerain recounts the history of his relationship with the vassal, stressing the many deeds he has performed in behalf of the lesser king simply out of good will. This recitation of unmerited benefactions is important because through it the suzerain establishes his claim upon the future vassal. The historical prologue leads very naturally to the “stipulations,” which are the terms of the contract, principally what the vassal is obligated to do for his suzerain. Interestingly, one thing both suzerain and vassal are frequently required to do is to “love” the other party. For example, in an Assyrian treaty from the seventh century, the vassals are told, “You will love as yourselves Assurbanipal.”³ In fact, love describes “the object of agreement . . . established by treaty.”⁴ Love for the suzerain and the doing of his will are almost synonymous. After the

stipulations come provisions for the “deposition of the covenant” and its periodic public reading. Then, “witnesses” to the treaty are invoked. In the extrabiblical covenants, these are usually gods. To breach covenant is to commit the abomination of perjuring oneself in their eyes. Last, we see lists of blessings that accrue to the faithful partner, curses to the perfidious partner in covenant.

Of all the biblical passages that illustrate the same formulary, perhaps the clearest is Joshua 24, in which the successor to Moses reaffirms the covenant between the Lord and Israel. Verse 6 contains the preamble; it identifies the suzerain as “Lord, God of Israel.” There follows a long historical prologue, really a resume of Israel’s sacred history from Abraham until the conquest of the Land, just completed.

After this recapitulation of the undeserved kindness of God to Israel come the stipulations, what God, in turn, asks from the beneficiaries of his grace:

And now, revere the Lord and serve him in purity and truth! Banish the gods your fathers served on the other side of the river and in Egypt, and serve the Lord. (v. 14)

After the people have sworn to accept the obligations of covenant (vv. 16-18, 21, 24), we see the provisions for deposition of the text (vv. 25-26). Below we find the efforts of a monotheizing religion to preserve the *Topos* of the witnesses without conceding them divinity:

Joshua said to the people, “You are witnesses against yourselves that you have chosen for yourselves the Lord, to serve him,” and the people answered, “Witnesses we are!”

Joshua said to all the people, “This rock will be a witness against us, for it has heard all the words the Lord has spoken with us, and it will be a witness against you, lest you prove faithless to your God.” (Josh. 24:22, 27)

The last item in the formulary of covenant, blessings and curses, is substantially abbreviated in Joshua. 24 . But we hear the threat of annihilation in the event of apostasy. (v. 20)

Lists of blessings and of curses are better-known from elsewhere in the Bible, principally from Leviticus 26 and Deuteronomy 27–28. The latter is especially relevant in that it comes at the end of the covenant ceremony on the plains of Moab. Note, too, that the choice

the prophets frequently offer Israel either of prosperity or adversity derives in part from their role as avengers of the covenant, prosecuting the people for their breach of the pact with God.

III

When we analyze the utilization of the idea of covenant within Judaism, we discover that the disjunctures are as revealing as the continuities. Outside Israel, covenant was exclusively an instrument of statecraft. In no extrabiblical covenant, to my knowledge, is the relationship one of a deity to a people. There are treaties in which the gods of one state are said to be in covenant with the gods of another, just as are their respective votaries. But no other people seems to have accepted a deity as its suzerain. Israel has transposed the covenantal institution from the diplomatic to the theological realm, transferring the terminology of fealty to kings of flesh and blood into fidelity to a divine liege-lord. Even if this transposition should prove not to have been unique to Israel, it is surely still one of the revolutionary developments in human history, one that reverberates continuously throughout Jewish experience. The rabbis recognized quite clearly the implications of this redirection of the terminology of monarchy. There is, for example the anecdote in the Gemara (*b. Ber.* 58a) about Rav Sheshet, who, although blind, was not fooled one day by an immense clamor that everyone else mistook for the approach of the king. When a certain heretic asked the rabbi how he knew this could not signify the arrival of the king, Rav Sheshet replied, "Earthly kingship is like (*ke'ein*) heavenly kingship"; it comes in the "sound of a thin silence" (1 Kings 19:12). The relationship cuts both ways. We also learn something about the heavenly King from observation of earthly monarchs. The institutions of political life provided some of the materials through which the divine Suzerain taught Israel how to relate to Him.

