HaBrit V'HaHesed: Foundations of the Jewish System

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I will bring you to the wilderness of the peoples and there will I plead with you face to face. Just as I pleaded with your fathers in the wilderness of the land of Egypt, so will I plead with you, saith the Lord God I will cause you to pass under the rod and will bring you into the tradition [bond] of the covenant. (Ezekiel 20: 35-37)

Four Words: Two Fundamental Concepts

The biblical-Jewish system of political and social life rests upon a set of principles and practices embodied in two pairs of normative yet action-oriented principles: *habrit v'hahesed* (covenant and loving covenant obligation) and *tzedakah u'mishpat* (righteousness and justice).[1] These sets of concepts provide the right foundation and an appropriate dynamics that will secure the translation of that foundation into an effective system of action in line with the principles presented.

For the Jewish system, which begins with the Bible and continues to unfold through the Talmud and later texts and interpretations, those two pillars begin with the concepts of *brit* (covenant) and *hesed* (not easily translated into English, but which can be summarized as loving covenant obligation). A look at a biblical concordance offers some idea of the frequency and centrality of those terms in the Bible.

Habrit v'hahesed constitute that part of the foundation of the Jewish system that is the basis for all social, interpersonal, and intergroup relations and hence for the operative political dimension of the system alongside of *tzedakah u'mishpat* (lit.: justice or just action and law in the sense of the administration of justice), the architectonic political principles of the system. Understanding the Jewish system, then, requires an understanding of what is meant by *brit*, what is meant by *hesed*, how the two of them are inextricably joined, and, conversely, what happens when there is *brit* without *hesed* or *hesed* without *brit*.[2]

How to Read the Bible

Before turning to the exploration of those closely-connected concepts, a few words of introduction on how to read the Bible are in order. Systems of thought can be either dialectic or monistic. Many people approach the Bible as a monistic system, including most of the modern "scientific" biblical critics. Assuming that the Bible is to be read monistically, they look at the unevennesses and contradictions that they see within the text as problematic, requiring explanation as contradictions, including the extraordinarily inadequate explanation that they are the result of bad editing of basic documents into a final text.

The very fact that the Bible has survived and flourished as one of the greatest texts of humanity for so many thousands of years suggests that this is an inadequate explanation. Somehow, despite its many presumed "inconsistencies" and "contradictions" the Bible captivates and compels even skeptical readers. I would suggest that it is inadequate because the idea that the Bible is monistic is incorrect.

The Bible, I would submit, is dialectic in character, that is, it consists of the interplay of ideas which differ in emphasis, usually as a result of the context in which they are applied. Those ideas all flow from a few basic premises shared by those who participate in the dialogue, i.e., that God is the omnipotent and omniscient sovereign and ruler of the universe, but bound by the moral order (*tzedakah u'mishpat*), He created, that humans were created both to serve God and to have stewardship in this world on God's behalf and for their own benefit, that Jews are God's special treasure because through covenant with Him they have accepted the special vocation allotted to them but, at the same time, humanity is one, stemming from one common set of ancestors, so that all humans are part of one very extended family bound by the Noahide covenant.

The dialectic dimension of the Jewish system is more evident in the Talmud, which is written in dialectic fashion. Some scholars also see that dialectic in the Bible.[3] An example of this dialectical approach can be found in the Biblical discussion of appropriate regimes for Israel. The polity projected by Moses for *Adat Bnai Yisrael*, the twelve Israelite tribes in the desert, in the books of Exodus (Chaps. 18-24), Leviticus, and Numbers, is presented again in more systematic but modified form for *Adat Bnai Yisrael* when they are in the Land of Israel, in Deuteronomy. A changed model is presented in Samuel by the partisans of the Davidic monarchy, and an effort is made to reconcile the two in yet another, more symmetrical, way by the prophet Ezekiel (Chaps. 34, 43-46, 47:13-48). Or, take, for example, the emphasis on the sacrificial cult in the Bible and the challenge to that cult as mere ritualism by the latter prophets. One can continue with many other examples. The Bible as a dialectic work has to be read or listened to very differently than the Bible as a monistic work, to pick up and enter into the dialogue, as it were. As a teaching, the Bible has normative and instrumental as well as dialectic dimensions. We read the Bible to learn what is the right thing to do and we study the Bible to find out what is the best way to do the right things, or indeed those things that will prolong our lives, according to it.

