



Jewish Interpretations of Biblical Violence

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THE PROBLEM OF BIBLICAL VIOLENCE

The Bible is full of violence. The violence comprises the normal operations of law, which include several dozen cases of capital punishment, corporal punishment, slavery, commanded war rising to the level of genocide against the indigenous peoples of Canaan, as well as against a marauding desert people, Amalek, divine threats (and sometimes realizations) of annihilation against wayward Israelite groups, and divine experiments on the character of discrete individuals, such as Abraham and Job. There are also violent incidents with violent consequences of a more ‘secular’ character, such as Shechem’s rape of Dinah,¹ or the grisly rape of the Levite’s

Positionality: I write as a scholar of Jewish Thought and Ethics, and as a Jewish philosophical theologian committed to purging violence from the concept of the sacred.

¹ Gen 34:1–31.

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concubine at Gibeah,² which precipitates a massive war by all of the other tribes against the tribe of Benjamin.³

Genesis starts with the story of a serene and sovereign God who brings order out of indeterminacy, but the backstory, as we learn from academic scholarship, is a long history of divine conflict with the forces of chaos, comparable to the theomachy of ancient near eastern myths.⁴ In fragments of creation stories made marginal by Genesis 1, such as Ps 74:12–17, God drove back the sea with all his might and crushed the heads of monsters. That's what it took to make a world. The unopposed God of the first, majestic creation story is the literary coda to earlier essays in cosmic conflict. Before God was sublime and serene, he was a victorious *warrior*.⁵

In the Bible, violent conflict seems fundamental to the warp and woof of human experience. With the first humans, violence manifests in human affairs. After creation, there follows betrayal. Temptation, disobedience, dissembling, blame, and guilt lead to expulsion into a harsh world where survival is not assured. Before there is law, there is punishment. And soon enough, there is fratricide—the first fully articulated relationship among brothers. Cain's humiliation by God—God rejects his offering for reasons known only to God—leads to murderous rage against his brother, Abel, whose offering is accepted. The Bible does not minimize or sugarcoat violence. It mirrors—it may even amplify—the violence that infects the human world. Assuming, as we should, that the Bible gives us a 'religion for adults' rather than comforting fictions, how could it be otherwise?⁶ In confronting biblical violence, we confront ourselves. Nonetheless, biblical violence is disturbing. For the Bible does more than mirror our violence. In crucial instances, it legitimates it; God sometimes calls for it. That, to say the least, is troubling.

² Judges 19:22–30.

³ Judges 20:1–48.

⁴ Jon D. Levenson, *Creation and the Persistence of Evil: The Drama of Divine Omnipotence* (Princeton: Princeton University Press, 1988), 14–25.

⁵ Levenson, *Creation and the Persistence of Evil*, XXV.

⁶ Emmanuel Levinas, *Difficult Freedom: Essays on Judaism*, trans. Sean Hand (Baltimore: Johns Hopkins University Press, 1990), 11–23.

RABBINIC READINGS OF VIOLENT TEXTS

It is not only modern ‘enlightened’ readers who are troubled by the violence of biblical stories and laws. Ancient and medieval Jewish interpreters were troubled by them, too. In what follows, let us look at some attempts by ancient, medieval, and modern Jewish interpreters to cope with violent biblical episodes or legal norms. Since antiquity, Jewish interpreters have deployed several strategies for diminishing, sidelining, or justifying violent norms. One strategy is to interpret a law out of existence, even though the original, ethically problematic law remains ‘on the books.’ I shall call this denial. Other strategies include what I shall call legalization, moralization, politicization, and historicization. In each instance, a biblical datum is put into a context—law, ethics, politics, or history—which brings, or attempts to bring, both intelligibility and greater acceptability. All of these depend on the relative freedom of rabbinic interpretation to depart from the obvious meaning of a scriptural text.

From the rabbinic point of view, God gave both a written Torah and an Oral interpretation of that Torah at Mt. Sinai.⁷ Without the Oral Torah, the written scripture would be routinely misconstrued. The inherited Oral tradition looks to us, from our modern, historicist point of view, as an ‘invented tradition.’ But for the rabbis, it is not only co-eval with scripture, it is the divinely intended key to its meaning. A famous example of this dynamic is the law of talion, which itself entails a certain violence. The law of talion stipulates that one who assaults another and injures him shall be commensurably injured himself. Its famous phrase is ‘an eye for an eye and a tooth for a tooth.’⁸ This is rough justice, although it is justice of a kind. The Talmud, however, understands ‘eye’ as the monetary value of an eye, which is much less harsh.⁹ From the (majority) rabbinic point of view ‘eye’ never meant ‘eye.’ (There were, of course, dissenters among the rabbis. Interpretive pluralism is also part of the hermeneutic picture.) What God always had in mind, so to speak, was monetary compensation for damages. Keeping the rabbinic tradition of interpretation in mind, let us look at how Jewish commentators and legists coped with violent texts.

⁷ In the twelfth century, Maimonides formulated the belief in the divine origin of both the written and the oral law into a dogma. See his *Perek Helek*, on *Mishnah*, *Sanhedrin*, chapter 10; principle #8 in Isadore Twersky, *A Maimonides Reader* (Springfield, NJ: Behrman House, 1972), 420.

⁸ Lev 19:20.

⁹ b. Bava Kamma 83b.

