

The Hebrew Republic? Divine Authority and Self-Governance

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Abstract

This article makes a case for the surprising conclusion that the ancient Israelite tribes and peoples, a group that saw itself as a nation under God's special care and authority—as a kind of theocracy—should be considered to have been a legitimately self-governing society, complete with many of the institutional features of republican forms of government. These features include a recognition of individual liberty and equality, the rule of law, protections of due process, and a separation of powers. The argument proceeds by identifying these features in narrative accounts of Israel's history in the Hebrew Scriptures, which ground God's political authority in the device of a covenant.

I. Introduction

An individual who is self-governing is autonomous. An individual who is autonomous engages in conscious, reflective deliberation over an option set, reaches a conclusion about what to do, and makes a reasonable attempt at doing it. Autonomous individuals are self-governing in the sense that they are self-directed.

Societies and polities can be self-governing, but in a looser, more approximate way. Generally, a society should be considered legitimately self-governing if it has enough of the institutional features of republican forms of government. These features include a recognition of individual liberty and equality, the rule of law, protections of due process, and a separation of powers. People in self-governing societies have what some Early Modern thinkers called “federal liberty,” or the freedom to act according to and within agreed upon or constitutional constraints (Elazar 1998, pp. 43–44). The establishment of a society or polity in a foundational agreement that defines citizens' federal liberties and responsibilities is sufficient to make it legitimately self-governing.

Understood in these terms, self-governance seems straightforwardly incompatible with subjection to divine authority. Standard accounts of divine authority depict an imposing God of the Hebrew Scriptures saddling people with commands that cover even the smallest details of their lives and are reinforced by the gravest of threats. These standard accounts are mistaken. In the sections that follow, I present the problem that self-governance and its associated institutions are meant to solve (sec. 2), locate this kind of solution in the conceptual device of a contract (sec. 3), begin to account for the significance of such a device in the narrative accounts presented in the Hebrew Scriptures (sec. 4) and, finally, identify in those narratives a nascent form of republicanism (sec. 5). I show that the ancient Israelite tribes and peoples—a group that saw itself as a nation under God’s special care and authority, even as a kind of theocracy—were legitimately self-governing.

II. The Problem of Practical and Political Authority

Practical authority is a kind of normative power that boosts the choiceworthiness of an action (Raz 1986, p. 24). Someone who has practical authority with respect to another can make it the case by issuing a directive that the other has reason to do something. For example, Ellie is a practical authority with respect to Lucy if and only if Ellie’s directive that Lucy bake a cake constitutes a reason for Lucy to bake a cake. Furthermore, the reasons constituted by an authority’s directive, according to this account of practical authority, are (1) normative and (2) weighty.

First, they are normative in the sense that the directive *justifies* the action, rather than simply explains it. If Ellie is a practical authority for Lucy, then Lucy should bake the cake *because* Ellie directed her to do it. Even if it’s true that Ellie will punish Lucy in some way if she fails to bake the cake, and even if that fact explains Lucy’s motivation to bake it, that fact isn’t what makes baking the cake the thing to do. Rather, the directive of the authority does.

Second, the reasons for action created by the directive are weighty in the sense that they should figure prominently in the subject’s deliberations about what to do. Lucy might want to bake cookies instead of a cake, but Ellie said that she should bake a cake. The directive of a practical authority obligates the subject to act a certain way. If Ellie is a practical authority for Lucy, Lucy is obligated to bake the cake in the sense that her simple refusal to do it would be blameworthy.

These conditions are strong. We might wonder how Ellie acquired this normative power to direct Lucy in a way that obligates her. What could make it true that she has this position with respect to Lucy? Call this the problem of practical authority.

