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Consent of the Governed in the Hebrew Bible

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Abstract: This article analyzes the concept of consent of the governed in the Hebrew Bible with special reference to the covenant on Mount Sinai. The author recognizes consent as a source of legitimate authority and deals in a sophisticated way with problems that have troubled later consent theories: whether parties actually consent; whether consent is voluntary; the information needed for informed consent; the issue of framing the issue so as to present the subjects with fair options; the problem of dissent; the impact of a social compact on non-participants and future generations; and the question of whether the compact is conditional or absolute. A remarkable feature of the Sinai episode is its similarity to the original position in Rawls' Theory of Justice: the Israelites in the wilderness at Sinai, like Rawlsian subjects behind the veil of ignorance, make fundamental choices while shielded from knowledge as to their future positions or endowments.

* * *

This article analyzes biblical covenant narratives – stories in which people enter into fundamental social compacts. I argue that these narratives form part of an extended analysis of political ideas – a political philosophy – which rivals in sophistication, and probably predates, the theories developed by Plato and Aristotle in the Greek world.

As outlined in prior work, the Garden of Eden story serves as a prolegomenon to the Bible's political theory and also offers an impressive analysis of the question of political obligation – why people are required to obey their political rulers. The stories of

the Dark Age after the expulsion of Adam and Eve address the question of anarchy: whether it is possible for human beings to lead a good and decent life in the absence of government and law (the author's answer is no).¹ The history of the patriarchs and matriarchs from the book of Genesis address the nature, source and legitimacy of power in families. In the first fourteen chapters of the book of Exodus, the author demonstrates that political organization is the only feasible means for governing groups of substantial size; argues that nationhood is preferable to nomadism, dependency, and slavery as a form of political organization; identifies self-governance as an element of nationhood; highlights the factors of identity, necessity, leadership, and political action as conditions for self-governance; and investigates the nature and attributes of leadership.

The events at and around Mount Sinai set up a new issue for analysis: revelation, defined as cases where God discloses information to human beings. Revelation is valuable to political theory because of its potential to impose unbounded and unquestioned obligations; it is dangerous for the same reason. In prior work I identify strategies which the author employs to constrain the destabilizing potential of revelation: embedding, which restricts God's ability to change his mind; authentication, which tests the validity of revelations; and access rules which privilege political elites as recipients of God's word.

We now turn to another important basis for authority: the consent of the governed. This topic has already been treated in rudimentary form in the Eden narrative, where Adam and Eve can in a sense be said to consent to living under God's rule by accepting the benefits of life in the garden. The author develops the idea further in the covenant

¹ I use the term "author" as a conventional way of denoting the creator of the biblical narratives without implying anything in particular about the identity of this source.

narratives.² In three of these narratives—those describing God’s promises to Noah and his companions on Mount Ararat, to Abraham in Canaan, and to Moses and the Israelites on Mount Sinai—the author presents his subjects as entering into agreements involving increasingly specific conceptions of government and law.³ These agreements are of the sort that modern political philosophy refers to as social compacts. In this respect, the author’s theory anticipates the work of political philosophers such as Hobbes, Locke, Rousseau, and Rawls, who also emphasize, in different ways, notions of the consent of the governed as fundamental to the legitimacy of political authority.

Theory

Consent to a social compact under conditions that ensure the fairness of the decision generates four powerful arguments for obligation.

1. Because the subject has consented to the arrangement, it can be inferred that he considers himself better off accepting the obligations of the compact than he would be under any available alternative arrangement. Accordingly, so long as the agenda is fair – so long as the subject is given an appropriate set of options – it seems consistent with the

² The biblical concept of covenant has generated an enormous literature. Contributions include Dilbert Hillers, *Covenant: The History of a Biblical Idea* (Baltimore: Johns Hopkins University Press, 1969); Daniel J. Elazar, *Covenant and Polity in Biblical Israel: Biblical Foundations and Jewish Expressions* (Covenant Tradition in Politics 1; New Brunswick, N.J.: Transaction Publishers, 1995); Martin J. Buss, “The Covenant Theme in Historical Perspective,” *VT* 16 (1966): 502–4; Erhard Gerstenberger, “Covenant and Commandment,” *JBL* 84 (1965): 38–51; James Muilenburg, “The Form and Structure of the Covenantal Formulations,” *VT* 9 (1959): 347–65; Ernest W. Nicholson, *God and His People: Covenant Theology in the Old Testament* (Oxford: Oxford University Press, 1986); Moshe Weinfeld, “The Covenant of Grant in the Old Testament and the Ancient Near East,” *JAOS* 90 (1970): 184–203; David Noel Freedman, “Divine Commitment and Human Obligation: The Covenant Theme,” *Int* 18 (1964): 419–31; Rolf Rendtorff, “‘Covenant’ as a Structuring Concept in Genesis and Exodus,” *JBL* 108 (1989): 385–93. On parallels with Bronze Age diplomatic practice, see George E. Mendenhall and Gary A. Herion, “Covenant,” *ABD* 1:1179–1202; George E. Mendenhall, “Law and Covenant in Israel and the Ancient Near East,” *BA* 17 (1954): 26–44, 49–76; Dennis J. McCarthy, “Three Covenants in Genesis,” *CBQ* 26 (1964): 179–89.