Interpretive Strategy I: Denial

Consider first an example of **denial**. A law in Deut 13:13–19 requires the obliteration of an idolatrous Israelite city (*ir hanidachat*). Its inhabitants were to be killed with the sword, and the city itself burned to the ground, never to be rebuilt. The Talmud has it that *there never was such a city, nor will there ever be one*. The law exists only to be studied and to gain benefit therefrom.¹⁰ What benefit could accrue from the study of such a morally problematic law? Rashi writes that the seven terms used in Deut. 13:15 (and two other Deuteronomy texts) form the basis for the rabbinic understanding of how investigations in capital cases should proceed. The idolatrous city case is a textbook example meant to generate norms of procedural justice. The rabbis then use these strenuous evidentiary and procedural norms to virtually eliminate the possibility of judicial execution in ordinary cases. This was one of the benefits of studying this problematic law.

Interpretive Strategy II: Legalization

Far more common is the strategy of **legalization**. To see how this works, consider the pericope mentioned above, the rape of Jacob's daughter, Dinah, by Canaanites (Hivites) in Shechem (Genesis, chap. 34). The son of the local Hivite chieftain, Shechem, saw her as she was visiting the women of the town and 'lay with her by force'.¹¹ He soon warmed to her and asked his father to acquire her legally for him as a wife. The father approaches Jacob and asks for his daughter's hand for his son: 'Please give

¹⁰b. Sanhedrin 71a. Rabbi Nathan Lopes Cardozo writes: 'It is most ingenious how the Sages justified this ruling [that the law was never meant to be operable]. They argued that it was impossible to destroy the entire city, since no doubt there must have been *mezuzot* on the doorposts of some of its inhabitants. (You can be a Jewish idol worshipper, but what Jew doesn't have a *mezuzah* on their doorpost?) Since it is forbidden to destroy the name of God, which is found in the *mezuzah*, and *everything* in the city had to be utterly destroyed, the law of *ir hanidachat* could not be enforced and was meant to be purely theoretical. That the *mezuzah* could be removed before the city would be destroyed was something the Sages did not want to contemplate! They must surely have been aware of this possibility. But since they believed that God could never have meant this law to be applied, they found an extremely far-fetched loophole and based their whole argument on a minor detail, which they could easily have solved and which they knew made little sense. It was deliberate trickery rooted in an unequalled moral awareness.' See Nathan Lopes Cardozo, 'The Deliberately Flawed Divine Torah,' 5, in *TheTorah.com*, <https://www.thetorah.com/article/the-deliberately-flawed-divine-torah>, accessed 8 June 2022.

¹¹ Gen 34:2.

her to him in marriage. Intermarry with us; give your daughters to us, and take our daughters for yourselves: You will dwell among us and the land will be open before you...(Gen 34:8–10).’ The bride price can be as high as Jacob chooses to ask for. Shechem ‘longed for’ Dinah. Jacob’s sons, who are seething with outrage at this indecency, speak to the Hivites deceitfully. They claim that Dinah cannot marry Shechem because he is uncircumcised. Until all of the male Hivites are circumcised, the deal is off. This was, to say the least, disingenuous. The sons had other plans. Shechem, his father, and eventually all of their townsmen agree. On the third day after the circumcision, with the Hivites still consumed by pain, Simeon and Levi, two of Dinah’s brothers, came into the town and killed every male with their swords and brought Dinah home. Then the rest of the brothers came and took all of the women, children, animals, and other possessions as booty—a disproportionately violent consequence to a violent act.

Jacob is chagrined not so much by the violence per se but by its possible repercussions. ‘You have brought trouble on me, making me odious among the inhabitants of the land...my men are few in number so that if they unite against me and attack me, I and my house will be destroyed.’ The brothers were not mollified: ‘But, they answered: “Should our sister be treated like a whore!”’¹² Later, on his deathbed, Jacob curses Simeon and Levi: ‘Simeon and Levi are a pair; Their weapons are tools of lawlessness. Let not my person be included in their council, Let not by being counted in their assembly. For when they are angry, they slay men... Cursed be their anger so fierce, and their wrath so relentless. I will divide them in Jacob, scatter them in Israel’.¹³

Two major medieval thinkers, Maimonides and Nachmanides disagree about how to understand this incident. Maimonides justifies Simeon and Levi’s actions not so much for what Shechem did, but for what his townsmen failed to do. Explicating the Noachide Laws—the seven commandments incumbent upon all human beings—Maimonides claims that they failed to set up ‘courts of justice.’ The town’s failure to prosecute Shechem could not go unmarked:

¹² Gen 34:30–31. All biblical translations, unless otherwise noted, are from *Tanakh: The Holy Scriptures* (Philadelphia: The Jewish Publication Society, 1985). (This is known as The New JPS translation or NJPS.)

¹³ Gen 49:5–7.

What must they [i.e. non-Jews] do to fulfill their requirement regarding the Law of Justice? They have to set up magistrates and judges in each district to judge the people with regard to these Six Commandments; and they must issue warnings (about them) to the people. A non-Jew who violates one of the Seven Commandments is executed by means of the sword. How is this so? Anyone who worships idols or blasphemed or murdered or had sexual relations with one of those forbidden to him or stole even less than the value of a Prutah or ate any amount from a limb or the flesh of a live animal or saw someone else violate one of these and failed to judge and execute him, is himself executed by means of the sword. It was for this reason all residents of the City of Shechem deserved to be executed. For Shechem kidnapped Dinah and they saw and knew and failed to judge him.¹⁴

