

Article

Between Covenant and Contract: Jewish Political Thought and Contemporary Political Theory

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Abstract: Social contract theory has long been at the center of political theory, and one of the inheritors of the social contract tradition, liberalism, reverberates through contemporary political life. And yet, an overlooked element of liberalism are the biblical origins of social contract theory. Specifically, how the early modern political theorists were reading Hebrew Bible, and the kinds of interpretive transformations of Hebrew Bible that take place on the pages of works like Thomas Hobbes' *Leviathan*, John Locke's *Second Treatise*, and more. Covenant is the centerpiece of this entanglement. When drawn from Hebrew Bible and read in the context of Jewish political thought, covenant has a very different meaning to that which social contract theories attribute it. This Jewish understanding of covenant concretizes a practice of politics that is constitutively dissenting and agonistic, in contrast to the command–obedience model typical of social contract theory. Furthermore, covenant loses its unique conceptual framework—thus its contribution to political thought—when it is secularized into a social contract. This Jewish conception of covenant offers a new way to understand politics and democratic practice through “covenantal authority” and its constitutively dissenting, agonistic, and circulating qualities. “Covenantal authority” captures the constitutive undecidability of who has authority over the text.

Keywords: religion and politics; Jewish political thought; covenant; social contract



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1. Introduction

Since its early modern reinvention, social contract theory has been at the center of political theory (Hobbes [1651] 1996; Locke [1689] 1988; Spinoza [1670] 2007). Debates about who is or is not included, the expanse or reach of the contract, and its potential transformations animate the scholarship on this front (Pateman 1988; Rawls 1971; Sandel 1998; Tully 1995; Walzer 2010). And rightfully so, because one of the inheritors of the social contract tradition, liberalism, reverberates through contemporary political life. The concurrent rise of secularism concretizes liberalism's public–private distinction, the foundation of liberal citizenship. And yet, secularism is not a project of separation, but of sharing and collecting power between the religious authority (the church) and the political authority (the state) in the wake of the Protestant Reformation (Nelson 2010, pp. 4, 88).¹ And yet, an overlooked irony of secularism's (liberalism's) hegemony are the biblical origins of social contract theory. Specifically, how the early modern political theorists were reading the Hebrew Bible, and what kinds of interpretive transformations of the Hebrew Bible² take place on the pages of works like Thomas Hobbes' *Leviathan* [1651/1668] 1996, John Locke's *Second Treatise* [1689] 1988 and more.³

Covenant is the centerpiece of this entanglement. When drawn from the Hebrew Bible and read in the context of Jewish political thought, covenant has a very different meaning to that which social contract theories attribute it. This Jewish understanding of covenant concretizes a practice of politics that is constitutively dissenting and agonistic, in contrast to the command–obedience model typical of social contract theory (Arendt 1956, 1961; Ciepley 2015; Flathman 1980; Hart 1994; Luxon 2013). Furthermore, covenant loses its unique

conceptual framework—thus its contribution to political thought—when it is secularized into social contract.

Covenant is a core concept in Jewish political thought, as the foundation for communal life in all its forms: ritual, religious, political, and social, even economic and agricultural.⁴ But even this phrasing is inadequate and imprecise. When covenant was taken out of context, and thus stripped of its Jewish conceptual framework, it was not secularized, but Christianized, to fit the culture of early modern western Europe (Nelson 2010). This Christianization, which created social contract, in part, out of the Jewish covenantal tradition, has remained in political thought and will stay as long as social contract and its successors (like liberalism) do, too. The social contract tradition's history of borrowing the Bible's authority tells an important genealogical story about concepts at the center of the "Western" canon. It attests to the present absence⁵ of Jewish political thought in the canon by the not-quite inclusion of Jewish sacred text.⁶

Scholarship in the realm of Jewish political thought (Batnitzky 2012; Cooper 2016, 2017; Flatto 2020; Halbertal 1997; Halbertal and Holmes 2017; Honig 2003; Lesch 2019; Lorberbaum 2001; Vatter 2021; Walzer 1985, 2012) has done important and productive work to clarify the differences between covenant, contract, and compact, while also, even implicitly, assimilating covenant to social contract by reconciling covenant with prevailing liberal (or liberal-democratic) models. I follow Charles H. T. Lesch's approach to thinking with biblical concepts in that sources such as Hebrew Bible are invitations for "theorizing analogically from religion" (Lesch 2019, p. 206), not opportunities to replace one hegemonic tradition or way of thinking with another. To "theorize analogically" is to bring religious traditions, their contexts, and conceptualizations, in dialogue with political theory; to think with theology but not to apply or impose it. This Jewish conception of covenant offers a new way to understand politics and democratic practice through "covenantal authority" and its constitutively dissenting, agonistic (Honig 1993, 2008), and circulating qualities. "Covenantal authority" captures the constitutive undecidability of who has authority over the text.

To unpack the complexities around and (mis)understanding of the term "covenant" in Jewish political thought with and against the "Western" canon, I will start with discussing how the Hebrew word for covenant both occludes and elucidates multiple conceptualizations. Then, I will discuss how a Jewish understanding of covenant resets a certain liberal cooptation of the covenantal tradition and offers a way toward a politics outside of the framework of command-obedience authority. Finally, I will turn to a discussion of Jewish political thought on covenant and contract.

