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Jonathan R. Cohen

University of Florida Levin College of Law, cohenjr@law.ufl.edu

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Two Directions toward Ethical Peoplehood

Jonathan R. Cohen

Introduction

From the biblical era through the present day, the conception of Israel as a people devoted to ethical ends has been a core Jewish value. But how is such a model to be implemented? This essay suggests two basic ways of thinking about ethical peoplehood, namely, that one can begin with a people and try to transform it into an ethical people (“from tribe to ethics”) or that one can begin with ethical norms and through those norms attempt to build a people (“from ethics to tribe”). Part I of this essay begins by sketching these two modalities in Jewish thought. Part II turns to some applications. Specifically, this distinction has ramifications ranging from understanding how Judaism is expressed among different groups of Jews (e.g., Orthodox vs. non-Orthodox, Israeli vs. American) to understanding many contemporary debates on specific matters, such as intermarriage and the nature of Israel’s democracy, in which tensions between the pulls of ethics and of tribe can be felt. We can see it at play as well in the work of leading Jewish theologians, such as Kaplan, Heschel, Borowitz, and Plaskow. Does Judaism begin with a people and seek to make them more ethical or does it begin with ethical norms and from those norms attempt to construct a people? As the goal of creating a people dedicated to ethical ends is such a core normative Jewish value, exploring this diagnostic question can offer insight into many areas of Jewish life and thought.

JONATHAN R. COHEN is professor of law, University of Florida Levin College of Law. The author thanks Kenneth Wald, Sharon Rush, Jason Nance, Alyson Flournoy, Karen Cohen, and the students of my Jewish Law seminar for their many helpful comments on this paper. Lauren Levy provided research assistance with this project, and Betty Donaldson helped with secretarial support.

The Two Directions

Shall I hide from Abraham what I am about to do, since Abraham is to become a great and populous nation and all the nations of the earth are to bless themselves by him? For I have singled him out, that he may instruct his children and his posterity to keep the way of the Lord by doing what is just and right, in order that the Lord may bring about for Abraham what He has promised him. (Gen. 18:17–19)

From the Bible's ancient description of God's statement that the mission of Abraham's descendants is to do "what is just and right"¹ through modern authors, such as Mordecai Kaplan, who saw the goal of ethical nationhood as *the—not a*—defining Jewish pursuit,² there can be little doubt that constructing a community devoted to ethical ends has long been a core normative Jewish ideal. But how is that vision to come about? Is it the ends that make the people or the people who pursue the ends? Below I suggest two basic ways of thinking about constructing the Jewish people as an ethical people. The first, "From Tribe to Ethics," suggests that Judaism begins with a people and then tries to make them into an ethical people. The second, "From Ethics to Tribe," suggests that Judaism begins with ethical norms and, through those norms, attempts to build a people.

To draw such a distinction is not, of course, to suggest that both approaches may not be present in the Jewish enterprise. On the positive, historical question of whether Judaism has approached the goal of ethical peoplehood from-tribe-to-ethics or from-ethics-to-tribe and on the normative, future-looking question of whether Judaism should approach the goal of ethical peoplehood from-tribe-to-ethics or from-ethics-to-tribe, I believe that the correct answer to each is "both/and" rather than "either/or." Judaism has not been, nor should it be, solely reliant on one modality. Very often, indeed perhaps most often, pursuing ethical behavior and building the tribe go hand in hand. A law against stealing both promotes ethical behavior and helps to foster the development of the group that adheres to it.³ An obligation to create a loan fund for members of the community both helps poor members of the community and helps the community over time to develop. A holiday such as Passover both builds Jewish identity and hence peoplehood (i.e., each person is supposed to envision himself or herself

as though he or she had personally gone out of Egypt) and helps prod people to work for social justice in our world today, a central theme of many contemporary Haggadot.⁴ Still, for analytical purposes, it is helpful to differentiate between these two modalities, both so that we can have some awareness of what “game” we are playing and because some of the most interesting issues Judaism faces in our world today are ones where these modalities are in tension.

In focusing on the interaction between ethics and Jewish peoplehood, I do not mean to suggest that other factors, such as sociological and political forces, are unimportant in understanding the construction of the Jewish people. The history of anti-Semitism, to name but one factor, has had tremendous influence upon the Jewish people’s evolution—and psyche—for millennia. Nor do I mean to imply through focusing on ethical peoplehood that reality has always lived up to rhetoric (i.e., that Jews, either individually or collectively, have always acted in an ethical manner). Indeed, while it is not my focus here, the case may be made that in certain areas, Judaism has inhibited rather than fostered human ethical development.⁵ Nor is my assertion a comparative one of claiming that Judaism is a better way of constructing a people devoted to ethics than other religions, philosophies, cultures, or ways of life. My goal here is simply to better understand a core aspect of the Jewish enterprise, namely, the interplay between peoplehood and ethical pursuits.

Before entering the analysis proper, a few additional prefatory comments may be of help.

First, the term “ethics” can be used in many ways, and here I am using it quite broadly, intending it to cover a wide range of values concerning how people treat one another. Central to ethics is pursuing justice, but other values, such as kindness, compassion, and integrity to name but a few, also fall within the realm of ethics. Even if we limit ourselves to the subject of justice, there are still distinctions to be made. Some aspects of justice relate to what an individual does (e.g., Did I use fair weights and measures in my business dealings?), while other aspects of justice relate to the conduct of a society (e.g., Do we as a society make provisions for the poor? When we as a society engage in war, do we concern ourselves with “collateral” damage?). In speaking of Judaism’s mission of pursuing ethical peoplehood, I use the term “ethics” in

a very broad sense. It covers both justice and kindness, truth and mercy. Further, it refers to both individual action and collection action. Within Judaism (and within many other religions too) the ideal of promoting ethical behavior may be seen as both an individual and a collective enterprise: an individual Jew is to pursue a righteous life and the Jewish community is to pursue a just society. Sometimes the stress is placed on the individual, as with afterlife beliefs about reward and punishment based on an individual's actions in life or daily *musar* practices designed to cultivate personal virtues.⁶ Sometimes the emphasis is more collective in nature, as say with community obligations to provide social services to the poor.⁷ Yet on a deep level, Judaism understands the pursuit of individual righteousness and social righteousness as deeply intertwined.⁸ Judaism, in other words, sees ethical personhood and ethical peoplehood as deeply linked.

Second, in focusing on Judaism and its pursuit of ethical peoplehood, by no means do I intend to suggest that ethical peoplehood is Judaism's only end. Judaism, qua religion, helps people address questions about life's meaning, form relationships, structure their daily lives, cope with losses such as death, celebrate joys such as marriage and birth, experience a sense of holiness (a subject related to ethics but certainly not subsumed by it), and so on. Ethics is part of the Jewish religious enterprise, but it is by no means the whole of it.

Third, some may ask whether there is an inherent tension between tribe and ethics. Tribes are by definition anti-universalistic, teaching people to see themselves as members of distinct groups rather than the human whole. Even more significantly, tribes sometimes act in ethically abhorrent ways toward those outside of the group: though a tribe may teach compassion toward fellow tribe members, it may foster indifference if not hostility toward nonmembers. While there is not space here to explore this subject in detail, I do believe that such concerns are important and that certain ethical risks come with tribal identities. Still, I do not believe that the concept of tribe is inherently unethical. The key question, in my view, is how the tribe behaves—whether its conduct is ethical or not.

Fourth, in discussing the interplay between ethics and tribe, I will at times paint with a broad brush. Especially in Part II, when discussing different examples where I see these forces in tension,

my goal is not to enter a detailed analysis of any of the particular examples. I seek not to solve the tension between ethics and peoplehood in these areas but simply to point it out.

Finally, while this paper is focused on the development of ethical peoplehood in the Jewish context, I hope that some of the ideas and tensions explored here may be of use to those from other communities as well, both religious and nonreligious. How one develops human beings devoted to ethical ends is one of the great questions of human development.⁹ Indeed, in my view, the challenge of developing a just world (to pick perhaps the most salient ethical value) is as much, if not more, a matter of developing people whose hearts are committed to the pursuit of justice than it is about figuring out the philosophical perplexities of justice, important though that work is.¹⁰ Put differently, the challenge of developing ethical peoplehood is not only a fundamental Jewish challenge, it is also a fundamental human challenge.