How, then, do we approach the study of the biblical text? We can understand the Bible as a book or anthology of books of moral science. While it contains history, it is not history. While it has a strong constitutional dimension, it is not simply constitutional. Nor is it simply a code of laws. Rather, as it has been known from its own account from the first, it is a *torah*, a teaching. In other words, aside from its constitutional and law code dimensions it is a series of case studies presenting examples of human behavior in a context in which we learn to evaluate them from a moral perspective. As a set of moral science case studies, at times it seems repetitive as the same material is used, with different emphases, to illustrate different cases and, at times, contradictory as the same material is seen from a different perspective, appropriate to the case it illustrates.

In all of these respects, the Bible has to be seen as a prismatic work. The Talmudic sages recognized that when they said that the Bible has seventy faces, i.e., can be understood or explicated in many different ways. Prismatic thought is different from the systematic thought that comes to us through Greek philosophy. In world literature, the Bible is the prime exemplar of prismatic thought. Systematic thought begins with certain basic premises or a basic framework from which ideas, principles, and practices flow in an orderly manner, deductively or inductively. Indeed, systematic thought, while not necessarily meant to be static, often leads people to static conclusions, i.e., final or ideal definitions which, once achieved, stand. Prismatic thought, on the other hand, is dynamic because looking through the different facets of a prism always brings new views, thus placing the prism itself in different contexts to change what one sees looking through its facets. Prismatic thought cannot be static because looking through a prism is never static, but always depends on the particular facet of focus, on the angle of vision used, and the light reflected through that facet.

On the other hand, the Bible is not an early example of postmodernism. That is to say, it does not contain simply what is in the eye of the beholder. The prism itself has a nuclear point that is permanent and fixed. Thus what one learns from looking through it is a combination of its fixed form and the viewer's perspective on that form in any particular case or situation. Prismatic thinking, then, has its own ways that differ from systematic thinking and its own methodologies for organizing ideas. We study the Bible in several different ways to penetrate its prismatic system. In Hebrew, that method is called *midrash*.

Three Ways of Studying the Bible

There are three common ways of studying the Bible. One is through the choice of selected passages, a verse here or a verse there, taken out of context and used to make a point. Sometimes we string different verses bearing on the same subject together presumably to make that point more effectively. This is a very problematic approach because the verses are torn out of context and rarely are placed in conjunction with verses that may present other nuances or are even contradictory. More often than not, it is an inadequate and unsatisfactory way of studying the Bible since intelligent people are suspicious of it. They know that using this method one can prove almost anything from the text.

The other two methods are considerably more useful. One is through *sugiot* or topics, whereby a particular topic or issue is traced all through the biblical text, and perhaps other texts in the Jewish tradition as well, from the beginning onward. The *sugiot* method allows texturing the study, adding depth and nuance to it through the use of varying materials related to each *sugia*.

The third method is through the "stories" in the Bible. This approaches the texts with even more texture than *sugiot*. The learner looks at one or more of the many stories in the Bible with questions in mind and sees how the stories deal with those questions and how the answers to those questions or the behavior of those featured in the story develops, learning goes on, and changes occur.

One such story of interest to those exploring the Jewish political tradition is the case study of the relationships between the prophet Elijah and Ahab, King of Israel.[4] In its simplest form, the story is about the confrontation between a zealous prophet of the Lord and a king devoted to the ordinary principles and practices of kingship in the Middle East who allows his pagan wife to influence his course of action in contradiction with biblical morality. Yet, read closely, the story has far more texture.

To give but two examples, in the course of the biblical presentation there is a scene in which Elijah and Ahab encounter each other on the road. Despite their hostility, each recognizes and pays due deference to the other - the prophet to the legitimacy of the kingship in Israel, and the king to the standing of the prophet, in a scene at once dramatic, poignant, and educative, teaching that the biblical division of authority into different domains not only is legitimate but has its source in the Almighty Himself (I K 18:1-19).[5] The other is that at the conclusion of the story Elijah is gently removed from the scene (II K 2:1-11). His zealousness has led to the triumph of biblical religion and God's will, but it is a zealousness that is too great for the people to bear. Hence, with his victory he is replaced by Elisha his pupil who is presented as a prophet more understanding of human foibles. Later *midrash* ties Elijah's return to the coming of the messianic age, i.e. when such zealousness will be to trouble for humans.