The problem of *political* authority is, in a similar way, a consequence of thinking about what it means to say that a state has practical authority with respect to its citizens (Huemer 2013). For example, the US government is a practical authority with respect to US citizens if and only if the government's directive that citizens pay an income tax constitutes a reason for them to pay an income tax. National governments tend to claim for themselves the normative power to obligate their citizens via the legal system to act in certain ways. The resulting laws purport to be (1) content-independent, in the sense that citizens' reasons to comply don't depend on what the law requires or forbids; (2) categorical, in the sense that citizens' reasons to comply with the law don't depend on their goals or interests, and (3) preemptive, in the sense that citizens' reasons to comply with the law will typically override their own respective views about the merits of the law (Hart 1982, pp. 254–55; Raz [1975] 1990, pp. 35ff).

Political authority, then, is a kind of practical authority where the right of the state to rule and issue directives delivers a citizen's obligation to obey. In other words, the fact that a directive comes from the state means that citizens have at least *pro tanto* reason to act in accordance with it. The problem this account gives rise to is whether the state actually has this authority to obligate citizens in these ways. What could make it true that it does? How far does the state's authority to obligate its citizens properly extend?

The problem of political authority is particularly acute assuming a liberal conception of the state and its relationship with its citizens. Liberal states respect individual autonomy. Liberalism, as a political philosophy, acknowledges that all people are free and equal in moral status. A legitimate state is subject to constraints on the exercise of arbitrary power so that it is justified in using power only to pursue commonwealth goals in accordance with the rule of law. More generally, the state's power to obligate is subject to a standing obligation to justify the coercive nature of the rule. How could a political entity come to occupy authoritative status under these conditions?

III. The Contract Device

Since contracts are agreements based on voluntary consent, they would seem up to this task. A social contract, made voluntarily among self-determining agents with their own respective beliefs, goals, desires, and commitments, that delivered to a designated authority a right to rule, however specified and limited, would seem to obligate citizens while respecting their free and equal moral status. Here we would have moral agents who are both subject to, *and authors of*, political obligations and, in virtue of the latter, competently self-governing.

David Hume identified a familiar problem with this tidy solution: it is much too fragile. First, he writes that there is no record of it: “It was not written on parchment, nor yet on leaves or barks of trees. It preceded the use of writing and all the other civilized arts of life” (Hume [1748] 1984). Second, it has no application to the present day: “would these reasoners look abroad into the world, they would meet with nothing that, in the least, corresponds to their ideas, or can warrant so refined and philosophical a system” (Hume [1748] 1984). Indeed, Hume notes that almost every polity was “founded originally, either on usurpation or conquest, or both, without any presence of a fair consent or voluntary subjection of the people” (Hume [1748] 1984).

However, Hume did allow that such a contract was essentially the gold standard for political authority: “My intention here is not to exclude the consent of the people from being one just foundation of government where it has place. It is surely the best and most sacred of any. I only pretend, that it has very seldom had place in any degree, and never almost in its full extent” (Hume [1748] 1984).

IV. Interlude, in Which I Compare Myself to God

There are still many people, mostly outside the academy, who think that moral and political obligations are tied to divine commands. People should (and should not) do certain things because God says so. This would mean that God has practical authority over people. He makes it the case that people have obligations by simply issuing a command or directive. Or, what I think amounts to the same thing, God has the normative power to create reasons for people to act, reasons that figure significantly in their deliberations about what to do, and reasons they might not have had before, by simply issuing a command.

For example, the ancient tribes of Israel presumably didn't have normative reason to avoid eating BBQ baby back ribs before God said not to eat them. But, according to this account of divine authority, they acquired such a reason when God declared pork unclean (Leviticus 11). Moral philosophers often talk about this kind of reason being *external* because the source of the reason is external to the agent whom the claim is directed at, or because the claim is grounded in such a way that the motivational states of mind of that agent are irrelevant (Williams 1981, p. 101). Perhaps many of the ancient Israelites *really liked* BBQ baby back ribs. Too bad.

This would not be a self-governing people. They would merely be subject to God's dictates, even potentially odious and arbitrary dictates. Indeed, this is the most common popular understanding of divine authority and the structure of political obligation presented in the Hebrew Scriptures. It forms the basis of many related objections to divine command theories of morality.

