

Abstract

This thesis asks the following question: in contemporary Reform Judaism, how do we transmit and instill obligation, both as a value to uphold and as a force that impels us to perform concrete enactments? This thesis argues that narrative creates a theoretical foundation and a practical methodology to do so. We transmit obligation not through teaching the concept abstractly but by living out narratives which embrace obligation as an ethic and an action.

Over the course of five chapters, I will demonstrate how narrative is vital to the enactment of obligation in several ways. First, drawing on legal theory and philosophy, narrative defines obligation as a morally validated expectation of action. Then, using the cultural narratives of historical Judaism and the United States of America, I illustrate the link between obligation and the values of freedom and autonomy. Next, I evaluate a series of traditionally Jewish motivations or incentives, narratives in their own right, to validate and perform a specific set of expectations called *mitzvot*. Following that, I explore how the American Reform Jewish culture has interacted with the values of obligation and autonomy by analyzing a series of platforms published by the Central Conference of American Rabbis. In the final chapter, I offer a series of recommendations for successfully transmitting obligation – education, surrender, and relationship, qualities necessary for creating a culture that embraces Jewish obligation through narrative.

TRANSMITTING A JEWISH ETHIC OF OBLIGATION

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Prolegomenon

An excerpt from BT Berakhot 27b:

“The evening prayer has no fixed time.” What is the meaning of “has no fixed time”?

If we say it means that one can offer the prayer any time during the night, then let the Mishnah state, “The evening prayer may be said at any time during the night”!

What, then, is the meaning of “has no fixed time”? It is like the one who says that the evening prayer is optional, for R. Yehuda said in the name of Shmu'el: “With regard to the evening Tefillah, Rabban Gamaliel says it is compulsory, whereas R. Yehoshua says it is optional.” Abaye says the *halakhah* follows the one who says it is compulsory; but Raba says the *halakhah* follows the one who says it is optional.

Though not the first, and certainly not the last, this discussion from Talmud addresses the relationship between obligation and Jewish practice. While this specific discussion focuses on a particular piece of Jewish practice, this thesis addresses a larger question: is Jewish practice obligatory, or is it voluntary? For most of Jewish history, few ever questioned the obligatory nature of much of Jewish belief and practice. With the advent of Enlightenment and Jewish Emancipation, questions like these came to the forefront. Philosopher Immanuel Kant added a new twist to this issue by asserting a morality based only in autonomy.¹ Today, in an American society so heavily steeped in the value of autonomy, instilling a sense of obligation of any sort has become a challenge, religious obligation all the more so. This thesis addresses that challenge, asking, and hopefully answering, how to transmit obligation in an autonomous environment.

¹ Robert Johnson, “Kant's Moral Philosophy,” Stanford Encyclopedia of Philosophy, February 23, 2004, accessed January 16, 2017, <https://plato.stanford.edu/entries/kant-moral/>.

The term “obligation” enters Jewish parlance with term **חייב**, which first appears in the texts of the Mishnah. Starting with the first mishnah of the first chapter of tractate *Berakhot*, the ancient rabbis utilized this concept again and again, nearly a thousand times in the Mishnah, three times that in the *Yerushalmi*, and over 4,500 times in the *Bavli*.

In his ubiquitous *Dictionary of the Talmud*, Dr. Marcus Jastrow defines **חייב** as: “(he is) [*sic*] bound”. Other translations often render it as “is/are obligated.” In counterpoint, the Torah speaks not in terms of obligation but in commandment. This speaks to an interesting tension in authority. The Torah speaks in active voice: “And you shall teach them diligently to your children and speak of them when you sit in your house and when you walk on the way and when you lie down and when you rise up.”² In Hebrew, the Mishnah speaks in active voice too, but it translates as passive voice: “If dawn has not broken, you are obligated to recite [the Shema].”³ This distinction, between the original text and its translation, may influence how many liberal, non-Hebrew speaking Jews relate to the concept of Jewish obligation. Ask any English teacher or speech writer. Active voice engages us, inspires us, connects us with the action taking place. Passive voice, on the other hand, is stale. Rather than making us part of the action, the passive voice of the Mishnah translation makes us feel acted upon. It denies our participation and engenders a negative response.

Furthermore, the rabbis of the Mishnah and Talmud utilize obligation in a fundamentally different way than the Torah uses commandments. The short narrative in m.Berakhot 1:1 demonstrates this: “It once happened that his [Rabban Gamliel’s] sons came

² Deuteronomy 6:4, combined translation by author

³ m. Berakhot 1:1

from a house of feasting. They said to him: We have not recited *Shema*. He said to them: If dawn has not broken, you are obligated to recite it.”

Rabban Gamliel is not placing a new, previously unknown obligation on his sons to recite the Shema in this story. Clearly, the sons of Rabban Gamliel already know of their obligation to recite Shema. Instead, by providing a specific time frame for the recitation of Shema, he clarifies the nature of the obligation, the context in which it can and should be fulfilled.

Other instances come closer to the tone of commandment, yet the wording and the subsequent discussions demonstrate a significant difference. For example, in BT Kiddushin 29a, the text reads:

האב חייב בבנו למולו ולפדותו וללמדו תורה ולהשיאו אשה וללמדו אומנות

“The father is obligated with regard to his son to circumcise him, and to redeem him, and to teach him Torah, and to marry him to a woman, and to teach him a trade.”

Unlike the Rabban Gamliel story above, here the text does introduce these parental obligations. However, the text differs from the commandment language of the Torah. In addition to the active/passive voice issue noted earlier – note the text does not read “With regard to his son, a father shall circumcise him, redeem him, teach him Torah...” – the Talmudic discussions that follow are unlike anything found in Torah. Regarding each of these obligations, the rabbis ask “From where do we derive this?” And for each obligation, the text provides an authoritative source, usually a Torah verse. In this instance, the rabbis derive the father's obligation to circumcise from Genesis 21:4, “And Abraham circumcised his son Isaac.”

Interestingly, the text does not cite Genesis 17:9-14, in which God commands “every male among you” must be circumcised as a sign of the covenant between God and Abraham. At first glance, this would appear to be the more logical proof text for circumcision. And it is. However, the rabbis of the Talmud did not ask for the source of circumcision. The rabbis want to flesh out the details, the who, what, where, when, and how the obligations described in narratives must be enacted. Here, they address the question of who performs this circumcision. They answer with a source that placed the obligation to circumcise a child on the father of that child. Here again we see a key difference between commandment language and obligation language. The innovation in this Talmud citation is not the act of circumcision itself but instead on whom the rabbis place the obligation to do so: not on the rabbis themselves, not on an appointed individual in the community, but the father of the child. To support this decision, the rabbis therefore cite Genesis 21:4.

Any larger discussion of obligation inevitably runs into the words “ethics” or “morality.” Common vernacular often uses them interchangeably, and many dictionaries use one to define the other, creating an endless loop of vague meaning. However, the two are not synonymous. Though intimately related, each possesses its own nuances and, for the sake of further discussion, need to be distinguished. Therefore, we will use the following definitions.

“Moral” or “morality” deals with issues of good and bad, right and wrong. It should be noted that “good” does not always or necessarily equate to “right,” and the same goes for “bad” and “wrong.” “Ethics” refers to a system of moral principles,⁴ theories underlying

⁴ “Ethics,” www.dictionary.com

moral norms and ideals.⁵ Though accurate, these definitions fail to provide the full scope of these terms. Both rely upon another factor, narrative.

Without getting into the debate between relativism and absolutism, any survey of human culture demonstrates a variety of internally accepted behaviors. These behaviors, deemed moral by the communities that practice them, find legitimacy in the narratives and mythologies that ground these communities in history.⁶ Due to the particularistic nature of cultural mythology and narrative, one culture's morals often come into conflict with those of another culture. However, scholars have found one idea present among a great many cultures. The closest thing to a moral constant identified so far is the “reciprocity rule,” otherwise known as the “golden rule.”⁷ The articulation of this idea varies, but the core concept remains the same. Most people recognize the positive formation: do unto others as you would have them do unto you.⁸ The Jewish articulation, attributed to Rabbi Hillel the Elder in BT Shabbat 31a, uses a negative formation: “What is hateful to you, do not do to your fellow.” However we express it, the reciprocity rule recognizes the inherent relational properties of ethics.

Taking it a step further, in an article exploring the nature of Jewish ethics, author Menachem Marc Kellner defines ethics as “the nature of moral obligation.”⁹ This line of thinking steps away from the purely philosophical exploration of the nature of ethics into a more prescriptive guide for life. Here we engage with the work of Emmanuel Levinas.

⁵ Elliot N. Dorff, Louis E. Newman, *Contemporary Jewish Ethics and Morality* [New York: Oxford University Press, 1995], 9.

⁶ Dave Robinson and Chris Garratt, *Introducing Ethics* [New York: Totem Books, 1997], 8.

⁷ Robinson, Garratt, *Introducing Ethics*, 9.

⁸ Bill Puka, “The Golden Rule,” Internet Encyclopedia of Philosophy, accessed January 16, 2017, <http://www.iep.utm.edu/goldrule/>.

⁹ Dorff, Newman, *Contemporary Jewish Ethics*, 12.

Levinas offers a window into the obligatory aspect of ethics. In his book *Reading Levinas/Reading Talmud*, author Ira Stone explains how Levinas manages to combine aspects of narrative, ethics, thought, obligation, and relationship into an optimistic philosophical worldview that exudes Jewish influence.

According to Levinas, experience precedes thought. This founding experience preceding all others is the experience of the other, that is, of other people outside ourselves. Our relationship to the other precedes thought, precedes our thought of ourselves, precedes our very idea of self...We come into being because of another who, unbidden and inscrutable, tends to us. We are fundamentally beholden to this other person...We are created by another's love and create ourselves by accepting the burden of this love and its obligations. In short, what philosophers call ethics (what should be) not only precedes ontology (what is) but makes it possible. Before philosophy, there is responsibility.¹⁰

Levinas uses the metaphor of the “face of the other.” This experience of seeing the face of the other combines aspects of Martin Buber's I-Thou and Carl Jung's collective unconscious, resulting in a sense of responsibility and obligation. Looking into the face of another allows us to break free of our “self-absorption.” This happens in two ways. First, this experience interrupts our constant focus on our own needs and enables us to see the other's needs. Second, we see in the other what Levinas calls the “trace,” a “memory of a past we cannot have experienced...of being-in-general, of the infinite.”¹¹

For Levinas, this fundamental experience of confronting the other necessarily leads to

¹⁰ Ira Stone, *Reading Levinas/Reading Talmud* [Philadelphia: The Jewish Publication Society, 1998], 8.

¹¹ Stone, *Reading Levinas*, 16.

a sense of obligation to the other. Levinas calls this “response of serving the needs of another” our “election.”¹² That term evokes a sense of biblical tradition and the larger “chosenness” idea in Judaism. Both of these ideas connect to another nexus point where ethics, obligation, narrative, and commandment come together: revelation.

The narratives we tell about revelation inform our relationship to both ethics and *halakhah*. Speaking in broad strokes, the Orthodox movement, for example, understands Torah, and the *mitzvot* contained within it, as the “direct, conclusive revelation of God's will.”¹³ *Halakhah* directly derives from Torah and is therefore the will of God also. As such, since *halakhah* comes from the highest authority possible, the *halakhah* on a subject dictates ethics.

In contrast, again in broad strokes, in the Reform Jewish narrative, ethics dictates practice and obligation. Reform Judaism rejects the divine aspect of *halakhah* and the closed understanding of revelation. Instead, Reform Judaism sees revelation as progressive and entirely focused on ethics. Rather than the rabbinic explication of commandments found in *halakhah*, Reform Judaism takes its ethical cues from the words of the prophets interpreted through a sense of “contemporary liberalism.”¹⁴

Jewish literature juxtaposes *halakhah* with *aggadah*. Ze'ev W. Falk defines the former as “rules that pertain to ritual and cultic as well as formal legal practices.”¹⁵ The latter he defines as “stories, homilies, and commentaries that were evoked to teach religious and

¹² Ibid, 15.

¹³ Kellner, *Structure of Jewish Ethics*, 17

¹⁴ Ibid, 18

¹⁵ Ze'ev W. Falk, “Jurisprudence,” *20th Century Jewish Religious Thought* [Philadelphia: The Jewish Publication Society, 2009], 509.

moral values.” This author challenges Falk's somewhat pejorative use of narrative as a teaching device for simpler people (Rachel Adler, personal communication, January 16, 2016). Instead, this thesis argues for the integral, foundational place of narrative. Morals, ethics, revelation, commandment, obligation, and law all hinge on our narratives, the stories we tell. They create our normative universe.

“Narratives are models through which we study and experience transformations that result when a given simplified state of affairs is made to pass through the force field of a similarly simplified set of norms.”¹⁶ In other words, narratives offer a life tools, coping mechanisms. Our narratives define us, influencing how we grapple with the world around us. An essential question of this thesis asks how we transmit a Jewish ethic of obligation. The answer is narrative.

In its simplest form, the thesis statement behind this entire project argues narrative, not norm. Put less succinctly, in order to instill obligation, we must establish a *nomos* in which obligation is understood as a norm. This parallels a teaching about the difference between the words “should” and “expect.” When someone tells us, “You should do x,” or “You should have done x,” we get defensive. “Should” implies guilt and shame. “Should” operates as a negative, external, social incentive. In contrast, “expect” offers a choice. “Expect” both allows for and invites conversation and personal investment. “Expect” operates as an positive, internal, social incentive. This distinction echoes the active/passive voice discussion earlier. Teaching a norm is an expression of “should.” Teaching a narrative is an expression of “expect.”

¹⁶ Robert Cover, “The Supreme Court, 1982 Term – Foreword: Nomos and Narrative” (1983). *Faculty Scholarship Series*. Paper 2705, 10. http://digitalcommons.law.yale.edu/fss_papers/2705

Chapter 1: What is Obligation?

The word “obligation” offers a wide range of understandings, denotations and connotations that depend upon the individual and the situation at hand. Obligation can equally refer to soldiers on the battlefield, politicians in a statehouse, or a teenager washing dishes or taking out the trash. Each example adds and subtracts nuances and stakes that can fundamentally affect the larger meaning of the term. All of them, though, possess a common theme or factor in their expression. When we speak of obligations, we speak of expectations. For the sake of clarity and further discussion, we will refer to this common aspect as “duty.” A duty is an action that one is expected to perform. For the purposes of this definition, it matters not who possesses this expectation. In the case of the soldier, it could be the soldier's commanding officer, the soldier's comrade in arms, a citizen of the country for whom the soldier fights, or even the soldier him or herself. Recognizing a duty requires only that we recognize that an expectation exists.