One can cite many more such stories. For example, there is the story of Jacob to teach us the difference between covenant and contract. The young Jacob is presented as clever but less than straightforward, a shrewd bargainer who is out for himself. When he flees from his father Isaac after deceiving him in the matter of the father's blessing and stops at Bet El where he has the famous dream of the ladder to heaven, God appears with the intention, according to the story, of covenanting with Jacob, but Jacob insists on interpreting God's offer as no more than a contract which Jacob will accept only if he senses the material advantage to himself. In disgust, God leaves it at that, but in the continuation of the story Jacob is put through a series of trials affecting him personally, in his pursuit of Rachel rather than Leah for his wife, in his service to his father-in-law Laban, and in his encounter with Esau after twenty years and his fear of Esau's revenge. Only after Jacob passes through that series of trials and is ready to understand the difference between a covenant and a contract does God reappear to make the offer again and Jacob, after wrestling with God and getting the name Israel which means "wrestling with God," is ready to enter that covenant and to harness his impulses in a covenantal manner.[6]

Studying stories in a context through the prismatic method is midrash, the classic device for penetration of and elucidation of the biblical text. The midrashic method involves not only classical midrash whose forms and seeming exaggerations were appropriate to its time, but also the application of the midrashic methods in our time, adding the knowledge that we have gained in various spheres.[7]

The Importance of Language

In utilizing the midrashic method we must pay particular attention to the importance of language, not only in the proper understanding of the words but in understanding the nuances of usage and connection. The Bible itself says as much in Genesis 2:20. There the first great power given to Adam as God's steward on earth is the power to name all living creatures. The power to name is an awesome power because it is the power to control either immediately or potentially, according to the biblical view of things.

In another demonstration of the importance of the biblical use of language in the first chapter of Genesis, we also have the first usage of the standard biblical terms for rule. In describing the role of the sun and the moon in the universe, the sun is described as having dominion (obviously, under God) over the day and the moon dominion over the night. The word used is *mamlechet*, a construct of *mamlacha* from the root *maloch*. From the context we can see that the term refers to rule of equals over equals, and indeed *maloch* throughout the Bible is used to describe the legitimate rule of equals over equals. At the end of the chapter Adam is given rule over all other living creatures, but the term used there is *rado*, a term describing the absolute rule of superiors over inferiors, a term used elsewhere in the Bible in that context. For example, the first imperialist described in the Bible, who establishes his empire by conquest, is *Nimrod*. The modern Hebrew term for dictator, *rodan*, comes from the same root.[8]

If the point were not sufficiently made, in Genesis 11:1-9, the Bible describes how God stops the human challenge to his authority at Babel by confounding (*tevaleh*) their speech. Humans are presented as having mounted the challenge because they all had one language and God ends it by giving them many different languages so that they could no longer communicate with one another and thus could not mobilize to assault heaven and "make a name" for themselves.

Subtleties in the use of language are particularly to be noted. Take, for example, the description of the sacrifices to be brought by Israelites of different kinds or performing different roles described in the early chapters of Leviticus, material often read over hurriedly today, if at all, because it is seen as boring. Look, however, at Leviticus 4:22. Up to that point, in describing each routine of sacrifice, the biblical passages begin with *im yishgu*, that is to say, if the subject errs. In verse 22, dealing with the magistrates (*nesiim*) of the assembly, the language used is *asher nasi yechta*, when a magistrate shall sin, suggesting that a political leader inevitably will sin in doing his job because of the exigencies of political leadership, a profound thought expressed in a single word change that a quick reading is likely to miss.

In connection with considerations of *brit* and *hesed*, we must pay particular attention to the meaning of the biblical word *shamoa* as in *shma yisrael* and other similar usages. *Shma* is usually translated into English as "hear." The King James version, which, whatever its deficiencies in technical knowledge which have been subsequently remedied by modern research, is still the most accurate English Bible translation when it comes to biblical thought and ideas, translates *shamoa* as hearken, a word that has become obsolete in conventional usage. The difference between "hearing" and "hearkening" is that to hear is essentially a passive act of absorption, whereas to hearken involves hearing, deciding, and responding according to what has been heard, which is what the Hebrew *shamoa* is designed to convey.

In other words, *shamoa* involves two dimensions. One, it requires both listening and acting, not simply hearing, and two, it requires reflection and choice on the part of the listener who must choose to act. The Bible has no term for obey, which implies a hierarchical relationship or situation in which commands are issued by God to humans in military-like fashion. The biblical system, being covenantal, involves choice and consent. Hence when God issues commands He does so by *shma yisrael*, in which the recipients of the command are told what is expected of them, but they must hearken, that is, choose and act on the command of their own volition.

