RHETORIC OF MODERN JEWISH ETHICS

by

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Abstract

Jewish ethicists face a twofold task of persuading audiences that (a) their proposal for an issue of social concern and justice is the right and good thing to do, and (b) their proposal fits within the Judaic tradition writ large. Whereas most scholarship in the field focuses on how Jewish ethicists argue by dividing arguments into halakhic formalist, covenantalist and narrativist categories, these efforts fail both to reflect the diverse ways ethicists actually argue and to explain why they argue in these ways. My project proposes a new methodology to understand how and why Jewish ethicists argue as they do on issues of justice and concern.

My project combines philosophical theology and discourse analysis. The first examines an ethicist’s notion of covenant (*brit*) in light of theories found in the Jewish textual tradition. Clarifying an ethicist’s notion of covenant uncovers that person’s assumptions about the scope and binding nature of elements in the Judaic tradition, and that person’s conception of an audience’s responsibilities to the normative argument s/he articulates. Certain themes come to the fore for each ethicist that, when mapped, reveal striking relationships between an ethicist’s notion of covenant and anticipated ethical rhetoric. These maps begin to show why certain ethicists argue as they do.

Discourse analysis then identifies the interrelationships between the speaker, the spoken and the audience – as they are actually articulated in Jewish ethicists’ practical arguments. These relationships form the *how* of Jewish ethical arguments insofar as they reflect an author’s rhetorical choices. My project applies discourse analysis to the rhetoric of a sample of living
Jewish ethicists (J. David Bleich, Elliot Dorff, Eugene Borowitz) who speak out on issues of social concern and justice. As will be seen, a rich and complex relationship exists between an ethicist’s theory of covenant and his subsequent moral rhetoric.

This twofold methodology enables the student of Jewish ethics to understand how and why seemingly disparate styles of normative speech are nonetheless participating in a common endeavor and discourse. And it supports the theologically-based rhetoric of religious ethical discourse in shaping justice in multi-cultural societies.
Acknowledgments

A dissertation germinates for quite a while in the nebulous state of “an idea” before it becomes concrete in “an outline.” Gestating in outline form, it mutates from one paradigm to another by reorganizing its twisting building blocks until a coherent, cogent and hopefully viable structure takes shape. Then, with an influx of research and substantial effort, the idea becomes ink and byte. Arguments get fleshed out, details filled in, and the idea begins to kick itself alive. It builds itself in fits and spats. It takes months and years to nourish an idea to a stage when it is ready to stand on its own. And it takes a village to help the author birth it. It is to all of these – and more – to whom I am indebted for their generous and ongoing support, commiseration and wisdom.

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Chapter 1: Pleasant Words

Adonai God took the man and placed him in the garden to work it and guard it.\(^1\)

1. Introduction

This project deals with the rhetoric of modern Jewish ethical discourse. It examines how and why modern Jewish ethicists use certain forms of persuasive speech to convince their audiences that their conclusions meet the needs of the day and are true to the tradition.\(^2\) Its focus on ethics instead of, say, law or liturgy, facilitates analysis of how norms in modern Jewry are communally and discursively established. To do this, the project develops a methodology for appreciating the complex ways modern Jewish ethicists argue. This methodology, at once practical and theoretical, combines discourse analysis and theology to see both how and why ethicists argue as they do. Even as this project clarifies Jewish ethical discourse, it also contributes to our understanding of how religious ethics function in contemporary multi-cultural societies.\(^3\)

The problem of rhetoric is not a new one. Recourse to persuasion has ancient roots in the Judaic textual tradition. Indeed, the textual tradition portrays God as the first rhetorician. As noted above in the second chapter of Genesis, God takes Adam and places him in the Garden of Eden. This raises considerable theological consternation for early sages and rabbis who hold that

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\(^1\) Genesis 2:15. All translations are mine unless otherwise noted.
\(^2\) Hence the composite title, “modern” and “Jewish.”
\(^3\) This project thus has practical import insofar as multi-cultural societies continuously struggle with balancing the needs, rights and privileges of minority populations.
God has no physical body with which to pick up and place anyone or anything. To assuage this concern, as early as the second century, this verse came to portray God speaking to Adam, not literally picking him up.⁴ A ninth-century *midrash* – a rabbinitic homiletical exegesis – goes further, interpreting this verse as God persuading Adam to relocate to the Garden.⁵ But what kind of persuasion does God utter? Does God command, cry and plead, or deceive, or…?

According to the 11th Century biblical commentator R. Solomon b. Isaac (Rashi), God moves Adam through “pleasant words so as to persuade him to enter” the Garden.⁶ Rashi hereby emphasizes the difference between this speech-act and the one immediately following it in which God commands Adam.⁷ Pleasant words, it seems, is a form of persuasion that, like commands, can move audiences to relocate or, at least, do one’s bidding.⁸

If God takes recourse to both pleasant words and commands to elicit compliance, all the more so it would be reasonable to assume that humans do as well.⁹ The Jewish textual tradition spills a great deal of ink differentiating the halakhic (legal) from the agadic (non-legal or *midrashic*). While the former speaks in imperative terms, the latter does not. *Agadah* tends to

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⁴ *Targum Onkelos*’s Aramaic translation of Genesis 2:15 reads “And Adonai God spoke to Adam and caused him to dwell in the Garden of Eden…” Onkelos, who lived a generation after the destruction of the Second Temple, took pains to remove anthropomorphisms whenever they occurred even as he tried to provide a literal translation of the texts.

⁵ *Genesis Rabbah* 16.5. R. Judah and R. Nehemiah disagree about the verb to take (ג"ע) the former understands it as “to persuade,” whereas the former understands it as “caused.” See also *Genesis Rabbah* 15.4 for a similar disagreement between these sages. There, R. Nehemiah conceives a verb meaning to put or place (וטש) as meaning “to persuade” as well.

⁶ Rashi on Genesis 2:15. יָדַע - כְּשֹׁר בְּדַבַּרְיָם אֶזְרְא מִסְתַּלְמָה. Other translations of “pleasant” (ואם) can be “beautiful” or “handsome.” See Jastrow (1903): 865-866. See also Rashi on Exodus 14:6; Leviticus 8:2; Numbers 8:6, 11:16; Deuteronomy 1:15; ad. loc.

⁷ Genesis 2:16. On this command to primordial man and the development of the concept of what is now known as the Noahide laws, see BT *Sanhedrin* 56b; Tosefta *Avodah Zarah* 8.4. See also David Novak’s work on natural law (1992, 2000, 2005).

⁸ Moses Maimonides in the 12th Century argues that Adam had to have sufficient intellect to (a) comprehend God’s words, (b) distinguish truth from falsehood, and (c) understand the significance of the commands God utters. See his *The Guide of the Perplexed*, 1.2. See also Pines (1963):24-25. Compare with an Islamic understanding of the primordial man. The *Qu’ran*, in which sequence matters, states that God “gave Adam knowledge of the nature and reality of all things and every thing” (*Sura* 2:31), and later God speaks to Adam (*Sura* 2:33) and then explicitly commands Adam (*Sura* 2:37). For other commentary on Genesis 2:15 and rabbinitic difficulty with divine anthropomorphism, see R. Meir Leibush ben Yehiel Michel (Malbim)’s (1809-1879) *Commentary on the Torah* at Genesis 2:15; R. Yaakov Tzevi Mecklenburg’s (1785-1865) *Haketav Vehakabbalah Torah Commentary* on Genesis 2:15.

⁹ This “from major to minor” (כל בר מן) argument is commonplace in rabbinic legal and ethical literature.
speak more in tones of suggestion: it points to the preferred, not the required, prohibited or permitted. Though different in tone and function, both *halakhah* and *agadah* construct communal norms, the one through fiat, the other through illustration and the power of persuasion. *Agadah*’s “power to transform the lives of people rests on [its] ability to convince the listeners and the readers that this is indeed the just and fair way to behave, or that this is really the correct way to approach God. Hence, one of the most important characteristics of Jewish ethics from Talmudic times to the modern age is the emphasis on explanation and inducement, rather than the simple statement of the actions that should be performed.” This is not to say that every *agadah* is ethical instruction or that all ethics is merely *agadic*. Rather, this is to say that ethics, persuasion, and the construction of communal norms are intimately intertwined throughout the Judaic textual tradition’s history.

2. The Study of Jewish Ethical Rhetoric

Jewish ethical instruction pervades Jewish history. As the biblical prophets extolling prosocial behavior and the book of Proverbs attest, the idea and need to communicate ethical instruction has ancient roots. The sages and rabbis continued this genre in the Mishnah and Gemara, intertwining it amidst legal deliberations. But it was not until Saadia Gaon in the 10th Century that ethical instruction was separated from amidst narrative and law for special and

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10 The preferred is often identified with going beyond the letter, or line, of the law (כמשים מסורת דת), especially in medieval literature. In earlier texts, other rationales are brought to justify and explain why one option or action is better than another. See Crane (2005) for an analysis of some of these rationales.
11 See Aiken (1952) who also differentiates levels of normative – moral – discourse.
12 Dan (1986):5.
13 Many *agadot* explain gaps in biblical texts, articulate extra-biblical – perhaps even extra-Judaic – stories and mythology, offer philological explanations, and other such non-ethical instruction. See, for example, Borowitz (2006).
reasoned consideration. Even though ethics now became a subject of sacred literature worthy of its own treatises, it maintained commonalities with other Jewish genres. Like halakhah, midrash and Jewish philosophy, Jewish practical ethics countenanced disagreement and contradiction. The central rhetorical strategy in medieval ethics was to buttress positions with citations and interpretations of prior texts. As will be seen, this strategy of linking earlier sources to contemporary concerns remains prominent in modern Jewish ethics.

This ongoing and strong similarity between such genres, however, begs the critical question of whether and how Jewish ethics is a distinct genre in the Jewish textual tradition. An answer is best achieved by briefly examining various forms of normative Jewish literature, especially sermons and responsa. The stress on “normative” is critical insofar as the goal of ethical literature is to shape and coordinate behavior in its audience.

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15 See his Sefer Emanot v’Deot. His tenth chapter explores “ideal human conduct” beyond prayer hall and court room. He asserts that just as material objects are comprised of multiple elements, so too is human conduct a mixture of likes and dislikes. Thus, he says, it is unreasonable if not evil for humans to give themselves over to one or another behavior (like asceticism, drugs, sex, children, money, etc.). Balancing and blending likes and dislikes and impulses, achieved through the faculty of wisdom, brings harmony and approval in this world and the next. On the significance of this new genre, see Dan (1986):7ff. Newman (1998):186ff, however, sees pre-modern ethics differently. The “traditional religious framework” viewed the textual tradition as embodying, literally, God’s will. The task of the ethicist, then, was to gather sufficient skill and diligence to discover within that textual tradition what God wills for a seemingly novel issue. Ethical deliberation, according to Newman, was no different than legal or religious ones insofar as they all shared “the same corpus” and “the same methods.” Though elsewhere he cites Saadia’s division of rational commandments from other commandments (128-129), he elides Saadia’s insistence that the intellect and reason are necessary for discerning ethical insights. It seems that for Newman, the genesis of Jewish ethics as a distinct genre comes only after the Enlightenment and when Jews themselves emerged from such ghettoized – that is, purely religious – deliberation. A marker of this shift in thinking is found in the decreasing deference to the obligation to “be holy” in favor of the search to “be good.” See also Newman (2005):129ff.

16 This strategy is shared with midrash and sermons. See Dan (1986) and Saperstein (1989).

17 Two other forms of normative Jewish literature deserve brief mention. Liturgy is normative insofar as it establishes coordinated behavior, at least in the house of prayer. It structures how and why people should do or not do certain things as much as it instructs how and why one should think or feel on particular issues. Yet the production of liturgy, historically speaking, is much slower than other forms of Jewish normative literature; it sometimes takes generations before a liturgical text attains normative status in a community. A more serious critique of liturgy is that its arena of concern comprises relations between humanity and God, and not amongst and between humanity, which is the domain of ethics proper.

Another normative genre is policy, such as ones adopted by synagogues, community organizations, educational institutions, charities and the like. Unlike liturgy, policies pertain to social relations. On the other hand, policies and liturgy are limited in scope: they apply only to constituents (e.g., congregants, community or organizational members) or potential constituents of the enacting body; their traction beyond this membership is necessarily curtailed. In some circumstances, the adoption of a policy by certain institutions can inspire broader compliance to that policy because, in part, of the stature of that group. On the whole, organizational policies – even policies of Jewish organizations – are not always linked to the Judaic tradition. Indeed, policies are often articulations of what is politically feasible; obviously they are politically desirable since they have been
Sermons, like liturgy, have curtailed normative capacity. Analyzing three interacting elements of rhetoric (the speaker, the spoken and the audience; these are introduced below and explicated in Chapter Two) best reveals this. The authority of the sermonizer – a synagogue’s rabbi or a visiting one – extends only so far within the synagogue or community. Indeed, permission to speak in synagogues at all was, especially in 17th and 18th Century Poland, controlled by a community’s rabbinical court. Sermonizers often began with self-deprecatory remarks and acknowledgments of the permission granted them to speak. Just as license to speak did not rest on the individual, the sermon itself was not the creation of the speaker alone. He had to speak in languages (Hebrew, Aramaic and the vernacular) the audience would understand; he had to make his remarks in formats the audience could appreciate; and he had to convey his thoughts within a timely manner because the sermon was couched within a broader service. Constrained by language, interest and time, the sermonizer usually addressed a topic of historical import or a theme embedded within the Judaic ritual calendar. Either way, the normative capacity of such speeches was limited because of insufficient historical hindsight of contemporary events or because they were merely re-presenting prior ethical (“conventional

adopted. The feasible, however, is not necessarily consistent with the ethical. (For an illustration of a Jewish organization’s policy perhaps affecting the broader community, see the March 2007 decision of the Jewish Theological Seminary (JTS) to admit qualified gays and lesbians into its rabbinic and cantorial programs. http://www.jtsa.edu/about/communications/press/20062007/20070326.shtml (accessed March 27, 2007). This policy decision comes on the heels of the Conservative Movement’s Committee on Jewish Law and Standard’s adoption of two teshuvot on this issue, one prohibiting and one permitting this action. Chancellor Arnold Eisen recognized that this policy applied only to JTS and not to the totality of the membership of the Conservative Movement (http://www.jtsa.edu/cjls/eisenletter.shtml, accessed March 27, 2007). And yet it is Eisen’s hope to engage in conversation with those beyond JTS’s halls to convince them of the rightness and goodness of this policy decision. Inasmuch as JTS continues to be the Conservative Movement’s premier clergy school, there can be little doubt that its policy decision will have broad influence.)

Whereas this project examines normative ethical literature, this project itself is descriptive. See Frankena (1973) and Little and Twiss (1978).

19 See Saperstein (1989):47ff. 20 See Saperstein (1989):77. Emmanuel Levinas continues this tradition in his Talmudic studies. He invariably begins with humility, expressing the he cannot fully explicate the excerpt under study either because of time constraints or because of his limited expertise. As he says, “I always feel inferior to my text.” For example, see his “Damages Due to Fire” on BT Baba Kama 60a-b, in Levinas (1990a):181.

21 See Saperstein (1989):39ff, 51, 28ff. About the dangers of lengthy rabbinic sermonizing, see Devarim Rabbah 5.15 and Vayikra Rabbah 9.9. The use of the pronoun “he” is only to reflect the fact that throughout Jewish history, men were the predominant public speakers, especially in synagogues. Only in the last century with the rise of egalitarian forms of modern Jewry have women preachers become more prevalent.
topoi”) norms. In a significant way, the audience was the dominant factor in a sermon’s normative capacity. The audience was usually voluntary: it could ignore the sermonizer, talk over or interrupt him, or leave altogether. Engaging the audience, connecting with it and persuading it were crucial tasks if a sermon was to have normative, or lasting, power.

Though the sermon remains a popular genre in modern Jewry, its normative capacity suffers from its extra-halakhic status: it does not carry the bite of law. The turn to law as a normative genre is to be expected inasmuch as Judaism is traditionally understood as a religion of law. Legal texts abound in the textual tradition. While the Talmuds defy easy categorization, later texts like Maimonides’ Mishneh Torah and Joseph Karo’s Shulchan Aruch assume the form of law codes. These codes demarcate legal systems, providing procedures and rulings at least at the general level. Their capacity to provide governance on specific tough cases not hitherto addressed in the halakhah, however, was limited. Especially by the early-modern period, a more responsive kind of legal literature was needed to attend to pressing contemporary concerns.

To this end, an independent branch of legal writing emerged during the Geonic period (6th-11th Centuries) called responsa in which communities sent clusters of questions (סпромך) to heads of academies in Sura and Pumbedita in Babylon. Quasi-formal assemblies of scholars at the academies wrote responses (singular: responsum, plural: responsa) in Aramaic and sent them back to the inquiring communities. These rulings addressed such issues as civil, criminal, administrative and public law. With the demise of the Babylonian academies and the further diasporic spread of Jews, questions were sent instead to individual rabbis of varying yet

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23 At certain times the community was required to be in the synagogue, like at Shabbat HaGadol just before Passover. Though men were the typical audience in synagogues, women and children were required to attend at these times.
27 Schochetman in Hecht (1996):281. Since Emancipation, responsa addressing civil and criminal procedures dramatically reduced since the state and not the local Jewish community was responsible for them. Indeed, “no responsible halakhic rulings could possibly be made without clear recognition of this radically changed Jewish environment.” See Novak in Hecht (1996):380, 392, 394.
substantial repute in Ashkenaz Europe, Spain, the Maghreb (Northern Africa), and Palestine. The search for far-flung authority is significant to both author and community. From the latter’s perspective, the author is more a reputation than a person per se; from the author’s perspective, the community is similarly more fictional than real and he would probably never learn whether a community took up his ruling or not. This physical separation thus created an inescapable intellectual distance only words could bridge. The written response had to convince the distant audience with sufficiently sophisticated deliberation that the conclusion was understood to be both the right thing to do and binding. Rhetoric, not legal reasoning, became paramount for responsa. This is not to say that responsa authors were masters of persuasion at the expense of being masters of law. Rather, authors were narrators who arranged legal texts and shaped facts to suit their conclusions, and in the process they developed models of hermeneutics and legal reasoning for audiences to use in future cases. In order for responsa to exercise normative power, they must do so through their rhetoric designed for distant communities.

Nestled between the hortatory nature of sermons and the juridical nature of responsa is the complex terrain of Jewish ethics. Whereas sermons issue forth from the bima in synagogues to an immediate community and responsa from rabbis as if in a court to an imagined community, modern Jewish ethics emerge primarily from the academy to communities both real and

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28 It was not uncommon for community rabbis to send questions to reputable colleagues for counsel on vexing issues. In these cases, the responses were considered less governance than guidance. Still, the authors had to be careful about their reasoning and arguing so as to elicit agreement in their questioning colleague.

29 That is, a rabbi’s persona and way of living are all but irrelevant as normative forces in this situation.


31 See Washofsky (1994):408, and Benjamin Cardozo’s description of the need for persuasion in responsa, found at 379n64; Washofsky (2001):20. The author of a responsion (חנ') develops his ruling not “from premises to conclusion but from a stated end or purpose to the means by which that purpose might best be achieved” (Washofsky (1994):377). In this vein, see Aristotle’s definition of rhetoric below.

32 Bleich argues that in legal rulings, “style and readability must give way to accuracy and precision” (1977):xi. For him, reliance upon rhetoric renders a rule arbitrary and thus nonbinding (see xvi-xvii). Toulmin (1970):171, would consider this position a kind of isolationism that justifies itself by appeals to authority than to morality or reason.

imagined. This academic provenance reaches out to religious communities, inclusive of houses of prayer and rabbinic courts, and, depending on the issue and goal, to broader, if not political, communities. Jewish practical ethics thus speaks in complex tones, combining scholarly erudition, legal acuity and sermonic humanism, to reach its variegated audiences, elicit agreement and inspire coordinated behavior and policy. This rich rhetoric of modern Jewish ethics is the subject matter of this project.

This is not the first study of Jewish ethics and its rhetoric, nor will it likely be the last. Nevertheless, this project asks questions that have yet to receive sufficient attention. These questions, it must be acknowledged, have been asked before, but the combination and focus upon them here is new.

The leading scholar and interpreter of modern Jewish ethics is Louis Newman. Insisting his work is descriptive and not prescriptive, Newman understands his task’s goal is to examine and explain the diverse views in contemporary normative Jewish ethics. Without taking sides, his specific “goal is to ‘deconstruct’ the issues, investigate the presuppositions underlying each of the positions that traditional authorities adopted, and to uncover the common assumptions that made it possible for authorities with conflicting views to engage in a coherent

34 Locating modern Jewish ethical discourse’s origin in the academy reflects the fact that most of today’s most reputable ethicists have academic posts. Only a few are rabbis without academic affiliations. While this is true for normative ethics, I have yet to find any rabbis doing descriptive ethics in a substantive manner. See Chapter Two for practical, and Chapter Three for theological, theories buttressing this provenance of religious ethical arguments.

35 For this reason it is important to understand the nature of the audience a religious ethicist addresses. It is conceivable to identify at least three types of audiences, each deserving special rhetorical strategies. An elite audience of rabbinic-scholarly colleagues is probably best persuaded through sophisticated and detailed deliberation. A congregational audience is perhaps best persuaded through a tone more akin to preaching so as to maintain a sense of authority for the speaker. And persuading a larger, multi-cultural audience may require descriptive generalities that, for better or for worse, gloss over nuances and disagreements inherent in the Judaic textual tradition.

36 All three forms of speech (sermons, responsa and ethics) have normative goals: they seek immediate adjustment of audience behavior to cohere with the advocated action. Responsa and ethics share a further goal insofar as both strive to provide ongoing methodological governance and guidance for identifying, thinking through and responding to changing moral problems. Sermons and ethics share a further goal, too, insofar as they seek to convince audiences of the rightness of the desired action and the goodness of that action. See Little and Twiss (1978):114ff, who argue that if religious ethics is to persuade, it must include convincing reasons and motivational reasons.

37 For descriptive Jewish ethics, see Batnitzky (2001); Bloch (1984); Dan (1986); Dorff & Newman (1995); Gibbs (2000); Kellner (1978); Nelkin (2003); Newman (1998); Newman (2005). On the rhetoric of Jewish ethics, see, for example, Alder (1998a); Adler (1998b); Crane (2007); Goldberg (1982); Henkin (1985); Newman (2007).

38 The John M. and Elizabeth W. Musser Professor of Religious Studies and the Director of the Program in Judaic Studies at Carleton College, Northfield, Minnesota.
conversation.” He then sets out to delineate how and why modern Jewish ethicists argue their positions.

Newman first identifies four distinct modes of arguing Jewish ethics. The traditionalist model functions within the pre-modern worldview in which the task is to discover within the legal textual tradition God’s will vis-à-vis pressing moral issues. Since answers are already embedded in halakhah and the ethicist’s task is only to mine it to uncover those answers, then both the corpus and the task are ahistorical and unchanging. The legal model, by contrast, also considers halakhah as the primary source for ethical instruction but subjects it to historical critique. If law develops in response to changing circumstances, then it is reasonable for the ethicist to interpret precedents in novel ways. The covenantal model dialectically balances God-given powers with God-given limits. It construes the covenantal relationship between God and humankind as one that simultaneously empowers ethicists to discern ethical norms in the textual tradition and to create ethical norms, all within circumscribed bounds. The narrativist model abandons the deductive thinking prevalent among the other forms in favor of analogical and imaginative deliberation. As law is the wrong place altogether to find ethical instruction for novel circumstances, ethics are best found in the narrative stories read and enacted in the textual tradition and contemporary rituals.

If this is how modern Jewish ethicists argue, the next step is to understand why they argue in these ways. Newman reflects on his taxonomy and observes that all modes function with a few shared assumptions. They all presuppose that Jewish ethics, a distinct enterprise in its own right, “is inescapably religious in nature. That is, it presupposes that Jews, both individually and in community, stand in relationship to God and derive their moral orientation from that relationship. Thus, modern Jewish ethicists share a commitment to affirming a transcendent

40 See Newman (1998), Chapter 9. In Newman (2005), he collapses traditionalists and legalists into one category, more or less describing the former as purists and the latter as historicists (see chapter 6). More will be said about these categories in Chapter Five below.
source of morality, while at the same time accepting the legitimacy of some secular modes of thought.”

Where these modes of arguing differ is in how they read texts. Newman thus turns to the issue of hermeneutics and the functions texts have in each argumentative mode which he expresses in metaphoric terms. The legalist (and traditionalist) ethicist views the textual tradition as a blueprint – instructions given by the architect – to be read carefully and executed diligently. If a challenge like a moral conundrum arises, the ethicist consults the blueprint to discern how the architect would want the issue to be addressed. In the covenantal model, the textual tradition is viewed as a marriage contract (ketubah) that documents the existence of a relationship but not necessarily all the minutiae of everyday moral life. Because this relationship changes with the vicissitudes of history, the textual-tradition-as-ketubah serves more as a symbolic source of illustrative and not definitive ethical guidance. The narrative model views the textual tradition like art whose purpose is to stimulate new perceptions about the world and about human moral behavior within it. The textual tradition all but invites every Jew to contemplate its artistry and complete its narratives in contemporary circumstances.

These differences compel Newman to conclude that the ways ethicists “appeal to the authority of the text and, consequently, the way in which they read its words and apply them to their lives depend on the type of relationship they have to the text.”

These relationships reflect and reinforce distinctive theories about the Jewish tradition, theories that give both the variegated tradition a semblance of coherence and the modern ethicist’s efforts normative import. Legalists employ a formalist theory of coherence in which the most important thing about the tradition is law, and complying with precedents promises to extend the Jewish tradition into the future. Covenantalists understand the tradition as an existential commitment, an ongoing relationship between God and the Jewish people that requires their ceaseless exploration of the moral

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Newman hereby succeeds in his task in descriptive ethics insofar as he categorizes ethical arguments, identifies shared assumptions across the categories, and clarifies the categories’ different modes of operation. It is significant that he introduces this descriptive effort with a caveat. These categories, he admits, are not ones Jewish ethicists would use to describe themselves. Rather, these categories point “to a writer’s underlying orientation to Torah as a source of moral guidance, a philosophy (often implicit rather than explicit) about what aspect of Torah is timeless and how to construct an authentically Jewish ethic in our time.”\footnote{Newman (2005):138-9. See also 147. “Torah” in this sentence means the totality of the Judaic textual tradition, not just the Chumash, the Five Books of Moses.} The purpose of this taxonomy, it seems, is to dig out underlying orientations. Indeed, Newman would rather modern Jewish ethicists be explicit about their underlying orientations and the reasons why they choose certain and not other orientations. “In fact,” he surmises, “only when Jewish ethicists are explicit about the choices they have made, and also about the reasons for those choices and the implications of adopting the models they have, can there be properly speaking a ‘field’ of Jewish ethics at all.”\footnote{Newman (1998):202.}

Newman’s study of modern Jewish ethics moves from the practical to the theoretical. He queries whence the different forms of extant ethical argumentation to find shared and different theoretical foundations. Squaring his approach with his conjecture, however, is difficult. If Jewish ethics should begin with theory and move to praxis, why should the study of Jewish ethics move in the opposite direction? Why put the cart before the horse?\footnote{Newman cites Rosenzweig’s call in 1920 to examine Judaism from the outside in, moving from life unknowing of Law back to the Torah. Newman (1998):202ff.} On the other hand, precedence can be found in the Jewish textual tradition for Newman’s approach. The Talmud often queries b’mai kamifalgi (במאי קימיפלגי) to inquire what, if any, theoretical differences

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\item \footnote{Newman (2005):138-9. See also 147. “Torah” in this sentence means the totality of the Judaic textual tradition, not just the Chumash, the Five Books of Moses.}
\item \footnote{Newman (1998):202.}
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underlie proposed practical rulings. The ensuing Talmudic discussions attempt to identify what are these underlying theoretical differences.\textsuperscript{47} This is a kind of enquiry that offers a theory to rationally explicate observable facts. This is a time-honored and powerful methodology; indeed, much of modern scientific knowledge is produced in this fashion.\textsuperscript{48} If this project were to continue this methodology, the temptation would be to hone Newman’s categories so they better reflect what is observable in contemporary Jewish ethical discourse, and then to tweak the theories that explain how these categories function and why they exist at all.\textsuperscript{49} Certainly these efforts are valuable insofar as they help students of modern Jewish ethics identify more clearly the myriad ways and whys ethical discourse functions as it does. Yet this approach puts the scholar of Jewish ethics in the awkward position of projecting onto normative ethicists reasons why they assume certain and not other stances vis-à-vis the textual tradition. Even Newman acknowledges that normative ethicists would only rarely, if at all, describe themselves according to either his taxonomy or the theoretical foundations he proposes.

Newman is not alone in trying to theorize the field of Jewish ethics. Other scholars typically use one of two general methods. Both, unfortunately, suffer critical scholarly impairments. The first construes Jewish ethics as an undifferentiated whole. This approach portrays the Jewish textual tradition and its ethical instructions as uniform if not univocal. Depicting Jewish ethics in broad, sweeping terms, this approach glosses over competing principles, divergent argumentative modes, and practical dissent. While it portends to convey the totality of the Jewish ethical tradition, it actually provides a blurred fraction of it, a fraction

\textsuperscript{47} See, for example, BT \textit{Sanhedrin} 6a, where the sages disagree about how many judges are necessary to adjudicate a compromise between litigants. Some think two is sufficient, others one, and others three. The Talmud queries \textit{b’ha kamif’l’ gel} – about what principles do they disagree? The answers are presented using the notion \textit{savara} (原因之一), which means, reason or thought. That is, justifying the practical differences (the number of judges for a case of compromise) leads to elucidating underlying reasons – or theories – for those differences. See also BT \textit{Sanhedrin} 8b-9a.

\textsuperscript{48} See also the philosophical work of Karl Popper, especially his \textit{The Logic of Scientific Discovery}.

\textsuperscript{49} Ellenson (1995), for one, does just this.
that is more fiction than real.\textsuperscript{50} The other approach differentiates the field by means of theological and philosophical commitments. In this way it is possible to speak of ethics developed by “liberal” Jews in contradistinction to more “conservative” or “orthodox” ones.\textsuperscript{51}

And, at a meta-ethical level, it is possible to identify rationalist Jewish ethics in contradistinction to existentialist Jewish ethics.\textsuperscript{52} Yet this method unnecessarily severs Jewish ethics as a field, dividing it in ways that make it all but impossible to conceive its contributors participating collectively in a coherent, broader discussion. It also posits that the authors of Jewish ethics make their arguments almost passively insofar as they are born into membership in one or another stream of modern Jewry or are inexorably embedded in a particular philosophical milieu. Lest this project suffer similar setbacks of projecting, absolutizing or severing the field, a different methodology is needed to study the rhetoric of modern Jewish ethics.

And yet this project benefits greatly from Newman’s approach and builds on it in several ways. First, this project begins with Newman’s conclusion that Jewish ethicists function with a presupposition that God serves as an eternal source of Jewish ethical instruction. This project also understands theology to be an inescapable and critical element of Jewish ethical rhetoric. But its examination of theology emerges not only from hermeneutics – how ethicists read texts – but also from how ethicists think about God and the relationship between God and people. For indeed, how people think about God and God’s relationship to humankind often shapes how people read sacred texts; and conversely, how people read texts often shapes their notions of God and God’s relation to humankind. Thus this project understands theology to be a dialectical process of conceptual analysis and textual study. Second and related to the first, this project pursues Newman’s request that ethicists be explicit about why they choose what they do. This

\textsuperscript{50} See, for example, Sherwin (1991); Levy (2001); Roth (2007).
\textsuperscript{51} See, for example, Copulsky (2004); Henkin (1985).
\textsuperscript{52} Rationalists would include Moritz Lazarus and Hermann Cohen, among others. Existentialists include Franz Rosenzweig and Martin Buber and their students, as well as Emmanuel Levinas and other phenomenologists. See Gibbs (1993) and (2000) for analyses of these approaches to Jewish ethics.
project therefore takes seriously modern ethicists’ theological choices, as these choices have
critical influence on their normative speech. And third, this project emulates Newman’s concern
about the audience. His taxonomy of argumentation differentiates modes of logos, that is,
different ways of persuading audiences. This project also takes the audience as an essential
element to understand how and why Jewish ethicists argue as they do.

3. The Study of Religious Ethical Rhetoric

Another approach to this topic is both less Judaic-centered and more theoretical. It combines ancient and modern philosophical deliberation about rhetoric and religious ethics. Rhetoric has long intrigued scholars interested in the ways of persuasion. The ancient Greeks, for example, wrestled with the benefits and demerits of rhetoric. The Sophists parsed different elements of speech and aligned rhetoric within the realm of the virtues. According to Socrates in Plato’s *Gorgias*, rhetoric produces persuasion through flattery (like political speech) or through elucidation (like the speeches of scholars). In *Phaedrus*, Socrates derides the former as speech full of the probable and not the factual; for in flattery, truth is all but irrelevant. The latter form of rhetoric, by contrast, adjusts itself to meet the needs of those for whom it is intended, explaining reasons and truths that will connect with the audience.

Aristotle, also, addresses rhetoric in a treatise devoted to this topic. For him, rhetoric is an outgrowth of dialectic and the science of ethics. This is his definition of rhetoric: “in any given case, [rhetoric is] the faculty of observing the possible means of persuasion.” Insofar as observing or seeing is a necessary component of rhetoric, Aristotle suggests that a rhetorician

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53 *Rhētorikē (Ῥητορική)* is often translated as oratory. I prefer the term rhetoric for the simple reason that modern Jewish ethicists rarely disseminate their arguments orally, much less exclusively.


perceives different ways of communicating his or her point, and these ways appear to have varying degrees of persuasiveness.\footnote{57} Empowered with these options, a rhetorician chooses amongst them to best suit the context and issue at hand. In brief, rhetoric is the faculty of choosing certain ways of communicating content per context.

To demonstrate his definition, Aristotle shows that all forms of speech contain three elements: the speaker, the spoken and the audience.\footnote{58} A speaker’s moral character (\textit{ethos}), which can be conveyed through sophisticated speech, establishes credibility and authority and “constitutes the most effective means of proof.”\footnote{59} The spoken speech is the content articulated by a rhetorician, and its logic (\textit{logos}) proves or seems to prove a point. Through either inductive or deductive reasoning, a speech conveys content by linking premises to conclusions, a structure Aristotle calls enthymemes. Good enthymemes – refutative ones – are those that link facts to new conclusions, whereas those enthymemes that link facts to accepted conclusions – demonstrative ones – do not add to the audience’s knowledge and thus carry less persuasive punch. On the other hand, the best enthymemes have conclusions the audience can foresee not because they are superficial but because they are logical.\footnote{60} Reaching the audience – so critical for all forms of speech – requires not just reasonable logic but provocative emotion. By arousing audience emotion (\textit{pathos}), a rhetorician affects an audience’s ability to judge both the personage of the speaker and the content of the speech.\footnote{61} Hence rhetoric is the careful reading of an audience by a speaker who then chooses and shapes her argument of facts, emotions and novel conclusions so as to reach and perhaps persuade that audience.
Like his other works, Aristotle’s treatment of rhetoric influenced millennia of subsequent scholars, secular and religious alike, and even scholars of religious ethics. The challenge for modern scholars of religious ethical discourse is to extract utility from Aristotle’s theory of rhetoric without simultaneously becoming embroiled in his metaphysics. An example of this effort is put forward by the preeminent scholar of religious ethics, Jeffrey Stout. In his *Ethics After Babel*, Stout argues that no one should delude themselves by thinking that discourse is without tradition. Every conversation is, in essence, a continuation both of old language and themes and of prior modes of reasoning and communicating, that are brought forward and applied (perhaps in novel ways) to modern contexts. This being the case, Stout argues that even modern “secular” discourse, championed as it is in liberal polities, is tradition-bound. Because universal reason and “secular” discourse function like particular and religious discourses, it would be unreasonable to ask participants in public debate to abandon the latter kind of rhetoric in favor of the former. So Stout proposes a “modest pragmatism” that combines without embarrassment rational and religious modes of reasoning and arguing in the public arena.

This modest pragmatism honors diversity. It calls for acknowledging that the various forms of the human pursuit of truth – cognitive, practical and aesthetic – are “inseparably interrelated and not parcelled out as the special responsibilities of the scientist, the moralist, and the strong poet.” Insofar as each of these professionals contributes to culture, each should be afforded the right and responsibility to participate, as best one can, in the construction of communal norms. In light of Aristotle’s three elements, Stout might say that normative

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62 It is well known that Maimonides studied Aristotle’s philosophy, albeit in Arabic translation, and incorporated much of it in his own work. He also read Aristotle’s treatise *On Rhetoric* – see his *Guide of the Perplexed*, III:49. See, for example, the argument that it is fitting to link Aristotle’s work with Muslim and Catholic normative rhetoric – in Bucar (2006). See also MacIntyre (1984) for a thorough reworking of Aristotle’s virtue ethics.

63 Professor of Religion, Princeton University.

64 John Rawls (1999:149ff) acknowledges that religious sensibilities may be brought into public discourse as long as “in due course proper political reasons – and not reasons given solely by comprehensive doctrines [such as religions] – are presented that are sufficient to support whatever the comprehensive doctrines introduced are said to support” (152).

discourse – whether in a religious community or in a broader polity – is best achieved when speakers from a variety of vantage points articulate differently-reasoned arguments that are geared to the mixed multitude constituting the audience.

Stout further develops his theory of normative discourse in *Democracy and Tradition*. If the “democratic practice of giving and asking for ethical reasons…is where the life of democracy principally resides” – it is not necessary to abandon one’s religious sensibilities to participate in public debate.66 Indeed, insofar as it is unnecessary for participants in public discourse to speak from “a common justificatory basis of principles,” each may employ religious premises and, Stout encourages, a “mixed rhetorical strategy” of articulating one’s reasons for a public policy.67 Moreover, healthy and robust debate should probably include “fair-minded, nonmanipulative, sincere immanent criticism against one’s opponent’s reasons.”68

This recommendation focuses primarily on the spoken argument (its premises and strategies) and all but ignores the speaker and audience. But Stout does not abandon them altogether. For example, the permission for religiously-grounded and religiously-themed arguments in the construction of public policy is not without its dangers: it could fall on deaf ears. In his recapitulation of the presence of religious rhetoric in public policy debates in history, Stout shows that pre-modern societies worked with the assumption that the polity was of a single cloth – that all belonged to a particular religious community. During that time, arguments and claims from within that tradition proved persuasive. With the advent of modern liberal democracies, this assumption no longer carried. Shapers of public policy now had to assume that they did not share theological assumptions or conclusions with the broader polity, and, as a

68 Ibid. Parallels to Stout’s pragmatism can be found in Wolterstorff’s consocial discourse. See Audi & Wolterstorff (1997). A question arises in relation to religious ethical discourse geared for co-religionists: how much imminent criticism would be too much? When would such criticism push away potential audience agreement rather than secure it? However fair one’s critique of opponent’s arguments may be, this critique may produce unintended and deleterious *pathos* affects in the audience.
consequence, they jettisoned appeals to certain religious claims and tropes in their arguments.\textsuperscript{69} Thus Stout concludes that “ethical discourse in religiously plural modern democracies is secularized…only in the sense that it does not take for granted a set of agreed-upon assumptions about the nature and existence of God.”\textsuperscript{70} To keep speaker and audience within his theory, Stout stresses that a speaker is justified in holding a particular religious claim if one “is entitled to be committed to it, given [one’s] discursive context and cognitive conduct”, but this religious claim is justified in a discursive context only if “everyone in that context is justified in believing it.”\textsuperscript{71} If a speaker cannot take for granted that personally-held religious claims have no default authority in a particular discourse, so, too, the audience must assume that its religious claims are not universally held either. In order for normative discourse to be articulated and received in modern democracies, both speaker and audience must speak and hear from within a framework that presupposes theological diversity.

A framework that permits both diversity and disagreement is critical to Stout’s theory of religious ethical discourse in democratic societies.\textsuperscript{72} This framework presumes a plurality of speakers, divergent means of reasoning through and communicating arguments, and complex audiences. Yet this framework also presumes sufficient commonality among speakers and audiences insofar as they all acknowledge a particular issue to be problematic. For without agreeing that an issue is a problem in the first place, they cannot disagree about it or engage in

\textsuperscript{69} See Stout (2004):92ff. This argument seemingly ignores the historical reality that many, if not most or even all, pre-modern polities were religiously plural. Although pre-modern governments functioned with the assumption that their citizens were all of a single cloth, this assumption was more desire than fact. Minority religious populations existed in most every polity, despite or perhaps because of public policies. What changed with the modern period is not that citizenries became religiously diverse, but that policy-makers now acknowledged religious diversity in the first place. Changes in rhetorical strategies followed this cognitive acknowledgment rather than from supposed changes in religious affiliation of citizens.

\textsuperscript{70} Stout (2004):99.

\textsuperscript{71} Ibid.

\textsuperscript{72} Stout’s project, it could be said, is to assert that religious ethics, complete with its deliberation and disagreement, is a distinct and coherent field of discourse. He does not demand that religious ethical discourse pursue or reach agreement, much less consensus.
the process of persuading each other to attend to the issue differently.\textsuperscript{73} This framework is necessary to understand religious ethical discourse as a coherent field at all and one worthy of analysis.

Developing Aristotle’s theory of rhetoric and Stout’s theory of religious ethical discourse is tempting. It would require identifying, at least in theory, an overarching framework in which religious ethics operate and it would insist on paying special attention, at least in theory, to the speaker, argument and audience of religious ethical discourse. This theory would give due attention to such themes as authority, reason and autonomy – themes critical to understanding modern religious ethical discourse generally. As long as it remains only a theory, such a theory of religious ethical discourse could become yet another “discourse about discourse” and risk being redundant.\textsuperscript{74} Worse, it could suffer from being ignored by religious ethicists (and scholars of religious ethics) because it has no apparent practical application, or because, as it is in Stout’s work, it is applied to religious ethical discourse generally and not to any particular religious community.\textsuperscript{75} Indeed, one wonders if Stout’s meta-ethics sufficiently engages in the messy practicality of the everyday that his “modest pragmatism” suggests.

Notwithstanding, there is much in Aristotle’s and Stout’s theoretical approaches to ethics that helps explain how and why Jewish ethicists argue as they do, and this project builds on their approaches by applying them to actual religious ethical discourse. Such an application asks what, if any, concrete differences obtain when religious ethicists adopt one or another theoretical position within a theological framework.\textsuperscript{76} Moving from frame to concrete, from theory to

\textsuperscript{73} See Stout (1988), especially Chapter 2.
\textsuperscript{74} Ricouer (1995):305. See, however, Gibbs (2000):380, and Chapter Three below.
\textsuperscript{75} Stout does not dwell on the question of whether and how his theories about religious ethical discourse in modern liberal democracies apply to religious ethical discourses as they are actually developed and exercised within contemporary religious communities. He does not answer, for example, the question whether all the dynamics of public debate that he identifies with democracies obtain in religious communities as well. Perhaps actual norm construction in religious communities is less democratic than his theory can permit.
\textsuperscript{76} Stout (1988):169, hints at this in his discussion of James Gustafson’s theory of theological ethics as an ethics that is “a process of selective retrieval of tradition, recombination and reinterpretation of traditional elements, and innovation.” Stout calls such ethical deliberation “moral bricolage.”
practice, has roots in the Talmudic question *mai binayehu* (מא יבייחו) – namely, how does this theoretical difference entail an actual difference in practice? The methodology employed in this dissertation attempts to continue, and bring up to date, the dialectic between theory and practice one finds in the ethical discourse of the Talmud.

4. **A New Method of Analyzing Jewish Ethical Discourse**

A methodology that complements and builds upon the approaches championed by Newman and Stout may offer a more powerful tool to analyze Jewish ethical rhetoric. This new methodology pays close attention to the actual language of Jewish ethical discourse as much as it elaborates upon the common theological framework in which such conversation occurs. By taking both rhetoric and theology seriously, this methodology can explain both how and why Jewish ethicists argue as they do. Thus, analyzing both rhetoric and theology best shows how persuasion operates as a mode of Jewish ethical discourse.

For this methodology to work, a few preliminaries are necessary. First, a common theological framework needs to be identified. Second, a sample of Jewish ethicists needs development and justification. Third, a practical issue deliberated by the sample needs to be selected. Subsequent chapters detail and expand upon these steps.

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77 For example, Rami bar Chama and Rav Sheshet discuss the Mishnaic statement that judges who roll dice are *a priori* disqualified from adjudicating court cases (found at BT *Sanhedrin* 24b). They both agree with this principle but they disagree on how it plays out. Rami bar Chama considers the transfer of whatever is wagered in gambling to be non-binding (whereas it would be binding in legal transactions), thus gambling winners are to be considered thieves because they are taking unlawfully from losers; as such, they are ineligible to adjudicate. Rav Sheshet, however, disagrees that gamblers are disqualified because they are essentially thieves. Rather, gamblers are disqualified because they do not further the general welfare. The Talmud queries ויהי בלתי - what is the practical difference between these positions? The practical difference is if a gambler were employed in something that did further the general good and only gambled as a hobby, then he could serve as a judge. So even though the sages agree at the outset with the principle or theory that gamblers ought not adjudicate cases, they produce dramatically different practical possibilities. See another example of this move from theory to praxis at BT *Baba Metzia* 15b-16a.
4.1. A Theological Framework

In order for their disagreement on practical issues to have much meaning, identifying a common theological framework shared amongst contemporary Jewish ethicists is necessary. Scholars of Judaism of any period cannot but conclude that Jews do not ascribe to a uniform set of dogmas. On the other hand, scholars across the board continuously identify a particular notion in the Jewish tradition that apparently grounds a wide array of theological perspectives. This notion is the concept of covenant (ברית). Borrowing from Bernard Lonergan, covenant appears like a horizon that is simultaneously inescapable yet adjustable. The entirety of Jewish life is lived within the context of covenant. It embraces all Jews – including Jewish ethicists – though it does not confine them to one or another theological orientation or practical outcome.

A legitimate question is “why covenant?” Why not some other notion, such as monotheism or *halakhah*? However attractive and prevalent such notions may be in the Jewish textual tradition, they, too, are already embedded within the concept of covenant one sees at work in the ethical reasoning of Bleich, Dorff and Borowitz – the three Jewish thinkers examined in this dissertation. For those who might be termed “covenantal” Jewish thinkers, even monotheism as the assertion of one and only God itself presupposes that the person making such an assertion is a Jew already involved in a covenantal relationship with this one and only God. And since this God is not confined to the covenantal relationship with the Jewish people (as is this people itself), one can subsequently assert that this God is the God who created the entire

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78 See, for example, Borowitz (1990); Borowitz (1991); Borowitz (2000b); Breslauer (1989); Buber (1988b); Dorff (1988); Elazar (1977); Elazar (1980); Faur (1968); Greenberg (1986); Hartman (1997); Kogan (2008); Levenson (1983); Novak (2000); Novak (2005); Ochs (2000); Roth (2007); Wurzburger (2000).


80 Newman (2004):40; Newman (1998):3, *ad loc.* – says that the entirety of Jewish moral life is lived within the covenantal relationship. It would be stronger, and perhaps more accurate, to say that the entirety of Jewish life – inclusive of moral, religious, social, political, etc. aspects – is lived within the covenantal context.
universe. That is, the assertion of monotheism follows covenant.\textsuperscript{81} And halakhah, while unavoidable when thinking about Judaism, is but one component of the whole tradition, as was seen above in the discussion about normative genres. Whatever importance one gives to halakhah is already a reflection of a theory about the relationship between Israel, God and the terms of that relationship. All Jewish theology – indeed all Jewish life – is unavoidably deliberation of covenant.

This claim that all Jewish life and ethical discourse is essentially covenantal is more than a rhetorical option. Rather, it is a claim about ontology.\textsuperscript{82} This observation only strengthens our argument, for it distinguishes Jewish ethical discourse from other religious ethical discourses. For example, it might be that certain Christian religious ethical discourses operate within a horizon of grace, and Islamic religious ethical discourse within a horizon of submission. If these are inescapable contexts for religious ethical discourse, the question should be how covenant, grace and submission are understood and articulated respectively. Details of religious and moral life therefore derive from one’s understanding of covenant, grace and submission. The question of which horizon an ethicist operates in is a question of affiliation. The question of the dimensions of that horizon, however, is a matter of personal choice and theology.\textsuperscript{83}

If covenant is ineluctable at least for Jewish ethical discourse, what, then, is it? At its most bare, covenant is a relationship between God and Israel. Theories about this relationship discuss who is involved in it, what is obliged upon the parties thereto, where the terms of the relationship can be found (that is, texts) and even how those texts are to be viewed and when.

\textsuperscript{81} Contrast this covenantal approach with that of the medieval Jewish rationalists, especially Maimonides, for whom universal monotheism is inferred from universal human experience of the physical world (nature). Only subsequent to the assertion of this universal monotheism comes the assertion of the historical covenant between God and Israel. For this latter group of thinkers, the concept of covenant plays a relatively minor role in their theologies.

\textsuperscript{82} Thus this differs from Newman’s category of “covenantal ethics.” This category, as Newman explains it, is an issue of rhetorical choice. Ethicists who choose to argue along these lines do so by speaking in explicitly covenantal terms and they rarely grapple directly with traditional (legal) texts. This model of doing Jewish ethics is analyzed in Chapter Five below. The covenantal framework developed here, by contrast, is not a matter of choice: it is an ineluctable context in which all Jewish ethicists, regardless of their rhetorical decisions, exist and argue.

\textsuperscript{83} See, for example, this assertion by the Orthodox Jewish scholar Wurzburger (2000):9, 24, 25, 44, 45.
Overall, theories about the human-divine relationship articulate reasons why Jews (should) pay attention to the Judaic textual tradition at all, and how this attention is to be given. Theories about covenant, then, map the terrain in which Jews live and speak; they highlight and shadow certain aspects of the tradition, and they give initial direction of how to navigate difficulties. As will be seen in Chapter Three, diverging theories of covenant begin in the Torah and appear in nearly every historical layer of the Jewish textual tradition.

Identifying how modern Jewish ethicists understand covenant is the first step to understanding why these ethicists argue as they do.\textsuperscript{84} Their theories of covenant – drawing as they do from previous generations’ theories – frames, grounds and guides their subsequent language, especially their normative language.\textsuperscript{85} But Jewish ethical discourse is not just a deduction of norms from theology. As will be discussed in Chapters Four and Five below, an ethicist’s normative language also reinforces theology.

4.2. A Sample of Ethicists

However difficult defining the genre of modern Jewish ethics may be, selecting a reasonable sample of Jewish ethicists for this project is no less challenging. This is not to say the task is impossible. Noting where Jewish ethical arguments occur – in religious settings (e.g., synagogues, professional religious meetings and journals), in secular settings (e.g., academic conferences, scholarly journals, books), and in public settings (e.g., governmental institutions...

\textsuperscript{84} Throughout his classic work on Jewish ethics, Newman (1998) accepts that covenant grounds Jewish thinking about obligations. He even develops his own theory of covenant that he thinks would best facilitate normative deliberation in admittedly non-Orthodox Jewry (see pages 150ff). However commendable his effort to clarify covenant may be, it begs the question of why a theory of covenant that \textit{ab initio} excludes significant portions of modern Jewry ought to be taken up as the fundamental theological conceptualization for subsequent normative speech. Why not, as this project proposes, rely upon the covenantal theories modern liberal and orthodox Jewish ethicists do espouse?

\textsuperscript{85} Novak (1992):7, argues that the authentic Jewish social thinker must “minimally be a theologian who is at home in the classical sources of the normative Jewish tradition.” See also Newman (1998):150, 222.
and hearings, organizations, hospitals, newspapers) – indicates that authors of Jewish ethics in these arenas are Jewish men and women, ordained clergy and laypersons, variously educated and naïve in regard to the textual tradition, and speak to and from across the spectrum of modern Jewry. Despite this breadth, the field is not so large that it is impossible to locate contributors with sizeable oeuvres and who have reputations of being thoughtful ethicists. The challenge, then, is to select among these reputable Jewish ethicists and make clear the criteria used for their inclusion here.

The following people have been chosen not because they are the best Jewish ethicists – as if such could ever be identified – or that they speak the definitive word on any particular topic – as if one could ever be articulated in a Jewish milieu. Rather, their selection emerges from the following reasons. First, each has produced a vast body of work covering a wide range of issues facing contemporary Jewry. As will be seen, none pigeon-holes himself into one niche or another, focusing only on, say, bioethics at the expense of dealing with social issues. The totality of modern life as Jews is subject to their investigation and ethical concern. Second, each one’s work has been received both broadly and critically, in the community and academy alike. Each individual, despite or perhaps because of his academic perch and rabbinic ordination, is taken seriously within his own community of affiliation as well as in others. Moreover, they often refer to each other’s work to clarify their own positions. Third, each has developed a distinct style of argumentation. The differences between their styles of rhetoric are palpable and not insignificant. Fourth, despite their rhetorical differences, these ethicists share a common language: English. They speak to and from within North American Jewry. Narrowing this sample to modern Jewish ethicists arguing in English may seem an unnecessary curtailment of

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86 As rabbis and as scholars, each straddles community and academy. This comports with the earlier argument that Jewish ethical arguments emerge more from the academy than from other arenas of modern Jewish life. That these scholars are also rabbis suggests that Jews seeking to be taken seriously as Jewish ethicists may need to be ordained as well as have academic positions. The need for a religious ethicist to straddle inside and outside a community is explored further in Chapter Two below.
this project. This critique, however, is premature inasmuch as the majority of the world’s Jews live in English-speaking countries. The concerns of Anglophone Jews may in fact overlap with Jews in Israel and elsewhere; their arguments may be of utility to non-English speakers. This notwithstanding, Jews in the Diaspora struggle as minorities in multicultural societies in ways that Jews in Israel do not.\(^{87}\) This project follows Stout and Newman by exploring the dynamics of Jewish ethics in modern North America so as to better understand how Jews construct norms and how their normative deliberations fold into broader public discourse that is, itself, facilitated in English.

Hence, the following individuals comprising this sample are comparable as a coherent group of modern Jewish ethicists and, to boot, their differences make the group interesting. A brief biography of each is warranted.

1) Rabbi Eugene Borowitz. (1924-). After receiving his undergraduate education in his home state at the Ohio State University, Borowitz went immediately to Hebrew Union College in Cincinnati from which he was ordained as a Reform rabbi in 1948. He did all the work except a dissertation at the joint Ph.D. program in religion at Union-Columbia, and then switched to earn an Ed.D in Education from Columbia. He became a full-time faculty member at Hebrew Union College – Jewish Institute of Religion in New York in 1962 where he now serves as the Sigmund L. Falk Distinguished Professor of Education and Jewish Religious Thought. He has written many books and articles on modern Jewish theology, especially the intricacies of autonomy, authority and community in a North American Jewish milieu inclined more sociological than otherwise.\(^{88}\)

\(^{87}\) Obviously, this is not to claim that Israel is homogenous in any one way or another. Israel’s diversity has long been celebrated and studied. But it cannot be refuted that Jewish life in Israel is dramatically if not radically different from Jewish life and deliberation outside Israel.