2. Covenant in Hebrew

There are many generalizable, broadly applicable definitions of covenant, but they do not capture the multiple transformations it underwent across Christian theology, nor the complexity of covenant as the central relationship of Israelite and Jewish community (Kurun 2016, pp. 57–60; McGiffert 1982; McGiffert 1988; Hill 1979). According to Daniel J. Elazar, covenant and contract are both constitutional and/or public; reciprocal; flexible in some components and static in others; and are based in mutuality and consent. They diverge because covenant is an agreement with a higher force and has a theo-political valence. Compact is legally binding, with indirect morality because a deity is not a participant, and is secular. Contract, by contrast, is private, has limited obligations, and is unilateral (Elazar 2017, pp. 1, 22–23, 31). İsmail Kurun offers a similar account of covenant: "the theological covenant is generally defined as the contract between God and man requiring them to behave according to certain rules. Away from its theological context, the term covenant means a relationship of 'oaths and bonds' and involves mutual, though not necessarily equal, commitments" (Kurun 2016, p. 35n2).

As a tradition with a textual covenant and a covenant affirmed in text, it is only fitting to turn first to the text at the center of Jewish covenantal thought—Torah. One of the challenges in distinguishing covenant and contract is that Hebrew Bible does not lend itself to

a consistent definition of covenant. There are covenants made and invoked across Hebrew Bible, but they are not all referring to the same kind of relationship.

The Hebrew word for ‘covenant’, ‘*b’rit*’ (בְּרִית) is used across Hebrew Bible, both for new or renewing covenants, or in reference to extant covenants.⁷ There are three covenantal landmarks early in Hebrew Bible that set up the framework for covenant to come and show how one word, *b’rit*, can connote many kinds of relationships. These are the covenants between God and Noah (Noahide) and God and Abraham (Abrahamic), as well as the covenant at Sinai between God, Moses, and the Israelites (Sinaitic).⁸ They are all called *b’rit*. Social contract theorists primarily refer to one of these covenants, but not others. Looking solely to the Sinaitic covenant indicates a selective engagement with a more complicated and pluralistic concept and source text. There are two primary clues for elucidating those qualities: first, the verbs used for establishing the covenant, which change and develop across the Torah; and second, the signs, obligations, and parties of the covenant also vary depending on context. As I will explicate, there are subtleties in the language that reflect these differences.

Each time God speaks to Noah about the covenant, ante- and postdiluvian, God uses versions of the Hebrew root *qof-vav-mem*, which can mean “to rise/get up” or “to establish” (Jastrow 2004). Although God communicates only with Noah, the covenant is established between Noah, his offspring (and by extension, all people), all animals, and the earth. The sign of the covenant is a rainbow in the sky, which is a reminder to God and humanity of the covenant’s persistence.

The Abrahamic covenant comes with different covenanting verbs in Hebrew and different, more tangible signs. When God promises Abraham a covenant for the first time in Genesis 15:18, the verb used is a version of the root *kaf-resh-tav*, which can varyingly mean “to cut”, “to establish”, or “to recognize”.⁹ One of the potential meanings of this covenanting verb reflects the new sign of the covenant, circumcision, which is called in Hebrew *b’rit mila* (circumcision covenant). Not only is the verb change an indication of a different covenantal relationship between God and Abraham than between God and Noah, but it also hints at the significance of the physical marker of covenant on Abraham and his male progeny. However, there is more ambiguity with covenanting verbs in the Abrahamic example. The text moves from *kaf-resh-tav* to *nun-tav-nun* (to give) in Genesis 17:2, back to *qof-vav-mem* in 17:7 from the Noahide, and then onto *shin-mem-resh* (to keep or guard) in 17:5, before circling back to *qof-vav-mem* and *kaf-resh-tav*.¹⁰ The changing verbs suggest the range of obligations placed on Abraham that were not put onto Noah, as well as the multiplicity of the relationship between Abraham and God—Abraham, who, in the following chapter, will challenge God for failing to be merciful to the people of Sodom and Gomorra (Genesis 18:22–33). The “cut” verb (*kaf-resh-tav*) comes back when Abraham makes covenants with other people (such as with Avimelech), an indication that perhaps when God first approaches Abraham, it is as an equal covenanter, as between man and man.

Reflecting the centrality of the covenant at Sinai, the language in the Hebrew Bible for the covenant between God and the Israelites and Moses changes again, from “cutting” or establishing a covenant, to hearing/obeying the covenant (*shin-mem-ayin*). There are many elements about the Mosaic covenant that distinguish it—instead of God covenanting with an individual and including all potential progeny, the covenant at Sinai is mediated through Moses and directly with the people.¹¹ While even today Judaism refers to Abraham’s covenant as the underwriting covenant of the Jewish people (because of the commandment to fulfill male circumcision and the turn to monotheism), it is the Mosaic covenant that adds the defining laws and obligations of Jewish covenant. The changing verbs for covenant indicate the change in quality of covenant, as well as demonstrate the difficulty in pinning down one conception of covenant. That the term’s relative meaning changes over the course of these three central covenants provides understanding and appreciation for why covenant could be so easily mapped onto other terms, such as contract, compact, and social contract.

Building on Elazar's definition, I find five central features of covenant from the Sinaitic example:

(1) The covenant is made between the people and God. While Moses was certainly the mediator in the desert in some key moments, in others, the Israelites themselves are the covenanters with God.¹² It is not between Moses and God and recounted to the Israelites secondhand, like much of the law-giving that happens during the covenanting episode. This is borne out in the *midrash* on the Sinaitic covenant. Whether it is God holding Mount Sinai over the Israelites to urge them to agree (Shabbat 88a:5), or that every Jew past, present, and future was at Mount Sinai at the moment of covenant (Sh'mot Rabba 28:6), or that God offered the covenant (as the Torah) to all the other nations and only the Israelites accepted (Midrash Sifri, Deuteronomy 343), it is not a negotiation between God and Moses, the elders, the priests, or anyone else, but explicitly between God and the people.