A. From Tribe to Ethics

One approach to building an ethical people is to begin with a community of people and then attempt to turn that community into an ethical one. Much of the most powerful scriptural imagery in Judaism adopts this approach. God's purported¹¹ statement about Abraham and his descendants in Genesis 18:19 ("For I have singled [Abraham] out, that he may instruct his children and his posterity to keep the way of the Lord by doing what is just and right.") adopts this approach. It begins with the assertion of a clan (i.e., Abraham, his children, and his household after him) and then articulates the clan's ethical purposes, namely, to "keep the way of the Lord by doing what is just and right." Even more significant is the Exodus-to-Sinai narrative. Exodus presumes that a people (the children of Israel) exists, and Sinai becomes the moment when, through accepting God's law, that people commits themselves to God's moral ends.¹² As we read in Exodus 19:3–6:

[A]nd Moses went up to God. The Lord called to him from the mountain, saying, "Thus shall you say to the house of Jacob and declare to the children of Israel: 'You have seen what I did to the Egyptians, how I bore you on eagles' wings and brought you to Me. Now then, if you will obey Me faithfully and keep My covenant, you shall be My treasured possession among all the

peoples. Indeed, all the earth is Mine, but you shall be to Me a kingdom of priests and a holy nation.”

The people, namely, the children of Israel, are taken to exist *a priori*, but they do not comprise an inherently ethical group. It is only through their acceptance of (the laws of) God’s covenant that they become an ethical people, “a kingdom of priests and a holy nation.”

Noteworthy is the linkage between that people’s unique history—a history laced with suffering as slaves—and the subsequent call toward ethical conduct. Why should one not oppress the stranger (or widow or orphan)? Because “you were strangers in the land of Egypt,” the Bible repeatedly declares.¹³ The Bible justifies the Israelites’ moral obligation to prevent the unfair treatment of others based on the Israelites’ past suffering. Like the Passover Haggadah, the biblical narrative begins with an identity rooted in suffering and, based on that identity, embraces the ethical imperative to fight oppression. One might think, too, of the “Never Again” rallying cry from the Jewish community following the Holocaust. Why must Jews not stand idly by in the face of ethnic genocide in our world today? Because *we* were the victims of an attempted genocide.

Above I have highlighted the linkage between Jewish suffering (both in the biblical narrative’s account of the people’s history as slaves in Egypt and, more recently, in the Holocaust) and the subsequent ethical call to prevent the oppression of others. It is important to note, however, that the impulse toward ethical nationhood within Judaism extends far beyond preventing oppression. Jewish law has long conceived of ethical behavior both positively and negatively, including both affirmative and negative duties.¹⁴ Jewish law obligates Jews both not to do certain things (e.g., as with the Ten Commandments’ prohibitions against stealing, murdering, and bearing false witness) and to do certain things (e.g., returning lost property and giving charity [*tzedakah*] to the poor). This is true within both Orthodox and liberal branches of Judaism.¹⁵

B. From Ethics to Tribe

A second approach to constructing an ethical people is to begin with ethics and, from there, move toward building a people. To

paraphrase the Psalmist, the “gates of righteousness” are the doorway to group membership.¹⁶

On a scriptural level, the most famous example of this may be the story of Ruth, the archetype for Jewish conversion. Ruth the Moabite changes allegiance and adopts Israel as her people. Why does she do this? One answer is simply her loyalty to her mother-in-law, Naomi. According to Scripture, Naomi had lived with Ruth and her son Mahlon (Ruth’s husband) in Ruth’s native land of Moab. However, following Mahlon’s death, Naomi decided to return to her native Israelite land.¹⁷ Rather than remaining with her biological kin in Moab, Ruth opted to accompany Naomi, dwell with her in Israel, and become herself an Israelite. As Ruth so poetically expressed, “Do not urge me to leave you, to turn back and not follow you. For wherever you go, I will go; wherever you lodge I will lodge; your people shall be my people, and your God my God.”¹⁸ As mentioned, one can read the story simply as being about personal relationships within an (inter)married family. However, another answer to the question of why Ruth adopted the God and people of her mother-in-law, Naomi, might stress the *kindness* with which Naomi treated Ruth (and her other daughter-in-law, Orpah, too). Although the story does not provide details concerning Naomi’s life in Moab,¹⁹ one senses Naomi’s kindness toward both Ruth and Orpah in their reaction of weeping when Naomi announces her intent to return to Bethlehem. Even more clearly, one sees this in Naomi’s choice of language, addressing Ruth and Orpah as her “daughters” (in contrast to the narrator’s description of them as her “daughters-in-law”) and, most vividly, by Naomi’s attempt to dissuade Ruth and Orpah from accompanying her on her return to Bethlehem, urging them to remain in Moab and thus putting their needs before her own.²⁰ In today’s world, people convert to Judaism for many reasons. Factors such as intermarriage (my spouse is Jewish), dogma (I couldn’t accept the ideas my old religion taught about God), acceptance of diverse views (I always admired the Jewish acceptance of debate and disagreement), and the role of clergy in one’s relationship to God (I like Judaism’s emphasis on a person’s direct connection to God) may all play a role, to name but a few. However, in Ruth’s case, Naomi’s compassionate treatment of Ruth may have helped inspire Ruth to join the Israelite people.

Ethical behavior may be viewed not only as a means of out-reach to potential converts but also as a means of in-reach (*keruv*) to other Jews, deepening their commitment toward Jewish life.²¹ Sometimes this happens in a small way. Why read the writings of the great twentieth-century Conservative theologian Rabbi Abraham Joshua Heschel? One reason, though certainly not the only one, often advanced is because Heschel marched in the civil rights movement with Dr. Martin Luther King, Jr. from Selma to Montgomery. Much more significant is the role that ethics plays in grounding a Jew's commitments to be Jewish. "Why be Jewish?" asks Reconstructionist Rabbi Sidney Schwarz. "There are two compelling answers," he asserts. "[The most compelling reasons to be Jewish are] because [1] it is a heritage that extends the boundaries of righteousness and justice in the world and [2] invests our lives with holiness."²²

Reform Judaism's historical emphases on social justice and *tikkun olam* (repairing the world) fall in this vein.²³ Indeed, in his keynote address to the Reform Movement's 2015 biennial convention, Rabbi Rick Jacobs, president of the Union for Reform Judaism, advocated pursuing justice as the principal doorway for ushering Jews back into synagogues:

So imagine you are walking down the street and some nice person stops and asks you, "Are you Jewish?" and even before you answer, they invite you inside saying, "Come survive with us." Are they kidding? It would be like a guy standing outside a restaurant with a flyer inviting people to come inside and eat dinner. Why? So he could keep the restaurant open. It's not exactly what you'd call a winning strategy . . .

. . . [I]n the 2013 Pew survey of Jewish Americans, people were asked, "What does it mean to be Jewish?" At the top of the list was remembering the Holocaust. A few percentage points down were leading an ethical life and working for justice and equality. Way, way, down at the bottom of the list were observing Jewish traditions like kashrut, prayer, and Shabbat. So here is a radical idea. What if we start where people are and not where we think they ought to be? Millennials . . . tell us that more than money or prestige, what they are searching for in life is meaning—a way to make a bigger impact than themselves—and the overwhelming majority of our people say that their Jewish identity is built upon *tikkun olam*, healing the world, welcoming the stranger, and acts

of social justice. So why don't we make that the biggest gateway into our holy work?²⁴

As with the story of Ruth, the essential direction here is from-ethics-to-tribe. It is by undertaking acts of righteousness and justice that the Jewish people are built.

C. Some Further Theoretical Considerations

These two modalities of building an ethical people—from-tribe-to-ethics and from-ethics-to-tribe—have significant implications for many challenges faced by the Jewish people today, and, in Part II, I shall discuss several. Before doing so, it may be helpful to make several further theoretical points to set the stage for that discussion.

1. A Blended Model

Some may ask, "Does Judaism approach the goal of building an ethical people from-ethics-to-tribe or from-tribe-to-ethics?" The correct answer, I believe, is both. From-tribe-to-ethics and from-ethics-to-tribe are ultimately *not* competing modalities, and a blended understanding of the Jewish enterprise is probably more accurate than a binary one in this area. As indicated above, sometimes Judaism works from-tribe-to-ethics and sometimes Judaism works from-ethics-to-tribe. Both are present in the Jewish endeavor, with history and context important factors influencing the choice of modality.

2. When Jewish Identity Can and Cannot Be Presumed

The modality of moving from-ethics-to-tribe may potentially work whether or not a group of people has a prior tribal identity. However, the modality of moving from-tribe-to-ethics presumes the existence of a prior tribal identity. Put differently, the tribe-to-ethics modality only works if membership in the tribe is essentially established. This observation has significant ramifications for thinking about the development of ethical peoplehood in Israel versus the Diaspora (e.g., America) and in Orthodox versus non-Orthodox Judaism.