Here's another example: if you take a class from me, you must write an assigned paper. Say I assign a paper on Hobbes. You thereby acquire a reason to write a paper on Hobbes. If I instead assign a paper on Rawls, you thereby acquire a reason to write a paper on Rawls. I have practical authority (within the limited domain of course pedagogy) over you. Somewhat like God, I create a reason for you to act a certain way, a reason you didn't have before, by simply issuing a directive to do the assignment. You don't want to write a paper on Hobbes? Too bad. Such is the nature of my awesome pedagogical authority.

This is perhaps a faulty comparison, however. Plausibly, there are differences in these examples between God and me. One is that the practical authority I have over my students is *contingent* on their having signed up for my class. They have voluntarily placed themselves under my (relatively limited) authority. If I assigned a paper on Hobbes to, say, my mail carrier, she wouldn't acquire any reason to write it. But those students who review my syllabus, see that there will be paper assignments, and sign up for the class agree to submit to my determinations about the content of those assignments. They presumably do this because taking the class somehow lines up with goals they have or things they care about. In that case, they have *internal* reasons to write papers I direct them to write.

But perhaps I have now overstated the differences just cited. There is good evidence to suggest that God's practical authority over people is similarly contingent, and that people's reasons to comply

with his rules are similarly grounded in their motivational states. Here's a section of the narrative where God hands down his law to the ancient Israelite tribes in Exodus 19:3-8:

Then Moses went up to God, and the LORD called to him from the mountain and said, "This is what you are to say to the descendants of Jacob and what you are to tell the people of Israel: 'You yourselves have seen what I did to Egypt, and how I carried you on eagles' wings and brought you to myself. Now if you obey me fully and keep my covenant, then out of all nations you will be my treasured possession. Although the whole earth is mine, you will be for me a kingdom of priests and a holy nation.' These are the words you are to speak to the Israelites." So Moses went back and summoned the elders of the people and set before them all the words the LORD had commanded him to speak. The people all responded together, "We will do everything the LORD has said." So Moses brought their answer back to the LORD.

In this passage, there is a brief preamble, and then promises are made on both sides. The terms are reviewed and accepted and at least appear to be contingent on that acceptance. This passage, then, is a summary presentation of a contract or covenant. In particular, the agreement in the passage closely models an ancient form of Assyrian suzerainty treaty (Berman 2011, pp. 29ff). The passage identifies God as the suzerain by referring to the great act of deliverance lately performed and to the Israelites as subordinate vassal "kings" who respond to a stipulation of rights and responsibilities.

In that case, suppose the people of Israel had responded differently to God's call to hearken and said something like "Ummm . . . thanks for all your past help, and we really appreciate your offer, but no thanks." Plausibly, in that case, they wouldn't have had normative reason to comply with all of God's rules, and God wouldn't have had the standing to demand compliance or to punish them for not complying.¹ The same plausibly goes for surrounding nations that weren't party to this covenant. The Edomites, for example, could eat all the BBQ baby back ribs they wanted. It would

¹ I say this about the rules established in this Sinaitic covenant. The rules established in the earlier Noahic covenant (Genesis 9), I would argue, are significantly more general and basic, and therefore different. But this argument is beyond the scope of this paper.

have been puzzling for the Israelites, and even God, to demand of the Edomites that they not eat BBQ baby back ribs and to hold them accountable if they did—just as puzzling, perhaps, as me directing my mail carrier to write a paper about Hobbes and attempting to hold her accountable when she doesn't.

One lesson from the foregoing is that directives we're justified in holding others accountable to shouldn't depend merely on the external, independent, or objective value of the action (surely, writing papers about Hobbes is valuable for everyone!). Likewise, it doesn't appear to depend on the intrinsic qualities of a divine person; for example, God didn't have the appropriate standing to prohibit BBQ baby back ribs for the Edomites. Rather, on a prominent contractualist account, obligation is "grounded in presuppositions to which you and I are committed when we reciprocally recognize one another as free and equal persons" (Darwall 2006, p. 103).