Hierarchical, Organic, and Covenantal Models

In the last analysis, all political scientific or political philosophic theories of the origins of the polity and polity-building can be categorized as suggesting that polities are either founded by force and organized as hierarchies, developed as centers with peripheries, or constructed as noncentralized matrices. True, each model is a classic expression of an ideal type. In real polities, the three may be somewhat mixed but, in fact, every polity is constituted on the basis of one or another, which remains dominant in its form of government if and until a fundamental reconstitution takes place.[9]

The pyramid is the classic expression of the hierarchical model, with organizational authority and power distributed among levels of government linked through a chain of command. Having its origin in some form of conquest, the use of force, a possibility in all polities, is strongly implied in its constitution. Thus it is the military model par excellence. It goes without saying that, in the hierarchical model, the top level must be the most important and the place where decisions are made as to which level does what.

The center-periphery model is one in which authority is concentrated in a single center which is more or less influenced by its periphery, depending upon the situation in which it finds itself. Such polities or organizations tend to develop organically, either around a center or by generating one over time in accordance with "the iron law of oligarchy."[10] Quite naturally, they tend to be oligarchic in character, with power in the hands of those who constitute the center. Power is either concentrated or dispersed according to decisions taken in the center which may or may nor include significant representation from the peripheries.

The federal, or matrix, model reflects a polity compounded of arenas within arenas held together by common framing institutions and a shared communications network. Its origins are to be found in the deliberate coming together of equals to establish a mutually useful governmental framework within which all can function on an equal basis, usually defined by a pact. Consequently, it reflects the fundamental distribution of powers among multiple centers across the matrix, not the devolution of powers from a single center or down a pyramid. Each cell in the matrix represents both an independent political actor and an arena for political action. Some cells are larger and some smaller and the powers assigned to each may reflect that difference, but none is "higher" or "lower" in importance than any other, unlike in an organizational pyramid where levels are distinguished as higher or lower as a matter of constitutional design.

In the origins of Western civilization, one can see hierarchical models deeply rooted in ancient Egypt since the beginning of recorded time. The study of Egyptian political history will reveal how hierarchy has maintained itself with hardly any interruptions until today. Moreover, those interruptions were invariably the result of outside conquests, whether the conquest of Egypt by the Hyksos nearly 4,000 years ago or by the Hellenists at the time of Alexander 2,300 years ago, and lasted only as long as the foreign conquerors continued to rule.

Similarly, the organic model is clearly reflected in Mesopotamian history and myth. If the pharaoh was a god-king in Egypt sitting on top of a pyramid (an Egyptian specialty if not invention), Mesopotamian mythology portrays a roughly equal community of gods serving as the world's elite who are served by the humans worshipping them collectively and individually, who form their periphery. The human institution imitative of this arrangement is the assembly of notables. This model was carried over into Greece and Rome and the polities of all civilizations that followed the same center-periphery, oligarchic pattern in one form or another.

We also know that in various communities, urban and rural, in the Eastern Mediterranean region, tribes and cities emerged on a more egalitarian basis using the covenantal model for self-organization. This model is found in ancient Israel and to some extent in ancient Greece. (Greek historians discuss the origins of Greek cities in that manner although the Greek philosophers later rejected it for the other models.) The Bible chronicles how Israel emerged out of Mesopotamian civilization. When Israel started experimenting with monotheism, it was patriarchal, only to discover that the idea of one God, sovereign and supreme, went best with the covenantal system through which His human subjects were linked to Him and to one another by pact which, in the latter case at least, presumed a fundamental equality among partners.[11] Experiencing both Mesopotamia in its origins and Egypt in its historical development, Israel opted for neither model, but instead developed (according to the Bible) the third model. Thus, each model developed along its own logic, but partly through encounters with the other models. In fact, of course, there are no pure models, but the tendencies in each polity toward one or another normally are clear enough.

The Bible is the master text and handbook for the covenantal model. As such, it begins by considering the other two models and rejects them as deficient, while at the same time it elaborates on the covenantal model in such a way as to make it workable in various situations and contexts. We can fairly say that the goal of the Bible is to promote a world of *tzedakah* and *mishpat*, that is to say, just and law-directed. The vehicles for doing so are *brit* and *hesed*. The Bible is a discussion of how *habrit v'hahesed* can bring humans closer to a world of *tzedakah u'mishpat* under different conditions of reality.