(2) Covenant is a relationship of reciprocal promise-making and promise-fulfilling. Contract is a relationship of exchange, often one-to-one and within a finite period. When the Israelites commit to the Ten Commandments, they have yet to enter their promised land and easily conquer it, one of the promises that God makes (Exodus 23:27–33). Striving to fulfill their promises to help bring about the unfulfilled ones creates bonds of obligation and community. These bonds are among the people, but also between God and the people and the people and God. Obligation forges multi-directional relationships that become difficult to rend.

(3) Covenant is a bounded community. One is either born into the covenant or undergoes conversion. This underscores that covenant is not an endlessly open community.¹³ Its boundaries are permeable—there is repeated mention of welcoming the stranger—but there are boundaries all the same.

(4) Covenant is practiced through contesting and contestable interpretation. When the Israelites commit to the covenant in the last section of Sinaitic covenanting episode, they say, "*na'aseh v'nishma*" "we will do and we will understand" (Exodus 24:7). The verb root for *nishma*, *shin-mem-ayin*, has three possible meanings: to hear, to understand, or to obey. The phrase *na'aseh v'nishma* could equally be translated to "we will do and we will obey". As there are at least two translations of the phrase, there are multiple, implied perspectives and relationships as well; as a community of individuals, the Israelites will do and understand (and understand through doing) the obligations of the covenant. Moses initially goes out to God on behalf of the Israelites,¹⁴ but when they finally agree to the covenant, they reply, "*na'aseh v'nishma*" "we will do and we will understand" (Exodus 24:7). The verb for "will do" has a root of *ayin-shin-heh* but begins with a *nun* (נ) to indicate the verb is in the second-person plural, future tense, as does "*nishma*", to be "we will understand". That the Israelites commit in the future tense leaves room for a process of doing and understanding through which each person can develop their own way of acting out the covenant and their own understanding of each obligation. The ordering of doing before understanding highlights that the Israelites understand through doing. Each person, in carrying out these obligations, understands them individually and as part of the obligated community. The individual-level doing and understanding invites a multiplicity of interpretations of what it means to fulfill the covenant. And, it requires holding space for the community, as covenant is a communal commitment, committed to communality. There is ample potential for multiple translations in the very phrase of committing to the covenant. The multivocality in *na'aseh v'nishma* underscores the undecidability of a final, authoritative interpretation of the text, and the covenant it both depicts and embodies.

At the moment of promising, Moses is not mediating, nor are the people alienated when they consent.¹⁵ There are many ways of interpreting what each commitment means and how it ought to be practiced. This is borne out in at least three ways: first, like the interpretation of *na'aseh v'nishma*, one Hebrew word root can have many meanings; second, each individual carrying out each obligation has the potential to create a multiplicity of ways to fulfill the obligation; third, the Jewish textual canon, and specifically Jewish sa-

cred texts, like the Talmud, record and animate debates about how to carry out these obligations.¹⁶ Such multivocality necessarily generates disagreement. Therefore, covenant is enlivened by dissent because it indicates that the covenant is alive and at work among the participants who are “doing” and “understanding”. Divergent understandings of what it means to be part of the covenant do not mean the end of the covenant, although it can certainly lead to conflict, which is evident across Jewish texts. However, there is an important boundary for the endless proliferation of interpretations. The interpretation and attendant practice(s) must be understandable as part of the covenant to the other members. Even then, certain interpretations may no longer be considered as part of the covenant, but the covenant itself does not dissolve. This directly leads to the fifth and last component.

(5) Covenant is practiced through contesting and contestable political authority. A multiplicity of interpretations reflects the many cases in Hebrew Bible where authority always has remainders: between God and individuals, and the people or groups of people, or among the people.¹⁷ The undecidability of final authority both fosters disagreement and shields the community from rupture because disagreement and the related circulation of authority via interpretation is expected and built in through examples and experience. There are examples from the Hebrew Bible, such as when King David’s military commander Yoav questions David’s request to carry out a census (II Samuel 24).¹⁸ It is the experience of reading and living the obligations of covenant—being in relationship to the obligations—that adds lived experience to the textual examples and the multivocality of the texts. The post-biblical canon reflects the theological position of the unknowability of God’s meaning or intention, in which contestations over authority always leave a remainder. Theologically, there is no recourse to final authority because the proximity between God and the people depicted in Hebrew Bible is no more. Politically, this invites a contesting relationship to authority because no person can make a legitimate claim to accessing the true interpretation.

The sovereignty that comes out of circulating authority is fractured and ephemeral, distributed between the momentary and potential holders of authority. It is altogether different from the image of the sovereign on high, above the subjects they command.¹⁹

If one were to look only to Hebrew Bible for guidance on which covenant does what, the single word *b’rit* conflates more than it distinguishes. It is understandable why covenant can be easily transformed into contract, and even closely related conceptualizations of covenant. Hebrew and Hebrew Bible hermeneutics inform how one understands the covenant, its terms, and its temporal and geographic reach (Babich 2018; Gadamer 1999). I have argued that the linguistic changes in Hebrew Bible between the Noahide, Abrahamic, and Mosaic covenants elucidate a substantive difference between each of the covenants, despite the same word *b’rit* being used in each episode. If the Hebrew itself is difficult to pin down, it is understandable that those without great Hebrew capacity would read and understand covenant from the Hebrew Bible to resemble or resonate with the burgeoning conception of social contract. These linguistic differences attest to the multiplicity of covenants in Hebrew Bible. It cannot easily conform to a version of covenant as social contract that makes space for the mutuality of the contract but not multiplicity. By centering individual consent as the legitimation for authority, social contract is not as resilient to disagreement.²⁰ When enough consent is revoked, the contract crumbles.