Maimonides sees the brothers' act not as wanton revenge but as *just punishment*, absent an institutional legal system. This employs the rabbis' legalization strategy. Whenever a violent event in the Bible seems spontaneous, the rabbis tend to see it as the result of a legal process that they interpolate into the text.¹⁵

Nachmanides finds this unconvincing. He disagrees with Maimonides' interpretation of the Noachide laws and the consequences of violating the one positive law—setting up courts of justice. There can be no death penalty for an omission (i.e., failing to set up a legal system) only for committing criminal acts. Furthermore, if the brothers were acting out of an obligation to impose justice, shouldn't Jacob have done so first? Even if he were afraid to act, why would Jacob have been angry with them for doing what was right? But how could it have been right? At most, in Nachmanides's opinion, the rapist alone deserved death, not everyone else. Nachmanides thinks that the Hivites' agreement to become 'one kindred' with Jacob's

¹⁴ *Mishneh Torah*, Laws of Kings and Their Wars IX:14.

¹⁵ An especially striking example of this tendency is found in the rabbinic interpretation of the Phinehas incident in Numbers, chap 25. Phinehas executes Zimri and his Midianite consort, Cozbi, spontaneously in the Bible, spearing them through their bellies while they are having intercourse. But the Talmud places so many conditions on such punitive action that Phinehas himself could have become a murderer and liable to execution by a court had he not complied with those conditions. For an analysis, see Alan Mittelman, *Does Judaism Condone Violence?: Holiness and Ethics in the Jewish Tradition* (Princeton: Princeton University Press, 2018), 168. For a thorough review of all the rabbinic sources, see David Bernat, 'Pinchas' Extrajudicial Execution of Zimri and Cozbi,' at: <https://www.thetorah.com/article/pinchas-extrajudicial-execution-of-zimri-and-cozbi>, accessed 8 June 2022.

family through circumcision¹⁶ was not disingenuous. Their agreement implied that they were open to choosing a godly way of life. They might have become proper worshippers of God. Thus, Simeon and Levi killed the townspeople for nothing; they ‘had not done Jacob’s sons any harm.’ Thus, Nachmanides explains Jacob’s lingering anger toward his sons. It goes beyond his initial dismay at his precarious position into a principled critique of their wanton violence. Nachmanides here rejects the legalization strategy. He does not give us an easy resolution to this morally fraught story.

Neither Maimonides’ nor Nachmanides’ readings remove the horror of the events, whether that of the rape or that of the slaughter, but they show how the interpretive tradition engages with a morally difficult text. Maimonides tries to justify the brothers’ actions through an appeal to legal procedure; violence is normed by law. Nachmanides tries to criticize the brothers’ actions as themselves violative of legal and ethical norms. Both take the actions out of the realm of mere vengeance and subject them to reasoned analysis. Their disagreement displays the open-ended, dialectical quality of the tradition. It invites us into a conversation about what can be justified and what cannot. Nor is the dispute resolved. We are left to make the best sense of it, that we can by reflecting on what constitutes violence, what attempts can be made to justify it, and what the differences between justification and mere post-facto rationalization are.

Another instance of legalization is the pericope of the wood gatherer of Numbers 15:32–36.

Once, when the Israelites were in the wilderness, they came upon a man gathering wood on the sabbath day. Those who found him as he was gathering wood brought him before Moses, Aaron, and the whole community. He was placed in custody, for it had not been specified what should be done to him. Then the LORD said to Moses, ‘The man shall be put to death: the whole community shall pelt him with stones outside the camp.’ So the whole community took him outside the camp and stoned him to death—as the LORD had commanded Moses.

This is a violent text, but it is not a savage one. The wood gatherer is not the victim of a lynch mob but of a judicial procedure. The man is apprehended by some anonymous Israelites. Perhaps they knew the law,

¹⁶ Gen 34:22.

propounded in Exodus 31:15, which mandated capital punishment for Sabbath violation. Or perhaps they sensed something taboo. But what precisely should be done to the wood gatherer was unclear. The legal tradition was not yet definite. They brought the wood gatherer before Moses, Aaron, and the whole community. Moses had to consult the Divine author of the law. God decreed death by stoning, effectuated by the entire community. The sin/crime affects the whole people; the whole people participate in the punishment.

In the hands of the rabbis, layers of legal procedure are added to the spare narrative. The overall thrust of rabbinic law is to diminish, to the vanishing point, the possibility of imposing a death sentence. One way that the law does this is through the device of *hatra'ah*: the requirement to give a warning to the would-be offender that what he is about to do bears a penalty of death (b. Sanhedrin 8b). The witnesses, no fewer than two, must also tell him the manner of death. If he persists and acts in a culpable way, which would indicate that he understands the consequences of his actions and accepts them, then he is liable to the death penalty.¹⁷ (It is unrealistic that all of these conditions could obtain, particularly in the paradigm case of murder.)

One of the main sources for this procedure is the current story. As the rabbis read it, those who found him did more than find him; they *warned* him. The Talmud (b. Sanhedrin 41a) takes the verb ('as he was gathering'—a single word in Hebrew) to imply that while they were warning him, he persisted in gathering twigs; he heard what they were saying but was not swayed. With full awareness, he thus accepted the consequences of his action. What the finders did not know was what manner of execution the wood gatherer should face. They couldn't fully warn him in the proper way. The great medieval commentator, Rashi, speculates that they therefore had to tell him all of the possible ways that he might be killed. Moses himself wasn't sure what the punishment should be because he wasn't sure of his exact sin; there are a number of possible violations in play. The man had to be imprisoned until a determination of the legality and outcome of the whole process could be made. That is why Moses had to consult God, who ratified the criminal procedure and determined the punishment. The stress on proper procedure—legalization—counts toward the justification of the norm and its application. The criterion of

¹⁷ b. Sanhedrin 40b.

procedural justice, the rabbis imply, has been satisfied. (Whether the norm is substantively just is not addressed.)