Philosopher Stephen Darwall works to uncover this idea in seventeenth-century debates between natural lawyers and voluntarists about moral obligation. He gives the label "Pufendorf's Point," after philosopher Samuel von Pufendorf, to the thought that someone sits under an obligation only if she can hold herself accountable to a relevant standard (Darwall 2006, p. 105, n. 55). For Pufendorf, moral obligation is a matter of being accountable to God, but not in the sense of merely being subject to his arbitrary power; rather, he suggests that accountability to God's ordinances involves an acceptance of an accountability relationship with God, grounded in God's intrinsic qualities, but which one freely undertakes and imposes upon oneself.²

This model is of interest for three main reasons: (1) it has the potential to rebut many of the most troubling criticisms of divine command theories of morality, which mainly have to do with the putatively ill-considered and arbitrary nature of divine commands; (2) it does this by understanding the divine ordinances in terms related to the broad tradition of social contract theory and recent contractualist accounts of moral and political authority; and (3) it suggests that a group of people who come together and agree to submit to a body of rules that make sense to them—rules that they can reasonably go

² In other words, God's intrinsic qualities and necessary attributes can appropriately ground an individual's reason to enter into and accept an accountability relationship with God, but until and unless the individual enters into and accepts the relationship, God lacks the relevant authority to hold the individual accountable to all of God's rules. See Murphy (2002), especially chapter 7.

along with given the full range of their beliefs, values, and other normative commitments—is a legitimate expression of self-governance.³ In this article, I do not directly take up the first point. I turn to the third point in the next section. The current section has focused on the second point. It might have been difficult initially to see how individual autonomy and self-governance could be compatible with divine authority, but it should now be clearer how individuals might voluntarily bind themselves in a covenant that outlines their federal liberties and responsibilities.⁴ Prior to covenant-making, people have, as historian Perry Miller puts it, “a liberty to go their own gait; afterwards they have renounced their liberty to do anything but that which has been agreed upon” (Miller 1964, p. 49).

V. The Hebrew Republic

Further investigation of the narratives in the Hebrew Scriptures suggests a nascent form of republicanism, complete with many of the institutional features commonly associated with societies we regard as legitimately self-governing.⁵

A. Individual Liberty and Equality

The most significant point about the narrative quoted in the section above was the covenant’s dependence on the Israelite people’s agreement. It is not the story of a unilateral imposition of a set of rules that these people opposed, as verse 8 notes: “The people all

³ Heinrich Bullinger provided one of the most systematic early analyses of the centrality of covenantal thinking in Christian revelation in *A Brief Exposition of the One and Eternal Testament or Covenant of God* (1534). Bullinger, furthermore, emphasized the notion that this eternal covenant is a pact and agreement, rather than an unconditional requirement and imposition. See McCoy and Baker (1991) and, for a more recent account, Lomasky (2011).

⁴ We see them do so many, many times in the Hebrew Scriptures following the episode at Sinai to re-up or renew participation in the covenant. See, for example, Joshua 24, verse 1: “Then Joshua gathered all the tribes of Israel to Shechem, and summoned the elders, the heads, the judges, and the officers of Israel,” and verse 25: “So Joshua made a covenant with the people that day, and made statutes and ordinances for them at Shechem.” See, also, Deuteronomy 28–30, 1 Samuel 16, 2 Samuel 2, and Nehemiah 8–10.

⁵ This was a point of frequent commentary in the literature of American Founding Era pulpit sermons. See, for example, Sandoz 1998. A number of texts discuss the clear and direct influence of biblical narrative on early modern political philosophy. See especially Berman 2011, Nelson 2010, and Schochet, Oz-Salzberger, and Jones 2008. Thanks to an anonymous referee for an overview of this surprisingly broad literature.

responded together.” Elazar (1998, p. 169) writes, “because they are humans who must consent, they cannot accept unilateral declarations. No consent. No covenant.” The overwhelming consensus view is that the covenant was voluntary and needed to be so in order to obligate those to whom it applied. According to Walzer, “The laws were binding only because they had been accepted by the people. Rabbinic writers are especially clear on this point” (Walzer 2012, p. 5; cf. Walzer 1985, chap. 3).