\(^{88}\) See biography of Borowitz by Ellenson and Krafte-Jacobs 1993. The bibliography at the end of this project contains a partial listing of his works.
Known affectionately as the grandfather of modern Jewish ethics, Borowitz has been instrumental on spurring cross-denominational conversation on issues confronting modern Jewry. For example, as the founding editor of *Sh'ma: a journal of Jewish responsibility*, he has engaged with Jews of all stripes to consider seriously how the Judaic tradition figures into contemporary Jewish ethical life. In his more recent works, especially *Exploring Jewish Ethics: papers on covenant responsibility* (1990) and *Renewing the Covenant* (1991), Borowitz articulates a postmodern understanding of covenant that gives primacy to a kind of individual autonomy.  

2) Rabbi J. David Bleich. (1936-). A native of Pennsylvania, Bleich attended public elementary school before going to Torah VoDaath, where he received Orthodox rabbinical ordination, and Beth Medrash Elyon in Monsey, New York. He received his undergraduate education at Brooklyn College of the City University of New York, earned a Masters at Columbia University, and a Ph.D. at New York University. He currently serves as Rosh Yeshiva and professor of Talmud in the Herbert and Florence Tenzer Chair in Jewish Law and Ethics at the Rabbi Isaac Elchanan Theological Seminary at Yeshiva University in New York.  

In addition to his full-time faculty responsibilities, Bleich offers weekly Talmud classes at the Orthodox synagogue where he serves. He also contributes regularly to Orthodox journals as *Tradition* and the *Journal of Halachah and Contemporary Society*, offering surveys of Jewish law on “contemporary halakhic problems,” now compiled into a series of books under the same title. These pieces address a broad range of issues from bioethics to tuna, from using electricity on Shabbat to the criteria of death. Because of his scholarly mastery of the Jewish legal tradition and his general erudition, Bleich is considered by many in the Orthodox community to be a

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89 This is not to say that Borowitz’s autonomy absolutely and completely isolates the individual as the ultimate arbiter of the Jewish tradition; rather, he gives individual autonomy preference over communal and legal authority. See discussions in Chapter Three on covenant and autonomy generally, and Chapter Four for a detailed look at Borowitz’ theory of covenant.
posek (legal authority) on par with giants of previous generations, such as Rabbi Moshe Feinstein.

3) Rabbi Elliot N. Dorff. (1943-). Dorff attended the Jewish Theological Seminary in New York to receive rabbinical ordination in 1970, and earned a Ph.D. in philosophy from Columbia University in 1971. A prominent figure within the Conservative movement, Dorff has long served on the Rabbinical Assembly’s Committee on Law and Standards, for which he has written or co-authored numerous position papers. He worked on the Ethics Committee of Hillary Rodham Clinton’s Health Care Task Force in the 1990s. He has published broadly in journals and offered what might be considered a near-systemic approach to modern Jewish ethics in his three volume series: Matters of Life and Death: a Jewish approach to modern medical ethics (1998), To Do the Right and the Good: a Jewish approach to modern social ethics (2002), and To Love Your Neighbor and Yourself: a Jewish approach to modern personal ethics (2003). He currently teaches as the Rector and the Sol & Anne Dorff Distinguished Service Professor in Philosophy at American Jewish University in Los Angeles.

Inspired by Rosenzweig’s non-orthodox approach to theology, Dorff has written on many aspects of Jewish engagement with modernity, ranging from theology to practical bioethical concerns. He takes a historical approach to understanding the Jewish legal tradition inasmuch as rabbinic law has developed, evolved and changed through time and circumstance. In contrast to Bleich’s legal positivism and Borowitz’s autonomy, Dorff understands the community as the authority to wrestle with and perhaps adapt the Jewish textual tradition to meet contemporary concerns.

Several critiques may be leveled at this sample of modern Jewish ethicists. First and most obvious, these are all men. Unfortunately, few women have published widely in the field of modern Jewish ethics. There are, no doubt, some who have put forward powerful arguments on a variety of topics. For example, Rachel Adler offers an eloquent feminist critique of modern
Jewish theology and ritual. And Laurie Zoloth urges a feminist reevaluation of modern Jewish medical ethics. As important as these and other female contributions are to the general field of Jewish ethics, no Jewish woman has yet published on such a wide array of topics as have the men selected for this sample, nor has one achieved the referential status as these men. Until women’s voices are as prominent in this field as men’s, and even after that point, effort must be made to incorporate gender-sensitive critiques.

Another critique is that these scholars are still living. However macabre this observation may be, it nonetheless recognizes that these individuals have not completed their life’s work and are still contributing to the field of modern Jewish ethics. As such, each of theirs is a living body of work, literally and metaphorically speaking. So as to honor their living legacies, this project tries to trace the development of each scholar’s thought and rhetoric without jumping to premature conclusions or gross generalizations about their ultimate positions or commitments.

A third critique concerns the size of the sample relative those who contribute to modern Jewish ethics generally. Although the number of contributors is not legion, considering them all would be unwieldy for this (or any) project. Nonetheless, this critique is serious and to assuage concerns about the sample’s possible quantitative or statistical significance, other scholars’ works are incorporated wherever possible.

At the end of the day, the sample is at best illustrative rather than exhaustive of the field of modern Jewish ethics. Nevertheless, it demonstrates, albeit only partially, the breadth and depth of Jewish ethical discourse insofar as these three ethicists affiliate with three of the largest streams of modern American Jewish denominations. For this reason, the sample retains heuristic

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90 Adler 1998.
91 Zoloth 1999.
92 If a sociological anecdote may be of interest, only 13 of the 40 participants in recent Society of Jewish Ethics conferences were women.
93 As Sherwin notes (1990b):30, grasping this field requires narrowing the texts and authors one considers.
94 See the bibliography for a partial list of contemporary Jewish ethicists and their works.
value and the knowledge derived from its analysis will improve general understanding of how and why Jewish ethical arguments operate as they do.

4.3. An Issue to Consider

In addition to frame and sample, this methodology requires actual arguments put forward by Jewish ethicists. While Stout all but elides practical ethical arguments in his theoretical work, Newman wrestles them into his taxonomy. While each approach has its strengths, neither adequately attends to the diverse theological or argumentative nuances found in actual arguments. Appreciating the rich ways ethicists argue their points requires selecting pieces in their vast *oeuvres* that best demonstrate their styles and that facilitate analysis. The question then is which pieces.

Analyzing Jewish ethical discourse is probably best done by comparing arguments attending to the same or at least overlapping issues; it would be ideal to compare apples with apples. Even if such a small basket of overlapping issues could be found, they would need to be of a particular kind. For example, Jewish life distinguishes obligations of a ritual nature (מ𠆮ות בן אדם לוחמי) from those of a social nature (מ𠆮ות בן אדם למקומי). Ethical concerns about Shabbat observance, for instance, may have communal ramifications, but their focus is of a ritual sort, that is, they address obligations between humans and God. Analysis of such arguments, because it concerns primarily if not exclusively Jews, would all but excise the discussion of Jewish ethical discourse in the public arena. It would unnecessarily limit this project to analyzing Jewish ethical ritual rhetoric. On the other hand, perhaps an issue could be

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95 Another possible methodology is to imagine what a Jewish ethicist might say about an issue. This method puts the analyst in the awkward position of conjecturing another’s argument, an effort that probably would distort what an ethicist would actually say about a topic if given the chance.

96 A third category, though not yet well recognized in mainstream literature, includes obligations of an environmental sort (מ𠆮ות בן אדם להיוות).
found of a social nature, like freedom of speech. In this instance, however, questions arise regarding whether this is a distinctly Jewish issue, or why Jewish perspectives are relevant for public consumption.\footnote{Obviously Stout would want Jews to participate in such deliberations and employ distinctly Jewish arguments. Novak, too, endorses such efforts.}

A survey of the vast oeuvres of the scholars in this sample shows that they do address a few common issues. The themes on which all have written are issues of war and peace, and of women in Judaism. Neither theme, however, is suitable for this study. Though the former appears particularly urgent in today’s conflicted world, it is too broad as there is no consensus that religious sensibilities can and should be applied to militaries. This is especially complicated in Israel where the Israeli Defense Force is beholden not to \textit{halakhah} but to the mandates of the democratically-elected Israeli government. That said, it may be beneficial at some point to study these ethicists’ perspectives on the Jewish deployment of lethal force for national defense. And the latter topic is too narrow because it is predominantly focused on religious rites and rights, and their conclusions can easily be predicted by movement affiliation. A more neutral yet pragmatic issue about which conclusions are neither theoretical nor foregone is needed.

So why not have no central issue at all? Then, at least, analysis is possible at the theoretical level. This solution would narrow the discussion to the meta-ethical. It would most likely revolve around perennial issues, like the relationship between ethics and \textit{halakhah}, or the role of autonomy in a revelatory command system.\footnote{See, for example, Newman 1998:2ff.} However important these meta-ethical discussions might be, they would not further scholarship on the rhetoric of Jewish practical ethical arguments \textit{per se}. A real issue neither too narrow nor too abstract and common to each ethicist, is needed for this project.\footnote{Kimmel (1991):22, argues that the analysis of ethical rhetoric requires the factive not the fictive. See also Aiken (1952).}
For these reasons the following analysis examines the biomedical issue of euthanasia. Mortality is every human body’s end. How and when a body reaches its end is vulnerable to human manipulation. Justifying such intervention is rife with controversy. This is true across human civilizations and no less among Jews. For centuries, Jewish sages expressed angst about manipulating the dying process. Indeed, with medical and technical prowess growing at a frenetic pace, modern Jews increasingly wonder which, if any, methods of interference like euthanasia are justifiable, when and how. As will be seen, how a particular Jewish ethicist argues about euthanasia and what position he ultimately advocates are not predetermined by affiliation. Nor do all scholars attend to euthanasia directly. Borowitz, for example, avoids the term euthanasia and bioethics generally in favor of reflecting on the relation between prayer and healing. Even this attempt to compare apples cannot but accept diversity. Nevertheless, as will be shown in Chapter Four below, a fruitful comparison is possible with this issue.

5. Analyzing Pleasant Words

This two-fold methodology combines discourse analysis and theology to explain how Jewish ethical arguments function and why they are framed as such. Unlike other approaches to religious ethical discourse, this one gives due attention to the speaker, the spoken and the audience – as each is necessary to the construction of communal norms. Moreover, it attends to themes like authority, reason and autonomy, themes that are necessarily intertwined in all ethical deliberations. As it analyzes the continuously developing oeuvres of living Jewish ethicists, it

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100 Though this is distinct from the anguish of mourning a death, some sages intermingle dying with mourning. Joseph Karo, for example, SA Yoreh Deah 339.2, gives permission to mourn someone who is still experiencing death throes. See other sources at Bleich (1996):65. See comment by Dorff (1998):376n54.

101 There has been a burgeoning literature by Jews on biomedical issues in the past quarter century with euthanasia being a prominent theme. One need only look at online journal indexes to see this trend.

102 In personal communication with this author, Borowitz corroborated this assertion. His piece on the prayer for healing (analyzed below), however, relates directly and powerfully to these issues.

103 Business ethics is another viable neutral topic, but like euthanasia there is little direct overlap across the scholars. While Borowitz writes about business ethics abstractly in three pieces and Bleich has half a dozen or so pieces on specific economic and business practices, Dorff has only one on privacy and the internet.
sketches a kinematics of moral language that Stout encourages. And this schema builds on the grammar of Jewish ethics Newman introduces, a grammar necessary for the field’s coherence and intelligibility.

This project achieves this through the following steps. Chapter Two develops tools to analyze actual religious ethical arguments. These tools draw heavily from yet critique many scholars of argumentation. It begins with an examination of the role of the audience in ethical discourse, a role heretofore largely underappreciated in studies of religious ethics. It then turns to the nature of ethical speech and of ethicists in particular. The chapter centers on these elements in religious ethical discourse, and through them, develops a description of Jewish ethical discourse.

If Chapter Two discusses how Jewish ethical discourse operates, Chapter Three examines theological reasons why Jewish ethicists argue as they do. Taking the notion of covenant as “the original and natural language in which the tradition expressed and understood itself,” this chapter traces how covenant was conceived throughout Jewish history. It begins with biblical material and then moves to rabbinic conceptions of covenant, and then to medieval and early modern, and finally to modern theories of covenant. By paying close attention throughout this survey to the three elements of rhetoric (speaker, spoken and audience) and to the perennial themes of Jewish ethics (authority, reason and autonomy), this chapter demonstrates the rich complexity of how covenant has been understood through the ages.

Chapter Four applies this two-fold methodology to our sample of Jewish ethicists. It begins by identifying each ethicist’s theory of covenant, again with special attention paid to the elements and themes. It constructs maps linking their theories of covenant to anticipated modes of arguing their positions on the selected issue of euthanasia. It then turns to analyze in detail

their actual arguments on euthanasia. The final section shows that – and how – the framework of covenant constrains and frames subsequent normative language.

Chapter Five reviews what this two-fold methodology provides for our understanding of Jewish ethical discourse. It does so by highlighting commonalities and differences between this project and other popular methods of thinking about religious ethical discourse. It concludes that this thick methodology, which takes both argument and theology seriously, contributes to both Jewish ethics in particular and religious ethics generally, especially in multicultural, democratic societies.
Chapter 2: Magical Words

The treacherous imagination is everybody’s maker – we are all the invention of each other, everybody a conjuration conjuring up everyone else. We are all each other’s authors.¹

1. Introduction

Language has the power both to persuade and to conjure. This power, as Aristotle noted, is part of what makes humans distinct from other species; it enables us to create, sustain, critique and develop complex and evolving social systems.² As individuals, we author our lives, spelling them out day by day as if letter by letter. Through the spoken and written word we bring forth change by making present what might appear absent.³ The language we use in this process functions as a form of magic inasmuch as magic is defined as the art of influencing objects or events especially through words.⁴

Considering modern Jewish ethical discourse magic per se may be dangerous.⁵ On the other hand, it is undeniable that Jewish ethicists seek to affect change through their words.

¹ Roth (1986):142.
⁴ Cf. Marcus Ananus Lucanus, Pharsalia, 6.530-590, according to whom magic is words enacting on humans, objects and deities alike. See also the entry for magic in the Oxford English Dictionary.
⁵ The Torah rules that one who casts spells (חֹרֶב) engages in abhorrent practices found in other, non-Israelite, nations (Deuteronomy 18:11 and surrounding verses). The Hebrew word – חover – has the same root for human associates – chaver – like friends, fellow, comrade; and it also has the connotation of connecting, joining, attaching, adding, authoring and charming (see, for example, BT Sanhedrin 65a-ff where speaking is explicitly linked to magic, soothsaying, necromancy and the like). Maimonides rules that anyone who whispers a spell over a wound, or recites a verse over a child to protect it from terrors and the like, are not just sorcerers (menachshim) and soothsayers (chovrim) but nonetheless may be inclined to repudiate the Torah altogether. See MT Aovdah Zarah, 11.12. Rosenzweig interprets Deuteronomy 18:11 to mean that a magician “turns on the course of the world in active intervention, and in the judgment of the theocracy therefore commits a capital offense. He attacks God’s
Understanding how they affect change requires mapping their rhetoric. This chapter’s map offers a schema of how normative rhetoric functions generally and then sketches a kinematics of Jewish ethical discourse in particular.  

2. Ethical Discourse

The tools used to develop this map derive from the works of four of the Twentieth Century’s greatest scholars of argumentation. These include the French philosopher Paul Ricoeur (1913-2005), who critiques the notion of the speaking self; the British scholar Stephen Toulmin’s (1922-) work that explores the role of reason in and the elements of ethical argumentation; the Belgian Jewish philosopher, Chaim Perelman (1912-1984), who urges the turn toward the audience; and the German philosopher Jürgen Habermas (1929-), who developed a now-popular theory of argumentation and discourse ethics. Weaving these scholars’ contributions together is necessary because none of them directly addresses the issue of religious ethical rhetoric generally or Jewish ethical rhetoric in particular. What follows, then, is an attempt to understand the seemingly magical powers of normative speech, and it is done by moving backwards from the object (the audience) to the medium (the speech) and finally to the conjurer (the speaker). It then moves forward again when looking directly at religious ethical rhetoric to unveil what constitutes Jewish ethical discourse. If this itinerary can be put visually, it would portray a funnel that flows from ethical discourse to religious ethical discourse and finally to Jewish ethical discourse, with each subsequent layer as a subset of the previous.

providence and seeks by audacity, guile, or coercion to extort from it what is unforeseen and unforeseeable by it, what is willed by his own will” (1985):95. By contrast, miracles performed by less-egotistical prophets uphold and demonstrate God’s providence. For Buber, magic “wants to be effective without entering into any relationship and performs its arts in the void” (1970:131). Insofar as relationality constitutes humanity in Buber’s view and as the natural world abhors a vacuum, magic’s very nature is both inhuman and unnatural.

6 Toulmin calls for a much-needed “language-map” that describes ethical arguments more than merely theorizes them (1950):194-195.
2.1. The Audience

Normative discourse, like most forms of speech, is geared for an audience.\(^7\) As Aristotle said, rhetoric is the faculty of observing the possible means of persuasion in any given case, that is, rhetoric is ascertaining what will persuade a particular audience.\(^8\) He identifies three kinds of audiences and the rhetoric that would best persuade them. If the audience is a judge or jury, the speaker should employ legal terms regarding facts of things past. If the audience is an assembly that decides things for the future, the speaker should use political rhetoric. If the audience merely observes with no other function, the speaker should engage epidictic speech.\(^9\) Ultimately, however, every audience becomes a judge of the speaker who seeks to persuade (see quote).

This is not to say that the audience judges the speaker, but that the audience judges the speaker’s speech: they determine the speech’s persuasiveness.\(^{11}\) In this view, the relation between the terms is static.

The audience judges, the speech undergoes judgment, and the speaker brings forth the speech to be judged.\(^{12}\) Only once does Aristotle open a crack in this model when he says, “slip in anything else the judges will enjoy.”\(^{13}\) This brief comment allows for spontaneity on the part of the speaker to respond to the adjusting attitude and receptivity of the audience as they are being addressed. On the whole, however, Aristotle conceives the elements as stable and in fixed relation to each other.

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\(^7\) Some speech forms, like personal diaries, are not meant for an audience – and perhaps not even for the author at some future moment.


Aristotle’s model of rhetoric underscores the centrality of the audience for all forms of speech. But is the role of the audience of Jewish ethics as Aristotle imagines? What is the nature of the audience of Jewish ethics? How does it differ from other kinds of audiences? Is there any dynamism or give and take in the relationship between the terms in Jewish ethics? The survey of Jewish normative literature in Chapter One suggests that (good) authors adapt their argumentative strategies even in the midst of their attempts to persuade – be it in a sermon, a responsa or a Jewish ethical piece – because they acknowledge that the audience adjusts their attitudes and receptivity through the course of encountering their speech. Understanding this dynamic relation is the task at hand.

The link between argument and audience is undeniable, as Perelman attests: “argumentation is a function of the audience being addressed.” An audience is defined as “the ensemble of those whom the speaker wishes to influence by his argumentation. Every speaker thinks, more or less consciously, of those he is seeking to persuade; these people form the audience to whom his speech is addressed.” Two elements of this definition deserve highlighting. First, in regard to “influence,” from the speaker’s vantage, the audience is designated as distinct others, indeed, as malleable others. This holds true especially for audiences of ethical speech. An impervious group would not respond to argumentation and thus could not be considered in this definition as an audience per se. More will be said later about change being an inextricable element for normative discourse.

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14 Perelman and Olbrechts-Tyteca (1969):44. This book was co-authored by Lucie Olbrechts-Tyteca, a woman passionate about literature and whose formal education level was at the licenciate level, the equivalent of a bachelor’s. It was Perelman, the ranked philosopher, who traveled extensively promoting the book and lecturing on its contributions to the field, and it was Perelman who became nearly synonymous to the book’s content and status. Without any insult intended to Ms. Olbrechts-Tyteca’s contribution to this classic volume, reference here is given to Perelman when speaking of this book. On a biographical note, it has been asserted that Perelman’s appreciation of argumentation stems from a return to his Jewish roots and affinity to the argumentation embedded in Talmudic discourse. See Boyle (2001):669.
16 Toulmin (1970):136-137, says “there would be no use for ethical reasoning, either among people whose feelings were wholly unalterable (and who would therefore behave exactly the same whether exhorted to or not) or, on the other hand, among angels, whose dispositions were always of the best (and who would therefore have no need to inquire or discuss what to do).”
The second element regards ‘thinking of the audience.’ Insofar as the speaker conceives of the audience through intellection or visualization,\textsuperscript{17} it is not possible for a speaker to acknowledge all details of this imagined audience. This limitation constitutes a substantial obstacle for any and all conversations. If, as Perelman asserts, argumentation aims “at gaining the adherence of minds, and, by this very fact, assumes the existence of an intellectual contact,” then the most important element a speaker must conceptualize is the nature of the audience’s mindset.\textsuperscript{18} This raises the question of whether a speaker alone can conceive of others’ mindsets (what Toulmin calls “dispositions”), shape an argument accordingly, and thereby establish “contact.” Is argumentation essentially a monological procedure? Perelman demurs, although not directly or clearly. A speaker must take care to correlate her concept of an audience to reality, as “knowledge of those one wishes to win over is a condition preliminary to all effectual argumentation.”\textsuperscript{19} Furthermore, this knowledge of an audience “cannot be conceived independently of the knowledge of how to influence it….Knowledge of an audience is also knowledge of how to bring about its conditioning, as well as of the amount of conditioning achieved at any given moment of the discourse.”\textsuperscript{20} In this way, ‘thinking of the audience’ requires understanding a real audience’s mindset and, simultaneously, the means to influence that audience. Obviously, knowing how to influence an audience is distinct from actually influencing it.

Perelman’s model of the audience includes several gaps that a speaker must traverse. One gap stretches between an imagined audience and a real one. One is a fiction, a mental construct in the speaker’s control; the other comprises factions, a mixture of others outside the

\textsuperscript{17} Perelman and Olbrechts-Tyteca (1969):19.
\textsuperscript{18} Perelman and Olbrechts-Tyteca (1969):14.
\textsuperscript{20} Perelman and Olbrechts-Tyteca (1969):23.
Knowing and correlating these two audiences is an iterative process through time; it cannot be achieved by one alone or once and for all. Inasmuch as a speaker’s knowledge of an audience is necessarily incomplete at any and every moment in time, her knowledge of how (best) to influence that audience also lacks perfection. Thus her repertoire of persuasive techniques is already passé because the audience is no longer what she conceives.\(^\text{22}\)

Lest a speaker fear this gap of having less than perfect command of influential techniques for an audience in any one moment and remain silent forever, a speaker must risk both impropriety and impotence and utter her argument. Indeed, pressing ethical issues require accepting one’s less than ideal command of influential speech and speaking into the abyss nonetheless.\(^\text{23}\)

2.1.1. Universal Audience

Both Aristotle and Perelman portray the audience as ineluctable for conversation. Like Aristotle, Perelman also identifies three kinds of audiences: the universal, the single interlocutor, and the self-deliberating speaker. Unlike Aristotle’s audiences, Perelman’s interact with the speaker as a conversation ensues.

The universal audience is understood along Kantian lines. It “consists of the whole of mankind, or at least, of all normal, adult persons;” it “may be all of humanity, or at least all those who are competent and reasonable…which may itself be made up of an infinite variety of particular audiences.”\(^\text{24}\) Insofar as the universal audience is a mental construct of each and every

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\(^{22}\) Levinas (1998) also discusses the other’s face already disappearing, and all that’s left is a trace, at best.


\(^{24}\) Perelman and Olbrechts-Tyteca (1969):30; Perelman (1982):14. On the competence of the audience, see Perelman and Olbrechts-Tyteca (1969):37. Elsewhere (at page 26) he says that interest in argumentation is to seek those techniques “that would apply to all kinds of audiences, or at least to those composed of competent or rational people.” Is his use of “or” here question-begging?
Argumentation addressed to a universal audience must convince the reader that the reasons adduced are of a compelling character, that they are self-evident, and possess an absolute and timeless validity, independent of local or historical contingencies. Thus, maximally efficacious rhetoric, in the case of a universal audience, is rhetoric employing nothing but logical proof. Nevertheless, to the degree that this audience is "competent and reasonable," it calls for only logical argumentation (see quote). This purely logical argumentation seeks to convince "every rational being" to adhere to the speaker’s position. Is this actually so?

Ironically, argumentation for the imagined universal audience revolves around discussions of "the real" – facts, truths and presumptions. Facts are those agreements by everyone relating to certain data of objective reality; they require no further proof or argument – indeed, facts are conclusions of arguments. In contrast to the "precise, limited agreement" nature of facts, truths are "more complex systems relating to connections between facts" and often transcend experience. Presumptions are "connected with what is normal and likely" and thus are inextricably linked with a reference group. All three elements are supposed to command the same "order of validity" for the universal audience.

Theoretically, any and every reasonable person can be included in the universal audience. Its inclusiveness necessarily incorporates the speaker herself; the speaker cannot recuse herself. Thus, the universal audience becomes real *per se* only in the actual personage of the speaker. The charge "know thy audience" cannot be fulfilled in the case of the universal audience except through the speaker knowing his own mind. For this reason Perelman asserts that arguments

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designed for the universal audience cannot be anything but “sincere, honest, and cannot consist of a manipulation of the audience”33 – because the audience is, in a small yet concrete way, the speaker himself. On the other hand, not all speakers are fully or always reasonable.34 Allowing for this reality requires a speaker to consider the universal audience as less than uniformly logical; it is neither purely logical nor monological.

Perhaps, then, it is appropriate to refine the universal audience not as the population of the competent and the rational but as a more specialized subset of that population. Perelman suggests for this subset “an elite audience, endowed with exceptional and infallible means of knowledge.”35 The link to religious ethical argumentation is readily apparent, and it is worthwhile to quote at length (see quote). Speakers of religious – even Jewish – ethical argumentation may consider themselves endowed with incredible knowledge and would rather communicate with like-minded populations. Such arguers speak to this elite group as if it were the universal audience, with the hope that those outside the group will look to that group as the vanguard and norm-setter for the broader community.38 This hope, however, is tenuous to the degree that some outside the elite group may not consider that group worthy of such veneration. For such skeptics, this elite group is just a particular audience

Those who pride themselves on possession of a supernatural revelation or mystical knowledge, as well as those who appeal to the virtuous, to believers, or to men endowed with grace, show their preference for an elite audience; this elite audience may even be confused with the perfect Being.36 The elite audience is by no means always regarded as similar to the universal audience. Indeed, the elite audience often wishes to remain distinct from the common run of men: if this is so, the elite is characterized by its hierarchic position. But often also the elite audience is regarded as a model to which men should conform in order to be worthy of the name; in other words, the elite audience sets the norm for everybody. In this case, the elite is the vanguard all will follow and conform to. Its opinion is the only one that matters, for, in the final analysis, it is the determining one.37

36 The philosopher, on the other hand, engages not in the “discourse of the gods” but of humanity. Perelman (1984):193. Compare with Plato’s *Phaedrus*, 273e, wherein a philosopher’s rhetoric – as long as it is founded on prior knowledge of truth – could please the gods.
38 See note 17 in Chapter One above for an illustration of this desire.
whose dispositions and deliberations are dismissible. Nevertheless, the universal audience—construed as such or as an elite—sets the norm of good arguments (those that are acceptable) and bad arguments (those that are rejected). In so doing, the universal audience establishes the boundaries of rational argumentation.

2.1.2. Particular Audience

The single interlocutor incarnates a particular audience that is both historically situated and of unique disposition. Like the universal audience, the particular audience is a construct or invention of the speaker’s mind. The difference between these audiences emerges in the verb Perelman uses to describe the construction of the particular audience. He says the particular audience is “chosen” – as if from among many options. This chosen – or elected – audience is a consciously demarcated population with specific characteristics, values and dispositions. It could be, however, that no one person or set of people in actuality fit this construct. Even the speaker herself need not be a member of this particular audience. Unlike the universal audience in which the speaker must necessarily situate herself, a conceived particular audience could be so hypothetical that it contains a null set altogether in regard to real human beings.

Choosing a particular audience also informs the means by which a speaker can and will reach and influence that audience. Indeed, analyzing a speaker’s choice of audience sketches a map of a speaker’s conceptions of the audience’s concerns, the methods that can persuade that

40 Though it might be plausible for a single interlocutor to represent the universal audience, this depends on the mindset of the speaker more than who the listener actually is. See Perelman and Olbrechts-Tyteca (1969):§8, ad loc.
42 “The choice of the single hearer who will incarnate the audience depends on the aims the speaker sets himself, but also on his idea of the way in which a group should be characterized. The choice of the person who will incarnate a particular audience will often influence the methods used in argumentation.” Perelman and Olbrechts-Tyteca (1969):40. The universal audience “is” – it is not chosen.
audience, and the ends the speaker hopes to achieve.\textsuperscript{44} As will be seen in Chapter Four below, developing this map both describes and anticipates a speaker’s speech.

Perelman notes that speech designed for a particular audience is bounded in both content and form. The content focuses on what is preferable to a particular audience, wherein the preferable comprises values, hierarchies and arguments relating to the preferable.\textsuperscript{45} Values divide into abstract ones (e.g., the Good, the True, and the Beautiful) and concrete ones that are attached to particulars, be it an object or group. Both kinds of values are necessary for society inasmuch as concrete values promote conservatism and abstract values inspire revolution.\textsuperscript{46} Hierarchies also divide into the abstract (e.g., the just over utility) and the concrete (e.g., humanity over animals). Whereas different particular audiences may share certain values, each audience has a unique hierarchy of values.\textsuperscript{47} Arguments relating to the preferable are general premises that distinguish and evaluate values and hierarchies.\textsuperscript{48} Because content for a particular audience revolves around the preferable, the form of an argument is more about persuasion than anything else: a speaker seeks to persuade an audience to adhere to a certain way of thinking through an issue and of ordering values a certain way.\textsuperscript{49} To this end, the speaker must give special attention to the actual presentation of the argument than would be necessary for one geared toward a universal audience. Even a speaker’s prestige needs to be taken into consideration when forming an argument toward a particular audience.\textsuperscript{50} As will be seen below in Chapter Four, Jewish ethicists attempt to know their audience even as they go about constructing arguments to sway that audience.

\textsuperscript{44} Perelman and Olbrechts-Tyteca (1969):40.
\textsuperscript{45} Perelman and Olbrechts-Tyteca (1969):66.
\textsuperscript{47} Burke (1962) calls hierarchy Order. See Perelman and Olbrechts-Tyteca (1969):81.
\textsuperscript{48} These can include “quantity, quality, order, the existing, essence, and the person.” Perelman and Olbrechts-Tyteca (1969):83, 85.
\textsuperscript{50} This is not the case for a universal audience, as it is impervious to a speaker’s embodiment; it only listens for logic. See Perelman and Olbrechts-Tyteca (1969):468.
2.2. The Spoken

What is spoken to an audience – be it the universal, an elite or a particular one – may or may not be persuasive. Some forms of speech are not meant to persuade, like personal diary entries, scientific articles, murder mysteries; they vent, describe events, or dramatically invent. These speeches do not necessarily require any change in an audience if there is one. Normative speech, by contrast, is by definition speech intending to persuade. And as Aristotle notes, a speech is “persuasive and credible either because it is directly self-evident or because it appears to be proved from other statements that are so.”51 What, then, comprises the elements of normative – ethical – speech?

Full-fledged ethical speech geared toward the universal audience is devoid of the concrete. According to Toulmin, that which is spoken to the universal audience should eliminate specific deictic references (e.g., me, here, now, them, there, then) and use instead appeals to more general principles. By abjuring the particular in favor of the universal, this kind of speech looks and sounds Kantian (see quote). Only this kind of abstract, general speech can rightly be deemed “ethical.” Any reference to the particular is, for Toulmin, not an appeal to morality but to privilege.53

Yet Toulmin’s insistence that ethical speech necessarily incorporates universal principles and reasoning seems to contradict his definition of the function of ethics. He says that ethics correlates “our feelings and behavior in such a way as to make the fulfillment of everyone’s aims

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53 “[I]f, for example, the most general principles to which we can appeal still contain some reference to us, either as individuals or as members of a limited group of people, then our appeal is not to ‘morality’ but to ‘privilege.’” Toulmin (1970):168.
and desires as far as possible compatible.” 54 Indeed, ethics harmonizes “the desires and actions of the members of a community” – and not members of the universal community. 55 Moreover, notions of duty, obligation and morality necessarily derive “from situations in which the conduct of one member of a community prejudices the interests of another, and are to be understood as part of the procedure for minimizing the effects of such conflicts.” 56 Reference to elements unique to a particular community would be reasonable to expect in an argument that seeks to alter audience dispositions, like ethical speeches.

Toulmin apparently avoids this quagmire by advocating exclusively for a “philosopher’s ethics” in which detached language and rational argument are used to harmonize people’s desires and actions. On the other hand, he admits that religious traditions do provide resources for moral deliberation and argumentation. If one can consider religion a spectrum, at the “thin” end people have left records of their moral codes – “of their attempts, failures and successes” – in regard to certain moral dilemmas. 57 These testimonials facilitate reasoning on what to do and how to harmonize current people’s desires and actions so as to avoid causing harm. 58 In Toulmin’s view, the final decision between these options is a personal one. From this perspective, religion is a repository, almost an accidental one at that, idiosyncratic to the individual, and is ultimately dismissible.

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58 Toulmin (1970):142, 160, ad loc. Whether and to what degree avoidance of causing harm is critical to Jewish ethical argumentation shall be taken up in later chapters. Ricoeur (1992):172, similarly understands ethics as teleological, but he defines it as “aiming at the ‘good life’ with and for others, in just institutions.”
At the spectrum’s “thick” end, Toulmin describes religion as a source for “reassurance,” “for a general confidence about the future.”\textsuperscript{59} Whereas reason and science deal with expectations, religion concerns itself with hope.\textsuperscript{60} Religion’s domain includes issues other modes of thought cannot adequately address, and its function is to bring about equanimity, even quietude, in regard to those issues (see quote). Religious reasoning, for Toulmin, is rhetoric of last resort when all other forms of reasoning have been exhausted, and its utility is primarily to instill reassurance that what is being prescribed is right and good even though the prescription cannot justify itself with universal principles.

This theme of reassurance appears essential to religious ethical speech. Process theologian Schubert Ogden argues that religions work to restore a level of assurance or confidence that has been lost.\textsuperscript{62} Through their historically contingent ritual and textual forms, religions bring forth to the present a deeper, prior faith or confidence (see quote). Even if a universal ground might be logically

\textsuperscript{59} Toulmin (1970):211, 216.
\textsuperscript{60} Toulmin (1970):216. To support his claim, Toulmin cites here Hebrews 11:1, “faith is the confidence of things which are hoped for, and the certainty of things which are not seen.” While Toulmin translates \textit{hupostasis} as confidence, it can also mean assurance or even substance, as in grounding. The centrality of hope to religion generally challenges the turn to law in some religious traditions, especially in some streams of modern Judaism. Law attempts to shape current and future behavior, and it does so by bringing forward past legislation or creating new legislation that itself will be brought forward. As such, law is a kind of stitching the past into the ever new present. Insofar as hope all but disregards the past and seeks to draw the future into the present, law has little in relation with hope \textit{per se}. See also Gibbs (2004).
\textsuperscript{62} Ricoeur, too, carries this theme when he defines attestation as “the \textit{assurance} of being oneself acting and suffering” (1992):22; emphasis added. Attestation is attestation \textit{of self}, expressing \textit{me voici} (\textit{\textsc{ibid}}.), and is “commonly called conscience and which in German is termed \textit{Gewissen}” (\textit{\textsc{ibid}}.). Ricoeur also seems to echo Hebrews 11:1 if one turns to the Luther translation: “Es ist aber der Glaube eine gewisse Zuversicht des, das man hofft, und ein \textit{Nichtzweifeln an dem, das man nicht sieht}.”
\textsuperscript{63} Ogden (1963):34. This trope of (re)instilling confidence, itself echoing Hebrews 11:1, resounds throughout Ogden’s work.
prior to religious representations and arguments, it is uncertain whether this is true chronologically.\textsuperscript{64} Nevertheless, a strong link is made between rational reason and religious reason both when Toulmin admits that “ethics provides the \textit{reasons} for choosing the ‘right’ course: religion helps us to put our \textit{hearts} into it,” and when Ogden concludes “that morality is unavoidably dependent on faith, regardless of its independence of the particular religions in which such faith finds expression.”\textsuperscript{65} Universal reason and particular religion, it seems, are inextricably linked and mutually dependent to the degree they confide in each other to step in where the one cannot suffice to persuade. Religious ethical speech, then, would do well to incorporate convincing reasons (that is, universal ethics) and motivating reasons (that is, religious ones).\textsuperscript{66}

If religious ethical argumentation – combining reason and faith as it does – cannot be directed toward the universal and thus (wholly) imagined audience, it must be directed to a particular and thus (partially) real audience. This being the case, the speaker’s speech must somehow address the real concerns of this limited audience in a way that can convince them. Achieving this is best done first by understanding the nature of the audience’s concerns and then by speaking a kind of substitution.

Understanding a particular audience’s concern requires appreciating what Toulmin calls “limiting questions.” These are questions that push past the boundaries of certain modes of thought. A limiting question has three characteristics: (i) the form of the question and the context in which it is asked do not determine the meaning of the question itself; (ii) there are no alternative answers from which to choose, as there are in other forms of thought; (iii) the

\textsuperscript{64} Early sociologists of religion like Max Weber and Émile Durkheim argue that religious sensibilities precede and yet in some ways generate (universal) reason. Weber’s famous “disenchantment of the world” is, essentially, a claim that religions express a first step toward freeing humans from the magic perceived in this- and other-worldly experiences. Toulmin (1970):211, also sees modern science growing out of magic and primitive religion.

\textsuperscript{65} Toulmin (1970):219, emphasis in the origional; Ogden (1963):36.

question nonetheless begs an ethical answer even if that answer can be questioned *ad infinatum.*\(^67\) Answering a limiting question challenges a speaker to provide an answer that is either tailored exclusively to the particular audience, and in so doing, it loses all potential universal application; or one that abandons “all pretense of literalness, and take on the elusive, allusive quality of poetry” and thus loses concrete application.\(^68\) If an audience demands an answer that is both universal and unique, nothing more can be done and the speaker must remain silent.

A limiting question like “why should I (a Jew, a Canadian, a man, a community, here and now) do X and not Y?” seeks an answer that is both rational and extra-rational.\(^69\) This answer is a kind of silent substitution of audience and speaker. Inasmuch as the ultimate decision to do X or Y rests on the individual, the argument in favor of X or Y ultimately leads to the personal statement by the speaker, “If I were you, I should choose this course.”\(^70\) In this way, the speaker imagines herself in the particular audience’s stead. She substitutes herself for them – a transposition impossible with the universal audience because that audience does not exist and she cannot will herself out of existence.\(^71\) With a particular audience, however, that at minimum has some element manifested in reality, the speaker can rightfully employ this silent substitutionary speech-act. This imaginary move (“if I were you…”) involves the speaker constructing an argument she herself would find compelling were she a member of the inquiring audience.

And this silent substitution is simultaneously an invitation to the audience to consider itself otherwise; it invites the audience to see itself as the speaker responding to its own question.\(^72\) The speaker’s argument facilitates this quiet transposition by leading the audience

\(^{67}\) Toulmin (1970):§§14.2-14.4.  
\(^{68}\) Toulmin (1970):208.  
\(^{69}\) See Crane (2007) for an illustration of this line of questioning.  
\(^{71}\) “The one thing for which none of us can rationally decide, whatever his particular choices, is the eventual nullity of any of his decisions.” Ogden (1963):36.  
through the course of her moral calculus, step by step, so as to see no other alternative course of
action than the one the speaker advocates. Each step along the way is an identifiable illocutionary act and is prefaced with the unsaid “I affirm that” or “I promise that.” In this way, the speaker’s spoken argument resounds with gaps and silence. This silence, however, transposes the speaker’s spoken “if I were you” into what the audience hears: “if you were me, you would choose this course of action for these reasons.” Altogether her argument functions as a lengthy, partially unsaid, invitation; it is a silent gesture of welcome to a different way of appreciating one’s self.

In order for this silent gesture of welcome to be offered at all, there must be separation between speaker and audience. Only through alterity can hospitality be conceived and a welcome extended at all. This cannot be achieved in universal reason alone, as the universal “all” consumes and conforms everyone. Rather, hospitality and welcome are based in religion (of this, see below). On the other hand, this separation is not so absolute or complete that the speaker’s ego enjoys itself in happiness and is ignorant of others. Indeed, she finds herself already compelled to respond, for one reason or another, to her particular audience’s conundrum. It is the approach of her elected audience that puts her into question; she cannot remain indifferent and must respond, albeit late, here I am, in the form of “if I were you.” Just as she elected her particular audience, so too is she elected to her obligation to respond to their

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73 See Aristotle (2007):1.2/1356b. The inescapable logic of religious ethical arguments points in the direction of Toulmin’s six-tiered (general) ethical argument: (i) claims; (ii) grounds; (iii) warrants; (iv) backing; (v) qualifiers; (vi) rebuttals. More on this below. See Bucar (2006):99-100.
74 Ricoeur (1992):43. Those statements with an explicit prefix “I” differ from those without it by degree of being visualized. The prefix acts as a sign, and a sign best represents when it fades and is transparent, when the seer sees the signified more than the sign itself. Prefixed sentences have “the opacity of a statement that refers reflexively to its own utterance”; sentences with a silent prefix “has the transparency of a statement that is wholly traversed by its referential intention” (ibid.).
75 Indeed, it is the feminine who gestures welcome to the other and is the “anarchic origin of ethics.” See Levinas (1969):156ff; Derrida (1999):44. On silence, see Levinas (1998):162ff.
particular and real concerns. As will be seen momentarily for Jewish ethicists, membership in
a shared community brings about this co-election.

2.3. The Speaker

The speaker of argumentation faces either a universal and imagined audience or a
particular and concrete one. Facing the former requires using purely logical rhetoric that weaves
together irrefutable facts in such a way that any reasonable and competent person would find the
argument reasonable. Facing the latter, however, requires a mixture of rational and extra-rational
rhetoric that invites the audience to see themselves and their moral conundrum differently.
Regardless of which audience a speaker speaks to, the speaker cannot escape the fact that she
faces an audience. This holds true for a writer as well: “Whereas a speech is conceived in
terms of the audience, the physical absence of his readers can lead a writer to believe that he is
alone in the world, though his text is always conditioned, whether consciously or unconsciously,
by those persons he wishes to address.” Moreover, the unseen or seen audience is an audience
of minds that inspire and, as will be seen, respond. The charge to “know thy audience” means to
know the real minds therein. And for the speaker of ethics, this boils down to knowing his or
her own mind.

78 Levinas (1998):145. Levinas goes further to claim that each is hostage to others’ claim of responsibility (112) -- a claim Ricoeur, (1992):338, critiques as “the most excessive of all”: it overflows itself. Levinas’ Other, for Ricoeur, is ‘scandalously’ “no longer the master of justice here…but the offender, who, as an offender, no less
requires the gesture of pardon and expiation” (ibid.).
79 Perelman and Olbrechts-Tyteca (1969):103. “Facing the speaker in the first person is a listener in the second
person to whom the former addresses himself or herself – this fact belongs to the situation of interlocution. So, there
is not illocution without allocation and, by implication, without someone to whom the message is addressed”
(Ricoeur 1992:43).
80 Perelman and Olbrechts-Tyteca (1969):7. No doubt, the writer’s audience is harder to conceive than the
speaker’s; see page 19 and 6.
81 “In argumentation, the important thing is not knowing what the speaker regards as true or important, but
knowing the views of those he is addressing….The great orator, the one with a hold on his listeners, seems animated
by the very mind of his audience.” Perelman and Olbrechts-Tyteca (1969):24-25.
Knowing and verbally influencing minds presupposes proximity between real – and not just imagined – beings. Whereas the universal audience is completely though not comprehensively imagined and the particular audience is predominantly imagined, the ethical audience is predominantly unimagined. The ethical speaker faces a real audience whose minds are as real as her own. Her challenge is to know her audience’s dispositions, institutions and practices, so as to understand what they need and want. Her study of them provides insights about what their dispositions, institutions and practices could be, and she is then able to foresee the possible and the desirable for this special audience.\(^{82}\) Because the ethicist refuses to accept things interminably as they are and instead envisions things that are not yet but could be, the ethicist’s task is to bring about changes in reality through her words, as if by magic.

This task is not done exclusively for the ethical audience. Rather, it is done for audience and for speaker alike because an ethicist does not exclude herself from her audience’s predicament and potential (see quote). It would be better, then, to say that in fulfilling the task of knowing the audience, the ethicist also studies herself, her own mind, institutions and practices, values and hierarchies, predilections and traditions. Indeed, the ethicist him- or herself may be the best source of information about the audience inasmuch as it is impossible to extract comprehensive information from other people about themselves.\(^{84}\) This turn to examine the self comes not at the expense of ignoring the audience altogether or of merely imagining the speaker amongst others, as is the case of speaking to the particular audience. Instead, the ethicist addresses the audience as one already enmeshed among them yet also as a distinct agent within a network with them.

\(^{82}\) Cf. Toulmin (1970) §12.7. Toulmin calls an ethicist a “moralist.” See also page 223.
\(^{84}\) See Levinas’ oeuvre about the impossibility of knowing completely or even sufficiently another being.
This integration of the ethicist with the ethical audience is such that membership in the community is considered necessary for ethical argumentation to occur at all.\textsuperscript{85}

Inasmuch as the ethicist examines herself to understand her audience’s conundrum and arranges her moral calculus accordingly, her argument appears less a gesture of welcome given only to others than an articulation of self-deliberation.\textsuperscript{86} The unsaid “if I were you, I would…” found in addresses to particular audiences no longer occurs here. No substitution \textit{per se} happens in an ethical address to an ethical audience because the speaker is both the origin of the self-deliberation and a member of the audience now receiving the gesture of welcome to think and behave otherwise. The “if I were you, I would…” shifts in ethical speech to “if we were to…”

More than expressing solidarity or solicitude as Ricoeur might want, this “if we were to…” articulates a moving proximity between speaker and audience, between self and selves, which is best observed using a phenomenological analysis.\textsuperscript{87} At the first instance, this phrase reflects an identification of speaker and audience by the speaker.\textsuperscript{88} She both understands herself as a member of the community she now chooses to address, and considers that she can serve as a rightful representative of this community. In the act of speaking or writing to this community, she asks it to become an audience and assume the role of listener.\textsuperscript{89} This bifurcation of speaker from listener does not absolutely sever their connection. Rather, in her speech, she reveals her self-deliberation, a deliberation that is, in a way, a critical self-analysis with which others, the listeners, can identify. Her speech’s sequence and presentation condition the listeners to follow her argument; it both promotes her communion with them and decreases their resistance to her

\textsuperscript{85} Toulmin (1970):223.
\textsuperscript{86} Perelman and Olbrechts-Tyteca (1969):41. See quote by Isocrates there.
\textsuperscript{87} See Ricoeur (1992):193, 218ff.
\textsuperscript{88} For Rosenzweig, this verges on a kind of totalizing “we” in which individualism is passed over and speaks of no plurality \textit{per se}. Indeed, this “we” would be too vague and universal without a concomitant gesture demarcating the boundary of who is and is not included in this “we.” See Rosenzweig (2005):254ff.
\textsuperscript{89} Perelman and Olbrechts-Tyteca (1969):21-22.
proposals. In a way, her personal self-deliberation develops as their selves’ deliberation. This “if we were to…” then “results in the audience no longer being exactly the same at the end of the speech as it was at the beginning. This form of conditioning can be brought about only if there is a continuous adaptation of the speaker to his audience.” Rosenzweig also understands the “we” to be a cohortative bridge between speaker and audience: saying “we” moves people. It might have been obvious that an audience changes by listening to normative speech; what is crucial about ethical speech, though, is that the speaker herself continuously adapts to this ever-changing audience as well. As such, the “if we were to…” is a complex reflexive and iterative expression of selves continuously adjusting their relations.

These changes are neither uniform nor uniformly under the speaker’s control. The community-now-audience argues back, albeit perhaps silently. The audience’s own arguments interrupt the speaker’s. She must, according to Perelman, constantly adjust and adapt her argument to her audience’s emerging challenges, changing attitudes and shifting predilections. Even in responding to their responses, she must be willing to change her own perspective. As Ricoeur puts it, the ethicist has no choice but to respond to the other’s irruption into the speaker’s notion of self-same.

Levinas describes the continuous responsiveness of selves in relation to each other as the ever-shifting proximity between self and other. This fluxing proximity constitutes the speaker and audience as terms embedded in a relation Levinas calls religion, a relation that anarchically

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92 Rosenzweig sees in Psalm 115 an expansion of the We from Israel to the house of Aaron to the totality of humankind who fear God. That is, through meaningful deliberation a limited we is expandable to incorporate a larger community of distinct individuals. See Rosenzweig (2005):270ff.
93 “While the speaker is arguing, the hearer in turn tends to argue on his own account about the speech in order to take his own stand, to determine the credibility he ought to attach to it. The hearer who listens to the arguments not only understands them in his own way, but also creates new arguments of his own, which are usually unexpressed but which nevertheless intervene to modify the final results of the argumentation.” Perelman and Olbrechts-Tyteca (1969):189.
bonds and obligates them.\textsuperscript{96} This religion differs from Toulmin’s notion of a repository of prior attempts to harmonize people’s dispositions. And this religion differs from Perelman’s notion of a system that constrains reading and interpreting texts, a system in which the self-evident is such only by virtue of the speaker and audience never questioning its validity (as in a dogma) or its applicability (as in law).\textsuperscript{97} On the other hand, Perelman likens an ethicist to an educator who attempts to instruct an audience and initiate them into a new field or way of thinking, and is thus more akin to a priest than a propagandist.\textsuperscript{98} The ethicist-as-educator/priest, then, continuously fashions her argument to meet the challenges of the ever-shifting and always-retorting audience. So as to avoid the sacerdotal connotations of “priest,” it would be more appropriate – especially in the Jewish milieu – to refer to these individuals as ethicists-as-rabbis.\textsuperscript{99} Indeed, the very term rabbi denotes someone steeped in a tradition and tasked to teach it to others. This notion is explored in greater detail below and also in Chapter Four.

Likening the ethicist to a rabbi is important both to the study of religious ethical rhetoric and for the ethicists themselves as they construct their arguments. This analogy reinforces the call for ethical arguments to include both motivating and convincing elements. Convincing arguments are reasonable ones that appeal to universal and timeless facts and truths. Motivating arguments, by contrast, include values, hierarchies and preferences inhering to particular historically-situated communities. Both elements are crucial for the ethicist-as-rabbi to convince and persuade the quietly interrupting ethical audience that, ultimately, is comprised of individuals similar to but not identical with the speaker.\textsuperscript{100}

\textsuperscript{96} Levinas (1998):82. This suggests Levinas understands religion to emerge from the Latin root \textit{religare}, meaning to bind fast, instead of the root \textit{re-legere}, meaning to read again.

\textsuperscript{97} Perelman and Olbrechts-Tyteca (1969):§26.

\textsuperscript{98} Perelman and Olbrechts-Tyteca (1969):54 and 321.

\textsuperscript{99} Moreover, unlike priests, ethicists do not make things holy or sacred. Whatever the source of their authority, ethicists’ authority is not numinous as it is for priests.

3. Religious Ethical Discourse

If religious ethical argumentation focuses on securing the adherence of the individual listener’s mind and heart, a critical question is to what degree is religious ethical decision-making monological: is it done by the sole individual? As already discussed, it is difficult to conclude that an individual speaker of ethics and an individual listener to an ethical argument each functions, thinks or communicates in isolated vacuums. Rather, both exist embedded in a broader context of a network of associations and concerns. Indeed, both consider themselves members of a shared community, continuously provoking and responding to each other. Inasmuch as participants in religious ethical discourse – inclusive of speaker and audience – coexist and function in a common context, theirs is a collective reasoning, or as Habermas would call it, a communicative rationality. They do not derive knowledge exclusively from the cosmos external to themselves nor only from their internal, monological deliberations. Their knowledge and ethical decisions emerge from intersubjective deliberations.

Jewish ethical argumentation, then, is rightfully described by Newman as a “special sort of discourse,” a distinct intersubjectively-shared language with a unique lexicon of interlinked referents as well as a grammar of “themes that weave their way throughout Jewish ethical life, giving coherence and meaning to the whole system.” Like any language, it can be used in multiple ways; there is no specific one way to construct a Jewish ethical argument. What matters instead is the interrelationship between discrete terms and themes, for it is the ways in which they can be interlinked that give them meaning in the first place.

As Aristotle and Perelman suggest, understanding the intersubjectiveness and interconnections of Jewish ethical discourse requires, appreciating separately the religious ethical

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102 Newman (2005): 181, 183. Themes like covenant, creation, revelation and redemption, demarcate what counts as a coherent moral argument and thus a moral obligation. These themes are explored in the next chapter.
speaker, the religious ethical speech and the religious ethical audience whom the speaker addresses. Paying attention to these interacting elements of rhetoric adds a dimension not heretofore found either in Habermas’ discourse theory or in the secondary scholarship on it. Moreover, Habermas is not known for taking religion or religions seriously, or for integrating such traditions into his theory of communicative action. His “ideal speech situation” incorporates an imagined discursive community rather than a real – much more a religious – one. It is necessary, therefore, to adapt and augment his religiously-impoverished theory for this project. What develops below is therefore a theory of discourse for religious ethical argumentation generally and for Jewish ethical argumentation in particular.

Yet Habermas does not disparage communal idiosyncrasy altogether. Communal distinctions are critical to communicative action, so much so that they cannot be ignored. Habermas – following Husserl – calls this set of communal and moral commitments from which one cannot willfully retract the lifeworld (Lebenswelt). So ineluctable the lifeworld is, it backgrounds and conditions one’s life unconditionally and unquestionably. It stands behind every person and cannot be perceived at will or doubted. If and when an element of a lifeworld becomes thematized – that is, it has risen to consciousness – because exogenous pressures brought a critique of it, that element moves to the foreground and is therefore eligible for conscious scrutiny and collective deliberation. Yet the invisible lifeworld is not completely inert. It provides a context in which pressures can be identified as such, and it offers resources to

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104 Even Spinoza would agree with this approach. He urges the modern reader of the Bible to appreciate it linguistically, to imagine who the author is behind the language, and to understand how the text might have been received by the ancient audience. See Seeskin (2001):123.
105 See Shaw (1999); Rogerson (1995); Dassel (2003); Adams (2006); Outhwaite (1994); Ricoeur (1992):287n79.
106 Habermas (1990):47. See also Habermas (1992):110. Pitcher & Winter (1977):70 refer to this as the ethos, and it is “an unexamined reality [whose] power as the shaping, informing and ordering source comes to light only when the meaning of the common life comes into question.”
107 “The life-world is so unproblematic that we are simply incapable of making ourselves conscious of this or that part of it at will. The fact that certain elements of the life-world become problematic is an objective process. It depends on the problems that press in on us from outside in an objective way, by virtue of the fact that something has become problematic behind our backs.” Habermas (1992):110.
interpret those pressures. In this way, lifeworlds frame which issues are addressed and how. Moreover, lifeworlds are constituted and reproduced through communicative action, especially through speech.