Though we often use them interchangeably as perfect or near synonyms, the words “obligation” and “duty” possess distinct differences that will become important further into this discussion.¹ Therefore we offer the following definition: obligation refers to a moral duty to obey. Like the perspective of expectation above, the object of “obey” is fluid and irrelevant to the definition, be it God, a parent, a president, or an alien overlord. This understanding of obligation applies our concept of duty in two ways. It defines the expected action one is to take, and it adds the standard of morality. Morality in this instance opens the door to the question of validity. In order to be a valid obligation by this definition, the

¹ Richard Dagger and David Lefkowitz, “Political Obligation”, *The Stanford Encyclopedia of Philosophy* (Fall 2014 Edition), Edward N. Zalta (ed.), <https://plato.stanford.edu/archives/fall2014/entries/political-obligation/>.

expectation to obey must satisfy a moral criteria. Put another way, a duty to obey becomes an obligation only if there exist sound moral reasons to comply with it.² When we apply these concepts of obligation and duty to law or legal precept, we find understandings of morality criteria in the philosophical distinction between political obligation and legal obligation.

Political obligation, generally speaking, refers to a moral duty to obey the laws of one's country or state. Many pages can be, and have been, written about the history, development, nuance, and application of this idea. For our purposes, the important question becomes one of qualifying the moral criteria. How we evaluate the validity of obligation, the processes and criteria we consider, matters a great deal. Therefore, we shall examine a number of theories that speak to the definition, quality, and need for morality in this concept. These theories include: consent theory, gratitude theory, membership theory, fairness or fair play theory, and natural duty.

Consent theory argues, in essence, that the moral quality present in the definition of obligation refers to and requires a form of consent from those to whom the obligation applies. However, the two main branches of this theory disagree on what exactly constitutes consent. One branch, expressed by Australian philosophy professor Harry Beran, believes that only clear, express consent can satisfy the moral requirement to generate a true political obligation.³ As such, Beran advocates for political societies to establish formal procedures for evoking this necessary consent.

² Leslie Green, "Legal Obligation and Authority", *The Stanford Encyclopedia of Philosophy* (Winter 2012 Edition), Edward N. Zalta (ed.), <https://plato.stanford.edu/archives/win2012/entries/legal-obligation/>.

³ Daggar and Lefkowitz, "Political Obligation," 11.

The other branch of consent theory argues for a broader conception of consent and its articulation. They propose that “active participation in the institutions of the state,” daily activities such as riding public transit, going to a library, or enrolling in a public school system, all qualify as a form of consent necessary for political obligations.⁴ Presently, consent theory has come under a great deal of criticism and has thus fallen out of fashion.

Other proponents of political obligation offer gratitude as a way to satisfy the moral criterion of political obligation. Contemporary gratitude theory follows a format proposed by A. D. M. Walker.⁵ Walker put forth the following proof:

A beneficiary has an obligation of gratitude not to act contrary to their benefactor's interests. Every citizen is a beneficiary of the state. Therefore, every citizen has an obligation of gratitude not to act against the state's interests. Noncompliance with the state's laws is contrary to the state's interests. Therefore, every citizen has an obligation of gratitude to comply with the law of the state.

Walker's theory has also come under criticism. Critics question the pertinence of the gratitude and the strength of such obligations. They argue that we owe gratitude “only to those who intentionally and at significant cost to themselves provide us with benefits” and that such obligations would regularly be overridden by other, stronger competing obligations.⁶

A third theory, called membership or association theory, claims that in recognizing or acknowledging one's membership in a group, one must also recognize the obligation to obey the laws of said group. Proponents of this theory draw analogies between politics and

⁴ Ibid.

⁵ Ibid, 12.

⁶ Ibid, 12-13.

families. To quote prominent political theorist Ronald Dworkin, “Political association, like family and friendship and other forms of association more local and intimate, is in itself pregnant with obligation.”⁷ Effectively, membership theorists challenge the need for moral justification for such obligations. The nature of relationships, be they familiar or political, naturally entails obligation, they argue. Most individuals voluntarily choose neither their family nor their citizenship, but that lack of voluntary choice in itself does not equate to having membership forced or imposed upon them. In the same way, membership in both families and polities entails obligations “neither chosen...nor incurred against our will.”⁸ Our mere membership subjects us to, in the words of Michael Hardimon, “noncontractual role obligations...obligations that simply flow from the 'roles into which we are born.'”⁹

A fourth theory of political obligation echoes or parallels aspects of both consent and membership theory. This theory bases itself on a principle of fairness. It argues that one incurs an obligation to an institution provided the following two conditions are met. First, the institution must be just or fair.¹⁰ According to John Rawls, two statements define this principle of fairness by which institutions are judged:

First: each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others. Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all.¹¹

If an institution satisfies these two criteria, it meets the first condition of obligation. The

⁷ Ibid, 15.

⁸ Ibid, 16.

⁹ Ibid, 15

¹⁰ John Rawls, *The Theory of Justice* [Cambridge: Belknap Press, 1971], 111.

¹¹ Ibid, 60.

second condition states that the individual in question “has voluntarily accepted the benefits of the institution or has taken advantage of the opportunities therein to further his or her interests.”¹² In his explication of this theory, Rawls emphasizes the importance of the voluntary nature of obligations.

A fifth approach to political obligation, one corollary to the previous theory of fairness, bases its claim in natural morality. These natural duties overlap with obligations as we have defined them but remain distinct at the same time. Effectively, natural duties are moral duties with open ended expectations of moral decency. They do not require consent or any other voluntary act to apply. They exist irrespective to any specific individual or institution; instead we possess this obligation to humanity at large. Lastly, the theory of natural duty “requires us to support and to comply with the just institutions that exist and apply to us.”¹³ As moral agents, we recognize these duties to one another.

Each of these presented theories offers both strengths and weaknesses. Each represents and upholds different values, different perspectives on how the world does and/or should work. With that in mind, each of us may align or resonate with different theories, and validly so. The important matter is not which theory is correct but how each theory plays out and affects our greater understanding of obligations in Judaism.

By our definitions above, what we term “legal obligation” may not qualify as an obligation at all. Legal obligation refers to a duty to obey the law. Morality plays no part in it, unless one recognizes a moral duty to obey the law, at which point it becomes a political

¹² Ibid, 112.

¹³ Ibid, 115.

obligation. This distinction allows scholars to discuss and juxtapose legal validity and moral validity. H.L.A. Hart explains the difference in the following way. “He holds that a duty is legally valid if it is part of the legal system (i.e., if it is certified as such by the tests for the law in that system), and a legal duty is morally valid only if there are sound moral reasons to comply with it.”¹⁴

Scholars of legal obligation once offered a contrasting definition of obligation. Scholars such as Thomas Hobbes, Jeremy Bentham, and John Austin, all legal positivists, explain obligation in terms of penalty. One has an obligation, according to this theory, if a law includes “an attached risk, however small, of suffering an evil for non-compliance.”¹⁵ Though largely defunct in contemporary scholarship, this theory speaks to an understanding of obligation devoid of morality and, in doing so, reveals the importance of morality in this discussion.

This may be best expressed by looking at obligation from another lens. In contemporary culture, we see “obligation,” “duty,” and other similar terms used to describe two categories of expectation. The first category stems from the internal, often associated with emotive terms such as “I feel obligated to...” The second category is imposed upon us from an external source and is often described with terms such as “requirement.” However, these statements fail to describe the importance differences between the two. Namely, internal obligations are irrevocably intertwined with morality, leading to that emotional, interior motivation of “I feel.” External obligations, on the other hand, lack any sense of morality and speak only from a place of external reward and punishment. Without this

¹⁴ Green, “Legal Obligation,” 3.

¹⁵ Ibid, 2.

purely external impetus, one has little to no motivation to fulfill these external obligations.

We must recognize the subjective nature of internal and external motivations. One person's internal obligation may seem to another as external, depending on any number of factors, such as their understandings of morality or to which theory of obligation they align. It is also important to notice that external obligations offer only external rewards and punishments. Internal obligations may offer rewards but only those that emerge from within the individual. Personal satisfaction, then, may provide an incentive for completing an internal obligation without violating the definition. Here also we see the subjective nature of these terms.

Thus far, we have discussed obligation in terms of expectation and morality. To round out our understanding of this concept, we shall now add a third component, narrative. In the early 1980's, Yale law professor Dr. Robert Cover published a highly influential article entitled *Nomos and Narrative*.¹⁶ Within, Cover discusses the potent connection between, and the defining power of, narrative and *nomos*, which he defines as “a normative universe...a world of right and wrong, of lawful and unlawful, of valid and void.”¹⁷ For Cover, two pieces combine to create a *nomos*: precept and narrative. “No set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning,” he asserts.¹⁸ “Once understood in the context of the narratives that give it meaning, the law becomes not merely a system of rules to be observed, but a world in which we live.”¹⁹

¹⁶ Robert M. Cover, “The Supreme Court, 1982 Term – Foreword: Nomos and Narrative” (1983). *Faculty Scholarship Series*. Paper 2705. http://digitalcommons.law.yale.edu/fss_papers/2705

¹⁷ Ibid, 4.

¹⁸ Ibid.

¹⁹ Ibid., 4-5.

Cover identifies the transformative power of narratives. Narratives add richness to our *nomos*, a richness that “establish[es] paradigms for dedication, acquiescence, contradiction, and resistance.”²⁰ In this sense, narratives serve alongside morality to transform expectation to obligation and to evaluate the validity thereof. These narratives, “myths [that] establish the paradigms for behavior,” cultivate mere rules into a system of communication and a “resource in signification.”²¹

In the theories discussed previously, the law set the expectation unidirectionally; we saw no interplay between law and subject. Cover challenges this idea, holding that “the force of interpretive commitments” – what we might call obligation – can and do determine what laws mean, what expectations they set.²² “Creation of legal meaning entails...subjective commitment to an objectified understanding of a demand.”²³ In other words, for Cover there exists an interpretive element in determining what laws mean, what actions they expect, that involves both personal commitment – validating the obligation's moral criterion – and narrative. In this process, narrative serves to frame the validation process. This is what Cover meant when he said: “The narratives that any particular group associates with the law bespeak the range of the group's commitments.”²⁴ At the same time, Cover recognized that how a group interprets its narratives can change. When this occurs, the change in interpretation also changes the group's interpretive commitments and, thereby, its normative universe as well.

²⁰ Ibid, 6.

²¹ Ibid, 8-9.

²² Ibid, 7.

²³ Ibid, 45.

²⁴ Ibid, 46.

This connection between narrative and commitment, narrative and obligation, reveals a sense of relative morality in Cover's understanding of law. Different narratives lead to different understandings of and commitments to the law, even the “same” laws. In effect, they lead to different *nomoi*, different worlds. Each society, even each group within a given society, can therefore, validly, possess disparate and diverse approaches to duty and obligation. Therefore, to understand how obligation functions within a given *nomos*, we must discern which narratives give life to that *nomos*, which narratives inform its perception of law and define the scope of its commitments.

Chapter 2: How Different *Nomoi* Interpret Obligation

In order to transmit an ethic of obligation in an American Reform Jewish *nomos*, we must first explore how its component *nomoi* understand, interpret, and relate to the concept of obligation. This requires, in part, an appreciation of the narratives that shape those *nomoi*. Therefore this chapter will attempt to elucidate the narratives and interpretive commitments that inform the American *nomos* and the traditional Jewish *nomos* necessary to understand the American Jewish *nomos* and the challenges of obligation therein. We will examine each *nomos*' central focus, its understanding of freedom, and its source of obligation, through the lens of its narratives. With full recognition of the potential for gross oversimplification, this chapter will attempt to hone in on each *nomos*' core narratives.

The America we know today grew out of the Enlightenment and the revolutions that preceded that movement. The works of prominent thinkers such as Immanuel Kant, Thomas Hobbes, and John Locke provided the narrative foundation for what would become the United States of America. Kant's thoughts on morality and autonomy, Hobbes' social contract theory, and Lock's "consent of the governed" ideas all set the groundwork for the founders of this nation.

The previous chapter demonstrated the importance of morality in the discussion of obligation. It is therefore pertinent to discuss how Kant reshaped the nature of morality by connecting it with autonomy. Kant believed that only autonomous action qualified as moral action. To act autonomously means that one acts only according to one's own reasons and motives. He believed that if everyone reasoned correctly, they would all come to the same

conclusion that prescribed the same action for anyone in a given situation, a universal morality governed by perfect reason. To act according to external forces of any kind, forces inauthentic to the self, would be heteronomy and, hence, immoral in Kant's eyes.

Enlightenment culture embraced this link between morality and autonomy, and because American culture grew out of Enlightenment culture, this link continues to shape our world today. Only our express, willing consent, many argue, can transform duty into obligation. This connection, the origin of consent theory, holds high stature in the American *nomos*. Therefore, we need to understand its origins.

Prior to Kant came the writings of John Locke, a 17th century British philosopher and academic. Of his many works, his second book on the nature of government, titled *The Second Treatise of Government*, most heavily influenced America's founding fathers. Within, Locke argues that a governing body's authority comes from the consent of the governed.¹ Hence, any obligation set by a governing body would also require consent to establish validity. In doing so, Locke also argued for a system based on rights; as free and equal agents, all humans share natural rights such as the right to life, liberty, and property.

These two thinkers set the stage for the primary American narrative, the Declaration of Independence. We see echoes of Kant, Locke, and many other thinkers in the opening words of the Declaration's second paragraph, some of the most famous lines from the document:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life,

¹ Alex Tuckness, "Locke's Political Philosophy", *The Stanford Encyclopedia of Philosophy* (Spring 2016 Edition), Edward N. Zalta (ed.), <https://plato.stanford.edu/archives/spr2016/entries/locke-political/>.

Liberty, and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed...² These words, so easily recognizable in their importance, only become so in the context of the narrative that surrounds this document and the American Revolution. Jefferson knew this and therefore told the tale of King George's "absolute Tyranny over these States" in the Declaration itself. It depicts a story of throwing off oppression, of standing up for one's rights, of doing what is right and necessary in the name of liberty.

In addition to the Declaration, other core American documents supplement the narrative that upholds the importance of autonomy and rights. History records that when it came time to ratify the Constitution, many delegates refused to do so. They demanded that the Constitution expressly include the protection of certain rights, rights tread upon by their previous ruler, rights such as freedom of speech, unreasonable search and seizure, and due process. Today we call this collection of amendments the Bill of Rights.

Narratives like these explain why social movements in this country center around the protection of one's rights.³ Civil rights, right to work, right to vote, all of these movements utilized the narrative around rights in this country to justify the changes they wanted to see. This focus on rights goes back to Thomas Hobbes and the social contract. "The myth [of the social contract] postulates free and independent if highly vulnerable beings who voluntarily trade a portion of their autonomy for a measure of collective security."⁴ By making this theoretical agreement a product of choice, this narrative, one around which the American

² Thomas Jefferson, *The Declaration of Independence* (1776), <https://www.archives.gov/founding-docs/declaration-transcript/>.

³ Robert M. Cover, "Obligation: A Jewish Jurisprudence of the Social Order." *Journal of Law and Religion* 5, no. 1 (1987): 67.

⁴ Ibid, 66.

narrative has formed, elevates the individual over the collective. Thus the individual takes a place of primacy in this *nomos*, and an individual's rights serve to separate and distinguish them from every other individual.

This fundamental American narrative – one of individual autonomy and rights – continues to shape how inhabitants of the contemporary American *nomos* understand and validate legitimate obligation. Freedom, then, takes on the nuance of freedom from tyranny, freedom from oppression, freedom from the suppression of one's rights. Therefore, the only path from duty to obligation travels through the realm of consent.