Brit and *Hesed*

The core of the biblical teaching about the relationship between God and humans and among humans rests on *brit*, the covenantal foundation, and *hesed*, the dynamics that make covenants work. The idea of covenant is perhaps the most daring in the Bible and one of the most daring in all of human history. The idea of covenant is that God, the omnipotent and omniscient, enters into a partnership with humans for the conduct of affairs on earth in this world. A covenant requires that the partners to it be roughly equal or at least equal with regard to the task at hand for which the covenant is made. Thus God not only makes space for humans to exist, but gives them a certain equality in matters of this world in a situation where otherwise equality is unthinkable.[12]

The kabbalists understood God's making of space for humanity as *tsimtsum* (contraction), God's withdrawal from a part of the world to allow a material creation. After withdrawing to make that space, God then made an effort to fill that space with emanations of His energy, but those emanations were too strong for the material vessels of this world that were to contain them and the vessels were shattered in the process of receiving the emanations. This phenomenon is known in kabbalah as *shevirat hakelim* (the breaking of the vessels), and is the source of trouble and evil in the world. Thus, a major task of humanity, working in partnership with God, is *tikkun olam* (the repair of the world), or more explicitly, repairing the vessels to make them whole again, at which point, according to the kabbalists, the messianic age will be achieved.[13]

The idea of *tsimtsum* reached its apogee in the sixteenth century in the kabbalah of the Ari (Rabbi Isaac Luria) of Safed. That was the same century that Reformed Protestantism in Western Europe and most particularly the Puritans in England developed their federal or covenantal theology which understood the daring character of the covenant idea. Thus in a religion that comes down to us simplistically as based on the dark belief of predestination, there is also the idea of human empowerment through covenant that undoubtedly helps explain why those societies founded in Puritanism have been so progressive and so active in striving for self-improvement based on a strong moral sense, even long after they have left their explicit Puritanism.

The ties of covenant are moral, either between God and humans or between humans under God, that is to say, a moral promise witnessed and guaranteed by a transcendent power. The ultimate and proximate grounding of covenant in moral commitment is a major part of its essence.

In his classic, *Leviathan,* the seventeenth century political philosopher who founded modern political philosophy, Thomas Hobbes, uses the term "covenant" to describe the foundations of human order and civil society that makes life other than "nasty, brutish...and short." Students of Hobbes normally have assumed that he used the term "covenant" simply because it was conventional in seventeenth century English discourse and they have often referred to him as a "compact" or "contract" philosopher. A closer reading of Hobbes, I would suggest, reveals that Hobbes used covenant very deliberately because ultimately the fundamental covenants of mankind are for him moral commitments before anything else and that he was being very precise in his use of the term.

Covenants differ from compacts in the character of the moral commitment underlying them. The moral commitment supporting a covenant is undergirded by a transcendent power. Compacts are also based upon a certain moral commitment, but it is a commitment of the mutual promises of humans guaranteed by their mutuality. On the other hand, both covenants and compacts are public agreements that either establish or link publics, unlike contracts which are private agreements between private parties to further the respective interests of each. In a contract, each side pursues his own advantage and attempts to limit what he has to give the other party(s) to the contract to make it work. Moreover, when the advantage disappears, it is legitimate for the parties to the contract to dissolve it. That approach, which is legitimate in a contractual arrangement, would make public life impossible, if applied to compacts or most especially to covenants.

This element of consent has been institutionalized in Jewish worship. Take, for example, the priestly blessing in the synagogue as performed in Sephardic synagogues.

Prayer leader: *Cohanim* (priests)!
Priests: *B'reshut rabbotai* (the authority of the congregation)!
Congregation: *B'reshut Shamayim* (the authority of Heaven)!
Prayer leader: *Y'varechacha* (May you be blessed)...
Priests: *Y'varechacha*...

Every step involves the consent of the principals: the congregation, the priests and God.

To prevent *brit* from turning into contract, the Bible adds *hesed* as covenantal dynamics. There is no true English equivalent for the Hebrew word *hesed*. It involves interpretation of the covenant in such a way that it goes beyond narrow construction to a liberal construction of its provisions, going beyond the letter of the law. The talmudic aphorism is *lifnim meshurat hadin din hu* (going beyond the letter of the law is the law). That is acting *b'hassidut*, the proper way to implement the brit. It is not surprising that throughout Jewish history, at least from the days of the Second Commonwealth through hassidei Ashkenaz of the Middle Ages and on through the eighteenth century Hassidic movement which is still with us, those who have presented themselves or have been considered as being especially concerned with going beyond the letter of the law in their relationships with God have been given the title "hassidim."

In essence, *hesed* is the antidote to the narrow legalism that can be a problem for covenantal systems and would render them contractual rather than covenantal. Rambam (Maimonides) discusses *hesed* in that context in the *Moreh Nevukhim* (*Guide for the Perplexed*).[14]

Thus it has been summarized that hesed is applied to beneficence taken absolutely; *sedaqah*, to every good action performed by you because of a moral virtue with which you perfect your soul; and *mishpat* sometimes has as its consequence punishment and sometimes the conferring of a benefit. When refuting the doctrine of divine attributes, we have already explained that every attribute by which God is described in the books of the prophets is an attribute of action. Accordingly He is described as *hasid* [one possessing loving-kindness] because He has brought the all into being; as *saddiq* [righteous] because of His mercy toward the weak - I refer to the governance of the living being by means of its forces; and as *Judge* because of the occurrence in the world of relative good things and of relative great calamities, necessitated by judgment that is consequent upon wisdom.