Insofar as lifeworlds are indispensable to human speech generally, the same must be true for religious ethical deliberation in particular. Answering the ethical question “who we are and would like to be” requires relating “to the context of a particular life-perspective which is assumed to be binding for certain persons or for a certain collective.” These answers, Habermas says, cannot make any universal claims but only relative ones to the community and context concerned. While religious ethical conclusions are binding only upon the limited set of people sharing a particular lifeworld, how these conclusions are reached is not monological per se. They emerge from a deliberative process in which the members of the lifeworld agree that a concrete situation requires regulation. The question now is how religious ethical deliberation occurs.

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108 “The actor is carried or supported from behind, as it were, by a lifeworld that not only forms the context for the process of reaching understanding but also furnishes resources for it. The shared lifeworld offers a storehouse of unquestioned cultural givens from which those participating in communication draw agreed-upon patterns of interpretation for use in their interpretive efforts.” Habermas (1992):135. Emphasis in the original. See also Habermas (1992):109 where the lifeworld is described as dissolving and disappearing even in the process of examining it piece by piece.

109 The agent of communicative action can therefore be understood in a twofold manner, “[as] an initiator who masters situations through actions for which he is accountable and [as] a product of the traditions surrounding him, of groups whose cohesion is based on solidarity to which he belongs, and of processes of socialization in which he is reared.” Habermas (1990):135. Emphasis in the original. See Love (1995):50 for a distinction between lifeworld and system.


111 “It would be utterly pointless to engage in a practical discourse without a horizon provided by the lifeworld of a specific social group and without real conflicts in a concrete situation in which the actors consider it incumbent upon them to reach a consensual means of regulating some controversial social matter. Practical discourses are always related to the concrete point of departure of a disturbed normative agreement.” Habermas (1990):103. On this latter point, see Ricoeur (1992):288.
3.1. Religious Ethicists

Certainly a religious ethicist, like every other speaker seeking to influence an audience, is to be able to see the best means of persuasion in every instance. This capacity for intellectual insight about persuasion coincides with the ability to reason according to a lifeworld’s pattern of reasoning.\footnote{Habermas (1990):30ff. Edward Said (1994):20, says something similar in regard to intellectuals who must, perforce, also be public intellectuals: they must know “how to use language well and know when to intervene in language.”} That is, the religious ethicist must be reasonable according to the community in which and to which she speaks. It could be, for example, that a religious ethicist’s reasonableness and persuasiveness in her own community fails to connect with minds in another religious lifeworld.\footnote{See, for example, Bucar (2006) for a comparison of religious ethical argumentation in Catholicism and revolutionary Islam in Iran. For an interesting comparison of the overlaps between religious (ethical) rhetoric and political rhetoric, see Lincoln (2003). Habermas also recognizes this limitation of religious ethical rhetoric at (1990):75.} For this reason it is impossible to fully separate the actual personage of the religious ethicist from what and how she communicates with her intended audience.

Nor is it possible to dissociate a religious ethicist’s contextualized reasonableness from the lifeworld in which she functions. Unlike the philosophical ethicist writing to a fully imagined universal audience and the more concrete ethicist who addresses a partially imagined particular audience, the religious ethicist is necessarily bound up in the reality of her community.\footnote{“Interference in a controversy whose outcome will affect a specific group may be made only by one who is a member of, or closely bound up with, the group in question.” Perelman and Olbrechts-Tyteca (1969):60, emphasis added.} Because the ethicist acknowledges the community’s characteristics and the concreteness of the people being addressed, hers is no imagined ethical conundrum but a real practical one impressed upon her and her community’s lifeworld. This ethical conundrum necessarily pertains only to certain aspects of their shared tradition. If an issue challenged the totality of a lifeworld, hers would not be an ethical argument as much as it would be a call for a revolution; it would be a cause célèbre for overhauling the whole religious tradition.\footnote{Cf., Habermas (1990):109.} Being no
The religious ethicist, in other words, reflects backwards and examines, not exhumes, pieces of their shared lifeworld that now appear problematic. In this process, however, the religious ethicist necessarily steps beyond the lifeworld so as to examine it and use concepts from outside it to evaluate it.

In this way religious ethicists are situated in a unique moral position. They straddle membership within a particular community or lifeworld as well as a position relatively distant from that community. Because of their communal membership, they bring to their speech a real, and not hypothetical, respect for the tradition from which they emerge and toward which they orient their normative speech. And because of their distance from that community, they bring to their speech a real, and not hypothetical, respect for the universal and rational. To construe these intellectual dispositions in professional terms, the religious ethicist straddles community and academy. Hence, the religious ethicist is embodied in the ethicist-as-rabbi. In both academy and community as a scholar of a religious tradition and as a member in the clergy, the religious ethicist carries stature, gravitas and authority. Moreover, it is to the community that a religious ethicist is answerable insofar as the community is free at any point to reject an ethicist’s teaching; the community retains the right to say to an ethicist, “you no longer speak to us or for us.” A religious ethicist is accountable to the academy, although in a different way.

Ethicists generally take into consideration their own and others’ perspectives on issues and, in this way, take on what Habermas calls a “decentered understanding of the world.” Following Lawrence Kohlberg’s theory of moral development, Habermas locates the decentered ethicist in a postconventional stage in which she takes on a hypothetical attitude to reflect back upon the lifeworld and its institutions to problematize them. Ideally, for Habermas, the ethicist argues independently from any semblance of a lifeworld, a notion that Rawls would applaud. But then again, Habermas critiques Rawls’ original position as being too fictitious: it would be better to participate in an idealized communication that best approximates the ideal. See Habermas (1990):66, 88, 129, 143, 158, 161, 162, 198.

According to Kohlberg’s theory, the religious ethicist straddles the postconventional and conventional stages. But not: ethicist-as-prophet. Rabbis, like priests generally, function in ways that perpetuate communities and their institutions, even while they try to improve certain aspects thereof. Prophets, on the other hand, often upend communities and institutions in wholesale ways. Rabbis tweak; prophets purge.

It is not a coincidence, then, that the sample of Jewish ethicists for this project includes individuals who are both rabbis and scholars; none are just one or the other. This position is borne out by several theories of covenant, as discussed in Chapter Three. See in particular the theories by Moses, Maimonides, Spinoza and Kant.
integrity. But as MacIntyre stresses, ethicists are not lone moral agents functioning in either social vacuums or purely academic environs. At the end of the day, ethicists and especially religious ethicists are members of and thus answerable to particular communities.

Because of their authoritative membership in a particular community, religious ethicists cannot but continue certain aspects of communal existence. At one level, the community’s goals serve as their own telos as well. This telos is what the community construes and constructs as “the good life.” Religious ethicists function with this telos in mind – if not in heart – precisely because of their membership in that community. And it is their argument promoting this telos that motivates the audience. At another level, the religious ethicist works with the assumption that religious norms, like all other kinds of norms, are considered norms per se to the degree they are communally rationalized. Since others are needed to deliberate a norm proposal before that proposal can become normative, religious ethicists function with the knowledge that their arguments will be submitted for public scrutiny and may be rejected. This demands a modicum of humility in religious ethicists, so as to express the possibility that the ethicists could be persuaded away from their proposed norms because of more convincing and persuasive arguments put forward by others.  

That is, religious ethicists are especially audience-aware, certainly in terms of constructing their own arguments but also in terms of perhaps being persuaded to abandon their own proposals.

3.2. Religious Ethical Speech

All this is not to belittle the fact that religious ethicists also exist beyond particular communities. Indeed, religious ethicists’ outsider status affords them a fresh perspective on

elements of a community’s lifeworld. It is this distance that enables them to articulate an argument that motivates as well as convinces a specific audience.  

Religious ethical speech has a threefold task. Its first is to acknowledge that an exogenous pressure upon a lifeworld deserves attention at all; that is, that the lifeworld itself needs problematization. This does not mean that the totality of the lifeworld is problematic, but that a portion of it can no longer remain unquestioned and invisible. The second task is to reflect back upon the lifeworld vis-à-vis this particular issue. This occurs from a universalizable rational perspective and critiques the lifeworld’s problem from without. And the third is to engage community members in the deliberation of this lifeworld’s handling of this newly acknowledged problem. By moving from within a lifeworld to universal reason and back again into the community, religious ethical speech incorporates both rational and particularist reasoning components. The speech retains its concrete motivational force and brings convincing rational elements to bear on the issue.

This threefold task has additional inescapable elements. Inasmuch as religious ethical speech seeks to establish intersubjectively validated norms, it inexorably makes claims about three realms. One realm is the objective world about which the speaker speaks; the second is the

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121 Habermas stresses that ethicists generally address moral questions along rational lines of justice and generalized interests, and in this way they have little if any motivational force for concrete action. When addressing evaluative questions of the good life, however, ethicists must function within a lifeworld without problematizing it. See Habermas (1990):108. Toulmin also bifurcates ethical questions into those that can be answered only within a moral code and those that require rationales beyond that moral code. See Toulmin (1970), Chapter 11.

122 Why reflect on the lifeworld? A meta-task for religious ethical discourse is to encourage a lifeworld to appreciate a situation as problematic in the first place and worthy of attention. In this way, the speech is a heuristic device that teaches members of a lifeworld to view as ethically significant those things that may appear now as ethically insignificant. This is not to say that religious ethical speech does not address the particular issue at hand. Indeed, it does, and its immediate goal is to acquire communal agreement to its normative conclusions. But, as will be seen in subsequent chapters, religious ethical speech also trains members of a lifeworld to be their own ethical teachers.

123 This echoes Habermas’ notion of the moral point of view in the postconventional stage.


125 Habermas (1990):109, hints at this when he says that “to become effective in practice, every universalist morality has to make up for this loss of concrete ethical substance, which is initially accepted because of the cognitive advantages attending it. Universalist moralities are dependent on forms of life that are rationalized in that they make possible the prudent application of universal moral insights and support motivations for translating insights into moral action. Only those forms of life that meet universalist moralities halfway in this sense fulfill the conditions necessary to reverse the abstractive achievements of decontextualization and demotivation” inexorably caused by the moral point of view.
social world of interpersonal relationships between speaker and audience; and the third is the subjective world of the speakers’ personal experiences. These claims find their grounding in these referents: claims to truth in the objective world (“it”), claims to rightness in the social world (“we”), and claims to truthfulness in the subjective world (“I”).

A preliminary map thus emerges:

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<thead>
<tr>
<th>Rhetorical Claim</th>
<th>Linguistic Expression</th>
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<tbody>
<tr>
<td>Truth</td>
<td>It</td>
</tr>
<tr>
<td>Rightness</td>
<td>We</td>
</tr>
<tr>
<td>Truthfulness</td>
<td>I</td>
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Map 2.1. Linking Claims to Language

While agreement in everyday life emerges from all three levels, religious ethical discourse predominantly but not exclusively concerns itself with the first two realms of validity: truth and rightness. This is because mobilizing assent and obedience to a proposed ethical norm requires mediating claims to truth and claims to rightness. These reasons function as a kind of guarantee or warranty offered by the speaker to the audience. Should an audience question a particular claim – like the truth of some propositional knowledge or the rightness of a lifeworld’s norm – the speaker is required to redeem his speech by exposing the reasons on which he bases his claim. These justificatory reasons manifest a speaker’s responsibility for his speech.

It is significant that justificatory reasons - called rationalizations – are made available for public scrutiny and possible rejection. It renders vulnerable all claims to truth and to rightness to the degree they risk not finding purchase in the minds of an audience. Claims to truthfulness, similarly, are subject to skepticism. Despite this liability, however, rationalizations are

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126 Cf., Habermas (1990):136ff, 23ff, 58ff. Rosenzweig would concur with this trifold division of the speakable insofar as he discusses the impossibility of communicating internal experiences (such as being married) without the marriage already existing as an objective fact or truth. See Rosenzweig (1955):120.

127 Claims to personal experiences, while persuasive in some religious circles, are usually brought forward to testify about items of faith than on ethical issues.

128 The notion of warranty stretches back to Aristotle: “If there is anything incredible, you should immediately promise both to give a reason for it at once and to submit it to the judgment of any whom the hearers approve” (On Rhetoric, 3.16/1417b). Toulmin also includes warranties as one of the six necessary components for ethical argumentation. And Habermas picks up on this theme: “Enduring acceptance of a norm also depends on whether, in a given context of tradition, reasons for obedience can be mobilized, reasons that suffice to make the corresponding validity claim at least appear justified in the eyes of those concerned. Applied to modern societies, this means that there is no mass loyalty without legitimacy.” Habermas (1990):62, ad loc.
For a norm to be valid, the consequences and side effects that its general observance can be expected to have for the satisfaction of the particular interests of each person affected must be such that all affected can accept them freely.¹²⁹ When a religious ethicist says “if we were to…” with attendant rationalizations grounding and backing her position, she thereby links religious valences to the (not) desired attitudes and behaviors she advocates, and all participants in the conversation – being members of the same lifeworld as they are – inexorably understand themselves through these religious valences. This occurs primarily because the religious ethicist is no stranger to or random member of the community. Indeed, she is (perceived as) a rabbi-teacher therein and thus has religious stature; her words reflect, reinforce and adjust religious doctrine and practice.

A danger here is that anything can be religiously valenced through religious ethical discourse.¹³⁰ This potential danger is mitigated by the fact that religious ethical discourse involves multiple people with differing perspectives – even in regard to their shared religious tradition’s lifeworld. This intersubjective nature of religious ethical discourse has already built into it a “procedure that insures awareness of consequences” – a procedure Habermas calls the principle of universalization (see quote).¹³¹

A speaker of religious ethics cannot presume that she speaks alone or, qua Kant,

(U) For a norm to be valid, the consequences and side effects that its general observance can be expected to have for the satisfaction of the particular interests of each person affected must be such that all affected can accept them freely.¹³²

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¹³⁰ “Religious discourse can recode virtually any content as sacred, ranging from the high-minded and progressive to the murderous, oppressive, and banal, for it is not any specific orientation that distinguishes religion, but rather its metadiscursive capacity to frame the way any content will be received and regarded.” Lincoln (2003):6. “Rather than being a divine and unfailing ground of morality, religion begins with a human discourse that constructs itself as divine and unfailing, through which deeds – any deeds – can be defined as moral.” Lincoln (2003):16. See also Asad (2003):11ff, 25, ad loc. Levinas identifies another danger of religious language – that of destroying the transcendence of the infinite. See Levinas (1998):197n25. See discussion of Lincoln below.
¹³² Habermas (1990):120. Emphasis in the original. See also 65, 93, 197.
autonomously legislates norms for a broader community. Indeed, the religious ethicist is but one participant in an ongoing conversation with real, and not imagined, people. When she speaks “if we were to…” she speaks as an irreplaceable member of a lifeworld and appeals to other similarly irreplaceable members of that same community. Her proposed norm’s validity emerges only when other members of that lifeworld agree to (or would be satisfied by) the consequences of the proposed norm. Thus, religious ethical norms cannot be just anything; they can be only those things to which real persons (could) agree to in actual conversation.

This leads directly to the ethics of discourse (see quote). Together (U) and (D) prevent distortion of one’s own interests inasmuch as they presuppose that one’s understanding of personal needs and wants are interpreted through cultural values. These needs and wants, Habermas asserts, are necessarily intersubjectively constructed. This does not mean members of a lifeworld are radically distinct. Indeed, when Habermas speaks in terms of reversibility of perspectives and reciprocity of equal consideration, he suggests that members of a communal conversation share a certain level of identity. Ricoeur and Levinas, by contrast, understand conversational participants to be radically unique beings whose distinctiveness emerges through interactions with different others; for them, identity is implausible. Regardless of which theory of self prevails, insofar as religious ethical discourse is a conversation among real people searching to establish (new) practical norms for their community, only the better argument prevails and secures agreement and adherence. That is, personal preferences do not become norms by fiat.

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133 Cf., Kant (1964):88/421. See also Habermas (1990):67-68.
135 Habermas (1990):66. See also 93, 121, 197.
As such, “the better argument” in religious ethical discourse demonstrates and inculcates a kind of reasoning that, ultimately, produces results. “The better argument” can do this by searching for agreement or consensus, or by seeking to coordinate action through influence produced by threats or rewards.\(^\text{138}\) This latter kind of speech – those seeking coordination – rests upon perceptions of authority. In religious ethical discourse, this relates to the personage of the ethicist: an ethicist may utilize his position and status as an authoritative figure in his community’s lifeworld to sway others. For example, within modern Jewry, an ethicist can claim rabbinic heritage and ordination, or status as a פסח (legal decisor), or as an (academic) expert on a particular topic as additional reasons for an audience to hearken to a proposed norm. Such are claims from authority. Another strategy includes claims to authority. As Perelman notes, claims to authority determine “the level at which the argumentation must be presented, laying down what is beyond dispute, and what must be regarded as irrelevant to the debate.”\(^\text{139}\) It is plausible within a Jewish ethical argument to state that X is הלכה (law) and thus beyond (needing) justification, or that X is ההלכה למשה מסיני (law [given] to Moses from Sinai) and should be considered beyond justification or even deliberation. Such formulae assume that adherence to proposal X stems from the innate authority the religious tradition ascribes to law generally.\(^\text{140}\) In addition, an argument can offer an interpretation of a text that is articulated or supported by a previous religious scholar or textual authority. This invocation endorses a particular way of reading earlier texts and, in so doing, reinscribes authority to this – and not another – interpretation.

\(^{138}\) This latter form of speech is called strategic speech; the former is called communicative action. See Habermas (1990):58ff, 133-135.


\(^{140}\) Perelman questions the apparent persuasive force of the imperative: “all its power comes from the hold of the person commanding over the one carrying out his orders; the relation is one of relative forces, without any implication of adherence. When actual force is lacking [as in the modern era in which religious figures do not have a monopoly of physical coercion and thus cannot “force” compliance] or when one does not consider using it, the imperative assumes the tone of a prayer.” Perelman and Olbrechts-Tyteca (1969):158. Elsewhere, he challenges the practice – quite prevalent in Jewish normative literature – of attribution to an authoritative figure because it can run the risk of “being transformed into a simple cultural fact.” Perelman and Olbrechts-Tyteca (1969):181.
Modern Jewish ethical argumentation does both. It includes claims from authority as well as claims to authority. Moreover, it has implicit if not explicit critiques of these claims. As such, Jewish ethical speech demonstrates ways to reason through issues. These ways of reasoning are not uniform across the field of modern Jewish ethics; they sometimes appear contradictory, as will be seen in subsequent chapters.\textsuperscript{141}

3.3. Religious Ethical Audience

“The better argument” in religious ethical discourse must ultimately be intelligible to its audience. This requires the speaker of religious ethics to share and participate in the same speech lifeworld as the intended audience.\textsuperscript{142} Through the very act of speaking, a religious ethicist does not so much as enter an interpersonal relationship with her audience as much as she furthers an already existing relationship; religious ethical speech is the ongoing language of morally concerned members of a community.\textsuperscript{143} The religious ethical audience forms a group of real persons with whom the speaker is already familiar. The undeniable reality of this group shapes the contours of religious ethical argumentation to the degree that the speaker constantly tailors her argument to the real people she addresses.\textsuperscript{144} For these reasons, religious ethical argumentation is necessarily historically located within a particular community; it is bounded by the temporality of the community’s practical concerns as well as those of the participants involved.\textsuperscript{145}

\textsuperscript{141}See Crane (2007) for a map of rationalizations Jews produced in the 20\textsuperscript{th} Century to promote Jewish support for human rights and human rights instruments, and a method for evaluating which among them constitutes “the better argument.”
\textsuperscript{142}Habermas (1990):23-24.
\textsuperscript{144}See Bucar (2006):94.
\textsuperscript{145}Habermas (1990):92.
On the other hand, as religious ethics is primarily re-produced through the written medium, it presumes a literate, not just an aural, audience. The intended audience may, in fact, be distanced from the author both physically and temporally. Nevertheless, both speaker/author and audience share in a literate mode of communication. As seen in the previous chapter, this holds true for responsa, a kind of Jewish normative literature. Here, Jewish congregations and rabbis sent ethical queries to authorities in search of normative governance; the responses were tailored and returned in written form to those audiences. Modern Jewish ethical argumentation is not so different from responsa in that it often is produced at the behest of an inquiring, literate audience – be it for a scholarly conference, a congregation, an individual. And often it is reproduced for a larger – again, literate – audience, through journals, magazine periodicals, books and online resources. The main difference, however, is that Jewish ethics, like religious ethics generally, provides guidance not governance.

To the extent that religious ethics merely guides an audience to a particular conclusion, what can be said about this audience? Habermas asserts that “the individual is the last court of appeal for judging what is in his best interest,” and thus, by extension, the audience is only an aggregate of autonomously judging individuals. If this were truly the case, each individual within a particular religious community would not need to consult others about what is good and right in any situation; the individual would be, as Kant imagines, a truly autonomous rational being in every instance and could legislate both the right and the good monologically. There would be no need for the historical development of religious normative literatures, be it law or ethics. Yet the existence of both religious law and ethical literatures suggests that the individual is not sufficient to be the ultimate arbiter of what is right and good.

On the other hand, perhaps Habermas is not altogether wrong about the nature of the religious ethical audience. Because religious ethical speech is given over to others in a particular

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shared lifeworld, conceiving the audience as a court seems appropriate. The audience-as-court hears the conflicting arguments and claims proffered by religious ethicists. It interrupts the speaker, perhaps only silently, to ask for clarifications and justifications. It then assesses the claims’ relative urgencies, evaluating them in light of precedents and systemic preservation. It eventually extends judgment on which claims are best – that is, which argument meets the needs of the moment and is true to the tradition. Even though the individual *per se* is not the last arbiter of religious ethical decision-making, the individual is a necessary participant in the communal deliberation thereof.

In this way, the religious ethical audience exercises a kind of autonomy, if one understands autonomy as a mode of legislating norms for oneself. Insofar as the religious ethical audience does not create the normative options itself but evaluates options offered by religious ethicists, it could be understood that the normative bespeaks itself through the audience, just as the moral law bespeaks itself through Kant’s autonomous and rational individual. This is not to say that the religious ethicist is the lone creator of norms, or that norm development is a monological exercise. On the contrary, as has already been seen, the religious ethicist functions in conjunction with the audience to construct communal norms, although each ethicist extends varying kinds or amounts of evaluative power to the religious ethical audience. Thus it would be best to understand religious ethical speech, while directed toward individual minds within the audience, appeals to the collective for a new formulation of a common will. Hence the phrase, “if we were to…”

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147 This links back to Aristotle’s assertion that every audience ultimately serves as a judge. See Aristotle (2007):2.18/1319b, and discussion around footnote 10 above in this Chapter.

148 See Levinas (1969):244ff for the role judgment has in regard to assigning infinite responsibility.

149 Bruce (2002):134, notes that prior to the Enlightenment, individuals were not afforded the privilege or right to assess whether (or not) to abide by a leader’s diction. This is not to say that individual reasoning did not exist *per se*, but that it was not religiously or politically recognized as a legitimate force in civilization.
4. Theoretical Jewish Ethical Discourse

If the above spells out some of the inescapable elements of religious ethical argumentation, perhaps it is possible to map them as well. The speaker of religious ethics is not just any a member of a community but an authoritative one. Her speech reasons through an issue by problematizing what previously appears irrelevant and demonstrating how to read and incorporate resources in a religion’s textual tradition – all by making claims to and from authority. And the audience exercises autonomy to the degree it judges competing proposals on a particular issue.

<table>
<thead>
<tr>
<th>Element</th>
<th>Is</th>
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<tr>
<td>Speaker</td>
<td>Ethicist-as-Rabbi</td>
<td>Authority</td>
</tr>
<tr>
<td>Speech</td>
<td>Set of Claims</td>
<td>Reason</td>
</tr>
<tr>
<td>Audience</td>
<td>Judge</td>
<td>Autonomy</td>
</tr>
</tbody>
</table>

Map 2.2. Religious Ethical Discourse Elements and Concerns

The question now is whether and how this map holds true for Jewish ethical discourse in particular.

Before turning to the individual elements of religious ethical discourse, a meta-issue deserves attention. Habermas asserts that “reaching understanding is the inherent telos of human speech.”150 Is this true in the Judaic tradition? Franz Rosenzweig suggests it is when he depicts language, functioning in the here and now between creation and redemption, as “dominated by the ideal of coming to a perfect understanding,” an understanding that would lead to the “language of mankind,” a unified language possible only in redemption.151 Despite the apparent fragmented nature of human languages, human speech is a tool and a medium by and through which humans can reach mutual understanding. And through forging understanding, people can

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151 Rosenzweig (1985):110. Perhaps there was a primordial unified language: see Genesis 11:1.
solidify agreements about coordinating action, which, for Habermas as for Spinoza, is the practical purpose of conversing.¹⁵²

A critical question is whether understanding and agreement are as important to Judaism, and by extension to modern Jewish ethical argumentation, as they are to Habermas’ discourse theory. For example, it is easy to point to statements by the newly freed Israelites from Egypt that they will do as God bids prior to understanding the content of the commands נְשֵׁרָה (נְשֵׁרָה) as examples that understanding, at least, is less important than, or is at least subsequent to, coordinating actions.¹⁵³ Similarly, Jewish scripture overflows with parties who apparently do not agree (e.g., from the beginning: God and Adam and Eve, Cain and Abel, the citizens of Babel, Abraham’s household and Lot’s household, and the list goes on), and much is lamented because of this apparent lack of agreement. Indeed, rabbinic Judaism canonized disagreement by preserving in its library multiple opinions and divergent halakhic conclusions. Within those pages the rabbis included the famous debate between the House of Shammai and the House of Hillel, two great sages of the first century CE, the conclusion of which states אלה ואלו דברי אלהי – those and those are the words of the living God, yet the law accords with the House of Hillel.¹⁵⁴ Not only is disagreement given divine imprimatur, argumentation is revered because it is “for the sake of heaven” and its conclusion will have endurance.¹⁵⁵ Disagreement and argumentation do not inexorably lead to antipathy or anarchy. As the Talmud says, the law accords with the House of Hillel, through public deliberation, a normative conclusion is reached to coordinate communal action. Social cohesion does not demand consensus.¹⁵⁶

¹⁵³ See Exodus 19:8, 24:3, 24:7; BT Shabbat 88a.
¹⁵⁴ BT Eruvin 13b. Perelman was smitten by this passage. He hints at it at Perelman and Olbrechts-Tyteca (1969): 158. See also Perelman (1990):1085.
¹⁵⁵ M Avot 5.17.
¹⁵⁶ Crane (2007) shows that acting in common cause does not require common reasons.
Insofar as agreement and understanding are not *sine qua non* in Judaism, it is a stretch to apply Habermas’ discourse theory directly to modern Jewish ethical argumentation. Where Habermas and modern Jewish ethics do find common ground is in the requirement for active participation.\(^{157}\) Participation leads to consensus for one, and for the other it continues the ongoing search for ever more reasonable and contemporary normative positions.

This theory of Jewish ethical discourse also takes issue with Habermas’ notion of equality that is embedded in the practice of reversibility, when in regular conversations the speaker and audience can transpose to take on the other’s perspectives. Such equality or identity between speaker and audience does not obtain in religious ethics because the religious ethicist is also a priest – and in the case of the Jewish ethicist, a rabbi. The ethicist-as-rabbi holds a distinct position of authority shared by only a few others. This is not to say that all Jewish ethicists received ordination from communally recognized seminaries, as indeed, many are not rabbis.\(^{158}\) On the other hand, the ethicist-as-rabbi moniker reflects the practice that Jewish ethicists are people of distinct authority in their respective Jewish communities. They are not just scholars and they are not merely people of religious significance. They combine both types of authority – intellectual and spiritual – in such a way that transposition is neither natural nor automatic. There is, as Levinas would say, height and distance between a Jewish ethicist and her audience.\(^{159}\) The height is not only in the perceived authority of the speaker, but also in the election of the speaker by the audience to grapple with their particular concerns. And there is distance insofar as the audience is probably not coterminous or immediately proximal to the speaker – assumptions taken for granted in Habermas’ theory of discourse. Moreover, Jewish ethicists enjoy no privacy insofar as they are continuously confronted by the interrupting

\(^{157}\) Cf., Habermas (1990):27.

\(^{158}\) That said, an ethicist’s religious stature if not personal practice itself plays a part in the ethicist’s suasive capacity.

As such, the Jewish ethicist is not just a member of a particular lifeworld, one among many others, but a special, authoritative member therein. Her position – both organic within and yet partially outside of a particular lifeworld – means she functions without equal.

This distinctiveness enables the Jewish ethicist to construct new kinds of arguments. These arguments are neither purely particular nor exclusively universal. To achieve the ethical task of creating novel ways to conceive elements of a lifeworld, Jewish ethical speech draws on sources foreign to that lifeworld. For example, Jewish ethical arguments on medical issues like smoking and stem cell research draw on contemporary scientific literature and secular law. These sources are external to the normative Judaic textual library and are accessible to the Jewish ethicist precisely because she straddles the community and the academy. In addition to bringing external sources to bear on ethical conundrums, Jewish ethical arguments invariably combine legal, philosophical, theological, scientific and anecdotal modes. This mixture of argumentative modes reflects the complexity of sources used and the intricacy of the ethical issue at hand. This fact comports more with Stout’s theory than with Newman’s. Stout understands religious ethics existing in the liminal space between science and reason on the one side and prophecy and tradition on the other. Religious ethical arguments therefore incorporate elements from both sides to create a “mixed rhetorical strategy.” These complex strategies are difficult to align neatly into Newman’s categories, as few arguments if any use exclusively legal reasoning, covenantal arguments or narrative elements. By nature and design, Jewish ethical speech is more complex than these categories allow.

This rich way of arguing is necessary to reach Jewish ethical audiences. These audiences function as interlocutors to Jewish ethicists, provoking ethicists to explain themselves and their

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160 The emphasis on religious ethics echoes in Levinas: “it is this exceptional situation where you are always in the face of the Other (Autrui), where there is no privacy, that I would call the religious situation.” Levinas (1962):29. See also Levinas (1969):195, 253.
arguments, and in this way audiences become masters and teachers in their own right.\textsuperscript{161} Because they teach and learn from each other, it is reasonable to follow Habermas in conceiving Jewish ethical speakers and audiences engaging in the mutual interpretation of intersubjectively established elements of argumentation.\textsuperscript{162} And it is possible to understand Jewish ethical audiences judging Jewish ethical arguments, as might Perelman. Such judgment, however, is not uniform across all forms of modern Jewry. Modern Jewry divides itself into streams or communities that may appear doctrinally and practically distinct yet are mutually influential.\textsuperscript{163} Each stream has established its own way of deliberating ethical issues that both draws on certain but not all elements of the Judaic textual tradition, and grants different levels and kinds of autonomy to the audience.\textsuperscript{164} Because of their membership within these streams, Jewish ethicists are prone to use one and not another of these methods when grappling with ethical conundrums. And, conversely, because they address a particular segment of modern Jewry, a Jewish ethicist chooses argumentative methods that will speak volumes to that and not another audience. This observation supports Newman’s categories more than Stout’s generic complex argumentative strategy.

What all this suggests is that Jewish ethicists, their arguments and their audiences are not magical elements appearing out of nowhere and exercising influence on each other as if by magic. As has been repeatedly shown, they exist embedded in a context that itself warrants attention. This context is the theological notion of covenant. A Jewish ethicist’s concept of covenant invariably shapes her role as an ethicist, informs and limits her argument, and depicts the nature of her audience. Her notion of covenant thus grounds her understanding and exercise of authority, reason and autonomy. It is to this context the next chapter turns.

\textsuperscript{161} Cf., Levinas (1969):69. See also M Avot 4.1 and 6.3.
\textsuperscript{163} See, for example, Sarna (2004).
\textsuperscript{164} This is not to say that these ways are static and no longer developing. Indeed, they are ever-evolving methods. See, for example, Dorff (2005).
Chapter 3: Covenantal Words

Before the Torah, the Covenant was.¹

1. Introduction

Philosopher Robert Gibbs concludes his Why Ethics? with this challenge: “The task of thinking about ethics, beyond the task of acting ethically, is a vital task for our world at the end of modernity.”² In this construal, thinking, speaking and acting ethically is the old yet ongoing task. The newer task is thinking about ethics, about what superintends or founds ethical thought and speech, about what grounds religious ethics.³ The challenge here is to identify and parse out the assumptions and commitments behind and around contemporary Jewish ethical discourse.⁴ This thinking about Jewish ethics uncovers why religious ethicists argue as they do.

Jewish ethical discourse is embedded in a larger context. This context is covenant ( kararı).⁵ Covenant serves as an ineluctable horizon from which a Jewish ethicist cannot escape when constructing a Jewish ethical argument. This covenantal context serves multiple purposes simultaneously. It supports her stance toward the textual tradition; it demarcates the limits of what she considers ‘reasonable’ Jewish argumentation; and it orients her within a community and toward a theological telos. As such, it shapes her understanding of authority, reason and autonomy. Because of covenant’s critical importance to Judaism generally and to Jewish

¹ Heschel (1962):230.
³ Indeed, Newman opens his Past Imperatives: studies in the history and theory of Jewish ethics with this sentence: “This is a book not of Jewish ethics, but about it.” (1998):1 (emphasis in the original).
⁴ Sherwin similarly encourages this task. (1990):11.
⁵ See discussion in Chapter One, pages 22ff.
ethicists in particular, acknowledging this horizon is central to this new methodological analysis of Jewish ethical argumentation because it helps explain why Jewish ethicists argue as they do. Other methods, as noted above and below, fail to acknowledge this theological dimension, or if they do, their effort inadequately traces the nuances found within it.

It must be stressed from the outset that covenant enjoys no monolithic reality, belief or concept.6 As will be seen, modern scholars find themselves challenged to speak about covenant. In their attempts to clarify what they mean by this term, it is not uncommon for these scholars to analogize covenant to other forms of human relationships. For example, many follow Spinoza by comparing and contrasting covenant to a (legal) contract or pact.7 Some liken covenant to a marriage complete with a marriage document or agreement.8 And some assert that covenant is a political construct (e.g., a social contract) and not just a theological one.9

These metaphoric explanations of covenant are projects in a Kantian sense, and, as such, are problematic. They begin from an idea of an entity already known inasmuch as they are humanly constructed and exercised, such as contracts, marriages, and governance structures. They then retroject this contemporary concept onto notions of covenant found in the Judaic textual tradition. In this manner these metaphors impose contemporary understandings of extant human relationships upon earlier texts that may not have known these relationships in such ways. This process thus conflates different historical layers of covenantal thought; indeed, it is not uncommon for scholars to weave together biblical, rabbinic, medieval and modern sources as if

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6 Perhaps this term cannot rightly be located exclusively in theology insofar as theology pertains to the study of God and such ‘spiritual’ matters as sin, immortality and resurrection.
9 Novak (2000); Mittleman (2000); Elazar (1977); Elazar (1980); Z. Falk (1999).
they comprise a unified whole. Though such a methodology may appear convincing, it nonetheless glosses over or elides altogether varying historical contributions and concerns.  

So as to avoid projecting onto earlier covenantal texts, the approach taken here lets the texts speak for themselves by examining their actual rhetoric. Specifically, by identifying a text’s speaker, content and audience of the covenantal relationship, this approach reveals a text’s notion of authority, reason and autonomy.

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<thead>
<tr>
<th>Element</th>
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<tr>
<td>Speaker</td>
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**Map 3.1. Theory of Covenant**

So while it may be correct to view these texts, especially the earliest ones, as conveying covenant itself, it may be better to understand these texts as expressing theories of covenant insofar as each offers but one conceptualization of covenant. As theories, they express variants of Jewish theology, and, as such, they delimit what can be considered right and good. Put succinctly, each theological theory informs ethics.

A critic of this approach might claim that, especially in regard to the biblical texts, this is an exercise in what might be called Karaite hermeneutics. That is, it would be an exercise of reading Jewish scripture in a direct and literal way. And it means reading the texts without others’ interpretations because those others undoubtedly offer theologically-biased perspectives. This criticism is fair insofar as it seems strikingly “un-Jewish” to read scripture without simultaneously consulting the millennia of Jewish commentators. Indeed, modern editions of the Talmud record centuries of commentary around its central texts. Reading Jewish

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10 It also reflects and reinforces assumptions that may be more damaging than constructive. See Adler (1998b), especially 179ff.

11 The phrase “covenantal texts” refers to those sections of the Judaic textual tradition that deal specifically with the notion of covenant and not to the totality of the textual tradition itself.

12 The Karaites were a sect of Jews who rejected Pharasaic interpretations of scripture and the development of rabbinic Judaism. They preferred to read scripture in its most basic, literal sense.

13 Reading texts on their own terms is what Martin Luther calls *sola scriptura* – reading scripture without a prior theology; but even he read texts with a prior rejection of Anabaptist theology.
texts means – by definition, the critic would say – to consult commentary. This project proposes, however, that it is unnecessary to read every Jewish text through others’ eyes every time. Rather, at least in regard to this exercise of tracing the notion of covenant through the generations, it makes good sense to cleave off chronologically later interpretations so as to understand where and how certain theories or issues emerged and how they developed in later texts. This approach is not sola scriptura in the strictest of terms, but a historically-sensitive one: each layer builds upon previous ones, and each cannot rightly be held accountable to later ones.

Before turning to a survey of some of the principal covenantal theories found in the Judaic textual tradition, a few preliminary comments about the three rhetorical elements are necessary. First, the speaker. A speaker’s authority arises from the very act of speaking, of transforming silence into sound. By interrupting the relative quiet of the extant relationship – however tenuous or secure it may be – the speaker reveals what was previously hidden in silence. The speaker’s speaking reveals a moment of communication from one term (e.g., God) to another (e.g., humanity or Israel). By sparking this communication, the speaker commands authority insofar as the speaker authors the speech’s content.

This content, the second rhetorical element, conveys both the substance of the relationship and the way that substance is to be understood. The substance of covenant may be law, commandment, narrative, a combination of the three or something other.¹⁴ Covenantal texts also point explicitly or implicitly to the sources of this content, that is, to the textual sources wherein the content is to be found. They also disclose preferred modes of reasoning to read and interpret these textual sources. Some privilege religious reasoning inasmuch as they speak of holiness and purity. Others prefer legal tropes like prescription, prohibition, predictability,

¹⁴ Commandments (‡טננה) are promulgated by God, whereas laws (‡ֶלע) are humanly developed. See discussion of Gesetz and Gebot in Rosenzweig (2005), and Buber’s reaction to these categories in Rosenzweig (1955); see also Gibbs (2004). Narrative here means midrashim (מדרשים) or aggadah (אגדות).
precedence and obedience. And some texts use holistic or moral terms, such as “preferred” or “good.” In this way, the speech’s content conveys substance and demonstrates reason.

But to whom? A speaker speaks to be heard by another. What is the nature of this other? How does this other hear and receive this revelatory content? What role does this audience have in receiving this speech? What responsibilities, if any, does an audience have? Here notions of community, both contemporary and sequential, come into play, as well as individuality and choice. That is, covenantal texts conceive audiences exercising some degree of autonomy. Some texts afford the audience great latitude to accept the speech’s content and, thus, the authority of the speaker, while others deny the audience any choice whatsoever: the relationship and its content are a matter of necessity. Understanding a text’s notion of audience is critical to draw a connection between theology and practical ethics.15

For Jewish theories of covenant, these three elements are ineluctable. These elements convey the necessary theological and philosophical presuppositions of authority, reason and autonomy. As will be seen in Chapter Four, these elements intertwine in Jewish ethical discourse inasmuch as they inform the form and content of practical Jewish ethical arguments. This chapter explores these elements in a historical manner so as to trace a lineage of covenantal theories as they appear through the millennia of Jewish normative thinking. The historical layers include the Torah, rabbinic writings, medieval and pre-modern scholarship, and modern thought. This chronological traipse through history is purposeful, for indeed, historical development is as inherent to the study of covenant as it is to the covenantal relationship itself. Though the texts discussed here are illustrative and not exhaustive, they nonetheless facilitate highlighting each historical layer’s analytical contributions to the elements of covenant. As might be suspected, no historical layer is monophonic; each contains multiple articulations of covenant. This historical

15 See discussion above in Chapter Two, especially sections 2.1 and 3.
analysis reveals the symphonic nature of covenant, a symphony in which contemporary Jewish ethicists play their part.

2. Biblical Theories

Biblical covenantal texts ground later historical contemplation about covenant. Not only do they provide preliminary theological theories about covenant, they do so by focusing on the three elements of rhetoric (the speaker, the speech, and the audience). As will be seen, there is no unanimity among these biblical texts about what covenant is, who is involved, where authority lies, and what it entails.

2.1 Noah

The first biblical mention of covenant occurs in the story of Noah. God declares the relationship between Noah and his sons and God as a covenant. Indeed, it is not just any covenant but “My covenant” (ברית) in which God promises not to destroy again all living flesh by flood. In addition, the rainbow serves as sign and visual reminder to God and Noah of this commitment. While the immediate audience to this announcement is Noah and his sons, the intended audience is broader, including all living flesh and the earth as a whole.

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17 Genesis 9, verses 10 and 12, expand the relationship to include animals, livestock and poultry – but only those that are “with you” (בריתכם) – and subsequently those that emerged from the ark. The inclusion of non-human animals in this covenant is thus subsequent to the primary inclusion of the humans. In verses 13-17 the tone changes to speak of a covenant in which the earth and all living flesh are not subsequent to but alongside Noah.
18 Seeskin (2001:39) argues that this covenant is “mainly a reaffirmation of duties that were in existence long before the generation of the flood” – and he invokes a rabbinic interpretation of the Noahide covenant that identifies at least seven commandments (BT Sanhedrin 56a). Earlier (page 38), he says that this covenant is an agreement, albeit an agreement between unequals. Nowhere in the biblical text does Noah say that he agrees to this covenant; indeed, his first reaction is to plant a vineyard and get drunk (Genesis 9:20-21). Consent, a necessary component for any agreement, is missing. Arguing that Noah’s silence is nonetheless an expression of complicity and could be
The explicit content is God’s promise to remember to respect all life. This promise reflects an assumption that even God must keep a promise once given, as upholding promises is a necessary component for an intelligible universe. God hereby foregoes the right to act arbitrarily – a right God seemingly exercises in preceding phases of God’s relationship with Noah and the rest of creation.

2.2 Mt. Sinai

The most famous biblical covenant is the one announced at Mt. Sinai. Indeed, for the subsequent Jewish textual tradition, this covenant is considered the master covenant, i.e., without qualification. Though God initially declares the covenant, Moses is tasked to bring it to the people Israel gathered at the foot of the mountain. Before declaring the covenant, God reminds the people of their own history, especially of what God has done for them. What follows, however, is not a proclamation but an offer: “Now if you will faithfully hearken to My
voice and uphold My covenant, you shall be to Me treasured from among all the nations, for the whole earth is Mine, and you shall be for me a kingdom of priests, a holy people” (Exodus 19:5-6a). As the verbs are in the second person plural, the intended audience cannot be Moses alone but the whole Israelite community. Nevertheless, it is left to Moses to convey to the people this relationship and its conditions. Indeed, the community tries to physically distance itself from the thunderous speaker and wants to be addressed only through the medium of Moses (Exodus 19:16-17). Despite or perhaps because of their distance, the people remain in earshot of God’s communication to Moses – so that the people will believe Moses and his reportage (Exodus 19:9a).24 Though the people cannot escape the sights and sounds of revelation, the community’s experience is imprecise: they see and hear that God speaks to Moses, but they cannot decipher what God is speaking.

Vagueness surrounds this covenant. After the initial offer for a covenantal relationship the people tell Moses individually (כֵּן) yet at once, “all that God said we will do” (כֵּן אֶשָּׁר דִּבַּר הָעֹז וְאֶת). Only later does God enumerate the content of the covenant (20:1-14). Moses then conveys to the people “all God’s words and all the rules” (כָּלַּדְבָּנִים אֲשֶׁר דִּבַּר אִזְכּוֹר), to which the people respond again in one voice (כָּל אֶשָּׁר דִּבַּר וְאֶת־אֵלָה וְאֵלָה) “all the things God said we will do” (כָּל אֶשָּׁר־דִּבַּר וְאֶת־אָדֹנָי), to which they again reply “all that God said we will do and hearken” (כֵּן אֶשָּׁר־דִּבַּר וְאֶת־אָדֹנָי וְאָדֹנָי וְאֵלָה וְאֵלָה) (24:3). Perhaps these are all God’s things or words (כָּל־דִּבָּנִים אֲשֶׁר־דִּבַּר) that Moses then inscribes and reads aloud to the people, to which they again reply “all that God said we will do and hearken” (כֵּן אֶשָּׁר־דִּבַּר וְאֶת־אָדֹנָי וְאֶת־אָדֹנָי וְאֵלָה וְאֵלָה) (24:4-7). Moses then sprinkles bull blood upon the people declaring, “this is the covenant blood (דם־קָרָאת) that Adonai made with you concerning all these things (כָּל־לְדָבָנִים כְּמוֹל) (24:8).

24 The people are repeatedly brought close to yet warned away from the mountain. The constant shuffling perhaps reflects nervousness exhibited in animals and humans undergoing the stress of anticipation. See Exodus 19:12-13, 17, 21-25; 24:1-2.
25 The verse can be understood to mean “the whole people answered in unison saying…”, or “every person individually responded [at the same time] saying…” The new JPS translation reads, “All the people answered as one, saying…” However translated, the verse is clear: there is univocality within the community on this point.
What is this “all” that is often repeated? The notion of all-ness, completeness or totality, is intelligible and communicable only in a conceptual universe where lack and excess are possible. The idea that “all” has been communicated presupposes that it is possible to communicate less than the full account. Conversely, “all” also assumes that there is more or beyond that enables assessment of whether everything has been included in the “all.”26 Here the question is whether the “all” articulated by God, conveyed by Moses, heard by the audience, affirmed by the audience, and written down by Moses – is indeed complete. Are the stipulations put forth in Exodus 20ff the totality of the terms of the covenant to which God invites Israel?27 Is it possible that there is more to the covenant’s terms than just these? If one answers that this “all” is hard and fast and expresses the totality of the terms to the covenant, then the authority of later Judaic normative texts such as halakhah is brought into question. If, on the other hand, this “all” is soft and imperfect and thus allows for the existence and authority of later Judaic normative texts, the biblical text itself begs the question: what does “all” mean if does not mean “all”? But this paradox is already jumping ahead, or after, the Torah. What matters for this biblical “all” is that both speaker and audience understand it and, unlike the covenant with Noah, both parties accede to this “all.” A form of agreement is reached on and through this “all” – regardless if later generations considered this “all” sufficient or too much.

Methodologically, this biblical “all” is intelligible and communicable both orally and in writing. That is, the terms of the covenant can be – in fact, are – transformed from an oral experience to an optical one, from an aural reception to a visual engagement.28 This sensory

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26 To conceive that “all” has no beyond is a dangerous if not violent risk. See Levinas (1969).
27 The term “invite”, though correct, is problematic inasmuch as Moses implores the people not to be afraid “for God has come only in order to test () you and in order that the fear of Him may be ever with you, so that you do not go astray” (Exodus 20:17).
28 God requests Moses to ascend the mountain to receive stone tablets inscribed by God (Exodus 24:12). What was divinely spoken is now divinely written. This divine writing, however, is humanly destructable (Exodus 32:19; Tanhuma, Ki Tissa, 26). Even though God promises to rewrite the terms of the covenant, it is probably Moses who finally etches the stone (Exodus 34 and Ramban on Exodus 34:28). God uses no tool to write on stone tablets except for a divine finger (Exodus 31:18, Deuteronomy 9:10). Rabbinic imagination understands it to be the third divine finger that writes (see Midrash Hagadol to Genesis. M. Margaliot (ed.), Mosad Harav Kook, Jerusalem
change is critical insofar as it enables later people to witness the establishment of this covenant through the written word. Whereas sound quickly dissipates, inscriptions only slowly erode. But the semi-permanency of the written formulation of the terms of the covenant allows for a synchrony that an oral/aural mode cannot provide. Spoken words must stumble out in a singular fashion; words on a page co-exist simultaneously. The spoken word communicates linearly and sequentially: the “all” flows from mouth to ear, from here to there – all the while in the speaker’s control. The written word need not be so confined. It frees itself from time: the end of a book exists at the same time as its beginning. It frees itself from its author, too: the reader can begin anywhere she wants and go in any direction; the text is all there waiting to be seen. Whereas in the Noahide covenant responsibility for the terms of the covenant rested solely on the speaker, now this responsibility is shared between the speaker and audience.

Remember that this covenant begins with an invitation. It is a gesture of welcome to the Israelites to establish a different kind of relationship with God. As in the Noahide covenant, God here is proposing an alteration to an already existing relationship, and this offer need not have been given in the first place. Where these covenants differ is in regard to the audience. Here the audience is granted the opportunity to choose whether this altered relationship is acceptable. The audience’s chosen spoken words express agreement to this new relationship and God’s stipulations for it, and their words also articulate a sense of community insofar as they are uttered as one and in the first person plural. A notion of simultaneity among the people (as individuals, 1967, p. 159. A parallel is in Pirkei R. Eliezer 48, D. Luria (ed.), Warsaw 1852, 116a). That the covenant’s terms are to be studied, see Deuteronomy 5:1.

One might argue that the rainbow was an inscription of the Noahide covenant and thus “written” down, albeit in the sky. The difference between this writing and the Mt. Sinai writing is that the former is inscribed in nature generally and the latter specifically in human language. More will be said below about which human language the covenant uses.

Ibn Ezra contends that God speaks the commandments (Remember and Observe the Sabbath) simultaneously, but they are heard by humans sequentially, for this is the only way humans can comprehend spoken language. It should be noted that the last time the community accedes to the terms of the covenant is after Moses reads from the record of the covenant (בנין המלחמים) (Exodus 24:7). They do not read it themselves; it is read to them: it remains an oral/aural transmission.
families and tribes) is coupled with a sense of collective agency: “we” can fulfill the terms given us.

2.3 Horeb

Moses twice recapitulates the revelation of the covenant at Sinai, once at Horeb and once at Moab. In the first re-presentation, Moses offers a lengthy preamble. He reminds the people that they were close enough to the mountain to hear God’s words. “God spoke to you from within the fire. You heard the sound of words but you did not see any shape, nothing but a voice. [God] declared to you His covenant that he commanded you to do – the Ten Words – and [God] wrote them on two stone tablets. God commanded me at that moment to teach you laws and rules, for you to do them in the land that you will cross into to inherit it.” The speaker of the covenant remains God, and the audience is “you” the community, but the audience did not then comprehend what God uttered. Moses portrays the content of God’s speech at Sinai as merely “The Ten Words” (שֵׁרֶשׁ תְּנֵיסֵי אָדָם). Use of this title suggests that the current audience understands what it signifies. Though they might understand what it means, Moses worries that they will forget the covenant as a whole: “take care lest you forget (אַדְנָאֵתָר שֵׁרֶשׁ תְּנֵיסֵי אֱלֹהִים) the covenant Adonai your God established with you….” Like the Noahide covenant, this theory conceives it

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32 Moses stresses there was no visual component to revelation (Deuteronomy 4:15) so as to distance Israelite worship of God from the idol worship found amongst other peoples (v19).
33 Deuteronomy 4:12-14.
34 Moses seemingly excludes himself from the community in this statement, an absenting reinforced by the declaration that God “commanded me,” Moses, a distinct entity not subsumed in the collective.
35 The term, שֵׁרֶשׁ תְּנֵיסֵי אָדָם, occurs in the Torah only three times. The first is at the end of the revelation at Mt. Sinai (Exodus 34:28); then here, Deuteronomy 4:13; and then in another reiteration by Moses at Deuteronomy 10:4.
36 Deuteronomy 4:23. “Established” is a colloquial translation for the verb meaning “to cut.” Ancient treaties and covenants were literally cut and carved into durable materials like stone and plaster. See note 21 above.
possible that the covenantal relationship is forgettable, though now the onus is on humans to remember it.\textsuperscript{37}

In the actual recapitulation of the covenant, Moses summons together all Israel to hear and study the laws and rules he proclaims.\textsuperscript{38} He sets the revelatory scene as follows: “Adonai our God established a covenant with us at Horeb. Not with our fathers did he establish this covenant, but with us, we the living, every one of us who is here today. Face to face God spoke with you on the mountain from within the fire – I stood between God and you at that moment to proclaim to you God’s word, for you were afraid of the fire and you did not ascend the mountain – saying…”\textsuperscript{39} God remains the initiator of the covenant, though it is unclear with whom and how God made it. Why does Moses stress that God did not establish “this covenant” with their ancestors, when surely he knew about the Noahide and Abrahamic covenants?\textsuperscript{40} Perhaps it was merely rhetorical flair to stress that the covenant, “this covenant,” is with the current population. Unlike in his preamble, Moses now includes himself in the community by using the first person plural, “with us.” Whereas in the preamble Moses depicts the people distanced from God, here they are face to face with God. This anthropomorphic metaphor suggests not just proximity but an intimacy in which words are shared. While in the preamble God spoke to and declares at the community the covenantal content, here God speaks with you the people. But even within this intimacy connecting the people and God, Moses stresses his mediatory role as the sole conveyer of God’s words to the people.\textsuperscript{41}

\textsuperscript{37} See Deuteronomy 4:30. Here it is “the covenant with your ancestors that God made on oath with them” (Deuteronomy 4:31). The only other incidences when “covenant” is (potentially) forgettable are (a) 2 Kings 17:36 (here, the covenant is made by God to a mish-mash of gentiles now residing in Israelite towns, and they are instructed not to forget this covenant – meaning that they otherwise could), and (b) Jeremiah 50:5 (Israel and Judah will come whimpering back to Zion to join an everlasting covenant with God that will not be forgotten). Conversely, God remembers the covenant at Genesis 9:15-16; Exodus 2:24, 6:5; Leviticus 26:42, 45; Ezekiel 16:60; Psalms 105:8, 106:45, 111:5; I Chronicles 15:16.

\textsuperscript{38} Deuteronomy Chapter 5.

\textsuperscript{39} Deuteronomy 5:2-5.

\textsuperscript{40} See footnote 21 above.

\textsuperscript{41} It is questionable whether Moses conveys the people’s words to God, as it seems that God hears the people’s words directed for God even though they are spoken to Moses (Deuteronomy 5:25).
Moses then recites the ten commandments first proclaimed at Sinai. He says God spoke “these words” to the entirety of “your congregation,” inscribed them on two stone tablets and gave them to him. The people acknowledge hearing God’s voice but they express fear of hearing it any more lest they die. They ask Moses to intercede on their behalf. They want him to get closer to God than they are, hear God’s words, convey to them God’s words, and “we will hearken and we will do.” God approves of this plan, and asks Moses to stand nearby so as to receive God’s detailed instructions which he will then relay to the people and from which they must not turn.

By relying so heavily on Moses as a mediator, this conceptualization of covenant shifts the rightful source of covenantal authority away from God alone to include Moses. Not only is this shift welcome by the audience – indeed, they implore him to be their ombudsman – but God also applauds this move. This is not to say that God’s authority is completely erased. Rather, it reflects a theology in which the community’s needs and desires are taken as seriously as God’s. Moreover it understands the audience exercising a degree of autonomy. And like the Mt. Sinai covenant, this one also perceives human written language to be the rightful medium to convey covenantal content.