³ Other biblical covenants include 2 Sam 7:4–16; Deut 29–30; Josh 8:32–35; 24; Jer 31:31–40.

person's *individual welfare* and best interests that he should be held to the terms of the bargain at future times.

2. Because the subject has agreed to a government that can exercise coercion in appropriate cases, it appears to be much less of an intrusion on that person's *autonomy* when the force is actually applied. This is so even if, at the time of enforcement, the individual objects to the actions being taken.

3. If the consent is given under conditions of mutuality, then others have given their own consent in *reliance* on the subject also submitting to the authority of the state. That reliance would be frustrated if the subject were allowed to renege on a promise once given. Because the subject knows of this reliance at the time he consents, it is appropriate that he be held to the terms of his bargain *ex post*.

4. Consent in social contract theories is presented as unanimous. So long as a suitable set of options is presented, the arrangements that result from the social compact enjoying the unanimous consent of the parties should satisfy the economic criterion for *welfare maximization* that no one can be made better off without making someone else worse off.

* * *

Despite these important advantages, consent theory also faces significant obstacles:

1. People rarely manifest express consent to government and never do so in a grand assembly involving everyone else in the society. It is for this reason that consent theories become unconvincing fictions to the extent that they suggest that a moment of universal agreement ever occurred.

2. Even when people do manifest consent, their actions may not be truly voluntary. If they know they are being observed by a powerful party who might be displeased if they withhold their consent, they may decide to manifest consent to a proposal even though they do not really agree.

3. Consent is not meaningful if the person who is manifesting it does not have a full understanding of his options. If, with complete information, he would withhold consent, then the consent given under partial information is not a full, fair, and informed agreement to the terms on offer.

4. Consent is not meaningful if the options presented to the subject are less desirable than some other option that is not presented. The problem here is that if the decision set is restricted to undesirable choices, then the fact that subjects consent to one rather than another is not very informative (when the armed robber says “your money or your life,” you do not evidence a wish to give your cash to a complete stranger when you select the former).⁴

5. What about people who dissent from the compact? It is difficult to justify imposing a social compact on those who do not consent. It is not enough that most or even the vast majority of people have consented, since the dissenter has not agreed to be bound by the decision of a majority. Any decision rule short of unanimity thus raises a problem of coercion.

6. Consent theory must also address the problem of those who do not participate in the convention or those who are born after the convention has occurred. Even if it is appropriate to impose the coercive force of government on people who have actually

⁴ The American comedian Jack Benny, who was notorious for being cheap, famously responded “I’m thinking.”

consented, how is it legitimate to extend the coercion to people who were not given the opportunity to choose?

7. Consent theory must address the issue of whether consent is given absolutely and for all time or is subject to conditions that, if they occur, will release the subject from his obligations.

* * *

The challenge for any consent theory—including the consent theory found in the Bible—is to devise an account that achieves the benefits of consent in terms of justifying political obligation while avoiding or mitigating the objections and limitations to the theory. The biblical author’s consent theory is no exception. Like other consent theorists, the author seeks to establish a strong norm of obligation and, in the process, to address the various objections and limitations that have troubled later thinkers.

The setup of the biblical covenants differs, of course, from the situation facing modern philosophical accounts. One distinction is that the Bible purports to be *history*. Since the author is the one writing the history, he can solve some of the problems of consent theory by *ipse dixit*: he can assert as historical fact circumstances that the authors of later philosophical works had to establish by logic or argument. An example is the question whether the parties to the social compact actually consent to its terms. For the biblical author, the problem can be addressed by the simple expedient of declaring that everyone agreed.