If the language of covenant makes clear the suzerainty of God, it also sheds a new light on the identity of Israel. Israel is the kingdom of God, and its form of government is theocracy. What makes a people is not a common racial or linguistic or cultural identity, all of which they shared with their neighbors. What creates Israel is Torah, adherence to the order of things that manifests the suzerainty of the God of Israel. All else is secondary.

The institution of covenant in Israel also tells us some important things about monotheism in ancient Israel. In any suzerainty treaty,

each vassal could have only one suzerain, although a suzerain could have many vassals in fealty to him through various covenants. The reason for this exclusivity is that one was required to love his suzerain, that is, to be devoted totally to him. If one is in covenant with a divine Suzerain, he cannot serve another god in any way. His God is his suzerain, his God alone. Thus, the idiom of monotheism in the biblical period is not philosophical, as it was to become later, but political. Israel is not to “recognize” or to “serve” other deities or to “bow down” to them. To do so is “rebellion,” (e.g., Exod 20:3–5; Deut 13:2–19). The main concern is not ontology or metaphysics, but loyalty, for biblical monotheism is an idea affirmed through obedience.

All of this obviously bears on the central issue of obedience: why do the *mitsvot*? What claim does God have on Israel? The answer implicit and at times explicit in the covenant theology is that God’s favor to Israel, which he has shown us despite our lack of merit, establishes his right to a special form of obedience from us. Observance of the *mitsvot* issues from a certain sense of gratitude that the Jew feels for the deliverance that has preserved his life (Deut. 6:20–25). The biblical covenant texts, like the New Eastern treaties which served as their prototype, ground that gratitude in historical experience, especially the experience of the Exodus. Such univocal optimism is today problematic, for after the Holocaust, the Jew is surely less willing to feel a comparable sense of gratitude for his treatment by history. To affirm the biblical texts as they are may be saccharine and, worse, an insult to our martyrs. On the other hand, it cannot be gainsaid that the prophets and rabbis retained their confidence in God’s beneficence and their sense of gratitude to Him, despite the comparable destructions and afflictions of their times. A way has to be found to maintain the covenantal grounding of observance without falling prey to a naive optimism about history. Perhaps the way lies in a transposition of gratitude from history to a more universal, ontic experience, for which seminal events such as the Exodus are symbols or modes of revelation. In that case, it may be possible to continue to regard the *mitsvot* as the means given us to direct a diffuse love, one made known in experience, toward its legitimate object. Once the history of redemption is read as disclosing an archetypical metahistorical reality, then it can function again as the historical prologue, creating the expectation that “We will do and we heed” (Exod. 24:7). On the other hand, the *peshat* of the Torah, with its uncompromisingly historical focus, serves as a potent witness

to the fact that history is not yet what it is intended to be, a manifestation of the grace and unchallenged sovereignty of God. The continuing messianic hope is directed toward closing that painful gap, toward the reunion of mundane reality and beneficent divine governance of history.

Halakhah, then, can be seen in part as the law of the kingdom of God. It is the means of entry into the sovereignty of the God of Israel. Of all halakhot, the Talmud opens with a discussion of the reading of the *Shema*. To recite the first paragraph of the *Shema* is, according to the Tanna, Rabbi Joshua ben Korhah, to “accept upon oneself the yoke of the Kingdom of Heaven” (*b.Ber.* 13a) and to fail to recite it is, according to Rabban Gamaliel, “to nullify the Kingdom of Heaven” (*b.Ber.* 16a). The decision to live according to halakhah is not a matter of merely raising one’s moral sights or even of affirming some “Jewish values,” unrelated to the will of God and to the transformative events of the Torah. Instead, it is a radical change in the etymological sense, a change at the roots of one’s being.