42 Deuteronomy 5:6-18.
43 Deuteronomy 5:19. The transfer of the stone tablets occurred forty days later. See Deuteronomy 9:9.
44 Deuteronomy 5:20-24. Hearing and (God’s) voice are mentioned in each verse. The people’s representatives also acknowledge that they observed God’s Presence and Greatness (v21) – but saw no image per se.
45 Deuteronomy 5:24. This inverts the Exodus phrase of “we will do and we will hearken.”
46 Deuteronomy 5:25-27. This is the source of the famous “do not turn to the right or left.” Later sages interpret this to mean that leniency is prohibited especially in regard following to biblical laws.
2.4 Moab

Moses offers a second recapitulation of the covenant in Moab. This one begins with Moses enumerating at length God’s commands, laws and rules. Only at the end of this long list of stipulations is covenant mentioned. “These are the words of the covenant that God commanded Moses to establish with the children of Israel in the land of Moab, in addition to the covenant established with them at Horeb.” Again, God’s role as covenantal authority fades to make room for Moses. Moreover, Moses and not God calls forth all Israelites to remember witnessing God’s historical interventions on their behalf. And it is Moses who encourages the people to fulfill faithfully the words of this covenant so that you may succeed in all your endeavors.

Content is the first and foremost concern of this covenant. God is eclipsed by Moses and the audience is gathered only after Moses has spoken. In a way, both the divine speaker and the human audience are late. What matters in this covenantal relationship are not the parties thereto but the content binding them. Unlike previous covenants this one remains oral – or, at least, the biblical text does not disclose that this particular covenant is written down at or after its revelation. This oral content remains speech, albeit an insufficient speech by itself: it needs and complements the (written) covenant at Horeb. The oral linearity of Moab joins the inscribed simultaneity of Horeb perhaps to invest this and every moment with covenantal content and significance.

Nevertheless, Moses repeatedly asserts that this covenantal relationship begins on a

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47 Deuteronomy Chapters 6-29.
48 Deuteronomy 28:69.
50 Deuteronomy 29:8.
51 At the beginning of this covenantal text, Moses says “these are the commandments God commanded [me] to teach you” (Deuteronomy 6:1), and again in 28:69 God is mentioned to give gravitas to Moses’ teaching. But God does not teach or command the people directly.
certain day (יום, this day) as if to say it has no end. Just as no historical generation – previous, present or future – can find itself standing outside the covenant, no person of any rank is exempt from it. Moses stresses that entrance into this covenant (ברירת בני) is a singular, individualized passing from one quality of relation with God to another. In contradistinction to the communal nature of previous covenants, this covenant is literally idiosyncratic; it is individuated for each individual and by each individual’s choices. However much one might stray from the terms of the covenant, even one’s physical death does not destroy the covenantal relationship.

2.5 Jeremiah

The prophet Jeremiah continues the displacement of God as the sole rightful authority in the covenantal relationship, but he does so in a different way. Speaking to all nations wherein the Israelites were dispersed, God speaks through Jeremiah to declare a new covenant (תורת נא-being) in the coming days (בימינו) with the house of Israel and the house of Judah. This covenant, Jeremiah assures, will be different from the previous one established with their ancestors when God brought them forth from Egypt. After some time (כי יקמו), God will establish this covenant (ברירת בני) with the house of Israel: “I will put my Torah among them

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52 See Deuteronomy 29:9, 11, 12, 14; 30:2, 8, 15, 18, 19.
53 Deuteronomy 29:13-14, 9-10.
54 Deuteronomy 29:11. This verb of passing also demarcates transgression of the covenant, the movement out of proper relations with God (Jeremiah 34:18). See discussion in Novak 2005:54. The verb is the same for “crossing” the Jordan. See, for example, Deuteronomy 6:1, at the beginning of this covenantal text.
55 In Deuteronomy Chapter 30, Moses uses the second person singular in his concluding pleas to abide by the covenant’s terms.
56 Jeremiah 31:10, 30. At this time, Israel and Judah were the Northern and Southern Kingdoms, respectively.
57 Jeremiah 31:32. At first glance, one might think this distancing from past covenants echoes Moses at Horeb (Deuteronomy 5:3). But whereas Moses denies that “this covenant” was established at all with their ancestors (לאرى שמה), Jeremiah insists that this “new covenant” will not be like the one established with their ancestors. Moses emphasizes that the covenant begins now, with we the living (שהלעינו כהנים)) and not before. Jeremiah, by contrast, merely says that the “new covenant” will be unlike previous – or ongoing other – ones. Indeed, he says that previous ones were broken by wayward people. His “new covenant” promises to be all but invincible.
and upon their heart I will write it. I will be for them God and they shall be My people. They will not teach anymore – a man his neighbor, a man his brother – saying, “Know God,” for all of them will know me, from the least of them to the greatest of them, says God, for I will forgive their iniquity, and their transgressions I will no longer remember.”

Jeremiah portrays God as the initiator of the covenantal relationship but not as the sole authority in it. He achieves this by saying that the content of the covenant will be inscribed on the seat of human intellect – a notion already proposed by Moses at Moab. That said, however, this content remains mysterious and incommunicable insofar as none can teach it to another; they already know God. The content and ultimate source of the content will be beyond language; they can only be intuited. Jeremiah hereby imagines that when humans think, they think Torah, that is, they think God’s will. To the degree humans share God’s thought, they also share God’s authority.

Jeremiah envisions an intimacy of incredible proportions, an intimacy so close that distinguishing the elements is difficult at best and impossible at worst. Speaker and audience all but merge and the content is for humans to embody, literally. But it is an intimacy that is “not yet”; it remains, for Jeremiah, in the future. Whether it remains forever in the future is left open.

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58 Jeremiah 31:33-34. Again, the trope of forgetting comes into play, but here it is portrayed in the obverse of no longer remembering. What does it mean that God will “no longer remember”? Is this an act of will? Perhaps, as it is expressed as a promise. Divine epistemology, it seems, dramatically differs from humanity’s.

59 The covenant or pledge ( אניֹקָט) described by Nehemiah a century later has humanity as the initiator. They pledge in writing to make an oath ( שָׁמַרְתֶּם) to walk according to God’s Torah ( תֹּרָה), and to guard and do all the commandments of Adonai, inclusive of God’s rules and laws (Nehemiah 10:30). This document begins with individual authorities’ names and then includes others who seek to follow God’s teaching and “all those who know (and) understand” (10:29). The content includes social restraint (no endogamy), ritual restraint (no shopping from gentiles during holy days), and economic obligations to uphold the institution that facilitates divine worship. Though this document is preceded by an oral acknowledgment that God is the creative sovereign of the earth in its entirety – as if to say that the following pledge is an expression of theological commitment – the people’s ultimate concern is political: they desire not to be subject to kings who rule by whim (9:37), and their only recourse is to appeal to God to liberate them.

50 In biblical language, the heart is the mind. See Deuteronomy 29:3. When God hardens Pharaoh’s heart (Exodus 4:21, ad. loc), God stiffens Pharoah’s will. On Moses’ proposal, see Deuteronomy 30:11-14, especially verse 14: “for it [Torah] is a very close thing you, in your mouth and in your heart for you to do it.”

61 Novak (2005:70-71) queries whether this knowing is a confirmation of the Torah or an affirmation.
unsaid in this text.\textsuperscript{62} Be that as it may, Jeremiah’s is a new covenant that does not abrogate previous covenants as much as it supersedes them.\textsuperscript{63}

2.6 Analytic Contribution

Since a theory of covenant is quintessentially theology, it is ironic that the most consistent move in these biblical covenantal texts is to eclipse of God as the sole authority in the covenantal relationship.\textsuperscript{64} On the other hand, none dispenses of God altogether. Each text invariably depicts God as either the initiator or speaker or ultimate authority behind the covenantal relationship. Only God announces a new quality to an already existing relationship between God and humankind (as in Noah’s) or between God and Israel (all the rest). It is not for humans to say, literally, whether or not a covenant obtains with God. Nor is it for humans to say when a covenant ends; in fact, God never speaks of the termination of a covenantal relationship with humans. Nevertheless, from Mt. Sinai to Jeremiah, humans become increasingly positioned as the rightful authority to articulate and interpret the contents of the covenantal relationship.

The content of these biblical covenants varies. In some, the content pertains primarily to God (Noah, for example), while in others the content apply to humans (the rest). Some content is so abstract as to be ineffable (Horeb, Jeremiah), while others have practical content concretized into words, laws and rules (Noah, Mt. Sinai, Horeb’s preamble, Moab). Some content remains oral (Noah), some transform into observable written language (Mt. Sinai, Horeb, Moab), and some become internalized altogether (Jeremiah). They variously conceive human reasoning as required (Mt. Sinai), desired (Horeb), superfluous (Noah), and passé (Jeremiah).

\textsuperscript{62} God says “Israel will cease to be a nation before me” if and only if the natural order of the universe goes awry (Jeremiah 31:35-36). But since the natural order endures, God says that Israel will be punished according to its deeds (Jeremiah 31:37). That is, the covenant perdures despite (or because of) natural history.

\textsuperscript{63} This is one of the bases for Christian supersessionism. See Luke 22:20; 1 Corinthians 11:25; Hebrews 8:8, 10:16. It may also be understood as a renewal of prior covenants.

\textsuperscript{64} Martin Buber explores this notion of displacing God in his \textit{Eclipse of God}.
Embedded in the content are rationales brought to bear on why a covenantal relationship should occur at all. Whereas the Noahide covenant did not articulate any rationales, and the Mt. Sinai included only a few rationales (such as, to be a treasured people, and to be a kingdom of priests, and to test that the people fear God), later covenantal theories included many more. Moses adds to those rationales such reasons as possessing the land promised them, preserving God’s and Israel’s reputations among the gentiles, learning to fear God, and being God’s possession. Jeremiah, too, offers rationales to goad Israel to accede to a new covenant. If they do, God promises to forgive their iniquities and no longer remember their sins. The increasing prevalence of such rationales to prompt acceptance of and adherence to the covenant suggests that the audience needs convincing. Covenant requires less divine fiat and more mortal buy-in.

This turn to the audience reflects and reinforces the shift away from God as the sole speaker and authority in the covenantal relationship. Except for the Noahide covenant, humans comprise the primary audience of covenantal speeches. The individual human is identified as the primary audience at Mt. Sinai (the revelation is expressed in second person singular) and at Moab; yet most covenantal speeches concern themselves with the collective. The issue of consent is raised (Mt. Sinai) but is mostly ignored (Noah, Horeb, Moab) or co-opted (Jeremiah).  

3. Rabbinic Theories

While biblical texts move to eclipse God as the sole authority in the covenant, rabbinic texts expand on their turn to the audience. Specifically, these rabbinic covenantal texts explore how and why the audience accedes to the covenantal relationship with God at all. In so doing,

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65 Bernard M. Levinson appears overly enthusiastic in his assertion that consent is a major theme of biblical covenantal texts. Despite this overstatement, his analysis is insightful, especially in regard to the admixture of narrative and individuation in some of these texts. See his piece in Walzer, et al, 2000:23-27.
they take seriously the Deuteronomic (30:12) claim that the Torah is not in heaven (לֹא קָרָא, מִשְׁמַרְיָה); it is within human grasp and, as such, it is both intelligible and debatable. These texts, therefore, shift from the somewhat apodictic tone of the biblical texts: they question as much as they declare. 

Throughout these texts, indeed throughout the near millennia of early rabbinic Judaism, covenant remained a popular issue to debate and theorize. For this reason, it is impossible to survey every rabbinic covenantal text. The sample below merely illustrates the breadth of the creativity rabbis brought to bear on this aspect of theology.

3.1. Universalism and Uniqueness

One of the issues the rabbis struggled with in regard to the covenant is “why Israel.” Why was this community chosen to be the primary audience of the covenantal relationship and not the totality of humanity? Although they never reach consensus about which characteristic stands Israel apart from all other nations, the rabbis nevertheless are reluctant to denigrate other nations by excluding them absolutely from experiencing a relationship with God. Indeed, many rabbinic texts envision God seeking humanity for a meaningful relationship. In these texts, it seems as if God is a peddler who plies Torah to the nations in search of a worthy recipient. Israel, as might be expected from the rabbis, is the ultimate customer.

And it should not be surprising that these texts focus on revelation insofar as revelation is God’s speaking forth to an audience. At least liturgically, the rabbis understand revelation to be an ongoing event instead of something buried in history. According to the third century Babylonian Amora Rav Hamnuna, the blessing to be recited before studying Torah should be:

66 See BT Baba Metzia 59b. Novak (2005):84ff discusses the prophetic penchant to “speak apodictically without presenting any arguments at all” and the rabbinic wont to argue issues into their minutiae. The authoritative rabbinic opinion, he says (page 85) “can only be the one the majority of the Rabbis have been persuaded to accept as right.” Whether this holds true throughout the Rabbinic corpus is uncertain, but Novak nevertheless highlights the important role persuasion has in rabbinic discourse. It is curious, however, that there is much disagreement among these rabbinic theories of covenant, which suggests that no one opinion persuades the majority…
“Blessed is God who chose us from among all the nations and gave us his Torah. Blessed are you God, giver of the Torah.”67 The present tense of the conclusion reflects a theology of continuous revelation as if God’s voice keeps reverberating.

If revelation continues wherever Jews study Torah, it must take place everywhere. Despite using past-tense verbs, this 10th-12th century midrash speaks of revelation’s omnipresence and more (see quote).68 At first glance this covenantal text focuses primarily on God’s revelatory omnipresence and polyglot abilities. These divine traits are neither new nor controversial. The novelty here, however, is the discussion of the audience of divine revelation. This text portrays Israel perceiving revelation emanating from multiple locations. In fact, they experience revelation coming from different directions: revelation is vectoral (moving from-to) and is neither stationary nor static. Moreover, Israel can never catch up with it; they are forever late and always in the wrong place.70

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67 This blessing is immediately praised as the best of all the options (רָאָתָם מֵעַלָּבְרֵחַ) by the Stam – the anonymous redactor of the Talmud. Rashi explains that this blessing is approved because it includes thanks to God and praises both Israel and the Torah. Maimonides reinforces its status as the blessing immediately preceding the reading of the Torah (MT Tefilah 7.10). R. Jacob ben Asher (1269-1343, Toledo) identifies this as the concluding prayer for Ashkenazic communities (Tur, Orach Chayim 47). R. Israel Meir haKohen (1839-1933, Poland) in his Mishnah Brurah (Orach Chayim 47.8) says that even gentiles can recite this prayer. On the ambiguous dating of this source, see Stemberger (1996):308-309.

68 Exodus Rabbah (Vilna edition) 5.9. See parallel versions in Midrash Tanhuma, Shemot (Warsaw edition: #25; Buber edition: #22); Yalkut Shimoni, Job 921; and a much truncated version at Deuteronomy Rabbah (Lieberman edition), Nitzavim 5. It seems the Buber and the Yalkut editions share a history inasmuch as both elide R. Yohanan and both change the verb from הקבירה to הקבר.

69 On the other midrashim, different mountains vie to host the giving of Torah (מצח ההר). All were rejected for one or another defect; only Mt. Sinai was without fault and thus given the honor. BT Megillah 29a; Bereshit Rabbah 99.1. Despite this geographic placement of הקבירה, the call of revelation – the call calling itself forth – is
But Israel is not the only audience to revelation. In addition to revelation’s geographic universalism, it is also conveyed in every language possible. R. Yohanan, a third century Palestinian Amora, insists that revelation is promulgated in seventy voices or languages and that every nation hears the voice of revelation in its own vernacular. But even though revelation is proclaimed in every human language, its reception is another issue. Every nation but one suffers existentially when hearkening (שמע) to the voice of revelation. Every nation hears God speaking their language, but, according to this text, they do not hear specific content – and this is too much for them; only Israel endures this experience of hearing God speak in the vernacular.

Although Israel is not harmed in hearing God speak, R. Yohanan stops shy of claiming that Israel is nourished by or benefits from revelation.

The notion that every nation experiences God’s revelation is picked up in other midrashim. In these versions revelation has content communicable and intelligible to humans. Even though the nations of the world understand this content, each named gentile nation rejects it for one reason or another. Indeed, in a third century version (see quote), the gentile nations not only reject revelatory content specific to the Torah, they also reject the Noahide commandments. In response to this moral affront, God gives Torah’s content to Israel (הא saja וכ נטנס לישראל). This midrash concludes: “Israel accepted placeless or outopic. Maimonides insists that Torah’s origin is radically elsewhere: תורה מת השמים – Torah from the heavens (Helek 8).

Note that the verbs are in the present tense in this section of the midrash. The number seventy was already a biblical concept depicting totality or completeness. See, for example, Genesis 46:20; Exodus 1:5, 24:1; Numbers 11:12. Seventy shekels is considered an appropriate gift (among other things) to the Tabernacle (Numbers, Chapter 7).

Maimonides, too, understands revelation to be a unified voice without words; only Moses heard and understood the distinct words of revelation (Guide to the Perplexed, II:33). Mekhilta deRabbi Ishmael, Yitro, 5; Sifrei Devarim, 343.

The gentile communities include the children of Esau (also known as Seir), the Ammonites and Moabites, and the Ishmaelites. Sifrei Devarim, 343.

The Noahide commandments are generally understood to include seven laws: prohibitions against blasphemy, idolatry, adultery, murder, robbery, and (later) eating the limb of a living animal; and the injunction to create courts. See, for example, BT Sanhedrin 56a ff; Maimonides’ The Guide of the Perplexed, III:48. Textual traditions dispute this number and content. See Novak (1983).
the Torah, its explanations and details, as well as the seven commandments that the children of Noah could not uphold and had cast off. So Israel came and accepted them, thus Scripture says, ‘God came from Sinai, and shone upon them from Seir’” (Deuteronomy 33:2). Here Israel apparently lacks the ability to reject the terms of the covenant. Nevertheless, the universalism (geologically and politically) of revelation revealing itself is unmistakable: all nations (could) have a meaningful relationship with God, but some choose not to or are unable to withstand such a relationship. No human community (individuals are not specified in these texts) can exempt themselves from being addressed by God. All communities have some relation to God but only one community takes on a substantive, covenantal relationship and receives upon itself the content of revelation.

3.2. Coercion and Power

The rabbis understood the above portrayal of revelation and covenant to be controversial. Gentile nations, they imagined, would probably take umbrage at this theory. So the Talmudic rabbis construct arguments between the nations of the world and God about why the nations deserve punishment for not following the strictures of scripture. At first the nations claim they were never offered the Torah at all. R. Johanan, a third century Palestinian Amora, citing the same biblical verses as in the ‘peddling’ midrash above, disagrees and says God brought the Torah to each the nation of the world and in every language but none accepted it except Israel. Granting this, the nations retort that they should not be punished because had they experienced what Israel did at Mt. Sinai, they, too, would have accepted and followed the Torah. But because they did not, they should be protected despite violating Toraitic rules. And what was it they

77 The Mekhilta envisions Israel as more activist: they verbally accept the terms of the covenant (כל אשר דברי העשה טפשים).
78 BT Avodah Zarah 2b.
imagined Israel experienced at Sinai? God tipped the mountain over the people to coerce them to accept the Torah.

This image of the overturned mountain is repeated in the Talmud (see quote). R. Abdimi bar Chama bar Chasa, a fourth century Palestinian Amora, interprets “they stood underneath the mountain” (Exodus 19:17) to teach that “God held the mountain above them like a casket and said to them, “if you accept the Torah, well and good. But if you do not, there will be your grave. R. Acha bar Yaacov\(^{80}\) said, This is a great pronouncement against the Torah. Rava\(^{81}\) said, Nevertheless, in the days of Ahashuerus a generation accepted it, as scripture says, “The Jews established and accepted,” (Esther 9:27) which means they established what they had already accepted.\(^{82}\)

From one perspective, it appears Israel is given a choice, albeit an existential one, of whether to accept the Torah. The people are free to reject the covenant’s terms and thereby end the relationship with God altogether. They probably already had a predilection in that direction, for how else could God’s coerciveness be intelligible? Thus it seems God is vulnerable to the people’s freedom and wont to reject.

R. Acha bar Yaacov sees things differently; he does not assume that the people would have rejected God’s covenantal terms on theological terms but on legal ones. His “great pronouncement” (מימדא רבד) speaks of a legal preemptive announcement by someone that an ensuing sale of property occurs under duress, and this witnessed affidavit serves as a tool

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79 BT Shabbat 88a.
80 Third-fourth century Babylonian Amora.
81 Third-fourth century Babylonian Amora.
82 BT Shabbat 88a. Holding a casket or tank (מימדא רבד) over a human can cause death – but there is disagreement amongst the rabbis regarding proper liability for this death. See BT Sanhedrin 77a. A parallel version is found in Midrash Tanhuma, Shoftim 9.
to annul the transaction retroactively by a court. R. Acha bar Yaacov’s analogy suggests that humanly-developed legal practices can reach into the realm of theology, even into the covenantal relationship between Israel and God itself. What could it mean to annul the relationship between God and Israel? Who would or could serve as the obligatory witnesses to such a TRANSACTION? Which court would or could adjudicate this trial? When would this trial occur? Perhaps these are merely rhetorical questions for which no answers can ever be provided. Yet the power of the analogy remains: if God did coerce Israel, the relationship and its contents are legally suspect.

A third option is offered by Rava, a contemporary of R. Acha bar Yaacov. For him, the historical affirmation by the Jews of Persia under king Ahasuerus serves as an apparent apologetic: even if God coerced Israel initially at Mt. Sinai, the Persian Jews nonetheless voluntarily accepted the terms of the covenant, albeit later; thus, the covenant is without blemish. Insofar as theirs is a re-acceptance or a re-affirmation, the nature of the initial acceptance is all but irrelevant. On the other hand, if the later confirmation reconfirms the first, it grants authority to the first. For without the reconfirmation, the original acceptance would have no authority for subsequent generations.

Many scholars gloss this text to portray God coercing Israel into a relationship and Israel accepts terms of the covenant only under duress. A more detailed appreciation of it, however, reveals that the audience is no mere victim of divine coercion. It conceives the audience as powerful in three different ways. Israel has the existential freedom to reject the covenant; it has the legal right to annul it; and it has the historical wherewithal to grant or withhold from it

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83 See BT Baba Batra 39b-40b.
84 Rashi at BT Shabbat 88a. s.v. מסדיון רבא - portrays God taking Israel to court and serving simultaneously as plaintiff, lawyer and, obviously, judge. See also Novak (2005):66ff.
85 Or Xerxes, who reigned from 485-464 BCE.
86 See also BT Shevuot 39a. See discussion in Novak (2005):71-73, who argues that distance in time and space is necessary to deliberate adequately the covenant and its terms. If this is to be understood as a renewal of a prior covenantal commitment, why not reference the one done at Shechem just before Joshua dies (Joshua 24); or the one at King Josiah’s reformation in Jerusalem (II Kings 23); or the one during Ezra’s time in Jerusalem (Nehemiah 10)?
retroactive authority.\textsuperscript{88} In so doing, the rabbis emphasize the audience’s power to shape both the nature of covenant’s origin and its ongoing authority. Whether the covenant’s authority stands on theological, legal or historical grounds depends on the perspective or choice of the audience.\textsuperscript{89}

3.3. Authority, Consent and Freedom

If God’s coerciveness compromises the covenantal relationship, perhaps a different theory of covenant can ground it in a positive manner, a manner that is less theologically suspicious.

A late third century \textit{midrash} portrays the establishment of the covenantal relationship as having theological, legal and moral validity (see quote). It begins by querying why the content of revelation is not given at the outset of the Torah. In a parable, it compares God to a human king who enters a province and asks the people, “Shall I reign over you?” to which they reply, “Have you given us any benefit that you should reign over us?” So the king builds infrastructure, secures their sustenance and wages war on their behalf. He asks again for the right to reign and they respond positively. So it is for God and Israel: God extricated them from Egypt, fed them in the wilderness and defended them against Amalek, among other things. Thus when God asks to be reign over them, they approve.

\begin{quote}

אנני ה’ אלהיך. מתינו לך את אמרו, ואשר ת דולר את בית יתדות,משל מלא לחם ובר זומת,לאיחד שכנך буд릇י, אמר חם,אלמנך עילם, אמרו לך, كلمة עשית לנו Sandra שתמלוך עלינו. מנה עשת, בנה לחם את הרוחם, חכמים lethm את חמי, ושאלה lethm,מלומת את חמי, אמרם לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך, אמרו לך,אמרו לך.

\end{quote}

\textsuperscript{88} Hartman (1997):219, glosses over these distinct readings to favor the historicist version, calling Purim an internalization of the norms imposed at Sinai. Rosenzweig (1955):90, however, summarizes this rabbinic teaching as “we may do what is in our power to remove obstacles; we can and should make free our ability and power to act. But the last choice is not within our will; it is entrusted to our ability.”

\textsuperscript{89} Levinas disagrees. He understands this sugya to mean that revelation is prior to human reason, and that ethics is prior to revelation. See discussion in §5.4 below.

\textsuperscript{90} \textit{Mekhilta deRabbi Ishmael}, \textit{Yitro}, 5.
The midrash continues with another parable (see quote). A human king enters a province wherein his servants encourage him to issue decrees. He replies that he will do so only when the people accept his sovereignty; for without the people’s acceptance of his sovereignty his decrees would also be unaccepted by them. "Thus God says to Israel: I am your God, you shall have no other gods. Is it my sovereignty you accepted upon yourselves in Egypt? They replied, Yes. So just as you accepted upon yourselves my sovereignty, accept my decrees."  

In both parables, the audience’s consent is critical for God’s authority. This consent emerges either from acknowledging benefits performed in human history or from legal logic. Either way, the past justifies the audience accepting God’s authority now. Even more than in the previous theories, this covenantal theory portrays Israel as a distinct polity (מְדִירֵי) exercising the right to reject and accept options put before it. Its consent is neither mandated nor coerced but requested by God. By pointing to Israel’s freedom to reject the covenant these parables assert that the issue of consent is inextricably intertwined with the covenant’s authority and durability. For only with the audience’s consent would the covenant have unquestionable theological stature. And politically, too, only then it would have durability, as Israel’s freely given consent to God’s sovereignty and subsequent rules is a form of self-governance insofar as

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91 Mekhilta deRabbi Ishmael, Yitro, 6.
92 Mekhilta deRabbi Ishmael, Yitro, 6. Another midrash portrays God redeeming Israel on the condition that they fulfill God’s decrees, see Sifrei Bamidbar, Shelach, 115; Sifrei Devarim, Ekev, 38. See also Isaac Abravanel’s Commentary on the Pentateuch, Deuteronomy 29, found in Walzer, et al (2000):37-40.
94 Indeed, this midrash depicts Israel as bargaining with God about the conditions of the content of the covenant. Melkhita deRabbi Ishmael, Yitro, 5, s.v. rabi omer. See Mittleman (2000):82-83.
it is the community that “elects” God. In this way, the heteronomy championed in the bible gives way to rabbinic notions of autonomy.

3.4. Analytic Contribution

Rabbinic theories of covenant continue the biblical trend of displacing God as the sole authority in the covenantal relationship. While God’s revelation may be universally proclaimed, it is understood and received by only a select people: the community of Israel. At least in these covenantal texts, the rabbis do not detail the exact terms of the covenant. These details are found in their broader project wherein they enumerate and explain covenantal obligations in terms of \textit{halakhah} and \textit{agadah}. And yet there is consensus among these texts that the covenantal content – whatever it might be – is late: it can only be subsequent to the rightful grounding of God’s sovereignty.

Therefore it is not surprising for the rabbis to focus on the audience and its perceptions of the covenantal relationship generally. It is as if the rabbis seek to convince coreligionists that the covenantal relationship with God honors human reason and freedom – issues suggested but not thoroughly debated in the earlier biblical covenantal texts. To be sure, the rabbis bring hermeneutics to the discussion insofar as they practice reading scripture beyond literalness. They also appeal to human reasoning through parables, legal analogies and notions of historical precedence. That is, they address the human mind. And these covenantal theories appeal not to individuals within the human audience but to the collective: the community of Israel is the rightful – and relatively free – partner with God in the covenant.

\footnote{This problematizes the nature of the obligation to obey God’s decrees. See discussion by Michael J. Sandel in Walzer, et al, (2000):30-33.}

\footnote{Mittleman, (2000):84, shows that the rabbinic use of the term covenant slips into hypostasis: it no longer points to a relationship but only to itself.}
4. Medieval and Early-Modern Theories

The focal shift toward the audience is taken up with even greater zeal by medieval and early-modern Jewish thinkers. Because they are more theological and philosophical in orientation than even the halakhists of previous generations, many arch back to analyze the nature of creation and revelation, while others look to future goals or purposes to explain how and why covenant matters.

4.1. Universal Reason: Moses ben Maimon

Considered the greatest medieval Jewish sage, Moses ben Maimon (Maimonides or Rambam, 1135-1204) does not formally address the notion of covenant, but in a piecemeal fashion he construes covenant as primarily a construct of human reason. In both his legal code, the Mishneh Torah, and in his theological-philosophical treatise, the Moreh Nebukim, Rambam describes Abraham as recovering monotheism from disuse and dispersing it to his children and contemporaries via reasoned teaching. Indeed, it is human reason that enables humanity to comprehend basic moral laws such as the Noahide laws, at all. And it is universal human reason that enables people to comprehend God. Only human reason facilitates knowing God rightly and comprehends the providential relationship between God and humankind. But humans are not endowed equally with the intellectual wherewithal to know God; providence flows proportionally according to intellect’s perfection. The more righteous and intelligent

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97 Judah Halevi, by contrast, understands covenant to be a biological one, passed from generation to generation through blood. See a comparison of these two theories in Frydman-Kohl (1992). See Rosenzweig below for a modern interpretation of Halevi’s theory.
98 MT Avodah Zarah 1:1-3; MN I:36, III:29.
101 See MN III:17-18. Rambam says his version of providence – that humans (and not animals) receive their just desserts – is less intellectually repugnant than the other theories he reviews. See MN III:17.
receive greater divine providence than the less righteous and the less intelligent. Hence, only that individual whose faculty of reason excels can receive prophecy; and Moses is considered to be the philosophical prophet par excellence.

Yet Maimonides conceives the relationship to be between God and humanity, not between God and Israel. Each and every human has some capacity to receive God’s intellectual overflow. The difference, then, between the prophets of Israel and Moses in particular from the rest of humanity is a matter of degree and not of kind. Even if God is the progenitor of the covenant, human reason is its limit and thus its ultimate arbiter. Moreover, it is human reason that explores and explains the rationales behind the covenant’s content.

4.2. Universal Necessity: Judah Loew ben Bezalel

The 16th Century Prague Talmudist and mathematical scholar Judah Loew ben Bezalel (a.k.a., Maharal, died 1609) disagrees with Rambam’s emphasis on human reason as the focal point of the covenant. He would rather focus on the covenant’s origin than on its audience. His point of departure is the Talmudic passage in which God holds Mt. Sinai like a casket over Israel’s

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102 MN III:18. Rambam says that the ignorant and disobedient are in a despicable state and, as such, are relegated to the same status as animals. “For this reason, it is a light thing to kill them, and has been even enjoined because of its utility. This matter is one of the fundamental principles of the Law, which is built upon it, I mean to say upon the principle that providence watches over each human individual in the manner proper to him.” (MN III:18). What Rambam proposes, then, is that it is theologically appropriate to kill those who are ignorant of and disobedient to true beliefs and necessary opinions. If intellect is even only partially biologically determined, does this perspective permit a kind of eugenics?


104 For this reason, Maimonides is not quick to disparage Christianity and Islam. Despite their deficiencies, these other monotheistic traditions “prepare humanity for an acceptance of a full monotheism” properly conceived in Judaism. See Frydman-Kohl (1992):68.

105 See discussion of ta’amei hamitzvot in Twersky (1980).
head (BT Shabbat 88a; see quote). He interprets this to mean that God does not hold the mountain over Israel’s heads because they might recant. Rather, God’s existential threat is necessary so that one cannot think that Israel’s acceptance of the Torah was based on human will. If Torah’s acceptance were dependent on human will, then Torah’s existence would have been contingent. This is unacceptable for Maharal, as the universe cannot exist in any reasonably ordered manner without the Torah. “It could not be otherwise.”

Maharal distances himself from Maimonides’ preferred finite and purposeful Aristotelian universe and looks more toward a Platonic world in which the unseen spiritual world is more intelligible than the visible material world. This ontology forces him to read the Talmud a certain way. Despite saying so, he cannot read the overhanging mountain as a matter of coercion per se, because this would admit contingency. Rather, the overhanging mountain must be necessary. God held the mountain over their heads “as if to say that [Israel] must necessarily accept the Torah, and whatever is necessarily so, has no release or annulment, because it is necessary.” The necessary, for Maharal, is more than sine qua non: it is inescapable. The covenant precedes Israel – indeed, even the universe – and neither God nor Israel can abolish it.

A bit further on in his Tiferet Yisrael, Maharal contends with Rava’s Talmudic assertion that the Jews renewed their commitment to the Torah in the time of Ahashuerus. Maharal’s logic is that since these Jews accepted upon themselves the singular mitzvah of reading the Megillah (to celebrate Purim) they simultaneously re-affirmed the earlier body of mitzvot. If the latter was done voluntarily, then how much more so was the earlier. “Hence, it is as though the original acceptance of the Torah was voluntary too, for the [ultimate] conclusion proves the original

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106 Tiferet Yisrael, ch 32.
108 See also Maharal’s Netivot Olam, I, Netiv HaTorah, 3, where he cites Bereshit Rabbah 1.1. There, God consults the Torah when creating the world; that is, the Torah precedes creation itself.
109 In creation theology, the world depends on God – as in a radical contingency – for without God, the world could not exist. So, too, in logic: a conclusion from logic depends on a certain premise. These preconditions (God, premise) render what follows (the world, a conclusion) as contingent.
110 He asks further on, “The lifting up was necessary in and of itself, for how can the Torah, which is the [completion and] perfection of the entire universe, depend on the fact that Israel chose to accept it?”

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[intention].” With this “as though,” Maharal coordinates the biblical “we will do and we will hearken” (וְשָׁאָר הַמַּרְא֣וֹת) with his ontology of necessity: “The Torah was voluntary on the part of Israel but necessary on God’s part.”

Maharal reads coercion out of this Talmudic text so as to uncover within it a different set of issues. For him, coercion smacks of disingenuousness and would undermine the duty to obey the rules of the covenantal relationship; if coercion inhered to the establishment of the relationship, escape would be plausible. So as to preclude this potential theoretical weakness, Maharal looks at the covenantal relationship from the perspectives of its participants. From God’s (spiritual / forms) perspective, the Torah is necessary for the universe’s existence (and all the more so for Israel’s); its “acceptance” must come at any price. Israel’s (material / contingent) perspective, by contrast, requires projecting retroactively voluntarism onto the initial acceptance of the Torah so as to render intelligible and reasonable Israel’s obligation to obey the terms of its relationship with God.

For Maharal, then, covenant’s authority exists before speaker, the spoken and the audience, and before reason and autonomy as well. Whatever reason or autonomy are found within covenant, they are discerned only subsequent to the covenantal relationship’s formation. Covenant precedes all: it is necessarily inescapable.

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111 Kaplan (1998):36, states, “Thus, for the Maharal, as later for Levinas, the inclining of the mountain does not contradict the Israelites’ proclamation ‘We will do and we will hear.’ Rather, the Israelites’ free acceptance of the Torah arose precisely out of their profound recognition that the Torah is not some dispensable luxury, but is a vital--a cosmic--necessity, and this profound recognition is signified by the inclining of the mountain.” Kaplan overstates Maharal’s Israelites. For Maharal, the Israelites do not “recognize” the Torah as some necessity at all – it is necessary only from God’s perspective. At most, Kaplan could say that Maharal conceives the rabbis authoring this text as understanding the difference between divine/universal necessity and human volition.

112 Novak (2005):81ff concurs. Just as children are required to obey parental commands, it was necessary to impose Torah at Sinai because only later could a mature Israel reflect back on that earlier obedience and discern reasons justifying it.
4.3. Human Contract: Baruch Spinoza

Although he was excommunicated from the Amsterdam Jewish community fourteen years earlier, Baruch Spinoza’s (1632-1677) *Theological-Political Tractatus* (1670) shows his ongoing curiosity and skepticism about traditional Jewish understandings of the Bible and its theological teachings. Because freedom of reason was his major concern, he worked hard both to read scripture without the corrupting force of others’ interpretations and to sever reason from faith. A text, in his view, should be read in its literary and historical context, unencumbered by tradition or dogma. By dethroning scripture as the sole source of truth, Spinoza elevates persuasive argumentation appealing to reason in its stead.

Spinoza identifies two historical covenants mentioned in scripture. While the first was more theologically pure, the second was the one that had historical durability. The first – “the kingdom of God” – emerges when the people, by “express covenant and oath (מעשון נשען)…surrendered their natural right and transferred it to God, which they did freely, not by forcible coercion or fear of threats.” Insofar as God rules the people directly and there is identity of religious and civic law, Spinoza calls it a theocracy. Every person in this theocracy had the equal right to consult God, and receive and interpret law: that is, each individual shared in the state’s government.

But this first theocratic covenantal state faded quickly. Spinoza points to the people’s fear of God’s thundering power at Mt. Sinai and their call to Moses to intercede on their behalf.

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113 There is evidence that he was familiar with Abraham ibn Ezra, Moses Maimonides, Hasdai Crescas, and Isaac Abravanel – all Spanish Jewish theologians, biblical exegetes and more. See Seymor Feldman’s introduction to Spinoza (2001).
114 See Spinoza (2001):5, 88ff, 146. Spinoza scoffs both those who think philosophy is the handmaiden to theology as well as those who think theology is ancillary to philosophy. Aquinas falls in the former camp; Al-Farabi and Averroës in the latter.
117 Flavius Josephus was the first to coin “theocracy” to describe Moses’ governing structure in which authority and power were ascribed to God. *Against Apion*. 2.17.
as the abrogation of this first covenant. In this request, they transferred to Moses their right to consult God and participate in their own government. As Moses becomes the *de facto* lawgiver, interpreter, judge and supreme king, he responds to the people’s political naïveté – emerging as they were from enslavement in Egypt – by promulgating what Spinoza calls ceremonial laws to regulate their lives and remind them of their subservience to this law.\footnote{See Exodus 20:18. Spinoza (2001):190ff, 205, 64.}

Moses’ covenantal polity also existed only for a short time. Spinoza concludes from this historical fact that Israel could not have been ‘elected’ or ‘chosen’ absolutely and eternally. Rather, Israel was selected by God primarily because of its social organization and not for any inherent wisdom or theological knowledge.\footnote{Spinoza (2001):38.} God’s laws promulgated by Moses were intended to sustain the Israelite polity only in a certain time and terrain.\footnote{Spinoza (2001):5-6.} Without geopolitical sovereignty, so Spinoza’s argument goes, the polity’s laws no longer bind.\footnote{Novak (2003):93, sees Spinoza reading his contemporary understanding of state sovereignty into scripture.}

And without historical authority, law – even God’s law – has no ontological authority. Humans, Spinoza argues, “do not know by nature that he has any duty to obey God.”\footnote{Spinoza (2001):181.} By stressing that human cognizance is necessary for ‘duty to God’ to have meaning, Spinoza asserts that human reason is *sine qua non* for the covenantal relationship (see quote). Moreover, human will is also necessary insofar as it is humans who “by express covenant promised to obey God” and thus surrendered their freedom. In short, it is humanity that originates the covenantal relationship, not God: humans elect God.\footnote{Spinoza (2001):204. See also Novak (2003) and Seeskin (2001):225.} Whatever laws this contractual relationship might entail, they are not *a priori* (natural) but late

For if men were by nature bound by the divine law, or if the divine law were a law by nature, there would have been no need for God to enter into a contract with men and to bind them by covenant and by oath. Therefore we must concede without qualification that the divine law began from the time when men by express covenant promised to obey God in all things, thereby surrendering, as it were, their natural freedom and transferring their right to God in the manner we described in speaking of the civil state.\footnote{Spinoza (2001):182}
and only intelligible to the degree they comport to human understanding of law, whose highest purpose is historical: the welfare of the people and its polity.\textsuperscript{127} Scripture, in this view, imparts only ceremonial laws and universal moral teachings.\textsuperscript{128} Its supposed divinity derives only from human reason measuring its teachings against established understandings of “true moral doctrine” – a task that devolves to the individual’s independent reason that is unencumbered by any external or eternal authority.\textsuperscript{129}

Spinoza’s theory of covenant, then, explicitly portrays humanity initiating the covenantal relationship with God, a relationship that Spinoza calls a contract (\textit{pactio} or \textit{contractum}). Not only does human reason acquire authority in this contracting act, it also abrogates to itself ultimate authority by taking on the task of evaluating scriptural (that is, religious) values over and against perceived universal values. The relationship’s content, whether law or commandment, depends solely on human reason and is cognizable only subsequent to the relationship’s establishment. And the relationship endures as long as the seats of human reason transmit across the generations the perspective that this relationship is sacred.\textsuperscript{130} In this way, Spinoza’s theory renders God a passive participant in the covenantal relationship. Insofar as authority rests in human reason and content must further the human goal of an ordered society, the audience – humanity writ large – self-gOVERNS into the future.

\begin{footnotes}
\item[128] Divine law leads to blessedness, whereas the ceremonial law, as promulgated to the Israelites, “promises nothing but material advantages and pleasures.” Spinoza (2001):60.
\item[129] Spinoza (2001):88, 103ff.
\item[130] Nothing, he says, “is sacred or profane or impure in an absolute sense apart from the mind, but only in relation to the mind.” Spinoza (2001):147. At page 145, Spinoza cites Deuteronomy 30:6 and Jeremiah 31:33 to support his position.
\end{footnotes}
4.4. Reason and Revelation: Immanuel Kant

While Spinoza’s Jewishness is questionable, he nonetheless sets the agenda for later scholars because he talks about Judaism. So, too, for Kant: his impact on subsequent philosophy and theology generally requires modern Jewish scholars and especially Jewish ethicists to grapple with his view of religion and of Judaism in particular. Immanuel Kant (1724-1804), in his *Religion within the Limits of Reason Alone*, differentiates pure religion from organized religion. The former concerns itself only with “obedience ensuing from the moral disposition.” It requires no revelation, statutory laws or institutions because the moral law, inscribed as it is in the heart and mind of the virtuous individual, bespeaks itself through the individual’s obedience to it. The identity of pure religion with the moral law renders it aistorical, universal and individually manifested.

Organized religion or church, by contrast, is historically contingent and dependent on a public covenant (*Verpflichtung*) backed by divine statutes. The goal of organized religion, through its divinely revealed statutory laws, is to dissolve into the invisible universal religion. Because of its reliance upon the revealed laws, organized religion rests heavily on scripture, and even more so on scriptural scholars who ensure the authority of the doctrines espoused by scripture maintains force in each generation. In this way, organized religions “must finally become mere faith in Scriptural scholars and their insights.”

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131 As Spinoza wrote in Latin he probably understood his primary audience to be Christian. His content, however, pertains to Judaism’s self-understanding.
132 On Kant’s impact on modern Jewish theorizing about covenant, see Eisen (1987).
133 Kant (1960):96.
134 Kant (1960):95.
135 A “church, on the other hand, as the union of many men with such dispositions into a moral commonwealth, requires a public covenant, a certain ecclesiastical form dependent upon the conditions of experience. This form is in itself contingent and manifold, and therefore cannot be apprehended as duty without divine statutory laws.” Kant (1960):96.
137 Kant (1960):105. See also 97ff. And further, at page 120: “The pure faith of reason, in contrast, stands in need of no such documentary authentication, but proves itself.”
Kant views Judaism according to his bifurcation of religion. In its original form, Judaism was like but not exactly an organized religion. Even though it had “a collection of statutory laws upon which was established a political organization,” Judaism was no church. Indeed, it was because of the Jews’ reliance upon their scriptures that enabled them to endure as Jews despite and because of their diasporic existence. Kant explains the Jews’ ongoing existence as evidence of a special Providence or covenant. This covenant can be understood in one of two ways: (a) as divine preservation of this people for a future earthly kingdom; or (b) as divine preservation of the messianic idea by holding Jews as an exemplar of punitive justice for establishing merely a political and not a moral earthly kingdom. The covenant is either a relationship whose telos pulls Jews into the future, or a relationship in which the past pushes Jews into tomorrow. The one sees the covenant ultimately benefiting Jews, and the other has Jews serving as an ongoing pedagogic moment for other communities.

Either way, the Jews’ covenant with God (regnum divinum pactitium) has to draw proof from history. That Jews endure through history with this old and not the new (Christian) covenant, proves for Kant that their covenantal relationship has historical origins but no historical end. In this way, just as pure religion is achieved in part through organized religion,
universal and ahistorical reason cannot absolutely abandon revelation because the latter leads to the former. Even though the duties a historical religion conceives as duties to God are to be understood as subjectively imposed, they are nonetheless invaluable to reason insofar as they train the faithful to embody the moral law. And insofar as humans can never be perfectly rational beings embodying the moral law totally, civilization must necessarily intertwine revealed duties with those duties derived from purely reasoned morality.

Kant’s theory of covenant, then, posits authority in neither God nor people but in the moral law itself. It is the moral law that enables the relationship between Jews and God to be established at all and to endure through history. And it is the moral law that empowers humans to interpret scripture and render it intelligible and compelling for contemporary communities. The covenant’s content, while particular to Jews, is what universal morality allows. And while the immediate audience of the covenantal relationship may be Jews, the ultimate audience is the totality of humankind insofar as the covenant trains Jews to embody the universal moral law.

4.5. Analytic Contribution

Continuing the rabbinic project of eclipsing God in favor of humanity, medieval and pre-modern scholars’ theories of covenant solidify human reason as necessary if not sufficient for the covenant to exist. Though Maharal’s theory also eclipses God insofar as it portrays covenant

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by policing them and not by intervening into their internal workings: the state needs these non-rational means of producing moral behavior just as the churches need the rational means of state to order society. Moses Mendelssohn (1729-1786) also contributes to this trend, though he does not address covenant directly. For him, insofar as reason is sufficient to ascertain eternal truths that are, by design, embedded in nature, what is revealed at revelation – and thus embedded in language – is word and script, specifically law. Mendelssohn insists that Judaism is not a revealed religion but a revealed legislation. This legislation, ceremonial in nature and aimed to impel action and induce reflection, is framed in language geared to a historical community. As such, it avails itself to human deliberation through time. And since the original theocracy died with the destruction of the Second Temple, the only laws that persist with any semblance of authority are personal commandments that are voluntarily taken on. These commandments can be abrogated only if and when a second messiah comes to relieve Jews of these responsibilities. Until that time, Jews are doubly yoked with these personal commandments and the civic laws of the state. See Mendelssohn (1983); Seeskin (2001):139ff. Kant references Mendelssohn at Kant (1960):154.
preceding God, it too understands human reason as necessary to acknowledge and accede to the covenant. These theories’ emphases on human reason suggest that authority no longer rests in scripture or tradition by fiat. Rather, authority now must be constructed via appeals to human reason—that is, through argument.\footnote{All these scholars write extensive theological and philosophical works as if to persuade their audiences of the rightness of their theories. These arguments create authority more than the scholars’ personal statuses.} Moreover, an argument’s persuasiveness increases less by appeals to logic or rationales embedded in a particular community than by using universal reasoning. The development of assent to the covenant is achieved through the speech of and the appeal to the (universal) rational faculty. Hence, following Maimonides’ notion of the philosopher-prophet and Kant’s scriptural scholar, the locus of rightful authority to generate, interpret and disseminate religious norms for a community is found in those who simultaneously embody religious as well as secular or universal intellectual authority, which, as noted in Chapter Two, would be today’s rabbi-scholar.

5. Modern Theories

Twentieth Century covenantal texts produce theories that further remove God from the notion of covenant. Because of their willingness to strip their theories of the mythical dimensions previous generations incorporated, these modern scholars present theories that make it difficult to ascertain whether God is an active covenantal partner at all. If this be the case, it raises serious theological questions of whether contemporary theories of covenant are truly theories of a relationship between humankind and God or something else altogether, and, subsequently, what hold these theories have over deliberations of communal norms.\footnote{And this trend raises the question if modern covenantal theories are deliberations in theology \textit{per se} if theology is understood as the study of (relations with) God.}
5.1. Covenant of Reason: Hermann Cohen

Taking seriously Spinoza’s measuring religion in light of morality and especially Kant’s universal reason, Hermann Cohen (1842-1918) argues in his *Religion of Reason: out of the sources of Judaism* (1919) that Judaism best approximates the ideal – and reasonable – religion whose essence is ethical perfection.\(^{145}\) This is visible through Cohen’s treatment of three biblical theories of covenant: Noah, Moab, and Jeremiah. Before turning to these covenants, it should be noted that Cohen asserts “the idea of God” as the sole unifying concept bridging what is and what ought to be. Only “the idea of God” can ground morality and serve as its ultimate goal.\(^ {146}\)

Moreover, Cohen puts forward the idea of correlation as a method to connect the idea of God with the variegated reality humankind experiences.\(^ {147}\) Insofar as God is an idealized idea of perfection, God is being (*Sein*). God’s being, however, is without existence *per se*, for if God did have existence (*Dasein*), it could only be understood as negative attributes, qua Maimonides.\(^ {148}\) And God’s being, perfectly perfect as it is, is “the uniquely One” (*Einzigkeit*) – without blemish or fracture – and as such, conceptually explains and grounds nature’s multiplicity, for only against the backdrop of unity can difference be identified as such much less experienced or understood.\(^ {149}\) This epistemological ground explains why ethics belongs to the sphere of humans and not to God, for only humans become or change at all. The command to love one’s neighbor, Cohen claims, is an ethical charge that can only be given to entities that can change or become more loving, that is, more holy. The call to become more holy is thus an ontological claim that can only be rightfully understood in light of a correlation between a

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\(^{145}\) Cohen (1995). The title alone reflects his argument’s goal. The first edition’s title, in fact, proclaimed Judaism “the religion of reason.”


\(^{147}\) On correlation as method in Cohen’s religious thought, see Wiehl (2005).

\(^{148}\) See discussion in Hyman (2005):364.

\(^{149}\) See Cohen (1971):92ff. This anticipates Stout’s call for a common theological background so as to see practical differences.
morally perfect God that does not (need to) change and a morally perfectible humankind that
does (need to) change. In this way Cohen co-relates human ethics with the idea of divine
perfection. Thus, when Cohen considers the idea of covenant, he does so in search of what can
be known about God’s perfection because it is this information that serves as the guide and telos
of human pursuit of perfection. As will be seen, he dismisses the relative mythological and
political dimensions of covenant in favor of a covenantal theory that shapes humankind ever
closer to the divine, uniquely one, form.

The covenant God makes with Noah is essentially nothing real. Noah symbolizes the
human race if not creation as a whole. A symbol is a paradox: it attracts attention to itself only
to parlay that attention to something other. As symbol, Noah absents himself from the covenant
in favor of not just humanity but the idea of humanity. Not only is the audience absent, but so is
the covenant’s content: “And what is the content of this covenant? Nothing else, nothing less
than the preservation, thus the future, of the human race.”¹⁵⁰ That is, God promises not to act; or
put more dramatically, not to destroy humanity. Thus, the content is omission, a negation, a
subtraction or redemption from nothingness.¹⁵¹ And, it should be remembered, God is only a
concept. As the speaker is only a humanly-constructed idea, the content empty, and the audience
absent, it seems this covenant exists – if it exists at all – only in the human mind.

Cohen also removes the second covenant from history.¹⁵² Instead of relying upon the
Exodus revelation, Cohen prefers Moses’ recapitulation of it, especially the Moab version.¹⁵³
Following Moses’ lead, Cohen removes all materiality from revelation so as to portray the event

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¹⁵¹ “Through this covenant, earthly existence is idealized and hence protected from the appearance of nothingness,
from which only the beyond may save it.” Cohen (1995):251.
¹⁵² Cohen mentions a covenant “concluded” with Abraham that is eternal and is “for his descendants and their
possession of Canaan” (see Cohen (1995):441, 118). But he does not explore this covenant further. It should be
noted that he does not explicitly call revelation at Mt. Sinai a covenantal moment, though he mentions it at page 441.
That he precedes this discussion of the third covenant with this one suggests that he considers them all within the same
category.
¹⁵³ Cohen considers the Exodus version a piece of “national literature” and too naïve and embedded in history,
while Moses’ version is “extremely interesting” and an example of good “scriptural teaching.” See Cohen
as a personal spiritual experience entrusted solely to Moses. With nothing for the people to see or hear, it is only Moses’ personal spiritual experience that can bring national consciousness to maturity.154 By spiritualizing revelation, Cohen correlates national consciousness – which is necessarily historical in nature – with monotheism, that which is eternal in nature. But even this historical consciousness is too material for Cohen. He erases this last vestige of materiality from this second theory by following “the most grandiose work of art in the entire history of rhetoric,” which is Deuteronomy 30:11-14, to insist that the covenant’s content is rendered “wholly subjective” because “the word” [Torah] is contained in humanity’s rational speech.155 That is, speech becomes “the vehicle of divine and hence also human reason.”156 If speech – Torah speech – is simultaneously human and divine, it can only be eternal and not contingent. By spiritualizing revelation and internalizing its content, this theory moves covenant out of material history and into the eternality of human reason.157

Just as national consciousness was problematic at Moab for Cohen, Israel’s nationhood proves troublesome in Jeremiah’s notion of covenant. In this “new covenant,” Israel’s polity must dissolve: “Israel must sacrifice its peoplehood for its God. Its name and seed will be saved but its state must disappear. A nation is transformed into a community (Gemeinde), and it is the community alone which will survive. The community of Israel replaces the people of the covenant. For now there is a new covenant written on the heart and intended to make the earlier

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154 Cohen (1995):76. Moses endures in Jewish tradition as Moshe rabbeinu – “Moses, our teacher” and not “Moses, our revealer.” See Cohen (1995):99-100. But even as Cohen emphasizes that it is to Moses God reveals revelation, it is to Moses as the rational man – and not to Moses the historical person. See Cohen (1995):79. He cites Midrash Tanhuma, Shoftim, 9 to support this claim. At a basic textual level the midrash says the nations of the world reject receiving the Torah God offers them at Mt. Sinai. While Cohen stresses that God’s revelation is to universal humanity, he ignores the reception of it: universal humanity refuses Torah. If humanity shares reason as Cohen asserts and all (other) nations reject revelation as the midrash says, it is a stretch to say that revelation is to (universal, ahistorical) reason.