3. From Covenant to Social Contract

Thus far, I have focused on the three covenants in the Hebrew Bible in the books that compose the Torah. This is in large part because, in Jewish theology, they are the ones referred to the most—even outside Jewish theology, the Abrahamic covenant and the Sinaitic covenant remain important markers for theologians and theorists alike to postulate on how communities, i.e., the people can organize themselves based on the principles espoused or demonstrated through these covenantal episodes (McGiffert 1982, 1988; Hill 1979; Kurun 2016). This is not to exclude the other invocations of covenant or rededications elsewhere in Hebrew Bible.²¹

Early-modern social contract theorists, like Thomas Hobbes—primarily in *Leviathan* (1651/1668), but also in *De Cive* (1642/1651) and other works—and John Locke in the *Two Treatises of Government* (1689), turned to the biblical example for revealing political-theological reasons. These theorists borrowed authority from the Hebrew Bible in two ways. First, the authority of the Hebrew Bible as such—as a communicable source of authority and meaning in the lives of their readers; examples from this text give the theoretical work the sheen of legitimacy. Second, the authority structure in the Hebrew Bible, as they perceive or (mis)interpret it to be. That is, reading the relationship between God, Moses, and the people as one of the ultimate sovereign, the intermediary, and the subjects (Locke, *First Treatise*, §157; Hobbes, p. 327). For Hobbes and Locke, the covenant at Sinai provides an example of the people agreeing to obey God as the sovereign, as the exemplary relationship of representation. Social contract solves the ‘problem’ of the democratic character of covenant by transforming it into a theory of representation. Hobbes especially makes use of representation to undermine democratic interpretation by making the sovereign the arbiter and authorizer of interpretation (Hobbes, pp. 124–125, 190–191). These theorists’ creative (mis)interpretations of the Hebrew Bible obfuscate the depth of covenant and transforms its authority structure from circulation to command–obedience.

Leviathan shows how Hobbes intersects interpretation, citation, and political goals in bringing biblical sources into his political theory—the title itself comes from a verse from Job; the leviathan is a biblical sea creature about which there is Jewish lore (Babylonian Talmud, Bava Batra 74b–75a). Part of the complication of Hobbes is that he explicitly distinguishes contract and covenant in Chapter XV. According to Hobbes, covenants are relationships in which (at least) the obligations of one of the parties is as yet unfulfilled (point two, above). Contract, by contrast, is a transaction in which both or all parties fulfill their obligations if not immediately, very soon. Covenant relies on promise-making and trust that the others will do their part, and Hobbes argues that covenant is the relational condition of possibility for representation, and thus sovereignty and the sovereign, “A Multitude of men, are made *One Person*, when they are by one man, or one Person, Represented” (Hobbes, p. 114).

Covenant is crucial to Hobbes’s theory of representation, without which the sovereign does not form. For these reasons, covenants of “every man with every man” create and authorize the sovereign (Hobbes, p. 120). And yet, while Hobbes insists on the language of covenant for his leviathan sovereign, it is more aligned with and substantively part of social contract.

There are many important differences between the Hobbesian sovereign–covenant and the Sinaitic covenant. Take directionality: in the Sinaitic covenant, God approaches Moses throughout. And if God’s ultimate sovereignty is in play, then that God seeks a covenant is significant. For Hobbes, the sovereign cannot initiate a covenant with the people, in part because the sovereign is itself a product of covenanting and not party to any one of them. God makes promises to the Israelites, who make promises in turn. According to Hobbes, the people make promises among themselves (which include to create a sovereign), and the sovereign, as a product of these commitments, represents the people but has no true pledge to them, “by Covenant onely of one to another, and not of him to any of them” (Hobbes, p. 122). By representing the people, however, the sovereign’s actions are authored and authorized by the people.²² Hobbes is working in the frame of biblical covenant to translate the first quality of Jewish covenant (covenanted with God) to create a different practice of authority with representation at the center, thus obviating the fourth and fifth qualities (contestation in interpretative authority, contestation in political authority) and keeping the second and third (promise-making and boundedness). Hobbes puts covenant to work to shut down contestation over authority, specifically at the interpretive and political levels. With the Protestant Reformation came a dispersal of authority to readers of the Bible in vernacular. That every reader of the Bible could position themselves as an authority or the authority on God’s will fostered the fractioning of authority and the formation of numerous new religious sects. As Hobbes shows in *Behemoth* ([1668] 1990) this

fractioning of interpretative authority contributed to the fractioning of political authority that led to the English Civil War (48).

Why would Hobbes even enter the theologically heavy language of covenant in a work that explicitly aims to control the ecclesiastical alongside the civil?²³ There are many persuasive interpretations that explain facets of Hobbes's influences and goals. First, covenant and covenantal language were pervasive in the religious and political discourse of his time and the conflation of the political and the religious made it imperative that Hobbes address not only the political ramifications of the war but the religious ones.²⁴ Relatedly, the popularity of "covenant theology" among Calvinists made the term and practice of covenant more salient (Martinich 1992, 2016; Garsten 2010; Kurun 2016). Hobbes may also have "subversively integrated" the scriptural imagery and sources of his political and religious opponents so as to make it even more difficult to dispute his political project (McQueen 2018). Each of these interpretations reinforce the significance of biblical interpretation to Hobbes and to Hobbes's theoretical project. Hobbes is a creative and subversive reader of Hebrew Bible, and his readings have been insightfully problematized from the perspective of the ideas at work in *Leviathan* or Hobbes's social and political context, but less so from the perspective of the text itself.