This affects the concept of religion and religious in an American *nomos* as well, built on yet another narrative that predates even the Revolution. Every elementary school student learns about the original pilgrims, who set off from various parts of Europe in search of religious freedom. They yearned to escape from oppressive governments that not only favored one religion, or one form of that religion, over another but actively persecuted those who held and practiced different beliefs. These pilgrims, we learn, embarked on a dangerous journey to cross the ocean, all on the hope that they could establish a new home where they could practice their religion as they saw fit.

The historical veracity of this story is ultimately irrelevant; the narrative possesses defining power regardless. This narrative became objectified, crystallized into law in the First Amendment, creating a *nomos* that, in its core form, separates church and state. As such, because no centralized government religion exists compelling its citizens to affiliation and practice, religion in America bases itself upon a voluntary system, on a system of consent.⁵ As a result, consent became the determining factor for any religious precept,

⁵ Daniel M. Bronstein, "Reform Judaism and Mitzvot: A Historical Overview." *Duties of the Soul: The Role*

principle, or practice as well.

In contrast to the American *nomos*, the core Jewish *nomos* centers not around the individual but the *brit*, the covenant between Israel and God. Therefore, rights do not occupy a place of “evocative force” as they do in the American *nomos*.⁶ Instead, a different concept defines the scope of interpretive commitments in the Jewish *nomos*: *mitzvot*. *Mitzvot*, or *mitzvah* in the singular, literally means “commandment,” but over the course of Jewish history and writing it has taken on a meaning closer to “incumbent obligation.”⁷

Just as rights tie into the narratives of the Enlightenment and the American Revolution, *mitzvot* also link into the core Jewish narrative: liberation from slavery in Egypt and revelation at Mount Sinai. Multiple layers compose this central story of the Jewish people. One layer speaks to the content of revelation: *chukot v'mishpatim*, laws and rules that outline basic Jewish practice and from which the rabbis extrapolated further. These *mitzvot* claim their authority not from legal protocols nor any form of social contract theory. Within this narrative, they possess the highest authority possible, the authority of God's divine command.

Another layer of this core narrative constructs an understanding of the Jewish people as a single, corporate entity, independent of the variable of time. When the rabbis read the famous phrase “*na'aseh v'nishmah* – we will do and we will hear” from Exodus 24:7, they understand “we” to include all Israel, all Jews for all time. They do not limit the “we” solely to those physically present, to that single generation of Jews who escaped from Egypt across

of Commandments in Liberal Judaism [New York: UAHC Press, 1999], 5.

⁶ Cover, “Obligation,” 65.

⁷ Ibid.

the parted sea into the desert. Deuteronomy 29:13-14 extends the covenant between God and Israel to include “both those who are standing here with us this day before the Eternal our God and with those who are not with us here this day.” The rabbis of the Talmud take this concept a step further, allowing the choice of a specific moment in time to apply to all Jews throughout time.

In another famous passage from Jewish literature, BT Shabbat 88a, the rabbis discuss the validity of the acceptance of *mitzvot* at Sinai. They read Exodus 19:17 and construct a commitment defining narrative around the verse. Where most contemporary editions of the Bible translate *b'takhtit hahar* as “at the foot of the mountain” or some similar fashion, the rabbis read “under the mountain.” One rabbi, Abdimi bar Hama bar Hasa, took this to mean that God lifted Mount Sinai above the Israelites, threatening to smash them were they to refuse *mitzvot*. Based on this reading, the rabbis recognized a challenge to the legitimacy of the Israelites' acceptance of Torah in that moment. The solution to this problem demonstrates the corporate quality of Israel. “Said Raba, Yet even so, they re-accepted it in the days of Ahasuerus, for it is written, 'the Jews undertook and irrevocably obligated themselves...’” Narratively, the rabbis accepted the obligations of *mitzvot* because, at one time in their history, in Esther 9:27, “the Jews undertook and irrevocably obligated themselves...” For the rabbis, that decision represented a collective, corporate consent. The rabbis felt no need to offer their own individual consent; the narrative sufficed. *Dayenu*.

To quote Dr. Robert Cover, “Just as the myth of social contract is essentially a myth of autonomy, so the myth of Sinai is essentially a myth of heteronomy.”⁸ This explains the focus on obligations instead of rights. It also greatly affects how the Jewish *nomos*

⁸ Ibid, 66.

understands the concept of freedom. The American understanding of freedom is what philosopher Isaiah Berlin called “negative freedom,” freedom *from* external restraint.⁹ The Jewish understanding of freedoms fits what Berlin called “positive freedom,” freedom *to* perform an action. Rabbi Richard Levy explains this same idea in his book *A Vision of Holiness*:

Jews have always understood freedom to be a predicate. We don't subscribe to the idea of freedom as a noun, freedom as an abstract. Rather, we believe in the freedom to do, the freedom to act. When Moses spoke God's words to Pharaoh, “Let My people go” (Exodus 7:26), that was only part of the sentence. The rest was, “that they may serve Me.”...Freedom is both freedom *from* oppression, and freedom *to* observe Torah.¹⁰

Herbert Bronstein makes a similar argument in an article in which he explicates, and advocates for, a biblical understanding of freedom and autonomy. Commenting on that same verse from Exodus 7, Bronstein explains: “The divine call is not to freedom per se but away from servitude to Pharaoh (a god) to the service of God. The service of God necessarily implies a sense of obligation and duties as well as autonomy – all are choices against the service to idols.”¹¹ Bronstein connects “personal choice in religious matters (what we would call the exercise of autonomy)” with the struggle against idolatry, and he cites verses from the book of Deuteronomy to demonstrate this.¹² Deuteronomy 11:26-28 reads:

⁹ Tamara Cohn Eskenazi, Jacob L. Wright, “What the Liberty Bell can teach us about America and the Fourth of July,” *Fox News*, July 3, 2013, accessed November 16, 2016, <http://www.foxnews.com/opinion/2013/07/03/what-liberty-bell-can-teach-us-about-america-and-fourth-july.html>.

¹⁰ Richard N. Levy, *A Vision of Holiness: The Future of Reform Judaism* [New York: URJ Press, 2005], 103.

¹¹ Herbert Bronstein, “Mitzvah and Autonomy: The Oxymoron of Reform Judaism,” *Tikkun*, Jul/Aug 1999, 42.

¹² *Ibid.*, 43.

See, I set before you this day blessing and curse: blessing if you obey the commandments of the Eternal your God that I command upon you this day; and curse, if you do not obey the commandments of the Eternal your God, but turn from the path that I command upon you this day to follow other gods...

Jewish freedom, Jewish choice, Jewish autonomy, then, is not between religion and no religion but between Judaism and idolatry. Obligations do not inhibit freedom but just the opposite. In this *nomos*, they define and actualize it. “Indeed, to be one who acts out of obligation is the closest thing there is to a Jewish definition of completion as a person within the community.”¹³

Having established an Jewish understanding of freedom that does not conflict with obligation, we now must ask about the theories of obligation in the Jewish *nomos*. The American *nomos*, we remember, relies almost exclusively on consent theory, at least in terms of religious obligation. In contrast, the Jewish *nomos* incorporates multiple theories. Even different books of Torah offer divergent views. In her book *Leviticus as Literature*, author Mary Douglas often compares the books of Leviticus and Deuteronomy, including on this issue:

When Leviticus says: 'I am the Lord your God who brought you out of the land of Egypt' it is a peremptory statement about a relationship, about a covenantal obligation, a debt incurred. When Deuteronomy refers to the same relationship it appeals to emotions of wonder, awe, and gratitude: 'He is your God, who has done for you these great and terrible things which your eyes have seen' (Deut 10:21).¹⁴

¹³ Cover, “Obligation,” 67.

¹⁴ Mary Douglas, *Leviticus as Literature* [New York: Oxford University Press Inc., 1999], 38.

The following chapter delves further into this issue by exploring broad categories of motivations to follow obligations in a Jewish *nomos*.

Chapter 3: Motivations

Over the long course of Jewish text, scholarship, and history, many Jews have asked the following question in some form or fashion: Why? Why do we, why should we, obey *mitzvot*? They were, in effect, challenging – perhaps more generously, evaluating – the validity of the expectation to perform *mitzvot*, though relatively few ever articulated it in this manner. In his book *For the Love of God and People*, Rabbi Elliot N. Dorff identifies twelve responses to this question, twelve motivations, as he calls them, that emerge from the Bible or from rabbinic texts.¹ His work presents a broad scope and clear view of the twelve predominant explanations for the performance of *mitzvot*. By diving into each motivation and grouping them together in a single text, Dorff offers us a fertile opportunity for exploration and conversation.

In truth, these twelve motives, these twelve, reasons, these twelve attempts to answer the question above, contain a mix of incentives and moral appeals to validate *mitzvot*, to try to transform them from mere duties to binding obligations. This chapter will examine the nature of incentives from the perspective of the science of economics, then it will review and evaluate Dorff's list of motivations, classifying them according to the type of incentive or theory of obligation.

In its simplest form, the science of economics is the study of incentives.² It defines incentives as “a means of urging people to do more of a good thing and less of a bad thing.”³

¹ Elliot N. Dorff, *For the Love of God and People: A Philosophy of Jewish Law* [Philadelphia: The Jewish Publication Society, 2007].

² Steven D. Levitt and Stephen J. Dubner, *Freakonomics: A Rogue Economist Explores the Hidden Side of Everything* [New York: Harper Collins, 2005], 20.

³ Ibid, 21.

In this instance, “good” and “bad” become relative terms; a more accurate definition might replace them with “desired” and “undesired,” respectively. Often economists use these terms – good and bad – in a utilitarian sense, though we need not limit them to this understanding. A congregation may define “good” or “desired” as teens participating in the post-bnai mitzah program, for example, and create incentives to encourage such “good” behavior. Economists view incentives as a cornerstone of life and recognize three general categories of them: economic – financial or resource based, social – relationship based, and moral – conscience based. In fact, Adam Smith, the founder of classical economics, considered himself a moralist and came to the study of economics through that path.⁴ He even titled what would become his revolutionary paper on the subject *The Theory of Moral Sentiments*.

For each of the three identified categories of incentives, a few layers of nuance exists. The first describes whether an incentive emerges internally or externally. This distinction introduces an element of relativism into the discussion. Not all incentives possess the same value to everyone. One might presume this perspective applies more to moral and social incentives than economic, but even economic incentives, some might say especially economic incentives, possess varying strengths to varying individuals.

The second layer adds the “positive” or “negative” qualities to incentives. Simply put, a positive incentive urges one to perform an action, and a negative incentive urges one not to perform an action. The third layer recognizes that not all incentives possess the same strength. Some can be strong incentives, others weak incentives, still others somewhere in between. Here we also see relativism at play. Depending on our perspectives and our objectives, a strong negative incentive for me could be a weak positive incentive for you.

⁴ Ibid, 15.

Combining incentives across all these variables creates an “incentive scheme,” which often prove more effective than any single incentive on its own.⁵

Dorff first identifies the motivation of Wisdom. He quickly distinguishes between contemporary understandings of wisdom – information or skills of analysis – from what he offers as the biblical understanding, “knowledge that comes from experience.”⁶ Dorff then presents a series of biblical excerpts attesting to the value of the wisdom that *mitzvot* offer. Deuteronomy 4:6, for example, reads: “Observe [*mitzvot*] faithfully, for that will be proof of your wisdom and discernment to other people, who on hearing all these laws will say, 'Surely that great nation is a wise and discerning people.'” This verse offers a positive social incentive for obeying *mitzvot*. The strength of it, though, depends on the individual. How much value does one put to being seen by others as wise? How much value does one place in that self-identification?

Dorff then points to the Psalm 19, which attest that “the covenant of the Eternal is trustworthy, making the simple wise,”⁷ before moving onto Proverbs 2, “For the Eternal grants wisdom; Knowledge and discernment are by God's decree...For wisdom will enter your mind and knowledge will delight you.”⁸ For these books, the wisdom that comes with a life of *mitzvot*, the “recipes for living life based on the experience of those who have come before,”⁹ even offer strong economic incentives. Psalm 112 asserts that those who obey *mitzvot* will receive blessings of wealth and riches in addition to the moral values of

⁵ Ibid, 21.

⁶ Dorff, *God and People*, 133.

⁷ Psalm 19:9

⁸ Proverbs 2:6, 10

⁹ Dorff, *God and People*, 135.

graciousness, compassion, and beneficence. Proverbs 3 promises not only riches but that the wisdom attained through *mitzvot* will outperform silver, gold, even rubies. If all this were not enough, Proverbs 3 makes, perhaps, its most compelling incentive yet: “It is a tree of life to those who hold fast it to, and whoever holds on to it is happy.”

This first motivation offers a strong positive incentive scheme that includes two of the three categories of incentive. It makes no effort to validate obligation nor does it establish an expectation of duty. It speaks only of the potential rewards that come from following *mitzvot*. As such, the strength of the incentive of wisdom depends upon an individual's preexisting level of belief or trust in the Bible. The stronger the belief, the stronger the incentive, and vice versa.

In contrast to the first motivation, the next on Dorff's list offers an exclusively moral incentive, Moral Knowledge and Motivation. This motivation operates on the dual premise that: 1) the Torah, both as the Pentateuch and as the embodiment of Jewish law and learning, defines morality; and 2) human beings want to be moral. In doing so, it offers a strong internal moral incentive to follow *mitzvot*.

The Torah crafts this argument not in the abstract but in the concrete. At no point does the text expressly link *mitzvot* with any conception of morality. Instead of debating general principle, the Torah demonstrates what it means to live by moral principles.¹⁰ Leviticus 19, for example establishes these moral norms: You shall provide for the poor and the stranger, verse 10. You shall not steal or act deceitfully, verse 11. You shall judge everyone fairly, verse 15.

¹⁰ Ibid, 138.

In his explanation, Dorff addresses potential challenges to the morality of *mitzvot* by framing the task of interpretation as a dialectic process, one which combines Torah law with an individual's own moral beliefs to arrive at the most moral *mitzvot* possible. He cites rabbinic texts as examples of this. “All of these rabbinic modulations of the law stem from their strong conviction that God would not want the law to allow, much less require, immoral things.”¹¹ Therefore Torah, or *mitzvot* in a maximalist sense, would still provide moral instruction.

This second motivation both provides a strong moral incentive and connects to a sense of natural duty discussed in chapter 1. If an individual recognizes morality in *mitzvot*, natural duty theory would then obligate that individual to follow *mitzvot*. In fairness, natural duty theory validates morality through reason, not by a religious text such as the Torah. However, Dorff's dialectical process allows reason both a place in the conversation and a power to affect change, the result of which would necessarily be moral, to which natural duty theory would then obligate the individual.

As his third motivation, Dorff points to Covenantal Promises. He begins by connecting promise keeping and moral integrity. According to the Torah, Exodus 24:3, the Jewish people made a promise to obey God's *mitzvot*, and in order to be moral people, we have to fulfill that promise. Dorff then presents challenges to that theory, as well as a few responses and counter responses, including Thomas Hobbes' tacit consent theory. Ultimately, though, Dorff denies the applicability of tacit consent theory and, from a position of negative freedom, denies the binding nature of biblical promises. Only by consent, only by

¹¹ Ibid, 139.