157 See also Cohen (1971):100ff for a version of this argument he published a year before his death, and two years before his Religion of Reason was posthumously published.
one sink into oblivion.”¹⁵⁸ This new covenant’s congregation is a messianic one, uniting humankind across boundaries and classes, in which all act “as if with one conscience and constituting one moral mankind.”¹⁵⁹ Indeed, “in this future age, the knowledge of God will be a common good for all.”¹⁶⁰ Not only does Cohen remove historicity from the covenant, he idealizes its futurity insofar as he, like Kant, acknowledges that achieving the morality of the messianic era is an infinite task eternally unachievable.¹⁶¹

All this is not to say that Cohen’s composite theory of covenant is devoid of history altogether. Nor is it to assert that Cohen’s notion of covenant does not comport with his understanding of religion, insofar as religion (of reason) is a continual process of transforming the real toward the ideal. Rather, it is to emphasize that human reason is both the rightful audience of revelation and also the true provenance of the covenantal idea.¹⁶² Moreover, as “covenant is the instrument of faithfulness,” covenant transforms human reason guiding historical (that is, imperfect) action into (ever more) perfectly moral reason producing moral (that is, eternal) action.¹⁶³ The content of the covenant human reason speaks to itself is love of the moral ideal, which is the idea of God.¹⁶⁴ In this way, Cohen understands covenant to be a humanly constructed idealized correlation wherein humankind naturally loves the moral ideal so

¹⁵⁹ Cohen (1971):204. See also pages 123ff.
¹⁶⁰ Cohen (1995):278. Cohen cites *Midrash Tanhuma, Miketz*, 2 in which prophecy in this world comes to specific prophets, yet in the future prophecy will come to every person.
¹⁶² Indeed, Cohen is famous for expanding upon the “idea of God” in his *Religion of Reason*.
as to produce ever more perfectly moral (that is, ahistorical and eternal) actions in every 
historical moment.165

5.2. Covenant of Revelation: Franz Rosenzweig

If Cohen’s theory of covenant rests on human reason, Franz Rosenzweig’s turns on 
revelation. Rosenzweig (1886-1929), Cohen’s student, also identifies three main covenants, the 
first two of which he juxtaposes to a superior, more inclusive third. The first covenant is the 
“fraternal covenant of Christianity.”166 This covenant draws individual Christians together into 
an Ekklesia – a church – that sets before them common, mutual tasks that do not obliterate their 
individuality. By acting individually yet in concert, all Christians experience equal brotherliness 
“as brothers ‘in the Lord’”.167 Even Jesus Christ, whom Rosenzweig describes as the “founder 
and Lord of the covenant,” becomes a fellow brother, one among the many. Moreover, Christ is 
“neither founder nor Lord of his Church.”168 That is, Jesus does not lead the religious institution 
– the Ekklesia – that navigates and shapes human history; he is, like every other atomic 
Christian: an equal member in the Christian fraternity. Covenantal authority does not translate 
into communal authority. Nor does covenantal membership in this fraternity ascribe to each 
individual full status as a Christian for, in Rosenzweig’s view, Christianity is always external to

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165 Cohen thus removes human beings per se from the notion of covenant. See Rotenstreich (1968):192. A 
biological metaphor: The written nature of revelation now written on the innards of humanity functions similarly to 
DNA. This inscribed or literally embodied text directs the workings of the biological body, guiding it through 
normal circumstances and stresses. It generates templates for future survival. Just as DNA creates messenger RNA 
that then creates proteins necessary for a cell’s survival, so too the moral law germinates virtues that reinforce 
socially beneficial behaviors necessary for a body’s (individual or political) survival. This internalized script reveals 
itself through normative behaviors. And it is eternal insofar as it is passed from parent to offspring without variance.


167 Ibid. Rosenzweig explores “brothers in the Lord” in a 1917 letter to his cousin Rudolf Ehrenberg. See “‘Germ 
Cell’ of the Star of Redemption” in Rosenzweig (1999a):54-56. Here, brotherhood in the Lord enables substitution 
as “all are interchangeable with each other” (56). The capacity for substitution, however, comes only after the event 
(revelation) that shatters prior (philosophical) thought of self-consuming identity (B=B).

Every individual fraternal member is stripped of “being-Christian” by Christ’s birth and, as such, can only strive toward becoming Christian. This covenant, then, comprises active atomic persons commonly pursuing individualized goals of being Christian. The church merely coordinates their actions in and through history, that is, the church shepherds people becoming Christian.

The second covenantal theory is the Jewish one. Perhaps taking inspiration from Cohen’s notion of the physical congregation, Rosenzweig insists that the Jewish covenant is one of blood. Because no Jew can wander away from the blood surging within the body, none can escape this covenant. Through being re-created in each generation, this covenant transcends such historical trappings as language and land, state and church. Being outside of history, human blood guarantees this covenant its eternity. As birth is sufficient to become a member of this covenantal community, each Jew has little to do. The brotherhood of this covenant is natural, before voluntarism and obligation, and inescapable. In this way, Jewish blood frees Jews insofar as there is nothing external to them upon which the individual or the community must rely.

Rosenzweig creates a more inclusive theory of covenant to supersede the Christian and Jewish versions. Here, covenant not only rests on revelation, it is perhaps nothing more than revelation. “Whatever does not follow directly from this covenant [of revelation] between God and man, whatever cannot prove its direct bearing on this covenant, cannot be a part of it.” The only content of revelation, Rosenzweig insists, is only itself: it is revelation revealing

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172 Rosenzweig thanks Abraham for this gift of nonaction. See Rosenzweig (1995):418ff. For this reason, Rosenzweig does not conceive of conversion into Judaism but only out of it (indeed, he contemplated converting to Christianity, thanks to the influence of his friend Eugen Rosenstock-Huessy). This position, however, problematizes his theory of election.
173 In his famous letter to Martin Buber in 1923, “The Builders,” Rosenzweig discusses this theme of freedom within the sphere of combined Jewishly forbidden and permissible extra-Judaic acts. See Rosenzweig (1955):84.
174 This is Rosenzweig’s comment on Judah HaLevi’s poetry. Found in Glatzer (1961):285.
It certainly entails no law, for God is no law-giver. If revelation must include anything, it would be only the command “Love me!” because commands are “absolutely pure present for which nothing has prepared it.” Revelation occurs in each and every moment, especially when humans speak. Mature human speech recreates Creation and seals Creation’s prediction “that God renews from day to day the work of the beginning.” And as people continuously verbally convey revelation, it is to fellow persons they convey it, for each I is “all ear” and ready to receive. This covenant of revelation thus survives within history when individuals speak to each other and, because people will always speak even in the messianic era when churches and blood no longer matter, it will endure beyond history.

If the Christian theory downplays authority in favor of equality, it also belittles human autonomy or agency insofar as individual Christians can only pursue an ever regressing goal of “being Christian.” And if the Jewish theory flows only in the veins, it obviates authority, bypasses reason and renders autonomy or agency irrelevant. The covenant of revelation, by contrast, elevates the speaking human as the authority figure who recreates Creation, reveals itself. It certainly entails no law, for God is no law-giver. If revelation must include anything, it would be only the command “Love me!” because commands are “absolutely pure present for which nothing has prepared it.” Revelation occurs in each and every moment, especially when humans speak. Mature human speech recreates Creation and seals Creation’s prediction “that God renews from day to day the work of the beginning.” And as people continuously verbally convey revelation, it is to fellow persons they convey it, for each I is “all ear” and ready to receive. This covenant of revelation thus survives within history when individuals speak to each other and, because people will always speak even in the messianic era when churches and blood no longer matter, it will endure beyond history.

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Revelation, and brings Redemption ever closer to the present. And the audience assumes an active part in this covenant insofar as each audience member is tasked to speak the covenant’s content “Love me!” to others. It is a superior theory, in Rosenzweig’s mind, because, as long as humans speak, it will endure in, through and beyond history.

5.3. Covenant of Constriction: Martin Buber

Martin Buber (1878-1965), a close friend and colleague of Rosenzweig, also discusses three covenantal theories. While he bases the first two on the bible, the third emerges more from the dialogical philosophy he propounded in his famous I and Thou. Like his immediate predecessors’, Buber’s theories pull the notion of covenant even further away from God and push it into the human realm. In Moses: the revelation and the covenant, Buber defines the term covenant (ברית) as neither contract or agreement, and nor does it require stipulations. Rather, covenant is “an assumption into a life-relationship, a relationship comprehending the entire life of the men involved.” Already from this definition, then, covenant speaks less of a relationship between God and humankind than a living relationship among people that adjusts to the vicissitudes of person and history.

The first biblical covenant – called brotherhood – is an alliance between equals. Like Rosenzweig’s Christian fraternal covenant, this one “leads to a mutual undertaking of unconditional support, a faithfulness even unto death, [which] is not stated, and does not have to be stated; for it stands to reason.”

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180 “The historicity of the miracle of Revelation is not its content – this content is and remains its present actuality – but its ground [Creation] and its guarantee [Redemption].” Rosenzweig (1995):198.

181 Hence, his promotion of the language thinker who engages in “speaking thinking.” See Rosenzweig (2000).

182 Buber (1988b):103. He references the covenants of Noah (Genesis 9:9ff, 6:18) and of Abram (Genesis 17:2ff) as illustrations.

Buber says of this kind of covenant that its equal reciprocity renders agreement superfluous. Authority means little in this covenant because the partners are – in fact or only in perception – equals. It also minimizes the need for meaningful deliberation or reasoning insofar as “it stands to reason” that the parties therein do not disagree.

The royal or kingly covenant is the second biblical covenant Buber identifies. Here, members exist in different levels of society, and the higher echelons make the covenant “for” the lower. Again, “no special agreement is necessary, and indeed, there is no room for any such thing.” This seemingly paternalistic covenant requires no meaningful deliberation or reasoning by the parties thereto. The example Buber cites is Moses reading from “a Book of the Covenant” (תנ”ך הכתוב על התורה) that is not an agreement but a “royal proclamation” from above and “an acclamation of royalty from below.” Echoing Spinoza’s first theocracy, the lower recipients of this proclamation stand “in the identical direct and immediate relationship” to the promulgator. But unlike Spinoza, Buber understands that the lower is comprised of a community and not individuals per se, because only as a collective could they become a holy people (עם נ Sinai). Like Spinoza’s second theocracy, Moses proposes this royal covenant because the people’s political naïveté threatened social cohesion. The covenant and its details (that is, the Decalogue) were offered to the people so that “YHVH would be the melek [king] and Israel his mamlakah, His regal retinue, YHVH would be the owner and Israel the especial property chosen by Him, YHVH would be the hallowing leader and Israel the goy hallowed by Him, the national body made holy through Him.”

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184 Buber (1988b):103. He cites I Samuel 18:3. Reciprocity is a significant Buberian trope. It resonates throughout his dialogical relations in I and Thou as well as in relations with God. See Buber (1988a): 15, 33, 60, 68, 89, 97.
189 Buber (1988b):137.
passive audience, receiving God’s munificence via Moses’ mediation. The people’s assertion of obedience (עֵשֶׂרַת ה' מֵי יִשְׂרָאֵל) signifies “that they bind themselves not in respect of specific ordinances as such, but in respect of the will of their Lord, who issues His commands in the present and will issue them in the future; in the respect of the life-relationship of service to Him.”\textsuperscript{190} Thus, the royal covenant conceives of an authority promulgating a covenantal relationship to a weaker party who, without meaningful deliberation, restrict themselves to the task of servicing the ever-changing stipulations set for it from on high.\textsuperscript{191}

Buber’s third and latest theory of covenant defines covenant as “self-obligation, self-limitation.”\textsuperscript{192} Insofar as a covenant requires at least two parties, it consists of mutual self-contraction.\textsuperscript{193} Contraction here is not in any legal sense but along mystical notions of divine self-limitation (מצמצם).\textsuperscript{194} Through the act of self-contraction each party simultaneously situates each into relation with an other at its borders. Covenant, Buber says, originally meant a “relationship that ‘confines’ and thus connects both parties, [and only] secondarily one which ‘restricts’ both or at least one.”\textsuperscript{195} The restrictions inhering to certain covenants, then, may not have been temporally subsequent to the mutual contraction of the parties but at least they were of secondary importance to that mutual contraction. If a word can comprise both covenantal elements – contraction and restriction – it would be constriction.

With this clearer definition, he returns to the royal covenant to say that it confined the partners into a relationship that permitted them their differences, yet it also brought them “into a

\textsuperscript{191} Perhaps this version reacts to the second king parable in the Mekhilta, discussed above in section 3.3.
\textsuperscript{192} Buber (1998a):122ff.
\textsuperscript{193} He uses a philological methodology to generate this definition. He draws on Assyrian and Talmudic language for this purpose. See Buber (1967):203n19.
\textsuperscript{194} On legality, see Buber (1967):31. On self-limitation, see Buber (1947):52. Although Isaac Luria in the 16th Century popularized the notion ofמצמצם, it has older roots. See, for example, Exodus Rabbah 35:1; the notion of diminution in Sefer Hilyun (13\textsuperscript{th} Century); and Nahmanides’ comments on Sefer Yetsirah (13\textsuperscript{th} Century). For Luria’s versions, see his Lqqutim Hodashim and Eitz Chayim. Since then, see Rabbi Nahman of Bratzlav’s Lqqutey MoHaRaN 64.
\textsuperscript{195} Buber (1967):122ff.
relationship of unconditioned super-ordination and sub-ordination, each of which has its own, its characteristic binding form in the reciprocal connection." That is, the royal covenant first made the parties aware of each other and then established rules by which they were to relate. Prior covenants, like the ones made with the patriarchs, may have had this reciprocal connection but they failed to join and confine the parties to a community “which embraces a duty of God to the people and a duty of the people to God.” Though the earlier covenants failed to restrict the parties, subsequent covenant-making events were merely reaffirmations of the royal covenant of Mt. Sinai wherein the parties repeatedly constricted themselves “as the hour requires.”

This covenant of constriction requires agency by both the speaker and the audience, that is, by the authoritative promulgator and the autonomous underlings. And because it is impossible to prescribe accurately how to meet the needs of each, every or any particular moment, this theory also precludes covenantal content: the covenant includes neither law nor command. Responsibility to decipher what is needed in every moment thus devolves to each individual who is party to the covenantal relationship. The community cannot fulfill this obligation; only individuals can. This, therefore, links back to his dialogic philosophy wherein each and every individual is tasked to be the ultimate arbiter and interpreter of every moment’s revelation.

197 Ibid.
198 This is why God’s name is only present tense. See Buber (1998b):52ff, 126; Buber (1970):127, 160. See also Freidman (1960):250. The call at Mt. Sinai is “the hour” not of revelation but of the covenant. See Buber (1998b):101. Buber challenges Kierkegaard’s notion of “the Single One” to show that even the isolated individual lives “in this hour” and cannot escape historical situatedness or God’s constantly renewed and renewing speaking. See Buber (1947):65ff. On presence in the relation with the Eternal Thou (God), see Buber (1970):168ff.
200 See Buber (1946):22; Buber (1970):163. Yet he steps away from absolute individualism, as seen in his critique of Kant’s turn to sociality for the ground for morality. Buber still sees the need for “the original source of yes or no.” See Buber (1988a):18. Borowitz (1995):163-165, challenges Buber’s covenantal individualism as antithetical to Jewish communal existence.
5.4. Covenant of Responsibility: Emmanuel Levinas

If Spinoza initiated the project of measuring Judaism and religion generally against universal morality, Emmanuel Levinas (1906-1995) takes it even further to measure the entirety of existence – if it is conceivable and effable – in light of ethics. Both his “Greek” philosophy and “Jewish” theology portray ethics as phenomenologically and ontologically prior to existence.\textsuperscript{201} His concept of covenant furthers this argument, but before turning to it a review of Levinas’ theory of revelation is necessary.

Revelation, Levinas contends, is prior to reason. He bases this assertion on the Talmudic vision of the overturned mountain hanging above Israel.\textsuperscript{202} Echoing Judah Halevy, Levinas says that the Torah “cannot come to the human being as a result of a choice. That which must be received in order to make freedom of choice possible cannot have been chosen, unless after the fact.”\textsuperscript{203} Not only is Israel’s acceptance of the Torah necessary for human freedom of choice, it is necessary for the world’s existence. Moreover, “the meaning of being, the meaning of creation, is to realize the Torah. The world is here so that the ethical order has the possibility of being fulfilled.”\textsuperscript{204} This “so that” asserts the primacy of ethics: Torah’s promulgation and its unchosen acceptance are but means to the greater end of instantiating “the ethical order.”\textsuperscript{205} Yet Levinas shies from saying that God is the sole source of revelation. Rather, it is the approach of the neighbor, an other, that constitutes revelation for each individual. The other’s increasing

\textsuperscript{201} Richard Cohen aptly calls Levinas’ \textit{Totality and Infinity} a book exploring “ethical alterity” and the later \textit{Otherwise Than Being} a book on “ethical subjectivity.” See Levinas (1998):xii. On the other side, Levinas’ essays on Judaism are entitled \textit{Difficult Freedom} – perhaps to suggest that ethical responsibilities pervade even or especially in Jewish existence.

\textsuperscript{202} BT \textit{Shabbat} 88a. This paragraph traces Levinas’ 1964 presentation at the annual gathering of the Colloquia of Jewish Intellectuals that met at the World Jewish Congress in Paris from 1957 onwards. Levinas presented at these meetings between 1960 and 1989. A listing of his talks is found in Gibbs (1992):175. This particular talk, “Temptation of Temptation” is found in Levinas (1990a).

\textsuperscript{203} Levinas (1990a):37.
\textsuperscript{204} Levinas (1990a):41.
proximity to the self is an epiphany to the self. Conversely, the self’s increasing proximity to the other is one’s revelation of oneself to that other. In this way, revelation is the mutual act of neighbors approaching each other, and the reception of revelation is the perception of the neighbor’s face and the immediate though unmediated-by-reason attendance to that neighbor.

Though essentially neighborly interaction and idiosyncratic to each individual, revelation is not completely anarchic. Insofar as each person’s face is a text coming from elsewhere to be scrutinized, every interaction is an interpretation. But not all interpretations or interactions are welcome as not all produce or reproduce “the ethical order.” Indeed, each person’s reading of the interaction must refer to traditional interpretations. In this way, Levinas agrees with Buber that the individual is responsible to assess this moment’s needs, but he does not accede to Buber’s apparent antinomianism: tradition sets limits as to what is and should be thought, said and done.

Just as revelation is ethical neighborly interaction, covenant, too, establishes ethicality as the inescapable ground of Jewish and universal existence. In his comments on another Talmudic

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207 The self’s being comes about “by producing itself before the others in discourse, it is what it reveals of itself to the others, but while participating in, attending, its revelation.” Levinas (1969):253. While this definition may lean heavily on words being exchanged in discourse, Levinas would rather it be understood as an exchange of awareness of mutual proximity.
210 If revelation were solely words and the reception of revelation were only interpretation of those words, each person must refer “subjective findings to the continuity of readings through history, the tradition of commentaries which no excuse of direct inspiration from the text allows one to ignore.” Levinas (1989):196.
211 The repository of historical interpretations includes not just written Torah (scripture), but also oral Torah (rabbinic writings, especially the Talmud). Levinas is unclear about the relation of these texts. On the one hand they are of equal authority with the oral completing the written; see Levinas (1989):197. On the other hand, however, the oral Law’s knowledge – its capacity to develop an idea – far transcends the written Law; Levinas (1989):217. Not reducing the later texts to commentary on the earlier texts, Levinas argues that oral Torah continues the discussion written Torah begins. In this way revelation becomes a “continual process of hermeneutics, discovering new landscapes in the written and oral Word, uncovering problems and truths locked within each other”; Levinas (1989):199. Traversing new territories requires obedience to the tradition’s dialectical nature as well as to the Law explicating therein, for it is the Law’s manifestation in praxis that unifies the people as a people. With a silent reference to Mishnah Pe‘ah 1:1, Levinas contends that “the highest” form of obedience to the law is the study of it; Levinas (1989):201.

Derrida also observes that each individual is the cite of revelation. In his 1996 “A Word of Welcome” lecture, Derrida reflects on Levinas’ ethics enjoining politics and law: the content “remains undetermined” until in each moment each individual takes responsibility appropriate for that moment. See Derrida (1999):115.
passage, Levinas discusses the interrelationship between the covenant shared by God and Israel and the “problem of the relationship between the particular case of Israel and the universal state of mankind.”

The tension is thus between the particular vertical or theological relation between Israel and God and the horizontal or political relation between Israel and humankind. Both axes, he contends, are grounded upon and lead to ethicality or what he calls here responsibility. But only one axis ultimately produces the ethical community he seeks.

If the theological dimension depends upon revelation from God, it also requires a social element, and a universal one at that. Levinas draws on a ceremony prescribed by Moses wherein the Israelites stand in such a way that they see each other assent to the words of Torah that are clearly written upon stones on Mt. Ebal and Mt. Gerezim. The people’s collective co-witnessing of their assent renders this pact “an authentic one.” By the time of Joshua, this ceremony comes to include strangers and sojourners. And by the time of the Mishnah, the words the people observe and to which they collectively assent are written in seventy languages. This shift from communicating to a particular community in a specific language to communicating to the universe of humankind means, for Levinas, “that all human beings are included in the legislation in whose name the pact is concluded.” That is, while Israel may

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212 This is a discussion of BT Sotah 37a-b, entitled “The Pact.” See Levinas (1989): 213.
213 See Deuteronomy 27.
215 Joshua 8:30-5. The text on the mountains is now Moses’ recapitulation (橦ניר תור הברון), not revelation itself.
217 Levinas (1989): 217. The Talmudic passage discusses three moments of וָדַרְדָּר (the giving of Torah): at Mt. Sinai, at the plains of Moab, and at Mt. Ebal and Mt. Gerezim. R. Simeon contests the inclusion of the ceremony at Mt. Gerezim and Mt. Ebal in this list and replaces it with the Tent of Meeting in the wilderness. Perhaps this means that study of the law supersedes ceremony. Levinas says, “Here the Covenant is not understood as an event staged so as to allow each person to see everyone else; rather, it is the questioning of the master by the pupils, on an individual basis. It was in precisely that tent of meeting, in Moses’ yeshivah, that the voice of God was heard, and it was there, after Sinai and before the plains of Moab, that the Covenant was made for the second time”; Levinas (1989): 223. According to Rashi, exclusion of the Deuteronomic ceremony is because not all the laws of the Torah are promulgated; see Rashi at BT Sotah 37b, s.v. motzi har gerezim and s.v. umachnis ohel mo’ed. R. Simeon’s teacher, R. Akiva, concurs with Rashi. This challenges Levinas’ assertion that Deuteronomy 27 is an “authentic” covenant.
have been the initial direct audience of the establishment of the covenant, they did so in behalf of the totality of humankind.

A similar move from the theological to the social is found in the Talmudic assessment of covenantal responsibilities. One Talmudic sage calculates that 28,970,400 covenants were made at Mt. Sinai, and whereas another sage determines that 364,212,250,000 covenants were made.\textsuperscript{218} The significance of these albeit finite yet large numbers comes down to this: the former number represents personal responsibility, while the latter is calculated by squaring the number of Israelites present at Mt. Sinai and thus represents mutual responsibility.\textsuperscript{219} Levinas understands this to mean that “one is not only responsible for everyone else, but responsible also for the responsibility of everyone else.”\textsuperscript{220} Not only is each person tasked to fulfill a unique set of responsibilities toward others, so too is each person the guarantor (‘arev) of other people’s responsibility toward oneself. In this fashion, responsibility fans out infinitely, “ein ladavar sof” – without end.\textsuperscript{221} What may have at one time appeared as a limited set of responsibilities between individuals and God now looms as an infinite series of mutual responsibilities among humans.

Mutual responsibility, in Levinas’ view, all but flattens the theological dimension of covenant. When he quotes the Talmud saying, “Kol Yisrael ‘arevim zeh lazeh, ‘All Israel is responsible for one another’, which means: all those who cleave to the divine law, all men worthy of the name, are all responsible for each other” - whatever verticality or divinity the covenant might have, it manifests itself only in the horizontal social relations among Jews.\textsuperscript{222}

\textsuperscript{218} This number is reached through the following Talmudic calculus: There are four dimensions of adopting a law (learning, teaching, observing, doing); every law is articulated twice (in its particular and general forms); and each law is coupled with a blessing (for commission) and a curse (for omission); and they are all promulgated in the three moments of revelation. Thus so far each has $4 \times 2 \times 2 \times 3$, which equals 48. And this is multiplied by the number of Israelites at Sinai. Thus $603,500 \times 48$, which equals 28,970,400. The second number emerges from the number of Israelites squared: $603,500 \times 603,500$, which equals 364,212,250,000.

\textsuperscript{219} BT Sotah 37b.

\textsuperscript{220} Levinas (1989):225.

\textsuperscript{221} Levinas (1989):226. \textit{Ein sof} – without end – is one of the mystical names for God.

But this ethical sociality is not dispersed far enough for Levinas; it remains too confined in this particular group. He therefore concludes, “in the Covenant, when it is fully understood, in the society which fully deploys all the dimensions of the Law, society becomes a community.”

Like Maimonides and Kant, Levinas acknowledges limitations to personal faculties and abilities. That said, when people act to their fullest responsibility, they transform their particular societies into a global community. This Cohenian goal of dissolution of the particular into the universal – which Levinas calls an ideal – is “inseparable from the humanity of human beings.” Horizontal mutual responsibility – ethicality – thus both grounds the human-divine relationship and is its ultimate telos.

This theory of covenant thus replaces God with ethics as the covenantal progenitor. It is ethics that establishes the necessity of revelation, which is, ultimately, the approach of one’s neighbor; it is ethics that serves as the covenantal content; and it is ethics that individuates the persons comprising the audience.

5.5. Analytic Contribution

The Twentieth-Century has witnessed substantial shifts in covenantal theories. Not only has God been all but extricated, prior concerns about religion and state have also disappeared. Morality has come in their stead. And to the degree that morality requires human instantiation, it is humankind that becomes the speaker of the covenantal relationship. This trend is seen in Cohen’s turn to human reason, Rosenzweig’s focus on human speaking, Buber’s ever-constricting individual, and Levinas’ ever-approaching neighbor.

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Ibid.

Ibid.
This theological displacement relocates religion and especially revelation not in sacrality but in sociality. Indeed, as Kant so desires, ethics becomes sovereign in the modern age, though not purely from reason. Ever since Spinoza, covenantal theories boil its content to a single notion: Love God. More recent theories interpret this to mean that loving God is achieved through moral behavior toward others, and this morality individuates the self and can create community. Moreover, this moral content is inescapable insofar as it is either ineluctably internalized (Cohen, Buber) or an unavoidable imperative (Rosenzweig, Levinas). Consent has become all but irrelevant except in the voluntarism of assuming the yoke of the Law – be it the universal moral law (Cohen), the Jewish tradition writ large (Rosenzweig, Levinas), or that which the self takes on to meet an encounter’s needs (Buber). In addition, the tones of these theories reflect divergent streams of individualism – certainty (Cohen); confidence (Rosenzweig); yearning (Buber); passivity (Levinas) – tones that try to reach and persuade the audience.

The ascent of humanity is seen also in these theories’ audiences. But it is the individual and not the community as a whole who receives the covenantal speech, be it the individual internally inscribed with the moral law (Cohen), or the individual in a reciprocal encounter (Buber), or the individual in asymmetrical relations (Rosenzweig, Levinas). Community – Jewish community – appears only later: in a messianic era after history (Cohen, Buber), or after Law (Levinas), or after hearkening to this moment’s command (Rosenzweig).

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225 Novak (2001) laments the emphasis on ethics in modern Jewish theology. For example, the efforts by Cohen, Buber, and Levinas to all but reduce Judaism to ethics, all but continues the Kantian project. Classical Judaism, however, attempts the opposite: it seeks to embed the interhuman in the human-divine.

226 Some modern scholars of covenant latch onto Law, making it not just the *sine qua non* of covenant but the only mechanism for subsequent decisions. For example, Gifter (2000):245; Kellner (1978):5. Others think that though it is possible not to abide by the Law, though choosing this path endangers self and society; see Bloch (1984):5-6, and Schacter (1992).

227 A grammarian may want to notice the tropes of the reasonable “One” in Cohen, the bloody “We” in Rosenzweig, the searching “I (Thou)” of Buber, and the radically alter “You” of Levinas.

228 Cf., “The covenant is communal: a plurality extending through time” (Novak 2001:256).
individual-as-audience is tasked to receive (or reveal) the covenant, comprehend it and interpret it through embodying its call.

6. Covenantal Theories and Jewish Ethical Discourse

The millennial-long eclipsing of the theological in favor of the social in Jewish covenantal theorizing illustrates the ongoing struggle to link the human-divine relationship to interhuman relations. What perhaps at one time was assumed about this relationship, such as God being the sole authority who made covenants by fiat, became problematic for one reason or another and needed interrogation, investigation and deliberation. And historical issues like diasporic existence and emancipation required theological responses. These theories extract elements from the subconscious Jewish lifeworld (*Lebenswelt*) not only for theological theorizing but also for application to real-life situations. They also address the interrelationships between law and commandment, revelation and redemption, particular and universal responsibility, right and rite. They reinterpret religious rituals and reinscribe them with contemporary meaning so that the community will continue to hold dear the rites and their meanings. Theological theories thus promote social integration (e.g., order), reproduce culture (e.g., knowledge), and enhance individuation (e.g., personality). Or, in terms of this project, theories of covenant attend to authority, reason and autonomy. For these reasons, theories of covenant pertain to modern Jewish normative discourse.

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231 Neusner (2005):25, stresses the importance to “recover a sense of community and Covenant, and from there to proceed to explore the meaning of that Covenant and the nature of that community, questions which lead directly to the fundamental issues of Jewish existence in any age, including this one, and center upon Revelation.” The dates of the sources cited in this piece suggest it was composed in the 1960s.
But there is more: theories of covenant shape subsequent normative discourse. These theories articulate certain logics of relations between the speaker, the spoken and the audience. In so doing, they portray what an author understands to be the right and proper configuration of authority, reason and autonomy when thinking through an issue, whether that issue is theological or practical in nature. And it is to this logic that an ethicist is beholden when constructing an argument.\textsuperscript{232}

As the above survey shows, the notion of rightful authority has shifted through time. God no longer looms as the sole authority generating or uttering covenantal relations. Rather, humanity becomes a primary partner, if not the greater partner, in this task. But this raises a serious theological question: with God no longer an active partner in the covenant, is it truly a covenant? If humans – by virtue of their reason, speech or plain existence – are the locus of rightful authority to (establish a) covenant, is it a covenant they make or a social contract or something else altogether? Insofar as covenant is by definition a relation between God and humankind, a theory’s eclipse of God remains just that: an eclipse of a partner whose presence is perceived or conceived to be less than immediate. Perhaps the trend to elevate humankind as the rightful authority in the covenantal relationship is a lengthy lament about the passing of (the perception of) God’s presence just as it is an increasing celebration of (perceived) human agency.

The notion of preferred reason similarly adjusted through time. What is the content of the covenantal relation, where can that content be found, and when is the content acknowledged, shared and deliberated – are contested questions throughout the textual tradition. Some theories understand covenantal content to be commandments, while others see it as law, encounters, mere

\textsuperscript{232} That is, of course, if the ethicist considers it important to remain consistent between a theological stance and a practical application. It could be that an ethicist deems a situation worthy of abandoning a certain theological position so as to reach an audience who otherwise would not or could not listen to the argument because of the limits imposed upon it by the author’s theology. But even this move reflects and articulates a new theory of covenant that itself is reflected in the subsequent practical speech. As noted in Chapter One, covenant is an inescapable dimension to Jewish ethical discourse.
existence, or contentless altogether. Theories locate the content’s source in nature (e.g., the universe, blood), in texts like the Decalogue or Torah generally, or in both the Written Torah and the Oral Torah, or even in time – like the moment of an encounter between humans. And theories assert that the covenant can be acknowledged only before the content is understood, or perhaps only after the content has been examined. Some theories consider the lone individual capable of monologically reasoning through the covenant and its content, while others require intersubjective or discursive engagement to recognize covenantal content.

And the notion of proper autonomy has also undergone substantial changes. The amount of freedom granted to the audience is not universally assumed. Some theories understand the audience to be free-less and coerced into servitude, while others understand the audience to be radically free and unbounded by any semblance of prescription. Despite these differences, the historical trend has been toward acknowledging the individual human as the proper site of covenantal relations. Theorists debate whether the covenanted individual is to strive toward self-dissolution into the universal humankind or if the covenanted individual can only become increasingly individuated by assuming unique responsibilities vis-à-vis humankind. These kinds of concerns articulate theological perspectives of how much autonomy is appropriate and good for social cohesion.

Even though it is possible to see in all these changes a historical trend away from God and toward humankind, it would be incorrect to assert that covenant is “always primarily ethical” and has nothing to do with the divine. On the other hand, just because ethicality is a relative latecomer to theories of covenant is no reason to assume that covenant has no relation

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233 For example, should much be made of the fact that Cohen scrutinizes Deuteronomy and not Exodus, and skirts contemporary scholarship; or that Rosenzweig relies heavily on scripture and rabbinic writings and modern philosophy; or that Buber ignores rabbinic writings altogether in favor of contemporary historical-critical scholarship of scripture; or of Levinas’ dismissal of contemporary historical scholarship in favor of parsing biblical and Talmudic texts?

whatssoever to interhuman relations. Rather, covenant has always served as a ground – if not a
goal, too – for communal norms. Covenant justifies social norms.²³⁵

Just as theories of covenant ground norms, they shape normative discourse. A Jewish
ethicist’s covenantal theory constrains how an ethicist can argue an issue insofar as the theory
demarcates the boundaries of rightful authority, preferred reason and proper autonomy – issues
that themselves are necessary to address for every norm-constructing argument. Analyzing an
ethicist’s theory of covenant thus makes it possible to understand why an ethicist uses certain
language in a normative piece. As noted in Chapter One, no other approach to studying Jewish
ethical discourse provides this explanatory dimension. As will be seen, Chapter Four
demonstrates the power of this methodology by using it to analyze the practical arguments of
three modern Jewish ethicists. It will look for the three elemental pieces of their covenantal
theories: the speaker, the spoken and the audience. It draws from these theories the ethicist’s
notions of authority, reason and autonomy and links them to particular language patterns. The
chapter then examines the ethicists’ actual practical arguments and shows that both correlation
and causation exist between theological theories and normative rhetoric.

²³⁵ This does not mean that all social norms are justified but rather justifiable. Something that is justifiable means
that it is explainable according to a particular theory. Something that is justified, however, is something that
withstands moral scrutiny. It could be that a particular theory of covenant justifies something that appears immoral.
(For example, for a long time slavery was perceived to be justified in Judaism; in time and through much
deliberation, this justification was withdrawn.) In this situation, the religious ethicist’s task is to acknowledge this
disjunction. Simultaneously situated within the religious lifeworld and beyond it in more universal modes of
thinking, she is best suited to help a religious community become aware of this scenario and guide its deliberations
to rectify it.
1. Introduction

Modern Jewish ethicists inherit the continuous deliberation about the nature of covenant, its attendant duties and its intended audience. Yet they also contribute to this ongoing discourse about covenant by articulating their own covenantal theories. Not only are their theological theories embedded in this larger conversation, so are their ethical arguments. These ethical arguments are geared to real human audiences existing in certain times and places, and they respond to prior arguments and anticipate future ones. To a degree, ethical arguments are like covenantal theories insofar as they transcend historical particularities. Despite this apparent timelessness of ethical argumentation, this project contends that it is possible to understand why an ethicist chooses to argue a particular topic in a certain way and not others. Indeed, it is only through the twofold analytical methodology this project proposes that it is possible to understand the theological – and logical – reasons why an ethicist argues as he does.

This twofold methodology first investigates an ethicist’s theory of covenant. Uncovering an ethicist’s notion of covenant makes it possible to discover that person’s assumptions about rightful authority, preferred reason and proper autonomy. Moreover, it identifies that person’s

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1 BT Berachot 31b. This phrase occurs 31 times in the BT, and in MN 1:26, 33, 46. See also MT Yesod HaTorah 1.9.
assumptions about the authority of the ethicist himself (e.g., why should anyone listen to him in the first place), the scope and binding nature of resources in the Judaic textual tradition (e.g., *halakhah*, *agadah*), and the audience’s responsibilities to take on the argument’s conclusions. This facilitates the construction of maps correlating theories of covenant and subsequent practical normative rhetoric. The second piece of this twofold methodology applies discourse analysis to actual ethical arguments. While this examines what an ethicist says, it pays special attention to such issues as the location and nature of authority, the line of reasoning and kinds of resources employed in the argument, and the desired disposition of the audience. What will be seen here is a strong relationship between an ethicist’s covenantal theory and his normative rhetoric. That is, this twofold methodology demonstrates both how an ethicist argues and why he argues as he does.

This methodology is designed to identify the interaction between *a priori* commitments and subsequent normative arguments. While it is reasonable to assume that theological commitments constrain and frame normative rhetoric, this may not always be the case. There may not be a sole, linear relation between theology and ethical speech, a relation that moves from the former to the latter. It could well be that speech reflexively influences theology. Indeed, as will be seen, a Jewish ethical argument challenges its speaker as much as its audience. Shifts and gaps in an ethicist’s principles, argument and conclusions become visible with this twofold methodology that would otherwise remain invisible or unexplained with other analytical tools. And these shifts and gaps suggest that ethical speech puts into question certain theological commitments; that is, ethical discourse is not solely determined by theology – it may in fact influence theology.

On the other hand, questions about possible linear relationships between theology and human speech are not unreasonable. As MacIntyre observes, everyone speaks from somewhere and this situatedness cannot but help frame and constrain a person’s speech. Even though
Habermas agrees that people are historically and geopolitically situated, he thinks that people’s speech intersubjectively constitutes the very realm in which they communicate. For this reason it is important to appreciate a person’s covenantal theory and practical ethical rhetoric as they develop in and through time. Hence, a longitudinal analysis best highlights the complex relationship between an ethicist’s theology and his rhetoric. These relationships will be mapped in a synthetic section before turning to a discourse analysis of their actual ethical arguments.

2. Theories of Covenant

Insofar as modern Jewish ethicists step into an ongoing discourse about what Jews ought to do, they also enter an ongoing conversation about the nature, scope and obligations associated with theories of covenant. Some modern ethicists consider covenant directly on its own in monographs, essays or paragraphs that readily facilitate analysis. Others, however, refer to covenant only in passing; their theories of covenant must be uncovered through a kind of textual archeology. Nevertheless, all modern Jewish ethicists wrestle in their theories of covenant with issues of law, authority, autonomy, reason, community, God and faith. Some point explicitly to prior theories of covenant to buttress or ground their own positions. Others, perhaps unconsciously or unwittingly, share earlier scholars’ positions. Thus, every modern Jewish ethicist articulates a theory of covenant influenced by a mixture of previously articulated theories. They also incorporate modern non-Jewish sensibilities – even if only to argue against them. For example, the modern construction of the autonomous individual is embraced and also rebuffed by modern Jewish ethicists in their attempts to articulate their own covenantal theories.

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2 In his Moses, Buber (1998b) discusses and demonstrates this methodology.
As mentioned in Chapter Two, that Jewish ethicists read, incorporate and respond to previous and current positions is an ineluctable element of religious ethical discourse.

2.1. J. David Bleich

J. David Bleich develops his theory of covenant (ברית) most in “Tikkun Olam: Jewish obligations to non-Jewish society.” He sets up his theory in light of the notion of election. “Any thinking person,” Bleich says, will see the difference between the election of Jews to special obligations in the Sinaitic Covenant and the responsibilities assigned to non-Jews in the Noahide Code as one of three things. This difference stems from [1] “the product of a capricious whim on the part of the divine lawgiver, or [2] a correlative of disparate capacities, talents or potential with which different peoples have been endowed or [3] of disparate missions with which they have been charged.”

That is, the Jewish covenant can be viewed as arbitrary, biological or theological.

Bleich rejects the idea that the covenantal relationship between God and Israel is arbitrary. He critiques Maimonides’ position that God chose among the nations and found Israel to be a viable though not an optimal partner. He juxtaposes this with the midrash that portrays God going nation to nation “peddling His wares” yet finding none who would accept the Torah. Bleich interprets this midrash to mean “it would be far more accurate to speak of Israel choosing to accept the Torah than to speak of God choosing Israel as its recipient” – a position loudly

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3 See also Newman (1998):181-183 for his “reassessment” of modern Jewish ethics.
4 This is based on a lecture at the 1994 Orthodox Forum, an annual meeting hosted by Yeshiva University. See Bleich (1997).
6 See MN II:25.
7 Sifrei 20.2 on Deuteronomy 33.2. See Exodus Rabbah 5.9 for another interpretation of this Deuteronomy passage – as analyzed in Chapter Three. When explaining the Noahide Code, Bleich (1997):69-70, again turns to a midrash (Tanhuma, Parashat Shemini on Habbakuk 3:6).
echoing Spinoza’s.\textsuperscript{8} “But, of course,” he says immediately, “such \textit{aggadic} [non-legal] statements are not to be taken literally.”\textsuperscript{9} So instead, this \textit{midrash} teaches that God is surely aware of people’s capacities and that “Jews – and only Jews – were destined to become beneficiaries of revelation at Sinai.” Jews were “purposefully endowed with the qualities necessary for obedience to divine law.”\textsuperscript{10} Jews were made specially to fit a niche in God’s world.

Bleich takes this biological position further when he turns to the 12\textsuperscript{th} Century Spanish theologian R. Judah ha-Levi’s \textit{Kuzari}.\textsuperscript{11} According to the \textit{Kuzari}, Adam was endowed with superior faculties than the animals and thus was not as vulnerable to corporeal experiences as other animals. This special endowment flows from Adam to Abraham, Isaac, Jacob and his sons and – “albeit in varying degrees” – to the people of Israel.\textsuperscript{12} These qualities “serve a teleological purpose. Creation of a people endowed with such a nature constitutes a necessary aspect of the creation of a universe in conformity with the divine blueprint.”\textsuperscript{13} In this perhaps Rosenzweigian fashion, Bleich links the biological view of covenant and the theological charge perspective: Jews have an inherent endowment that enables them to take on the responsibilities of a special

\textsuperscript{8} Bleich (1997):66.
\textsuperscript{9} Ibid. On the nature and dynamic of \textit{aggadic} texts in the Talmud, see Borowitz (2006).
\textsuperscript{11} Judah ha-Levi (c1075-1141) wrote religious, secular and love poetry – which Rosenzweig found fascinating and translated into German.
\textsuperscript{12} Bleich (1997):68.
\textsuperscript{13} Ibid. “God found it necessary to create a people imbued with the requisite psychological and spiritual qualities”; “God’s election of Israel is nothing more, and nothing less, than the shaping of that spiritual disposition. Once created, this spiritual quality must be nurtured and preserved,” Bleich (1997):69. With this last statement, does Bleich open himself up to the possibility that Israel has phenomenal influence (literally) to the degree that they can undo God’s creation by not nurturing and preserving themselves? Or, along Aristotelian lines, perhaps he views this quality as a virtue that cannot be created by humans but only developed.
relationship with God.\textsuperscript{14} Indeed, Jews’ special responsibilities began with Abraham’s covenant “between the parts.”\textsuperscript{15}

What is the nature of these covenantal responsibilities? Jews are responsible, Bleich says, to hold each other accountable to the covenant’s terms, and this mutual “reciprocal” responsibility flows directly from the covenantal moment described in Deuteronomy 9:9-14.\textsuperscript{16} This surety or guarantee (连云 overwritten with letters) is more an intra-Israel social contract of mutual protection than it is a relationship between Israel and God. In a manner again echoing Spinoza, Bleich sees the covenant as a social pact that has a distinct historical origin and is limited in scope to members of the Israelite community.\textsuperscript{17}

Just as the shift to inter-human responsibility is a move away from God, so too is Bleich’s Deuteronomic prooftext. This scriptural reference to Moses’ recapitulation of the covenant made at Horeb is already a step removed from the actual covenantal moment; indeed, it comes at a moment when Moses struggles to prevent Israel from transgressing again. God has been displaced in favor of Moses. It is the human authority figure who reminds the people of a

\textsuperscript{14} For example, “Taken as a unitary corpus of law, divine edicts can be observed only by a people endowed with the requisite nature for doing so,” Bleich (1997):70. Perhaps it could not have been otherwise, as Maharal would say: God had to create some community to fulfill this part of the divine plan lest the universe revert back to chaos (see Chapter Three, Section 4.2, above).

\textsuperscript{15} See Bleich (1997):62-3. Found in Genesis 15, this covenantal moment portrays God instructing Abraham to bring animal offerings. Abraham does and splits them, putting their halves on either side of him. God announces the covenant to Abraham, its terms being the promise of a bounded tract of land to Abraham’s descendants (15:18). The explicit rationale for establishing this covenant is that Abraham put faith in God and God reckoned it to his merit (连云 overwritten with letters) (15:6). Abraham’s faith, not biology, grounds this covenant. This prooftext is troublesome for Bleich in two ways. First, it speaks not of human blood but of animal blood. Second, the sole rationale for the enduring nature of the covenant is not what flows within every Jew in every historical moment but what happened once with Abraham. The covenant endures only because of zekhut avot (连云 overwritten with letters) – because of the honor or worth of the ancestors.

\textsuperscript{16} Bleich (1997):73. These verses speak of Moses relating to the Israelites his ascent to the top of Mount Sinai to receive the two tablets of stone inscribed by God. After forty days, God alerts Moses to descend because the Israelites have gone astray by making a molten idol. God pleads Moses to stand aside so that God can annihilate the wayward people and create a mightier and more numerous nation through Moses’ progeny. In terms of this analysis, God seemingly appears as the “speaker/author” of the covenant (though it is Moses who is retelling the story), the content is what is inscribed on the tablets, and the intended audience is the Israelite people who are both absent and errant.

\textsuperscript{17} Bleich attempts to distance his position from social contract theory at page 101. He fails insofar as he essentializes the theory to “a laissez-faire attitude toward its citizens.” On communal surety (连云 overwritten with letters), see also Levinas’ “The Pact” as discussed above in Chapter Three, Section 5.4. For other Orthodox perspectives on surety, see Schacter (1992).
special relationship they have with God and reprimands them for their waywardness. As seen in Chapter Three above, this turn to human authority – especially to interpreters of scripture (e.g., Moses) – is not new in Judaic covenantal theories. Indeed, Bleich repeatedly stresses that Jewish scriptural scholars are the rightful authorities to teach both Jews and gentiles about their moral and legal obligations.\(^{18}\)

In regard to the content of this covenantal relationship, Bleich, like Kant, see the moral-legal law bespeaking itself through the human intellect. Though Bleich acknowledges *halakhah* as “an intellectual discipline,” he adamantly refuses to admit to it any influence emerging from an individual’s creativity, biography or external- *halakhic* sensibility.\(^{19}\) Like other sciences, *halakhah* permits disagreement according to the canons of the discipline. Bleich insists that even though an individual legal decisor (עֵּד) uses a fallible intellect, *halakhah* “in its pristine form, [has] no room for subjectivity.”\(^{20}\) His ideal is for the law to bespeak itself through the scholar’s mind and into his argument. The reality, however, is that *halakhah* is also an art to the degree that each scholar must make judgments between precedents, citations and arguments.\(^{21}\) Like an artist, the scholar must “have a keen understanding of underlying principles and postulates of *Halakhah* as well as their applicable ramifications.”\(^{22}\) Even though Bleich admits a law’s current viability deserves some concern, he would rather a scholar be more scientist than artist to ensure his arguments and conclusions do not contradict precedents.\(^{23}\) For Bleich as for Kant, contradiction is abhorrent. Current articulations of *halakhah* must not (or even, cannot)

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\(^{19}\) Bleich (1995):xi-xiii. Newman (1998):131 follows Bleich’s argument elsewhere to mean that “discerning His will” is nothing but authority granted to the intellect by the divine command of *imitatio Dei*. The individual *per se* is absent from this intellection insofar as it is only the divine command acting through the individual.


\(^{21}\) In his famous (1985) “Is There an Ethic Beyond Halakhah?”, Bleich concludes that “Halakhah is an art rather than a science” (543). On the difficulties of paralleling Judaism to natural sciences and especially to theoretical sciences like mathematics, see Novak’s (1978) review of Bleich (1977).


\(^{23}\) Indeed, he says that the litmus test of a “cognizable legal obligation” is its actionability. See Bleich (1985):529. See also Bleich (1995):xiii.
contravene what has come before or contradict the majority’s position because *halakhah* is eternal and immutable.\(^{24}\) Ultimately, all that a Jewish scholar can do is ink the law that was already revealed to Moses on Mt. Sinai; without innovating, he may only sketch over traces already impressed by the tradition.\(^{25}\) In this way, both Bleich and Kant understand religio-moral law to be universal at least across time.\(^{26}\)

In regard to the audience, because consistency is critical to the covenant, Bleich all but dismisses human experience from normative deliberations. On the one hand, the objective of *halakhah* is its embodiment in every individual. In this regard, *halakhah* requires living human beings to obey its strictures. Yet, on the other hand, this very obedience all but obliterates the individuality of each person.\(^{27}\) Moreover, matters of *halakhah* “dare not be tailored to predilections of the audience.”\(^{28}\) Since peculiarities of the audience may be ignored when rendering a *halakhic* decision, it is reasonable to conclude that a scholar does not address real human beings embedded in real historical circumstances. Rather, his is an idealized audience who must be measured over against the timeless. “Do not ask,” Bleich says, “whether the Torah is relevant to the world in which you live, but whether the world in which you live is relevant to the Torah.”\(^{29}\) Bleich hereby inverts Spinoza’s and Moritz Lazarus’ claim that Judaism and Jews can be evaluated in light of morality.\(^{30}\) The Torah is perfect and any difference between it and existence requires the latter’s modification. Bleich’s theory of covenant requires consistency through time as well as in time insofar as “human mores, values, economic policies, political


\(^{26}\) They also agree that the religio-moral law is variously obeyed across and within generations insofar as people’s acknowledgments and understandings of the law differ. On the other hand, Bleich distances himself from Kant’s position that religion never changes. Bleich, at least in principle, acknowledges that shifts have occurred in Jewish law. These shifts, however, do not indicate a change in religion *per se* but strides taken toward greater clarity of the truth of the content of the covenantal relationship.


\(^{29}\) Bleich (1997):68.

\(^{30}\) Lazarus (1900):§79.
structure and/or social institutions…require modification so that they become meaningful and relevant in implementation of biblical laws, norms and values.”31 The all but absent audience and its civilizational accoutrements are mutable and must comport to the unchanging covenantal content.

Nevertheless, Bleich acknowledges that the contemporary generation differs from previous ones. Whereas previous generations exhibited great fear of heaven (חרם השם), this one seems almost devoid of it. This fear, Bleich believes, is the sine qua non for proper fulfillment of covenantal responsibilities. Without fear of heaven, compliance with halakhic strictures is mere “cultural expression.” On the other hand, fear of heaven expresses a “conviction that halakhic error or laxity is as dangerous to the soul as other forms of error may be to the body.”32 This reinforces his fundamental concern: fear of heaven, which motivates both scholarship of and obedience to halakhah, is not done for heaven’s sake per se but for consistency’s sake.33 His fear of deviance is consistent with his position that the fear of heaven is necessary to acknowledge the halakhic system as divine in its entirety and a self-contained value system; that is, deviance and consistency is measured by and within this total system.34 For Bleich, only the halakhic system is true. For this reason he seeks to contribute to a Jewish community in which no external or “false” values find purchase: he wants communal consistency in time (through proper legal decisions) and space (by full obedience to law).35 His ideal is a pure community functioning in and governed by consistently correct halakhah.

33 When Bleich (1977): xvi says, “the development of correctly formulated decisions governing manners of practice is of singular importance,” the importance he means is rendering decisions that comply to the rules of halakhic decision-making. Innovatively formulated decisions would be incorrect or wrong. See Bleich (1996):84n36.
34 The logic of this is questionable. See Stout (1988):22ff.
Yet he does not dismiss modernity altogether because “denying its existence results only in arrested intellectual and spiritual development.” This rhetorical turn explicitly appeals to an audience’s fear of becoming stunted, not their fear of heaven. Bleich plays more on people’s fear of being abnormal than on their desire to be normal. Linking this rhetoric to his pursuit of a pure halakhic community, his is more an effort to dissuade deviance than encourage compliance through, say, love of God. For him, people’s fear of deviance and its accompanying physical, intellectual, and spiritual mutations are more powerful motives to coordinate behavior.

Given this theory of covenant with the sage/scholar as its rightful articulator, the law correctly formulated its content, and the audience virtually absent, it is no surprise that Bleich’s concern is that Jewish ethical argumentation be true to the objective, textual tradition. Such claims to truth are epistemological ones, concerning “the relationship between language and reality,” according to Habermas. As such, this mode of argumentation’s major trope is “it” – a rhetorical pointing outward toward truth: an objective (textual) world severed from a person’s relationship with it.

To illustrate, Bleich repeatedly introduces his collections of practical halakhic essays with virtually the same statement (see quote). The collections, he says, are not halakhic guides insofar as the pieces are not definitive law. His work is neither law code nor responsa. Perhaps he distances himself from these legal genres because of a fear of erring; or, without such psychological projection, if there were inaccuracies in his

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37 Bleich’s focus on speech as the bridge between God’s will and human life parallels Rosenzweig’s turn to speech. See Chapter Three, section 5.2 above.
halakhic reasoning, they render his work ineligible to be considered law per se. As his work is not law in its purest sense, it can best be considered ethical because he still intends it to be normative. And for whom does he write? Not the uninitiated. His ideal audience includes those already familiar with rabbinic literature but lack skill or time to “assimilate and analyze” material found in the objective world of the textual tradition. He does not ask his learned audience to question his arguments but to incorporate them intellectually if not bodily. Nor does he seek conversation. In a way, his notion of normative discourse is a kind of theology: it is speech given by a religious authority figure to the masses for their edification, protection and spiritual well-being. In sum, Jewish ethical argumentation makes claims to truth both by pointing to the textual tradition and by using only the tradition’s methods of reasoning, and it is valuable to the extent it is consistent with the tradition’s immutable, self-contained system.

2.2. Elliot N. Dorff

In his 1990 article “In Search of God,” Elliot Dorff explains that he is in search of a “strong epistemological basis for belief.” But because the search for truth dogs him, he prefers “to live with inconsistency rather than distort or ignore features of [his] experience that do not fit into a given theory, however helpful that theory may be in explaining other facets of my experience.” He relinquishes “the human quest for certainty” in favor of “a mellow, almost playful, posture vis-à-vis earnest human attempts to understand everything.”

40 Intentional or not, there is resonance between these “assimilate and analyze” and the biblical ﻟا ﻧﺎﺤِﻞَ ﻟﻠَّهَ ﻟِ(104,931),(132,937) we will do and hearken, or understand. In a way, this portrayal of his audience expresses a familiar lachrymose perspective on Jewish history wherein each subsequent generation is understood to be less pious and less learned than the previous.


44 Ibid.
game: he seeks to construct rigorous explanations that cohere with experience.\textsuperscript{45} Put differently, his constructivist theology emerges from collective and personal experience.

Dorff couples his turn from epistemology with one to hermeneutics. He believes that “there are objective truths and norms, but no human being can know what they are because no person shares in God’s omniscience.”\textsuperscript{46} Since no human is omniscient and certainty itself is philosophically suspect, at best “our convictions are what I (or we) think is the truth, given our history, values, fears, hopes, personalities, associations, and perspectives.”\textsuperscript{47} Our given experiences shape our thinking and interpretation and, consequently, our theological convictions. In this way he elevates interpretation or hermeneutics as the best methodology to discern the right and the good.\textsuperscript{48} And because interpretation is so rooted in lived experience, it honors history without sacrificing intellectual honesty.\textsuperscript{49} Dorff’s goal in turning to hermeneutics is to cohere theology with actual lived life.

