



ICJW Bea Zucker Online Bible Study Program

“The Five Books of Moses: Contemporary Issues and Classic Perspectives”

By Dr. Bonna Devora Haberman

51 Nitzavim — Covenant or Contract?

Text

דברים כט

ט אתם נצבים היום כלכם לפני יהוה אל היכם ראשיכם שבטיכם זקניכם וש'טריכם כ'ל איש ישראל. י טפכם נשיכם וגרר אשר בקרב מחניך מח טב עציך עד ש'אב מימיך. יא לעברך בברית יהוה אל היך ובאלתו אשר יהוה אל היך כ'רת עמך היום. יב למען הקים-אתך היום לו לעם והוא יהיה-לך לאל הים כאשר דבר-לך וכאשר נשבע לאב'תיך לאברהם ליצחק וליעק'ב. יג ול'א אתכם לבדכם אנ' כי כ'רת את-הברית הז'את ואת-האלה הז'את. יד כי את-אשר ישנו פ'ה עמנו ע'מד היום לפני יהוה אל הינו ואת אשר איננו פ'ה עמנו היום. //

כח הנסתר'ת ליהוה אל הינו והנגל'ת לנו ולבנינו עד-עולם לעשות את-כל-דברי התורה הז'את.

דברים ל

יט העד'תי בכם היום את-השמים ואת-הארץ החיים והמות נתתי לפניך הברכה והקללה ובחרת בחיים למען תחיה אתה וזרעך. כ לאהבה את-יהוה אל' היך לשמ'ע בק'לו ולדבקה-בו כי הוא חייך וא'רך ימיך לשבת על-האדמה אשר נשבע יהוה לאב'תיך לאברהם ליצחק וליעק'ב לתת להם.

Devarim 29

⁹ You stand this day, all of you, before the Lord your God — your tribal heads, your elders and your officials, all the people of Israel, ¹⁰ your children, your spouses, even the stranger within your camp, from woodchopper to water-drawer — ¹¹ to enter into the covenant of the Lord your God, which the Lord your God is concluding with you this day, with its sanctions; ¹² to the end that S/He may establish you this day as Her/His people and be your God, as S/He promised you and as S/He swore to your fathers, Abraham, Isaac, and Jacob. ¹³ I make this covenant, with its sanctions, not with you alone, ¹⁴ but both with those who are standing here with us this day before the Lord our God and with those who are not with us here this day. //

²⁸ Concealed acts concern the Lord our God and overt acts, it is for us and our children ever to enact all the provisions of this Teaching [Torah].

Devarim 30

¹⁹ I call heaven and earth to witness against you this day: I have put before you life and death, blessing and curse. Choose life — if you and your offspring would live — ²⁰ by loving the Lord your God, heeding Her/His commands, and holding fast to Her/Him. For thereby you shall have life and shall long endure upon the soil that the Lord swore to your ancestors, Abraham, Isaac, and Jacob, to give to them.

Context

Heaven and earth bear witness to the covenant of the entire Israelite people – those present and those not present. Everyone has the opportunity to choose whether to follow the commandments, or to follow temptations of idolatry. Upon those who stray, God will



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bring fire and brimstone wrath and fulfill the curses mentioned in the previous parasha. But when the people return to God and choose life rather than curses, they will be blessed with love and fertility and flourish in the land. All of these teachings are within reach of the people themselves; they do not depend on any special leader to fulfill them.

Explorations

Covenant is at the very heart of the Torah and Judaism as a whole. The Torah discusses divine-human covenant at key stages of the narrative. Each is accompanied by a ritual act or sign.

Early in Bereishit, God commits to all creatures by the universal sign of the rainbow to refrain from flooding the earth again,

God said to Noah and to his children with him, "I now establish My covenant with you and your offspring to come, and with every living thing that is with you — birds, cattle, and every wild beast as well — all that have come out of the ark, every living thing on earth. I will maintain My covenant with you: never again shall all flesh be cut off by the waters of a flood, and never again shall there be a flood to destroy the earth."

God further said, "This is the sign that I set for the covenant between Me and you, and every living creature with you, for all ages to come. I have set My bow in the clouds, and it shall serve as a sign of the covenant between Me and the earth. When I bring clouds over the earth, and the bow appears in the clouds, I will remember My covenant between Me and you and every living creature among all flesh, so that the waters shall never again become a flood to destroy all flesh. When the bow is in the clouds, I will see it and remember the everlasting covenant between God and all living creatures, all flesh that is on earth. That," God said to Noah, "shall be the sign of the covenant that I have established between Me and all flesh that is on earth." (Ber. 9:8-17)

Avraham undergoes a ritual “between the pieces” when God promises the land to him,

When the sun set and it was very dark, there appeared a smoking oven, and a flaming torch which passed between those pieces. On that day the Lord made a covenant with Abram, saying, "To your offspring I assign this land, from the river of Egypt to the great river, the river Euphrates: the Kenites, the Kenizzites, the Kadmonites, the Hittites, the Perizzites, the Rephaim, the Amorites, the Canaanites, the Girgashites, and the Jebusites." (Ber. 15:17-21).