“restat[ing] the promise themselves, either orally” or by one's behavior, does the morality argument apply.¹² In making this argument, Dorff provides a weak moral incentive and represents both branches of consent theory discussed in chapter one.

Dorff's fourth motivation takes a different approach to the idea of covenant, by defining it as a relationship of love. Dorff begins by echoing a form of membership theory. As human beings, we begin life with a set of predetermined – as in involuntary – relationships, and these relationships impose obligations. Our relationship with God, Dorff asserts, is no different. These obligations do not require consent, explicit or tacit, and arise as naturally as do our obligations to our family. Just like our relationships with family, friends, or our community, the “deeper the relationship, the more extensive the duties that follow from it.”¹³ At a certain point, the relation grows beyond a general sense of caring to reach the level of love, and at that point, the obligations become less about expectations and more about expressions of that love.¹⁴ Jewish prayers such as *Ahavah Rabbah*, *Ahavat Olam*, and the *V'ahavta* speak to this relationship of love and its deep connection with *mitzvot*.

Dorff then explains how one can perceive *mitzvot* as an expression of God's love for Israel. Without law, without rules, he argues, society has no sense of order because it possesses no way to express expectations. He cites *The Trial*, a novel by 20th century German Jewish author Franz Kafka, which tells the story of a man arrested and tried without ever knowing the nature of his crime. This lack of communication, lack of expressed expectation, leads to a life of terror. Therefore, the laws, rules, and expectations

¹² Ibid, 146.

¹³ Ibid, 147.

¹⁴ Ibid, 148.

encompassed in *mitzvot* become expressions of God's love.

In response to this testament of love, as partners in this relationship of love, we desire a way to reciprocate, an avenue to express our love for God. We do this by performing *mitzvot*. Seen in this relational perspective, *mitzvot* lose much of their “commandment” quality and become “something very important to Me that you do.”¹⁵ Performing *mitzvot*, then, become doing something important for a loved one. For those with loving relationships with God, this provides a strong internal social incentive.

The fifth motivation on Dorff's list, mirrors one of the theories of political obligation mentioned in chapter one, Gratitude. Dorff presents an argument similar to A.D.M. Walker's moral proof of gratitude theory. Once we recognize the many gifts God has given Israel, once we see ourselves as beneficiaries of God's love, we acquire obligations to act in God's interest, or to not act against God's interests. *Mitzvot*, in this paradigm, become an avenue or a mechanism for expressing gratitude to God.

The strength of this motivation hinges upon one's recognition of God's beneficence. Hence the question becomes, what does it mean to recognize God's gifts? Gratitude theorists would argue that every citizen of a polity necessarily benefits from that polity. Of course one can debate the validity of that premise, but it remains a central postulate of the gratitude formula. Within the realm of religious belief, our mere existence could serve as that minimal, base level gift. In recognizing the gift of life, we would incur obligation.

However, if one chose to debate the basic postulate that we have necessarily benefited from God, one could respond with consent theory. The second branch of consent theory,

¹⁵ Richard N. Levy, *A Vision of Holiness: The Future of Reform Judaism* [New York: URJ Press, 2005], 50.

which takes a broader understanding of what it means to consent, would point to general practices that speak to God's beneficence. For example, singing the song *Dayenu* at a Passover seder would constitute recognition. The song “spells out the many divine favors included in God's leading us from Egypt to the Promised Land, asserting that any one of them would have been enough for us.”¹⁶ Other common practices would include offering the *Nisim b'chol Yom*, the Daily Miracles, a series of blessings that thank God for our ability to rise and walk each day. For that matter, offering any blessing, any prayer, that incorporates the basic *Baruch Atah Adonai* formula could constitute recognition. Though the words literally mean “Blessed are You, God...,” the act of blessing is a form of offering thanks to God.

Dorff addresses the concern that obligations of gratitude could appear as a form of *quid pro quo*, favor for favor. There exists no “cosmic balance sheet in which God's actions create a debt for us to repay.”¹⁷ Instead, we perform *mitzvot* because “*decent and just people* [sic] should recognize when acts of kindness (*hesed*) are done for them, and they should respond in kind.”¹⁸ By making this distinction, Dorff accentuates the appeal to morality in this motivation. He denies a economic incentive, hammers a strong external *and* internal moral incentive, and validates the moral requirement of two different theories of political obligation, all in the same argument.

Dorff's sixth motivation appeals to our sense of identity and identity in relationship by arguing that performing *mitzvot* Preserves God's Reputation – and Ours. Due to the

¹⁶ Dorff, *God and People*, 153.

¹⁷ Ibid.

¹⁸ Ibid, 153-154.

relationship created through the Covenant between God and Israel, our actions affect each other's reputations.¹⁹ A number of biblical passages further support a concern for God's reputation. The most famous example comes after the incident with the Golden Calf. Moses argues that, were God to destroy the Israelites as punishment for this offense, God would tarnish God's reputation. "Let not the Egyptians say, 'It was with evil intent that God delivered them, only to kill them off in the mountains and annihilate them from the face of the earth.' Turn from Your blazing anger, and renounce the plan to punish Your people."²⁰

In a similar fashion, Dorff argues that Jews possess a moral and social incentive to follow *mitzvot* "because our actions reflect not only on ourselves but our families, our friends, our people, and our partner in the covenant and in history, God."²¹ We want to be, and be seen to be, moral individuals, a moral people, hence we have a stake in the reputation of God and Israel. Whenever a Jew commits a crime, the entire community feels the shame. Similarly, whenever a Jew excels, winning a public award or an election for government office, the community feels proud. Dorff then points to both biblical and rabbinic texts that extend this connection to God, linking the public perception of Jews with God and vice versa. Following *mitzvot* becomes an act of *kiddush haShem*, sanctifying God's name, actions that protect the name and reputation of both God and the Jewish people. Hence, we have social, moral, and perhaps even economic incentives to follow *mitzvot*.

However, this entire argument hinges on an unstated premise, the idea that performing *mitzvot* yields moral actions, or at the very least, actions that preserve our reputation in the eyes of others. If the latter, if *mitzvot* simply produce actions that look good in the eyes of

¹⁹ Ibid, 157.

²⁰ Exodus 32:12

²¹ Dorff, *God and People*, 157.

others, we still require moral validation for their performance. A good reputation in the eyes of possibly immoral people fails to do so. If the former, if *mitzvot* are moral actions in themselves, natural duty theory would argue they present valid obligations on their own, rendering the motivation of reputation superfluous. It could be included as part of a larger incentive scheme, but on its own, concern for reputation offers rather weak incentives.

Dorff's seventh motivation, Making Our Lives Holy, in truth contains three related but distinct applications of the same idea. Performing *mitzvot* makes our lives holy in three ways: by confirming Israel's place as God's chosen people, by enabling us to grow in character to become closer to God, and by giving the Jewish people a mission.

Few definitions of the word “holy” do justice to the Hebrew meaning of the word *kadosh*, which we often translate as “holy.” Most definitions carry spiritual, powerful, or even divine connotations. Most Jewish definitions, including the one Dorff offers, speak to its meaning of separateness. However, this understanding misses a vital component. In her commentary on *parshat Kedoshim*, Rabbi Dr. Tamara Cohn Eskenazi emphasizes the connection present within holiness. “Connections – not only separations – define the holy community: the connection to parents whom one must honor, to the poor and the disadvantaged whom one must protect, to the neighbor and the stranger whom one must love, and of course to God.”²²

Holiness, then, embodies a separateness that facilitates connection. Through separating ourselves via the performance of *mitzvot*, Israel facilitates and cultivates the

²² Tamara Cohn Eskenazi, “Another View,” *The Torah: A Women's Commentary* [New York: URJ Press, 2008], 716.

connection between itself and God. We become, through *mitzvot*, an *am segulah*, God's "treasured possession." Despite the well known appellation of Israel as "God's Chosen People," Dorff argues that this "is not a privileged status that one inherits and keeps, no matter what one does; one must *deserve* [sic] that distinction by living up to what God expects of a people associated with [God's] name."²³ We must earn this distinction, and we earn it through performing *mitzvot*.

Part two of this motivation emerges from multiple places in the Torah which command us to take after God, to "walk in God's ways,"²⁴ to be holy, for I, the Eternal your God, am holy."²⁵ Maimonides, as Dorff points out, articulates it most clearly: "each person is required to guide [oneself] by [the qualities of God] and aspire to be like [God] as much as one can."²⁶ By performing *mitzvot*, we become not only special to God, but like God. This offers, according to Dorff, a strong internal moral incentive. "We *want* [sic] to strive for noble goals; we *want* [sic] to be as good as human beings can be. When we strive to be more like God and – even more – when we succeed in some measure, our lives gain meaning."²⁷ *Mitzvot*, in this sense, offer Jews the means to achieve a holy form of what psychologist Abraham Maslow called "self-actualization," resulting in something like "holy-actualization."

The final piece of this three part motivation takes the actualization described in part two beyond the self and into the world. Through performing *mitzvot*, we can become what

²³ Dorff, *God and People*, 162.

²⁴ Deuteronomy 28:9

²⁵ Leviticus 19:2

²⁶ Dorff, *God and People*, 163, citing Maimonides, M.T. Laws of Ethics (De'ot) 1:6, modified for gender inclusive language.

²⁷ Ibid, 164.

Isaiah called “a light to the nations.”²⁸ *Mitzvot*, then, offer Israel “a *mission* [sic] to teach justice and righteousness to the entire world;” further, the performance of *mitzvot* “gives life a purpose, a goal worth working and sacrificing for.”²⁹ We find inspiration and aspiration through them.

These three components offer a potentially quite potent incentive scheme comprised of internal and external, moral and social, components. In addition, Dorff’s description of the earned nature of chosenness, “one must *deserve* [sic] that distinction by living up to what God expects of a people associated with [God’s] name,” invokes the language of duty in its own right and alludes to the previously described motivation of Reputation. Multiple biblical citations – Exodus 19, Deuteronomy 26, Amos 3, to name a few – speak to the expectation that Israel earns its place as God’s chosen people. Once we recognize that, each of us must decide whether that expectation, whether that duty, possesses moral validity, based on any of the theories of political obligation described in chapter 1. If so, becoming God’s chosen people transcends the realm of incentive into the realm of obligation.

Dorff’s eighth motivation, the last suggested by the Bible, is likely the first motivation that occurs to most people: Enforcement. When asked why one should follow the law, Dorff believes the majority of individuals would respond something like: “I must follow the law because if I do not, I will be punished.”³⁰ This mindset speaks to a specific relationship with law, a specific narrative of law, one which envisions the law as an antagonist, a threat, the overabundance of what Dr. Robert Cover refers to as the “violence” or the “coercive

²⁸ Isaiah 42:6.

²⁹ Dorff, *God and People*, 166.

³⁰ Ibid, 131.

dimension of the law.”³¹ Dorff hopes that by exploring all the previous motivations, as well as those yet to come, he will demonstrate that, in Judaism, the threat of enforcement or punishment ranks low on the list of reasons to perform *mitzvot*, that it is simply one of many motivations. Still, enforcement does have a place within Judaism. Dorff distinguishes between human and divine enforcement, exploring each before ultimately arguing against its use as a motivating factor.

Throughout biblical text, rabbinic text, and the length of Jewish history, we find a number of examples of potential human or communal enforcement. It might surprise many to learn that one form, *tokhekhah*, is a *mitzvah* in its own right. Leviticus 19:17-18 connects *tokhekhah*, which means “rebuke,” to the commandment “Love your neighbor as yourself.” This type of social pressure reflects a loving care for the individual who performs inappropriate, or fails to perform appropriate, action, in this case defined by *mitzvot*. This provides a social incentive whose strength varies depending on the individual circumstances. The polarity of this incentive, whether it is positive or negative, similarly depends on perspective. Put another way, *tokhekhah* presents both a positive and a negative social incentive: a positive incentive to perform *mitzvot* and thereby avoid receiving rebuke from the community, and a negative incentive against violating *mitzvot*, for the same reason.

A second, less loving, form of human enforcement offers likely stronger economic and social incentives. Due to the often less than cordial relationships between Jews and the ruling secular governments throughout Jewish history, Jewish communities had their own internal forms of government. These Jewish courts ruled over disputes and enforced Jewish

³¹ Robert M. Cover, “The Supreme Court, 1982 Term – Foreword: Nomos and Narrative” (1983). *Faculty Scholarship Series*. Paper 2705. Pg. 48. http://digitalcommons.law.yale.edu/fss_papers/2705

laws; they “had the power to impose fines, lashes, and, most important, excommunication on those who failed to obey.”³² Today, after Enlightenment and Emancipation, with the advent of freedom of religion, these courts no longer exist. They do persist in Israel, though liberal movements within Israel regularly challenge their power.

Divine enforcement stems from biblical assertions that following *mitzvot* will lead to reward and violating *mitzvot* will lead to punishment. This would present strong economic and social incentives. However, the life experience of many brings the assertion into question. This kind of thinking leads to problems of theodicy, trying to reconcile why bad things happen to good people. A survey of Jewish history, with events such as pogroms, expulsions, and the Holocaust, casts further doubt on these assertions of just, divine enforcement.

Rather than debating the issue, Dorff reinforces his belief that fear of enforcement is and should be “only a back-up mechanism to produce compliance for those not motivated” by a host of other factors.³³ Positive motives, such as love, far exceed enforcement and possess far more importance than enforcement should. Moreover, a *nomos* that values autonomy and remembers events like the Holocaust makes “fear of God's punishment practically ineffective and morally questionable as a motive to follow God's law.”³⁴

The remaining four motivations all come from rabbinic texts rather than from the Bible, from which we derive the previous eight. These motivations possess no lesser strength, no lesser applicability, though, especially, for the rabbis and those who follow in the

³² Dorff, *God and People*, 168.

³³ Ibid, 170.

³⁴ Ibid, 173

tradition of rabbinic Judaism. Instead, the presence of these motivations demonstrates a sense of progression or development within the world of *mitzvot* beyond the canonization of the Bible. As the world changed over time, so did the context in which Jews engaged with *mitzvot*. These new contexts led to new understandings, new relationships, new interpretive commitments, which the next four motivations reflect.

The ninth motivation on Dorff's list, Refining Human Beings, presents an astonishing rabbinic twist on the relationships between God, Israel, and *mitzvot*. Unlike previous motivations that described *mitzvot* as a means to some spiritual or holy end, this motivation explicitly asserts a more mundane, human end resulting from the performance of *mitzvot*: “in learning moral values from the commandments and in acting in moral ways, we become purified human beings – that is, we come much closer to the ideal of what it means to be human.”³⁵ This assertion combines aspects of several previously mentioned motivations and, like the Reputation motivation, harkens back to natural duty theory by recognizing the moral qualities of *mitzvot*. The more interesting part of this motivation, that part that qualifies it as its own motivation rather than simply a collection of other motivations, springs from how the rabbis phrase the argument. For example, Genesis Rabbah records the following: “Rav said: The commandments were given to Israel only to purify people. Does it matter to God whether an animal is slain at the throat or the neck?”³⁶ Claims such as this one, Dorff explains, “assert that God does not benefit from our adherence to [God's] laws, that God, in fact does not care whether we act according to [God's] laws or not.”³⁷ Such statements would effectively negate many of the previous motivations, and, more

³⁵ Ibid, 174.