The main concern for coherence is that it be intelligible and reasonable. So when Dorff develops his covenantal theory, he seeks to render it intelligible and reasonable in a way that coheres with lived life. For example, while he mentions a variety of metaphors to explain covenant as he experiences it, he prefers the trope of wedding and marriage.\textsuperscript{50} Even though “it was irrational love on both sides” that brought Israel and God together in the first place, this

\textsuperscript{45} At Dorff (1990):113, “I think that we human beings have no unmediated knowledge of God but that we rather have to construct our conceptions of God on the basis of the experiences that we have…[O]ur understanding of God will therefore be built not only upon those experiences that we all share but also upon those that are unique to each one of us.” At page 115: “I am not trying to prove the existence of God – an impossible project – but rather to construct a view of God adequate to my experience.” Bleich might say along these lines, I am trying “to correct my view of God adequate to my textual tradition.” See also Dorff (1990):120n2.

\textsuperscript{46} He continues, “To claim that some person has such omniscience is to make an idol of him or her, for it is to assert that a human being knows what God knows…” Dorff (2002):55. This is an implicit critique of Cohen’s notion of human reasoning as the process of thinking the thoughts of God. See, for example, Cohen (1995):88, 86.

\textsuperscript{47} Dorff (2002):59. See also BT Berachot 55b about seeing what we think or dream (according to Rashi) instead of what there actually is. See discussion in Crane & Kadane (2008).

\textsuperscript{48} “The key to using revelation as a source of knowledge of God is the interaction between the original revelation and its ongoing interpretation.” Dorff (1990):118. He compares his approach to other scholars at Dorff (1988):75. On hermeneutics as a practice of interpretation, see Habermas (1990):24ff.


\textsuperscript{50} Other metaphors include social contract and suzerainty treaty. Dorff (1988):69ff.
covenantal relation was “a wedding with no possibility of divorce.” He quickly abandons the wedding metaphor in favor of marriage because of its biblical roots and perhaps to stress that the covenantal relationship transcends a ritual moment and endures through time. Love shared between God and Israel is a key motivating factor for obeying the relationship’s obligations. Moreover, as it is for married humans, the covenantal relationship sometimes requires going beyond what is explicitly contracted. The covenant-as-marriage expresses an enduring yet flexible relationship. In this way, Dorff’s covenant-as-marriage echoes Buber’s dialogical relationalism insofar as the members of the covenant mutually influence each other.

Every marriage begins at some point. The covenantal marriage between Israel and God is, for Dorff, no exception: its historical origins are found in the bible from Abraham to Sinai and onward. The covenant’s historicity is what gives human experience – and the covenant itself – meaning, an observation that Dorff extracts from R. Judah ha-Levi’s Kuzari. As a historical relation the covenant deals with real people embedded in real historical circumstances. Yet because the covenantal relationship transcends each individual’s life, Dorff reiterates his belief that the covenant is between God and the community of Israel. The collective nature of the covenantal relationship plays out in the community’s historical and contemporary deliberations about what constitutes the content of revelation. But Dorff does not dismiss the individual

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51 Dorff & Newman (1999):266. This piece, “A Jewish Theology of Jewish Relations to Other Peoples,” was originally published in 1996 for a Jewish-Christian conversation. He revised this piece in chapter 3 of his 2003 To Do the Right and the Good – a book geared more for a Jewish audience and wherein he skips this interpretation altogether.


55 See Dorff (1999b):264, 275n2; and its parallel in Dorff (2003):62, 221n2. Dorff (1990):119, 121n22, turns to the Kuzari in his discussion on prayer, to say that religious experience is concrete and not merely cerebral, and also at Dorff (2003):77-78, 226n57, when he rejects Muslim and Christian arguments because he did not grow up in those traditions.

56 Dorff (1995):63; Dorff (1999b):265, 267; Dorff (2002):68; Dorff (2005):330. Even though the covenant is a special relationship between God and the people Israel, it does not confer upon or reflect an elevated quality. Indeed, the covenant does not “entail exclusivity or triumphalism” (1995):268. Dorff explicitly cites Mordecai Kaplan’s turn to the folk as inspiration for his own communalism.

57 Dorff (1990):118.
altogether. He acknowledges modernity’s prioritization of the individual over against the group. Thus, today’s rabbis must grapple with the reality that individuals do not automatically express loyalty to their birth-traditions.\(^58\) Rabbis must counteract this trend to protect the covenantal marriage by communicating the tenets of religion. But even with the increasing need for rabbinic direction, he warns that a communal “check” on theological discussions and normative decisions is needed to protect the community from renegade or revolutionary rabbis. In his view, the historically-embedded community balances modern individualism.\(^59\)

Insofar as every historical Jewish community deliberates and decides theological and legal matters for its time, Dorff insists that making Jewish decisions today requires appreciating prior decisions in their historical contexts. He insists that historicizing precedents is inherent in the Judaic textual tradition. Indeed, this method honors the plurality of attitudes, approaches and positions found in the textual tradition, especially in regard to practical matters. And this method highlights when, how and why certain norms and practices were altered, circumscribed, abandoned or overturned. Recognizing that laws have changed throughout Jewish history does not obviate the need to render legal decisions today. “We can and must take stands, but we should do so while remaining open to being convinced to the contrary.”\(^60\) That is, decisions made today should cohere with today’s needs as well as yesterday’s precedents, but should be made with the expectation that they may not last beyond today.\(^61\)

This willingness to alter a decision reflects an epistemological position that acknowledges error. “What if,” he wonders, “we Jews (and our ancestors) have been wrong all

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\(^58\) Dorff (2003):91. His stress on rabbis as the rightful speakers of Jewish ethical arguments comes to the fore in Dorff & Borowitz (1998):16, *ad loc*. Dorff takes this point personally because since 1984 he contributes to and leads the Conservative movement’s Committee on Jewish Law and Standards – a committee composed of rabbis and non-rabbis, but only the rabbis vote.

\(^59\) See, for example, his dialogue with Eugene Borowitz, originally published in *Conservative Judaism* in 1996-1997. Also published in Dorff and Borowitz (1998) and again in Dorff (2005):464-480. The trope of “balancing” is found throughout Dorff’s work.

\(^60\) Dorff (2003):59.

\(^61\) This is the twofold task of modern Jewish ethics, to “serve the needs of the Jewish people [that] will bring us closer to God,” Dorff (2005):336. Contemporary needs precede all else, though not haphazardly.
along?"62 Since the Judaic textual tradition articulates the “content of our theological ideas and codes of practice” and is a human artifact, it is “subject to error and change.”63 The position of accepting precedents as “an accurate reflection of God’s will at any given time” is a matter of “an abiding faith” – “a faith that I know may be wrong in any or even all of our legal decisions.”64 One could take Dorff to task, as might Bernard Williams, for saying that he (sometimes) holds a wrong faith. According to Williams, claims to belief are either true or aim at truth; they cannot be wrong, and even the mere acknowledgment that they could be wrong already distances them from the category of claims to belief or faith.65 Dorff evades this critique by turning not to claims of belief or theology but to hermeneutics. Hence he argues that norms bequeathed to the living must be continuously and communally re-evaluated in light of contemporary circumstances and sensibilities and thus avoid becoming “wrong” in the strong sense. This process therefore juxtaposes moral sensibilities and the Judaic textual tradition because, according to Dorff, they are neither coextensive nor coterminous. Echoing Spinoza, Kant and Lazarus, Dorff’s is a call for the ongoing moral evaluation and rectification of Jewish norms.66

Communally-constructed, morally reevaluated and evolving Jewish law constitutes the primary content of God and Israel’s marriage. The law’s importance to this covenantal relation cannot be understated: it is the very reason for God covenanting with Israel in the first place. “God, who created the world, enters into a covenantal relationship with Israel so that the law of at least one human society may reflect divine purpose.”67 This is consistent with Maharal’s position that the Torah (law) is essential for creation and human existence. Like Maharal, Dorff

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64 Dorff (2005):333.
grounds his position on the Talmudic discussion of God holding a casket above Israel’s head.68 Moreover, Jewish law has transformative powers because “it aspires to transform both human and animal nature.”69 Ultimately, assiduous adherence to the law will abrogate the law as it will be internalized and inscribed on each person’s heart.70 This line of reasoning inverts Bleich’s (and Halevi’s) ontology that Jews were specially endowed at creation to handle halakhah for a moral mission. In Dorff’s view, it is halakhah that is specially endowed at creation to instill virtues and transform Jews into the moral exemplars the tradition so desires them to be.71

Turning to the audience of this covenantal marriage, why did the Jews accept the covenant and its content in the first place? Dorff, like Bleich, refers to the midrash of God peddling the Torah to the nations of the world.72 Dorff describes the “insignificant” and “measly People Israel” agreeing to accept the covenant without hearing its terms as an example of voluntary yet uninformed consent. He contrasts this with the midrash of the overhanging mountain to illustrate coerced and uninformed consent.73 These images are problematic for him because a legal system’s viability depends on positive, or at least tacit, consent. To counter this problem, Dorff points to the bible’s claim that “Jews at all times and places explicitly promised to obey the law because they all stood at Sinai.”74 His argument concludes that Israel and God are “two contracting parties, each of whom promises something to the other to form the

68 BT Shabbat 88a. Dorff (1995):64, cites the continuation of the sugya that Levinas explores in his “Temptation of Temptation.” See Chapter Three, Section 5.4 above.
71 At Dorff (1999b):267, the covenant’s goal is “modeling what a human society can and should be” – becomes in Dorff (2003):65, “modeling what human individuals and what a human society can and should be.” Does this later addition of the individual reflect a growing acknowledgment of modernity’s influence on modern Jewry: even individuals, despite their wont to err, can be moral exemplars?
72 Sifrei Deuteronomy 343; Numbers Rabbah 14.10. See Chapter Three, Section 3.1 above.
73 Dorff (1999b):265; Dorff (2003):63. See also Dorff (1995):72. In the 2003 version, he also adds a midrash from Sifra, Shemini, 12.4 on Leviticus 11:45, in which God essentially says “I will be your God even against your will.”
74 (1995):62. Perhaps this conflates Deuteronomy 29:14-15 with the refrain “we will do and we will hearken” found in Exodus 19:8, 24:3, 7; and in Deuteronomy 5:24.
agreement.” He sees the audience – the people Israel – entering into a (marriage) contract with God because they assent to its conditions.

Though promises may have initiated these covenantal obligations, why Jews should continue to uphold them is debatable. In Dorff’s view, the ultimate purpose of Jewish existence in the covenant is to uphold the law so that it becomes absorbed into humankind. He cites a midrash in which God cries, “would that they had deserted Me and kept My Law, for if they had occupied themselves with the Law, the leaven in it would have brought them back to Me.” Dorff, like Bleich, sees in this teaching the instruction to study and practice law (not ethics per se) to connect with God. Dorff further insists that one who obeys the law because it is commanded is praised more than the one who voluntarily upholds the law. Obeying the law is Israel’s means of “relating to, and learning about, God.” Obedience transforms Israel’s humanness into the holiness biblically desired of them.

Dorff’s covenantal theory thus conceives Jewish ethical arguments as part of a larger conversation amongst living Jews. These arguments reach into the past to find precedents that can be evaluated in their historical contexts and then appropriated for contemporary concerns. As rabbis are the proper authorities to speak these arguments and are merely human, they must be ready to admit being wrong and to adjust their positions if the community demands it. If a

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76 “One may still feel bound to obey Jewish law out of a sense of owing God, or due to one’s Covenantal promise, or because one sees the life guided by the law as wise, or because one is motivated by respect for, or love of, God. For all these reasons, then, I maintain that Jewish law is fully authoritative for us today, even without human enforcement,” Dorff (1999b):13. Borowitz also sees such pluralism justifying law’s authority at (1991):286-287. That common “cause need not require common because,” see Crane (2007).
77 Pesikta deRav Kahana, §15.
78 “Practice of the law can be a method of coming into contact with God,” Dorff (1990):115. Bleich also cites this midrash (from YT Hagigah 1.7) to mean “‘Would that they were concerned with normative law rather than with ethical conduct.’ Reflected in this concern is the fear that undue concentration upon an attempt to capture the essence of the Divine and attendant obligations which transcend normative law may degenerate into antinomianism. The second concern is that ethical reflection can, after all, add but little to what may be discovered by an examination of normative law. Hence, the opposition in some circles to the study of mussar literature. Ultimately, as illustrated by the above-cited dictum, G-d’s essence can be discovered, not from the study of ethics, but from the pages of the Talmud.” Bleich (1985):542-543.
79 Dorff (1990):115. See BT Kiddushin 31a; BT Baba Kama 38a, 87a; BT Avodah Zarah 3a.
80 Ibid.
A rabbi wants to find purchase in his audience, he must appeal to the real individuals constituting his audience by coordinating his argument to their experiences. Conversely, each individual comprising the audience is an active participant in this ethical discourse insofar as each brings his or her experiences and values to the discussion. An ethical argument attempts to coordinate the speaker’s and the audience’s experiences into a coherent whole. Only when a substantial portion of the community sees itself in and thus accepts a rabbi’s argument can the argument’s conclusions become the community’s norm. That is, a norm becomes right qua law if and only if the community makes it so. Jewish ethical argumentation is an ongoing collective endeavor in which communally-established laws are constantly re-evaluated; and because of its political nature, it is a consultative process in which consideration of the audience dominates.

2.3. Eugene B. Borowitz

In some ways it is appropriate to consider Eugene Borowitz the progenitor of 20th Century covenant theology. Since mid-century, his covenant theology matured from a boyhood of liberal Jewish rationalism to religious existentialism and on to postmodern Jewish self-hood. Throughout his theological wanderings, the central issue around which all else orbits is integrity. At any moment in one’s life, all that a person has and has control over is one’s integrity; protecting it is imperative. Covenantal theology, for Borowitz, is the best tool for this endeavor.

81 Dorff (1998):9-10. This echoes H. Cohen (1995):4, who says that in order for Jewish scriptures and texts to mean much to him, he must bring to them “a concept, which I myself lay out as a foundation in order to be instructed by them and not simply guided by their authority.” Just as a reader brings a conceptual lens to texts, so too do individuals participating in communal deliberations bring experiences, values and concepts to their contributions therein.

82 For Dorff, this community is composed of learned Jews (rabbis), not laypeople.

83 Borowitz did not begin his theological musings on covenant theology itself but on a “theology of mitzvah, a rationale of the Jewish way of life and belief” and only later on covenant theology itself (1961):62ff. For a summary of his intellectual/theological maturation, see his “A Life of Jewish Learning: in search of a theology of Judaism” (2000a), and “Im Be ‘et, Eyma – since you object, let me put it this way” (2000b):149-150. See also Ellenson (1993); Ellenson & Krafte-Jacobs (1993); Batnitzky (2001).
Borowitz’s covenantal theology derives primarily from sociological considerations. From 1961 onwards, he continuously points to changes in Jewish practices and sensibilities that require reconsidering theology because, for him, theology is handmaiden to lived life.\(^\text{84}\) Not only is social history the true laboratory of Jewish theology, society is a primary source for normative guidance.\(^\text{85}\) On the other hand, the 20\(^{th}\) century’s many examples of group-inflicted atrocities and of universal reason’s failure to uphold morality inspire Borowitz to distance himself from Kaplan’s communalism, and from Hermann Cohen’s and Leo Baeck’s rationalism.

If sociology drives theology, it is no surprise then that Borowitz understands the covenant to be a relationship between God and Israel, with God serving as its ground.\(^\text{86}\) This is a relationship with historic origins at the time of Abraham and it was sealed at Sinai.\(^\text{87}\) Insofar as God covenants with the people Israel and not with individuals \textit{per se}, each Jew shares in the covenantal relationship by birth or by conversion.\(^\text{88}\) This historical communal relationship with God is the context in which modern Jews function.

Though God may be the initiator or speaker of the covenant, God is both weak and quiet. At least philosophically speaking, because modernity’s absolutes (e.g., reason, the autonomous self) have proven themselves fallible, God is best understood as a “Weak Absolute.”\(^\text{89}\) On the other hand, Borowitz is wary to speak exclusively in naïve postmodern terms of relativism or to deny God any absolute status altogether. He uses this qualification of God – a “Weak Absolute”

\(^{84}\) “Still in true Jewish fashion it is life which must strengthen and intensify theology, so that theology may in turn direct and order life” (1961):68. His lean on sociological changes is found at (1961):64; (1984):231ff; (1991):292ff; (2002b):11. Bleich and Dorff, too, are concerned about lived life, but for them, albeit differently, life is handmaid to theology.


\(^{86}\) Covenant, with a capital C, is in Borowitz’s lexicon reference to the covenant between God and Israel. When he speaks of covenant with a lower-case c, it refers to the covenant between God and all of humankind, as embodied by Noah. In this paper, however, these distinctions are not kept.


\(^{88}\) Borowitz echoes Rosenzweig’s insistence on consanguinity for membership in the covenantal relationship. But unlike Rosenzweig, Borowitz makes room for the convert by saying that a Jew “may share in [the covenant] as a matter of will when he makes this historic Covenant the chief article of his faith.” See Borowitz (1961):5.

– to “smash into the ear” of his audience and thus appeal to the philosophically suspicious and
theologically yearning individuals comprising his assumed audience. This qualification of
God’s absoluteness is also an epistemological move. It expresses humility because humankind’s
capacity to grasp absolutes at all was proven by modernity to be faulty, at least theologically
speaking. Certainty in the post-modern age is no longer an intelligible goal.

God is also quiet. Over forty years ago when regarding Shavuot, the holiday celebrating
the giving of the Torah (משה), Borowitz says he cannot celebrate the traditional belief of
“God’s giving the words of the Torah, both Written and Oral….I cannot believe that God reveals
Himself in words.” For whenever he is close and intimate with “my God, I have not found Him
to speak words.” The words others claim as God’s align more consistently “with everything
else I at this point know of man’s history and God’s nature, that these are men’s own words in
response to God, not His dictation.” Thirty years later he reiterates his belief that “God
commands people, albeit nonverbally.” He draws on Buber’s insistence that revelation is
necessarily wordless and at a “transverbal level.” He combines Rosenzweig’s and Buber’s
notion of individuals experiencing revelation (and, perhaps, on Levinas’ reading of Halevi) to
reinforce his own position that whatever is known about God comes from human responses to
God: knowledge of God is ultimately subjective. This subjectivity does not mean that
knowledge of God is arbitrary or purely idiosyncratic; rather, it demands personal intention and

91 See Borowitz’s discussion of humility and self-contraction (רסס) at (2000b):32ff. See also his retreat from
objective assertions about God, (1991):293, ad loc. In most of his works Borowitz critiques Kant’s philosophical
certainty.
92 Borowitz (1966):102. In a way, he echoes Buber’s resistance to the idea that God legislates – that is, God
promulgating norms intelligible precisely because they are formulated linguistically as laws.
93 Borowitz (1966):103.
95 On “transverbal level,” see Borowitz (1991):270. Batnitzky is right to point out that Rosenzweig’s view of
Shavuot, for Borowitz, is therefore more כַּעֲשִׂיְתִיְהָ וּבְרֵי כיָם כָּל הָרֶעְדָּה, that is, more “establishing-a-covenantal-
attention. It takes personal effort to “listen” to God’s silent presence and relating.\textsuperscript{96} Since what is known of God is subjective and personal, Borowitz is vague about the concept of covenant itself. Throughout the decades of his thinking on this topic, he consistently speaks of covenant as a “relationship” between God and Israel and bases it on Buber’s relationalism. Only lately and rarely does he refer to any specific kind of relationship (e.g., marriage) to metaphorically illustrate the obligations incumbent upon the relationship’s partners.\textsuperscript{97} Borowitz’s resistance to using the marriage metaphor may derive from his sociological bent. For example, he sees that marriage no longer endures in modern society as an indelible relationship; the increasingly practiced annulment or dissolution of marriage does not comport with his insistence that the relationship between God and Israel has no historic or theological end. Because marriage could not suffice as a metaphor, Borowitz speaks in vague terms of ‘covenant as relationship’ and only that.\textsuperscript{98} This vagueness may be virtuous insofar as all people relate and only a portion marry, and thus his theory would be cognizable by a larger audience.

Squaring the personalized, subjective nature of one’s knowledge of God (i.e., revelation) with the communal nature of the covenantal relationship is no easy task. Borowitz addresses this by speaking about the content of the covenantal relationship. Theologically, since God is silent, there can be no divinely legislated law. Logically, however, it is inconceivable to Borowitz that nothing serves to coordinate behavior. Again relying on sociological observations, he claims that since the Enlightenment fewer and fewer Jews turn to or perceive halakhah as a governing

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\textsuperscript{96} A critic might say that Borowitz’s theology is a kind of sociology of subjectivity and its individualism risks anarchy. As will be seen below, Borowitz meets this challenge with a checks-and-balances ethical decision-making process that tethers individuals to groups, tradition and time.

\textsuperscript{97} He refers to covenant as a marriage in (1991):223 and (2000b):163. In reflection, does Dorff’s reliance upon the metaphor of marriage unwittingly repulse those who are not married, who do not want to be married, or are no longer married because of choice or death or of illness or injury? See Adler (1998b) for a critique of the marriage metaphor.

\textsuperscript{98} Novak challenges Borowitz’s intimation that the covenantal relation, like many human relations, is between terms of equal worth or status. He would rather Borowitz be explicit about the “senior partner” being qualitatively superior to the human. See Novak in Ochs (2000).
institution; indeed, lax observance plagues all streams of modern Jewry.\textsuperscript{99} Individual decision-making has become the authority of last resort. The only way to salvage some sense of behavioral coordination among modern Jews is to integrate – marry, if you will – the current reliance upon individual conscience and more traditional notions of Jewish communal obligation.\textsuperscript{100} Borowitz attempts this by positing “the Jewish self”\textsuperscript{101} as the final source, tester and arbiter of Jewish practice or \textit{halakhah}.\textsuperscript{102} Borowitz thus dismisses Bleich’s and Dorff’s 

\textsuperscript{100} Borowitz is explicit that he co-opts modernity’s “culturally compelling metaphor of selfhood.” (1991):288, \textit{ad loc.}
\textsuperscript{101} Borowitz’s transition from “the autonomous Jewish self” to “the Jewish self” warrants scrutiny. Modernity’s infatuation and elevation of the autonomous self led Borowitz in 1984 to “transform the older liberal general human self with its accretion of Jewish coloration into what I call the undivided Jewish self” (219). He goes beyond Kaplan’s religious humanism and Buber’s relationalism to speak of “the autonomous Jewish self” that “is constituted by existence in the Covenant” (221). Insofar as a Jew’s personhood is ineluctably intertwined with the contemporary covenanted community, its history and its future, the individual Jew exercises autonomy vis-à-vis this context. This is why he says the individual autonomous Jew tests the provisions of law according to his or her own conscience, because only in this context can personal freedom be exercised in the first place. To the degree that the autonomous individual’s conscience is the ultimate arbiter of what law is and its authoritative claim upon the self should be – which is an existential exercise in covenant – Borowitz claims that “the Jewishness of the Jewish self should now be seen less in its obedient observance than in its authentically living in Covenant” (224). Even disobedience, both unwitting and willful, by the autonomous Jewish self can be viewed as living covenantally.

In his 1991 opus, Borowitz downplays the trope of autonomy to speak instead of “the Jewish self.” Philosophically speaking, postmodernity’s (especially Derrida’s) deconstruction of modernity’s notions of rationalism and autonomy led him to rethink theology. The self’s \textit{a priori} particularity and the self’s difficulty in articulating it become his primary concern (see also his summary at (1995):283ff). Although he acknowledges that his subject matter is more ideal than real, he nonetheless asserts that his theology of covenant has the therapeutic goal of “bringing Jews to the greater wholeness of Jewish selfhood, a reconstruction of Jewish life that begins with helping individual Jews find greater personal integration, one that ineluctably involves them in community as with God” (294). Personal integrity becomes the ultimate goal of every Jewish self.

“As autonomous Jewish selves, they would personally establish the validity of every \textit{halakhic} and communal prescription by their own conscientious deliberation. We would then judge their Jewish authenticity less by the extent of their observance than by the genuineness of their efforts to ground their lives, especially their actions, in Israel’s ongoing Covenant with God. The more fully they integrate their Jewish selves, the more fully will every act of theirs demonstrate their Jewishness.” (1991:294)

Self-adjudication of Jewish duty is a necessary component of Jewish existence for every Jewish person. (How different is he from Bleich and Dorff who also admit that, at the end of the day, they rely upon individuals to understand, construe and defer to \textit{halakhah} as binding upon them? All three scholars, it seems, agree that individuals can and do exercise freedom to reject, be it altogether or piecemeal, \textit{halakhah}’s authority.) Moreover, Jewishness is determined more by intention to coordinate behavior with the covenantal context than by actual coordination. \textit{Kavanah} (תַּכָּנָה, intention) – and not \textit{keva} (tryside, structured action) – becomes his measuring stick of Jewishness (see Borowitz (2000b):167). And, as personal integrity is predicated on social context, for a Jew, that context is the Jewish tradition, community and God. Hence, the rhetorical switch from “the autonomous Jewish self” to “the Jewish self” highlights the necessary sociality of Jewish personal existence; the former expression gave too much credence to modernity’s isolated beings-in-general. See Borowitz (2000b):35ff. See also Ochs (2000) and Batnitzky (2001).

\textsuperscript{102} Source: Law is “the living discipline which flows from the consciousness of standing in direct personal relationship with God, not merely as a private self, but as one of the community with whom He has covenanted” (1966):106. Tester: “As autonomous Jewish persons, the provisions of the law would ultimately be tested by appeal to their conscientious individual Jewish understanding” (1984):224. Arbiter: “At any given moment, it is ultimately
reliance upon the sage or rabbi for making binding norms for modern Jews, for it is the individual Jew – knowledgeable, to be sure, of the Judaic tradition and its current communal expression – who legitimates what might be construed as Jewish law.\textsuperscript{103} And insofar as each individual Jew is concerned with personal integrity \textit{as a Jew}, each will “want their lives substantially to be structured by a continuing involvement with the prescription of Jewish law.”\textsuperscript{104} In this way Borowitz ties individual modern Jews who experience personalized revelation to the communal covenant that is historically expressed in prior halakhot. His is not a call for wanton anarchy.

On the other hand, what emerges from such individualized deference to historic halakhah is not law \textit{per se} but something else. Borowitz distances himself from the rhetoric of law and halakhah in order to speak of “Jewish duty.”\textsuperscript{105} However much Borowitz yearns for communal forms of Jewish existence, he cannot fathom a “return to law.” Instead, he says, “we must think in terms of a self-discipline that, because of the sociality of the Jewish self, becomes communally focused and shaped.”\textsuperscript{106} Integrating modernity’s fascination of the self with Judaism’s legalism, the notion of self-discipline is the source of Jewish duty and is “the Jewish self’s equivalent of halakhah.”\textsuperscript{107} This self-discipline is similar to that practiced in daily relationships wherein “unarticulated demands have a greater power than the spoken ones.”\textsuperscript{108} Like Levinas’ quietly approaching neighbor, the silent demand of a relationship’s partner is a more powerful motivator

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\item I who must determine what to make of God’s demands and Israel’s practice, tradition, and aspiration as I, personally, seek to live the life of Torah in Covenantal faithfulness” (1991):293.
\item Borowitz (1991):287ff.
\item Hence, the subtitle to his 1991 opus: “A Postliberal Theology of Jewish Duty.”
\item Borowitz (1991):288, emphasis in the original. Borowitz may be drawing inspiration from Leviticus 16:31 where Yom Kippur is described as an annual Sabbath of complete rest in which “you shall practice self-denial” (זֶה היא הַשָּׁנָה הַשָּׁרֶשֶׁתָּה). The haftarah read on Yom Kippur is Isaiah’s (57:14-58:14) plea that such self-denial or self-discipline not be pure zealotry to be near to God at the expense of engaging in social justice. Like Isaiah’s, Borowitz’s is a call for ethical self-discipline that links ritual with moral responsibility.
\item Borowitz (2000b):163ff.
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to fulfilling responsibility than any articulated law could be. Always the sociologist, Borowitz hopes this call for Jewish duty – for simultaneously enacted self-discipline by “enough Jewish selves” – will “create common patterns among us.”  

Thus the proper audience of the covenantal relationship is both the individual and the community. Like Dorff, Borowitz reiterates that contemporary individual Jews did not start the covenant but come to exist in an ongoing covenantal community.  

And like Dorff, the community ranks prominently in Borowitz’s five-planked Jewish ethical decision-making procedure. The freedoms or responsibilities that are ultimately granted to the individual Jew are bounded by the limits of the community’s covenantal relation with God.  

On the other hand, because the community is comprised of humans who develop the covenant’s boundaries and strictures, it is possible that the community may err or be “inattentive to its duty to God.” Though normally the community trumps individual freedom, this may be countermanded by a person’s assessment to favor deviance if and only if the person’s conscience can justify the deviance as rightful adherence to covenantal responsibilities.  

Borowitz’s covenantal theology balances communal obligations and individual freedom through an iterative checking done by the individuals constituting the community in which they are embedded.  

Given Borowitz’s theory of covenant-as-relationship wherein God is a silent partner, its content is ultimately self-discipline, and the audience is comprised primarily Jewish selves conscious of their communal contexts, what is his understanding of Jewish ethical argumentation? His theology leads him to delineate a meta-halakhah – a “theory of sacred

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111 His concern for both the audience and his methodology leads him to adjust his preferred mode of argumentation so that he can best reach his audience where they are at now rather than where he would want them to be. He explains this in regard to his 1969 book Choosing a Sex Ethic: A Jewish Inquiry. See Borowitz (2002a):98. Persuasion is the ultimate goal – see (1991):287.  
115 This reinterpretation of selfhood so that the Jewish self “has a measure of legislative authority” is “the most creative and important thing I accomplished in Renewing the Covenant” Borowitz (2000b):154.
First, the Jewish self lives personally and primarily in involvement with the one God of the universe....Second, a Jewish relationship with God inextricably binds selfhood and ethnicity, with its multiple ties of land, language, history, traditions, fate, and faith....Third, against the common self’s concentration on immediacy, the Covenant renders the Jewish self radically historical....Fourth, though the Jewish self lives the present out of the past, it necessarily orients itself to the future....Fifth, yet despite the others with whom it is so intimately intertwined – God and the Jewish people, present, past, and future – it is as a single self in its full individuality that the Jewish self exists in Covenant.  

This procedure for developing Jewish duty devolves to every individual Jew – not to rabbis or sages or communities. This is because “even in the postmodern vision of covenant with this strongly contextualized view of personal individuality, each Jewish self ultimately stands alone before God.”

Since every individual Jew is ultimately responsible for personal compliance with or deviance from communal practices, explaining oneself to the community becomes most critical. His ethical decision-making process helps the postmodern Jewish self conceptualize and then articulate why one does (or not) certain disciplines.

Paradoxically, arguing one’s ethical position is a kind of nonverbal task. Despite the requirement to plumb the depths of the textual tradition (steps 2 and 3), Borowitz does not feel compelled to cite precedents because, at best, citations reflect an author’s selectivity and not the normative tradition. For example, Borowitz mentions several theories offered in rabbinic tradition on why God covenants with Israel but not with others, but he does not explicitly cite the sources. One of the theories is “when they hesitated to accept the Torah at Sinai, [God] coerced them into doing so by lifting the mountain over their heads” – an obvious but silent reference to

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116 He offers preliminary outlines of it in his 1984 article, “The Autonomous Jewish Self” and then develops them further in his 1991 *Renewing the Covenant*, especially chapter 20. He summarizes them in his 1995 *Choices in Modern Jewish Thought*, and in his response to critics in Ochs’ *Reviewing the Covenant*.


119 See also “‘Jewish?’ ‘Ethics?’ ‘Jewish Ethics?’ – the new problems.” In Borowitz (1990), especially 35ff.

120 “No matter how many citations one adduces,” he says, “they can merely illustrate a possible relation of some aspects of our tradition to the new thinking...[A]ll textual citations remain a thinker’s selection of what she/he finds relevant in the tradition, and testify more to the thinker’s hermeneutic than to ‘the normative’ ideas in the tradition.” Borowitz (2000b):167. Even the phrase, “the new thinking” is borrowed from Rosenzweig (2000).
By saying that all citation is hermeneutics, Borowitz reasserts his sociological orientation: life drives theology. Thus he concludes “it wiser to clarify [his] hermeneutic than to gather texts to demonstrate its putative Jewishness.” By silencing the textual tradition, Borowitz encourages individual modern Jews to focus less on what they think ought to be done in a certain situation because of earlier Jewish textual sources and more on why they think through that issue in a particular way and not another. For him, Jewish ethical argumentation is more about process than position. Indeed, Jewish ethics “involves less a content than a process, one of mediating between the values I find” in modernity and in the Jewish tradition. In this way, ethical discourse is speech about thinking; it is philosophy in action.

For all his concern about integrity and decision-making, and in light of the elements of rhetoric (speaker, content, audience), Borowitz is most focused on the speaker. He is concerned about the individual Jew as articulator of personal Jewish norms, whether it is called self-discipline or Jewish duty. Each individual is to strive to communicate his or her truth as he or she perceives it. This is because personal expressions of truthfulness through time ultimately constitute one’s personal integrity.

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121 Borowitz (1991):219. Elsewhere he intimates this text and perhaps Maharal’s interpretation of it when he says, “I and others like me know that the existence of the Jewish people in Covenant with God is a matter of unique cosmic significance.” See Borowitz (2000b):162.


123 And yet in his latest book, Borowitz (2006), demonstrates how he reads, uses and interprets traditional Jewish texts. While this demonstration shows how he thinks through these traditional sources, he does not do this kind of textual re-citation in his more ethical works. Does he not cite these texts because of their variability and an indeterminacy that he eschews in ethical personal reflection?


125 It is not uncommon for Borowitz to explain how others have misread or misquoted him – a practice that reflects a desire to be not just truthful but clear about his positions. See, for example, Borowitz (2000b). He also speaks of this concern to this author in private email communication in September 2007. See also BT Berachot 55b on the ambiguous phrase “we see only our internal thoughts” – See Crane and Kadane (2008).

3. Linking Theories of Covenant to Ethical Rhetoric

It is now possible to map these scholars’ theories of covenant and begin to link them to Jewish ethical rhetoric. The following three maps offer visual depictions of their theories. Like all maps, these distort nuances. Nevertheless, their heuristic value emerges from their condensed presentation of the similarities and differences between these theories, and these theories’ relationships to normative speech.

The first map (4.1.) portrays the scholars’ theories of covenant in regard to the three elements of rhetoric. The Speaker refers to the desired authorized articulator and interpreter of the covenantal relationship between God and Israel; the Spoken refers to the desired content of that relationship; and the Audience refers to the desired role of the Jewish community. The shaded boxes indicate a scholar’s central concern in his theory of covenant.

<table>
<thead>
<tr>
<th>Theory of Covenant</th>
<th>Speaker</th>
<th>Spoken</th>
<th>Audience</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bleich</td>
<td>Lineage</td>
<td>Prior Sages</td>
<td>Ahistorical Law</td>
</tr>
<tr>
<td>Dorff</td>
<td>Marriage</td>
<td>Current Rabbis</td>
<td>Historicized Law</td>
</tr>
<tr>
<td>Borowitz</td>
<td>Relationship</td>
<td>Historicized Jewish Selves</td>
<td>Self-Discipline</td>
</tr>
</tbody>
</table>

Map 4.1. Covenantal Theories and Elements of Rhetoric

Despite their theological differences, these scholars agree that covenantal theories include these three elements. Moreover, their theories contribute to the ongoing development of Jewish thinking about covenant. For example, like early-modern and modern theorists, these scholars displace God in favor of human articulators of the covenantal relationship’s content.127 Stretching further back, in varying ways they echo Maharal’s notion that covenant is existentially

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127 Here is an alternative appreciation of this displacement of God. If Borowitz’s is a turn to the self, he does not do so at the expense of the Jewish community: the Jewish self is autonomous only within the covenanted communal context. Dorff gives primacy to the community over the individual but still acknowledges the self as an essential partner in developing communal norms. Bleich, too, nods toward the individual insofar as his works are invitations open to individual contemplation and ultimate rejection. Borowitz does not shed law altogether, but places it in a different authoritative status that Bleich and Dorff would balk at. That Dorff makes law subservient to communal consensus would challenge Bleich, yet the law has teeth for Dorff: it has boundaries. Bleich does not dismiss the community insofar as he seeks consistency within and across time in obedience to halakhic standards. Unity, for him, requires a community’s coordination of individuals’ behavior. In this way, all three give their due to the following elements: law, community and self – obviously in varying fashions and degrees. If one maps these as might Rosenzweig, they comport with Torah, Israel and God, where God and self are interposed.
necessary for Jews if not the (human) world as a whole. They all cite the Kuzari to locate the covenant in human blood (Bleich) and in human history (Dorff and Borowitz). Though none relies solely on the Tanakh, each points to it for covenant’s historical origin. In these ways, contemporary covenantal theologies retrieve biblical theories of covenant and couple them with rabbinic, medieval and (post)modern conceptualizations.

A second map (4.2) steps back to link covenantal theories to themes essential to ethical discourse: source of rightful authority, preferred mode of reasoning and notions of proper autonomy. The central concerns found in the previous map (4.1) become the rightful authority in this map (4.2). The shaded boxes indicate a scholar’s primary ethical concern or claim.

<table>
<thead>
<tr>
<th></th>
<th>Authority</th>
<th>Reason</th>
<th>Autonomy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bleich</td>
<td>Ahistorical law</td>
<td>Theological</td>
<td>Compliance</td>
</tr>
<tr>
<td>Dorff</td>
<td>Audience</td>
<td>Political</td>
<td>Deference</td>
</tr>
<tr>
<td>Borowitz</td>
<td>Historicized Jewish Selves</td>
<td>Philosophical</td>
<td>Contextualized in community</td>
</tr>
</tbody>
</table>

Thougt each scholar acknowledges that authority, reason and autonomy are ineluctable elements in religious normative speech, they differ in their interpretations of them. Bleich’s concern about the authority of the ahistorical law leads him to reason theologically to compel and inspire his audience’s compliance. Dorff’s fascination with the audience leads him to promote a political mode of reasoning in which the audience is asked to defer to the collective’s final decision. And Borowitz sees historicized Jewish selves as certain kinds of philosophers independently exercising and articulating their autonomy in communal contexts. In an attempt to simplify their theories if only to highlight their differences, it is possible to say that Bleich understands (religious) normative speech to be an argument predominantly – though not exclusively – from authority, Dorff from reason, and Borowitz from autonomy. Pushing these distinctions further, it is possible to say that these scholars differently understand reasoning.¹²⁸ Whereas reasoning for

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¹²⁸ For example, though they attend to reason differently, they nonetheless address it. Insofar as Dorff emphasizes communal conversation, he must rely upon some form of reason as the primary facilitator of a community’s construction of norms. That is, reason – because of its shared nature – is the primary tool in Jewish ethical rhetoric. He wants to construct reasonable arguments that cohere with his and others’ experiences and that inspire consensus.
Bleich is a process that engages objective reason (if objective here means that which is outside the self), for Dorff reasoning is a deliberative social practice in which humans are ineluctably intertwined, and for Borowitz reasoning is a process of self-examination for the purpose of sincerity in speech and integrity in action. In this way, a theory of covenant reveals more than religious ethical claims; it points to an ethicist’s desired religious ethical reasoning itself.

With these relationships in mind, it is now possible to map (4.3) connections between these scholars’ covenantal theories, desired normative reasoning, and religious ethical rhetoric itself. This begins by recalling a scholar’s primary element of rhetoric and primary ethical concern, and links them to the kind of procedure he considers most important for that element and concern. It then points to a scholar’s essential social concern, the rhetorical claim necessary to meet that social concern, and the linguistic expression that would best give that rhetorical claim voice.

<table>
<thead>
<tr>
<th>Primary Element of Rhetoric</th>
<th>Primary Ethical Concern</th>
<th>Procedural Concern</th>
<th>Social Concern</th>
<th>Rhetorical Claim</th>
<th>Primary Linguistic Expression</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bleich</td>
<td>Speech</td>
<td>Authority</td>
<td>Epistemology</td>
<td>Consistency</td>
<td>Truth</td>
</tr>
<tr>
<td>Dorff</td>
<td>Audience</td>
<td>Reason</td>
<td>Hermeneutics</td>
<td>Coherence</td>
<td>Rightness</td>
</tr>
<tr>
<td>Borowitz</td>
<td>Speaker</td>
<td>Autonomy</td>
<td>Decision-Making</td>
<td>Integrity</td>
<td>Truthfulness</td>
</tr>
</tbody>
</table>

Map 4.3. Covenantal Theories and Anticipated Normative Rhetoric

If there is a linear relationship between theories of covenant and ethical rhetoric, it would be reasonable to expect an ethicist to speak in terms consistent with this map. Bleich’s ethical

that, ultimately, becomes communal norm qua law. Borowitz (2000b):37, by contrast, recognizes that “reason had to be a secondary instrument in the search for wisdom.” Even the particularistic reason of Jewish communities is to be ancillary to the particularism of individual experience. Individual particularism precedes communal particularism which precedes universalism; see Borowitz (2000b):38. Bleich’s focus on truth precludes, for the most part, concern about reason. His concern is more about familiarity with the language of truth itself, like knowing mathematics in order to communicate the truth of theorems. Being reasonable is less important than being logical so as to prove a theorem based on the tradition’s pure and total(izing) language.

They also touch on messianism: For Dorff, through obeying the strictures of the covenant Jews can transform themselves and transcend into a messianic existence in which the laws are inscribed within human nature. Bleich sees Jews already endowed with a special quality and the law is not a means to an end, though obedience to it is a means and through obedience to the law Jews transcend time and space. For Borowitz, personal confirmation of the covenant writ large transcends time and space – obedience and law have little to do with it, while intention has messianic potential.

Or even further, Borowitz’s reasoning could be considered Socratic insofar as he models the Greek ideal gnothi seauton – know thyself.

See Map 2.1 in Chapter Two above and its surrounding discussion (page 64).
rhetoric should speak primarily in terms of an objective juridical truth; Dorff’s in search of communal consensus about what is right; and Borowitz’s in reflective personal exposition.\textsuperscript{131} Perhaps such linear anticipation is premature. As will be seen in the next section, they do not speak primarily in terms of legal formalism, \textit{halakhic} dynamism, or covenantal holism.\textsuperscript{132} If it were true that they speak only in these ways, then Bleich would not incorporate non-\textit{halakhic} texts or sensibilities, Dorff would not refer to any \textit{halakah} as eternal and absolute, and Borowitz would never refer to a text or law qua law at all. This is not the case; their arguments are not pure. Just as categorizing Jewish ethical arguments by language puts the linguistic cart before the theological horse, the converse is similarly dangerous. Thus it would be wrong to assume that, given an ethicist’s covenantal theory, he speaks exclusively in terms of truth, rightness or truthfulness.\textsuperscript{133}

The relationship between a scholar’s theory of covenant and his normative rhetoric may be messier than a linear model suggests. Indeed, each scholar acknowledges that his attempts to articulate his normative positions have a reflexive impact. Just as he seeks to connect with his audience and persuade them to abide by his position, this very exercise influences his own

\begin{flushleft}
\textsuperscript{131} Compare with Aristotle’s juridical, political and epidictic categories, as discussed in Chapter Two, Section Two, above.
\end{flushleft}

\begin{flushleft}
\textsuperscript{132} Newman describes Bleich as a legal formalist who is concerned primarily about “consistency, predictability, and logical coherence.” Also concerned about law as long as it is historicized, Dorff works “within a legal model, one that sees halakhah as a dynamic system, evolving in response to changing circumstances and ideas rather than as a timeless repository of eternal truths.” And Borowitz’s focus on covenant theology leads him to more theoretical than practical applications, and his discourse is more holistic, less systematic and formalist than the others so as to give greater emphasis on the \textit{zeitgeist} of “spirit of divine instruction.” See Newman (2005):116, 139ff, \textit{ad loc}. It should be noted that Newman does not confine ethicists to use the argumentative strategies he associates with them. Rather, he points to their various ways of conceptualizing moral decision-making. See also Newman (1998):187-194.
\end{flushleft}

\textsuperscript{133} It is also facile to assume a linear and direct relationship between an ethicist’s perceived or stated affiliation with a specific movement of modern Jewry and his language. There is great variability among members of every stream of Judaism in their theological commitments and how they articulate normative arguments. Bleich’s fellow Orthodox colleague at Yeshiva University, Walter Wurzburger, held a dramatically different perspective on covenant from Bleich’s, and reached conclusions on ethical issues that Bleich would not agree to. In the Conservative movement, see Dorff’s (2005) summary of the growth and diversity in that community of theological commitments and practical applications. And in contrast to Borowitz’s, look at the decidedly legalistic modes of argument by Marc Washofsky, a member and leader of the Reform community.
One might think that if authoring a normative text has a normalizing affect on the author, it would necessarily lead to positive reinforcement of foundational theological commitments. What actually transpires differs from that assumption. As will be seen, even though ethicists generally speak in accordance with their covenantal theologies, they also use normative rhetoric transcending the language anticipated here. This does not mean that there is no relationship whatsoever between theology and language. Rather the relationship between Jewish covenantal theology and practical Jewish ethical rhetoric is rich and mutually influential.

4. Actual Jewish Ethical Rhetoric

Before ascertaining the relationship between a scholar’s covenantal theory and his practical ethical argumentation, identifying what an ethicist says and how he says it on a particular topic requires careful discourse analysis. This analysis proceeds in a few steps, moving from a reportage or summary of their arguments, to a more abstracted discussion of their kinds of reasoning and argumentation, and finally to relating their arguments to their covenantal theories. Much like legal briefs, the following analyses highlight the unique strengths of each scholar’s argument.

As noted in Chapter One above, the practical issue chosen for this project is a biomedical one. Specifically, it examines how Jewish ethicists argue through the complex and controversial issue of care at the end of life, specifically euthanasia. As will be seen, these scholars present dramatically different arguments to reach divergent conclusions.

\[134\] Cf., Bleich on why scholars write, (1983):xii; Dorff (1990) on his search for greater coherence between his words and his experience; Borowitz, ad loc, especially on his attempt in 1969 to connect with college students about sexuality.
4.1. Bleich

J. David Bleich’s extensive 1996 “Treatment of the Terminally Ill” is not his first exploration of euthanasia. In 1976 he wrote about Karen Ann Quinlan, a young Irish Catholic woman who had lapsed into a persistent vegetative state and was then supported by ventilators. Her family sought to remove her from the machines and their case gained national notoriety. In that earlier article, Bleich identifies three primary issues of concern about euthanasia in the areas of theology, technology and morality. The theological question is whether God or humankind “is the arbiter of life and death.” The technical questions regard the definition of death and the extent of authority of health proxies. And most critical is the moral or legal question: “does anyone have the right to choose death over life?” These questions and his answers warrant close analysis.

Bleich weaves the trope of rights throughout his answer to the theological question as it relates to euthanasia. From 1973 to 1976 to 1996, he consistently insists that only God has the “right” over the beginning and end of human life. This is true because God possesses absolute

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135 “Karen Ann Quinlan: a Torah perspective.” Originally published in 1976 in *Jewish Life*, and reprinted in *Kellner* (1978):296-307. Page numbers are from the Kellner edition, and is listed in the bibliography here under Bleich (1976). Quinlan was taken off the ventilator in 1976 after a legal battle ending in the New Jersey Supreme Court. To everyone’s surprise, her body kept breathing for nine years, finally succumbing to pneumonia in 1985. The issues surrounding the Quinlan case helped generate the field of bioethics, establish ethics committees in hospitals and other health care facilities like hospices, and promote the institution of advance care directives. A more recent case regarding Terry Schiavo in Florida raised a national furor over a similar complex of rights and responsibilities and sparked State and Federal government intervention.


137 He states authoritatively that Quinlan “is alive even according to the most liberal definitions of death.” This is a somewhat surprising declaration, especially given his prior deliberations on the definition of death. Cf., Bleich (1973). And on proxies, he wonders, “may parents authorize withdrawal of treatment?” His initial response: “from the legal perspective, proxy consent remains a clouded area; from the perspective of Jewish law parents have no standing whatsoever in this matter.” Bleich (1976):196.

138 Bleich (1976):196. The curious nature of this moral question is that Bleich frames it in terms of rights, a trope that is not inherent to the Judaic textual tradition. See Novak (1992); Novak (2000); Novak (2005); Crane (2007).

139 In 1996, Bleich condenses the questions into two, a value judgment and personal obligations: (a) “Is it desirable that the patient be treated? Should value judgments be made with regard to the quality of life to be preserved?”; and (b), “under what circumstances, and to what extent, is the physician morally obligated to persist in rendering aggressive professional care? Is the patient always obliged to seek treatment designed to prolong life even though a cure is not anticipated?” Bleich (1996):52. While the former speaks in terms of preferences or ‘the good,’ the latter emphasizes legal responsibilities or ‘the right.’ Put differently, he frames the good as a rule applicable to everyone anytime, while duties are policies regulated by circumstances.
title over the human body; humans are merely stewards.\textsuperscript{140} For this reason, only God is the rightful governor of life’s termination. In this conceptualization, God is an active agent who bestows and relieves, determines and arbitrates, governs and reclaims. Humanity’s task, by contrast, is to preserve, dignify and hallow. For this reason humanity is relieved of – actually, “denied” – the burden (or “right”) of wrestling with “quality of life” questions.\textsuperscript{141} For Bleich, a medically hopeless life is not a spiritually meaningless one since only God can decide whether this is true. Morbidity, too, should not be impugned because living with suffering is preferable to death, according to the Talmud.\textsuperscript{142}

In 1973, Bleich concludes from this theological position that any withdrawal of treatment to the dying “leads directly to overt acts of euthanasia: from there it may be a short step to selective elimination of those whose life is deemed a burden upon society at large.”\textsuperscript{143} He is silent about this slippery slope in 1976 yet reasserts his position that “every moment of life is of inestimable value” – suggesting that any withdrawal of treatment is counter to Judaism.\textsuperscript{144} Yet he seemingly tempers his position by 1996. Despite life’s infinite worth, and that both active and passive euthanasia are “contrary to the teachings of Judaism,” and that “any positive act designed to hasten the death of the patient is equated with murder in Jewish law,” he nevertheless concedes that “life-prolonging therapy may be withheld only to avoid excruciating pain.”\textsuperscript{145} This permission, however, is only theoretical, as will be seen momentarily. That is, the theological position that God is the sole and ultimate arbiter of the end of life remains intact.

\textsuperscript{141} Bleich (1973):109; Bleich (1976):306; Bleich (1996):61, 70-71. He repeatedly connects concerns about quality of life with American values insofar as the latter cherishes happiness and utility.
\textsuperscript{143} Bleich (1973):109.
\textsuperscript{144} Bleich (1976):305.
\textsuperscript{145} Bleich (1996):52, 76.
On the technical question of the definition of death, Bleich rejects the modern notion of brain death in favor of the halakhic criteria of stopped respiration and heart beat. He insists that the determination of the time of death is “essentially a theological and moral problem, not a medical or scientific one.” Since medicine has no determining agency in this task, halakhah serves as the exclusive framework in which a definition of death can be found and grounded for Jews. This is because halakhah is totalizing, absolute and eternal; indeed, it “acquires a sanctity, sui generis, of its own.” In this way Bleich asserts an epistemology that rests upon theology: the rightful authority to determine death is not in human hands (alone) but in Jewish law.

Just as Bleich relies on halakhah to define death, he turns to Jewish law to ascertain when a person approaches death. A moribund person whose death is imminent is called a goses (גוזס) and, according to halakhah, medical intervention is not mandatory. Not all moribund patients are in the state of gesisah ( OnCollision) – of being in their death throes. Therefore it is unreasonable to apply rules for the goses to all terminally ill patients; it is impermissible not to intervene. Later on he all but renders the category of gesisah moot. He does this by limiting the category of goses to a strict time period of 72 hours before death. Any patient surviving longer than three days is, by definition, not a goses and the legal permission not to intervene medically becomes irrelevant: the patient must receive medical intervention. Conversely, by definition the state of

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146 The notion of brain death was put forward by Harvard University in 1968, and published in “A Definition of Irreversible Coma,” Journal of the American Medical Association, 205/6(August 5):337-340. Bleich rejects this definition at (1973):91ff; (1976):298ff; and in (1996):58, where he cites R. Ahron Soloveichik’s rejection of brain death. But if cessation of breath and heartbeat are sine qua non of the dead, then would not the resuscitation of a patient constitute resurrection? Yes, Bleich admits, and this should be done “since there can be no greater honor than resuscitation,” Bleich (1973):107. But resuscitative efforts of the already dead should occur only if “there is absolute certainty with regard to the success of such efforts.” See Bleich (1973):106-107. There is no agreement, however, among Orthodox poskim about brain death. See a contrary position in Tandler (1990).

147 Bleich (1973):93. See also Bleich (1976):303. Yet in 1993, Bleich insists that “the task of defining the term [death] properly belongs to a lexicographer whose findings are essentially reportorial in nature…. [And] the act of definition provides no basis whatsoever for moral conclusions of any nature” (1176).


149 Cf., Rema’s gloss to SY Yoreh De’ah 339:1.


151 Bleich (1996). See Ronald Green’s critique of Bleich, quoted in Newman (1998):168-169. Green suggests that goses can be retained as a halakhic category only if its criteria are switched from time to “medical hopelessness” (a technological definition that, obviously, changes over time) or to “quality of life” (which he does not define).
"gesisah" is one that is neither reversible nor prolongable. If it were medically possible to prolong a patient’s life – despite, for example, a terminal illness or acute injury – the patient cannot be qualified as a "goses" and intervention is thus mandatory. Furthermore, because modern science cannot ascertain when death occurs, identifying a patient's last 72 hours is impossible; thus no one could ever be categorized as a "goses." He therefore sees the category of the "goses" as a definitional fiat by halakhah that arbitrarily punctuates the continuum of life. A patient who yesterday would have been considered a "goses" and can be treated in today’s medical world thus should not be considered as a member of that category. If the category must exist, "gesisah" can only be a relative category that varies according to medical knowledge and technology.

Only if a patient suffers intractable pain does Bleich consider it reasonable to entertain passive euthanasia. Following modern poskim, Bleich asserts that if it were possible to identify a "goses" at all, the patient must invariably suffer intractable pain. This suffering patient falls under the principle “it is not obligatory to prolong the life of every patient.” Bleich challenges this principle with two halakhic arguments: (1) that “emotional distress, at least for some people, is subject to control,” and (2) that not all patients (e.g., unconscious ones) suffer pain or discomfort. He couples these halakhic arguments with scientific studies, anecdotes and editorials to reject this principle’s possible permission for passive euthanasia.