The *brit mila* – circumcision covenant is incised in male flesh,

I will maintain My covenant between Me and you, and your offspring to come, as an everlasting covenant throughout the ages, ... Such shall be the covenant between Me and you ... every male among you shall be circumcised ... and that shall be the sign of the covenant between Me and you... So shall My covenant be marked in your flesh as an everlasting pact. (Ber. 17:7-14)

Shabbat is to be observed weekly,

The Children of Israel shall keep the Sabbath ... as a covenant for all time; it shall be a sign for all time between Me and the people of Israel. (Shmot 31:16-17).



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In the first lines of the Shma, a central credo of Jewish faith, the Torah instructs us to bind words of Torah to our hands and head as a sign,

Hear, O Israel! The Lord is our God, the Lord alone. You shall love the Lord your God with all your heart and with all your soul and with all your might. Take to heart these instructions with which I charge you this day. Impress them upon your children. Recite them when you stay at home and when you are away, when you lie down and when you get up. Bind them as a sign on your hand and let them serve as a symbol on your forehead; inscribe them on the doorposts of your house and on your gates. (Devarim 6: 4-9)

These passages institute a committed relationship between Creator and creature. Each act signifies a unique aspect of the connection –

The rainbow signals a promise to all creatures.

A promise of offspring and land is revealed in passage between sacrificial flesh.

Circumcision in the male reproductive organ is a lasting blood pact.

A weekly communal ritual observance marks time as sacred.

Scribed texts bound to the arm and head signal commitment to Torah teachings.

With the exception of the rainbow which is universal, each act builds the covenantal relationship between the divine and the Jewish People. Among them, *brit mila* is sex-specific. As feminism progresses in the Jewish world, women are progressively performing more of the covenantal obligations, and thereby participating more fully in the covenant. Women binding with tefillin, the phylacteries prescribed in the Shma, and *mohalot* who perform *brit mila*, are increasing in number.

The rainbow in Bereishit symbolizes a divine promise, a one-way message to all creatures of the earth. According to Rashi who cites midrash and sages,

all the ordinances [mentioned in the revelation at Mt. Sinai include]: the seven Noahide commandments, in addition to [keeping] the Sabbath, honoring one's father and mother, [the laws of] the red cow, and laws of jurisprudence, which were given to them in Marah. [Mechilta on Shmot 19:10, Sanh. 56B] (Rashi on Shemot 24:3)

In other words, the revelation relates also to non-Jews, and seeks to bind them to observe certain customs as partners to a divine covenant.

Our parasha introduces another facet of this prism. Nitzavim paints a monumental image of the Jewish People in relation to the world. The sky and ground preceded us and, if we take better care of the environment, will endure forever bearing witness to a covenant incised in the Creation, in the structure of being. Every Jew enters into a commitment with the Creator – laborers and leaders, men and women, converts, and descendants. We are implicated together in a momentous human undertaking. Insofar as we commit and fulfill it, we choose life and blessing; insofar as we choose to stray from the covenant, we suffer consequences and curses.

Our parasha describes how those present and those not present are bound - covenant is foundational to existence, beyond time and space. By this means, the Torah establishes core priorities for human life, setting a framework for our role as responsible beings and a



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structure for our individual choices. To shed light on this important idea, let us consider the covenantal approach of Nitzavim in relation to a parallel concept in Western thought - the social contract.

In the *Leviathan*, Thomas Hobbes (1588-1679) theorizes how society is founded on a “Social Contract” - an agreement that would be made among suitably situated rational, free, and equal persons in order to reign in the miserable state of nature. According to Hobbes, competition for dignity and honor naturally give rise to envy and hatred. Left to our own devices, we would be deadlocked in a constant war of everyone against everyone, disabling us all from realizing our important life purposes. Hobbes used this theory to justify his claim that we ought to submit to the authority of an absolute, undivided sovereign power. In Hobbes' view, ‘commodious living’ - morality, politics, and all the benefits of society are conventions that derive from such a “Social Contract”. Without the basic social contract establishing the agreement to live together and submit to sovereign authority over our behavior, nothing is immoral or unjust. Except for the social contract, society would be impossible, and none could be expected to uphold promises, or cooperate together; there would be no *good* whatsoever. No reasonable person could possibly resist the argument that binds each person together under a supreme rule. The people give their power to a sovereign and submit their wills to his/her will and their judgment to his/her judgment (*Leviathan* 17.13.109).

At the root, Hobbes' contract is based on fear. The justification for society and sovereign rule is protection – from each other, and from any common enemy. Unless political authority is absolute, he reasons, the state will deteriorate into civil war. Hobbes does temper what he considers the “essential rights of sovereignty” with “true liberties of subjects” - to defend themselves and their honor against the aggressions of sovereign power. This caveat opens his theory to more complexity than we can explore here. Hobbes is also conscious of the power and influence of religious faith.