³⁶ Genesis Rabbah, Lekh Lekha 44:1

³⁷ Dorff, *God and People*, 174.

importantly, they would contradict many biblical passages. Perhaps most importantly, the claim that *mitzvot* exist solely for the refinement of humanity offers only a weak moral incentive for their performance. In effect, it diminishes *mitzvot* from commandments to options, to be done only if one feels the need or desire to grow. Moreover, teaching *mitzvot* in such a fashion could come across as an accusation that those who do not engage with *mitzvot* are unrefined or uncultured.

Though Dorff does not articulate these negative consequences in such a fashion, he clearly recognizes some of these tensions. In response, he quickly reframes the rabbinic claim as an act of “rabbinic flourish, an exaggeration to emphasize the commandments' effectiveness in functioning for our human benefit.”³⁸ Dorff ultimately understands this motivation as saying that above and beyond the religious reasons to perform *mitzvot*, doing so yields positive effects on one's character.

Maintaining the World, Dorff's tenth identified motivation, challenges the ninth by presenting a wholly different purpose or end coming from the performance of *mitzvot*. In contrast to the rabbinic texts mentioned just above, other rabbinic passages identify *mitzvot* with world sustaining, or even world creating, power. For example, *Pirkei Avot*, a famous wisdom tractate of the Mishnah, records the following teaching: “Shimon the Righteousness...used to say: 'The world stands on three things: on Torah, on worship, and on acts of kindness.’” Dorff interprets this *mishnah* as saying that human society depends on the values embedded in Jewish law.³⁹ Joseph Caro, a sixteenth century Jewish scholar and

³⁸ Ibid.

³⁹ Ibid, 176.

commentator, understood it more literally. In contrast with the world preserving forces of “justice, truth, and peace,”⁴⁰ he believed that Torah, worship, and acts of kindness represented world initializing forces.⁴¹

Whatever the scope of their power, *mitzvot* play a large part in maintaining life as we know it. As we saw in Relationship of Love motivation, the existence and recognition of *mitzvot* provide network for communicating expectations and guidance, love and gratitude. An absence of law, of *mitzvot*, would lead to chaos, fragmentation, the opposite of peace, *shalom*, “and without peace...none of the blessings of life matter.”⁴²

Evaluating this motivation based on its incentive scheme proves somewhat problematic. If *mitzvot* serve solely to provide society maintaining guidance and values, what differentiates *mitzvot* from secular laws that could, and arguably do, serve the same function? If *mitzvot* possess some inherent quality that makes *mitzvot* better or more effective than secular law, this quality warrants articulation and inclusion in the argument. Moreover, such an assertion “not only tests the limits of credulity but is disgracefully chauvinistic,” words Dorff used to describe the belief that *mitzvot*, or the Jews' acceptance thereof, played a fundamental role in the creation of the world.⁴³ Therefore, this motivation as presented offers weak incentives at best for a member of post-Enlightenment society.

Dorff's eleventh motivation, Identifying as Members of a Distinct Community, pairs well with membership theory of political obligation. This motivation asserts that ever since

⁴⁰ Pirkei Avot 1:18

⁴¹ Joseph Caro, Beit Yosef at Tur: Hosen Mishpat 1, translated by Robert Cover, “Nomos and Narrative,” 12. Chapter 4 of this thesis offers a longer presentation of Caro's thoughts.

⁴² Dorff, *God and People*, 176.

⁴³ Ibid.

the Diaspora, the performance of *mitzvot* has become an important marker of Jewish identity. Dorff discusses this sense of identity of two levels. The first applies to the relationship between God and Israel. Dorff cites another midrash, Sifra 112c, which reads: “If it were not for My Torah that you accepted, I should not recognize you, and I should not regard you more than any of the idolatrous nations of the world.” This sentiment, that only through the performance of *mitzvot* does Israel earn its special status, echoes what we saw in the first section of the Holiness motivation.

The second level of this sense of identity refers to the binding effect that the covenant between God and Israel had on the Jewish people. By entering into and recognizing this relationship, we also form a bond with other members of the Jewish community. Just as the covenant with God entails certain obligations, so does the bond with fellow Jews. According to Dorff, a life of *mitzvot*, which includes common ethics, prayer practices, holidays, and life cycle events, helps “retain and reinforce one's ties to the Jewish community.”⁴⁴ This sentiment lies at the heart of Ahad Ha-Am's famous statement, “More than Israel has kept the Sabbath, the Sabbath kept Israel.”

These ideas can offer strong internal incentives or weak external incentives, depending on how one applies them, which speaks to the heart of this thesis. Any group, any community, regardless of population or geographic area covered, requires boundaries in order to identify themselves. These can be territorial, such as the borders of a state or country, or they can be philosophical, as in social groups or special interest groups. These boundaries exist to protect and distinguish, not necessarily to judge.

⁴⁴ Ibid, 179.

We can compare these boundaries to a cell wall.⁴⁵ The cell wall determines what can and what cannot enter the cell. A solid, impermeable wall isolates the cell from the body, limiting its available resources and endangering its existence. The opposite extreme, a fully permeable wall also endangers the cell by allowing too much in, diluting the cell's purpose and impairing its ability to function. The assertion behind this motivation claims that *mitzvot* serve as a form of boundary. A hard boundary, one that tells Jews what they “must” or “should” do to claim that identity, offers a weak external incentive to perform *mitzvot*. However, a semipermeable boundary, one that speaks in obligations and expectations of what it means to be Jewish, offers a strong internal incentive for individuals interested in learning more.

The last motivation Dorff mentions, Making Life Beautiful, offers a weak incentive overall but proves a strong infection vector. In other words, this motivation provides a strong incentive for individuals just beginning their journey through *mitzvot* but would not stand as a sufficient incentive on its own. For reasons that echo the Relationship of Love motivation, the rabbis expressed an expectation “to make one's observance of the law aesthetically beautiful,” known in Hebrew as *hiddur mitzvah*.⁴⁶ Though not the explicit reason for doing so, through upholding this value of *hiddur mitzvah*, performing many *mitzvot* became more enjoyable for those involved. One can see the effects of *hiddur mitzvah* in the variety beautiful and artistic *talitot*, the efforts made to decorate one's sukkah, or the care put into making a flavorful holiday meal. Dorff describes the beauty of a Shabbat meal, filled with

⁴⁵ Rachel Adler, *Engendering Judaism: An Inclusive Theology and Ethics* [Boston: Beacon Press, 1998], 115.

⁴⁶ Ibid, 180.

good food, family, friends, and often lively singing, as a prominent “factor that prompts Jews to become more observant,” even if only by “recreating the experience in their own homes.”⁴⁷

By writing this chapter of his book, Rabbi Dorff hoped to demonstrate the variety of reasons that Jews might perform *mitzvot*, well beyond the single threat of enforcement.⁴⁸ By analyzing each of these motives on the science of economics and aligning each motivation with corresponding theories of obligation, this thesis hopes to determine which motivations transmit Jewish obligation as a norm and which as a narrative. Alternatively, this analysis provides Jewish educators, those interested in creating a *nomos* of obligation, with new ways to understand and approach both the education process and the motives present in Jewish tradition.

Rather than justifying *mitzvot* as a way to show gratitude to God, for example, instead begin by cultivating that internal feeling, that narrative, of gratitude within the individual. Explore the gifts, the love, God offers us, and investigate ways we can express our heartfelt gratitude in return. Guide that search to discover *mitzvot* as part of an organic, joyous practice of gratitude, rather than an one of imposition and enforcement. Teach the narrative, not the norm.

⁴⁷ Ibid.

⁴⁸ Ibid, 181.

Chapter 4: The American Reform Jewish *Nomos*

As we learned in Chapter 2, the American and Jewish *nomoi* take vastly different approaches to freedom and obligation, which makes combining the two something of a challenge. Since the days of Enlightenment and Emancipation, Jews have struggled to reconcile these differences. From this struggle emerged the modern Jewish movements. Some desired to embrace the opportunity to join secular society, which meant adapting or reforming Jewish practice to do so. Others chose an opposite approach, crystallizing their practices, beliefs, even fashions to that moment in time. Still others endeavored to find a middle ground. Thinkers like Samson Raphael Hirsch, Abraham Geiger, and Zechariah Frankel, to name only a few, led the way to the Judaism we know today, a Judaism that offers a spectrum of beliefs, practices, and modalities. While these movements do share core narratives, to include them all within a single *nomos* would be to paint with too broad a brush. One would only be able to speak in generalities. Instead, multiple Jewish *nomoi* exist, overlapping in certain sections like a multifaceted Venn diagram. This will cover only one of these *nomoi*, that of Reform Judaism in America. To that end, this chapter will examine Reform Judaism's core narratives through the lens of the published Platforms of the Central Conference of American Rabbis.

The foundations of the American Reform Jewish *nomos* begin in the middle of the 19th century. Even before the creation of the infrastructure of Reform Judaism, liberal Jewish leaders in America identified the need to resolve a tension between American freedom and Jewish obligation, to establish a set of rules, norms, or expectations for liberal Jewish life in

America. Max Lilienthal, a German-born rabbi who immigrated to the United States in 1845, spoke to this question in a text from 1854:

We wish to see this contradiction solved; we wish to know when religious ceremonies have to yield to the necessities of life, and when they have to be kept at any price, subjugating life and its exigencies...we wish to know what in our law is God's command and what is the transient work of mortal man. Such an investigation will solve the contradiction between life and religion...[and] will do away with all the unfounded conglomerations of different ages...¹

Lilienthal expressed a challenge brought on by the ideals of Enlightenment and newfound freedoms of the recently emancipated Jewish people. His words identify a new construction of interpretive commitments, one that values both participation in secular society and Jewish practice. These commitments reflect a new narrative, one that separates the “necessities of life” and religious practice as mutually exclusive. Lilienthal also addressed a contributing factor to the challenge of religious authority by asserting that Jewish law does not represent in its entirety divine law, will, or revelation. By acknowledging the human origin of at least some laws and practices, Lilienthal, like many other scholars of his era, called into question the authority of all Jewish laws and practices.

Lilienthal envisioned a hierarchy of authority with only two levels: God above and humanity below. Other models of authority imagined a sub-hierarchy within humanity, giving some groups more authority than others. Human history has seen many versions of this. For instance, medieval feudal systems granted authority based on one's caste. Other

¹ Max Lilienthal, “We Wish to Know the Law,” *The Growth of Reform Judaism: American and European Sources* [Philadelphia: The Jewish Publication Society, 2015], 236-7.

systems have utilized race, creed, and gender as metrics for determining authority for millennia. In Jewish tradition, the rabbis granted themselves greater authority than that held by the general population of Israel. In addition, the rabbis held a notion of *yeridat hadorot*, the falling or lessening of generations, that grants greater authority to scholars of previous generations.

Lilienthal dismissed all of these separations. His view still contained an artifact of the traditional Jewish *nomos* – God still held that primary place – but all human held equivalent amounts of authority. By equalizing all humanity on the same rung of authority, Lilienthal exhibited the autonomy of the American *nomos*. “God's command” still reigns supreme, but no human possesses similar authority to command. In combining these elements, Lilienthal represents a very early merging of the American and Jewish *nomoi* into something new.

The Pittsburgh Platform of 1885

Though the first Reform Platform dates back to 1885, to trace the American Jewish roots of this issue, we must go back even further. In 1855, Isaac Mayer Wise issued an appeal to American Jewish leaders to join together as one united community. In that appeal, Wise recorded three basic principles of such a union, each designed to satisfy the plurality of Jewish beliefs and practices of the time. His words attempted to connect the past to the present and the future. In contrast to what we shall see later in the 1885 Pittsburgh Platform, Wise did not claim the authority of autonomy to evaluate Judaism for the time. Instead, he envisioned a “synod” of Jewish leaders representing the broad Jewish communities of America invested with the authority to interpret Jewish law and tradition.² In essence, Wise

² Isaac M. Wise, “Appeal,” *Growth of Reform Judaism*, 18.

sought to wrestle with the challenges of modern Judaism by re-establishing a Sanhedrin, an ancient Jewish judicial body with the power to set binding precedent and rules of Jewish living. While this endeavor ultimately failed, it set into motion a series of rabbinic conferences and what 20 years later would become the Union of American Hebrew Congregations.

In the fall of 1885, Dr. Kaufmann Kohler issued a call for such a rabbinic conference. In response to that call, fifteen rabbis met in Pittsburgh, Pennsylvania. From their discussions emerged a series of principles known today as the Pittsburgh Platform. These principles would come to shape Reform Judaism for the next century, especially in the fields of Jewish practice and law. In his address to the conference, Dr. Kohler said the following:

We can no longer be blind to the fact that Mosaic-Rabbinical Judaism, as based upon the Law and Tradition, has actually and irrevocably lost its hold upon the modern Jew. Whether they have justificatory reasons for doing so or not, the overwhelming majority of Jews within the domain of modern culture disregard altogether the Mosaic-Rabbinical laws concerning diet or dress, concerning work or kindling the light on Sabbath, or any other ancient rite.³

Dr. Kohler spoke to a growing reality within liberal Judaism. One cannot emphasize enough the particular areas of Jewish practice which Dr. Kohler mentions outright: dress, diet, and work. These three domains of Jewish life served to separate, to distinguish the Jewish community from their non-Jewish neighbors. Only recently in the history of Jewish-Gentile relations had Jews begun to be accepted by their non-Jewish peers. For many, the traditional Jewish dress code, dietary practice, and calendar served only to reinforce that notion of

³ Ibid, 33.

difference, of otherness. In an America that lacked a state church that mandated religious expression, as was seen in many European nations, religion in America became a purely voluntary system.⁴ Given this new opportunity, many Jews chose to throw off the yoke of tradition in favor of becoming an assimilated part of the American nation. Those fifteen rabbis in Pittsburgh echoed Dr. Kohler's words in the Pittsburgh Platform:

3. We recognize in the Mosaic legislation a system of training the Jewish people for its mission during its national life in Palestine, and today we accept as binding only its moral laws, and maintain only such ceremonies as elevate and sanctify our lives, but reject all such as are not adapted to the views and habits of modern civilization.

4. We hold that all such Mosaic and rabbinical laws as regulate diet, priestly purity, and dress originated in ages and under the influence of ideas entirely foreign to our present mental and spiritual state. They fail to impress the modern Jew with a spirit of priestly holiness; their observance in our days is apt rather to obstruct than to further modern spiritual elevation.

Taken on their own, these statements usher in a powerful, radical paradigm shift in the relationship between Reform Jews and Jewish tradition. Whereas Wise initially sought to establish a ruling body with the authority to interpret tradition, the authors of this platform assumed such authority. With that authority, the authors promulgated a new narrative of consent theory. As a result, they could now choose to accept and, more shocking, to reject the obligations of Jewish law. This narrative valued American autonomy over Jewish heteronomy. In doing so, the platform further established criteria for such evaluation, namely that religious practice should promote an individual's feeling of holiness and sanctification.