Interpretive Strategy III: Moralization

As is often the case, ancient midrash and medieval biblical commentary explore the human dimensions of the case or the characters, lending greater ethical depth to the norm or story. Here, we see the strategy of **moralization**. The gatherer, according to Kimhi, was collecting twigs that were similar to straw so that he could kindle a fire—a major Sabbath violation—and cook his manna on the Sabbath (another violation). The people who came upon him didn't just do so coincidentally—Moses knew that he was a troublemaker and told people to track his whereabouts and check on what he was doing (Hizkuni).¹⁸ The man was someone, whose behavior had previously aroused suspicion; he was a bad influence on society. Indeed, some commentators see Moses as having established a whole system of oversight, a public police function to patrol for Sabbath violations. (If Moses had to set up a public morality squad, doesn't that imply that violations were widespread? If the wood gatherer were not an outlier in his flouting of Sabbath norms, does that diminish or enhance his guilt?) By adding ethical complexity, the midrash discredits the wood gatherer's motives, character, and conduct. It thus makes his punishment even more appropriate. In addition to the legal proceduralism, the rabbis craft an ethical context for the story—indeed, for almost every story.¹⁹

But why such a horrendous punishment for gathering sticks on the Sabbath? Why does violating the Sabbath—denigrating its holy status and rendering it profane and unholy—warrant the death penalty? Where is the substantive justice in that? Maimonides, following ancient midrash, likens the desecration of the Sabbath to the most extreme instance of biblical sin: idolatry. Just as idolatry implies utter rejection of God, so too does Sabbath violation. Maimonides writes:

¹⁸ Michael Carasik, ed. and trans., *The Commentators' Bible: Numbers* (Philadelphia: The Jewish Publication Society, 2011), 112.

¹⁹ A striking instance of this is the bizarre story in II Kings 2:23–24 about the prophet Elisha being insulted by a group of boys due to his baldness. Elisha summons bears to come out of the forest and maul the boys. The Talmud tries to justify the violence by painting the boys as wicked, irredeemable people. Fabulous backstories about the 'boys' (one of the rabbis ages them into adults who should have known better) darken their moral character and destiny. See B. Sotah 46b.

Observance of the Sabbath and abstention from idolatry are each equivalent to the sum total of all other commandments of the Law. Furthermore, the Sabbath is an eternal sign between the Holy One, blessed be He, and ourselves. Accordingly, if one transgresses any of the other commandments, he is merely a wicked Israelite (*b'khlal rishei yisrael*), but if he publicly desecrates the Sabbath, he is the same as an idol worshipper (*k'oved avodat khokhavim u'mazalot*).²⁰

Idolatry negates the biblical/Jewish project at its most fundamental level. Maimonides understands the Torah, indeed, the entirety of Judaism, as an ongoing rebellion against the human tendency toward idolatry. Abraham, the first Jew, as it were, launches a spiritual/moral rebellion against idolatry. He achieved a blazing intellectual insight into the truth of monotheism and sought to convince his contemporaries, through argument and moral example, of the pernicious error of idolatry. Moses, subsequently, through prophetic communion with the divine mind, received a law that gave definitive form to the rejection of idolatry.²¹ It mobilized an entire nation to fight idolatry. That fight is its very *raison d'être*. Many of the laws of the Torah should be understood, according to Maimonides, as educational devices to train Israel to repudiate idolatry. Thus, the Sabbath, a sign of God's transcendence of the created world, severs any link between God and the things that human beings idolatrously worship. The Sabbath reminds Jews that idolatry is an intellectual and ethical arrest; it stops at the pseudo-ultimacy of some existent thing, say, the sun, moon, or stars, rather than going on to the Ultimate, their Creator. Desecrating the Sabbath is tantamount to affirming the validity of idolatry, hence the justification of its harsh punishment.

Interpretive Strategy IV: Politicization

Maimonides presents a highly intellectualized Judaism. But it is also a highly **politicized** one. Abraham founds a movement, but Moses founds a nation. The laws of all nations seek to secure the material and moral conditions of life for their inhabitants, but a divine law also brings them to true beliefs. The Torah encompasses and surpasses natural and civil laws by aiming both at the 'welfare of the body' and the 'welfare of the soul'.²²

²⁰ *Mishneh Torah*, Laws of the Sabbath, 30:15.

²¹ *Guide of the Perplexed*, III:29.

²² *Guide* III:27.

Thus, the punishments that the Torah enacts for religiously perverse, viz., idolatrous beliefs and practices, are of a piece with its fundamental political orientation. Politics, unlike for moderns but very much like for Plato of the *Laws*, is meant to perfect human beings insofar as that is possible. (It is possible only for a very few, in Maimonides's opinion.²³) Maimonides's overall framing of the Torah as a kind of constitution for the Jewish people establishes a broad political context. It makes individual laws the laws of a state (or, in medieval parlance, of a city—*medinah*). Since living in a polis or *medinah*, as Aristotle understood, is essential to the well-being of human beings, God's law, the supreme expression of law, is justified by its contribution to human perfection.