While Hobbes arrogated free choice to sovereign discretion, in their updated variations on social contract theory, some have attempted to restore free choice to citizens. Modern philosopher John Rawls opines that society should hold individuals responsible for their choices but not for their unchosen unjust circumstances in which they make their choices. Rawls becomes embroiled in the difficult project of distributing resources fairly according to his understanding of what reasonable people's judgements ought to be.

Divine covenant and social contract intersect and diverge. While both propose a sovereign ruler, one divine, the other human, the role of the subject is quite different. While our text urges us to opt for life, and threatens bad outcomes if we choose not to follow the covenantal obligations, the Torah and sages uphold free choice. Rambam argues that freedom of choice to follow divine instructions or to transgress them is a matter of divine justice. If people were compelled to act, reward and punishment would be unjust. If people are not free to obey or disobey divine commands,

“By what right and justice does God punish the wicked or reward the righteous?
‘*Shall not the judge of all the earth do justice?*’” (Genesis 18:25) (8 *Peraqim*, Ch. 8)

Rambam pursues this principle of justice to the limit when he discusses trials of capital cases. He clarifies that the accused, whether a sage or a commoner, is legally culpable only if s/he was expressly forewarned just before the act. Only thus can the judges be



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sure that the person committed the transgression with full intent, that is, chose freely (Hilchot Sanhedrin 12:2). This emphasis on free choice is critical to establishing human responsibility.

Any modicum of life experience reveals that the causal connection between transgression and punishment, between good deeds and reward is at best tenuous. The certainty of punishment or reward would interfere with free choice. The fact that punishment is delayed or uncertain makes it possible for each person to experience her/his fullest capability to choose freely at every moment – without being influenced by the temptation of reward or fear of punishment. The Torah's covenantal approach educates toward human will to act from love, desire for sacredness, and the pursuit of justice. Free human agency in a responsible relationship with the divine sovereign partner who is committed to justice is one of the profound Jewish innovations.

Questions for Discussion

- Describe your views about the “state of nature”. In your opinion, how would people behave outside the framework of a sovereign society? While Hobbes speaks about *man* generally without reference to gender, how do you interpret his assumptions about the state of nature in gender terms?
- What does/might it mean to you to be a partner in a covenant with the Creator? How does/would it affect your life and behavior? Does sex have any relevance to the covenant – should women and men be expected to behave differently in relation to the divine partner?
- Discuss the relative uses of fear and love by sovereign systems to guide behavior in society. How do you view the governance of the society in which you live – is it by fear or love, or some other factors? Explain.
- In what areas do you and your family experience freedom of choice? What are the constraints upon your freedom of choice? How would you propose to lessen them?
- Evaluate Rambam's idea that free choice is required by the idea of divine justice. In your view, how are free choice and justice related?
- How ought our daily life in an open democratic society be affected by a covenant with the divine sovereign (if at all)? Is it strictly a personal matter? Explain how a covenantal approach might contribute toward better citizenship in our contemporary polities and cultures.
- To what extent do we and our Jewish institutions abide by Rambam's demand that the Divine Covenant uphold free choice at every instant? Why or why not?

Study Links

- This is an [halakhic opinion about mohalot](#) - women who perform *brit mila* - by Rabbi David Golinkin.



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- In 1988, I convened an Israeli prayer initiative at the Western Wall that evolved into “Women of the Wall.” This movement contributes toward the acceptance of women performing and leading public ritual covenantal obligations. The image of women with *tefillin* expands attitudes about what is accepted practice, and encourages women to identify as full covenantal partners. For a full Jewish theology of liberation where women are not only participants but re-conceive core covenantal experience of Jewish life and practice, see my book, [Israeli Feminism Liberating Judaism: Blood and Ink](#).



photo credit – Uriel Sinai, NYTimes May 10, 2013

- This is a book of thoughtful approaches to Hobbes from contemporary thinkers, Peter Caws (ed.), [The Causes of Quarrel: Essays on Peace, War, and Thomas Hobbes](#) (Boston: Beacon Press, 1989).
- See this critical look at the *Leviathan*, Katherine J. Wolfenden, “[Hobbes' Leviathan and Views on the Origins of Civil Government: Conservatism by Covenant](#).”
- After Hobbes, John Locke and Jean-Jacques Rousseau elaborate versions of the social contract. John Rawls' Kantian version of social contract theory continues to be very influential amongst Western political thinkers in our time. See this summary of Rawls' [Theory of Justice](#). For some in-depth analysis, see “[Rawls, Responsibility, and Distributive Justice](#)” by Richard Arneson.
- See “[Kinship and Consent](#)”, the first chapter of Daniel J. Elazar's book, *Covenant as the Basis of the Jewish Political Tradition*.

Summary of Issues

Based on very different approaches and assumptions about the human condition, the Divine Covenant and the Social Contract are two very different ways to conceive the underpinnings of society. Free human agency in a responsible relationship with the divine sovereign partner who is committed to justice is one of the profound Jewish innovations.

Methods & Observations

Judaism is one of the foundations of Western culture and values. Exploring Jewish and Western ideas about society together, we have the possibility to compare and contrast assumptions, to better understand, and to refine our lives at the intersection of these traditions.

Contact

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