⁴ Bronstein, "Reform Judaism and Mitzvot," 4-5.

In a less palatable but very real sense, the platform also asserted that religious practice should not deviate from the appearance and values of the Christian majority.

The word choices within Dr. Kohler's address and the resulting platform speak to the mentality of that time period toward Jewish tradition and practice. Interestingly, Dr. Kohler's address may also indicate that, rather than a bold, unprecedented, top-down move toward modern autonomy, the platform may in fact have been following in the footsteps of the American Jewish community at large, one that had already chosen to reject practices that had lost their meaning. In addition, both texts specifically speak in terms of law and legislation. That phrasing speaks to a narrative that depicts in a particular way the relationship between many liberal Jews of the time and the complex system of *halakhah*, Jewish traditions, philosophies, and practices that evolved over thousands of years. To describe the results of this process as law or legislation, as opposed to *mitzvot* or obligation or even *halakhah*, tells a story that defines these traditions in terms of coercive power. At the same time, in the very same sentence even, the authors of the Pittsburgh Platform outright denied that many Mosaic laws continue to hold any coercive, binding power at all. In effect, the authors of the Platform obfuscated the sanction theory of legal obligation, the idea that obligation exists whenever non-compliance bears a risk, by eliminating the threat of sanction in the “law.” By establishing Jewish tradition as law in this way, the authors allow themselves, validly, to negate their force.

This connection between *mitzvot* and sanction is not without precedent. While legal scholars may have outgrown sanction theory, the Torah still utilizes sanctions as motivating factors. One need not search farther than the book of Genesis, chapter 2. In this second

creation narrative, God creates Adam from the dust of the earth. In the first act of verbal communication both in this narrative and to this new form of consciousness, God issues the following command, through the Hebrew root *tzadi-vav-heh*: “From every tree of the garden you may surely eat. But, from the Tree of the Knowledge of Good and Evil, you will not eat from it, because on the day that you eat from it, you will surely die.”⁵

Though the text remains unclear as to whether Adam's death would come as a form of natural consequence or direct punishment from God, the nature of God's command remains an example of coercive force. In an effort to prevent Adam from eating from the Tree, God employed a sanction, informing Adam that negative consequences would result from said action. That this sanction ultimately failed to prevent Adam, and Eve, from eating from the Tree makes no difference for our purposes.

In contrast to this example, the Bible also depicts God employing another form of coercive power, incentives. Later in Genesis, in chapter 12, God speaks – using the Hebrew root *aleph-mem-reish* – to another human being. This time, God instructs Abram to leave the land of his birth and the home of his father and to travel to a land that God would reveal to him. After that instruction, God offers the incentive: “I will make you into a great nation and I will bless you and I will expand your name and it will be a blessing. I will bless those who bless you and curse those who curse you, and all the families of the earth will bless themselves by you.”⁶

Through the many laws and narratives of the Torah text, God continues to employ coercive force, both sanctions and incentives, in order to motivate obedience. These range

⁵ Genesis 2:16-17, translated by author

⁶ Genesis 12:2-3, translated by author

from further examples of divine action, such as God's assurance to Jacob that he need not fear traveling to Egypt,⁷ to earthly punishments for violating God's commands, such as adultery warranting the death penalty or excommunication for the crime of incest.⁸

These examples portray one relationship, one understanding, one narrative of law representing only one facet of Jewish history and thought. The rabbis had a different, more conflicted narrative and thus a different understanding of divine coercion. Moses Maimonides, Kabbalists, and the Hasidut movement all had varying relationships with this concept. While this thesis makes no attempt to represent all of Jewish thought in the examples above, thereby ignoring or erasing millennia of scholarship, these Torah examples do represent common connotations of law, that of conflict and violence, a state authorized “imposition of force.” However, as Dr. Robert Cover explains in his article “Nomos and Narrative,” we can also cultivate a relationship with law where it becomes “a system of meaning.” Moreover, Cover demonstrates that the idea of meaningful law has its own precedent in Jewish texts.⁹

In order to explain his concept of jurisgenesis, the creation of legal meaning, Cover compares two seemingly contradictory texts from *Pirkei Avot*, a book of ethical teachings in the Mishnah, as well as a commentary on them from a much later Jewish scholar, Joseph Caro. Herein lies the conflict:

Pirkei Avot 1:2 reads “Shimon the Just was a member of the Great Assembly. He would say: The world stands upon three things – Torah, Temple worship, and acts of loving kindness.” And yet, only 16 *mishnayot* later, Pirkei Avot 1:18 reads: “Rabbi Shimon ben

⁷ Genesis 46:3

⁸ Leviticus 20

⁹ Robert M. Cover, “The Supreme Court, 1982 Term – Forward: Nomos and Narrative,” *Faculty Scholarship Series*, Paper 2705. (1983): 11-12, http://digitalcommons.law.yale.edu/ffs_papers/2705

Gamliel says: “On three things the world stands: judgment, truth, and peace.”

Caro offered a way to reconcile this apparent contradiction. Rabbi Caro explained that, due to living in fundamentally different eras of history, Shimon the Just and Rabbi Shimon ben Gamliel were describing two fundamentally different aspects of existence. Rabbi Shimon ben Gamliel described three forces that manage to sustain the contemporary world, or culture, of the time. However, Shimon the Just described world-initializing forces, ideals necessary to catalyze the creation of a new normative universe. Cover uses this model to describe two patterns of existence, one in which law imposes force in order to maintain universal norms, and another in which law embodies meaning in the creation of universal norms. He calls these patterns imperial and paideic, respectively.

These ideas of paideic and imperial patterns of existence help us articulate the relationships of the rabbis of the 1885 Pittsburgh Platform. The rabbis saw themselves in an ever weakening imperially Jewish world. Jewish ritual law, especially regarding aspects of daily life, had lost their normative value. Thus the rabbis faced a choice: enforce these practices upon the community to maintain them as norms, or create a new normative universe built on meaning. This new norm would require a new narrative, a new pedagogy, and a new direction.¹⁰

The statements of the 1885 Pittsburgh Platform present the framework for a new Jewish narrative and through that narrative, a new direction. Principle five, though its conclusion disavows the Zionist movement, weaves a story where “the modern era of universal culture of heart and intellect” becomes the torchbearer for the Messianic Age, the redemptive realization of Jewish tradition. Hence, by embracing the “postulates of reason”

¹⁰ Cover, “Nomos,” 13.

mentioned in principle six and upholding the values of “justice and righteousness” mentioned in principle eight, Reform Judaism becomes if not “the” then certainly “a” protagonist in this messianic narrative. This narrative promotes and supports the “mission” of Reform Judaism, as defined in principle six: “the establishment of the reign of truth and righteousness among” humanity.

To instill this narrative and further this mission, Reform Judaism needed a new pedagogy, “a common and personal way of being educated into this corpus.”¹¹ To accomplish this, Reform Judaism instituted religious schools. In response to a critic of the Reform movement, Rabbi Gustav Gottheil wrote the following:

Next our schools rise to view...The religious schools are altogether the creation of modern Judaism. They are in great favor with all parents; children love to go to them, and both ministers and congregations bestow all possible care on that part of their work....And, we may ask – ought the 'impression' of religious teaching indeed be measured by more or less attention to the forms of religion alone, or even primarily so, and not also by the *moral* [sic] conduct of the pupils?...So measured, we have no reason to blush for our former pupils, not to confess any failure. With few exceptions they have grown into honorable men and women, faithful in their stations and successful in their lives.¹²

Presumably, one can understand Rabbi Gottheil's use of the adjectives “honorable,” “faithful,” and “successful” through a metric of the ethics of the time. Hence, the graduates that Rabbi Gottheil describes in this text successfully, faithfully, and honorably embody the

¹¹ Ibid.

¹² Gustav Gottheil, “In Defense of Reform,” *Growth of Reform Judaism*, 41.

“universal culture of heart and intellect” referenced in the 1885 Pittsburgh Platform.

In addition to congregational religious schools, Reform Jewish leaders long recognized the need for an American Jewish seminary. In fact, Isaac Mayer Wise envisioned such a college in 1854. This idea would come to fruition in the creation of Hebrew Union College 20 years later. Together, Hebrew Union College and congregational religious schools formed the necessary infrastructure to promote the paideic vision of the authors of the 1885 Pittsburgh Platform.

Thus far, we have noted ways in which the Pittsburgh Platform attempts to reconcile the American and Jewish *nomoi*. Specifically, the text calls out certain traditional Jewish practices as no longer binding. While the rejectionism may speak loudest, especially for a contemporary audience that has begun to re-embrace such rejected practices, we cannot overlook an integral part of the text. Those early Reform rabbis did not outright negate or dismiss the idea that Judaism has the authority to obligate. By identifying certain aspects of Jewish practice as non-binding, as failing to “elevate and sanctify our lives,” the 1885 Pittsburgh Platform affirmed and upheld the binding nature of Judaism's moral and ethical teachings.

The Pittsburgh Platform may appear to make an arbitrary dichotomy of religious practice: ethical on one side and ritual on the other. However, reading it in this fashion would miss the values behind such a distinction. The authors of the Pittsburgh Platform established, or at the very least espoused, criteria by which to judge aspects of Jewish practice. They did not start with a clean slate, choosing only those parts which they felt

interesting or stimulating. Yes, they rejected pieces that they felt fell short, but they also maintained the pieces that met their standards. That verb, “maintain,” demonstrates the nature of their starting point. Rather than “cafeteria Judaism,” the authors of the Platform purport to have run Jewish traditions through a filter, separating the wheat from the chaff. In establishing these principles and precedents, the authors of the 1885 Pittsburgh Platform defined Reform Judaism for several generations.

One negative consequence merits noting, here. The Pittsburgh Platform heavily emphasized the moral and ethical obligations of Judaism. However, it also deemphasized the Jewish texts that flesh out and concretize these obligations without offering any replacement. This lack of structure provides little to no guidance for those endeavoring to fulfill these obligations, offering only elevated abstractions in its place.

The Columbus Platform of 1937

Fifty years after the adoption of the Pittsburgh Platform, the world had changed significantly. In light of these changes, many Reform rabbis felt the need to reconsider and restate the principles of Reform Judaism. In addition to a number of other progressive elements, the Columbus Platform offers a new understanding, or at least a new articulation, of the tension between Obligation and Autonomy. In particular, the Columbus Platform makes the following statements in excerpt:¹³

2. *God*. The heart of Judaism and its chief contribution to religion is the doctrine of the One, living God, who rules the world through law and love...He is the indwelling

¹³ Central Conference of American Rabbis, “The Columbus Platform,” <http://ccarnet.org/rabbis-speak/platforms/guiding-principles-reform-judaism/>

Presence of the world. We worship Him as the Lord of the universe and as our merciful Father.

The Columbus Platform offers a fundamental shift in Reform Judaism's approach to God. The Pittsburgh Platform discussed the divine in the abstract, using terms like “grasp” and “God-idea” as if talking about the philosophical notion of God.¹⁴ In contrast, the Columbus Platform offers not the Reform idea of God but the Reform relationship with God. Future generations will explore this relationship further. In addition, unlike the Pittsburgh Platform, the Columbus Platform connects God with law. No longer is law solely the domain of the “Mosaic” or the “Rabbinic;” now, law issues forth from God.

3. *Man...*He is an active co-worker with God. As a child of God, he is endowed with moral freedom...

In this statement, the Columbus Platform establishes humanity's authority to evaluate on the spectrum of morality all aspects of life, up to and including if not expressly stated, Jewish practice. Curiously, although the authors of the Pittsburgh Platform utilize this authority, never within the text of that document is such authority established.

4. *Torah...*The Torah, both written and oral, enshrines Israel's ever-growing consciousness of God and the moral law. It preserves the historical precedents, sanctions and norms of Jewish life, and seeks to mould it in patterns of goodness and holiness. Being products of historical processes, certain of its laws have lost their binding force with the passage of the conditions that called them forth. But as the depository of permanent spiritual ideals, the Torah remains the dynamic source of the

¹⁴ For a more thorough understanding of Hermann Cohen's Platonist conception of “God-idea,” see Eva Jospe, trans., *Reason and Hope: Selections from the Writings of Hermann Cohen* [Cincinnati: Hebrew Union College Press, 1993].

life of Israel. Each age has the obligation to adapt the teachings of the Torah to its basic needs in consonance with the genius of Judaism.

In this section, the Columbus Platform takes some big leaps from its predecessor. First, we notice the shift from “Bible” to “Torah.” This change from English to Hebrew represents an embrace of the Hebrew language described later in the document. Further, by defining Torah as including both written and oral components, the Columbus Platform reconnects with an essential piece of Judaism, Jewish history, and Jewish endeavor that had previously been rejected as “Rabbinical law.” By including the words “Torah,” “God,” and “law” in the same sentence, this text connects these ideas and builds upon them.

Moreover, this section continues to reframe Jewish practice away from “Rabbinical law” in favor of “Jewish life,” complete with the normative universe that comes with it. This Platform upholds the non-binding character of some laws and practices, but rather than dismissing them for that, the Columbus platform issues a charge to continually adapt Jewish laws and teachings for contemporary life, adding new value and new life to old ideas. This last statement, this charge, represents perhaps the first obligation issued by the Reform movement, certainly the first in its platforms. No longer can we simply reject ideas we deem archaic, nor can we rely on the evaluation of others. Now, we must learn the full body of Jewish teachings, integrating those we deem as good and holy and wrestling with those we do not until we find their goodness and holiness in adaptation.

6. Ethics and Religion. In Judaism religion and morality blend into an insoluble unity...

Whereas the Pittsburgh Platform expressly separated ritual and ethical, the Columbus

Platform begins to reconcile this division, blending the two into an inseparable one.

Transcripts from the CCAR conference which adopted the Columbus Platform reveal a disturbing mechanism. In general, when we imagine casting a vote on a particular resolution, each individual possesses three options: for, against, and abstain. We see these options utilized in the United States Congress today. However, when the time came to vote for the adoption of what would become known as the Columbus Platform, then President of the CCAR said the following: “Those who wish to record their vote in the negative may do so and those who do not report as voting in the negative will be reported as having voted favorably. The Secretary informs me there are 110 members present as the vote is being taken. With 110 members present, five members asked that their vote be recorded in the negative.”¹⁵

To quote Rabbi Dr. Rachel Adler, “Silence is a pretty thin kind of consent.”¹⁶ For context, Adler was commenting on the process by which a bride signals consent at an Orthodox wedding, through silence. Adler goes on to discuss the nature of consent. She juxtaposes “thin” consent, assent via lack of denial, with “thick” consent, “a joyful, well considered yes.”¹⁷ In doing so, she references the “under the mountain” midrash discussed earlier, comparing the Jewish community's eventual consent at the time of Ahashuerus to contemporary society. In both, one must confront a plurality of religious expression. Adler appeals to contemporary Jews to require thick consent, making ever more discomforting the thin consent of the Columbus Platform.

Overall, the Columbus Platform began to walk back the strenuous rejectionism and

¹⁵ *Growth of Reform Judaism*, 100.