The establishment of a political context for Jewish legal norms continues into modernity.²⁴ Spinoza adopted this political framing of the Torah-constitution—and much else—from Maimonides. Spinoza notes that in the ancient Israelite/Jewish commonwealth,

the enemies of this state were the enemies of God; citizens who aimed to seize the sovereignty were guilty of treason against God, and the laws of the state were the laws and commands of God. So in this state civil law and religion...were one and the same thing; the tenets of religion were not just teachings but laws and commands; piety was looked upon as justice, impiety as crime and injustice... There was considered to be no difference whatsoever between civil law and religion.²⁵

In Spinoza, politicization of the law is complete. The entire legal order is meant to support a project of this worldly political life—a flawed and self-defeating project, by Spinoza's lights. The violence of any given biblical law is understood as part of the necessary violence of political life. Spinoza, excommunicated by the Amsterdam Jewish community, took the stance of an outsider. He didn't so much justify problematic laws as explain their purported ancient function and subsequent obsolescence. He both

²³For a comprehensive view of Maimonides's political philosophy and the functions of law and punishment within it, see Haim Kreisel, 'Maimonides' Political Philosophy,' in Kenneth Seeskin, ed., *The Cambridge Companion to Maimonides* (New York: Cambridge University Press, 2005), 198.

²⁴For an overview, see Alan L. Mittleman, *The Scepter Shall Not Depart from Judah: Perspectives on the Persistence of the Political in Judaism* (Lanham, MD: Lexington Books, 2000), 19–45.

²⁵Baruch Spinoza, *Theological-Political Treatise*, trans. Samuel Shirley (Indianapolis: Hackett Publishing Company, 1998), 117.

politicizes and historicizes. The latter move, also anticipated by Maimonides, opens the way for modern Jews, who will try to nullify problematic norms by relegating them to an abandoned past.²⁶ Although ancient and medieval Jewish scholars did this too, modern historicism does not invoke their pious claim that history reveals divine providence. Modern historians assume Spinoza's outsider stance. They seek explanation more than normative justification.

Unlike Spinoza, Moses Mendelssohn continued to live within the normative universe of rabbinic Judaism. He maintained an internal point of view. But he also relegated the problematic norms to a past that, while not triumphantly overcome, was no longer pertinent; it must remain past. Like Spinoza, he accepts that the ancient Jewish state had a unique constitution. Judaism, he claims, is a revealed law, not a 'religion' in the Enlightenment sense. Its doctrines are the basic philosophical and moral beliefs of natural religion. What is particular to Judaism are its laws, which have a broadly moral, educational function. The laws and ceremonies are a script, the enactment of which shapes the moral conscience of the Jew and brings the individual to felicity. The civil and criminal laws of the ancient Jewish society were pertinent only to that bygone era when God was the actual sovereign of Israel. Mendelssohn writes that 'in this original constitution, state and religion weren't conjoined—they were one. They weren't connected, but identical. Man's relation to society and his relation to God coincided and could never come into conflict. God, the creator and preserver of the world, was also the king and administrator of this nation...'²⁷ Mendelssohn tries to undermine the standard categories of religion, state, and even theocracy. The ancient Mosaic constitution was

²⁶ Maimonides sometimes appealed to 'historical' explanations for certain Jewish norms and practices, such as the sacrificial system. Because the Israelites lived in a world where sacrifice was the normal means of approaching and communing with God, God's law could not have instituted a religion without sacrifice. It would have been too jarring a transition for the Israelites. Were God to have given his law at a later date, installing a sacrificial cult would not have been necessary. The law enshrines but constrains sacrifice, anticipating its eventual obsolescence. See *Guide* III:32. Maimonides thus provides a basis for contemporary traditionalists to see the Torah as both true and dependent on the cultural level of its human recipients. Torah might be thought of as 'a stage in God's plan at a particular moment in Jewish history.' See Nathan Lopes Cardozo, *Ibid.*, 2.

²⁷ Moses Mendelssohn, *Jerusalem: Religious Power and Judaism*, trans. Jonathan Bennett accessible at: <https://www.earlymoderntexts.com/assets/pdfs/mendelssohn1782.pdf>, accessed 8 June 2022, 56.

incomparable, a singularity. Applying his framework to our case of Sabbath desecration, he writes:

The same can be said of crimes. Every sacrilege against the authority of God, as the lawgiver of the nation, was high treason and therefore a state crime. Whoever blasphemed against God was insulting the monarch; whoever desecrated the Sabbath was setting himself against a fundamental law of civil society, for the establishment of this day was the basis for an essential part of the constitution... Under this constitution these crimes could be—indeed, *had to be*—punished by the state; not as wrong opinion, not as *unbelief*, but as *misdeeds*, outrageous crimes against the state, aimed at abolishing or weakening the lawgiver's authority and thereby undermining the state itself. And yet how leniently even these high crimes were punished!²⁸

Mendelssohn goes on to extol the rabbinic diminution of capital sentences through reliance on *hatra'ah* and other legal devices. When someone, like the wood gatherer, is punished for Sabbath desecration, what he was really punished for was a political rebellion against the authority of the state and its divine lawgiver.

When the civil bonds of the ancient Jewish nation were dissolved through foreign conquest, 'all corporal and capital punishments ceased to be legal...'²⁹ Judaism was able to become what it has been ever after: a religion based on a revealed law, the overriding purpose of which is moral improvement and spiritual felicity in this world and the world to come. There is no longer state power, sanctions, or punishment. The only 'sanction' is an individual sinner's conscience, which leads him voluntarily to change his ways. He then fully re-enters the non-coercive moral community which is Judaism. Mendelssohn leaves little doubt that this is a more fitting, ennobling expression of Judaism than the bygone Mosaic constitution, while at the same time rejecting the idea of moral progress. Mendelssohn has one foot in Maimonides's insider world of using history and politics to justify violent norms and the other in Spinoza's outsider world of using history to debunk them.