Within Israel, the identity of Jews as Jews is essentially taken as a given. While skirmishes exist over who counts as a Jew (e.g.,

concerning immigrants from Russia, concerning conversions performed by non-Orthodox rabbis not recognized as legitimate by the Israeli rabbinate),²⁵ for the vast majority of Israeli Jews, their identity as members of the Jewish people is clear. For some like the ultra-Orthodox, this is because Judaism itself is so defining of their lives. For others, like many secular Israelis, it is because they speak Hebrew, serve in the Israeli army, live in a predominantly Jewish society, and follow a weekly and yearly calendar built around Shabbat and the Jewish holidays.²⁶ Noteworthy too is the role that danger plays in reinforcing tribal identity. When one fears attack (this applies to both Jews and non-Jews in Israel), one of the first questions a person may naturally ask, whether consciously or not, is, "Who is on my side?" Conflict between groups strongly reinforces group tribal identities, a phenomenon prevalent in Israel, the Middle East, and indeed much of the world.

Having a clear and strong sense of Jewish identity is also a fact of life for Orthodox, especially ultra-Orthodox, Jews who live in the Diaspora. Both from the extensive, affirmative role Judaism plays in their lives and from increased anti-Semitism their Jewish visibility (e.g., men wearing *kippot*) may bring in comparison to non-Orthodox Jews, their identities as Jews are largely established. For most such Jews, their identities as Jews are a given. By contrast, for non-Orthodox Jews in the United States, there is much greater variety to the role Jewish identity plays in their lives.²⁷ For some, it is extremely important, but for others, it is almost irrelevant. In short, for Jews living in Israel and for Orthodox Jews living outside of Israel, Jewish identity can generally be presumed in a way that it cannot for non-Orthodox Jews outside of Israel.

What are the implications of this for Judaism's goal of constructing ethical nationhood? The short answer is that for those Jews whose Jewish identity is clearly established (i.e., who already see themselves as members of the Jewish people), the essential question in terms of constructing ethical peoplehood is how to make that people more ethical. When an Israeli human rights group, such as *B'Tselem*, protests the Israeli treatment of Palestinians, it is clear that they are in large part, though not exclusively, speaking to fellow Jews and trying to get them to improve their behavior. Indeed, the very title of their group, *B'Tselem*, comes from Judaism's

religious heritage, namely, the biblical account of humans as created in God's image (*b'tzelem Elohim*).²⁸ The same is true when the Orthodox rabbinate, whether in Israel or America, makes decisions governing the lives of the Jews, or the Israeli government enacts rules concerning matters such as the ethics of warfare for its soldiers.²⁹ One may agree or disagree with those particular decisions and rules, but the essential modality is clear: a Jewish people exists and many of those decisions and rules are, theoretically speaking, designed to help that people lead ethical lives.

When, as with much non-Orthodox Diaspora Jewry, Jewish identity is weaker (i.e., when membership in the Jewish people is less clear), the challenges of developing an ethical people are somewhat different. Group identity can no longer be presumed. Consider, for example, the mitzvah of *tochechah* (rebuke) of those who have gone astray.³⁰ To chastise too much might mean, for example, to alienate individuals and cause them to leave the group altogether. I do not mean to suggest that the circumstance of having less affiliation with the Jewish people is inherently bad compared to the settings in which Jewish group identity is typically much stronger. For example, until full equality is realized within Judaism for gay, lesbian, and transgender Jews, life may be better for such persons with more porousness in the boundaries between who is a Jew and who is not a Jew. For the community as well, less clarity over membership in the Jewish people may perhaps ultimately lead to more "competition" and moral growth—if Jewish organizations need to compete to retain and attract members, perhaps they may be more likely to innovate. My essential point, however, is not to judge which circumstance is better and which is worse, but to simply note that they are different. When Jewish identity can be presumed, the challenges of pursuing ethical nationhood are different from when it cannot

3. Choices about Emphasizing Ethics vs. Tribe Have Significant Long-Run Effects

The question of whether Judaism works from-tribe-to-ethics or from-ethics-to-tribe may initially strike some as esoteric, a matter of philosophical speculation but not practical import. Deeper reflection indicates the opposite, for changes in emphasis on matters related to ethics and tribe can profoundly influence how the Jewish community develops over time.

Consider the example of Reform Judaism's historical movement away from strict adherence to the laws of *kashrut*. To recall, the German founders of Reform Judaism argued that ethics, rather than ritual, formed the heart of Judaism, a view the American Reform movement officially adopted under its 1885 Pittsburgh Platform. More specifically, it held that, while Reform Judaism still believed that Jews were obligated to follow ethical Jewish laws ("[W]e accept as binding only [Judaism's] moral laws"³¹), it left ritual matters to personal choice and, indeed, repudiated the laws of *kashrut* specifically ("We hold that all such Mosaic and rabbinical laws as regulate diet, priestly purity, and dress originated in ages and under the influence of ideas entirely foreign to our present mental and spiritual state."³²).

This, of course, was a significant change in normative Judaism. Indeed, following what has since been called the famed "T'reifah Banquet" in 1883, at which a variety of nonkosher foods (e.g., crab and shrimp) was served to the first graduating class of rabbis from Hebrew Union College (the Reform seminary), the Conservative branch of Judaism arose, a branch more progressive than Orthodoxy but not willing to go as far as the Reform Movement went in its rejection of Jewish ritual law. Now, more than a century later, the effects of such a choice have been profound. For example, the 2013 Pew Research Center survey found that the intermarriage rate among Reform Jews was 50 percent, while only 27 percent among Conservative Jews and a slight 2 percent among Orthodox Jews.³³ Exactly how much of that is attributable to Reform Judaism's liberal approach to ritual matters is, of course, a question. However, there can be little doubt that the Reform Movement's constriction of the obligatory nature of Jewish law to ethical laws only contributed to it. While numerous rationales have been advanced over the ages justifying the rules of *kashrut*,³⁴ it is clear that one of the main effects of observing Jewish dietary laws is sociological separation—keeping the Jews as a distinct group.³⁵ Put differently, a step as "small" as Reform Judaism's historical emphasis on ethical rather than ritual *mitzvot* profoundly affected the development of the Jewish community over generations.

4. Static vs. Dynamic Conceptions of Tribe

Is "tribe" a static entity, or may what constitutes a tribe be understood to change over time?³⁶ Those seeking to make changes

to Jewish practice for ethical reasons (e.g., to end discrimination against homosexuals by permitting gay Jewish marriage) may argue that the concept of tribe needs to be understood dynamically—that even if such changes do harm to the tribe-that-has-been, they will benefit the tribe-that-is-becoming. One of the most famous biblical stories is that of Moses’s encounter with God at the burning bush, where Moses asks God what he should say to the Israelites when they ask him, “What is [God’s] name?”³⁷ God cryptically responds, “Ehyeh-Asher-Ehyeh.”³⁸ Sometimes this is translated as “I Am Who I Am,” and sometimes it is more literally translated as “I Will Be What I Will Be.” So, too, it may be with tribes. Some tribes are static in nature, defined by their continuity. Others are more dynamic.³⁹ Under such a framing, issues such as the rate of change and the justification for change become critical. Ethics tends to have an urgency to it, calling, if not demanding, for a change in action. As Rabbi Hillel put it, “If I am not for me, who will be for me? And when I am for myself alone, what am I? *And if not now, then when?*”⁴⁰ Tribe, usually, though not always, tends to pull in the opposite direction.⁴¹

Some Examples

When the pulls of ethics and of tribe work in the same direction (e.g., as in a mitzvah to establish a loan fund for fellow Jews⁴²), life is easy, so to speak. But what happens when these forces pull in opposite directions (i.e., when ethical considerations and group loyalties conflict with one another)? Then the situation becomes more complex. Indeed, many of the most challenging questions facing the Jewish community today lie precisely at this intersection. Below I discuss several examples. The first two concerning the country of Israel and the subject of the Torah’s origins and contents are thematically broad, and the latter ones are more specific in focus. My goal in discussing these examples is not to argue how each should be resolved but to illustrate that an awareness of conflicts between the pulls of ethics and of tribe can give us insight into them.

A Should the Country of Israel Be a Jewish State or a Democratic State?