A more fundamental difference is that the biblical covenants usually concern arrangements between man and God, not man and man. The presence of God as a party to these agreements affects the analysis because of the vast difference in status between the

counterparties. For example, it could be seen as insulting to the dignity of God to portray his human counterparties as having the right to reject his proposals. Being divine, God should not have to ask for the approval of any human being; he should simply announce his judgment and expect humans to comply. This consideration creates a difficulty for the author because he needs to tread carefully around the proposition that human beings have the ability to bargain with God.

While these are important differences, they should not be overstated. The author also wanted to *persuade* his readers. Accordingly the author wants the covenants to appear reasonable when judged from a purely human perspective. For this reason, the author's responses to problems in the biblical setup often anticipate arguments found in the modern philosophical tradition.

Noah

This story in Gen 8, the first of the great biblical covenant narratives, is appropriately also the most fundamental. At issue is the basic idea of government and law. Noah and his companions are refugees from a Dark Age in which the absence of government and law had allowed society to descend in a horrifying spiral of violence and retribution. Recognizing that if he does not intervene, the cycle will only repeat itself the next time around, God offers human beings a deal. He will never again destroy the world, but they must agree to live under government and law. That agreement is symbolized by two obligations: (a) the rule against eating meat with the lifeblood still in it, a direct parallel to the rule against eating the forbidden fruit that symbolizes God's rule in the garden of Eden; and (b) the rule on spilling of blood, which is a primitive version of the *talion* law designed to stop the cycle of violence that had doomed the prior dispensation.

By accepting this deal Noah and his companions seal the primal social compact—the basic agreement to live under government and law and not in anarchy.⁵

The story of Noah’s covenant raises a number of issues for a consent theory of obligation:

1. Even though the counterparties do not manifest express consent to this covenant, the author suggests that consent did in fact occur. It is true that there is no bargaining. God simply announces the covenant and all of its terms. Presumably this is due to the dignitary concerns mentioned above: it would not do to suggest that Noah had the right to reject God’s proposal. Yet the overall tenor of the narrative suggests that Noah and the others actually consented to the arrangement. God himself refers to the transaction as a “covenant,” a term that usually implies a mutual exchange of promises. Noah does not object to the deal that God announces. And the covenant occurs around a ritual of sacrifice that throughout the Bible expresses acceptance of communal obligations.

2. The author argues, moreover, that Noah’s consent was given freely and of his own volition. It is true that Noah is in a weak bargaining position. He is dealing with an all-powerful and rather irascible deity who has just destroyed the world—not exactly a situation where one should quibble about the fine print. Noah arguably had little choice but to agree. Nevertheless, Noah initiates the sacrifice: it is Noah who calls God to parlay, not the other way around. This detail suggests that Noah’s consent to the covenant is freely and voluntarily given. The terms of the covenant reinforce this inference, since they so heavily favor Noah and his companions. Noah and his family are protected

⁵ Technically God’s counterparties include all living air-breathing beings since all such life benefits from God’s promise never again to destroy the world with a flood.

against the world ever being destroyed again and are given blessings of fertility and prosperity to boot. Who could object to that? The obligations God demands in exchange are either not onerous or in the people's long-range interest. It is therefore easy to conclude that consent to this covenant is volitional and not made under conditions of duress.

3. The author also argues that Noah's covenant is made under appropriate knowledge conditions. As refugees from the Dark Age, Noah and his family are aware that social conditions had descended into chaos in a system without government and law. They do not know exactly what the world will be like *with* government and law, but they may remember stories about the garden of Eden and the blissful harmony that was manifested in that setting. Even if they do not remember that far back, they still have reason to believe that the new dispensation will be better than the old one since it could hardly be worse. The setup, moreover, argues that the participants have an ability to judge the future. They are on top of a mountain—apparently the highest one around, given that this is where the ark washed up—and they can look down at the lands cleansed by the flood—lands they will soon be colonizing. Symbolically, they have a vision of the future that informs and substantiates their agreement to the new dispensation. Thus they have the basic data necessary to assess the matter on offer from God and to make a well-informed decision about whether to accept the proposal.

4. The narrative argues that Noah and his companions have a fair set of options. It is true that God defines the question at issue without input from Noah, but this limitation does not interfere with the generality of the covenant because of the nature of the issue. Noah and his family choose between the old dispensation of anarchy and the new one of

government and law. Their selection of government and law does not in any way determine what form of government should be adopted. Noah is not presented with a set of less-than-optimal choices. Thus, God's control of the agenda does not unfairly skew the outcome.⁶

5. The author argues that consent was unanimous.

(a) In part, he does this through *ipse dixit*: he simply tells the story in such a way as to suggest that there was no dissent.