²⁸ Mendelssohn, *Jerusalem*, 57.

²⁹ *Ibid.*, 57.

Interpretive Strategy V: Historicization

For Mendelssohn's nineteenth and twentieth-century descendants, the Jews of modernity, the insider-outsider use of history led eventually to the assumption that Judaism is nothing but a contingent historical product. One effect of this shift to modern historical consciousness is that, unlike for Mendelssohn, the authority of the Torah is fundamentally reconfigured. Rather than a definitive divine revelation that imparts an eternal law to the Jews, the law becomes a human product that develops, like all cultural artifacts, within the push and pull of lived human historical experience. Authority becomes a kind of cooperation between generations; the wisdom and custom of the past are kept alive through voluntary appropriation in the present. **Historicization**, at least in the academic realm, has become the dominant modern Jewish way of dealing with sacred texts, including the morally problematic ones. Let us consider some modern scholarship on the biblical phenomenon of 'holy war' to see how this mode of justification works.³⁰

The commandment to obliterate the Canaanite people that dwell in the land God promised to the Israelites is given in Deut. 7:1–4.

When the LORD your God brings you to the land that you are about to enter and possess, and He dislodges many nations before you—the Hittites, Girgashites, Amorites, Canaanites, Perizzites, Hivites, and Jebusites, seven nations much larger than you—and the LORD your God delivers them to you and you defeat them, *you must doom them to destruction: grant them no terms and give them no quarter.* You shall not intermarry with them: do not give your daughters to their sons or take their daughters for your sons. For they will turn your children away from Me to worship other gods, and the LORD's anger will blaze forth against you and He will promptly wipe you out.

³⁰The term 'holy war' as a leading historian of religious warfare in Judaism admits is a misnomer. Reuven Firestone writes that '...there exists no *traditional* term for holy war in the vocabulary of either religion [Islam or Judaism]. 'Holy war' is a slippery term, and some have cautioned against using it in scholarship because of its current politicization and because the traditional context for its discussion is within Christian thought and practice. Moreover, holy war in the Western imagination is war for conversion, while neither Judaism nor Islam condones engagement in war for that purpose.' Nonetheless, Firestone takes the Jewish notion of 'divinely sanctioned war...war that is justified by divine authority' as a kind of holy war. Reuven Firestone, *Holy War in Judaism: The Fall and Rise of a Controversial Idea* (New York: Oxford University Press, 2012), vii–viii.

God will deliver the Canaanites into the Israelites' hands but the Israelites, for their part, must utterly destroy them (*ha-hareim taharim*)—man, woman, and child—as well as all of their possessions. The text tries to justify the enormity of this course of action, by portraying the Canaanites as incorrigibly idolatrous and the Israelites as prone to defect if they fall under Canaanite influence. If the Canaanites remain in the land, the Israelites will abandon God, who has made them His treasured people.³¹

This text, as well as Deut 20:16–18, which repeats the commandment of proscription (*herem*) of the Canaanite nations and Deut 25:19, which commands the genocide of a related people, the Amalekites, presents these groups as *morally deserving* of destruction.³² God's desire for their destruction is a matter of justice. The sin of these peoples is so great that, given how they have lived to date, they will not change and will only corrupt the Israelites moving into their midst. They are presented as moral monsters deserving of destruction through divine justice, executed by Israel. As Susan Niditch points out, however, within the Bible itself, this attempted justification was preceded (and accompanied) by another approach, rooted in priestly thought. The idea of *herem* is drawn from the vocabulary of sacrifice. Animals or other possessions dedicated to God become holy (*kodesh*). Holiness cannot be reversed. Sacrificial animals that have been 'proscribed for the LORD' cannot be withdrawn for profane use.³³ They must be given to God through immolation on the altar. This scenario of vowing to sacrifice something to God, designating it as *herem*, and then wholly destroying it, comes into play at Numbers 21:2–3.

Then Israel made a vow to the LORD and said, 'If You deliver this people into our hand, we will proscribe (*haharamti*) their towns.' The LORD heeded Israel's plea and delivered up the Canaanites; and they and their cities were proscribed. So that place was named H̄ormah.

In this war text, Israel vows that if God lets them conquer the Canaanites in the Negev, they will proscribe the inhabitants and their towns, offering them as a sacrifice. This implies that the Canaanite other is 'human and

³¹ Deut. 7:6.

³² It is noteworthy that the general import of Deut, chapter 20 in which the commandment to proscribe the Canaanites occurs is one of limiting warfare. The chapter begins with a list of Israelites who can claim exemptions from having to fight and ends with an injunction not to destroy the fruit trees of cities under siege.

³³ Lev 27:28–29.

valuable and does not turn him into a monster worthy of destruction, a cancer that must be rooted out. The enemy is not the unclean ‘other’ but a mirror of the self, which God desires for himself.³⁴ The irony is, as Niditch points out, that Deuteronomy’s ethicizing approach, which might seem more advanced than the Priestly author’s holiness-based, sacramental approach, *does* see the Canaanites as a cancer, a morally evil people. The more ethically salient text diminishes the enemy’s humanity. Nonetheless, ascribing agency to the Canaanites, seeing them as moral beings who are so degraded that they deserve ultimate punishment also attests to their humanity. Punishing them as an act of justice is not convincing but it is an attempt at justifying a law. It shows the biblical authors trying to work out different ethical models and justificatory strategies.