Every covenantal system, to remain covenantal, must have an equivalent of *habrit v'hahesed*. Political, federal systems involved covenants or compacts between the people and their political entities. Not surprisingly, they also have the closest equivalents. Perhaps the closest parallel to *habrit v'hahesed* is the German *bundestreue*, that is to say, fidelity to the spirit of the covenant. In Australia, the term is mateship, that is to say, the proper behavior towards one's fellow Australians or mates. In the United States, the legal term is comity, that is to say, taking into consideration your opposite number's needs when you act. In political talk, the term used is partnership.

To make the point, *brit* and *hesed* are conjoined throughout the Bible. A few examples: in conjunction with Moses in Deuteronomy 7:9, 12; with Solomon in both I Kings 8:23 and II Chronicles 6:14; in Daniel 9:4; and Nehemiah 1:5 and 9:32.

The point receives further elaboration in the Talmud.[15]

"The covenant and the covenant love" (*habrit v'et hahesed*, Deuteronomy 7:12). Rabbi Shimon Ben Halafta said: The matter is like the king who married a lady who brought him two precious ornaments. And the king also added two ornaments, (to match them). But when his wife abandoned her two ornaments, the king abandoned his. After a time she arose and purified herself and brought back her two ornaments, and then the king brought back his two. The king said, the four together shall be made into a crown and shall be put upon the queen's head. So you may find that Abraham gave his descendants two precious ornaments, as it is said: "For I know him that he will command his children after him, and they keep the way of the Lord to do righteousness and justice" (Genesis 18:19). So when the Holy One Blessed be He set up two ornaments to match the other two, namely love and compassion as it is said, "He turned justice into gall and righteousness into hemlock" (Amos 6:12). So God also took his two, as it is said, "I have taken away my peace from this people, even love and compassion" (Jeremiah 16:5). Then Israel arose and purified herself and brought its two back, and God restored his two likewise...(Isaiah 1:27; 54:10). But when Israel brings its two, God gives his two and God says: The four together shall be made into a crown and shall be placed upon Israel's as it is said, "I will betroth you unto me in justice and righteousness and in love and in compassion" (Hosea 2:19).

Brit Without Hesed -- Hesed Without Brit

Brit was translated into Latin in the Vulgate translation of the Bible as *foedus*, which in turn was translated into the term "federal" in Latin based languages. Federal, then, means covenantal. John Winthrop, the seventeenth century Puritan governor of Massachusetts Bay Colony during its first generation, summed up the matter neatly in his discussion of federal versus natural liberty, which brings us to the problem when *brit* and *hesed* are separated and we have either *brit* without *hesed* or *hesed* without *brit*.[16]

There is a two-fold liberty, natural (I mean as our nature is now corrupt) and civil or federal. The first is common to man with beasts and other creatures. By this, man, as he stands in relation to man simply, hath liberty to do what he lists; it is a liberty to evil as well as to good. This liberty is incompatible and inconsistent with authority and cannot endure the least restraint of the most just authority. The exercise and maintaining of this liberty makes men grow more evil and in time to be worse than brute beasts: *omnes sumus licentia deteriores*. This is that great enemy of truth and peace, that wild beast, which all of the ordinances of God are bent against, to restrain and subdue it. The other kind of liberty I call civil or federal; it may also be termed moral, in reference to the covenant between God and man, in the moral law, and the politic covenants and constitutions between

men themselves. This liberty is the proper end and object of authority and cannot subsist without it; and it is a liberty to that only which is good, just and honest. This liberty you are to stand for, with the hazard (not only of your goods, but) of your lives if need be.

As suggested above, where there is *brit* without *hesed*, the tendency is to degenerate into a narrow legalism in which each party interprets the covenant for its own best interests without regard to the interests of the other partners, or it can happen in religious covenants that the interpreters of the covenant interpret it rigidly in what they see as God's demands of them without considering changing times and contexts or the weaknesses of humanity. For example, in Genesis 9, when Noah's son Ham "sees his father's nakedness," he is punished drastically, implicitly for having violated covenantal respect.