In the *Second Treatise*, Locke makes a similar move to Hobbes in grounding his social contract theory in biblical interpretation. The *Second Treatise* opens with an interpretation of Genesis that summarizes Locke's criticism of Sir Robert Filmer's *Patriarcha* in the *First Treatise* and Locke's counterclaim. Filmer, who argues for the divine right of kings, grounds his argument in the kingly line of Adam, who had the first "dominion" of the earth (Filmer [1680] 1991, pp. 5–11). Locke points out that there is no feasible way to know who the direct descendants of Adam are, especially since all human beings are descendants of Adam and Eve.²⁵ Therefore, the land belongs to all the descendants of Adam and Eve—to humanity in common "God gave the World to Adam and his Posterity in common" (Locke, *Second Treatise*, §§1–4, pp. 25–26). If land is held in common, the only way to make the common into private property is to mix the common with one's labor. This process is an imitation of God, who, in shaping all of humanity, is our true "proprietor", thus we cannot destroy our own lives, "For men being all the Workmanship of one Omnipotent, and infinitely wise Maker... they are his Property, whose Workmanship they are" (Locke §§6, p. 27). Locke goes on to build an argument about property being the reason we join governments—our desire to protect ourselves comes up against that same desire in others, and so in order to protect "life, liberty, and property", people leave the state of nature to form a society and then a government (Locke §89).²⁶ In starting with Genesis and framing the concept that serves as a catalyst for the social contract (private property) in an interpretation of Hebrew Bible, Locke underwrites social contract with Hebrew Bible.

Notably, contract (and certain understandings of covenant) does not attend to the important difference in authority and sovereignty, but a primary goal of the social contract is to articulate the legitimacy of the sovereign, whose authority the people agree to obey. Put differently, to resolve one of the problems of the state of nature—the undecidability of meaning and judgment—the social contract transfers the authority of resolution to the sovereign. It is implicitly a problem of contestation over interpretive and political authority, the fourth and fifth qualities of covenant. Covenant relies on the covenanters to contest meaning among themselves, and to negotiate what can be acknowledged as part of the covenant or not. When people create a social contract and they all explicitly agree to form a government to meet their needs rather than stay in the state of nature, they are forming a collective authority out of their individual authorities, manifest in the Hobbesian sovereign or the Lockean government. Even though the contract authorizes the sovereign/government, that social contract relies on alienation,²⁷ which significantly distances the people from their own authority by displacing it to the sovereign/government who assumes final interpretive and political authority. Their consent to be governed is, in fact, consent to obey. This is how command–obedience authority arises from social contract, despite social contract's goal of creating a society in which individuals' rights

are protected, and curtailment of their rights is by a social–political structure to which they have consented. On its face, the centrality of consent and individual rights creates a more equal regime, but the structure of command–obedience authority reinforces hierarchy and control.²⁸

Invoking obligation in covenant in Hebrew Bible gives one the claim to share authority with other participants in the covenant, but not to leave nor to change the terms of covenant. Obligation is the pathway to participation, but also the boundary of participation.

4. Covenant as a Model of Politics

Social contract relies on creative interpretations of Hebrew Bible, occluding a Jewish understanding of covenant and contributing to the abiding present absence of Jewish political thought in political theory and the “Western” canon. With covenant at the center, the kind of politics that emerges is distinct from that of social contract.

Covenant is not an all-encompassing, endlessly open conception of communal life. The covenant between the Israelites and God, and the covenant that features in Jewish theology and political thought, has boundaries (point three). Those boundaries may be permeable—for example, the repeated commandment to welcome the widow, orphan, and stranger and treat them as one does oneself (including Exodus 23:9, Leviticus 19:33, Deuteronomy 27:19, Jeremiah 7:6)—but there are conditions of varying strictness for joining the covenant and taking on its obligations. Yet, the treatment of those who are not part of the covenant is one reason for its abiding relevance for contemporary life. If a person is not subject to the same covenantal obligations, it is not a statement of valuation or hierarchy. And, though a person outside the covenant is not subject to the same obligations, a covenanted person still has obligations to someone outside the covenant (Novak 1993; Levy 1993; Hollander and Kaminsky 2009). It can be an understanding of difference that puts no valuation or normativity on who is obligated and who is not. It persists inside the covenant as well; one is only born into one of the priestly groups (*kohanim*, priests, and *levi'im*, Levites). There are multiple possible readings of this, but one is that even in ancient rituals, these groups relied on the rest of the people to provide the materials for ritual as the people relied on them to perform the sacred rites. The *kohanim* and *levi'im* are obligated to certain ritual responsibilities, but it does not inherently create a hierarchy.²⁹

Being in relationship to the covenant relies on the (perhaps) tacit agreement of the people that its obligations and responsibilities have relevance to their daily lives, and its parameters condition their actions. Sometimes obligations require actions against intuition. Sometimes the commitment to community is more important than what an individual may want. Under covenant, each person has a responsibility to each other more than each individual has a ‘right’ to act the way they want. Covenant is sustained in relationship, which is why interpretations rely on mutual acknowledgment. And it is self-reinforcing because mutual acknowledgment sustains relationships to each other and the community, to the text, and to the covenant.

Covenant follows a different path to political authority. As such, contestation over political authority follows from the first four qualities of covenant. In both the Abrahamic and Sinaitic covenants, God and the Israelites³⁰ make promises to each other, and in so doing, forge a community bound by those commitments. Even though the people have each made promises to God, how to follow through on those promises, as well as their promises to each other, are less clear in the texts. After Moses dies at the end of the Book of Deuteronomy, no one has the same access to God and can directly ask for interpretation, so it is up to the people to try and understand it themselves.³¹ No person or dynasty (when there is a monarchy) has singular interpretive authority, and most notably, there is a tradition that goes back to Abraham of challenging God’s own decisions. Typically, kingship and monarchy are read as the imposition of direct, hierarchical order. The biblical example, beginning with the request for a king, invites circulation of authority between the elders, the people, Samuel the prophet-judge, and God, which only continues into the circulation of authority between king, prophet, God, and the people.