¹⁶ Rachel Adler, “Dvar Torah for Carol Bakhos” (paper, HUC, 2011), 1.

¹⁷ *Ibid*, 4.

devotion to autonomy found in the Pittsburgh Platform. However, despite devoting an entire section of the Platform to religious practice, by not address the specific rejections of dress and diet, the Columbus Platform upheld the Pittsburgh Platform on these issues, even by thin consent.

As all paideic normative universes eventually do, the nomos of Reform Judaism swung toward a more imperial mentality, of enforcing and maintaining the norms it had established. Its rejections became prohibitions, leading to a Reform Jewish mentality that, rather than promoting openness and individual choice in Jewish religious expression, it in fact proscribed certain aspects of Jewish practice. “To uncover one's head, to cast off a worn silk *tallis*, to eat *treif*, all felt like assertions of one's independence, though it was really a surrender to the majority culture that defined 'American' as 'uniform.’”¹⁸

A Centenary Perspective – San Francisco, 1976

Over the 40 years since the Columbus Platform, the world changed yet again. World War II and the Holocaust, the establishment of the state of Israel and its continued vitality, and in the United States, the economic rise of the Jewish community, all presented new challenges, new circumstances which Reform Judaism had to face. Rabbi Eugene Borowitz, a chief architect of what would become the next published statement from the CCAR, recalls some of the frictions of the time.

As Reform Judaism entered the 1970s there was a general feeling that the movement needed to rethink its directions. The tremendous enthusiasm generated by the rapid expansion of the number of Reform congregations in the 1950s and '60s had passed.

¹⁸ Levy, *A Vision of Holiness*, 118.

The integration of American Jewry into the society had largely been accomplished, but the style of synagogue life that resulted, which seemed so fresh a few years previous, in the '70s, seemed somewhat stale and in need of invigoration. The crisis in American society, the peril to the State of Israel, the new American appreciation of ethnicity, all seemed to call for a reexamination of Reform Jewish principles.¹⁹

Borowitz describes jarring tensions on issues of freedom and obligation, autonomy and community, universalism and particularism, and more. A vote against performing intermarriage even threatened to rend a split between the factors of the CCAR. In response, then CCAR Robert Kahn proposed the creation of formal statement “of the unity of our movement today,” out of which the Centenary Perspective emerged.²⁰

The previous two CCAR platforms presented lists of statements and principles. The Centenary Perspective breaks with that format, offering a mix of reflection and affirmation. Its first stanza speaks to the challenges of merging the American and Jewish *nomoi*:

It now seems self-evident to most Jews: that our tradition should interact with modern culture; that its forms ought to reflect a contemporary esthetic; that its scholarship needs to be conducted by modern, critical methods; and that change has been and must continue to be a fundamental reality in Jewish life. Moreover, though some still disagree, substantial numbers have also accepted our teachings: that the ethics of universalism implicit in traditional Judaism must be an explicit part of our Jewish duty; that women have full rights to practice Judaism; and that Jewish obligation begins with the informed will of every individual.

¹⁹ Eugene B. Borowitz, *Reform Judaism Today: Book One* [West Orange: Behrman House, 1983], xii.

²⁰ *Ibid*, xiii.

Though it may have been “self-evident” at the time of publication, the conversation regarding Jewish duty and obligation that preceded the Perspective was fraught with tension. Borowitz describes the question of Jewish obligation as “the most explosive issue” with which the committee dealt.²¹ Since the 1950's, rabbis had discussed the idea of creating some form of guidebook for Reform practice. Despite attempts to provide a clear distinction between their suggestions and a code outlining required practice, the idea met with little to no success. Proponents of a guidebook attempted to frame it as a means to prevent anarchy within the movement, an argument which echoes the framing of *mitzvot* as an expression of love. They also suggested such a move would further integrate Reform Judaism into the larger network of Jewish movements. Any attempt met with protests voicing the value of “American” freedom and autonomy; some went so far as to make “freedom of choice the only dogma of their faith.”²²

However they chose to express it, the primary controversy came down to a question of authority: “by what right did any group of Reform Jews tell any other group of Reform Jews what they ought to do?”²³ This very question speaks to the larger narrative within Reform Judaism at the time. The narrative of American freedom and autonomy, that of personal choice, had won out to such an extent that any expression of expectation was heard as an expression of “should” or “ought.” Autonomy, a decidedly non-Kantian version, had become an entrenched value, one that granted individuals the right to follow their conscience.²⁴ From this, conscience became the highest authority; individuals could legislate

²¹ Borowitz, *Reform Judaism Today: Book Three* [New York: Behrman House, 1978], 3.

²² Ibid, 6.

²³ Ibid, 7.

²⁴ Borowitz, *Reform Judaism Today: Book One*, 95.

for themselves.²⁵

However, the narrative changed sometime in the early 1970's, evidenced by the adoption of a CCAR *Shabbat Manual*.²⁶ Somehow, its authors succeeded in differentiating guidance from prescription. At the same time, the opposition came to see that “in a time of spiritual confusion and search, what Reform Jews needed more than an emphasis on their freedom was some counsel as to what their leaders thought they ought to be doing with their Judaism.”²⁷ A debate at a CCAR conference in 1975 further evidenced this shift in narrative. At that conference in Cincinnati, a debate took place over the values of *halakha* and freedom. Many expected this debate truly to cleave the CCAR into two, but it did not happen. Why? The proponents of each side did not set up the values as mutually exclusive. Each recognized an awareness and respect for the other value. Together, they argued for a Judaism that did nothing to curtail the right to individual decision while at the same time asserting the need for structure, for continuity with Jewish tradition.²⁸ They incorporated values from both the American and traditional Jewish *nomoi*. They wanted greater expectations without becoming prescriptive.

The Centenary Perspective provided that necessary expression of expectation. Prior platforms had provided a series of principles, both abstract and concrete. The Centenary Perspective offered beliefs instead, and it did so without requiring or enforcing them upon others. It includes, for the first time, a section on “religious obligations,” one which extends beyond “our ethical obligations” into:

...many other aspects of Jewish living, including: creating a Jewish home centered on

²⁵ Ibid, 96.

²⁶ Borowitz, *Reform Judaism Today: Book Three*, 7.

²⁷ Ibid, 8.

²⁸ Ibid, 9.

family devotion; lifelong study; private prayer and public worship; daily religious observance; keeping the Sabbath and the holy days: celebrating the major events of life; involvement with the synagogues and community; and other activities which promote the survival of the Jewish people and enhance its existence.²⁹

These practices establish a basis of expectation while also encouraging Jews “to exercise their individual autonomy, choosing and creating on the basis of commitment and knowledge.”³⁰ This combination of values established a new narrative which defined what it meant to be a Reform Jew in America.

Since the Centenary Perspective, the CCAR has published two more platforms or statements of principles. The first, offered in recognition of the hundredth anniversary of the World Zionist Congress, dealt exclusively with Israel and Zionism. It does address the topic of obligations between Israel and the Diaspora, articulating expectations of both entities, but the document does little to add to the larger discussion.

The CCAR adopted the second, entitled “A Statement of Principles,” at a convention in 1999. This document introduces a number of ideas, perhaps the most striking of which is that of Hebrew. For more than a century, leaders of Reform Judaism spoke in terms of law, practice, duty, or obligation. With the advent of this document, leaders now spoke in terms of *mitzvot*, *brit*, and *kedushah*. The individual conscience no longer holds the highest authority, as God, Torah, and the community of Israel can now obligate us:

We affirm that the Jewish people is bound to God by an eternal *brit*, covenant, as

²⁹ Central Conference of American Rabbis, “A Centenary Perspective,” <http://ccarnet.org/rabbis-speak/platforms/reform-judaism-centenary-perspective/>

³⁰ Ibid.

reflected in our varied understandings of Creation, Revelation, and Redemption...

We are called by Torah to lifelong study in the home, in the synagogue and in every place where Jews gather to learn and teach. Through Torah study we are called to *mitzvot*, the means by which we make our lives holy...

We are committed to the *mitzvah* of *ahavat Yisrael*, love for the Jewish people, and to *k'lal Yisrael*, the entirety of the community of Israel. Recognizing that *kol Yisrael arevim zeh ba-zeh*, all Jews are responsible for one another, we reach out to all Jews across ideological and geographical boundaries...³¹

Yet still these principles manage to expectations, not prescriptions, and they certainly make no mention of sanctions for failing to meet the expectations. It makes no mention of autonomy, individual conscience, or choice, yet it allows for individual understanding and interpretation. Perhaps the most interesting statement regarding the nature of authority comes in the preamble: “Today, when so many individuals are striving for religious meaning, moral purpose and a sense of community, we believe it is our obligation as rabbis once again to state a set of principles that define Reform Judaism in our own time.” In response to an internal expectation of themselves, the leaders of the movement chose to lead by offering a set of expectations that outline what it means to be a Reform Jew.

The narrative of expectation and obligation has evolved from the coercive force of law in 1885 to an expression of love and care in 1999. The narrative of Judaism's existence evolved from personal satisfaction to a path that offers holiness, meaning, and purpose into our lives. And, the narrative of Jewish practice no longer splits the ritual and the ethical; they

³¹ Central Conference of American Rabbis, “A Statement of Principles,” <http://ccarnet.org/rabbis-speak/platforms/statement-principles-reform-judaism/>

have become reintegrated into a single expression, “sacred obligations.”

In his commentary on the book of Leviticus, scholar Jacob Milgrom discusses a particular quality possessed by H, the author of the Holiness Code, the latter half of the book of Leviticus:

Unique to Israel, rather to H, though, is the subsumption of rituals *and ethics* [sic] under the rubric of holiness. All the pentateuchal codes raise the issue of holiness. Here H takes a giant step forward. Other codes restrict holiness to ritual commandments... whereas H lists ethical prescriptions alongside rituals as determinants of holiness. H also differs from the prophets, but in the other direction. The prophets rank ethics as supreme. YHWH's holiness is characterized mainly by ethics...Indeed, for some of the prophets, Israel's national destiny is determined exclusively by its ethical behavior. H, however, insists on the equal and inseparable role of ritual in the prescription for the holy life.³²

By reintegrating ritual and ethical elements, the 1999 Statement of Principles rediscovers a core narrative of Judaism, one lost in the challenges of adapting to modern times. The challenge now becomes how to disseminate the narrative and build a corresponding *nomos*.

³² Jacob Milgrom, *Leviticus: A Book of Ritual and Ethics* [Minneapolis: Fortress Press, 2004], 215.

Chapter 5: Building a *Nomos* of Obligation

Up to this point, this thesis has explored the philosophical and legal understandings of obligation, reviewed the relevant *nomoi*, and analyzed traditional motivations for validating the obligations of Judaism. Having established this foundation, this chapter will offer a number of facets necessary to the creation of a *nomos* of Jewish obligation. Each will build upon the last. These combined aspects should result in an emergent property, something greater than the sum of its parts, an ethic of obligation.

Despite its reputation as a great corpus of Jewish law, the Talmud in fact offers surprisingly little foundational material regarding the concept of obligation and its transmission. Various pieces speak to educational content or outline, for example, the obligation to pass on the knowledge of Torah and *mitzvot*, but unlike a contemporary parallel, the authors of the Talmud felt no need to validate basic concepts such as obligation or explain the process of its transmission. One text, though, comes the closest. According to BT Sukkah 42a, “a minor who knows to how to shake [the lulav] is subject to the obligation of the lulav; [if he knows how] to wrap himself [with a tallit] he is subject to the obligation of tzitzit; [if he knows how] to look after tefillin, his father must buy tefillin for him.”

This text establishes a direct connection between education and obligation. Through education, it reads, one becomes subject to obligation. The question then becomes, what does it mean to “know” or “to know how”? Here we have an opportunity to choose between maximalist and minimalist approaches. A minimalist approach begins at the literal meaning of the text. Like all translations, the translation above is an interpretation. The authors of the

Soncino edition of the Talmud, from which this translation comes, attempted to adapt the original Hebrew/Aramaic text into colloquial English. They presented a perfectly acceptable translation in good faith of the original text. However, even still, they inserted their own understanding of what the text means. The original text reads:

קטן היודע לנענע חייב בלולב להתעטף חייב בציצית לשמור תפילין אביו לוקח לו תפילין

A more literal translation would render something like this: “A minor* who knows: to shake is obligated in *lulav*; to wrap is obligated in *tzitzit*; to guard tefillin, his father buys for him tefillin.” These two similar translations offer two different understandings of the same text. Does a minor acquire the obligation to perform the *mitzvah* of the *lulav* when that minor knows *to* shake the *lulav*, or when the minor knows *how to* shake the *lulav*?

This question epitomizes the difference between teaching obligation as a norm and teaching obligation as an ethic. The literal, minimalist translation focuses on the norm, on the duty itself. It states that merely recognizing the duty compels one to perform it. In contrast, the more maximal translation, the “how to” translation, goes a step further. Mere recognition of the duty is insufficient; one also requires training, education. Here again we face a choice between minimalist and maximalist interpretations. What exactly does it mean to “know how to”? A minimal perspective would require only the basics, perhaps no more than, in the case of the *lulav*, knowledge of the blessing and the choreography of shaking the *lulav*: east three times, south three times, west three times, north three times, up three times, and down three times. Such learning would register on the lowest rung of Bloom's Taxonomy of learning, a hierarchical system for classifying and evaluating cognitive learning

* Remember that for the rabbinic community, the term “minor” referred to a boy under 13 or a girl under 12 years of age, not someone under 18.

objectives.¹ Taught in this minimal fashion, the *mitzvah* of waving the *lulav* diminishes into a norm or a duty, devoid of any context or narrative to strengthen one's commitment to it. According to this approach, one need not even know the name of the holiday during which one is supposed to perform this duty.

In contrast, a more maximal approach expands “how” to include who, what, where, when, and why. What is this festival of Sukkot? Where does it come from? Who celebrates it, and when do they celebrate it? Why these species, and why these motions? How does this fit into the larger context of Judaism? By including all these questions and more, this approach incorporates narrative and tradition, it builds the relationships involved, it turns duty into obligation.

In 1923, Jewish scholar Franz Rosenzweig wrote an open letter entitled “The Builders” to friend and fellow scholar Martin Buber. Within, Rosenzweig comments on an ideal shared by both Jewish education and *mitzvot*. He juxtaposes learning, the nearly endless expanse of what is knowable, with teaching, that which is personally meaningful and powerful. “Teaching,” Rosenzweig explains, “begins where the subject matter ceases to be subject matter and changes into inner power.”² Similarly, Rosenzweig juxtaposes law and *mitzvot*. “Like teaching, [*mitzvot*] must consciously start where its content stops being content and becomes inner power, our own inner power. Inner power which in turn is added to the substance of law.”³

Rosenzweig promotes a maximalist understanding of the relationship between

¹ Grant Wiggins and Jay McTighe, *Understanding by Design, Expanded 2nd Edition* [Upper Saddle River: Pearson Education, Inc., 2006], 339-340.

² Franz Rosenzweig, “The Builders: Concerning the Law,” *On Jewish Learning* [New York: Schocken Books, 1965, 76.