However, we need to consider here the possibility that the text was designed to show the origins of the curse upon Canaan, Ham's son, according to the biblical account, which led to the Canaanites to lose the land to the Israelites.[17] To give a different example, Shylock in the Merchant of Venice, smarting at the wrongs done him, demands his pound of flesh as per his contract with the prince, regardless of its consequences.[18] In more recent times, one of the best known literary products of the late nineteenth century Eastern European *haskalah* was the story "Kotzo shel Yod" by Yehuda Leib Gordon, which describes how rabbinical harshness in interpreting the law prevented the delivery of a bill of divorcement to a woman because there was a slight imperfection in its writing, leaving her an agunah, anchored to her husband dead and gone, for her remaining years.[19]

On the other hand, we have examples of *hesed* without *brit*, as in Genesis 18-19 when Abraham attempts to intercede for Sodom, seeking God's mercy for a city that had no commitment to God's justice. While Abraham is praised for the attempt, the attempt fails because it violates the principles of federal liberty. In the contemporary United States we also have the strong attempt to extend *hesed* to those who do not accept the *brit*. For us, too, the biblical teaching should be clear. To be eligible to benefit from *hesed*, one has to be a partner to the *brit*. Those who repudiate that partnership in essence become outlaws and need to be treated as such for the good of society. In a very prosaic example, terrorists reject the covenants of humanity and need to be treated without being bound by the limits of those covenants.

To take another example, the hedonistic individualism that reflects neopaganism in much of the contemporary world celebrates natural liberty and rejects federal liberty. The question arises: should it not then be able to claim the protections of federal liberty except insofar as those who accept federal liberty feel it necessary or desirable to extend those protections beyond the parties to the federal covenant?

The human task is to balance *brit* and *hesed*. Here we may turn to the story of Jacob and Esau. Jacob is portrayed as very intelligent, able to control and direct his passions, but out for the main chance. Esau is portrayed as warmhearted, capable of great affection, but impulsive and unable to control his passions. The Bible presents the two as natural rivals and then has God choose Jacob to be the patriarch Isaac's successor as the least problematic of two deficient people and the one best able to be taught to be more human and covenantal.

God then puts Jacob through a series of learning experiences until he becomes sufficiently covenantal in his understanding to see his relationship with God as covenantal rather than contractual. Esau, on the other hand, is given the consolation prize in the assumption that it will allow the better angels of his nature to cool his passion towards Jacob, which is indeed what happens, but Esau's line does not continue as part of God's chosen people in the biblical account. (Significantly, Esau is the ancestor of the Edomites, according to the Bible. The Edomites are enemies of Israel. During the period of the Second Commonwealth they become known as the Idumeans and were conquered and forcibly converted to Judaism by the Hasmonean rulers of the independent Israelite state, thereby introducing Idumeans into the Hasmonean inner circles, which led to the further corruption of the Hasmoneans and ultimately to Herod, of Idumean descent, ascending the throne of Israel through his Roman protectors' favor, with very unpleasant and unJewish consequences.)

Summary and Conclusions

The Torah and the Bible as a whole are grounded in the covenant idea through specific covenants. It is a matter of some dispute among theologians and scholars as to whether there is an implied covenant between God and Adam in the Torah, but there is no question about the covenant between God and Noah, the first to be called explicitly by that name. In the case of Noah, God bestows the covenant upon him (Genesis 9), but that bestowal comes after Noah shows his willingness to enter into the partnership by responding to God's request of him that he build an ark for his family and collect specimens of all the creatures of the earth to preserve them from the flood (Genesis 6).

God's relationship with Adam is essentially patriarchal. That "soft" hierarchical relationship was modified through the covenant with Noah in which God makes concessions to human appetites, for example, allowing humans to eat meat under regulated circumstances (that is, when not torn from a living animal). The Bible implies that God has learned from experience that if He is to have humans as partners, He must accommodate them at least minimally.

God's next covenant is with Abraham. It is also bestowed by God but with a partner who is not only chosen but winnowed out of a larger family and community of Mesopotamian cultural background. These first covenants combine the hierarchical and the organic, i.e., not only individuals are designated but their families as well, the humans simply consenting to God's initiatives.

God's covenant with Abraham establishes Abraham as a patriarch who governs his family by combining the organic and the hierarchical as he is governed in that way by God. That is the system maintained, according to the Bible, for Abraham's son Isaac and grandson Jacob. Jacob, however, is presented in the Bible as one who has to learn the difference between contract and covenant and, while he does so, at least sufficiently to satisfy God's requirement, there are serious unresolved problems, especially with Joseph who is portrayed as the natural successor to Jacob among his twelve sons. Joseph is a person who thinks only in hierarchical terms, first in relationship to his family as illustrated by his dreams and then in his success in the larger world which is based upon his capacity to function masterfully in Egypt, the most hierarchical of systems, as pharaoh's right hand man. What Joseph does in that capacity is to help pharaoh enslave the Egyptian people. While this saves his brethren from famine-ravaged Canaan, it also leads God to reject hierarchy for His people. Indeed, while most of the *midrashim* about Joseph cited today attempt to clean up Joseph's act. In fact, the rabbinic sages were quite bothered by his behavior as *midrashim* that are less attended to will attest.