In the hands of the rabbis, holy war, like murder, becomes almost impossible to prosecute. The rabbis distinguish a ‘war of commandment’ from a ‘discretionary war’.³⁵ The latter, like the wars of King David to expand the borders of his kingdom, are irrelevant, absent a Jewish state. The rabbis develop so many deferments from service that it is questionable whether an army could even be raised. The commanded wars, principally those against the Canaanites in order to conquer the land, have already been accomplished. The rabbis historicize the command into irrelevance. History has made it a dead letter.³⁶ Commenting on this nullification by historicization, Moshe Greenberg writes:

[T]he sages left the ancient *herem* law as they found it: applying to seven extinct nations, while radically meliorating other terms of the obsolete law. The rabbis adjusted its meaning to their moral sentiments. Since Deuteronomy expressly grounds the *herem* in the warning ‘lest you learn their evil ways and they cause you to sin to the LORD,’ the rabbis concluded reasonably enough, that if the Canaanites reformed they should be allowed to remain. The moral sensibility of postbiblical Judaism cancelled the indiscriminate inevitable application of the *herem* (which is the plain sense of

³⁴ Susan Niditch, *War in the Hebrew Bible: A Study in the Ethics of Violence* (New York: Oxford University Press, 1993).

³⁵ Mishnah Sotah 8:7; b. Sotah 44b.

³⁶ Firestone, *Holy War in Judaism*, 77–90.

Scripture): it did not justify it by political or military reasons of public security or living space.³⁷

To the extent that the texts bear any ongoing normative weight, it is because they were once God's will and—given an eventual messianic age and Jewish ingathering to the Land of Israel, they may well become God's will again. Some level of human participation in a messianic conquest may be required.³⁸ The war against Amalek, however, at least on some interpretations, remains obligatory. Furthermore, an opinion in the Jerusalem Talmud holds that wars of self-defense, unrelated to the conquest, are commanded and remain obligatory. These keep the possibility of *milḥemet mitzvaḥ* (commanded war) notionally alive. If contemporary wars between the modern State of Israel and its neighbors can be characterized as wars of self-defense or wars against the ideological, but not biological, descendants of Amalek, then aspects of the ancient paradigm could be applied.³⁹ The possibility of 'sacralizing' contemporary warfare is, to state the obvious, deeply troubling and morally problematic.

The text of Deuteronomy chapter 20 distinguishes between towns that are 'very far off from you' and towns that are 'hereabout'.⁴⁰ The former should be offered peace terms; the latter must simply be proscribed. If the inhabitants of the former towns agree to surrender, then they shall be allowed to live, albeit as slaves to the Israelites. The latter, Canaanite

³⁷ Moshe Greenberg, 'On the Political Use of the Bible in Modern Israel,' in *Pomegranates and Golden Bells: Studies in Biblical, Jewish, and Near Eastern Ritual, Law, and Literature in Honor of Jacob Milgrom*, ed. David P. Wright, David Noel Freedman, and Avi Hurwitz (Winona Lake, IN: Eisenbrauns, 1995), 469. The aim of Greenberg's study is to repudiate the legitimacy of nationalistic and militaristic readings of the ḥerem commandment by modern Israeli extremists.

³⁸ An important dissenter is the medieval scholar Nachmanides, who claims that there is a commandment to conquer the land of Israel incumbent upon all Jews in every generation. That will involve war, although a genocidal war against contemporary inhabitants would not be commanded. Nachmanides, unlike Maimonides ties the ḥerem commandment to the conquest of the land rather than to the elimination of idolatry, as Maimonides does. Thus, since conquest of the land is an ongoing, valid commandment, war against it present occupiers is an ongoing desideratum. For texts and analysis, see Firestone, *Holy War in Judaism*, 128–131.

³⁹ On the tradition's construction of Amalek as a category of eternal, evil enemy rather than an historical people, see Firestone, *Holy War*, 101–104. See also Zev Garber, 'Amalek and Amalekut: A Homiletic Lesson,' in Isaac Kalimi, ed., *Jewish Bible Theology: Perspectives and Case Studies* (Winona Lake: Eisenbrauns, 2012), 147–160.

⁴⁰ Deut 20:15.

towns, however, are to be destroyed with all of their inhabitants. Based on some rabbinic precedents, Maimonides applies the leniency to be shown to the far-off towns to the Canaanites as well. ‘A war is never waged against *anyone* before peace is offered,’ he writes.

This applies both to an obligatory war and to a permitted war, as it is written ‘when you get near a city to wage war against it, you must offer peace. If they agree and accept upon themselves the seven mitzvot given to the children of Noah, not a single soul is to be harmed, and they are to pay taxes, as it is written ‘they will pay taxes and serve you’.⁴¹ If they accepted taxes but not servitude, or servitude and not taxes, we don’t listen to them until they accepted both.⁴²

Maimonides even includes Amalek under the category of ‘anyone,’ an innovation that drew some criticism within his own lifetime. Maimonides, through legal interpretation, effectively nullified the *herem* against the seven Canaanite nations and Amalek. In principle, their treatment would depend upon their choice; they are portrayed as rational agents who can decide upon their future. Of course, in history, as the Bible presents it, other than the Gibeonites mentioned in Joshua 11:19–20, who were spared, the other Canaanite groups did not decide to surrender. They, therefore, deserved extirpation. The logic tracks that of Deut, chapter 20.