Doctors, he says, are not yet adequately trained in palliative care, and studies show that adequate

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152 This was true before modern medicine, too. The textual tradition notes that someone in a swoon may exhibit the symptom of stopped respiration. See Bleich (1973): 97, 106, ad loc.
153 “Life itself is a terminal condition and the process of dying begins with the moment of birth. Identification of any point along the continuum of life as the beginning of the process of dying is, in the logical sense, entirely arbitrary. Similarly, identification of the state of "gesisah" as denoting the onset of dying is nothing more than a halakhic construct, and hence definition of "gesisah" as the process of dying is tautologous, i.e., a patient in the physiological state termed "gesisah" is treated as being in the process of dying, not because of any incontrovertible empirical considerations, but because Halakhah declares it so.” Bleich (1997):67.
154 Passive euthanasia is in contrast to active euthanasia, which are acts of commission hastening a patient’s death.
155 He follows R. Moshe Feinstein, Iggror Mosheh, Hoshen Mishpat, II, no. 74, §1, and no. 73, §1. He also cites R. Shlomoh Zalman Auerbach, Minhat Shlomoh, no. 91, §24. See Bleich (1996):70ff.
pain control neither exacerbates respiratory distress nor hastens death. For this reason it is best to change the first word of his last sentence (“when” to “because”) so that it reads: “[because] pain can be controlled, the obligation to preserve and prolong life remains in full force.” In this way, both halakhah and science justify his conclusion that intractable pain does not warrant even passive euthanasia.

The second technical question – in regard to health proxies – is really about who has rightful authority to make decisions about a patient’s demise. Early on Bleich recognizes that caring for dying patients causes resentment and extreme emotional distress upon families and medical practitioners. That said, he focuses his discussion toward doctors: “halakhic Judaism demands of [the physician] that he govern himself by the norms of Jewish law whether or not these determinations [of death] coincide with the mores of contemporary society.” Not only is the family dismissed from having a say in a patient’s demise, doctors, too, are also removed so as to make room for the rightful authority: rabbis. For only rabbis are sufficiently distanced from a particular patient to make dispassionate and objective decisions. Rightful authority rests solely in halakhah as interpreted by trained rabbinic scholars.

Finally, in regard to the initial moral question of the right to die, Bleich reframes the issue in a way that avoids moral deliberation altogether. In 1973, he argues from Jewish and Greek sources that the right to life “precludes the right to hasten death either overtly or covertly.” This very statement precludes moral deliberation insofar as it silences consideration of

159 Bleich (1996):77.
161 Bleich (1973):107. Notwithstanding that the law to which Bleich urges Jewish physicians to obey is one imbued with a care for the sanctity of human life, the irony in this statement emerges at the end of the piece where he says, “Hannah Arendt and others have pointed out that in the scale of values accepted in Germany during the World War II era obedience to law took priority over the sanctity of human life” (109). It is not obedience to law per se that can jeopardize society, but that the kind of law one obeys can be dangerous. Bleich’s juxtaposition here pits Jewish law over and against all other kinds of law as if to say they must not mix.
163 Cf, Bleich (1996):52, 57. Families are denied permission even to pray for a patient’s demise because they are too emotionally involved; see Bleich (1976):302.
alternative perspectives. A few years later he switches from speaking against the increasingly popular “American value” of dying with dignity to challenging the assumption that living with sickness is an indignity. For him, it is “specious to insinuate” that attempts to sustain even mortally sick individuals are anything but expressions of high regard for the gift and dignity of life.  

If intervention expresses and reflects the dignity of life, then removal of intervention or the omission of intervention would be its opposite and, in his view, antithetical to Judaic values. The right to die, then, is not a moral question because it is not a Jewish one. He carries this logic even further in 1996 when he argues that the theological term “sanctity of life” is the same as the secular state’s “compelling state interest.” Being a transcendent value, the sanctity of life “supersedes consideration of personal freedom.”  

Choosing to die is thus taken out of the hands and minds of people because only God controls human mortality – a position consistent with Bleich’s covenantal theory of lineage. In this way, the moral question of the right to die becomes a moot issue, and deliberation of it as such would only muddle efforts to obey the Divine plan.

A strong relationship is thus visible between Bleich’s covenantal theory and his practical ethical rhetoric. He explicitly states that, after God, rabbis are the best arbiters to decide both when a patient enters into irrecoverable death throes and when medical intervention is no longer required. He buttresses this position by relying heavily on prior sages – including sages who institute law per se as well as sages who interpret Toraitic, aggadic and legal texts. Despite

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165 “Is sickness or frailty, however tragic, really an indignity? Is the struggle for life, in any form, an indignity? Is it not specious to insinuate that the attempt to sustain life is aught but the expression of the highest regard for the precious nature of the gift of life and of the dignity in which it is held?” Bleich (1976):305, emphasis in the original.


167 He incorporates R. Isaac Abarbanel’s interpretation of the Mishnaic maxim “אין אתה נבנוי埃尔 עליה ממקוהו, ר” as “nor in desisting from it are you a free man.” Bleich takes this to mean that “freedom is the absence of constraint which would interfere with realization of man’s potential. The laws of the Torah are designed to facilitate man’s endeavors in fulfilling the Divine plan inherent in creation.” Bleich (1996):55. See M. Avot 2.16. The traditional translation of the full teaching is “you are not obliged to complete the work, but nor are you free to desist from it.” R. Abarbanel lived in the 15th century.
acknowledging advances in medicine and technology, he maintains that Jewish law is ahistorical and remains in force even if its initial reasons no longer obtain.\textsuperscript{168} His removal of euthanasia’s audience – including the patient, family, caregivers and even rabbis themselves – reflects his covenantal theology. As seen above, he reiterates the need for modern Jews to accommodate themselves to halakhah, and specifically to the never-dying laws on death and dying. It should be no surprise then when he wraps the modern moral/legal question about the right to die back to his theology of biological necessity. Such modern questions distract Jews from fulfilling God’s plans for creation.

4.2. Dorff

Elliot Dorff addresses death, dying and euthanasia many times.\textsuperscript{169} He justifies this ongoing attention to these topics by pointing to “new medical and legal realities” that make it “less than obvious to contemporary Jews” that traditional Jewish positions on euthanasia are tenable and morally valuable.\textsuperscript{170} He explicitly situates himself in the ever-changing medical and

\textsuperscript{168} Bleich (1976):305. Note, too, that it is God who creates drugs and medicine, Bleich (1976):301. “In precisely the same manner, all medical artifacts must be recognized as having been spawned by providence and designed to serve as instruments of pikuach nefesh….God created drugs and medicaments and endowed man with the intelligence necessary to discover their medicinal properties; we are obliged to use them in warding off illness and disease. Similarly, God provided the materials and the technology which make possible catheters, intravenous infusions and respirators; we are likewise obligated to use them in order to prolong life. Medication, therefore, may not be withheld from an incurable patient.” Bleich (1996):61; see also Bleich (1976):301 for a near similar quote. This line of reasoning paints the universe in such a way that human ingenuity is but an illusion. Human intelligence’s purpose is merely to uncover what is already latent in the universe. Like the Jewish scribes and sages in Bleich’s covenantal theory, scientists only bring into practice what God provides; humans do not create law or medicine.

\textsuperscript{169} Dorff (1998):176-220, 228-229; Dorff (1999a); Dorff (2002):107-108; Dorff (2003):240-244. His major treatment of this topic (1998; and published in full in 1999) became one of the two approved positions in 1997 for the Conservative movement’s Committee on Jewish Law and Standards. See his bibliography in 1998 for a more complete listing of his efforts. The following analysis is primarily of the 1998 chapter.

\textsuperscript{170} Dorff (1998):177.
legal milieu of modern America so as to examine and reevaluate classical Jewish positions on euthanasia to better fit contemporary Jewish-American concerns.\textsuperscript{171}

The American context serves as a foil to Dorff’s primary concern about Jewish attitudes toward death and dying. He sees in “American secular perspectives” a utilitarianism in which each individual owns his or her body and can dispose of it as personally desired; each person, at least theoretically, can exercise the right to die.\textsuperscript{172} Judaism, by contrast, sidesteps concerns about utility in favor of an ontological claim: humans are created in God’s image (בנולא אלוהים). This inherent “ultimate value” precludes suicide and assisted suicide because “life is sacred regardless of its quality or usefulness.”\textsuperscript{173} Moreover, if the human body is “owned” at all it would be “owned” by God, which would deny individuals “the right unnecessarily to destroy or damage God’s property” – for that would constitute thievery.\textsuperscript{174} Dorff insists that “even a comparably liberal view of Judaism must, in order to remain recognizably Jewish, begin with the tenet that the body belongs to God.”\textsuperscript{175}

Dorff, like Bleich, understands God as the owner of human bodies and is the rightful authority to impose obligations to sustain human health and life. And yet it is humans who provide the actual care to the ill and dying. So while Dorff directs his comments to health care providers and patients, he also explicitly includes families, proxies, rabbis and other caregivers as essential to the decision-making processes for each patient.\textsuperscript{176} He also includes himself in this mix when he says that the American and Jewish traditions promote radically dissimilar values

\textsuperscript{171} Dorff (1998):177. At Dorff (1999):265, he says his reexamination and reevaluation of “Judaism’s stance on suicide and assisted suicide [is] so that contemporary North American Jews will know their tradition’s views of these issues and the reasons for those views.” In brief, his is (only) an educational goal. This raises the question of the relationship between education and ethics.

\textsuperscript{172} Dorff (1998):178ff. At least, suicide is not illegal, according to federal and state law. This does not mean that the national and state laws condone suicide, only that those who attempt it are not legally liable for a crime. On the medicalization of suicide, see Dorff (1998):370 note 4.

\textsuperscript{173} Dorff (1998):179.

\textsuperscript{174} Dorff (1998):179. Unlike Bleich, Dorff supports this assertion with prooftexts. He admits that this position derives from a merism of “heaven and earth,” meaning everything in between. See Genesis 14:19, 22; Exodus 19:5; Deuteronomy 10:14; Psalms 24:1. See Dorff (1999a):265 note 3; and chapter 2 in Dorff (1998).

\textsuperscript{175} Dorff (1998):180. See also page 197.

\textsuperscript{176} Dorff (1998): 201, 211, 219.
about “the worth and ownership of our bodies.”177 By speaking in the first-person plural, Dorff understands himself qualified – certainly at least bodily – to contribute to the collective’s deliberation about these pressing concerns. With this diverse audience in mind, he constructs his argument in ways to appeal to their various modes of reasoning. The course of action ultimately chosen for a particular patient should emerge from a consultative process among these stakeholders.178

In addition, this consultative process is to take Jewish legal precedents into full consideration. Dorff identifies at least three categories of legal thought that deserve scrutiny when making decisions about euthanasia: suicide, martyrdom and assisted suicide. If rights are granted to Jews by God, none include the right to injure one’s own body much less kill oneself.179 A Jew may opt for death only in three specific instances: when being forced to engage in idolatry, illicit sex, or commit murder.180 Such deaths are called *Kiddush hashem* (קדושת השם) – sanctifying (God’s) name – or martyrdom.

On the issue of martyrdom, Dorff invokes the famous Talmudic story of Roman soldiers burning R. Hananyah ben Teradiyon alive for teaching Torah publicly. Dorff reads this story as follows: Refusing to inhale flames to quicken his death (to illustrate the principle that one may not actively shorten one’s own life), R. Hananyah permits a soldier to remove wet tufts of wool on his chest so that the flames may consume him faster.181 Dorff asserts that “later Jewish authorities deduce [from this] that one may remove impediments to the natural process of dying

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177 Bleich, by contrast, frames the American context more generally in terms of democracy, individual freedom and personal autonomy. Though he admits that these are religious values as well, a religiously-oriented ethical system like Judaism does not afford them privileged status: Bleich (1996):53-54. This rhetorical frame distances Bleich from his American context to the degree that he seeks to adjust lived life (and dying) to his understanding of the Jewish textual tradition. Nevertheless, both Bleich and Dorff address their American contexts.


179 Dorff cites many of the classical sources at (1998):371 note 10. He notes that the prohibition against suicide itself does not have Talmudic roots even though the tractate *Semahot* 2:1-5 is often identified as the source for this position.

180 Cf., BT *Sanhedrin* 74a.

181 Cf., BT *Avodah Zarah* 18a.
but not actively cause one’s own death, much less someone else’s.” That is, passive euthanasia (the removal of impediments) is permissible, but other forms of euthanasia are not. As Bleich points out, this is a misreading of the Talmudic text. The Talmud has the soldier asking R. Hananyah to bring him into the world-to-come if he increases the flames and removes the tufts of wool from his chest, an arrangement to which R. Hananyah agrees. By increasing the flames, the soldier does not merely remove impediments to Hananyah’s ultimate demise but actively shortens the duration of Hananyah’s suffering. It is therefore difficult to understand this source as a prooftext of either martyrdom or passive euthanasia; rather, it speaks – and positively so – of active euthanasia.

This misreading aside, because suicide is prohibited and martyrdom is at best a problematic parallel to euthanasia, the category of assisted suicide may be the best source and resource for collective deliberation on this issue. Indeed, it might be possible to find grounds within this category that would prohibit euthanasia. For example, regardless of intention, an aide providing to a patient the means to commit suicide would be guilty of “misleading the patient to think that a forbidden act is permissible.” And the aide who directly causes a patient’s death (e.g., administering a lethal dose of medicine or poison) has done what “clearly constitutes murder, even though the motive was, by hypothesis, benign.” For these reasons, at least, the notion of assisted suicide speaks to the issue of euthanasia and support a prohibitive position.

Dorff (1998):181. For his “later Jewish authorities” he cites Joseph Karo’s SA Yoreh De’ah 339:1 and the gloss there by Isserles.

Bleich (1996):83 note 35. The sugya concludes with a divine voice asserting that both the soldier and R. Hananyah are established in the world to come.


Even an example of permission to commit suicide during the Holocaust to avoid endangering fellow Jews does not serve as analogous to people seeking death because of personal suffering. Dorff (1998):182ff.


Ibid.
Ever the historicist, Dorff turns to consider “contemporary circumstances” that make it difficult to argue in favor of euthanasia. Broadly speaking, Dorff identifies five major kinds of historically-contingent arguments against euthanasia. *Theological arguments* reinforce humanity’s limited authority in regard to terminating life. Because humans are to “evaluate life from God’s perspective,” arguments from autonomy and liberty necessarily fail. *Social and economic arguments* permitting (assisted) suicide are dangerous because they would all but force physicians to advise patients to commit suicide so they would avoid incurring costs to the health care system and/or to their families. Dorff instead endorses hospice care as an alternative and cost-effective means of caring for the dying. He proposes this because “we must prohibit assisted suicide in order to prevent diminishing the value of life in the public eye and in public policy.” *Medical arguments* supporting assisted suicide to relieve a patient from agonizing and unrelenting pain fail because modern medicine provides “ample means for controlling any amount of physical pain.” And fear that “overly aggressive care” at the end of life would prompt requests for assisted suicide can be avoided by physicians acknowledging and following patients’ advance directives. *Psychological arguments* based on feelings of hopelessness associated with a patient’s situation should not compel assisted suicide because social support and interest in a patient may obviate such requests.

And, finally, *moral arguments*. These arguments portray the ill and dying as numbering among society’s most vulnerable and thus deserve governmental protection; indeed, this

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188 Dorff (1998):186. These arguments echo positions found in the Jewish textual tradition.
189 Dorff (1998):187. He does not offer ways to see life through God’s eyes, though his deference to the Judaic textual tradition suggests that these sources provide that divine lens. This theological argument seemingly counters his prior argument that humans can never obtain divine omniscience.
192 Dorff therefore advocates the *mitzvah* of visiting the sick (בקרות עלולים). In the 1999 version of this piece, he incorporates the sugya at BT *Nedarim* 39b-40a in which visitation removes psychological barriers to recovery (see pages 281-282). These citations are not included in the 1998 version. On this Talmudic text, see Bleich (1996):56. Dorff (1999a) also includes a personal anecdote in this section that is not included in the book (1998) edition.
protection is a duty and not a right. Yet Dorff slips from right to duty by saying that while permitting suicide may affirm a patient’s liberty to choose to die, “it soon transforms into a duty to die.” Thus he favors keeping assisted suicide illegal and supports this position with distinctly utilitarian qua Bentham reasons. Moreover, real cases of assisted suicide are rarely morally simple or pure. Their innate complexity requires keeping assisted suicide illegal lest seemingly dubious aspects associated with dying become morally if not legally condoned. Dorff concludes this moral reasoning with a claim to virtue: once one “exposes the less noble motives involved [in seeking assisted suicide], [assisted suicide] often seems considerably less honorable.”

For all these reasons Dorff prefers assisted suicide to remain illegal. But this does not satisfy him. On the one hand he rejects Christianity’s opposition to euthanasia based on its logic that suffering is redemptive. On the other hand, “for Judaism, the pain of disease is not in and of itself a good thing to be sustained for its own sake.” And because Jewish sources permit and require “us to act as God’s agents in bringing healing or, failing that, in reducing pain,” it is

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194 Dorff (1998):196. This slippage from right to duty is surprising, given Dorff’s skepticism toward “slippery slope arguments, for the essence of moral discernment is learning to distinguish cases.” See Dorff (1998):189.
195 “Protecting individuals’ liberty, then, is more effectively achieved by making assisted suicide a socially unacceptable option so that individuals need not defend their desire to continue living. The current ban on assisted suicide inevitably infringes on the liberty to gain assistance in dying, but that is a reasonable price to pay in order to preserve the liberty of a far greater number of people to continue living without having to justify their choice.” Dorff (1998):196.
196 Dorff (1998):197. Dorff’s moral argument in favor of keeping assisted suicide illegal is an agglomeration of slippery slope, utilitarian, realism and virtue elements. Each element, however, can be challenged. The slippery slope relies fallaciously on an assumed conjunction between a right to die transforming automatically to the duty to die; this presumes people cannot or would not make rational decisions to set further limits once one limit or liberty has been set. (This line of argument can also be called non causa pro causa – non-cause for cause.) The utilitarian argument fails in two ways. It does not prove that the happiness derived from illegal assisted suicide outweighs the unhappiness caused to the few who seek to die, and it does not explain how this (real or perceived) imbalance is a “reasonable price to pay.” Nor does it clarify the connection between the state permitting assisted suicide and those people wanting to live “having to justify their choice” to live. The realism argument begs the question of why moral messiness should preclude granting liberty to those he admits are society’s most vulnerable. Indeed, later on he says “the essence of moral sensitivity is not the evasion of life’s complexities but rather the ability to make distinctions among them” (206). Denying those who seeking to die the right to choose assisted suicide is, in a way, ignoring these people as a class. Finally, the concluding argument of virtue ethics relies on vague values (nobility, honor) that may be irrelevant to real patients seeking to end their intractable suffering.
plausible that Judaism can countenance reasons supporting certain forms of assisted suicide or euthanasia.\textsuperscript{198}

Because the historical and technological contexts are always shifting, Dorff insists that it now may be possible to entertain passive euthanasia from a Judaic perspective. More precisely, the question becomes not if passive euthanasia is permitted but when: “When does our obligation to cure end, and when does our permission (or, according to some, our obligation) to let nature take its course begin?”\textsuperscript{199} Answering this question demands close consideration of the last phases of human life. Dorff sees the end of human life in medical, legal and moral, stages.\textsuperscript{200}

Whereas someone in the throes of death is a \textit{goses}, a person with an irreversible terminal illness is called a \textit{terefah} (תראפה). Though the textual tradition defines both stages in temporal terms (seventy-two hours and twelve months, respectively), Dorff would rather define them medically.\textsuperscript{201} While both are without medical cure, a \textit{goses} is like a guttering candle and is mortally vulnerable to intervention. Along with the modern medical establishment Dorff accepts cerebral death in his definition of human death.\textsuperscript{202} With these definitions at hand, Dorff sees it reasonable to collapse the laws pertaining to \textit{gesisah} to \textit{terefah}. In other words, the passive euthanasia permitted for those in the final hours of life “would then apply to people as soon as they are in this state” of \textit{terefah}, that is, of “being diagnosed as having a terminal illness.”\textsuperscript{203} For this reason he distinguishes between treatments “sustaining life” and those “prolonging the dying process.”\textsuperscript{204} Because it is permissible to remove the latter treatments from those in \textit{gesisah}, he extends this permission to those who have been diagnosed with incurable diseases – to \textit{terefah}.

\textsuperscript{198} Dorff (1998):185.
\textsuperscript{199} Dorff (1998):199.
\textsuperscript{200} Bleich does not. Borowitz elides this issue.
\textsuperscript{201} The move to define these categories medically instead of temporally seems more technical than moral. In any case, he admits that definitions are, by definition, exercises of fiat; cf. Dorff (2003):242.
\textsuperscript{202} See Dorff (2003):240-244 for his full treatment of these stages. On cerebral death, see Dorff (1996):213-217.
\textsuperscript{203} Dorff (1998):200.
\textsuperscript{204} Dorff (1998):203.
Effort should be given more to relieving pain than to as-yet unproven curative therapies. This leads Dorff to permit double-effect: if when treating intractable pain for a patient the dose given leads to cessation of respiration and heartbeat, the physician is not liable for the patient’s death because the intention is to minimize pain.

Dorff’s examination and reevaluation of Jewish perspectives on death and dying has a strong relationship to his covenantal theory. Just as his theory involves considering legal precedents in their historical contexts and reevaluating their cogency for contemporary circumstances, his practical argument about euthanasia does too. He understands himself to be authorized as a human being and as a rabbi to examine, contextualize and adjust halakhah, even though he readily admits that his position may not be taken up by his intended audience. His audience, as noted, explicitly includes those intimately involved with the care of dying people: patients first and foremost, physicians, families, rabbis and other caregivers. Echoing the covenantal marriage metaphor of a relationship that constrains and flexes, Dorff portrays Jewish positions on euthanasia as both conservative and liberal. They are conservative to the degree that not all forms of euthanasia are permitted, and yet they are liberal insofar as they could tolerate passive euthanasia in some cases. And like a marriage, he sees this stance as exclusive to Jews; not all Americans need abide by his argument. While he is not shy to imagine his position suitling well as public policy, he agrees his argument must be articulated in more universalistic rhetoric than it currently is. Ultimately, he puts his position forward for communal consideration and possible rejection: the audience is the ultimate arbiter.

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205 For the case of a terefah suffering a secondary disease like pneumonia, he favors refraining from curing the latter so as to minimize the painfulness of dying because of the former; Dorff (1998):206-207.

206 In the case of someone who meets the criteria of brain death, Dorff endorses the practice of removing hydration and artificial nutrition tubes “after some time.” Dorff (1998):216-217.

207 He notes it would be wrong to assume that Jewish modes of reasoning are appropriate for American court rulings or for advocating public policy. Dorff (2002):107-108. See also (1998):180. See Chapter Five below for discussion about religious (ethical) rhetoric in the public square.
4.3. Borowitz

Eugene Borowitz does not address euthanasia explicitly because his wont is to wax metaethical rather than pragmatic, as is evident in his address to a 1997 conference on healing, “Please, God, Heal Her, Please,” in which he wrestles with theology, liturgy, pain, and medicine. Ever the sociologist, Borowitz begins his “ruminations” with two experiences. The first – in 1963 – depicts a fellow rabbinic colleague challenging his assertion of the primacy of faith in Judaism. This colleague wondered if Borowitz would have Reform Jews “begin reciting the Refa’enu instead of relying on the science of medicine.” The other is the burgeoning interest in the 1990s of the intersection of Judaism and healing that produced, among other things, the conference at which he was speaking, sponsored as it was by two national American Jewish institutions. He queries this “radical change in ethos”: “Why has a skeptical community become one in which a sizable minority eagerly seeks to learn about and practice Judaism’s counsel for the work of healing?” His following remarks are “a theological hypothesis which explains this development to me and which you can test against your own experience.” Conversely, his ruminations on his experiences shape his theology that he offers here for public testing and contesting.

Borowitz begins with an ironic question for his earlier challenger: whence his interrogator’s dogmatic liberalism? Surely not out of his Jewish learning, for the textual tradition – as Borowitz explicitly cites – is unambiguous about the obligation to recite the

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209 This prayer for healing is the eighth blessing in the weekday Amidah. It has this location because of its association with circumcision, which takes place on the eighth day (cf., BT Megillah 17b). The petition is based on Jeremiah 17:14 – “Heal me, o God, and I shall be healed; save me and I shall be saved.” The prayer’s concluding phrase is “Blessed are you God, who heals the sick of His people Israel.” It is permissible to insert into it a special prayer for a particular ailing individual.
212 Ibid.
Refa’enu daily. Though the textual tradition portrays God as the ultimate and perhaps only legitimate physician, humans are also upheld as powerful healers. Borowitz sees “classic Jewish theology of medicine [as] dialectical”: God creates illnesses and yet commands humans to cure them. Insofar as God and humans are construed as active agents in the world (of medicine) with the former acting independently and the latter not, Borowitz concludes that this bipartite agency constitutes covenant. Indeed, Borowitz’s covenantal relationship portrays the human and the divine as partners in this world, not just of it. Thus, what agitated the interrogator “was not the Jewishness of prayers for healing but their clash with modernity.” These prayers imply that God is an effective cause in the natural world, a notion that undermines both the supremacy of science and the efforts of Jews modernizing their tradition’s theology.

Broadly put, modernity’s mechanization of the natural world excused God from being an active partner in human health. Modernity eclipsed God in such a way that “at best, God lay behind the orderliness assumed by treatment and research, the values which moved people to seek and apply them, and the presence which might give patients and caretakers a psychosomatic boost.” Even mid-20th century rabbi’s manuals reflected this modernist sensibility, as do later prayer books. Their theologies portray God as at most the God of healing and not as the healing God. Using Mordecai Kaplan as a foil, Borowitz the sociological philosopher observes that the recent “erosion of the old certainty paradigm” now reveals most everything – including medical therapy – as no longer authoritative; all is merely “a plausible construction of reality.” Just as modernity eclipses God and elevates science as the source for omniscience and omnipotence,

213 BT Megillah 17b; BT Avodah Zarah 8a; Numbers 12:13; BT Berakhot 34a. See Borowitz (2002):342.
214 Borowitz cites Exodus 15:26; 2 Chronicles 16:12. Many Talmudic rabbis are physicians, as was Maimonides. Further on Borowitz cites Exodus 21:19 and BT Baba Kama 25a regarding the command to heal.
216 Ibid.
post-modernity dethrones science, or at least doctors and their therapies: they are no longer gods. Indeed, they are fallible and limited.

Yet Borowitz is not quick to abandon his “daily dose of beta, calcium, and angiotensin inhibitors” because medicine “remains our best way of fulfilling the commandment to ‘guard our souls’ and stay healthy.” But if he and so many other Jews are unwilling to throw away their pills, the question becomes what is the nature of “insight into nature”: does “medicine, and science generally, still adamantly insists on a monopoly of insight into nature” or is it plausible that there are other means that illuminate the how’s and why’s of nature and of healing in particular? If post-modernity is right to say that science does not enjoy a monopoly of insight into the nature of things, then it seems reasonable to abandon modernity’s claim to certainty in human capacities generally and favor a worldview and theology in which certainty is not god. This is no return to pre-modern magic and superstition. It is a turn to “an appreciation of the mysterious, nonempirical ways in which the mind – better, the soul – affects the body.” This body-soul division reflects a Greek conceptualization of the nature of human beings more than it does a biblical one. That said, the ancient rabbis take up this division and ensconce it in their theologies that survived the centuries and pervades modern Judaism. Though Bleich and Dorff do not discuss this division per se, their silences suggest that they do not disagree with this conceptualization of the mortal modern Jewish person.

Borowitz’s call for greater appreciation of the power of the non-empirical in regard to healing similarly follows his sociological bent. This theological shift should occur because “many now believe that what transpires in our depths, and not only in our unconscious minds,

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220 Ibid.
222 Saadia Gaon, for example, understands the soul in a Platonic fashion insofar as the soul includes desire, emotion and thought. See his Emunot v’Deot 6.3. In his Moreh Nebukim, Maimonides, by contrast, follows Aristotle’s version of the soul as developed intellection or the potential of the intellect. And Kabbalah – Jewish mysticism – develops these themes further by weaving more dimensions of meaning onto the biblical words nefesh, ruach and neshamah.
influences our organs and limbs for good and ill.” And because a critical mass believes that the non-empirical has biological agency, it behooves Jews to reconsider the role and power of prayer in healing. But Borowitz does not rely only on fad to justify post-modern expansion of what is considered biologically effective. He sees recent history has “chastened” humanity so much that “humankind’s new humility has left space in our world for God, and we, conscious of our limitations and the reality of our new/old God, are groping for better ways to let God’s presence and God’s power into our lives more fully.” Here it is not belief *per se* but rationality’s consciousness of humanity’s limitations that all but demands Jewish “theological realignment.” For all these sociological, historical and intellectual reasons, Jewish theology must move beyond modernity’s humano-centrism and certainty.

But Borowitz is loath to dispose of humanity altogether in this post-modern theology in which God partners with humans in the efforts to heal. Again citing classical Judaic texts, Borowitz claims that no contradiction or diminution of human powers occurs when reaching “for what God might also do that laboratories cannot depict.” Yet this human-divine partnership must permit uncertainty on humanity’s part because relying on God “for what God might independently do for the ill” does not lead directly, automatically or always to healing. Even though he still prays fervently for God to cure someone whose doctors have not succeeded to cure, “I can no longer ask for anything less than God’s independent action to stop this suffering and to restore today’s list to health.” With this phrase – “stop this suffering” – Borowitz expresses permission if not a desire to pray for a patient’s death. This is as close as Borowitz gets to commenting directly on euthanasia: humans may pray for a patient to die but only God facilitates the demise. Active euthanasia and even passive euthanasia do not receive Borowitz’s support.

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224 Ibid.
His turn to prayer and divine intervention, however, does not absolve human caregivers from their responsibilities; indeed, doctors and scientists are mandated to do what they can to alleviate suffering and cure the ill. Nor does it explain “how God can be an efficient cause in the natural order.” Though this proposed partnership cannot explain everything, it is the best way to integrate “the fragments of various broken systems.” Both God and humanity are needed in the postmodern medical world. This partnership may not be ideal but it is optimal.

Borowitz’s version of the postmodern Jew “seeks with every capacity of mind and soul to approach ever closer to the ideal Unity without denying the realism that befits an era awash in disillusion.” The postmodern Jew yearns for the time when, as classical Jewish texts say, God orders the sun to heal everyone who suffers. Therefore the postmodern Jew prays the second part of the Refa’enu prayer – “save us, and we shall be saved” – because it “links healing to salvation: every cure is a small redemption.” Through prayer and science, the postmodern Jew integrates “the hope of this messianic healing” with the difficult work for the “everyday redemptions of refuat ha-nefesh, refuat ha-guf, healing of soul, healing of body.” In this way, Borowitz offers today’s scientists and doctors a Jewish postmodernism in which they retain agency and significance, and in which they may readily admit their finitude. This Jewish postmodernism also reflects and endorses contemporary Jews’ belief in and practice of prayers for healing. And this Jewish postmodernism allows for death as a reasonable if not desirable outcome, as long as it is brought about at God’s discretion. In sum, Borowitz’s proposal seemingly integrates body and soul, individual and community, humankind and God.

Borowitz’s ruminations about Jewish postmodern perspectives on prayer and healing have a strong relationship to his covenantal theory. Like his theology, his arguments on practical

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230 Ibid.
issues moves from sociological observations about lived life to theology and then back again to lived life. Indeed, he speaks of his own experiences and observations, and uses them to illustrate and justify his practical proposals. That is, he as an individual modern Jew has the rightful authority to articulate a normative position to the community. In regard to content, throughout his piece, he expresses skepticism of modernity’s faith in certainty and in humanism, a skepticism that serves as a central plank in his covenantal theory. And just as the self-discipline of his covenantal theory is tethered to precedent and is not anarchic, he ties his proposals in this piece to halakhah (law), midrash (story) and tefillah (liturgy) – illustrating his commitment to precedent and community. Though his covenantal theory shuns the practice of textual citation, his practical argument includes many citations so as to demonstrate his decision-making process of how and why he reaches his particular conclusions. In this manner he offers for public consumption a first-person account of his experiences, his readings of the tradition, and his proposals for communal norms. By abandoning his theoretically preferred rhetorical practice of non-citation, he underscores his pursuit of being understood not just as a contemporary human being but as a post-modern Jew who sees himself embedded in a larger tradition and community. Thus his is an exercise of expressing truthfulness and embodying integrity.

5. Critical Analysis

Two general tasks remain. One is to assess the value of this methodology for understanding contemporary Jewish ethical discourse generally; a task taken up in the following chapter. The more immediate task is to focus on the interrelationships between these ethicists’ covenantal theories and their normative arguments. On the one hand this involves identifying what they share in theology and in rhetoric, and where they differ. On the other hand, this requires examining the relationships between their theologies and their discourses, and whether
any differences are significant. Finally, this task entails querying whether these ethicists participate in a common discourse at all or if, because of their perhaps striking rhetorical differences, they speak past each other altogether. In brief, this section analyzes the sample’s consistency of theology and language, the nature of coherence between the ethicist’s theologies and discourses, and the overall integrity of the field of Jewish ethics as a whole.

5.1. Consistency

Beginning with their theories of covenant, all three share in the theological notion of the ascendancy of the human. God lapses into the background for each, though in different ways and for different reasons. This holds true in Bleich’s call for rabbinically developed ahistorical law, Dorff’s search for communal consensus, and Borowitz’s pursuit of personal integrity. And yet God is not altogether absent. Each understands God to be the progenitor – even a coercive one – of the covenantal relationship between Israel and God.\(^ {232} \) Though God remains an authoritative figure in their covenantal theories, the human assumes a more pressing agency surpassing God’s. This turn to the human furthers the divine eclipse observed among many other Jewish covenantal theories surveyed in Chapter Three.

In regard to the content of the covenantal relationship, all three covenantal theories acknowledge the indispensability of norms to coordinate Jewish behavior. Indeed, each cites or echoes Maharal’s insistence that the Torah has cosmic and communal significance. While Bleich and Dorff have no qualms speaking about law (ahistorical and historical, respectively) \textit{per se}, Borowitz shies from such language to favor the trope of self-discipline. Both law and self-discipline coordinate human behaviors to the degree they tether individual action to prior and contemporary communal standards. No theory, then, endorses anarchy.

\(^ {232} \) All three discuss or allude to God coercing Israel (BT \textit{Shabbat} 88a).
Finally, all identify the audience as vital to Jewish covenantal theory. Bleich understands the covenantal audience, Jews, to be specially created for this position. Inasmuch as this specialty runs in their veins, Jews can only comply with the authoritative content of the covenant; they cannot do otherwise. Questioning its content or its validity is not an option. Such challenges, however, are a necessary function of the covenantal audience in Dorff’s theory. For him, the covenantal collective audience is tasked to ever reevaluate the content bequeathed to them. Borowitz agrees with Dorff that this task is ongoing, though he sees it devolving not to the community but to each individual Jew.

Their theories of covenant differ in two critical ways. The first is Borowitz’s insistence that covenant’s content (revelation) is wordless. Dorff and Bleich, by contrast, understand revelation to be content-full of law and lore. The silence Borowitz experiences does not preclude others hearing Divine words. Words are for Borowitz artifacts of human endeavors to communicate; their origin is not divine even though they may aspire to articulate something of the Divine. In this way Borowitz honors the textual tradition because he sees in it previous generations’ expressions of their experiences of God and what they think Jews ought to do. Second, the relation between morality and the Jewish textual tradition varies for these scholars. Bleich, following many prior covenantal theorists, is adamant that modernity is to be judged by the eternal values and strictures of the Jewish tradition. Modernity should conform to the Torah writ large. Dorff and Borowitz demur. For them, extra-Judaic contemporary moral sensibilities cannot be ignored and may in fact be used to hone Judaic norms to better align Judaism with the contemporary period and to protect it into the future. Despite this seemingly radical difference, all three understand that there is a relation between extra-Judaic morality and Judaism. That is, morality and Judaism are neither identical nor coextensive. Only when morality and Judaism conflict do these scholars disagree as to which should trump and how.
At the practical rhetorical level, all three acknowledge their modern technological and American contexts. Each scholar points to dramatic changes in medicine and science as reasons why it is important to rethink Jewish approaches to healing. Dorff and Bleich speak of economic motivations for and against certain therapies. They also discuss and cite recent US federal and state court cases. Borowitz eschews referencing financial and judicial reasons so as to focus, along with Dorff, on broad philosophical and sociological shifts. The collapse of certainty in humanity and in science warrant rethinking how and where Jews put their hopes for healing and the cessation of suffering. Sociological changes in what American Jews already do serve for Borowitz as catalysts to consider healing anew.233

Despite these scholars’ theoretical reconceptualizations God, their practical ethics identify God as significant in Jewish approaches to healing. Bleich and Dorff explicitly state that God is the ultimate Owner of the human body – a position that Borowitz supports, as seen in his concluding remarks about the rightful authority to end human life. Humans do not have the right or privilege to take away, destroy or damage that which is not theirs. Claims to absolute autonomy are, as Bleich says, specious; therefore medicine is not an affair done by and for humans alone.234 Dorff and Borowitz concur. Borowitz agrees that wholesome healing requires more than human intervention. For all three, prayer is more than mere cathartic ritual, it is theurgic activity drawing God into the healing process.235 Of course, God’s activity remains mysterious and one’s prayers for healing may not produce what one hopes.

Another commonality across these practical pieces is their sources. Each incorporates traditional Jewish texts (e.g., Biblical, rabbinic, medieval, early modern codes) as well as modern

233 These observations serve as another justification for the exclusion of Jewish ethicists working and writing in places outside the US and Canada. Each scholar here conscientiously locates himself and his audience in the North American context. Jewish ethicists writing in and for an Israeli context and audience, for example, may or may not function similarly as these ethicists do. Such a finding is possible only by doing a similar thoroughgoing analysis of Israeli Jewish ethicists, and perhaps one of European Jewish ethicists, and then comparing these different politico-geographic samples.
ones (e.g., *teshuvot* by modern and contemporary rabbis, prayer books). They all cite *halakhic* and *midrashic* texts. They also incorporate personal anecdotes into their arguments. Bleich and Dorff, as just noted, cite modern science and law, whereas Borowitz does not.

The most substantive difference between their discourses is in their logic. Bleich sees life as a “terminal condition” that moves along a continuum from birth to death. Any demarcation along this inevitable “process of dying is, in the logical sense, entirely arbitrary.” Coupling this with his earlier slippery slope argument that withdrawal of any treatment of the terminally ill “leads directly to overt acts of euthanasia” suggests that qualitatively different categories or stages of life do not – and should not – exist. This may be one reason why he is so eager to render moot the *halakhic* category of *gesisah*, so that the legal permission not to treat a *goses* should never be granted and that all patients must receive life-sustaining treatment regardless of their suffering. Compare this with Dorff’s slippery slope argument that does not refer to the Jewish category of the *goses* but to the legal right to choose to die: it could become a duty to die. Though Borowitz and Dorff would not disagree with Bleich that life ends with death, they part company with him about the logic of viewing life as only a continuum. They divide life into stages or categories. For example, they identify healthy life in contradistinction to life with treatable illness and to life with terminal illness. That people move from one category to another does not mean that such categories are useless for thinking about Jewish approaches to healing. These categories, they argue, have heuristic or logical value insofar as they help differentiate what should be done with whom, when and how. Categorization is quintessential to thought as well as to organizing resources and society as a whole.

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5.2. Coherence

The relationships between the scholars’ theology and practical rhetoric are both strong and complex. Bleich stays true to his covenantal theory’s fascination with ahistorical law by speaking in terms of obedience to the eternal law. Physicians and patients must behave according to the law as he – or another rabbi with whom he agrees – sees it. His argument is nothing shy of the truth: it articulates what Jews are designed to do in God’s plan for the cosmos. To achieve his conclusion, however, Bleich abandons his preferred reliance upon Jewish law and includes modern science, medicine and secular law into his argument. That is, the ahistorical must contend with the contingent just as modern Jewish ethics must acknowledge and interact with extra-Judaic resources.

Dorff’s practical discourse demonstrates his covenantal theory’s dismissal of consistency between law and life in favor of communal coherence. He incorporates a broad range of arguments into his piece, perhaps because he recognizes that his variegated audience responds to different motivations. Yet in his zeal to articulate what he thinks is right for the community, he underestimates the importance of reading critical texts completely and accurately and he overestimates the aggregate power of dubious moral arguments.

Borowitz models his theology of covenant in his practical argument by explaining his personal experiences and decision-making processes. This personal exposé functions as a kind of individualized sociology that he couches in collective terms. Yet perhaps despite himself, he takes on a rhetorical practice – explicit citation – he considers specious and would otherwise avoid.

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238 He also turns to *midrashim* and anecdotes. These serve as yet other challenges to the assertion that Bleich’s practical ethics are purely legal formalism. Newman (1998) twice quotes (106-107, 187) Bleich’s insistence that the modern Jews “can answer such [ethical] questions in only one way. He must examine them through the prism of Halakhah for it is in the corpus of Jewish law as elucidated and transmitted from generation to generation that God made His will known to man.” (Bleich (1979)). See this quote in Newman (2005):139.
Each in his own way maneuvers within and around his theology of covenant. As predicted earlier (Map 4.3., again) and insofar as each stays true to his theory of covenant, Bleich speaks primarily in terms of (legal) truth, Dorff in terms of (communal) rightness, and Borowitz in terms of (personal) truthfulness.

<table>
<thead>
<tr>
<th></th>
<th>Primary Element of Rhetoric</th>
<th>Primary Ethical Concern</th>
<th>Procedural Concern</th>
<th>Social Concern</th>
<th>Rhetorical Claim</th>
<th>Primary Linguistic Expression</th>
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<tbody>
<tr>
<td>Bleich</td>
<td>Speech</td>
<td>Authority</td>
<td>Epistemology</td>
<td>Consistency</td>
<td>Truth</td>
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<tr>
<td>Dorff</td>
<td>Audience</td>
<td>Reason</td>
<td>Hermeneutics</td>
<td>Coherence</td>
<td>Rightness</td>
<td>We</td>
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<tr>
<td>Borowitz</td>
<td>Speaker</td>
<td>Autonomy</td>
<td>Decision-Making</td>
<td>Integrity</td>
<td>Truthfulness</td>
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Map 4.3. Covenantal Theories and Anticipated Normative Rhetoric

On the other hand, each transcends his theology to employ rhetorical means he thinks will better persuade his audience, or, at least, to express better what he finds compelling. While a strong relationship exists for each between theology and rhetoric, the relationship is not air-tight.

These gaps disprove a linear link between theory and practice. A richer relationship between them exists. As mentioned in Chapters Two and Three, religious ethicists adjust their rhetoric to better reach their audiences. This may occur over time or in a particular piece. Either way, a religious ethicist reaches beyond his lifeworld – here, his covenantal theory – to use rhetorical tools that will better serve his goals than what is recommended by his theological lifeworld. Bleich turns to science and anecdote, Dorff to multiple moral arguments, and Borowitz to citation. These are strategies they would otherwise not use were they to comply solely with the strictures of their theologies. That they use tools outside of their theologies perforce critiques their theologies and all but forces them to reconsider why they frame the covenantal relationship as they do.

As seen above, each takes these challenges seriously and has adjusted his covenantal theory, however minutely. Bleich, for example, admits that at least within the realm of medicine, modern scientific advancements and treatment technologies cannot be ignored. So even while he acknowledges their import to the wellbeing of patients, he remains adamant that their use must
comport with authoritative rabbinic rulings. That is, ahistorical theology can ill afford to ignore contingent technology. Dorff, too, adjusts his covenantal theory, in a subtle way. While his theology urges a hermeneutical style of showing or demonstrating reasons and reasoning that the audience might find attractive and persuasive, his practical argument, at least on this issue of death and dying, overflows with reasons and reasoning against other positions supportive of active euthanasia. This polemical style gives the impression that his permission for passive euthanasia, which constitutes only a small percentage of his argument, should be viewed as perhaps if not consistent with traditional Judaic law, then at least as not contravening traditional Jewish values. That is, a theology seeking consensus may require practical divisive politicking that construes others’ positions as worse than one’s own. Borowitz, too, tweaks his theology so as to better persuade on this pressing practical issue. Even though he would rather speak only philosophical ruminations about personal experiences or sociological observations, he sees that at least on this issue of healing it is necessary to draw on the Judaic textual tradition to ground his perspective in Judaism and to give it historical gravitas. In this way, his practical rhetoric that uses the collective past pushes back against his theology of the personal past.

It can be surmised that these rabbi-scholars could have argued their positions differently, perhaps even completely within the boundaries of their respective theories of covenant. Yet this counterfactual hypothesis only strengthens the earlier observation that religious ethicists choose their modes of argument so as to reach their audiences. Conversely, the idea of a causal relationship between theological commitments and normative rhetoric is supported by the fact that these scholars decided not to argue totally disengaged from their theories of covenant. The deciding factor of whether and how an ethicist departs from what his theology would dictate is his (conceptualization of his) audience. This holds true for Jewish ethicists addressing 239 Or, as Borowitz might say, he speaks so as to explain himself better. But clarifying one’s personal decisions is itself an exercise to persuade others to see if not agree with his way of thinking and behaving. In this way, personal exposé is a means to shaping communal norms. From a psychological perspective, it is also a means to accrue external validation for internal deliberation.
coreligionists. Whether this holds true for Jewish ethicists speaking to noncoreligionists is a matter for a different study.

5.3. Integrity

Given these observations and conclusions, is it reasonable to say these scholars participate in a common discourse? Just because their rhetorical strategies appear at one level to mimic each other, this does not mean that they share in a larger conversation. This challenge is bolstered by their seemingly mutually exclusive attitudes about the relationships between law and life, Judaism and morality, the individual and the communal. Bleich asserts that law ought to control life; Borowitz and Dorff think otherwise: life does and should shape law and theology. While Bleich thinks Judaism can and should evaluate contemporary morals, the others think it reasonable that modernity’s morals and practices can and should critique Judaism’s. Furthermore, insofar as Borowitz champions the individual, Dorff values the community and Bleich the law, their interests seemingly do not overlap. These observations – found using this twofold methodology – support the assertion that they are speaking past each other altogether and operate in different normative Jewish genres.

However tempting it might be to understand these scholars participating in idiosyncratic genres, this conclusion does not comport with the overarching nature of Jewish ethical discourse. As described in Chapter Two, Jewish ethical argumentation appeals to individuals’ minds. All three ethicists understand that they can do no less and no more than appeal to the individuals they conceive populating their target audiences. These individuals are not radically autonomous individuals separated from all past, present and future. Rather, these are religious (here, Jewish) individuals, necessarily and essentially connected to the Jewish community and to its past, present and future. Each ethicist, moreover, recognizes himself embedded within this Jewish
collective chain of existence as well. Insofar as these speakers and audience share in a common lifeworld, it is better to conclude that these speakers participate in a shared, albeit variegated, conversation.²⁴⁰ Even with their divergent rhetorical strategies, each articulates what amounts to “if we were to…”. It is now up to the sub-communities they address to take on their normative principles, arguments and conclusions.

²⁴⁰ It is logically difficult at this stage to ascertain the strength of the integrity of this field. Describing the field with adjectives like “loose” or “close-knit” has weak explanatory, much less predictive, power. These adjectives beg comparisons to other religious normative discourses, comparisons this project does not provide. Moreover, this study uses only three modern Jewish ethicists. Many other rabbi-scholars not cited here construe themselves and are perceived by others as Jewish ethicists. To make summative statements on the integrity of the field of modern Jewish ethics presupposes using a sample that is statistically superior to this one. That said, the value of this sample of three is that these scholars span contemporary streams of Judaism; a larger sample may be skewed in favor of one or another sub-community.
Chapter 5: Words of Fire

The Torah: how is it written? Upon white fire, in black fire. ¹

1. Introduction

The twofold methodological analysis of modern Jewish ethical rhetoric proposed by this project explains both how and why Jewish ethicists argue as they do. It brings to bear on Jewish ethical arguments both theological criticism and discourse analysis to discern theological commitments that constrain and frame subsequent normative language. This last chapter moves on to assess the benefits this methodology brings to the study of religious ethics by first reviewing its components and then viewing how this methodology complements the two major approaches offered by Newman and Stout. Following Newman, this assessment compares this methodology to other means of identifying and organizing Jewish ethical rhetoric. It explores each methodology’s explanation of how and why Jewish ethical discourse emerges and functions as it does. And echoing Stout, this assessment moves beyond Jewish ethical discourse to consider the role of religious ethical discourse in complex societies. The concluding section likens Jewish ethical discourse – discourse that is at once pleasant, magical, covenantal and human – to black fire on white fire.

¹ Midrash Tanhuma, Bereshit 1. See also Rashi at Deuteronomy 33:2 and Song of Songs 5:16. This sentiment is found in the Jerusalem Talmud (Shekalim 6:49d; Sotah 8:22d) but not in the Babylonian Talmud. See also Deuteronomy Rabbah 3 (Ekev); Shir HaShirim Rabbah 5; Midrash Tehillim (Buber) 90; and other locations.
2. **Methodological Benefits**

In regard to discourse analysis, this project focuses on the three essential elements of all forms of rhetoric – the speaker, the spoken and the audience – which itself facilitates examination of three essential concerns in religious ethical discourse: authority, reason and autonomy. Chapter Two demonstrated that and how these elements and concerns interrelate:

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<thead>
<tr>
<th>Element</th>
<th>Is</th>
<th>Exercising</th>
</tr>
</thead>
<tbody>
<tr>
<td>Speaker</td>
<td>Ethicist-as-Rabbi</td>
<td>Authority</td>
</tr>
<tr>
<td>Speech</td>
<td>Set of Claims</td>
<td>Reason</td>
</tr>
<tr>
<td>Audience</td>
<td>Judge</td>
<td>Autonomy</td>
</tr>
</tbody>
</table>

Map 5.1. **Religious Ethical Discourse Elements and Concerns**

By paying special attention to these elements and concerns, this methodology is able to tease apart how each ethicist understands his role, frames his argument’s claims, and conceives his audience. In this way, it clarifies an ethicist’s notion of rightful authority, desired reason and proper autonomy. In short, this method uncovers how an ethicist’s argument emerges and functions.

Discourse analysis proves itself to be particularly helpful in this study of religious normative arguments. At one level discourse analysis directs attention to the speaker, to what is spoken by the speaker, and to the audience of this speech. These elements, admittedly, are found in most every speech-act and are not special to normative genres. On the other hand, at a different level, discourse analysis highlights the norms employed in communal deliberations.² For almost every genre of speech, a community develops certain norms for producing a genre, who participates in that genre and how. This holds true for communal norm generation as well. In its deliberation of what its norms ought to be, a community necessarily develops and exercises discursive norms. That is, discursive norms articulate the boundaries of normative speech and the function of norm-speakers and norm-audiences. As a community engages in norm

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² Habermas argues that discourse analysis is a tool that enables describing the norms a community develops as they go about engaging in conversation.
deliberation, these discursive norms – for better or for worse – ascribe authority to certain kinds of speakers, and the limits of autonomy an audience may enjoy when listening to the reasoned arguments a speaker articulates. Discourse analysis, in sum, already attunes the student of Jewish ethical arguments to the dynamics of authority, reason and autonomy, which are, in their own right, claims about who can and should participate in the community’s norm debate and how.

Moreover, this methodology uses these rhetorical elements to analyze the theological context peculiar to Jewish ethics. This theological context is the notion of covenant – the special relationship between God and humankind. Insofar as each modern Jewish ethicist is conceptually free to theorize theology, each is nonetheless a recipient of an old and rich tradition of covenantal theories, as reviewed in Chapter Three. Modern Jewish ethicists draw on this tradition to formulate their own covenantal theories that, when analyzed using the rhetorical elements, reveal differing understandings of authority, reason and autonomy. Moreover, as was shown above in Chapter Four, these theological conceptions shape and inform subsequent normative speech. That is, theological commitments offer reasons why ethicists frame their arguments as they do.

As such, this new methodology does something different than what Newman and Stout offer. Newman moves from argument to theory by first identifying different argumentative styles and then conjecturing theoretical underpinnings for them. This twofold methodology, by contrast, avoids constructing a taxonomy at all and instead focuses first and foremost on the theological context that grounds all Jewish normative speech. But this twofold methodology does not remain at the meta-ethical level of the theological context as does Stout’s. Rather, it moves directly to the messiness of the everyday by examining actual religious ethical arguments. And in so doing it reveals that ethical living – or ethical speaking, at least – sometimes challenges and critiques Jewish theological commitments. It could be said that this reflexive
influence between theology and normative speech demonstrates a tell-tale element of Judaism: life and theology are inseparable and mutually constituting.

3. Complementarity and Comparative Advantage

This method’s thick approach to the study of Jewish ethical rhetoric is not the only effort to understand this genre. No small debt is due to Newman who has produced decades of path-clearing scholarship in this regard. Others scholars, too, have sought to organize, categorize and explain the apparently divergent ways Jewish ethicists construct their arguments. As will be seen, this twofold methodology echoes many of these other efforts.

These other methods of organizing Jewish ethical discourse fall into these categories: casuistry, principle ethics, narrative ethics, covenantal ethics, and a hybrid ethics. Each method is heuristically instructive in many ways, explaining how and why Jewish ethicists argue as they do. But none is able to predict both how and why an ethical argument emerges from a particular ethicist. To compensate for this critical weakness, this project builds on these other methods’ most constructive elements. This is not to say that the following survey is meant only to show the superiority of this twofold method. Rather, the following situates this methodology among the many other ways of analyzing and organizing modern Jewish ethical discourse. In a way, this methodology is in conversation with these other methods and awaits their critical response.

3 Though slowly gaining popularity, the field of Jewish virtue ethics (musar) is still in its nascent stages. See, for example, Saadia Gaon’s Sefer Emunot v’Deot; Wurzburer (1994); Borowitz and Schwartz (1999); Blau (2000); Nelkin (2003); Schofer (2005).

4 This, then, meets Pitcher and Winter’s (1977):85 claim that the function of religious social ethics is “illumination and disclosure through dialogue.”
3.1. Casuistry

A once-popular method of ethical argumentation, especially with 16th-17th Century Jesuits, but then disparaged because of its tendency for picayune stringency, has been recently reintroduced into general religious ethics parlance. In their rehabilitation of this method, Jonson and Toulmin define casuistry as a mode of ethical reasoning that works analogically by comparing a specific case to more general paradigm cases (see quote). For example, case A (should I spank this child when frustrated by its behavior) is similar to and thus falls under the more general case B (torturing children is evil), which leads to a certain conclusion for case A. It might seem – wrongly though – that casuistry is a kind of deductive logic. Casuistry is more than this – it is more than a merely unavoidable style of moral decision-making that subsumes a particular case into a general principle. It first requires accepting certain cases as already settled, and it is these that become the paradigmatic ones against which all others are measured. It also requires analogical thinking insofar as it demands deciding which dimensions or elements of a case are (more or most) morally relevant than others and how those relate to the paradigmatic cases one brings to bear on them. It is the claim that all “moral knowledge is essentially particular,” and that the creation of moral knowledge requires “the recognition of paradigmatic examples of good and evil, right and wrong.”