Moreover, at Sinai, Moses functions as the primary intermediary between God and the people, but later, in chapter 20, God speaks the Decalogue in the presence of all. In that case, as Walzer notes, “As one of the rabbinic commentators argues, there isn’t a single covenant but 600,000 between God and the Israelites at Sinai” (Walzer 2012, p. 7). Biblical scholar Joshua Berman (2006) also writes, “God is a king who enters into a treaty not only with the Jewish people as a lesser king, but with each individual Jew, subordinate yet possessing honor and standing in his own right” (Berman 2006, p. 79). The people of Israel all assemble in subsequent repetitions of the covenant as well (see footnote 4). In fact, at Shechem Joshua requires the assembled body to affirm its commitment three or four separate times (Joshua 24:16–24).

Finally, many of these subsequent repetitions are spread out over different generations of Israelites: just before Moses’s death and their arrival to the promised land, before the death of Joshua, at the monarchy’s inauguration, when new kings came along, and many times after violations of the covenant that were serious enough to require another renewal ceremony. During intervening periods, parents were responsible for instructing their children in the covenant (Deuteronomy 6:6–7). The overall sense from the various renewal ceremonies was that the acceptance people offered wasn’t mere verbal assent; it was based on a clear and distinct understanding of what the assembled group members were getting themselves into (Nehemiah 8:8). Even the reader of these accounts who is thoroughly scandalized by much of the agreement’s content, or by the severity of many of the possible punishments, will have a difficult time rejecting the agreement’s validity.⁶

⁶ However, one rabbinic account worries about the difference in threat-advantage between God and the Israelites and interprets the scene where “Israel stood under the mountain” as God lifting the mountain over the heads of the people and thereby securing their consent “or else,” so to speak. This appears to be a minority position. See Walzer 2012, p. 5.

A right to contract with another, to offer or withhold consent, implies that the contracting individuals have sufficient freedom and moral status. As Elazar (1980, p. 26) writes, “The covenant idea has been important for the growth of democratic government and society. . . . It presupposes the independence and worth of each individual and the truth that each person possesses certain inalienable rights, because only free people with rights can enter into agreements with one another.” On the other side of the agreement, within the covenantal relationship, individuals are bound by its terms, which define a set of rights and responsibilities.

B. Due Process Protections and the Rule of Law

Political authority in the Hebrew Scriptures is assigned by the covenant, rather than being determined by the intrinsic features of divine power. Conditioned upon consent, the agreement prevents the arbitrary or capricious exercise of power. According to Rabbi Gordon Freeman, this goes for earthly representatives of God’s authority, too: “Biblical covenant eschews centralized human authority” in order to be on guard against any self-aggrandizing pursuits of leaders (Freeman 1980, p. 76). Ancient Israel was theocratic in the sense that God was the political authority, faithfully bound by the covenant terms in a way no human authority ever would or could be. For this reason, the prophet Samuel warned the people against putting themselves under a king “like all the other nations” (1 Samuel 8:18). In fact, the book of Joshua repudiates inherited leadership, and Joshua’s position as head of the confederated tribes is confirmed by God himself (Joshua 1:1–9).

After Joshua’s death, people begin to deviate more and more from their federal liberty, each doing “what was right in his own eyes” (Judges 17:6). Amid this uptick in covenant-breaking, it became difficult to resist the public’s clamoring for a king. Still, ancient Israel’s eventual establishment of a kingship had more the character of an institutionalized federal monarchy (Elazar 1998, pp. 319–35). The Torah (Deuteronomy 17:14–20) anticipates and sets conditions on legitimate kingship, such as limitations on the wealth and wives the king could acquire. It also stipulates that God would appoint the king, who would be “subordinate to and bound by covenant (*brit*) and constitution (*Torah*) both” (Elazar 1998, p. 322).