Even prior to its establishment, the question of whether Israel was to be a Jewish state (i.e., a homeland for the Jews) or a democratic

state (i.e., a democracy involving many Jewish, but not exclusively Jewish, citizens) was hotly debated.⁴³ “Jewish state” and “democratic state” are not, of course, synonymous with “tribe” and “ethics.” However, the concepts are no doubt linked, and debates implicating this basic tension between tribe and ethics continue to this day. Should Israel, founded in the wake of the Holocaust, admit only Jews seeking a new homeland under its Law of Return, or should it be a refuge for all who suffer from severe persecution in the world, be they Jewish or not?⁴⁴ Should Israeli law addressing matters such as marriage and conversion be developed along theocratic lines or democratic ones?⁴⁵ How can Israel be a democracy and simultaneously control the lives of Palestinians living in the territories, people essentially without a voice in Israeli “democratic” governance?⁴⁶ Are non-Jewish Israelis (e.g., Arabs not living in the territories) treated equally with Jewish Israelis, not only in rhetoric but also in reality?⁴⁷ Consider, for example, the concerns raised by Israeli legal scholar Ruth Gavison:

Non-Jewish citizens of the state must feel they are unequal if they live in a state that defines itself as “the state of the Jewish People.” Even if this feeling does not negate Israel’s democratic character, it most certainly impairs non-Jews’ sense of belonging to their country. This feeling is amplified against the backdrop of the protracted struggle between Israel and its Arab neighbors, and the ongoing discrimination between the Arab sector and the Jewish sector in the allocation of budgets, development, construction and employment. The problem is further heightened by the fact that most of Israel’s symbols and memorial days are uniquely Jewish, which makes it even harder for non-Jews to identify with them. Israel’s democracy cannot be stable, and certainly not just and fair, without granting civic equality to its non-Jewish citizens and without granting them power to affect decisions regarding their own affairs.⁴⁸

It is often asserted by the Israeli government that Israel is both a “Jewish and democratic state” as though no tensions could exist between those models.⁴⁹ In reality, however, many do. This subject is a complicated one, far more complex than I can address fully here. I do not mean to suggest that being a democracy is coterminous with being an ethical society or that being “tribal” inherently means being unethical. There are many justifications for

particularism in our world (e.g., group autonomy and cultural variety).⁵⁰ “Ethics” and “tribe” are different ideals but not inherently opposing ones. Nor do I mean to suggest that ethical considerations fall on only one side of most debates. Just as human equality and dignity are important ethical values, so too is protecting human life, and Israel undoubtedly faces significant security challenges to protecting the lives of its citizens. My basic point is that tensions between tribe and ethics critically underlie many of the most important debates in modern Israel today.

B. Candor Concerning Differing Views about the Torah’s Origin and Contents

Although frequently overlooked—if not ignored—in many public Jewish discussions (for, as discussed below, the subject is potentially so divisive vis-à-vis peoplehood), there may be no subjects as conceptually significant for the long-run development of Judaism as those of the Torah’s origin and the nature of its contents. Was the Torah revealed to Moses at Mount Sinai or is it a collection of writings redacted from different sources?⁵¹ Relatedly, to what degree are the events described in the Torah historically accurate and to what degree are they mythic? The ramifications of a person’s answers to these questions are profound. For example, the most basic justification offered by Jewish tradition for observing the mitzvot (i.e., for adhering to Jewish law) is that they are God’s instructions to the Jews as revealed at Sinai.⁵² If one rejects the view that the Torah was revealed by God to Moses at Sinai, that justification evaporates. Alternative justifications for observing mitzvot are certainly possible to construct, but they are undoubtedly weaker.

Consider as an illustration the subject of gay marriage. The biblical prohibition upon male homosexuality is quite clear: “Do not lie with a male as one lies with a woman; it is an abhorrence.”⁵³ Traditionally, Judaism viewed gay and lesbian sex as sinful, and gay marriage as beyond the question. By contrast, the largely American, liberal branches of Judaism, such as Reform, Reconstructionist, and (eventually) Conservative, have taken a very different view.⁵⁴ Supported by modern psychological research concerning homosexuality, rather than seeing homosexual acts as wrongful, they see discriminating against homosexuals as wrongful, and, indeed, the

forbidding of homosexual relationships as ultimately cruel.⁵⁵ With the goal that homosexuals may, like heterosexuals, build sanctified Jewish homes, such movements have thus accepted gay and lesbian Jewish marriage.

On the surface, this may simply seem to be a choice between values, but at a deeper level, the subject of peoplehood is squarely implicated. Jews have long been called the “People of the Book,” and with good reason. For millennia, traditional Judaism understood, and contemporary Orthodoxy continues to understand, the Torah as God’s word.⁵⁶ By legitimating homosexual relationships, the liberal branches of Judaism essentially rejected the position expressed in the Book that is so foundational to the Jewish people itself.⁵⁷

The issue of the Torah’s authority is, of course, much broader than the subject of gay marriage; however, this subject illustrates well different ways in which ethics and peoplehood may be in tension concerning the Torah’s authority. The modern ethic of equality for gays and lesbians clearly conflicts with the biblical norm, and, to the extent one rejects the divine authorship of the Bible, it is easier to embrace the modern ethic. Not to be overlooked are the general ethical values of truth and candor. Although non-Orthodox Jewish movements are far from monolithic in their understandings of matters such as revelation and in their willingness to discuss openly the matter of the Torah’s origins, in my view, as a whole, they often skirt frank discussion of the Torah’s authorship and historicity in such discussions.⁵⁸ The pursuit of truth (e.g., teaching to one’s children ideas one believes to be truth) and the value of candor each point toward greater openness among non-Orthodox movements concerning their views of the Torah’s origins. Why is this not done? The needs of peoplehood (e.g., maintaining the view that Orthodox and non-Orthodox Jews are members of one people) works the other way, as may also the internal needs of the non-Orthodox branches of Judaism themselves.⁵⁹

Returning to the example of homosexuality, for those who do not believe that God dictated the Torah to Moses at Sinai, the simplest response to the assertion that God condemns (male) homosexuality is that the Torah is not God’s revealed word. However, from the point of view of peoplehood, that response is highly problematic, for it undercuts a belief that has served as a

foundation of the Jewish people's approach to life for millennia. Indeed, within Jewish tradition, to argue that the Bible was not God's revealed word was long seen, and is still seen by some, as apostasy—an act requiring that the individual be shunned by the community.⁶⁰ Put differently, to describe the Torah as a human product rather than a divine one is, in essence, to argue that the traditional belief in revelation at Sinai is fraudulent. That step can be highly destabilizing, both to individuals and to the collective Jewish identity. This, of course, is an underlying, thematic tension in debates between non-Orthodox and Orthodox branches of Judaism (and even within those branches) about many topics, not solely homosexuality.

C. Specific Debates

Questions such as whether Israel should be a Jewish state or a democratic state and whether the Torah should be viewed as God's revealed word or a collection of mythic writings are broad, thematic ones reflecting tensions between the pulls of tribe and ethics. Yet numerous specific questions exist within the Jewish community also reflecting that tension. Let us begin by considering two "small" matters: circumcision and kashrut.

Is it permissible *not* to circumcise a Jewish baby boy so as to spare him, and by extension his parents, the pain of circumcision?⁶¹ The pull of the tribe answers with a clear "no." Circumcision is biblically prescribed as the sign of accepting God's covenant, and, in the Bible at least, any uncircumcised male is to be rejected as a member of the community.⁶² Indeed, nothing could more clearly mark tribal membership than physically altering the bodies of (some of) the group's members. Ethics, however, may point elsewhere. Why inflict pain upon a helpless infant? Further, if changes are to be made to a person's body, should it not be the person himself who in time chooses to make them? So, too, there have been many recent discussions of modifying Jewish dietary laws in the direction of "eco-kashrut," requiring, for example, that animals be treated more humanely during their lives (e.g., not confining chickens to live in cages) rather than simply at the time of their slaughter, or suggesting a "greener" approach to Jewish community meals in which less disposable cutlery and dishes are used. Some concerned with Jewish peoplehood might speak in favor of

maintaining the kosher rules as they are. Others driven by ethical considerations may argue for changes. Note that I write “may” in the previous sentences, as determining which way ethics pulls and which way peoplehood pulls are often *not* simple matters. Arguments can frequently be advanced on both sides of an issue. Returning to the subject of circumcision, it is possible to argue that ethics speaks in favor of circumcising an infant boy rather than against it—through infant circumcision, the child is spared the longer recovery time and likely greater pain that he would experience if he were circumcised as an adult.

Many of the most heated debates within the American Jewish community in recent decades involve foundational questions about ethics and peoplehood. Should the Jewish community respond to marriages between Jews and non-Jews with mourning or embracing? The pull of tribe may resist intermarriage, while the pull of ethics may favor it (e.g., why should a religion oppose rather than support two people who love each other if they wish to formally commit to sharing their lives together?). A similar tension is felt concerning patrilineal descent. For centuries, Jewish law defined as Jewish those born to Jewish mothers and converts to Judaism.⁶³ The pull of tribe—maintaining unity in the definition of who is a Jew—may resist changing such rules, while the pull of ethics (e.g., especially in an age of genetic paternity testing, why should fathers be presumed less valid as transmitters of Jewish identity than mothers?) may point the other way. Again, my goal here is not to attempt to resolve these specific matters but help us better recognize and understand aspects of them. I note, too, that such examples implicate the issue of whether peoplehood is understood statically or dynamically, as well as more general matters of cultural distinctiveness and assimilation.