This prerequisite begs the question of provenance: from where and how did a person come to understand these paradigmatic cases of

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5 Jonson and Toulmin (1988): 257. Toulmin (1982) earlier pointed out trends in medical decision-making that shifted from juxtaposing cases to general ethical theories to direct examination of specific cases.
6 In his attempt for a systematic Jewish ethics, Spero follows the 14th Century Jewish philosopher Joseph Albo who says that the wise of every generation are responsible to “work out the details” of cases from general principles (Ikkarim, 3:23; quoted at Spero (1983): 277 and 280). Jewish ethics, so Spero argues at page 280, works deductively to show a natural connection between general principles and subsequent practical rules.
good and evil, right and wrong? This is not the only challenge to casuistry. Because casuistry works from the particular to the general it cannot be a deductive moral calculus *per se*; rather, it begins from a particular understanding of a certain case so as to differentiate it from other cases. Its reliance upon a person’s idiosyncratic prior understanding of what is right and wrong, good and evil, and that person’s particular understanding of the (more or most) relevant moral dimensions of a certain case means that casuistry is less universally geometric and pure than some might assume.\(^8\)

The steps of casuistic reasoning may begin with the particular but it includes much more.\(^9\) Through analogical reasoning, casuistry differentiates cases A from B and in the process highlights relevant paradigmatic cases. It establishes which presumptions of relevant paradigmatic cases weigh upon the particular case at hand. Circumstances surrounding and embedded within the case at hand that are deemed salient are included in the moral calculus. These might include principles, narratives and opinions of prior authorities on similar cases. Casuists then bring all these pieces together to construct an argument and reach a specific conclusion for the case at hand.\(^10\)

While this procedure seems relatively straightforward to the degree that it focuses on a pressing case at hand, it also begs critical questions, especially within a Judaic context.\(^11\) Its focus on practical reasoning elides theoretical issues framing its practical reasoning. For example, who chooses the comparative cases brought to bear upon a particular one and the cases that serve as paradigmatic? Who decides what is morally salient in each of these cases? What authority do these deciders have in their communities? What shaped their decisions to select this

\(^9\) The following paragraph draws from Miller 1996:5ff. Moore (1993):56ff, by contrast, understands casuistry to be a ‘particular’ kind of ‘general’ ethics, if the former is understood to mean that casuistry functions like physics insofar as it seeks to clarify good actions “whenever they occur.”
\(^10\) Zoloth (1999):196, summarizes these steps concisely: “the methodology of casuistry requires attention to what is morally relevant about the case situation.”
\(^11\) See discussion in Hecht, et al (Eds.) (1996):6ff that differentiates casuistic laws from apodictic ones that usually take the form of “thou shalt (not).”
case over another one to be the paradigm? To illustrate these concerns, a Jewish feminist critique challenges the credibility of conclusions rendered by casuistry since casuistic reasoning apparently excludes certain voices. This critique argues that if Jewish ethical reasoning were only casuistic in nature, it boils down to *halakhic* reasoning, which is “analogue, interpretive, and ineluctably subjective, but only half the people expected to adhere to it are allowed into the process.”

As *halakhic* reasoning has traditionally been dominated by men, its mode of reasoning, especially about and for women, is morally suspect itself.

If Jewish ethical decision-making were only casuistic, its arguments would follow casuistic methods. For example, Jewish ethicists would argue a particular case by identifying comparable cases, the salient moral elements in them, and paradigmatic cases that subsume the case at hand. To a certain degree this process happens insofar as Jewish ethicists argue analogically between cases and identify relevant moral and legal elements and principles. For this reason, this twofold methodology pays special attention to the cases and moral elements authors identify as relevant for the issue at hand. But, as seen in Chapter Four above, their arguments are more than exercises of analogical reasoning. They use complex modes of argumentation to reflect their thinking and ultimately reach their conclusions. Theirs is no formulaic calculus.

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12 See Davis (1992). Moore (1993):57 levels a similar critique at casuistry. Casuists do not show how and why the cases they bring into juxtaposition differ or are similar; that is, the values casuists use to evaluate cases is not transparent.


14 Davis (1992) reflects on the issue of persuasion amongst *halakhic* casuists. In regard to Blu Greenberg’s advocacy of broadening the category of therapeutic abortion, her “suggestions are so ‘liberal’ that it is difficult to imagine that they could persuade commentators like Bleich or Jakobowits. But that is not the point. If women were trained in the *halakhah* and invited to be full participants in the interpretive process, their voices would be part of the discussion…..then the results would be more credible to the women (and men) who are expected to live by [the results of that discussion]” (322). Perhaps unknowingly, Davis here points to the inherent difficulty of conceptualizing Jewish ethical discourse as *only halakhic* casuistry. This model innately favors experts, and the system defines who is (and is not) an expert. If fairness were important for the construction of communal norms, then a *halakhic* casuistry model would not suffice.

15 Cf., BT *Baba Batra* 130a-b and the discussion of תהליך הלכתי - that is, general vs practical law.
Though casuistry gives ample attention to the nature and dynamic of an ethicist’s argument, it pays scant heed to the speaker himself or to the audience. Indeed, it does not explain the source of an ethicist’s authority, nor does it describe the relative autonomy of the audience.

3.2. Principle Ethics

John Stuart Mill wrote his famous 1859 essay *On Liberty* to explain why the principle of not causing harm is and should be the foundation for any reasonable society. Liberty from harm or interference is not just a question of utility but, he says, is “the ultimate appeal on all ethical questions.”\(^\text{16}\) Mill encourages an ethical (and political) system in which all moral decisions are made in accordance with this overarching principle. At base no decision can be incompatible with this principle and at best all should support or integrate into it.

Though this model of doing ethics might look like casuistry to the degree that it compares cases to a central principle, its vector is radically different. While casuistry moves from a particular case to the general, principle ethics works in the reverse: it moves from the general to the particular. It begins with a foundational principle and works to fold and mold all subsequent issues into its idealized vision for society.\(^\text{17}\) Some Jewish ethicists understand Judaism to promote a particular principle and all subsequent moral decisions augment that principle.\(^\text{18}\)

Deciding moral problems according to a principle creates its own challenges. In his early 20\(^{\text{th}}\) Century masterpiece *Principia Ethica*, G. E. Moore sees a naturalistic fallacy in this kind of thinking insofar as it “offers no reason at all, far less any valid reason, for any ethical

\(^{\text{17}}\) See McKeever and Ridge (2006) for a strong defense of principle ethics.
\(^{\text{18}}\) See Spero’s (1983) attempt to do just this for modern Jewish ethics. A prior yet failed attempt was made by Lazarus (1900). See also Wurzburger (1994).
principle whatever.”¹⁹ That which is good – especially a religious good²⁰ – is indefinable unless and until it is juxtaposed to something else; the good is too abstract and unreal on its own.²¹ And metaphysical or religious ethics fails to acknowledge the verbal ambiguity inherent in the phrase “X is good.” Though this causes Moore to be suspicious of religious ethics generally, he admits that religious ethic’s utility is found in its capacity to suggest what can be considered good.²² But it can do so only by reference to something definable or already known. That is, a principle like “the good” is cognizable and then actionable if and only if it is linked to something else that is not “the good” per se.

Stout agrees with Moore when he says that principle ethics operates not by knowing the principle by itself but by knowing it in juxtaposition to things that are not that principle (see quote). A foundational ethical principle can be understood as foundational only via considerations of practical cases. Without these concrete applications, a principle would be vacuous.²⁴ Childress concurs: principles should not be considered “absolute, invariant, and eternal” as Jonsen and Toulmin would want, but rather as “prima facie binding norms” for specific cases.²⁵

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²⁰ All ethics aim toward clarifying the good. Even a religious ethical principle like Love God is a good, and subsequent moral decisions aim to manifest this good. See Chapter Four in Moore (1993).
²¹ Wurzburger (1994):17, challenges Moore’s ‘open question argument’ – how do we know that X is good outside of our saying that it is – so as to defend theological ethics. Wurzburger answers, “one can argue that once God is defined as the perfectly good Being, it follows by logical necessity that whatever is commanded by Him must be good.” Obedience to the commands of God-defined-this-way “must, by definition, yield the greatest possible good, even if our limited intellectual capacities prevent us from seeing how and why certain divine imperatives engender the most desirable consequences” (20). This line of reasoning, however, illustrates Moore’s argument: Wurzburger says that God is defined thusly. How does Wurzburger know that this definition is accurate? He could only answer this by juxtaposing the definition over and against something else that is not God/good.
²² “We admit that Metaphysics may serve an ethical purpose, in suggesting things, which would not otherwise have occurred to us, but which, when they are suggested, we see to be good.” Moore (1993):§71.
²⁴ For a further critique of principle ethics, see Barden (1990) and Mabbott (1970).
This is not to say that principle ethics reduces to casuistry – either in ethics generally or in Jewish ethics in particular. Novak notes that the task of Jewish ethics “is not to deduce conclusions from the rules at hand but, rather, to perform the more imaginative intellectual task of attempting to gain insight into the principles that inform and guide the whole normative Jewish enterprise” of attending to moral conundrums of the day. Novak’s version of Jewish ethics therefore moves from practical cases to find overarching or undergirding principles that “inform and guide” subsequent moral decision-making. Menachem Kellner concurs, yet he circumscribes Jewish moral decision-making to the principles found exclusively within the halakhic system, a position called “halakhic-formalism.” Debate rages whether the halakhic system is totalizing, that is, whether ethical principles exist beyond halakhah or could be appropriated to it by modern Jewry. Regardless of a Jewish ethicist’s opinion on this point, what holds true for Jewish principle ethicists is their assumption that modern moral conundrums ought to be addressed as questions of halakhah.

This twofold methodology takes principle ethics seriously to the degree that it recognizes that an ethicist may point to one or another principle or even the halakhic system generally as the good from which all else flows. The problem of considering modern Jewish ethical discourse as principle ethics only, however, is now apparent. No principle – be it ethical in nature, halakhic, theological, political, or otherwise – enjoys unanimity as “the” fundamental principle around

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28 The classic article on this debate is Lichtenstein (1975). See also Newman (1998); Bresaluer (1983); Gifter (2000); Kellner (1978).  
29 See Newman (2005):139ff; Newman (1998):188ff. Elsewhere, however, Newman (1998):162, does not stress such exclusive reliance upon halakhah when he says that modern Jewish ethics involves three steps: “(1) identifying precedents from classical Jewish literature, (2) adding principles from these texts, and (3) applying these principles to new sets of facts.”
which the rest of the Judaic textual tradition and ritual life revolve. Moreover, whatever
descriptive power this model might provide when examining Jewish ethical arguments, it has
little predictive strength: it can no more predict what conclusion an ethicist will reach (or how
the argument will be framed) than what principle an ethicist proposes as her foundational starting
point. Nor does this approach include in the overall mix of modern Jewish ethical discourse
those modern Jewish ethicists who work without a (clearly identifiable) first principle. This
model also excludes the audience from Jewish ethical arguments: they are not just silenced, they
are ignored altogether. As such, evaluating and organizing modern Jewish ethical arguments
along principle ethics lines absolves ethicists from explaining why their principle is “the” best,
obscures other contributors to the normative discourse, and erases the audience.

3.3. Narrative Ethics

Through their actions and fictions, humans are essentially story-telling animals,
according to Alasdair MacIntyre, and the stories humans tell “aspire to truth.” Given
MacIntyre’s depiction of humans as story-telling animals, even the normative rhetoric humans
utter would be subsumed into the category of narrative. The notion of narrative ethics, then,
seems an appropriate model for understanding how individuals and communities go about
constructing personal and collective norms. Compelled by the notion that stories have moral

30 See Stout (1988) on the dangers of totalizing moral language. It is not surprising, then, that McKeever and
Ridge (2006) promote the notion of a limited stock of fundamental moral principles.
32 Phelan (1996):19, argues for understanding “narrative as rhetoric,” that is, “a rhetorical relationship between
author, text, and reader [that refers to] the complex, multilayered processes of writing and reading, processes that
call upon our cognition, emotions, desires, hopes, values, and beliefs.” This kind of approach thus focuses on the
“recursive relationships among authorial agency, textual phenomena, and reader response, to the way in which our
attention to each of these elements both influences and can be influenced by the other two” (ibid.).
33 It is important to distinguish the ethics of narrative from narrative ethics. The former is the ethics of constructing
a narrative, and is usually applied to the conception and development of fictional stories. See, for example, Newton
(1995):11ff. In his 1984-88 *Time and Narrative* voluminous masterpiece, Ricouer explores how the construction of
import, religious ethicists advocate that religious ethical argumentation be based primarily on stories found within religious texts.\(^{34}\) Jewish narrative ethicists point both to the content of stories found in the Judaic textual tradition and to the forms or ways those stories are encountered. For example, some stories are re-enacted (e.g., Passover is a retelling of the exodus/liberation from Egypt; Purim often includes a play of the book of Esther), and some are only heard and/or studied (e.g., the golden calf incident). The prominent Jewish narrative theologian Michael Goldberg argues that the “master story” of the Jewish tradition – the Exodus – serves both as “a model for understanding the world and a guide for acting in it.”\(^{35}\) As such, the master story or narrative is simultaneously descriptive and prescriptive, both theological and practical.\(^{36}\)

Like casuistry and principle ethics, Jewish narrative ethics involves engaging traditional texts to extract morally-salient elements for application on a pressing ethical conundrum.\(^{37}\) These extracted moral themes “constitute the theological touchstones for developing a concept of Jewish moral responsibility.”\(^{38}\) Procedurally, Jewish narrative ethics differs from casuistry and principle ethics because it permits multiplicity on at least two levels. At the textual level, because narrative ethics requires reading stories – and not just law – carefully, it “suggests that narrative resolves problems and tensions between history, fiction and identity. (On this tension, see Cover’s seminal 1983 article, “Nomos and Narrative”.) Emplotment, Ricouer says, elicits a pattern from seemingly or really unrelated events to create a meaningful totality or narrative (see Ricouer (1995):11ff).

Narrative ethics, by contrast, understands human life and action to be embedded in larger-than-the-self stories, especially stories that encompass a community, nation or religious tradition. The apparently discrete moral conundrum of each moment is to be understood as yet another event in an ongoing narrative. Agents involved in each moment’s challenges are to appreciate previous ‘chapters’ and derive moral guidance from them. Thus, with the turn to prior (morally relevant) stories, narrative ethics is the weaving of each moment’s moral conundrum into a larger whole. See, for example, Ellos (1994); Goldberg (1982):242ff. Childress (1997) also discusses the relations between narrative and ethics.

\(^{34}\) Christian ethicists Stanley Hauerwas and John Howard Yoder promote this kind of ethical argumentation and decision-making. Childress (1997), by contrast, argues that even cases themselves are already mini-narratives.


\(^{36}\) A community’s stories have a dual purpose: “the character of a community in terms of its self-image – its ethos – is and ought to be reflected in the character of its moral practice – its ethic – and that even more fundamentally both of these aspects of communal life ultimately draw their existence from the character of that particular community’s overarching paradigmatic story.” Goldberg (1984):25.

\(^{37}\) Zoloth (1999) offers a sophisticated example of encountering narratives to address complex pressing moral dilemmas.

there are aspects of stories that can guide us into different ways of looking at a problem, and not just for a different result.”\textsuperscript{39} That is, whereas laws and principles already frame issues in certain ways, narrative ethics countenances as many approaches to an issue as might be found when interpreting a story. And at the authorial level, narrative ethics also conspicuously construes the author of an ethical argument as a textual reader who interprets texts for his or her ultimate purpose, a role that is all but ignored in casuistry and glossed over in principle ethics. Just as the plethora of stories in the Jewish textual tradition can be plumbed for morally-salient elements and offer multiple ways to consider a problem as such, so every Jewish ethicist may read those texts for a variety of reasons. In sum, Jewish narrative ethics facilitates “imaginative constructions of ethical possibility,” thereby permitting a broad range of restrictive and permissive conclusions.\textsuperscript{40}

Newman provides a substantive and a pragmatic reason to favor narrative ethics when constructing modern Jewish norms. Neither, however, appears positive. He argues that modern Jews “no longer feel compelled by a halakhic ethic” that “presupposes the authority of a divine lawgiver (as well as the derivative authority of the rabbinic legal decisors)” – and thus Jews reject the authority of ethics derived primarily from Jewish law.\textsuperscript{41} Narratives, by contrast, do not make such appeals to divine authority and are thus more palatable in principle to the modern Jewish audience. And the pragmatic reason to favor narratives is because “halachic discourse is highly technical and largely inaccessible to contemporary Jews, most of whom do not have the requisite skills to read and analyze the complex halachic literature that has developed over two millennia.”\textsuperscript{42} This pragmatic reason voices more a lament about the educational skills of modern Jewry than a positive support for narrative ethical argumentation. It seems Newman positively

\textsuperscript{39} Knobel (2007):172. Emphasis in the original.
\textsuperscript{40} Knobel (2007):182.
\textsuperscript{41} Newman (2007):184.
\textsuperscript{42} Newman (2007):184. A similar sentiment is found in Bleich’s introductions to his compilations, \textit{Contemporary Halakhic Problems}. See Chapter Four above.
describes narrative ethics because modern Jews are skeptical of dogmatic grounds for norms (itself a sociological observation), and because stories are easier to identify, digest and incorporate into daily life. He simultaneously overstates that (all or even most) modern Jews deny any authority to halakhah and he underestimates their abilities to understand and appreciate sophisticated (especially, legal) arguments. If this were true, narrative ethics would be a concession. Critics of Jewish narrative ethics could retort that an ethical discourse based on such concessions may do more harm than good because it does not adequately reflect its audience, much less strengthen their understandings of their tradition.

The procedure of narrative ethics is vulnerable to other critiques. For example, narratives are inherently ambiguous and open-ended. As each story can be read in multiple ways and lead to perhaps radically different instructions for action, it is difficult to see how an ethical system based on such fluidity can ever gain real bite or establish real boundaries between what it endorses and what it proscribes. And if each person is authorized to reach normative conclusions from individualized readings of narratives, it would be difficult to see how narrative ethics provides means to coordinate behavior in a community. Furthermore, the question of canon is not sufficiently addressed by this mode of reasoning. This mode does not say which texts are included and which excluded from consideration, much less which of the included ones are to be given greater weight than others. This is particularly troubling in a Jewish context as there are a plethora of stories and texts. Not only is there a massive library of texts, there is no single, unanimously-acknowledged, overarching and unifying Jewish narrative into which all texts fit, contrary to Goldberg’s claim that there is. Since there is no uncontroversial canon of Jewish texts or unified Jewish narrative, reconciling narratives and their possible interpretations

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44 Childress (1997) makes a similar observation.
45 This concern echoes the one articulated against casuistry. Who decides which text(s) can or must be consulted? Who has the authority to say that a particular narrative (e.g., the Exodus) is “the” master narrative? What are the values and goals that person brings to making this declaration?
is not needed at the theoretical level or even possible at the pragmatic level. Newman thus concludes: “When different narratives point in different directions, we are left without even the (relatively ambiguous) moral guidance that a single story can provide.”\textsuperscript{46} So, too, does William Cutter warn, “the world of decision making does not wait for narratively inclined people.”\textsuperscript{47}

The strength of Jewish narrative ethics is therefore found primarily in its ability to explain \textit{how} ethicists argue. The fact that an ethical speaker is a reader and interpreter of the textual tradition automatically establishes common ground with her audiences insofar as they, too, read and interpret the textual tradition – including the speaker’s ethical argument. In brief, Jewish ethical argumentation is the ongoing narration of an individual’s and community’s rereading of its textual tradition in light of contemporary concerns. This collective rereading provides meaning to modern ethical struggles – a point this twofold methodology takes seriously by insisting that Jewish ethics is a communally- and reflexively-developed genre of norm construction in the modern era. Narrative ethics’ procedural and meta-ethical weaknesses, however, undermine its ability to explain \textit{why} an ethicist reads certain texts (one way and not another), reaches certain conclusions, or argues in a particular linguistic fashion (e.g., “I”, “we”, “you”).

3.4. Covenantal Ethics

The covenantal model of ethics posits the relationship between God and individuals as the ground for all subsequent moral decision-making.\textsuperscript{48} Following Rosenzweig’s insistence that

\textsuperscript{46} Newman (2007):186.
\textsuperscript{47} Cutter (2006):59.
\textsuperscript{48} Breslauer (1983):4, says that “defining the ethical relevance of Torah [by which he means “an expression of covenant, the relationship between the divine and the human” (5)] is the first and most basic issue faced by a modern Jewish ethics. Other concerns flow from this fundamental one.” His opening assumptions about the choices modern Jews face (i.e., between affirming “this radically altered modern world or to challenge it in the name of traditional
revelation is revealed to the individual and not the community – thus allowing room for individuation if not autonomy, covenantal Jewish ethicists understand covenant to be a relationship that goes beyond impersonal law to include embodied beings.\textsuperscript{49} Borowitz, an early champion of covenantal ethics, describes it as a method that rejects both Kantian rationalism and Jewish legal formalism so as to emphasize the notion that “Jewish responsibility derives from personally sharing the Jewish people’s covenant with God. The \textit{Halakhah} and \textit{agadah} may then be the Jew’s best guides to authentic obligation – but they must now be read in terms of a given individual’s present response to God as one of God’s dedicated ethnic community.”\textsuperscript{50} Newman describes this mode of ethics as having the goal “to live faithfully in relationship to God and in continuity with earlier generations of Jews who likewise have attempted to live faithfully in this same relationship.”\textsuperscript{51} Covenantal ethics, therefore, connects the contemporary individual to prior (and concomitant) efforts to live “authentic” Jewish lives. Moreover, it understands God as calling “Jews to discover their moral bearings in the context of that covenantal relationship.”\textsuperscript{52}

If Jews are to discover moral orientation within the boundaries of the ongoing covenantal relationship, they do so through constant engagement with the tradition that bespeaks that relationship. Covenantal ethics requires Jews to take the textual tradition seriously and broadly, to consider law as well as narrative, ritual as well as history. Delving into this vast heritage is both task and goal. Covenantal ethics unveils the dialectic between doing what the covenant charges and respecting the limits the covenant circumscribes. The human is thus understood to be God’s partner in completing, improving and even perfecting, creation.\textsuperscript{53} In this way, values and beliefs” (2)), though energetically articulated, raise suspicions if this is a false choice. Perhaps it is not either/or but both/and, for is it not possible to simultaneously affirm \textit{and} challenge?\textsuperscript{49} Wurzburger identifies a series of modern Jewish thinkers as “Covenantal theologians” who “adopted Franz Rosenzweig’s doctrine of Revelation” (1994:6n6).\textsuperscript{50} Borowitz (1990):24-25.\textsuperscript{51} Newman (2005):140.\textsuperscript{52} Newman (2005):140. As noted in Chapter One above (see note 83 there), Newman (1998) develops his own theory of covenant for Jewish ethical deliberation.\textsuperscript{53} See Irving Greenberg’s (1986) article on covenantal medical ethics.
covenantal ethics “balance[s] between the belief in and reliance on God on the one hand and the affirmation of human autonomy on the other.”

This model’s focus on the individual and on autonomy raises serious questions that pivot between the verbs “discover” and “create.” While certainly relying upon the vast textual tradition, how much leniency is granted each modern Jewish covenantal ethicist to create moral conclusions? Or is the modern ethicist confined to conclude only along the lines of what is uncovered within the communal and textual heritage? How much individualism or autonomy is too much? When does this model blur from being a distinctively Jewish mode of ethical decision-making to a model that is so universal it cannot be distinguished from other models?

Methodologically, what is the hermeneutical stance of a covenantal ethicist toward the textual tradition? According to Newman, covenantal ethicists consider the vast library and heritage merely symbolic, much like a ketubah (marriage contract), as it provides orienting guidance but not “a specific plan of action.” If Newman is right, then his conclusion that covenantal ethicists “rarely feel the need to engage in detailed explication of the Torah’s rules, for they are taken as illustrative rather than definitive of one’s moral responsibilities” is appropriate.

Though this model requires an ethicist to engage the textual tradition, it does not compel concrete application by either discovery or creativity. As such, this model acknowledges a relationship between God and individuals but does little to flesh it out in principle, procedurally or practically.

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54 Ellenson (1995):137. The trope of balancing is echoed in Newman (1998):194; Newman (2005):141. This trope is also found in Christian covenantal ethics; see, for example, Mount (1999).

55 Newman (2005):140-141, uses both verbs to describe this model of ethical decision-making.

56 Borowitz (1990):24-25, says Jewish covenantal ethics “accepts the liberal notion that a universal ethical sensitivity must be basic to a modern Judaism.” He does not clarify or quantify what he means by this “universal ethical sensitivity.” Following Rosenzweig, Kogan (2008) argues that Jewish covenantal theology ought not preclude Christian covenantal theology; indeed, modern Jews ought to accept the notion of equally-divine multiple revelations.


Championing the modern individual’s autonomy as it does, covenantal ethics empowers audience members to consider their textual heritage to find normative guidance. In so doing, this methodology is seemingly allergic to the notion of authority: it refuses to say that God has absolute authority or even to assert that humans do. Its search for a “balance” between divine authority and human agency is vulnerable to the vicissitudes of history, in that an ethicist in one historical period will favor leaning in favor of one and an ethicist in another period will tilt in favor of the other. That is, this mode cannot predict what an ethicist might say or how that conclusion is reached. And deferring to the audience to decipher the daily specifics of the covenantal relationship risks dissolution of coordinated behaviors: communal norms would be hard if not impossible to establish.

This twofold methodology nonetheless finds useful this mode’s focus on covenant. Covenant, as argued in Chapter One above, serves as the foundational theological framework in which all Jewish normative conversation occurs. Despite this singular framework, there is no monolithic conceptualization of covenant in the Judaic textual tradition, as demonstrated in Chapter Three. And as shown in Chapter Four, modern Jewish ethicists understand covenant in sometimes dramatically distinct ways. Some understand the textual tradition to be merely symbolic and thus all but ignorable, while others view it as authoritative and as having normative bite for contemporary applications. Again, the key difference between covenantal ethics and this methodology is that the former presupposes that speaking covenantally is a personal rhetorical choice. This methodology understands all Jewish discourse, especially normative discourse, to be covenantal; it cannot be otherwise. Hence, this twofold methodology begins with an analysis of an ethicist’s covenantal theory, and from this analysis this methodology is able to predict how

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59 Newman (1998):222, admits that “specific concepts of covenant…do in fact shape classical responses to ethical questions, both theoretical and practical.” He fails, however, to pursue this observation further to reveal how these variant theories of covenant inform divergent subsequent normative positions.
an ethicist views the textual tradition and explain why he reads it as he does. Covenantal ethics, by contrast, does not offer predictive power.

3.5. Hybrid Ethics

Branching beyond his normal haunt of descriptive ethics, Newman offers a hybrid method of law and narrative to organize Jewish ethical discourse. Jewish ethicists should “see narrative and law as complementary and ultimately interdependent aspects of any authentic Jewish ethic.” 60 Such an approach is “most likely to appeal to modern Jews because, unlike a narrative or legal approach [alone], it is neither ‘dead’ nor ‘wild,’ but a source of authentic, dynamic guidance.” 61 As noted above, Newman understands the legal method to be “dead” because modern Jews reject the divine authority behind halakhah, and the narrative method is “wild” because of the innate ambiguity of texts, canon and ways of reading. And this hybrid approach will “be most likely to appeal” because the narrative method recognizes the importance of an individual’s intention and motivation for a deed, and the legal method focuses on the performance or follow-through of that deed. For these reasons, it makes sense to advocate a method of ethical reasoning and arguing that combines these two. 62

What is the nature of this combination? Newman sees it as a fine balance of two inextricably intertwined pieces that are not diametrically opposed. 63 Indeed, since narrative and

61 Newman (2007):192. He also claims this hybrid model is “more authentic and more comprehensive than an ethic that relies exclusively on either [law or narrative] aspect of the tradition” (ibid.).
62 Childress (1997):268 also calls for a hybrid ethics that combines narrative and norms, as each “plays as a corrective, enriching, enhancing role in relation to the other – one by moving to the more general, the other by moving to the more particular.” But unlike Newman, he does not stipulate the relative dominance of these elements in this hybrid methodology.
63 “Indeed, it could be said that Halacha is, at least in part, an attempt to concretize the values embedded in the great stories of our people and its relationship to God. So, in principle, narratives and rules need not be diametrically opposed.” Newman (2007):188.
law are both included in Torah writ large, “they must point us ultimately in the same direction.”

According to this logic, both halakhah and aggadah are utilitarian; their study and embodiment orient but they do not have innate value in and of themselves.

On the other hand, even if they were only means to an end, they have a purpose of helping Jews think and live more ethically. “The question before us, then, is how we can draw equally from both these sources of moral instruction. What might a Jewish ethic look like that is equal parts Halacha and aggadah?”

Newman does not explain why narrative and law should be granted equal prominence in this new hybrid method of doing modern Jewish ethics. Does he presume that they are equally present in the textual and lived heritage? How is this “equality” measured? Could it ever be measured and ‘balanced’ out? Equality aside, Newman admits that law and narrative perform different yet necessary functions in this new model of ethics. In the spirit of Abraham Joshua Heschel, law defines boundaries by articulating what is proscribed, while narrative “explores the nuances of what is permissible.”

Law functions in the realm of deeds, narrative in values. Both are necessary to make concrete moral decisions that make sense in a personal and collective narrative trajectory.

This hybrid model is attractive if for no other reason than it echoes much of what this project’s methodology attempts. Like this project, Newman’s hybrid model welcomes complex arguments that intertwine law and narrative; this one, however, does not automatically exclude any one mode of ethical argumentation. Newman’s also acknowledges the importance of the individual and community, text and context, speaker and audience. On the other hand, his hybrid model suffers some critical drawbacks. It fails to explain why an ethicist constructs an argument

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64 Newman (2007):188.
65 Newman is silent whether either element has pedagogic or therapeutic value, as in a method that would be more attuned to virtue ethics.
67 See Borowitz (2006) for a discussion of other texts beyond law and narrative in the Talmudic textual universe.
a certain way or reaches a particular conclusion. Methodologically, his insistence on the equal measure of narrative and law puts unnecessary strain on speakers of Jewish ethical arguments who would rather incorporate unequal consideration of them and, perhaps, other (non-Jewish) sources. As such, Newman’s hybrid is too descriptively weak at the meta-ethical level and too prescriptively strong at the discursive level to adequately explain both how and why Jewish ethical arguments emerge and function as they do.

4. Religious Ethical Discourse in Complex Societies

Insofar as this twofold methodology both explains and predicts how and why Jewish ethicists argue as they do, its benefits surpass the partial explanatory powers offered by other ways of categorizing Jewish ethical discourse. This is not to say that this twofold methodology is perfect and omniscient; indeed, it presents many challenges and difficulties, as will be discussed momentarily. Nonetheless, its relative strengths in clarifying the dynamics of Jewish ethical discourse emerge from its explicit focus on both theology and actual argument. In this way it builds upon both Newman’s focus on language and on Stout’s reliance upon theory.

Questions now arise whether and how this twofold methodology furthers contemporary understanding of religious ethical discourse generally. While the above sections show how this methodology’s employment of discourse analysis builds upon the strengths of other attempts to explain Jewish ethical rhetoric and avoids their weaknesses, it remains to be seen that this methodology’s focus on theology is similarly beneficial. This project assumes along with Newman and Stout that Jewish ethical discourse can enhance modern normative deliberations in mixed societies. The question then is whether and how the theological dimension of Jewish ethics contributes to that offering.
This methodology’s theological dimension is descriptive. In his classic text describing the field of modern Jewish ethics, Newman also takes Jewish theology seriously throughout his studies of Jewish ethics. Yet at one point he gives his own proposal for a covenantal theory. He takes on the task of reinterpreting and “demythologizing” “the traditional covenant idea so as to retain much of what it has always symbolized” and create a notion of covenant that can attend to contemporary concerns.69 But what does he mean by “always” and how does he propose that his method of identifying those elements that are “always” embedded in “the traditional covenant idea” is better than any one else’s? He does not say. Nevertheless, his treatment of covenant reinforces the claim shared with this project that “covenant does form the basis of all traditional Jewish concepts of religious obligation.”70 By trying to salvage covenant and assert its relevance for modern Jewish ethical discourse, Newman alters his role from descriptive scholar to constructive theologian.

This project resists the temptation to construct yet another “better” theory of covenant. It seeks to expose theology by unearthing and unpacking Jewish ethicist’s actual theories of covenant as they themselves understand it. In so doing, this project demonstrates the fact that covenant is an ineluctable theological framework for modern Jewish ethics. Unlike Newman, though, this project does not insist that modern Jewish ethics avoid influence from “philosophical categories drawn from other moral traditions” – as these sources are already evidently intertwined with and constitutive of modern Jewish theology as much as modern Jewry, even if only as sources to resist.71

This project agrees with Newman in that modern Jewish ethical discourse is a communal exercise in norm development and that it requires serious engagement with the broad and deep

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Jewish textual tradition inclusive of but not limited to *halakhah* and *aggadah*. Curiously, however, Newman insists that modern Jewish ethics is best developed by Jews who are “fully literate in the traditional sources, actively engaged in the life of the Jewish community, spiritual seekers for whom the Jewish and secular components of life are thoroughly integrated” and meet regularly for worship, study and deliberation of moral conundrums. This vision is a good idea, but it is one that is so far fetched that it cannot be reasonably realized in the messiness of daily living in which Jews are differently literate, uniquely engaged, on distinct spiritual paths and variously value secular components of life. Though this project could promote such a fantastic vision of knowledgeable and engaged Jews, it instead describes how modern Jewish ethicists actually do their work.

This descriptive approach to theology and ethics facilitates a clearer understanding of religious ethical discourse in a broader, multi-religious society. Its insistence to recognize the multiplicity of theological commitments by contemporary religious ethicists argues strongly against efforts to essentialize religious ethics (or at least, Jewish ethics) to a central or a small set of (theological) principles, as do Little and Twiss in their field-forming work on comparative religious ethics. Theological multiplicity reinforces Stout’s observation that with the advent of the Enlightenment and modern nation-states, makers of public norms could no longer assume a shared theological foundation with their constituencies. This holds true both for mixed societies as well as within religious communities. But whereas Stout primarily theorizes theological multiplicity, this project actively demonstrates this multiplicity. And in so doing, it

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75 Stout (2004):99. See Note 68 in Chapter One above.  
76 See Stout (2004), Chapter Four.
answers the call to attend to actual religious practices – or theologizing – so as to understand the relationships between theological commitment and normative argument.\textsuperscript{77}

On the other hand, the multiplicity found here within the realm of Jewish ethical discourse is not of a radical kind. The theories of theology Jewish ethicists articulate are distinct by degree, not kind. That is, these theories all speak from and about covenant (\textit{brit}). This fundamental theological framework serves as the soil of agreement from which disagreement can arise. For, as Stout observes, meaningful disagreement can obtain only if and when there is sufficient agreement or commonality that supports recognizing differences and disagreements as meaningful at all.\textsuperscript{78} Specifically, these ethicists share not only in the assumption that there is a relationship between Israel and God, but also in the assumption that authority inheres in an ethicist to give normative instructions to other Jews, in the assumption that \textit{halakhah} cannot be ignored in contemporary ethical deliberation, in the assumption that the modern context can be ignored only at risk of unsubstantiated dangers, in the assumption that Jewish ethical audiences are tasked to consider their arguments before taking up their advocated conclusions. This albeit complex yet common ground affords them intellectual, legal, theological and ritual space to disagree meaningfully on pressing moral issues of the day. Thus the theological multiplicity uncovered by this methodology points not to a fracture of Jewish ethical discourse but to its integrity: it is all of a whole, a genre unto itself, theologically speaking.

That modern Jewish ethical discourse shares a theological outlook is also seen in the fact that, at least with these ethicists, the trend to eclipse God in the covenantal relationship continues apace. However central God may appear rhetorically in these ethicists’ theories of covenant, none foregrounds God to such an extent that humankind or human reason are not granted a substantial level of authority to articulate and deliberate communal norms. Indeed, even Bleich

\textsuperscript{78} See Stout (1988), especially Chapter Two.
elevates human sages as the rightful loci of expressing theological, ethical and legal norms for the masses; while God may be such norms’ origin, their conveyance is achieved only by humans. Dorff and Borowitz, too, understand God to be important if not central to their theologies, but God’s presence therein does not come at the expense of honoring modernity’s claim that humans are responsible for their moral and spiritual stature. Just as these ethicists agree that God has a claim upon humankind, they also understand that God does not have exclusive claim as the rightful authority in norm generation. In this way, these ethicists continue the millennia-old trend in Jewish theories of covenant of constricting God’s exclusive claim to authority when communal norms need development.  

So theologically speaking, this method’s insistence on the chronological and logical priority of theology to normative speech endorses a kind of universalism not otherwise found in secular normative deliberation. It illuminates the inseparableness and mutual influence between the vertical relation – humankind’s relation with God – and horizontal relations – those among humankind. The former grounds the latter and the latter manifests the former. Put differently, this method reveals the necessary and dynamic relationship between theory/theology and practice/ethical argumentation. It therefore fathoms the varieties of practical ethical rhetoric (e.g., Bleich’s “the/it”, Dorff’s “a/we”, and Borowitz’s “I/my”) as modes functioning in a shared discourse. In this way it links Bleich’s theological essentialism, Dorff’s political perspectivalism and Borowitz’s philosophical personalism in ways no other method of analyzing Jewish ethics can. Recall:

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79 In a way, this continues Hermann Cohen’s method of correlation. Understanding the normative claim of God requires understanding the correlative normative claim of humankind and human reason, and vice-versa. And yet this does not propose that there is an inverse relationship between these claims, that more of one automatically requires or implies the reduction of the other. Rather, this observation of these ethicists’ theories of covenant suggests that, knowingly or unwittingly, each correlates God’s authority with human authority so as to ascribe authority to their own normative projects. For if God were the sole rightful authority for constructing Jewish norms, then what claim to any or more authority would an ethicist have over any one else? 

80 Novak (1992):7, argues that the authentic Jewish social thinker must “minimally be a theologian who is at home in the classical sources of the normative Jewish tradition.” This project demonstrates that being “at home” requires more than intellectual passivity; it demands conscientious engagement with the inherited tradition as well as with the contemporary audience one seeks to persuade.
That is, insistence on theological priority welcomes to societal normative discourse more voices than a prescriptive theory might (such as a principled one) or a theory that precludes theology altogether (such as by staunch secularists, like early Rawls). The universalism this method encourages is one in which different notions of moral sensibility and moral responsibility are simultaneously broader than and more humble than the totalizing universalism some theological and nontheological ethicists espouse. 81

Even though this focus on theology welcomes multiple voices, it does not welcome just any voice to the normative fray. While Habermas envisions an ideal communicative moment in which all people affected by a norm have equal access to and equal voice in the norm’s construction, this is not the case in religious ethical deliberation. This is attested to even in the Talmud. After years of disagreement between the School of Shammai and the School of Hillel, a heavenly voice finally uttered that both offered “words of the living God.” Nevertheless, the norm accorded to the School of Hillel. 82 Though each school was acknowledged as a rightful authority to participate in this dispute, not everyone who would be affected by the debate’s conclusion was involved in it. Broadly speaking, the Judaic tradition goes to great length to recognize yet marginalize those it deems unworthy of contributing to norm creation for the Jewish community. 83 As shown in Chapters Two and Three and Four above, religious ethics

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81 See discussion in Novak (2008), who argues that the particularism of Judaic ethics – and perhaps ethics of other religious traditions – provides necessary checks to the dangerous totalization that secularist universalisms often produce.

82 BT Eruvin 13b. Why did the School of Hillel receive this honor? Because the members therein were humble and patient, and taught their opponents’ positions first before offering their own. Stout could see in this Talmudic story support for his “imminent critique.”

83 For example, the Sadducees, Essenes, early Jewish Christians, and, more generally, Jewish non-rabbis. The construction of norms within Judaism appears to be a continuous polemic against nearby communities, communities
generally and Jewish ethics in particular acknowledge that only certain roles have legitimate authority to participate in normative debate, roles such as the rabbi-scholar. This is not to deny others from speaking altogether but to insist that certain voices are privileged in communal norm creation.

This privileging builds upon Stout’s proposal for a modest pragmatism. His proposal encourages people of different religious commitments to express their positions using whatever reasons or arguments they personally find persuasive. This holds true, at least in modern Jewish ethics. But it is also true that modern Jewish ethicists do not offer just any argument they find personally persuasive. Knowing their audiences as they do, and knowing their religious tradition as they do, these ethicists constrain themselves to arguments that adhere to the tradition and, hopefully, connect with and even persuade their audiences. Normative deliberation may be a free exchange of reasons at one level, but at another level the range of reasons exchanged is not unlimited.\textsuperscript{84} Just as there are arguments that \textit{ab initio} would be out of bounds and unacceptable for a particular community’s norm deliberation, so too would this be true for norm creation in a multi-religious society.\textsuperscript{85} These bounds are established not by theory alone – as scholars like Audi and Wolterstorff might want – but by tracing actual arguments offered for public scrutiny.\textsuperscript{86} In a Habermasian way, the limits of acceptable reasons are clarified through actual communal deliberation. Hence, this methodology’s requirement of complementing theory and theology with analysis of actual ethical arguments.

Just as there is a privileging of \textit{who} participates in communal norm creation, so too is there a privileging of \textit{what} is appropriate for that conversation. And an ethicist’s theology

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\textsuperscript{84} See discussion of Perelman in Chapter Two above. See also Haarscher (1986).

\textsuperscript{85} When someone takes issue only against an ethicist’s theological commitments, their disagreement is one of theology and not ethics \textit{per se}, and it may be dismissed from inclusion in the construction of communal norms.

provides reasons why his argument should be taken seriously. By taking theology seriously in a multi-religious arena like modern day secular democracies, this methodology enables scholars of religious ethics to compare arguments from different traditions. For by “uncovering ideological assumptions,” this method brings into sharper focus the field of religious ethics. Inviting and invigorating religious ethical discourse in complex societies may forge commonalities across communities that would otherwise not be so easily established were people to argue in only secularist or in particularist theological language. Conversely, it would make transparent reasons why a religious community does not agree with a particular normative proposition, and thus enable a proposer to reframe the issue in a way that is more palatable for members of that particular community. This is not to advocate a kind of political pandering but a kind of political empowerment insofar as it takes the variegated audiences in modern democracies seriously. Because a speaker would have a better conceptualization of a particular religious community, she would be able to construct arguments that speak more powerfully to that audience, even if she were not a member of that community.

While promising to be inclusive and broad and optimistic that it can further norm creation in modern democracies, this methodology does not claim to be a panacea for all norm deliberations. Its modest claim is that at least in the realm of religious ethical discourse, it is necessary to take theological claims seriously – as well as actual arguments put forward by religious ethicists. In this way it is possible to ascertain both how and why an ethicist understands rightful authority, desired reason and proper autonomy. This twofold methodology seemingly works well within the Judaic tradition to explain how and why Jewish ethicists argue

87 Hindery (2008):227. Hindery would rather subsume religious ethics into the category of ethics generally, so as to flavor the former as but one brand of ethical discourse and not a distinct genre.
88 Crane (2007) explores different rationales Jews offer each other to support human rights instruments. Pitcher and Winter (1977):85 suggest that the purpose of religious ethical discourse generally is to illuminate and disclose religious reasons to support norms, such as public policies.
89 This is not to say that her argument would be religious ethical discourse per se for she does not have the necessary stature in that community to speak such arguments.
90 In this way, this project continues Pitcher & Winter’s (1977):84 work to elucidate the dimensions of an “integrative discipline of religious social ethics…without violating this pluralism of perspectives.”
as they do. Perhaps it will work well in other traditions like Judaism, such as Christianity and Islam in particular. Whether this methodology has explanatory and predictive power in traditions less monotheistic than these is a project awaiting scholarly energy and expertise.

5. **Black Fire on White Fire**

Given that this twofold methodology takes both theology and argument seriously, a final question is whether this methodology adequately describes modern Jewish ethical discourse. For example, would the ethicists in this sample recognize themselves in their portrayal here? Or would they find themselves better described in one of the categories surveyed above? This latter possibility would be unlikely because, as Newman acknowledges, the categorical approach is not one “Jewish ethicists typically use to describe themselves.”

Indeed, as shown in Chapter Four, modern Jewish ethicists argue in complex ways that defy simple categorization. Even if each did argue within the confines of one or another category, such an approach to the field would still be unable to explain how these modes of arguing speak to each other. A categorical approach simultaneously fractures the overall discourse into seemingly solipsistic conversations, glosses over the substantial differences within each category, and elides the weaknesses of each identified above.

So if a categorizing approach is insufficient to either describe or prescribe the field, does this twofold methodology do any better? Would the ethicists see themselves herein? Insofar as this methodology begins with each ethicist’s theory of covenant, it suggests that at least theologically each would recognize himself. And insofar as this methodology examines an ethicist’s actual arguments’ rich rhetoric, it respects the diverse argumentative modes and styles.

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92 One might ask whether it matters at all whether a Jewish ethicist sees himself in such a project as this. If an ethicist did not find any commonality between an analysis and his own work, the onus is on the analysis to prove its relevance to the field.
each uses. Perhaps, then, modern Jewish ethicists would be able to recognize themselves in this methodology more than in others. And what of the audience – those whom the ethicists are trying to persuade – are they included here? Whereas most categorizing methods all but ignore the audience and a theological-only approach does too, the rhetorical analytical dimension of this methodology brings the audience into the forefront. It shows that the audience cannot be ignored when appreciating the complexity of religious – especially Jewish – ethical discourse. The religious ethical audience is a real one, composed of real people who differ from the speaker yet are not so different that they cannot or would not take the speaker’s argument seriously. And, conversely, the speaker takes the audience’s historical proclivities and theological commitments seriously enough to hone his argument in such a way as to connect with them. Dorff’s practical argument is particularly demonstrative of this effect of the audience.

Given this twofold methodology’s relative success in incorporating both speaker and audience, and its ability to appreciate diverse means of reasoning through moral conundrums, this approach expresses the different levels at which Jewish ethical rhetoric is normative. At one level, it directs a target audience toward specific behaviors when confronting a certain moral issue. That is, Jewish ethical arguments promote particular actions for Jews to perform. In this way ethics functions alongside halakhah in prescribing and coordinating practical communal behavior. At another level, this approach highlights the different models ethicists want Jews to use when thinking through moral problems generally. Ethicists explain and demonstrate ways to reason through issues by pointing to which sources are relevant, showing how to read those sources and ascribing to them relative priority, and incorporating or arguing against extra-Judaic influences. And at a third level, this method’s description of the breadth of Jewish ethical reasoning simultaneously clarifies the boundaries of it. That is, it helps clarify which issues are perceived as moral problems worthy of Jewish ethical deliberation. It could be that what appears as a moral dilemma in one era or community may not appear as one elsewhere or at another
In sum, Jewish ethical argumentation prescribes action, reasoning and ways to identify moral problems in the first place.

On the other hand, this twofold methodology does not prescribe uniformity to the field of modern Jewish ethical discourse. Rather, it celebrates multiplicity both in theological commitment and in rhetorical flare. Insofar as covenant serves as the theological background for Jewish normative discussion, and the actual practical arguments are in the foreground, it is possible to consider covenant white fire (לבנה אש) and discourse black fire (שחורה אש).

Discourse analysis scrutinizes the actual, black, printed ink of modern Jewish ethics. The covenantal theology, like background, renders this printed material visible, cognizable and comparable. In short, theology grounds and supports meaningful disagreement. Obviously, this does not mean that all aspects of theology are the same for every Jewish ethicist. Indeed, as seen above, Jewish ethicists understand covenant in dramatically different ways, but they nonetheless see it as the foundation from which all other normative notions and practical arguments emerge.

93 For example, early feminism radically challenged modern Jewry. Some streams of modern Jewry took on the challenge to think about gender as a moral issue in its own right and, after lengthy consideration of the Jewish textual tradition and broad-based deliberation by Jewish ethicists, adjusted both their practices (especially liturgical ones) as well as their attitudes about gender generally. These streams no longer wrestle with gender issues as they once did; indeed, some have become so “gender-blind” that gender no longer serves as a distinguishing factor for leadership or membership. That is, for some Jewish communities, gender is no longer (such) a morally-fraught issue.

This is not to say that those individuals and communities do not continue to wrestle with gender issues at all, but that they do so from within a different paradigm than before. Whereas in pre-feminist eras gender was generally dismissed as a non-issue, now, because of early feminist efforts, gender cannot be ignored. That is, early feminists succeeded in opening people’s minds to the possibility (and necessity) of acknowledging gender as an issue at all and as a moral one at that. Given that gender is a morally-fraught issue for those who acknowledge it as such, the struggle today is how they attend to particular issues involving gender. This is a significant difference between the more “progressive” or “liberal” streams of Jewry and the more “traditional” ones that maintain nonegalitarian divisions, especially in regard to liturgy. This is not to say that “traditional” streams of Judaism do not take gender seriously. On the contrary, it was and remains one of the most contested issues therein.

Though there is abundant scholarship in and about Jewish feminism, see in particular Plaskow’s (1990) ground-breaking work, Adler’s (1998a, 1998b) critique of more traditionalist approaches, and Borowitz’s (1995) reflections on early and later Jewish feminisms.

94 Stout (1998):232, says that “to speak of disagreement, in morals as much as elsewhere, only [makes sense] if we are prepared to recognize a background of agreement.”

95 Another theological approach might be an examination of creation, revelation and redemption. Like covenant, these are, in varying ways, theological notions of a relationship between God and humankind (and the world). Such an approach, however, would similarly require examining these theological notions as Jewish ethicists understand
In this way Jewish ethics is a discourse that is at once pleasant, magical, covenantal and human. Its pleasantness is reflected in the myriad ways Jewish ethicists demonstrate their preferred reasoning through difficult issues; they work to make these challenges more pleasant, though without erasing them altogether. They work to show that their proposal is not unreasonable but is, indeed, so reasonable that anything else would be unpleasant. And that an audience takes up a proposed course of action manifests this magical ability of ethical speech to influence others elsewhere. Certainly the covenantal background supplies deep meaning behind and purpose to normative deliberation. And Jewish ethics, being conveyed from human ethicists to human audiences, enables argumentative *bricolage* (qua Stout) insofar as it incorporates various, seemingly apposite, modes of argumentation.

Even though Jewish ethicists may be *bricoleurs*, it does not mean they are conniving politicians willing to use just any argument to influence their intended audiences. They are principled speakers whose theological commitments limit their speech options. Within these bounds they function as Aristotle imagines: they employ the best means possible in a given situation to convey their meaning and reach their audience. However distinct their theological stance may be and their practical argumentation is, their normative pursuit is the same: they seek to inspire assent to their conclusion and adherence to their way of reasoning, if not agreement with their theological perspective itself. Jewish ethicists seek to forge in their Jewish audiences agreement of body, mind and perhaps spirit – if such a division is philosophically and theologically reasonable to imagine – even though Jewish history and textual tradition honor passionate disagreement of, at least, thought and theology.

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The black fire on white fire paradox is now visible. From the perspective of theology, the shared covenantal paradigm allows for disagreement (theological, methodological, practical) that, from the perspective of the discourse itself, Jewish ethicists discursively struggle to eliminate. And conversely, from the perspective of discourse analysis, this method shows that dramatically different assumptions, arguments and audiences, participate in a common conversation that is, at a fundamental level, theologically unified. The two levels are inseparable just as theology and practical behavior are.

Insofar as Jewish ethical rhetoric is best understood through this twofold methodology combining theology and discourse analysis, it anticipates certain difficulties. Newman states it well when he says that “if Jewish ethics is decisively shaped by its religious foundations, then we would expect that any effort to translate it into the terms of a nonreligious system of philosophy would encounter serious difficulties. How, for example, can covenant, as the ground of Jewish moral obligation, be assimilated to a philosophical category?”97 Just as translatability to secular philosophy will be challenging, it will be difficult to find foundations in other religious traditions commensurable to covenant when attempting comparative religious ethics. That communities have different foundations and conceptualizations of the good does not mean that fruitful conversation cannot be had.98 Indeed, as Stout argues, differences in the public arena motivate communities to assent to efforts that minimize discord. Though perhaps for different reasons, people will agree to certain basic standards of behavior. Intractable disagreement need not lead inexorably to societal fracture or anarchy.99

This difficulty aside, there are several ways this project can be strengthened and furthered. A more longitudinal analysis of this genre of normative Jewish speech would show

98 Novak (2008) argues that the supposed particularism of Jewish ethics is, in actuality and in many ways, more universal than supposed universalist ethics along the lines Kant proposed. That is, it is reasonable to put forward in the public arena Judaic arguments about the good because they are, like many other conceptualizations of the good, good for the general public.
better how Jewish ethicists adjust their arguments and theologies in response to changing circumstances and others’ points of view. For example, the very fact that a community takes up an ethicist’s initial position on euthanasia may inspire that ethicist to encourage a new, more nuanced, sophisticated, conservative or permissive position. Or perhaps external reasons like technological advancements or new medical standards provoke revisiting an issue. A longitudinal study could better reveal the ongoing, iterative adjustment of conclusions, argumentation and theology (of an ethicist as well as of a community).

Second, the study can be sharpened by contrasting Jewish ethical rhetoric by issue. For example, dividing issues into biomedical, social, economic, political and religious arenas may uncover nuances of ethical argumentation in each. It may come to light that Jewish biomedical ethical arguments tend to give primacy to certain rhetorical elements (speakers, texts, audiences, assumptions, etc.) unlike social ethical issues. Identifying these differences may illuminate sub-genres of Jewish ethics, niches that deserve scrutiny in their own right and light.

Third, although acknowledged at the outset, this project does not deal with Jewish ethical arguments geared for audiences outside the North American context. Analysis of Jewish ethical discourse happening in Europe and in Israel, for example, would no doubt complement this study. The basic premises of covenant and discourse analysis would probably be reasonable to apply to these conversations.

Fourth, a significant portion of contemporary Jewish ethical argumentation is not geared exclusively to a Jewish audience. Indeed, many Jewish ethicists teach and speak to noncoreligionists in North America and around the world. Knowing they are addressing non-Jews, how do they adjust their arguments? Do they, as Stout claims, “typically search for common assumptions in a way that blurs any distinctive contributions of their religious
"tradition"? Do they deploy religious reasoning and resources despite knowing that their audiences are predominantly non-Jewish – in the hopes that “religious voices” in the public arena are given as fair a consideration as any other? Or do they shift their practical arguments and conclusions so as to forge coordinated action despite uncommon motivation? This project takes Novak’s advice to focus first on intra-Jewish normative discourse before attending to discourse geared to a broader audience. In this way, this project displays the robust nature of modern Jewish ethical discourse, itself a broad and complex conversation that, by dint of its presence in multi-religious societies, contributes to the overall wellbeing of society insofar as it promotes sophisticated consideration of and coordinated action on pressing moral issues of the day at least among contemporary Jews.

102 See Crane (2007) on this practice within the Jewish world vis-à-vis human rights.
103 Novak (2005):82.
# Abbreviations

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<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>BT</td>
<td>Babylonian Talmud</td>
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<td>JT</td>
<td>Jerusalem Talmud</td>
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<td>M</td>
<td>Mishnah</td>
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<tr>
<td>MN</td>
<td>Moreh Nebukim, by Maimonides</td>
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<td>MT</td>
<td>Mishneh Torah, by Maimonides</td>
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<td>SA</td>
<td>Shulchan Aruch, by Joseph Karo</td>
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<td>R</td>
<td>Rabbi or Rav</td>
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