³ *Ibid*, 85.

education and obligation. Simply recognizing an expectation, a duty, a law, does not create obligation, nor does simple knowledge of its performance create commandment. For Rosenzweig, the transformation lies not in external knowledge but internal experience.⁴ In effect, Rosenzweig concurs with Robert Cover in connecting narrative with interpretive commitment. Rosenzweig argued for validation of obligation not based on intellect but on experience, what he called ability. For him, an internal sense of commandedness became the ultimate deciding factor. Since that internal sense emanates from narrative, this requires an educational system that focuses on narrative. Knowledge of duty, or how to fulfill that duty, does not create obligation on its own. It may be a first step, but it cannot be a last step if the intent is to create an ethic.

A second facet of creating an ethic of obligation focuses on the idea of surrender. As we have demonstrated, the American Jewish *nomos* struggles to reconcile two conflicting understandings of freedom and autonomy. The American understanding, based in Enlightenment ideals, grants the individual ultimate authority. Talmud Bavli Yoma 67b expresses a different perspective:

Our rabbis taught with regard to the verse: “My laws you shall do” (Leviticus 18:4), that the phrase “My laws,” is a reference to matters that, even had they not been written, it would have been logical that they be written. They are the prohibitions against idolatry, prohibited sexual relations, bloodshed, theft, and blasphemy. The phrase “And My rules you shall keep” (Leviticus 18:4), is a reference to matters that Satan and the nations of the world challenge because the reason for these mitzvot are

⁴ Alan T. Levenson, *Modern Jewish Thinkers: An Introduction* [Northvale: Jason Aronson, Inc., 2002], 112.

not known. They are: the prohibitions against eating pork; wearing garments composed of diverse kinds of material; performing the *halitzah* ceremony, the purification ceremony of the leper, and the scapegoat. And lest you say that these have no reason and are meaningless acts, therefore the verse states: “I the Eternal” (Leviticus 18:4), to indicate I the Eternal decreed these statutes and you have no right to doubt it.⁵

That last part – ואין לך רשות להרהר בהן, “you do not have the authority to question/criticize them [laws and rules]” – clearly states a rabbinic understanding of the limited authority of human beings. More than simply challenging American and Enlightenment values, this statement describes a rabbinic relationship between humanity and God. It supports the Jewish narrative of a relationship between unequal partners. This narrative, this relationship, necessarily limits individual autonomy, which many may find troublesome. Today, we can respond to that narrative in a few ways. We can fight it, we can ignore it, or we can surrender to it.

The idea of surrender carries with it many connotations in contemporary society, some positive, some negative, and some so bound up in a belief system that the mere word carries with it overtones of that system. To many, to surrender is to lose, and no one wants to be on the losing side, especially not willingly. The American narrative of a weaker colonial force overcoming the stronger and better resourced imperial oppressor goes against the very idea of surrender. However, surrender can also be a powerful act of growth and even control.⁶

⁵ Author's adaptation of Koren translation

⁶ For more on this, see Brenda S. Cole and Kenneth I. Pargament, “Spiritual Surrender: A Paradoxical Path to Control,” *Integrating Spirituality into Treatment: Resources for Practitioners* [Washington, DC: American

The addiction recovery organization Alcoholics Anonymous famously roots itself in a twelve step program. This program helps addicts come to terms with their addiction, make amends for wrongs they have caused, and develop the physical, mental, and spiritual practices to combat the draw of addiction. The very first step of this program involves surrender: “1. We admitted we were powerless over alcohol - that our lives had become unmanageable.”⁷ For many, this statement of surrender carries with it inescapable overtones of Christian theology. It can echo the “Christian paradox”: “Whoever wishes to save his life will lose it, but whoever loses his life for my sake and that of the Gospel will save it” (Mark 8:35). For many Jews, this idea of surrender is similarly bound up in narratives of violence, making it distasteful and problematic. However, different narratives can transform the concept of surrender into something more relatable and more productive.

For example, Beit T'Shuvah, a residential addiction treatment and recovery center in Los Angeles, combines the Alcoholics Anonymous program with Judaism and Jewish values. It too emphasizes the importance of surrender and the connection between surrender and growth through one of its “Recovery Tasks”: Awakening/Surrender.⁸ At Beit T'Shuvah, surrender means “the recognition that something has to change.” There, surrender possesses a narrative of *t'shuvah*, of return, of “(re)connecting” with something larger than ourselves. In contrast to narratives of abdication or capitulation, Beit T'Shuvah's narrative of surrender teaches that one cannot make the journey of recovery on their own, alone, by sheer force of will. It promotes letting go of illusions and “outmoded, stuck, ways of being.”⁹ At Beit

Psychological Association, 1999], 179-198.

⁷ Alcoholics Anonymous, “The Twelve Steps of Alcoholics Anonymous,” accessed 1/8/17, <http://www.alcoholics-anonymous.org.uk/About-AA/The-12-Steps-of-AA>

⁸ Beit T'Shuvah, *The Beit T'Shuvah Handbook*, accessed January 16, 2017, <http://www.beittshuvah.org/BTSHandbook.pdf>.

⁹ Ibid, 49.

T'Shuvah, surrender is the path to “discovery, recovery and (re)integration” with the self, with God, and with the community.¹⁰

In chapter 2, we discussed Herbert Bronstein's biblical definition of autonomy as a choice against idolatry. In that article, he comments on the dangers of taking autonomy too far:

All idolatry is ultimately reducible to the worship of self, or to an aspect of one's self no longer connected to anything beyond the self. Autonomy, when raised to the level of a religious principle and detached from the limitations imposed by any consideration of other religious values or of any authority beyond itself, is no exception.¹¹

Instilling an ethic of obligation rather than a norm of obligation requires an element of surrender, of letting go of the focus on the individual in lieu of something greater, be it God, community, tradition, or some other articulation. In effect, surrender allows for obligational validation outside of consent theory.

Surrendering autonomy as a religious principle allows for valid obligations based not only on consent but also gratitude, membership, and other metrics. One of those metrics, perhaps a subset of membership theory, bases itself in relationship. The fourteenth century philosopher and poet Yehuda HaLevi, for instance, validated Torah's authority to obligate in relationship, not on God or the text itself. Specifically, for him, “the Torah's authority rested on what he considered the fact that more than 600,000 Israelites at Sinai saw the Torah being given and heard the Ten Commandments.”¹² One could argue that this trust represents a form

¹⁰ Ibid, 93.

¹¹ Herbert Bronstein, “Mitzvah and Autonomy: The Oxymoron of Reform Judaism,” *Tikkun*, Jul/Aug 1999, 43.

¹² Richard Levy, *A Vision of Holiness* [New York: URJ Press, 2005], 92.

of consent. However, such consent could only be classified as implicit rather than the explicit consent required by consent theory. In effect, because he so valued the relationship and saw himself as both part of the chain of tradition and a member of Israel, that the testimony of these 600,000 ancestors outweighed his own.

Jewish philosopher Emmanuel Levinas formulates his entire theory of ethics on the nature of obligation, relationship, and surrender. Each of us, Levinas writes, begins life with an intense focus on our physical needs. This concern only for the self, if left unchecked, can lead to the idolatrous form of autonomy Herbert Bronstein described. However, when our personal physical needs are satisfied, we gain the potential to see the “Face of the other.” For Levinas, seeing the Face of the other expands beyond the physical sense of vision. To see the Face of the other means to perceive another individual “with all of his or her needs and enigmas.”¹³ Looking into the face of another and see them and their needs rather than a reflection of myself and mine finally interrupts our “self-absorption,” our idolatrous autonomy. This in itself is a form of surrender, surrendering focus from ourselves to another. Doing so, this combination of surrender and change of focus obligates us, according to Levinas. Seeing the Face of the Other commands us. “Remarkably, this obligation coincides with [our] own desire to serve another, which grows stronger the more it serves.”¹⁴ The current focus on self, on autonomy, precludes our ability to surrender, inhibiting our ability to see the face of the other, leading to what the *New York Times* called “The Epidemic of Facelessness”.¹⁵

¹³ Ira F. Stone, *Reading Levinas/Reading Talmud: An Introduction* [Philadelphia: The Jewish Publication Society, 1998], 14.

¹⁴ Ibid.

¹⁵ Stephen Marche, “The Epidemic of Facelessness,” *New York Times*, February 14, 2015. https://www.nytimes.com/2015/02/15/opinion/sunday/the-epidemic-of-facelessness.html?_r=0

In the article, author Stephen Marche describes “the dissonance between the world of faces and the world without faces,” the growing abyss separating face to face communication and the faceless, often anonymous communication of social media. This world without faces is experiencing the “Gyges effect, the well-noted disinhibition created by” the anonymity of Internet communication, leading to online viciousness and abuse. In a Levinas-ian way, this world without faces contributes to an “inability to recognize shared humanity with another.” Marche warns that “A world stripped of faces is a world stripped, not merely of ethics, but of the biological and cultural foundations of ethics.” Taken to its extreme, the facelessness and anonymity of the online world demonstrates the dangers of focusing solely on the self, of idolatrous autonomy.

Of course, this paper does not intend to vilify all online communication. Instead, it merely serves as an example. In chapter 2, we discussed the idea that, because America lacks an official state religion, religion in America became a matter of choice. As a consequence, religions in America tended to shift away from their core structures toward almost a retail model, focusing on satisfying their constituents' wants and needs.¹⁶ In order to instill an ethic of obligation, we must surrender the focus on self and promote a focus on relationship: relationship with others, relationship with God, relationship with history and tradition. To accomplish this, we must steep our faith and our practice in narrative. One such narrative exemplifies the importance of this facet.

The Passover Haggadah tells of the Four Children to whom we must tell the Passover tale, one wise, one wicked, one simple, and one unable to ask. The second, the “wicked” or

¹⁶ Daniel M. Bronstein, “Reform Judaism and Mitzvot: A Historical Overview,” *Duties of the Soul: The Role of Commandments in Liberal Judaism* [New York: UAHC Press, 1999], 5.

insolent child, asks, “What is this observance to *you*?”

Since he says “to *you*” and not “to us,” he rejects essentials of our faith; the unity of God and the community of Israel. Thus we respond sharply: “It is because of what God did for *me* when *I* went forth from Egypt – ‘for *me*,’ that is, and not ‘for *you*’...for had you been there, you would not have known redemption.¹⁷

The wicked or insolent child earns the appellation because, as the above response explains, they deny the relationship between themselves, God, and Israel. They failed to surrender their autonomy, their self focus, and as such cannot see themselves as members of a larger community.

The above response, while perhaps a bit harsh for contemporary audiences, speaks to a larger Jewish narrative about the Exodus and revelation at Sinai. Deuteronomy 29:13-14 reads: “I make this covenant, with its sanctions, not with you alone, but with those who are standing here and with those who are not with us here this day.” Here Deuteronomy extends the covenant to all Jews, everywhere. Rabbinic tradition takes it a step farther. Midrash Tanhuma, Nitzavim 3, according to the words of Rabbi Shmuel bar Nachmani, teaches that the souls of all Jews witnessed the creation of the covenant at Sinai, even if their physical bodies were not yet created. This, according to R. Shmuel, explains why Deuteronomy reads “with us” and not “standing” with us. Kabbalists like Isaac Luria take this idea even further. They taught that the lives of all Israel, of every member of the community for all time, overlap in some fashion.¹⁸ The *Reshit Chochmah*, a book of Kabbalah and *musar*, teaches

¹⁷ Herbert Bronstein, ed., *A Passover Haggadah: The New Union Haggadah* [New York: The Central Conference of American Rabbis, 1984], 30.

¹⁸ Yisrael Ben Reuven, *Male and Female He Created Them: A Guide to Classical Torah Commentary on the Roles and Natures of Men and Women* [Passaic: Kislev Press, 1994], Introduction.
<https://books.google.com/books?id=HJ5WCAAAQBAJ&printsec=frontcover#v=onepage&q&f=false>

that “All Jewish souls are bound together like a plaited rope, and are therefore united with no separation.” These ideas all form a narrative of Jewish relationship and community.

Instilling an ethic of obligation requires the celebration of such narratives.

A final facet to the creation of a *nomos* of obligation addresses, perhaps, the elephant in the room. This last section focuses on the idea of personal commitment. It is within this realm that we can change the nature of the discussion from obligation versus autonomy to obligation and autonomy. Professor Michael A. Meyer explains the core problem. Reform Judaism does not tailor its education toward “the inculcation of a revealed and normative body of Jewish law that requires obedience.”¹⁹ Instead, Reform Judaism encourages “the incorporation of personally configured elements of Jewish tradition into individual lives.” This style of education runs the risk of merely presenting alternatives, creating what Meyer calls a “learned” Jew but not an “educated” Jew. Reform Judaism hopes “to influence choice by educating toward core Jewish values and aiming at the creation of Jewish religious lives that stand under the authority of an obligating God.” The difference between “learned” and “educated,” Meyer claims, is commitment.²⁰ This takes different forms for children and adults. For children, “The goal is to draw the child into the circle...to 'instill' a sense of what it is like to live within the circle. Choice then follows after commitment, after 'binding.’”²¹ In other words, Jewish education requires a full *nomos* of Jewish teaching, Jewish practice, Jewish belief, and Jewish story.

While adults can benefit from such an environment, choice often needs to precede

¹⁹ Michael A. Meyer, “Reflections on the 'Educated Jew',” *CCAR Journal: A Reform Jewish Quarterly*, Spring 1999, 8.

²⁰ Ibid, 9.

²¹ Ibid, 13.

commitment. Rabbi Michael Marmur provides such a framework: *neder*.²² The term *neder* traces its roots back to Torah, to Numbers 30:3. It means “a vow freely made,” a solemn oath offered to God. As Marmur points out, though, once made, a *neder* carries consequences. “My private commitment takes on a communal resonance.”²³ Marmur offers the *neder* as a liberal Jewish praxis, a ritual commitment to Jewish practice. These would be offered freely, with no “*neder* police, checking up on my performance.”²⁴ This practice, both individual and communal, could be tied to the festival of Shavuot, a holiday celebrating and renewing Israel's covenant with God. *Nederim* combine aspects of narrative, autonomy, relationship, surrender, and commitment. For many, they could provide an entryway to the creation of something larger, a culture of investment, a *nomos* of obligation.

Each of these facets, along with all the many theories and arguments discussed in the course of this thesis, lay the groundwork for the creation of a *nomos* that embraces an ethic of obligation. They provide guidelines and metrics for imaging, creating, evaluating cultures. However, they are not meant to provide direct curricula, nor are they intended to offer ammunition for persuading others to this thinking. To quote Rabbi Eugene Borowitz, “Most people are more shaped by doing and subsequent reflection than by working out a mature theology of duty by which they then seek to live.”²⁵

²² Michael Marmur, “Toward a New Jewish Theological Lexicon,” *Jewish Theology in Our Time: A New Generation Explores the Foundations and Future of Jewish Belief* [Woodstock: Jewish Lights Publishing, 2010].

²³ Ibid, 88.

²⁴ Ibid.

²⁵ Eugene B. Borowitz, *Studies in the Meaning of Judaism* [Philadelphia: The Jewish Publication Society, 2002], 429.

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