Relationships of contestation over interpretation lend themselves to relationships of contestation over political authority. If authority connoted not command and obedience but destabilized this entire hierarchy because the source of authority kept changing, the responsibility of interpretation, rule, and leadership would circulate and be shared among the many. If disagreement was not a symptom of weak polities but rather robust ones, ones that can weather vehement disagreement without rupturing, we might also create more space for participation and contribution.

5. Conclusions: Liberalism and Jewish Political Thought

With this conflation of covenant and contract, social contract theories borrowed the religious authority of the “source text” while transforming it for their theoretical projects. As I have tried to show, it is not merely the promise fulfillment that separates covenant and contract. There are significant qualities of each relationship that lead to divergent practices of authority (the third-fifth qualities). There has been important and productive work in Jewish political thought that both distinguishes and conflates the two concepts. Why does it matter that covenant became contract? When we look to the quotations and the allusions to the Hebrew Bible that show up in the work of social contract theorists, we can misattribute the source of social contract theory. It is not simply or merely Hebrew Bible, but how we read it, and how a chosen hermeneutic can shape concepts.

Covenant is a reorientation from social contract theory and its liberal progeny in another manner. The separation of public and private and the division of realms (i.e., the social, the political, the religious), are not part of the covenantal framework of the Hebrew Bible.³² Key concepts of social contract theory—individualism, toleration, property—rely on a separation and distinction of spheres, such as public and private or religion and politics. Take toleration, which functions in liberalism when certain features of identity, like religion, are separated out from the public sphere and kept in the private. When citizens interact only as citizens, toleration is possible. And, when citizens are only perceived as citizens by the state, each person in their capacity as citizen can claim and act on their rights. By contrast, covenant prioritizes responsibility, not rights, obligation, not obedience, plurality, not toleration.³³

The plurality inherent in covenant makes it near impossible to claim any one conceptualization of a Jewish term is *the* one. With the obligation to “do and understand” the covenant falls to every person, to do and understand in their way. Each interpretation rests on some validity, even if it is not the widely accepted interpretation or way.³⁴ Foundational contributions to contemporary scholarship in Jewish political thought have taken a divergent position on contract and covenant. Daniel J. Elazar and David Novak are two such theorists, who both take up Hebrew Bible as a source for political thinking in the contemporary, as well as the crucial project of making salient Jewish political thought for a wider political theory audience (Novak 2005; Elazar 1991, 2000; Walzer 2012). The nature of their projects necessitates a different theoretical outcome than the kind of Jewish covenantal politics that I have laid out.

Elazar writes that biblical Israel was “theocratic, federalist, and republican” (Elazar 2017, p. 354) showing that, in fact, the social contract model that undergirds liberal democratic thought is, in fact, derived from the Hebrew Bible. Novak theorizes a “Jewish social contract” that would facilitate Jews’ ability to live according to their tradition and be full and equal citizens in a secular government. Both take the concept of covenant in its Jewish contexts seriously and do not simply or merely transform it into social contract, as Elazar and Novak seem to want to retain something distinctly Jewish about the relationships of covenant. They do, however, also seem to claim the covenant/social contract heritage as a Jewish contribution to political thought, while also using it as a basis, in Novak’s case, for a kind of Jewish equality. In trying to make sense of the world as it is, Elazar and Novak each in their own way remain within a Christian political paradigm, even when steeped in Jewish texts and tradition. Elazar retells the covenantal story from Hebrew Bible, opening up covenant to interpretation as a kind of social contract. The

rapprochement between covenant and contract permits Jewish tradition to lay claim to a key term in political thought—contract—as derived from Jewish sacred texts. Subsequently, it familiarizes and legitimizes Jewish tradition for the secular world as well as the “Western” canon, ostensibly opening up a space for Jews and Jewish thought to engage political theoretical discourse as a contributor. Given the present absence of Jews and Jewish thought in the canon, such a project makes an important attempt to end a kind of intellectual wandering.

This is further exemplified in *The Jewish Social Contract*, in which Novak insightfully distinguishes covenant from social contract, while effectively putting Jewish tradition, modern political thought, and contemporary questions in liberal democracies in dialogue with each other. Novak also argues that Jews, to maintain their covenant, should enter into a social contract with the society and polity around them so they can contribute and participate like any other liberal subject, “The Jewish social contract is the means by which a Jew can live actively and honestly—as a Jew—engage the democratic society in which he or she lives” (Novak 2005, p. 21). By contrast, I argue covenant was ‘mistranslated’ into social contract because the authority structure unique to Jewish covenant was either overlooked, unappreciated, or transformed into the command–obedience model.

As much as social contract seems to be the condition of forming the most free and equal democracy, its foundations are a deeply hierarchal, unitary conception of authority. Covenantal authority has always been in between the lines of the biblical sources of social contract theory. By recovering a Jewish conception of covenant in which authority circulates, that thrives on plurality, and is constitutively dissenting without rupture, I argue against the covenant–social contract continuity and instead claim space for Jewish political thought without the legitimization of being “familiar” to political thought by being couched in one of its most-used and most-theorized concepts—social contract. Destabilizing concepts familiar to political theory by turning to overlooked sources and traditions at the margins of the “Western” canon is, itself, an analogical practice of covenantal authority.