D. Theological Approaches

The directional question of whether Judaism works from-tribe-to-ethics or from-ethics-to-tribe can be a lens not only into concrete questions of policy and practice but into abstract matters of belief and theology. When hearing a rabbi’s sermon or when reading a theologian’s work, one can ask what approach—tribe-to-ethics or ethics-to-tribe—primarily underlies that person’s thought, either implicitly or explicitly? I emphasize *primarily* in the prior sentence for I suspect that most sophisticated thinkers have some elements

of both. I cannot here engage in a detailed analysis of any particular person's work, but to give a sense of such inquiry, let me briefly compare the approaches of four leading, liberal, twentieth-century, American Jewish theologians: Mordecai Kaplan, Abraham Joshua Heschel, Eugene Borowitz, and Judith Plaskow.

Kaplan explicitly viewed Judaism through a tribe-to-ethics lens. Kaplan famously described Judaism as a civilization rather than as a religion, and stressed that his purpose in doing so was "to emphasize the fact that our loyalty to Judaism is sustained basically by the natural and historical ties which bind us to the Jewish People, and only secondarily by specific religious beliefs."⁶⁴ For Kaplan, first comes membership in the people, and then comes ethical striving. Wrote Kaplan:

[T]o live as a Jew, one has to want to belong to the Jewish People and help it become morally and spiritually great. That is a prerequisite to believe what one should believe, as a Jew, concerning God, man and the world. In other words, contrary to the usual assumption, *in normal experience of Jewish life, belonging takes precedence over believing*, in the same way as feeding a hungry man takes precedence over reading poetry to him."⁶⁵

Kaplan, of course, believed that the Jewish people should strive to be ethical. Indeed, he saw ethical nationhood as the *raison d'être* of the Jewish people.⁶⁶ However, for him the starting point was not ethics but group membership.

I don't know whether Abraham Joshua Heschel ever explicitly asserted a position as clearly as Kaplan on whether Judaism works from-tribe-to-ethics or from ethics-to-tribe, but many of his writings suggest that his essential framing was the latter. To Heschel, it was not man who was in search of God, but God who was in search of man, and it was in response to God's holy call—a call that included ethics—that the Jews came (and come) into being. As Heschel wrote, "When at Sinai the word of God was about to be voiced, a call for holiness in *man* was proclaimed: 'Thou shalt be unto me a holy people.'"⁶⁷ Heschel saw the Bible as God's "transcendent appeal" addressed to humanity,⁶⁸ thereby suggesting that Bible essentially precedes the Jewish people. "What is the spirit of the Bible?" asked Heschel, "The Bible is the *quest for the righteous man*, for a righteous people."⁶⁹ For Heschel, Judaism was at root a religious enterprise and Israel was "a *spiritual* order in which the

human and the ultimate, the natural and the holy enter a lasting covenant."⁷⁰

In contrast to Kaplan and Heschel, Reform theologian Eugene Borowitz viewed Judaism in the more hybrid terms, a synthetic combination of tribe-to-ethics and ethics-to-tribe. "[T]he only adequate way of characterizing the Jews today," wrote Borowitz, "will be to combine aspects of religion and nationality."⁷¹ Borowitz believed that American Jews were neither "merely" an ethnic group such as "[t]he Italians, Irish, the Chinese or the blacks," nor were they simply a religion "whose creed [was] ethical monotheism."⁷² Rather Borowitz argued that Judaism was a distinctive blend of ethnicity and religion (religion that included, of course, a strong dose of ethics). As he wrote, "Ethnicity and religion interact in Judaism in quite special ways. Historically, Jews invested their ethnicity with unusual significance because they believed in the uniqueness of their religion . . . [I]n an authentic Jewish life, religion validates peoplehood rather than the other way around, *though the two cannot be separated from one another.*"⁷³

Feminist theologian Judith Plaskow's *Standing Again at Sinai: Judaism from a Feminist Perspective* also illustrates such hybrid thinking. On the other hand, Plaskow's claim that we must again stand at Sinai is in part an ethical claim about equality and group membership in forming the Jewish people: "The need for a feminist Judaism," wrote Plaskow, "begins with hearing silence. It begins with noting the absence of women's history and experiences as shaping forces in Jewish tradition. Half of Jews have been women, but men have been defined as normative Jews, and women's voices and experiences are largely invisible."⁷⁴ Consider, for example, the old issue of counting women in a minyan: egalitarian ethics demand that women must be counted.⁷⁵ In such an argument, the essential movement is from ethics-to-tribe: ethics demand rethinking who has full tribal membership. On the other hand, Plaskow calls for reassessing not simply who counts in the tribe but how the tribe conducts itself. Drawing upon feminist ethics, she argues for a less hierarchical approach to difference—different need not mean better or worse—and applies that insight into core Jewish matters such as ritual purity and Israel's "chosenness," a concept Plaskow recommends replacing by "distinctiveness."⁷⁶ So, too, she suggests that Jewish God-language should move beyond a traditional metaphor of God as

a “dominating Other,” a warrior-king who arbitrarily imposes his will from on high through exercising autocratic power.⁷⁷ Instead, argues Plaskow, we should think of an in-dwelling God, a God we approach through language such as *Shechinah*⁷⁸ and metaphors such as lover, nurturing mother, and just (rather than arbitrary) lawgiver.⁷⁹ In these efforts, Plaskow’s implicit framework is tribe-to-ethics. The tribe is taken to exist, and feminist ethics guide us in how to construct a more ethical community. In sum, as with Borowitz, we find in Plaskow’s approach much hybridity, with ethics and tribe engaged in a deep and ongoing dialogue.

Conclusion

Does Judaism work from-tribe-to-ethics or from-ethics-to-tribe? The goal of this paper has not been to answer that question. Rather it has been to argue for the relevance of that question as a diagnostic tool. When evaluating the practices of and choices faced by the Jewish community, I suggest asking the following about any particular approach: *Does the approach work from-tribe-to-ethics, from ethics-to-tribe, or some combination of the two?* This diagnostic question is especially relevant when, as with many contemporary debates between different branches of Judaism and about the nation-state of Israel, the pulls of ethics and of tribe may lead in different directions. Yet such inquiry is relevant, too, on the more microscopic level, including assessing the conduct of ordinary synagogue life.

Constructing a people devoted to ethical ends is not a simple task; however, it is a deeply noble endeavor. For millennia, the Jewish community has upheld this as an ideal. I hope that greater awareness of some of the tensions inherent in that endeavor can assist both those within the Jewish community and those within other communities who choose to undertake it.

Notes

1. Gen. 18:19. In labeling this the “Bible’s ancient description,” I do not mean to conclude that such events took place in a simple historical sense. The historicity, or lack thereof, of the biblical narrative is for many reasons a very important question. However, whatever one’s view of that question, there is no question that the biblical verses themselves are ancient and have, for millennia,

been central to the Jewish enterprise. As W. Gunther Plaut expressed, “[T]he Torah not only speaks of history, but has made history by helping to shape human thought . . . The origins of the Torah are one thing, its life through the centuries another.” W. Gunther Plaut, ed., *The Torah: A Modern Commentary* (New York: Union of American Hebrew Congregations, 1981), xxi.

2. See Mordecai M. Kaplan, *The Religion of Ethical Nationhood: Judaism's Contribution to World Peace* (New York: Macmillan, 1970), ix (“Ancient Israel was the first nation to have come upon the idea of ethical nationhood which it translated into religion.”); *ibid.*, 2 (asserting that the “Jewish people [were commanded by God] to serve as a paradigm of ethical nationhood”); *ibid.*, 3 (arguing that a reconstructed version of ethical nationhood “defines the role which the Jews of today should play in the modern world”); *ibid.*, 9 (claiming that the Hebrew prophets’ emphasis on justice and law “originated and fostered ethical nationhood as a religion”); *ibid.*, 10, 45.

In this paper, I use the term “peoplehood” rather than “nationhood,” for given the country of Israel’s existence, “nationhood” runs some risk of confusion. For a thoughtful, recent exposition of the history of the term “peoplehood” in Jewish discourse, see Noam Pianko, *Jewish Peoplehood: An American Innovation* (New Brunswick, NJ: Rutgers University Press, 2015).