IV

We have seen that the faith of biblical Israel effected a momentous transposition of the institution of covenant from the world of diplomacy to the world of theology. In the mind of the believer, this transposition coincided with the birth of Israel, the dominion of God in vassalage to the Lord, the King, Whom Israel owed allegiance. In accepting the stipulations of the Suzerain, Israel became “a kingdom of priests and a holy people” (Exod. 19:6). Once this transfiguration of covenant had been completed, the original political realm of the institution was undermined. If God was Israel’s King, what need was there for a mortal sovereign? How could a human king be other than a usurper in the new theocracy? The emergence of Israel was a judgment upon human government, not merely upon tyranny, but upon the very notion of the sovereignty of rulers of flesh and blood. In the old province of Canaan, over which Egyptian and Hittite emperors of the Late Bronze Age had been warring for centuries, there appeared a group who recognized neither regime, but only the heavenly kingdom. Egyptian hegemony over the Canaanite city-states, sealed in covenant, crumbled before the Israelite conquest. Israel obeyed another Suzerain, of Whose power the Pharaoh learned in the hardest way. It thus follows that Israel

was later in accepting the institution of human monarchy than her neighbors, for the acceptance of an earthly sovereign could appear only as a betrayal of Israel's fundamental identity. When the people asked Gideon after his stunning victory over the Midianites to be their ruler, he is said to have replied, "Neither I nor my son will rule over you, but the Lord shall rule over you!" (Judg. 8:23). And when a later generation demanded a king from Samuel, God comforts the disconsolate prophet with the assertion, "Not you have they rejected; but me they have rejected from being their King" (1 Sam 8:7).

The main philosophy of government in early Israel, according to these sources, was a kind of theocratic anarchism, "theocratic" because God literally ruled, "anarchism" because His rule excluded what most of the world means by "government." The idea of the people Israel, the dominion of God, impeded the formation of a state in Israel. The prior existence of a sacred community obstructed the path neighboring groups had taken with relative ease toward political statehood. For Israel had her laws before she had her (earthly) monarchy, and with those laws she survived the destruction of the House of David in the sixth century B.C.E. in an amazing and unparalleled way. David was the founder of only the monarchy; Moses "founded" the theopolity—the sacral kingdom, the holy people.

Despite the doubts expressed in the statements ascribed to Gideon and to Samuel, monarchy did finally take root in Israel. The old charismatic leadership of the "judges" proved inefficient at withstanding the Philistine attacks. When kingship was finally accepted ungrudgingly and without qualification (contrast Deut. 17:14–20), this, too, came through the medium of a covenant with God, this time between Him and David. This type of covenant is different from those discussed earlier, although it, too, is well-documented in extrabiblical sources. When a king in the ancient Near East wanted to reward a lesser ruler for the fidelity he had shown, the king would grant him certain territory, usually with the provision that he, the suzerain, would insure that the area in question never passed from the control of the vassal's dynasty.⁵ This type of covenant, termed a "grant," was "a reward for loyalty and good deeds already performed," whereas the other type, the "treaty," was "an inducement for future loyalty."⁶ In the grant, the suzerain does not put his vassal under oath, as in the treaty, but instead, takes an oath himself to uphold the vassal's right to his throne. The curses in

the grant are directed not at the vassal, but at those who would attempt a *coup* against his and his descendants' regime. Once again, there is a distinctive idiom to this type of covenant, one paralleled in at least eight biblical passages.⁷

The grant to David is proclaimed through the words of Nathan the Prophet (2 Sam. 7:6-16 cf. Ps:89:1-5, 20-38). The most important theological element in this oracle is that the covenant is not contingent upon the vassal's fulfillment of stipulations. If he errs, he will be punished but not dethroned. The promise to David furnishes even his unworthiest descendants a reservoir of grace which absorbs the destructiveness of their sins.⁸ Thus, although Kings sees only a handful of David's descendants as anything other than sinful people, the refrain of the books still affirms their right to the throne "for the sake of David my servant whom I chose because he observed my commandments and my laws" (1 Kings 11:34; cf. 1 Kings 11:12, 13, 32, 36; 15:4; 2 Kings 8:19, 19:34; 20:6). This promise harbors an eschatological thrust, an inclination to overlook the vicissitudes of history as we fix our gaze upon the suprahistorical constant Nathan's prophecy ushers in, the constancy of divine fidelity to David. For that proclamation of fidelity, the assurance that God will not turn away the face of his anointed, his messiah, extends to even the most wicked generation the hope of ultimate acceptance and fulfillment.