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Notes

- ¹ Not only in its historical emergence or in its founding ideas, but also in the Protestant foundations of its core ideas was liberalism a religiously informed project. On the relationship between separation and secularism in the period in which it emerged, “The pursuit of toleration was primarily nurtured by deeply felt religious convictions, not by their absence; and it emerged to a very great extent out of the Erastian effort to unify church and state, not out of the desire to keep them separate” (Nelson 2010, p. 4).
- ² I use “Hebrew Bible” to refer specifically to the Jewish collection and organization of Torah, Prophets, and Writings, and to obviate the frame of supersession that is in play with “Old Testament” and “New Testament”.
- ³ That early modern political theorists were not only looking to Hebrew Bible, but were in fact “discovering” that Hebrew language texts transformed political thought from that era is argued effectively in *The Hebrew Republic* (Nelson 2010).
- ⁴ The very fact of categorization defies the *halachic* (Jewish legal) framework that is introduced in the Hebrew Bible. The modern separation of the public and private (and religious and political) does not fit the way *halacha* (Jewish law) is technically all religious law, but it includes all the categories listed above, and more.
- ⁵ By “present absence”, I refer to an assemblage of Jewish experiences that includes: the systematic marginalization, villanization, exclusion, and persecution of Jews around the world and specifically in the “West”, while many Jews also produced theological, philosophical, scientific, and other works that contribute to the “Western” canon; Hebrew Bible cited across works in the canon; and yet, Jewish thought is similarly marginal while being difficult to completely write off.
- ⁶ There is certainly an argument to be made that the Hebrew Bible that some of these theorists were reading was not a “Jewish text” in that it was in Christian context, translation, and theology. I largely agree, and choose to read the theorists as working from Jewish texts to critically engage the politics that are not usually attributed to Hebrew Bible/Old Testament.

- 7 Elazar highlights synonyms for covenant, but I choose to focus on this one word because it is the most commonly used and for clarity. (Elazar, *Covenant and Polity in Biblical Israel*, p. 23).
- 8 There are even more uses of *b'rit*, such as to indicate to agreements across communities, such as with Abraham and Avimelech.
- 9 See Jastrow, first entry for **ברית**.
- 10 The verses referenced, with the key verb bolded:
 “I will establish My covenant between Me and you, and I will make you exceedingly numerous”. (Genesis 7:2)
 וְאֶתְנַתְּ בְרִיתִי בֵּינִי וּבֵינֶךָ וְאַרְבָּה אֹתְךָ בְּמָאד מְאֹד:
 “I will maintain My covenant between Me and you, and your offspring to come, as an everlasting covenant throughout the ages, to be God to you and to your offspring to come”. (7:7)
 וְהִקְמַתִּי אֶת־בְּרִיתִי בֵּינִי וּבֵינֶךָ וּבֵין וְרֵעֶךָ אֶתְרִידָה לְדֹרֹתֶם לְבְרִית עוֹלָם לֵהָיוֹת לְךָ לְאֱלֹהִים וּלְנֹרְעָה אֶתְרִידָה:
 “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”. (7:10)
 זֹאת בְּרִיתִי אֲשֶׁר תַּשְׁמְרוּ בֵּינִי וּבֵינֵיכֶם וּבֵין וְרֵעֶךָ אֶתְרִידָה הַמּוֹל לְכֶם כָּל־זָכָר:
 “But My covenant I will maintain with Isaac, whom Sarah shall bear to you at this season next year”. (17:21)
 אֶת־בְּרִיתִי אֶקְיָם אֶת־יִצְחָק אֲשֶׁר תֵּלֵד לְךָ שָׂרָה לַמּוֹעֵד הַזֶּה בְּשָׁנָה הָאַתְּבֵרַת:
 “Abraham took sheep and oxen and gave them to Abimelech, and the two of them made a pact”. (Genesis 21:27)
 וַיִּקַּח אַבְרָהָם צֹאן וּבָקָר וַיִּתֵּן לְאַבְיִמֶלֶךְ וַיַּכְרֹתוּ שְׁנֵיהֶם בְּרִית:
- 11 Sh’mot Rabba 28:6: “Another explanation: ‘And God said all of these things, saying’ Rabbi Yitzchak said, What the prophets were to prophesy in the future in each generation, they received from Mount Sinai. As Moshe said to Israel (Deuteronomy 29:14), ‘But with those here with us standing today and with those not here with us today’. It does not say [at the end of the verse], ‘with us standing today’, but rather, ‘with us today’; these are the souls that will be created in the future, who do not have substance, about whom “standing” is not mentioned. For even though they did not exist at that time, each one received that which was his” (emphasis original, cited from Sefaria.org, Sefaria Community Translation).
- 12 Such as when the Ten Commandments are read (Exodus 20:1–14). Later, Moses reminds the Israelites of the Ten Commandments (Deuteronomy 5:19–28).
- 13 There are also people who live among the covenanted, and for whom there are specific laws—notably to treat such people the same as the other covenanted people (Exodus 20:10, Exodus 22:20, Leviticus 23:22, Deuteronomy 16:14). For more on openings and closures in politics, see (Keenan 2003).
- 14 Because they are afraid of God’s might (Exodus 20).
- 15 The peoples’ consent is somewhat fraught in the rabbinic literature: one midrash recounts that God held the mountain over the Israelites’ head to force them to consent; another explains how God offered the covenant to every other people, but it was only Israel who agreed; other commentators draw attention to the fact that God’s display of grandeur manipulated the people into consenting.
- 16 One such example is as follows: in the Babylonian Talmud in Shabbat 21a, there is a discussion about the appropriate wicks and oils to use to light candles on Shabbat and Hanukkah. This develops into a long discussion into Shabbat 21b through Shabbat 23a about how to light for Hanukkah, what to do if the light goes out, when one ought to light for Hanukkah, the key commandments of Hanukkah, the debate between the schools of Hillel and Shammai over the ordering of the lights (does one add a light each night, or remove one?), where to place the lights, what the lighting is meant to commemorate, and more.
- 17 Examples include Abraham arguing with God over the fate of Sodom and Gomorra (Genesis 18), Moses refusing to lead the Israelites out of Egypt (Exodus 4), the daughters of Tzelofhad requesting a change in the law (Numbers 27).
- 18 There are certainly episodes in the Hebrew Bible that exemplify how disobedience can also be returned with punishment (ex. Exodus 32 or Numbers 16).
- 19 Circulating authority in covenantal relationships is akin to the account Jill Frank gives of circulating authority as “authority-with-freedom” in Plato’s *Republic* (Frank 2014, p. 335). Frank argues that authority-with-freedom “recognizes the need to avow responsibility and accountability, sometimes to refuse it, and to resist, when necessary, even the authority we desire” (335). I draw on the relationship between the text as authoritative and the disposition of the reader that Frank describes in how Plato stages the dialogues (345).
- 20 Notably, in the *Second Treatise*, John Locke offers revolution as the way out of tyranny—the ultimate disavowal of consent (§§211, p. 222).
- 21 And there are many; Spinoza is especially interested in the repetition of covenant as a narrative of succeeding covenants (*Theological-Political Treatise*, pp. 214–16).
- 22 I have checked Hobbes’s English citations of Hebrew Bible, and they most closely, if not identically, match the King James Version (see Hobbes’s own citations on p. 325). Hobbes also makes mention of “the English Translation made in the beginning of the Reign of King James” and “the vulgar Latine” or the Vulgate. Using these two translations, I tracked the key occurrences of *b'rit* in Hebrew (Genesis and Exodus) against the same verses in the KJV and the Vulgate. While the KJV keeps the same word, “covenant”, the Vulgate moves between “foedus” and “pactum”.