3. Chafetz Chaim, *Ahavath Chesed: The Love of Kindness as Required By God*, 2nd rev. ed., trans. Leonard Oschry (Nanuet, NY: Feldheim Publishers, 1976), 148.
4. Yaakov Smith, *The Haggadah: Transliterated & Translated with Instructions & Commentary* (New York: Judaica Press, 2002); Lawrence A. Hoffman and David Arnow, eds., *My People's Passover Haggadah: Traditional Texts, Modern Commentaries*, vol. 1 (Woodstock, VT: Jewish Lights Publishing, 2008).
5. For example, concerning the equality of women and homosexuals.
6. See Neil Gillman, *The Death of Death: Resurrection and Immortality in Jewish Thought* (Woodstock, VT: Jewish Lights Publishing, 1997) and Steven H. Resnicoff, *Understanding Jewish Law* (New Providence, NJ: LexisNexis, 2012), 19–20 (on Jewish beliefs about afterlife reward and punishment); see also Alan Morinis, *Everyday Holiness: The Jewish Spiritual Path of Mussar* (Boston: Trumpeter Books, 2007) (on Mussar spiritual discipline practices).
7. See, e.g., Jill Jacobs, *There Shall Be No Needy: Pursuing Social Justice through Jewish Law and Tradition* (Woodstock, VT: Jewish Lights Publishing, 2009), 79–96.
8. A fine example of this interwovenness is the *Vidui* prayer recited on Yom Kippur. This prayer begins with a personal confession

expressed in the singular (“Yet, I confess my sins, and I do not say that I was fooled by another, who beguiled me. Why would I try to hide my sin from You? For even before I came to be, Your kindness accompanied me.”) but ultimately turns into a collective confession expressed in the plural (“You have always been known as the one who overlooks transgression. Hear our cry, as we stand before You, in prayer. Overlook the transgressions of a people turning from transgression. Wipe away our transgressions from Your sight.”). Ed Feld et al., ed., *Mahzor Lev Shalem: For Rosh Hashanah and Yom Kippur* (New York: Rabbinical Assembly, 2010), 231, 236.

9. Central to this is the moral development of children, a subject examined by psychologists such as Jean Piaget, Lawrence Kohlberg, and Carol Gilligan.
10. Similarly, see Amartya Sen, *The Idea of Justice* (Cambridge, MA: Harvard University Press, 2009), ix (arguing that the absence of resolution in response to philosophical questions about “the nature of perfect justice” should not prevent us from taking practice steps to enhance justice and remove injustice in our world).
11. As discussed above, with much of the Bible, the historicity of the narratives is an important question. For further reading, see Benjamin D. Sommer, *Revelation and Authority: Sinai in Jewish Scripture and Tradition* (New Haven, CT: Yale University Press, 2015); Richard Elliot Friedman, *Who Wrote the Bible?* (New York: Harper-Collins, 1997); William G. Dever, *Who Were the Early Israelites and Where Did They Come From?* (Grand Rapids, MI: Eerdmans, 2006); Neil Asher Silberman and Israel Finkelstein, *The Bible Unearthed: Archaeology’s New Vision of Ancient Israel and the Origin of its Sacred Texts* (New York: Free Press, 2001).
12. See Kaplan, *Religion of Ethical Nationhood*, 2, 10, and 45.
13. Exod. 22:20 (see also Exod. 23:9; Lev. 19:34; Deut. 10:19, 23:8, 24:17). “The commandment, ‘You shall love the stranger (*ger*), for you were strangers in the land of Egypt,’ is the most frequently repeated, occurring 36 times in the Torah.” Ronald L. Eisenberg, *850 Intriguing Questions about Judaism: True, False, or in Between* (Lanham, MD: Rowman & Littlefield, 2015), 14.
14. In contrast to American law’s focus on rights, the core concept within Jewish law is duty (*mitzvah*), both negative (i.e., what a person must not do) and positive (i.e., what a person must do). The significance of Jewish law’s focus on duties rather than on rights has many ramifications. See Robert Cover, *Obligation: “A Jewish Jurisprudence of the Social Order,”* *Journal of Law and Religion* 5 (1998): 65. American law, of course, involves duties, too; however, these are mostly negative duties (more specifically, the correlatives of other people’s positive rights) rather than positive

duties, such as the duty to provide food for one's child. For example, if my neighbor has the right to his property, then I have the duty not to trespass upon it. See Wesley Hohfeld, "Some Fundamental Legal Conceptions as Applied in Legal Reasoning," *Yale Law Journal* 23 (1913): 16. Judaism, by contrast, involves many positive duties as well as negative ones.

15. As discussed below, while liberal Judaism (e.g., Reform) has largely abandoned the concept of obligation vis-à-vis ritual laws (roughly *mitzvot bein adam laMakom*), it has upheld the concept of obligation vis-à-vis ethical laws (roughly *mitzvot bein adam l'chaveiro*). See Walter Jacob, *Contemporary American Reform Responsa* (New York: CCAR Press, 1987), xviii.
16. See Ps. 118:19 ("Open the gates of righteousness that I may enter through them and praise the Lord.") (author's translation).
17. Ruth 1:3–7.
18. Ruth 1:16.
19. Ruth 1:3–5.
20. Ruth 1:8–13.
21. Beginning with the late Middle Ages, Judaism largely discouraged people from converting to Judaism, an approach that progressive branches, especially Reform, have increasingly rejected in recent decades. See Joseph Telushkin, *Jewish Literacy: The Most Important Things to Know about the Jewish Religion, its People, and its History* (New York: William Morrow, 1991), 688–90; see also George Robinson, *Essential Judaism: A Complete Guide to Beliefs, Customs, and Rituals* (New York: Pocket Books, 2000), 175–80.
22. Sidney Schwarz, *Justice and Judaism: The Jewish Passion to Repair the World* (Woodstock, VT: Jewish Lights Publishing, 2008), 5.
23. Historically the term "*tikkun olam*" was used somewhat differently from its current use in the liberal Jewish world as a rallying call for progressive social action. On the origin of the term and a critique of its current usage, see Jacobs, *There Shall Be No Needy*, 20–24.
24. "Rabbi Rick Jacobs, Keynote Address—Biennial 2015," November 4, 2015, YouTube video, posted by Union for Reform Judaism, November 6, 2015, <https://www.youtube.com/watch?v=c8GSfigtUh8>.
25. Judy Maltz, "The Unconverted: How Israel excludes those 'not Jewish enough,'" *Haaretz*, August 20, 2015, <http://www.haaretz.com/st/c/prod/eng/2015/08/not-jewish-enough> (accessed October 20, 2016).
26. One could debate to what extent such a secular Israeli identity is distinct from a Jewish identity. I will not discuss that issue here.
27. On the changing role of ethnicity in American Jewish identity, see Shaul Magid, *American Post-Judaism: Identity and Renewal in a*

- Postethnic Society*, 2nd ed. (Bloomington, IN: Indiana University Press, 2013).
28. See B'Tselem—The Israeli Information Center for Human Rights in the Occupied Territories, "About B'Tselem," http://www.btselem.org/about_btselem.
 29. Many non-Jews serve in the Israel army; however, I believe the essential point remains.
 30. See, e.g., David A. Teutsch, "Offering Reproof," in *A Guide to Jewish Practice: Everyday Living*, vol. 1 (Wyncote, PA: RRC Press, 2011), 136–46.
 31. Jacob, *Contemporary American Reform Responsa*, xviii.
 32. *Ibid.*
 33. "A Portrait of Jewish Americans," Pew Research Center, October 1, 2013, <http://www.pewforum.org/2013/10/01/jewish-american-beliefs-attitudes-culture-survey> (accessed November 2, 2016).
 34. For a review of historical attempts to explain biblical dietary rules, as well as a probing anthropological analysis of those rules, see Mary Douglas, "The Abominations of Leviticus," in *Purity and Danger: An Analysis of the Concepts of Pollution and Taboo* (London: Routledge & Kegan Paul, 1966), 41–57.
 35. See, e.g., Mordecai M. Kaplan, *Questions Jews Ask: Reconstructionist Answers* (New York: Reconstructionist Press, 1972), 252 (describing kashrut laws as the Jewish people's "last-ditch defense against the inroads of assimilation").
 36. A similar question may be asked about "ethics," for undoubtedly many aspects of our ethical understandings are culturally and historically dependent. For example, the Bible clearly accepts (and regulates) the practice of slavery, a practice that the vast majority of the modern world rejects as ethically abhorrent.
 37. Exod. 3:13.
 38. Exod. 3:14.
 39. An intriguing story of change within Judaism is found in the Talmud's legend of Moses (whom tradition dates to roughly the thirteenth century B.C.E.) traveling through time and visiting the classroom of Rabbi Akiva, a leading Rabbinic authority from the first century C.E. Sitting in the back of the classroom, Moses did not understand what Rabbi Akiva was teaching and grew troubled. However, when Rabbi Akiva announced that this teaching was a law given to Moses at Sinai, Moses calmed down. BT *M'nachot* 29b.
 40. *Pirkei Avot* 1:14 (emphasis added). See also *Pirkei Avot* 5:8 ("[The] sword comes to the world for the delay of justice, and for the perversion of justice.").
 41. An interesting counterexample is the story of Pinchas in Num. 25:1–18, where urgency in the defense of the tribe seems to supersede usual ethical considerations.