But were they actually extirpated? Are the texts that call for genocide, as well as the depictions of total war in Joshua, based on credible traditions? Are they idealizations, retrojections, or rhetorical warnings that, as scholars have suggested, are directed to idolatrous Israelites in the author’s present more than to imagined Canaanites in an already remote past? Contrary biblical texts and traditions, as well as archeological evidence, strongly imply that the conquest of Canaan and the total destruction of the Canaanites, as depicted in Joshua, chapters 1–11, never occurred.⁴³ The *herem* never took place. The biblical scholar Steven Geller, whose view is typical of contemporary academic scholarship, sees holy war as a fantasy retrojected onto the ‘supposed ‘conquest’ of Canaan.’ Its true purpose is to serve as a metaphor for God’s ‘fight against his own sinful

⁴¹ Deut. 20:11.

⁴² Maimonides, *Mishneh Torah*, Laws of Kings and Their Wars, 6:1.

⁴³ For a summary, with attention to the ethical implications, see Michael Walzer, ‘The Idea of Holy War in Ancient Israel,’ *The Journal of Religious Ethics*, 1992, Vol. 20, No. 2, 215–228.

people.⁴⁴ Similarly, John Collins sees Deuteronomy as a text promulgated to support the work of King Josiah, who centralized the sacrificial cult in Jerusalem and destroyed idolatrous shrines around the country. Josiah's campaign against idolatry was directed not against actual Canaanites but against 'Israelites whose cultic practice did not conform to Deuteronomic orthopraxy.' Thus, 'there is much to be said then for the view that neither Deuteronomy nor Joshua, in the historical context of their composition, was intended to 'incite literal violence against ethnic outsiders,' but rather they were directed at 'insiders who pose a threat to the hierarchy that is being asserted'.⁴⁵ Given the polemical, historically contextualized purposes of the text, they may tell us more, to quote Collins again, 'about the purposes of their human authors than about the purposes of God.'⁴⁶

In these modern historical framings, the *herem* is purely notional. It served highly ideological purposes in the seventh-century BCE world of the Deuteronomist. This dissolves some of the ethical problems by taking the norm out of the register of divine command and putting it into the register of political-religious rhetoric and polemic. But it also takes the divine commandments out of the register of divine command. What is left of revelation, authority, normativity as modern historicism does its work? The ascription of genocidal intent to God is no theological scandal on this view; God is just a character in a human drama of religious reform. But is there anything left of divine intent at all? The typical move of modern Jewish interpreters is to take the texts that teach generosity, compassion, welcoming the stranger, social solidarity, and so forth and to give them ethical primacy, to let them set the tone against which the violent texts are wanting. The rabbis did this, too, and it is all for the best. But I am not sure how this approach avoids the Euthyphro problem—by making God synonymous with the good, don't we also make God redundant? This question must remain open.

⁴⁴ See Geller's 'Prophetic Roots of Religious Violence,' David A. Bernat and Jonathan Klawans, eds., *Religion and Violence: The Biblical Heritage* (Sheffield, UK: Sheffield Phoenix Press, 2007), 51.

⁴⁵ John J. Collins, 'The Zeal of Phinehas: The Bible and the Legitimation of Violence,' *The Journal of Biblical Literature*, 2003, vol 122, no. 1, 11.

⁴⁶ Collins, *The Zeal of Phinehas*, 10.

IN LIEU OF A CONCLUSION: OPEN QUESTIONS

Do the various strategies for coping with violence in the Bible and the Rabbis go far enough? To my mind, they move in the right direction, but they do not fully achieve their goal. The texts remain a provocation. The overall approach of the classical and medieval traditions toward the most troubling texts of the Torah is to minimize their violence through reading the texts in context, in the contexts of law, ethics, politics, and history. The Torah points toward what a modern philosopher, Avishai Margalit, calls the decent society.⁴⁷ That is the pole star. A decent society is one in which violence, both routine and extraordinary, is rare. It is a society in which people have dignity and standing, and where the institutional humiliation and the denigration of others are condemned. It is a more modest ideal than a good society. It recognizes that violence is to some extent ineliminable, but that it should be delimited to the greatest extent possible. The Bible initiates that recognition and that effort at containment. Of course, it also points beyond, to a good, even to a perfected society where violence has been eliminated because ‘the earth shall be filled with awe for the glory of the LORD as waters cover the sea.’⁴⁸

But in the here and now, violence remains, both in our lives and in our inherited scriptural texts. For religious Jews, to enter the world of the text is to enter a fertile intergenerational conversation. The Torah is unfinished; it too remains open. The violent texts serve to sharpen our moral attunement and capacity for ethical critique. Better a scripture with glimpses of the uncanny and inassimilable than a Jefferson Bible, trimmed to the preferences of an ‘enlightened’ age. Modern readers should not approach these glimpses with a smug sense of their own moral superiority, but rather with humble perplexity as to how a good God could command or tolerate such seemingly bad things. That question too must remain open.

FURTHER READING

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Reuven Firestone, *Holy War in Judaism: The Fall and Rise of a Controversial Idea* (New York: Oxford University Press, 2012)

Alan Mittleman, *Does Judaism Condone Violence? Holiness and Ethics in the Jewish Tradition* (Princeton: Princeton University Press, 2018)

⁴⁷ Avishai Margalit, *The Decent Society*, (Cambridge: Harvard University Press, 1996).

⁴⁸ Habakkuk 2:14.

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