(b) Because God's offer never to destroy the world was so generous and the terms he required in exchange were so reasonable, most people would consent because the new dispensation is, in general, so much better than the prior one.

(c) Unanimity is also assured by the knowledge conditions available to the participants. Recall that the covenant takes place just after Noah and his companions have left the ark. As we have seen, they know what life was like under anarchy (not good), and they have a basis for predicting what life will be like under government and law (better). They are in possession of all the general knowledge they need to make an informed decision. But they lack other information that will be important in the world to come. They have no possessions, no land, no flocks—no entitlements of any sort. All of the endowments that people acquired during the Dark Age are gone: there are no cities, no great families, no specialized crafts or guilds. Later on, of course, Noah's descendants will obtain different positions in the world—as illustrated by Noah's judgment in response to Ham's transgression, which establishes a hierarchy among Noah's sons. But

⁶ This is essentially the same argument Locke advances when he describes his subjects as “barely agreeing to *unite into one Political Society*, which is *all the Compact that is, or needs be, between the Individuals, that enter into, or make up a Common-wealth.*” Locke, *Second Treatise of Government*, § 99.

at the time of Noah’s covenant, no such hierarchies exist. The conditions on Mount Ararat thus satisfy the “veil of ignorance” criterion, famously set forth in the work of the American political philosopher John Rawls, which holds that fair principles of justice are those that would be adopted by decision makers who act with general knowledge of the world but without knowledge of their personal endowments.⁷ The author, in other words, has crafted, in narrative form, the essential conditions for fair decision that were formalized only in the last century by Rawls and others.⁸

6. Even if all those present voluntarily consent to the covenant, there remains the question whether future generations are obligated. How can the consent of those present bind those who are yet to be born?

(a) The author has a simple answer to this problem. Unlike modern philosophers, who generally reject the idea that the consent of an ancestor can obligate his descendants, the author believes that obligations *can* run with the generations. He is explicit on this point: the obligations bind not only Noah but also “your descendants after you” (Gen 9:9). In imposing the obligations on later generations, the author draws on well-accepted legal principles of his time that recognized that in certain circumstances the acts of an ancestor can legally bind descendants (e.g., Exod 20:5; 34:7; Num 14:18; Deut 5:9; but see Deut 24:16). The assumption that Noah’s covenant binds later generations relieves the author of the inconvenience of attributing some form of consent to people who were not present at the time the covenant was adopted.

⁷ See Rawls, *A Theory of Justice*.

⁸ The knowledge conditions on Ararat also arguably satisfy Hare’s criterion of universalizability, under which moral judgments ought not to refer to any particular individual, time, or spatial location. See R. M. Hare, *Freedom and Reason* (Oxford: Oxford University Press, 1963).

(b) As a backup, the author suggests that later generations do consent by ratifying the covenant. He does this through the detail of the rainbow.⁹ Human beings who see a rainbow will remember the covenant Noah made with God. The presence of the rainbow operates for human beings, as for God, as a form of covenant renewal in which the obligations imposed and accepted on Mount Ararat are reaffirmed for each new generation. Because rainbows are frequent phenomena that everyone observes, the narrative suggests that the obligations they symbolize are binding in perpetuity.¹⁰

7. Finally, the author addresses the issue of conditionality. All biblical covenants are unconditional on the human side: the people's obligations are binding unless the deity elects to release them. But the same is not necessarily true for God's promises. The binding effect of these promises may depend on whether the human counterparty has satisfied some condition precedent to God's obligation. In the case of Noah's covenant, however, the author makes it clear that God's performance is unconditional: it is an "everlasting" obligation (Gen 9:16). The reason for the lack of conditions has to do with God's assessment that "every inclination of the thoughts of [man's] heart was only evil all the time" (Gen 6:5). Since human beings are fundamentally flawed, there is nothing they can do that will disappoint God so deeply that he will consider it necessary to destroy the world again.

⁹ See Laurence A. Turner, "The Rainbow as the Sign of the Covenant in Genesis IX 11–13," *VT* 43 (1993): 119–24.

¹⁰ There is no basis to consider that the symbol of the rainbow represents God's war bow or any other specific object (for criticism of the "war bow" hypothesis, see Turner, "The Rainbow as the Sign of the Covenant," 119–24). The rainbow is used in the narrative simply because it is ubiquitous in human experience and has desirable line-of-sight attributes to signify the generality of the covenant promises.