- 23 For another perspective on Hobbes, specifically how Hobbes's engagement with religion in *Leviathan* illuminates his own positions on religion and, specifically, Christianity, see (Chen 2006; Collins 2007; Stauffer 2010; Tuck 1992).
- 24 For example, political parties heavily overlapped with religious affiliation. And Hobbes was concerned about how the decentralized interpretation of biblical texts helped create the uncertainty and unrest that categorized the chaos of the war and its aftermath (*Behemoth*, Hobbes 1990 [1668]). On Hobbes's use of representation to engage debates about authority and sovereignty: Garsten (2010).
- 25 He humorously writes, "I remember not this in my bible" of Filmer's interpretation (§55 of the *First Treatise*).
- 26 *Ibid.*, §89. Locke subtly picks up on a component of the Abrahamic and Sinaitic covenants—God's promise to give the Israelites land—by having the operative reason people leave the state of nature the protection of their property. While land and property are distinct concepts in contemporary political thought, it is not clear that they are in the mind of the ancient Israelite. A place for further research on the role of property and land in biblical covenant and its impact on social contract theory.
- 27 Evident in Hobbes, Spinoza, Locke, and Rousseau (*The Social Contract*).
- 28 Interpreting the features of contract from the social contract theorists themselves: aligned with Hobbes's definition of covenant, there are elements that are unfulfilled initially, but continued consent is predicated on the fulfilment of the founding promises; these covenants are earthly, that is, only among people; one joins the social contract by giving their consent, whether implicit or explicit; disagreement may be permitted but disobedience is criminalized or it becomes revolution and cause for a new government; authority is located in the sovereign by the contract made by the people; relatedly, the attenuated authority of the people via the sovereign imbricates them in the laws, such that they are meant to obey laws that they themselves created (because they consent to the contract that makes such a government possible); sovereignty is unitary.
- 29 This is, if you interpret distinct sets of responsibilities as merely that, different sets of responsibilities, rather than difference always indicating valuation.
- 30 Throughout, I will use "Israelites" to refer to the group of people also called "b'nai Israel" (children of Israel) in the Hebrew Bible, who are today called Jews. As they were not called Jews then, it helps draw a chronological and textual distinction.
- 31 For example, *Pirke d'Rabbi Eliezer* 38:17 describes how Joshua used the breastplate of the high priest (*urim v'tummim*) to discover which of the men betrayed the covenant by withholding booty from battle (Joshua 7). The prophets also had a connection to God.
- 32 On how secularism did not come about as a project of separating church and state, see Nelson, *The Hebrew Republic*. As much as separation can lead to problems (such as for religious minorities, whose beliefs and needs can never be truly private in a political context in which only they need accommodations), the lack of such separation can also create inequalities and opportunities for abuse. Spinoza is attuned to this and discusses it at length in the *Theological Political Treatise* in Chapter 18: Some principles are inferred from the Hebrew state and its history (pp. 208–29, especially p. 229).
- 33 By invoking plurality, I mean to circumvent both pluralism and toleration not only for their familiarity to the discourse around liberalism, but also to describe a kind of relationship to difference that is not captured by either term. It intersects with and then diverges from Charles Taylor's notion of "qualitative contrast" (see a description of and account by Tuck 1994, pp. 160–62). Plurality does not extend the moment of final ordering, but rather accepts, even assumes, that such a final ordering may not be possible. As I describe below, disagreement over interpretation in covenant is delimited by the need for another covenanter to be able to acknowledge such an interpretation that they disagree with (or are unfamiliar with) as potentially correct, or holding some truth. Where 'tolerance' implies a tacit recognition of difference while, as Wendy Brown describes, masks "a buried order of politics" of "identity production and identity management" (Brown 2008, p. 14), and pluralism seeks to make space for difference within the extant system of rights, plurality attempts to hold together difference without hierarchy and to have the terms of the debate be in interpretation and not extension, retraction, or expression of certain rights as a citizen.
- 34 One concrete example is keeping kosher. Some people may not eat certain fruits or vegetables (i.e., raspberries or broccoli) because of a concern over small bugs and critters, since *halacha* instructs against eating bugs and most insects. Others follow the interpretation that if the bugs cannot be seen or do not appear after thorough cleaning, then the fruits or vegetables are fine to eat. Both are keeping kosher, but they may have different views on what is 'fit' to eat.

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