These conditions suggest that it was more important from the covenant’s viewpoint that those who govern be limited to exercising rightful power according to the established terms than that the polity

be structured according to a specific regime type. Elazar interprets the texts in such a way that the political order in biblical Israel “is a public thing (*res publica*) . . . not the private preserve of any single ruler, family, or ruling elite” (Elazar 1998, p. 356). The power of earthly officials was constitutional (or covenantal), not arbitrary. Thus we see one function of the prophetic role when Nathan confronts King David (“You are that man!”) for the murder of Uriah the Hittite (2 Samuel 12). And Elijah confronts King Ahab for the murder of Naboth, who refused to sell his vineyard to the king (1 Kings 21). Both kings were held accountable. Neither dared simply to take in the open what they wanted; rather, they schemed to acquire what they had no legal right to. The Israelite kingship was not above the law.

C. Separation of Powers

Israel’s God was the supreme political authority, but he would have an earthly representative who served as administrator under the covenant. During the early tribal confederation, Moses and then Joshua served in this role; later, during the monarchical period, the king would hold that authority. Below this position, Moses established an intricate tribal structure with powers delegated to elders and judges. Elders represented their fellow citizens at the township and tribal levels. Judges appear to have handled, or sometimes only consulted in, controversies and disputes that outstripped the local patriarchal elders’ ability to deal with internally (Elazar 1998, p. 77; Deuteronomy 17:8–9). Israel also appears to have had a separate group of “elders of the land” (see, for example, 1 Kings 20:7), who were likely selected from township and tribal elders, to represent the people in matters that affected the entire nation. We see Joshua addressing (and warning) each of these levels in the covenant reading and renewal in Joshua 23.

This polycentric regime structure, unmistakably republican in character, is presented in some detail at various points in the books of Exodus, Leviticus, Numbers, Deuteronomy, and Joshua (see, for example, Deuteronomy 16–17). Examples of the system in operation are presented in Judges, I–II Samuel, and Ruth. Elazar concludes: “The classic biblical commonwealth was a fully articulated federation of tribes instituted and reaffirmed by the covenant to function under a common constitution and common laws” (Elazar 1998, p. 91).

VI. Conclusion

My summary in section 5 only scratches the surface of the intricacy and detail provided in the biblical account of Israelite institutional design to establish the “federal liberties” the people then and there valued. The nineteenth century Congregationalist minister, E. C. Wines, writes at the end of his lengthy *Commentaries on the Laws of the Ancient Hebrews* that “the Hebrew constitution, in its substance and its forms, in its letter and its spirit, was eminently republican” (Wines 1855, p. 633). And its “polity was essentially a system of self-government” (Wines 1855, p. 634).

Historian Eran Shalev describes in detail how pre-Civil War Americans such as Wines looked to the “Hebraic republic” as a model and exemplar for the US Constitution and American-style federalism (Shalev 2013, especially chap. 2). An impartial reader of his account would probably conclude that many of these eighteenth- and nineteenth-century theologians and writers took the comparisons too far (including, apparently, some peculiar forays into numerology). Despite such excesses, it is nonetheless fair to acknowledge that the Hebrew Scriptures present a system of political authority that was legitimately binding, according to rules that were self-imposed, and that allowed for the exercise of the sort of agency those people identified with. Elazar, who is typically more measured in his evaluation than Wines, still allows that “the Book of Joshua should be read as a classic of political thought [and] is the first classical exposition of federal republicanism” (Elazar 1998, p. 229). The Hebraic covenant was grounded in, and established, a set of basic and principled commitments to divine sovereignty—and a government limited by individuals’ federal liberty, the rule of law, and separately distributed powers—in a way that secures a recognizably republican character.

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