Abraham

God's covenant with Abraham is set forth in Gen 15.¹¹ God appears to Abraham at an undisclosed location in the land of Canaan and tells him not to fear (Gen 15:1). Abraham complains that he is childless and that a servant will inherit his estate (Gen 15:2–3). God foretells that Abraham will have a son and that his descendants will be as numerous as the stars in the heavens (Gen 15:4–5). God then reintroduces himself as the deity who brought Abraham out of Ur of the Chaldees to take possession of the land of Canaan (Gen 15:7). Abraham again complains, this time seeking reassurance that he will in fact receive the promised territories (Gen 15:8). God instructs Abraham to get some animals, most of which Abraham cuts in half (Gen 15:9–10). Abraham falls asleep, whereupon God tells him of the Israelites' future: their captivity in Egypt, their escape, and their eventual return to Canaan (Gen 15:12–16). A smoking firepot with a blazing torch appears and passes between the severed animals while God pronounces a conveyance granting the land of Canaan to Abraham and his descendants (Gen 15:17–21).

This narrative establishes a different covenant than the one just discussed. The covenant with Noah committed human beings to live under government and law. Here, the author, in typically systematic fashion, imposes a second, more specific set of obligations. The covenant here is not with all living creatures or even all human beings. This covenant is limited to one particular group—Abraham and his descendants. This

¹¹ For discussion of this and related texts, see Keith H. Essex, "The Abrahamic Covenant," *MSJ* 10 (1999): 191–212; Ronald E. Clements, *Abraham and David: Genesis 15 and Its Meaning for Israelite Tradition* (SBT II/5; London: SCM, 1967).

compact is symbolized in a deal in which Abraham promises to obey and be faithful to God and God delivers Abraham the promised land and promises to give him many descendants. The covenant is a basic statement of political and ethnic solidarity among Abraham and his descendants with Sarah.

Several details of this covenant are notable:

1. First, like the covenant with Noah, this narrative does not report that Abraham consents to the covenant, and presumably for the same reason: it would be insulting to God's dignity to acknowledge that Abraham had the power to reject it. But Abraham's behavior indicates that he manifests acceptance. Abraham's silence after hearing the terms of the deal can be taken to indicate consent. Since he is not afraid to speak up to God—here or elsewhere—we may assume he could have complained if he was not satisfied.

2. The author argues that Abraham's consent was voluntary. Throughout the Bible Abraham is the loyal servant of God. In the Akedah episode, he willingly goes along with God's instructions to sacrifice his own son. Given Abraham's character and relationship with God, it is inconceivable that he would not willingly consent to this covenant. Volition is also indicated by the fact that Abraham engages in a dialogue with God about both parts of the covenant, the promise of an heir and the promise of the land. He demands assurances as to both, and gets them. The terms of God's promises, moreover, are so favorable to Abraham that his volition cannot seriously be questioned. Who, after all, would be heard to complain when, wandering around with no property and no heir, he is informed that he will found a great nation and possess a wonderful land?

3. The author argues that Abraham is equipped with the information he needs to give informed consent. God takes pains to provide Abraham with all the necessary data, not only about the past (God's bringing Abraham out of Ur of the Chaldees) but also the future (the sojourn in Egypt, the oppression, the exodus, and the conquest of the promised land). As to the promise of descendants, Abraham knows the pain of childlessness—it is the first thing on his mind when God appears to him—and also can anticipate the joy of having heirs. Similarly, with respect to the promise of the land, since he has seen the land of Canaan firsthand, he can assess its worth and compare it with the qualities of other territories. Thus he has the requisite basis on which to make a decision, both with respect to God's promise of a patrimony and to God's promise of the land.

4. The author provides two arguments for the proposition that Abraham is presented with fair options.

(a) First, the decision is basic. What is in issue is whether a particular people should come together *as* a people—whether they should make common cause in solidarity with one another. Abraham is not here asked to decide on any particular *form* of government or law—that will come later, in the covenant at Sinai. Abraham is asked simply to agree that he will become the father of a nation and proprietor of the promised land and that in return he will worship and be loyal to God. Because the decision is basic, it does not represent an unfair decision between less desirable choices that leaves a more desirable option off the table.

(b) Second, the author argues that the options presented to Abraham are fair because Abraham affirmatively influences the content of the deal. Because Abraham, the party receiving the promises, participates in shaping the agenda, the author establishes

that the subject matter of the covenant is one that offers genuine value to the human counterparty.

5. The author establishes that consent to this covenant was unanimous:

(a) This proposition follows trivially from the fact that only Abraham is involved. Abraham cannot dissent from his own decision.