42. Chafetz Chaim, *Ahavat Chesed*, 148.
43. See Alan Dowty, *The Jewish State: A Century Later*, updated ed. (Berkeley and Los Angeles: University of California Press, 2001), 3–5; *ibid.*, 17; see also Mark Tessler, *A History of the Israeli-Palestinian Conflict* (Bloomington and Indianapolis: Indiana University Press, 1994), 182; see also Charles D. Smith, *Palestine and the Arab-Israeli Conflict: A History with Documents*, 7th ed. (Boston and New York: Bedford/St. Martin's, 2010), 30–32; see also Gregory S. Mahler, *Politics and Government in Israel: The Maturation of a Modern State* (Lanham, MD: Rowman & Littlefield, 2004), 17–20; see generally Joseph E. David, ed., *The State of Israel: Between Judaism and Democracy—A Compendium of Interviews and Articles* (Jerusalem: The Israel Democracy Institute, 2003).
44. See, e.g., Joshua Bloom, “Israel Welcomes All Seeking Refuge, but Only if They’re Jewish,” *The Jerusalem Post*, September 9, 2013, <http://www.jpost.com/Opinion/Op-Ed-Contributors/Israel-welcomes-all-seeking-refuge-but-only-if-theyre-Jewish-325660> (accessed November 2, 2016).
45. See Dowty, *The Jewish State*, 160–161; see also Mahler, *Politics and Government in Israel*, 63–69; see generally “Israel’s Religiously Divided Society,” Pew Research Center, March 8, 2016, <http://www.pewforum.org/2016/03/08/israels-religiously-divided-society> (accessed November 2, 2016).
46. See Dowty, *The Jewish State*, 237–38.
47. *Ibid.*, 186–87, 197–200. Certain Israeli government subsidies, for example of college education, are contingent upon prior military service, an experience much more common among Jewish than non-Jewish Israeli citizens. See “Absorption of Discharged Soldiers Law—Amendment No. 7: Benefits for Discharged Soldiers,” ABDALAH, <http://www.adalah.org/en/law/view/508> (accessed November 2, 2016). On such disparities between Israeli Jews and non-Jews, see generally “The Discriminatory Laws Database,” ABDALAH, <http://www.adalah.org/en/content/view/7771> (accessed November 2, 2016) (providing numerous examples of Israeli laws some view as discriminatory). This tension exists in the symbolic realm as well. Consider, for example, Israel’s national anthem, “Hatikvah” (The Hope), whose translated lyrics are, “As long as the heart within, a Jewish soul still yearns, and beyond, toward the east, an eye scouts Zion. Our hope is not yet missing, the hope of two thousand years, to be a free nation in our land, the land of Zion and Jerusalem” (translation found at <http://lyricstranslate.com/en/hatikvah-%D7%94%D7%AA%D7%A7%D7%95%D7%95%D7%94-hope.html#ixzz48p1Wxkd5> (accessed November 2, 2016)). How would a non-Jewish Israeli feel when singing that anthem? Several prominent Arab members of the Israeli government have refused to sing the anthem,

including: Saleh Tarif, the first Arab member of the Israeli cabinet, in 2001 (see "Behind the Headlines: Not All Israeli Arabs Cheer Appointment of Druse Minister," *Jewish Telegraphic Agency*, March 6, 2001, <http://archive.jta.org/2001/03/06/archive/behind-the-headlines-not-all-israeli-arabs-cheer-appointment-of-druse-minister> [accessed November 2, 2016]); Ghaleb Majadale, the first Muslim member of the Israeli cabinet, in 2007 (see Amnon Meranda, "Majadele Refuses to Sing National Anthem," *Ynetnews*, March 17, 2007, <http://www.ynetnews.com/articles/0,7340,L-3377681,00.html> [accessed November 2, 2016]); and Salim Joubran, an Arab Justice of the Israeli Supreme Court, in 2012 (see Ethan Bronner, "Anger and Compassion for Arab Justice Who Stays Silent During Zionist Hymn," *The New York Times*, March 4, 2012, http://www.nytimes.com/2012/03/05/world/middleeast/anger-and-compassion-for-justice-who-stays-silent-during-zionist-hymn.html?_r=0 [accessed November 2, 2016]).

48. Ruth Gavison, "Democracy and Judaism—Between Conceptual Analysis and Public Discourse," in *The State of Israel: Between Judaism and Democracy*, ed. Joseph E. David (Jerusalem: The Israel Democracy Institute, 2003), 331, 339.
49. Israel's Declaration of Independence of 1948 described Israel as a "Jewish State" but not specifically as a democracy. It did, however, contain language calling for the "complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex," as well as "freedom of religion, conscience, language, education, and culture," and specifically the "full and equal citizenship and due representation in all its provisional and permanent institutions" of Israel's Arab citizens. See "The Declaration of the Establishment of the State of Israel," Israel Ministry of Foreign Affairs (May 14, 1948), <http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/declaration%20of%20establishment%20of%20state%20of%20israel.aspx> (accessed November 4, 2016). In 1985, as part of an amendment to its Basic Law, Israel officially described the State of Israel as "a Jewish and democratic state," a position reiterated in further Basic Law amendments in 1992 and 1994. See "Basic Law: The Knesset," Israel Ministry of Foreign Affairs (Feb. 12, 1958) (updated translation, January 2003), <http://www.mfa.gov.il/mfa/mfa-archive/1950-1959/pages/basic%20law-%20the%20knesset%20-1958-%20-%20updated%20translatio.aspx> (accessed November 5, 2016).
50. Recall that the U.S. Constitution is often understood as an anti-majoritarian document, protecting small groups from the majoritarian excesses.
51. Most Western scholars understand the Torah as redacted from multiple sources, an approach known widely as the "documentary hypothesis." For introductions, see Plaut, *The Torah*, xxi–xxiv;

- Richard Elliott Friedman, *Who Wrote the Bible?* (New York: Summit Books, 1997), and Resnicoff, *Understanding Jewish Law*, 13–16.
52. Some intellectual footwork is needed to fold the oral law into that understanding. Jewish tradition accomplished this by asserting that, along with the written law, Moses received the oral law at Sinai. See, e.g., Maimonides, *Mishneh Torah, Transmission of the Oral Law* 1.
 53. Lev. 18:22.
 54. For the Reform view, see “Civil Marriage for Gay and Lesbian Jewish Couples,” Union for Reform Judaism (adopted by the General Assembly, 1997), <http://www.urj.org/what-we-believe/resolutions/civil-marriage-gay-and-lesbian-jewish-couples> (accessed November 5, 2016); for the Reconstructionist view, see “FAQs on Reconstructionist Approaches to Jewish Ideas and Practices,” Jewish Reconstructionist Communities, <https://jewishrecon.org/resource/faqs-reconstructionist-approaches-jewish-ideas-and-practices> (accessed November 5, 2016); for the Conservative view, see Rabbis Elliot Dorff, Daniel Nevins, and Avram Reisner, “Rituals and Documents of Marriage and Divorce for Same-Sex Couples,” Committee on Jewish Law and Standards (approved May 31, 2012), available at <https://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/2011-2020/same-sex-marriage-and-divorce-appendix.pdf> (accessed November 5, 2016).
 55. See, e.g., Jay Michaelson, “Ten Reasons Why Gay Rights Is a Religious Issue,” *Tikkun Magazine*, July/August 2010, <http://www.tikkun.org/nextgen/ten-reasons-why-gay-rights-is-a-religious-issue-2> (accessed November 4, 2016).
 56. See, e.g., Nosson Scherman, *The Chumash: The Stone Edition* (Brooklyn, NY: Mesorah Publications, 1993), xix (quoting Maimonides’ statement, “I believe with complete faith that the entire Torah now in our hands is the same one that was given to Moses [at Sinai]” and asserting, based on BT *Sanhedrin* 99a, that the “Talmud states emphatically that if one questions the Divine origin of even a single letter or traditionally accepted interpretation of the Torah, it is tantamount to the denial of the entire Torah.”).
 57. The methodology here is different, for example, from Jewish law’s treatment of the rebellious son, in which numerous strictures were imposed by the Talmudic rabbis to functionally prevent the Bible’s requirement of stoning. See “Rebellious Son,” Jewish Virtual Library, http://www.jewishvirtuallibrary.org/jsource/judaica/ejud_0002_0017_0_16525.html (accessed November 5, 2016). In that case, the biblical command was not formally overturned; rather its application was limited in scope. By contrast, by accepting homosexual relationships, including in some cases gay marriage, progressive Jewish movements have essentially rejected the

Bible's prohibition on male homosexuality. Cf. Elliot N. Dorff et al., "Homosexuality, Human Dignity & Halakhah: A Combined Responsum for the Committee on Jewish Law and Standards," December 6, 2006, available at http://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/20052010/dorff_nevins_reisner_dignity.pdf (accessed November 5, 2016) (interpreting Scripture [Lev. 18:22] as prohibiting a certain form of male homosexual sex).