After Joseph (as a result of his actions?), the Israelites are enslaved. When God sends them Moses as the leader in their redemption, He abandons the patriarchal system of governance for Israel and its hierarchical structure and introduces the covenantal system in its place. (Throughout all of this, the familial or organic dimension continued to underlie the political arrangements, making the Israel that emerges after the Exodus a family of tribes united by their covenant with God, a blend of kinship and consent.)

To sum up, humanity, according to the biblical understanding of the world, lives because of the human covenants with God. Those covenants push humans in the direction of *tzedakah* and *mishpat* and work to the extent that they combine *brit* and *hesed*. That combination is not only necessary to make *brit* properly effective, but to prevent humans from confusing natural and federal liberty by applying *brit* without *hesed* or *hesed* without *brit.*

Notes

1. Moshe Weinfeld, *Social Justice in Ancient Israel and in the Ancient Near East* (Jerusalem: Magnes Press, 1995); Daniel J. Elazar, *Covenant and Polity in Biblical Israel: Biblical Foundations and Jewish Expressions* (New Brunswick, NJ: Transaction, 1995).

2. Nelson Glueck, *Hesed in the Bible* (Cincinnati: Hebrew Union College Press, 1967); George Mendenhall, *Origins of the Biblical Tradition* (Baltimore: Johns Hopkins University Press, 1973).

3. Elazar, *Covenant and Polity,* p. 281.

4. Uriel Simon, *Reading Prophetic Narratives* (Ramat Gan: Bar-Ilan University Press, 1997).

5. Stuart A. Cohen, "*Keter* as a Jewish Political Symbol: Origins and Implications," *Jewish Political Studies Review,* vol. 1, nos. 1-2 (Spring 5749/1989); Stuart A. Cohen, *The Three Crowns: Structures of Communal Discourse in Early Rabbinic Society* (Cambridge: Cambridge University Press, 1990).

6. Daniel J. Elazar, "Jacob and Esau and the Emergence of the Jewish People," *Judaism*, vol. 43, no. 3, (Summer 1994).

7. Max Kadushin, *Organic Thinking* (New York: Jewish Theological Seminary of America, 1938); *The Rabbinic Mind* (New York: Bloch, 1972).

8. "Nimrod," *Encyclopedia Judaica* (Jerusalem: Keter, 1972), vol. 12, p. 1166.

9. Daniel J. Elazar, "Federal Models of (Civil) Authority," *Journal of Church and State*, vol. 33, no. 2 (Spring 1991):231-254.

10. Robert Michel, *Political Parties: A Sociological Study of the Oligarchical Tendencies of a Modern Democracy* (New York: Free Press, 1966).

11. Daniel J. Elazar, *Covenant & Polity in Biblical Israel: Biblical Foundations & Jewish Expressions,* Volume 1 of the Covenant Tradition in Politics (New Brunswick, NJ: Transaction Publishers, 1995).

12. Perry Miller, *The New England Mind: The Seventeenth Century* (Boston: Beacon Press, 1939); *The New England Mind: From Colony to Province* (Boston: Beacon Press, 1953); *Errand into the Wilderness* (Cambridge: Harvard University Press, 1956).

13. Gershom Scholem, *Major Trends in Jewish Mysticism* (New York: Schocken Books, 1961).

14. Maimonides, *Guide of the Perplexed.*

15. Cited in Gordon M. Freeman, *The Rabbinic Understanding of Covenant as a Political Idea* (Ramat Gan: Bar-Ilan University Press, 1977).

16. John Winthrop, *History of New England, 1630-1649,* ed. Sam Savage (Boston, 1853), vol. 2, pp. 279-282.

17. "Ham, *Encyclopedia Judaica* (Jerusalem: Keter, 1972), vol. 7, p. 1216; "Canaan," *Encyclopedia Judaica*, vol. 5. p. 97.

18. William Shakespeare, "Merchant of Venice."

19. Yehuda Leib Gordon, "Kotzo shel Yod," *Writings of Y.L. Gordon* (Tel Aviv: Dvir, 1928) (Hebrew).