(b) The author also argues that this covenant is fair to all affected parties, so that unanimity could be inferred if parties other than Abraham participated under appropriate knowledge conditions. Abraham, who has been promised a great patrimony, is well situated to assess what actions and decisions will best serve all of his descendants. The result is the same as that which would be generated if Abraham's descendants themselves were parties to the decision behind a veil of ignorance as to their individual characteristics. For example, if Jacob and Esau had been parties to this covenant, they would each have agreed to its terms if they had been shielded from information about their share in Abraham's patrimony.

6. The author argues that Abraham has the power to bind subsequent generations and, therefore, that the promises Abraham makes to God will also control his descendants. As a backup, the author provides later narratives in which God renews his promises with Abraham's son Isaac (Gen 26:3) and again with Isaac's son Jacob (Gen 35:12).

7. Unlike the covenant with Noah, the deal with Abraham is conditional on God's side. Although God does not make the condition explicit, it is evident that his promises are revocable if Abraham or his descendants prove disloyal. Even though this possibility

is only theoretical as regards Abraham, given that patriarch's notable obedience to God's commands, the same cannot be said for some of his descendants.

Moses

We now turn to the signature covenant in the Hebrew Bible: the compact at Sinai.¹² Noah's covenant represents a basic commitment of human beings to government and law; Abraham's more specifically commits the Israelites to ethnic solidarity and fidelity to God. The Mosaic covenant is narrower still: it represents agreement by the Israelites to a particular set of laws. Notable features of the Sinai covenant include the following:

1. Unlike the covenants with Noah and Abraham, the people at Sinai repeatedly and unequivocally manifest their acceptance of the covenant and also engage in rituals that signify acceptance of the obligations of the covenant. It is not necessary to infer a manifestation of consent from the circumstances; the author is explicit that the people agree to its terms.

2. The issue of volition is somewhat more difficult. The people accept the obligations of covenant, but they do so in close proximity to an awesome and unpredictable deity who might not have appreciated a different response. Jewish tradition has debated this question; some authorities conclude that the Israelites had no choice because God would have destroyed them if they refused; others argue that the covenant between God and the people was truly mutual.¹³ The better view is that the consent was volitional. The author suggests volition in a number of details: the people's enthusiasm

¹² See Elazar, *Covenant and Polity in Biblical Israel*, 163 (Sinai is the "paradigmatic constitutional covenant" in the Hebrew Bible).

¹³ See Elazar, *Covenant and Polity in Biblical Israel*, 171.

and eagerness to see God, even at risk to their lives; the fact that here, unlike the other covenants just discussed, they voice consent explicitly; and the evident undesirability of the alternative, which is to remain indefinitely in the state of nomadism rather than moving forward toward the blessings of living within an established territory.

3. The Sinai narrative also deals with the issue of the information set available to the parties.

(a) In Exod 19:7–8 the people are not informed about the laws and institutions that they are asked to accept; in this respect they might be seen as being asked to buy a pig in a poke. But the Israelites have some degree of information with which to make their choice. God instructs Moses to remind them that “you yourselves have seen what I did to Egypt, and how I carried you on eagles’ wings and brought you to myself” (Exod 19:4). The reason for this memorandum is to equip the people with the pertinent information that the God they are dealing with is a powerful deity who cares about them and who can be trusted to act in their best interests and to perform his promises.

(b) The information set available to the participants in the other versions of the Sinai covenant is much greater. Like a financial prospectus that bombards investors with so much data that they cannot separate the forest from the trees, the Israelites are supplied with a mind-numbing plethora of laws, rules, and regulations. Many a *bar mitzvah* boy has struggled through Torah portions covering these texts. Yet God also helpfully provides an executive summary, in the form of the Ten Commandments, to which the readers can refer if they do not wish to parse out all the provisions on the priestly garments. At least the detailed information is there if the decision-maker wishes to refer

to it. Overall the information set is sufficient to support a knowing, conscious, and deliberate consent.

4. The author also defends the covenant at Sinai against the charge of agenda manipulation. Two fundamental decisions have been made already at this point: to accept government and law (the covenant with Noah) and to join in solidarity with one another and to submit to the authority of Israel's God (the covenant with Abraham). The Sinai covenant addresses the next question by asking what form government should take. It offers the Israelites a choice of two models: nomadism, which has proven to be unsatisfactory, or nationhood, symbolized by the opportunity to accept national laws coupled with a bonded promise to deliver control over territory in the form of the promised land. This latter opportunity is exactly what they should aspire to and accordingly is not simply one of a set of undesirable alternatives.