In conclusion, Jews live in awareness principally of two covenants, the Sinaitic and the Davidic. Sinai speaks to us of our obligations, of the society we must become, of the world we must build. Its keynote is choice, the choice of obedience or faithlessness, of prosperity or adversity, of the Land or exile, of life or death. Awareness of the Sinaitic covenant infuses us with inner tension, as we are continually tempted to follow our own hearts instead of the divine command. Sinai is the ultimate corrective to the complacency of the easy conscience. The Davidic covenant, by contrast, speaks to us of a hope we do not deserve, of a promise as yet only announced, of an all-embracing security we can barely conceive. Whereas Sinai appears with the fearsomeness of "thunder and lightning and a thick cloud on the mountain and a very loud blast of the horn" (Exod. 19:16), Zion, the mountain of the city of David, is like "the waters of Shiloah, which flow so gently" (Isa. 8:6), like "a field secure, a tent that shall not move,/Whose pegs will never be pulled up/Nor its ropes cut loose" (Isa. 33:20). Zion is the ultimate Jewish symbol of confidence, the confidence of those who dwell in the city of God, immune to attack, its enemies stunned and panicking at its

inviolability (e.g., Psalms 2, 46, 48). There is more to Judaism than covenant, more even to biblical law than the idea of covenant embraces. But it is hard to evade the conclusion that understanding these two covenants, with a fuller appreciation of their contexts, will help us see our body of revelation not as a mere inheritance from our ancestors, but as something as fresh as the day it was given.

NOTES

1. The best overview of the movement is Eugene B. Borowitz, "Covenant Theology—Another Look," *Worldview* (March, 1973), pp. 21-27.
2. The finest popular presentation is Delbert R. Hillers, *Covenant: The History of a Biblical Idea* (Baltimore: Johns Hopkins, 1969); see also Dennis J. McCarthy, *Treaty and Covenant* (2nd rev. ed.; Analecta Biblica 21a; Rome: Pontifical Biblical Institute, 1978).
3. William J. Moran, "The Ancient Near Eastern Background of the Love of God in Deuteronomy," *Catholic Biblical Quarterly* 25 (1963), p. 80. Incidentally, Moran's article is one of the finest historical and linguistic investigations of covenant.
4. Moran, "Love of God in Deuteronomy," p. 79.
5. See Moshe Weinfeld, "The Covenant of Grant in the Old Testament (*sic*) and in the Ancient Near East," *Journal of the American Oriental Society* 90 (1970), pp. 184-205.
6. Weinfeld, "The Covenant of Grant," p. 185.
7. Gen. 9:8-17 (Noah); Gen. 15, 17, et al. (Abraham); Num. 14:24, Josh. 14:9, 13-14, et al. (Caleb); Num. 25 (Phinehas); 1 Sam. 2:27-36 (Eli); Jer. 33:17-26 (David, the Levites, the patriarchs); Jer. 35:18-19 (the Rechabites); and Ezek. 44:4-31 (the Zadokites). See Jon D. Levenson, "On the Promise to the Rechabites," *Catholic Biblical Quarterly* 38 (1976), pp. 508-514.
8. This promise was one that could be falsified by experience, as indeed was the case with the fall of the First Commonwealth, when two Davidic kings, Jehoiachin and Zedekiah, were indeed deposed and exiled, and their Temple and city torched (2 Kings 24:8-25:21). The psychological consequences were devastating (e.g., Lam. 4:20), but the doctrine of the indefectible promise to David survived in the form of the messianic hope, the hope that the parenthesis in history opened by the Exile will yet be closed.