58. I do not mean to suggest that non-Orthodox Jewish movements have been entirely silent on such matters. For example, the Reform Movement's Plaut *Chumash* was groundbreaking in its open discussion of biblical criticism (see Plaut, *The Torah*, xxi–xxiv), a step in which the Conservative Movement has since followed suit (See The Rabbinical Assembly, *Etz Hayim: Torah and Commentary*, ed. David L. Lieber (Philadelphia: Jewish Publication Society, 2004), 1340–47. Further, much thought has been devoted in such circles to the religious significance of the Torah in light of the subjects of biblical criticism and non-historicity. See, e.g., Plaut, *The Torah*, xviii–xxiv (from the Reform Movement, on the religious significance of Torah postbiblical criticism); Eugene B. Borowitz, "Did God Give the Bible?" in *Liberal Judaism* (New York: Union of American Hebrew Congregations, 1984), 241–55 (from the Reform Movement, on theories of revelation and the import of biblical criticism); Richard Hirsh, "Four Questions to Ask Before Starting the Seder," in *A Night of Questions: A Passover Haggadah*, ed. Joy Levitt and Michael Strassfeld (Pennsylvania: The Reconstructionist Press, 2000), 21–23 (from the Reconstructionist Movement, justifying the use of the Exodus narrative in the Passover *seder* even if it is ahistorical); Sommer, *Revelation and Authority* (from the Conservative Movement, examining different concepts of revelation with consideration of biblical criticism). Yet, in my view, silence, rather than open discussion of the Torah's human origins and non-historicity continues to be the norm in most discussions, especially among lay Jews.

Documenting precisely the absence of a discourse is not a simple thing to do, for there are always exceptions. However, I believe the general pattern of silence can be seen in the following example—an exception proving a rule. In 2013, *Reform Judaism Magazine* published two articles arguing against the historicity of the Exodus narrative, one by David Wolpe, a leading Conservative rabbi, and one by S. David Sperling, a professor of Bible at Hebrew Union College. See David Wolpe, "Were the Jews Slaves in Egypt?" and S. David Sperling, "The Torah is Not History," *Reform Judaism Magazine*, Spring 2013, http://rjmag.org/spring_2013 (accessed November 4, 2016). For a response on the substance of their claims, see Richard Elliott Friedman, "The Exodus is Not

Fiction," *Reform Judaism Magazine*, Spring 2013, http://rjmag.org/spring_2013 (accessed November 4, 2016). Prior to publishing his article, Wolpe gave a series of sermons to his large Los Angeles synagogue suggesting that "virtually every modern archaeologist who has investigated the story of the Exodus, with very few exceptions, agrees that the way the Bible describes the Exodus is not the way it happened, if it happened at all," and, when he did, it was reported that he created a "hurricane" in the Jewish community of Los Angeles where he lives. See Tom Tugend, "L.A. Rabbi Creates Furor by Questioning Exodus Story," *Jweekly*, May 4, 2001, <http://www.jweekly.com/article/full/15596/1-a-rabbi-creates-furor-by-questioning-exodus-story> (accessed November 4, 2016). Not all, however, saw such open discussion of the Bible's non-historicity as shocking. Reform Rabbi Steven Leder of Wilshire Boulevard Temple stated, "Defending a rabbi [such as Wolpe] in the 21st century for saying the Exodus story isn't factual is like defending him for saying the Earth isn't flat. It's neither new nor shocking to most of us that the Earth is round or that the Torah isn't a history book dictated to Moses by God on Mount Sinai." *Ibid.*

59. Another reason—perhaps even the greater reason—for the absence of such discussion may be the threat such critiques of the Torah pose to the liberal branches of Judaism themselves: without the divine nature of the Torah, both in terms of its origins and contents (e.g., stories about what God did and said), there would appear much less reason to be concerned with it, and hence much less reason to be involved in Jewish life. Responses can of course be offered to the questions of why read the Torah if its stories are not historically accurate and its authorship is not divine (that the Torah contains moral truths if not historical ones, that its narratives form the cultural foundation of the Jewish community, etc.), yet, for all of their merit, such answers are not, in my view, as powerful as the basic justifications offered when historicity is presumed.
60. The Talmud quite clearly took the view that those who denied that the Torah was divinely revealed were to be cut off from the community. See BT *Sanhedrin* 99a.
61. This question is being increasingly posed within Jewish communities, where a "growing number of [non-Orthodox] Rabbis feel that surgical circumcision is no longer appropriate in the 21st century" and "hundreds of thousands of Jewish males around the world remain intact [i.e., uncircumcised]." See "Progressive Rabbis on Creating a Jewish Covenant Without Circumcision," *IntactNews*, January 27, 2012, <http://intactnews.org/node/142/1327690351/progressive-rabbis-creating-jewish-covenant-without-circumcision> (accessed November 6, 2016)

(describing the rise of non-circumcision as a practice among Jews and the views of many contemporary rabbis who feel the practice is no longer appropriate). This issue is certainly not a new one for liberal Judaism. For example, Rabbi Abraham Geiger, a central figure in founding the German Reform Movement, described circumcision as a “brutal act that does not deserve continuation” (as quoted in the *IntactNews* article, *ibid.*). So, too, “the question [of whether circumcision was required] was raised in 1843 by the Frankfurt Reform Association, which encouraged its members to abandon the rite.” See CCAR Responsa, “Circumcision of Infants,” Central Conference of American Rabbis (1982), <https://ccarnet.org/responsa/arr-141-143> (accessed November 6, 2016). That said, a general commitment to circumcision has remained within the Reform Movement. See “Circumcision of Infants”; see also Mark Washofsky, “Why Reform Never Abandoned Circumcision,” *ReformJudaism.org*, <http://www.reformjudaism.org/why-reform-never-abandoned-circumcision#sthash.EqLnUt3b.dpuf> (accessed November 6, 2016).

62. God’s purported statement to Abraham makes this extremely clear:

As for you, you and your offspring to come throughout the ages shall keep My covenant. Such shall be the covenant between Me and you and your offspring to follow which you shall keep: every male among you shall be circumcised. You shall circumcise the flesh of your foreskin, and that shall be the sign of the covenant between Me and you. And throughout the generations, every male among you shall be circumcised at the age of eight days. As for the home-born slave and the one bought from an outsider who is not of your offspring, they must be circumcised, home-born, and purchased alike. Thus shall My covenant be marked in your flesh as an everlasting pact. And if any male who is uncircumcised fails to circumcise the flesh of his foreskin, that person shall be cut off from his kin; he has broken My covenant (Gen. 17:9–14.).

Later Jewish law was less absolute. See David Golkin, “What is the Halakhic Status of an Uncircumcised Jew?,” *Responsa in a Moment*, v. 9, n. 3, Feb. 2015.

63. Rebecca Weiner, “Who Is a Jew?,” Jewish Virtual Library, <http://www.jewishvirtuallibrary.org/jsource/Judaism/whojew1.html> (accessed November 6, 2016).
64. Mordecai M. Kaplan, *Questions Jews Ask: Reconstructionist Answers* (New York: Reconstructionist Press, 1972), 3. See generally Mordecai M. Kaplan, *Judaism as a Civilization: Toward a Reconstruction of American-Jewish Life* (New York: Schocken Books, 1967).
65. Kaplan, *Questions Jews Ask*, 5.

66. See note 2 (on Kaplan's view of Jewish civilization as a paradigm for ethical nationhood).
67. Abraham Joshua Heschel, *The Sabbath: Its Meaning for Modern Man* (Cleveland and New York: Meridian Book, 1951), 9.
68. Abraham Joshua Heschel, *God in Search of Man: A Philosophy of Judaism* (New York: Farrar, Straus and Giroux, 1985), 197.
69. *Ibid.*, 177.
70. *Ibid.*, 423. Borowitz described Heschel's understanding of Judaism as precisely the opposite from Kaplan's: "The revelation to Israel dominates Heschel's understanding of Judaism. The Jewish people, as such, hardly has an independent role in his thought . . . He almost certainly adopted this stance to counteract the stress on Jewish ethnicity of his [Jewish Theological Seminary] faculty colleague Mordecai Kaplan." Eugene B. Borowitz, *Choices in Modern Jewish Thought: A Partisan Guide* (New York: Berhman House, 1983), 178.
71. Eugene B. Borowitz, *Liberal Judaism* (New York: Union of American Hebrew Congregations, 1984), 34.
72. *Ibid.*, 27.
73. *Ibid.*, 35 (emphasis added).
74. Judith Plaskow, *Standing Again at Sinai: Judaism from a Feminist Perspective* (New York: HarperOne, 1990), 87.
75. *Ibid.*, 89.
76. *Ibid.*, 96–97.
77. *Ibid.*, 132.
78. *Ibid.*, 138.
79. 9 *Ibid.*, 146.