It is true, of course, that certain versions of the covenant at Sinai do more than give the Israelites the general form of laws; they are a turnkey deal in which a mass of detailed laws are acquired on a wholesale basis. To this extent, agenda setting could be problematic for consent theory because it is possible that some other set of laws would be better still than those on offer. The author addresses this problem with the detail about Moses' visits to God on the top of the mountain. If Moses was simply going to receive a set of laws, he would not need to remain as God's guest for forty days and forty nights. God could give Moses the tablets and send him on his way. Perhaps God was being a good host to an honored guest in keeping Moses on the mountain for so long. More likely, the detail of Moses' stays on Mount Sinai reflects the suggestion—one that cannot quite be made explicit out of respect for the dignity of God—that Moses was working

with God to develop the laws and regulations that he later brings down to the people. If Moses did provide input to God with respect to the formulation of the laws, this would tend to substantiate the inference that the choice given to the Israelites represents a good option among possible decision sets.

5. The Sinai covenant deals with the issue of unanimity:

(a) The author simply asserts that the decision was unanimous. The people “all responded together” in approving the deal (Exod 19:8; 24:7). In contrast to the frequent occurrence of murmuring and dissatisfaction among the people elsewhere in the wilderness wanderings, the people never manifest dissent or disagreement with the fundamental terms of the deal on offer at Sinai.

(b) The author suggests that the terms of the covenant were so beneficial as to generate a unanimous response (the argument is a bit circular here, however: the author suggests both that the people’s unanimous approval of the covenant is evidence that its terms are beneficial and also that the beneficial nature of the terms is evidence that the people were unanimous).

(c) The author argues that the covenant terms are fair to all concerned, so that unanimity can be expected. As in the case with the covenant with Noah, he does this by controlling the information available to the participants regarding their individual endowments. Having fled Egypt under cover of darkness, the Israelites have essentially no possessions. They have no lands, houses, or other fixed assets. All their physical requirements are met by a communistic system of distribution in which everyone receives food and water according to his needs. Whatever clothes they brought with them would have been of scant value by the time they reached Sinai. They do have gold taken from

neighbors, but this is of no use in the desert. They know their tribal backgrounds, but family affiliation has faded in importance. The blessing of Jacob, if not forgotten, would have had little meaning in the wilderness—and, to the degree that it conferred leadership on the tribe of Judah, had apparently been abrogated by the commission of Moses, a Levite, as the Israelite champion.

At the same time, the tribes know nothing about the allotments that await them in the promised land. They do not know if their properties will be near the sea or inland; if their lands will be fertile or not; if they will have a large territory or a small one—or even no territory at all (the fate that awaits the tribe of Levi). Those questions will be answered later, but in the book of Exodus the Israelites are uninformed. Their concept of the promised land is of a unitary place, a land flowing with milk and honey—not a tract subdivided by a divine developer with deeds and plats filed in some celestial hall of records. The setup of the Sinai narrative thus guarantees the fairness of the decision being made and does so in a way that is astonishingly similar to Rawls' formulation of the veil-of-ignorance idea more than two thousand years later. Because the Israelites are shielded from knowledge about their individual endowments, they have every reason to agree to an arrangement that is fair to all.

6. In the Sinai covenant as elsewhere, the author must confront the problem of persons who do not have the opportunity to consent. Two dimensions of this problem are pertinent.

(a) First is the question of Israelites who are present at Sinai but who do not participate in the covenant. The problem arises because of the political implications of recognizing all Israelites as entitled to participate. On the one hand, including all the

Israelites reinforces the argument for the legitimacy of the decision. On the other hand, including everyone endorses a democratic decision process with which the author may not have been comfortable. Here, uncharacteristically, the author does not endorse a single position but rather supplies three different franchise rules:

(i) In the first model all the Israelites consent to the covenant, either explicitly or by implication. They offer explicit consent twice, with slight variation: once in response to Moses' oral recitation of the law (Exod 24:3) and once in response to Moses' reading of the written law (Exod 24:7). In each case, the people use a legalistic form of words, committing themselves to obey everything the Lord has said. This verbal formulation makes it clear that the people are accepting not just some of what they hear but all of it and also that the people acknowledge that they have heard and understood the law that is read to them (the difference between these two instances may be that the acceptance of the oral recitation allows for greater flexibility in adapting the law to changing circumstances). The people also signal consent by participating in a ceremony of covenant ratification. Exodus 24:4-8 reports a ritual in which the blood of the sacrificed animals is sprinkled half on the altar and half on the people, a gesture symbolizing that the people participate directly in the covenant. Overall, this model is consistent with a form of government in which the people have a substantial degree of participation in government.

(ii) In a second model the people consent through representatives. This is reflected in Exod 19:7-8, where Moses brings God's words to the elders for their consent. Consent through representatives is also found in Exod 24:10-11, a fragment

describing a ritual involving Moses, Aaron, Nadab and Abihu, and seventy elders.¹⁴ Here, only the political elites get to ratify the covenant as representatives of the people. This model is consistent with an aristocratic form of government in which elites make decisions for everyone.

(iii) A third model restricts participation to a single leader acting as representative for all. The events after the golden calf episode code this model. God in Exod 34 calls Moses to the mountain and makes it clear that only Moses himself is to participate: “*no one is to come with you* or be seen anywhere on the mountain; not even the flocks and herds may graze in front of the mountain” (Exod 34:3). God tells Moses, “I am making a covenant *with you*” (Exod 34:10)—not with the Israelites as a whole, or the elders, or even Aaron, but with Moses alone. The exclusivity favoring Moses is reinforced by other details as well: God’s recitation that “before all *your people* I will do wonders never before done in any nation in all the world” (Exod 34:10); his conferral on Moses of the privilege of hearing the holy name uttered by God himself (Exod 34:5); and the refracted glory of God that lights up Moses’ face (Exod 34:29–35). The implicit justification for cutting the people (and even Aaron) out of consent rights is the fact that they have proven unworthy in the idolatry of the golden calf. This model of consent is consistent with a regime in which a single authoritarian figure claims the right to make all the decisions. The second and third models restrict the franchise to leaders and do not allow the people to participate directly in the process. This creates a problem for consent theory because the Israelites who do not participate arguably have not agreed to the compact. The

¹⁴ See Noth, *Exodus*, 195 (the text refers to an “ancient tradition about the making of the covenant probably along with the seventy elders, whose role as the representatives of Israel is immediately obvious”).

author's answer to this problem is that the consent is given by authorized agents who act as loyal representatives of the people's best interests.

(b) The author also addresses the problem of future generations. He has access here to the same answer that served him with respect to the covenants with Noah and Abraham: if appropriately phrased and structured, promises made by an ancestor can run with the generations, so the covenant made by the Israelites on Sinai is binding on all their descendants. Yet this argument is less satisfactory in the case of the Sinai narrative because the author is dealing with political rather than patriarchal power. It is more persuasive to suggest that an ancestor can make promises that bind his descendants than that a political leader or even the public as a whole can bind future members of the polity. The author recognizes this problem in Deuteronomy when Joshua reminds the Israelites that "it was *not with our ancestors* that the Lord made this covenant, but with us, *with all of us who are alive here today*" (Deut 5:2–3). Joshua would not view this as an effective talking point if promises made by ancestors had the same force and effect as promises made by the present generation. Since family and tribal identification are less important in the exodus setting, the author needs another argument to explain why the covenant at Sinai is binding on future generations.

Such an argument is available in the form of the concept of covenant renewal. The Bible records a number of instances in which Israelites assemble, not for the purpose of entering into a new covenant with God but rather for the purpose of affirming and renewing a covenant already made. Deuteronomy 31, for example, reports that Moses wrote down the law and entrusted it to the Levites, instructing them to place it in the ark. Moses then declares: "At the end of every seven years, in the year for canceling debts,

during the Festival of Tabernacles, when all Israel comes to appear before the Lord your God at the place he will choose, you shall read this law before them in their hearing. Assemble the people—men, women and children, and the foreigners residing in your towns—so they can listen and learn to fear the Lord your God and follow carefully all the words of this law. Their children, who do not know this law, must hear it and learn to fear the Lord your God as long as you live in the land you are crossing the Jordan to possess” (Deut 31:9–13). In other words, the law is to be publicly read to all residents—citizens and foreigners alike—every seven years, so that those who have already consented may reaffirm their vows and persons who have not previously entered into the covenant may agree to its terms.¹⁵

7. Finally, it is clear that the covenant at Sinai represents only a conditional obligation of God. Exodus 19:5 makes this clear when God tells the Israelites: “*If* you obey me fully and keep my covenant, *then* out of all nations you will be my treasured possession.” The most-favored-nation clause in this contract is explicitly conditioned on the Israelites’ performance of a condition precedent, namely that they fully obey God and keep his covenant (subsequent events, of course, turn out to trigger the conditionality of the promise, because the Israelites do not fully obey God and keep his covenant and God does not fully protect them above all the nations).

¹⁵ For treatment of instances of public reading of the law in ancient Israel, see Watts, *Reading Law*.