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COMMENDABLE COMMANDABLES AND THE LIMITS OF HALAKHAH

2025 Matt Eisenfeld Memorial Essay on Commandedness

By Rabbi Aryeh Klapper

True love generates contracts. That's why the ketubah and "The Prenup" are incredibly romantic documents. Shallow love is the willingness to give "all the wealth of one's household" in the moment of strong emotion. True love is the willingness to make commitments that will remain in force even if our love "alters when it alteration finds".

The framing above, adapted from my *2024 Matt Eisenfeld Memorial Essay on Commandedness*, now seems to me to require modification.

Some contracts are enforceable only in favor of a party that has met all their own obligations under that contract. Others are enforceable even if the party seeking enforcement is themselves in breach.

Much of Nakh is devoted to the question of which kind of contract legally governs the relationship between Hashem and the Jewish people. In my best current understanding, the fundamental conclusion of the Prophets is that G-d remains in the relationship despite our failure to fulfill our obligations. However, they are much less clear about whether He remains in the relationship out of contractual obligation or rather voluntarily (to the extent such terms can be applied to G-d). Yirmiyah notably suggests that He remains married to us despite His legal obligation to divorce us as an adulteress.

Post-Holocaust, Rabbi Yitz Greenberg among others reversed the question and asked whether Jews were still bound by Sinai when G-d had obviously defaulted on His obligations. Rabbi Greenberg argued that the original contract was no longer enforceable by G-d on Jews, individually or collectively. Human commitment to the Covenant was now entirely voluntary. The upshot was that any continuation of Jewish identity or

observance is an act of *chesed* toward G-d and deserving of communal gratitude or praise, whereas there is no basis for criticizing any degree of disassociation from Torah Judaism.

I understand that Rabbi Greenberg's most recent book, which I have not read, modifies or even abandons the above argument. Furthermore, I am aware of a significant scholarly literature seeking both to trace the chronological development of his position and nail down its parameters and assumptions. My interest here is in the argument and its implications per se, not in the specific subjective variation that Rabbi Greenberg held personally at given times and places. He should therefore not be held accountable for anything below. To avoid misleading, I will therefore designate this position as "G" for the rest of this essay.

I suspect that G entails a parallel release of G-d from all contractual obligations. Accepting this position absolutely would necessitate massive liturgical reform. Standard liturgies in fact still call upon G-d to remember His covenantal obligations toward us. However, liturgy often embodies a theological hodgepodge, or perhaps our Heavenly advocates would advise us that we have no reason to unilaterally release the other party.

I also think the standard form of G requires a determination that G-d had breached His obligations at Auschwitz, which implies that He was still obligated at that point despite our prior breaches. That raises a difficulty: Why then aren't we still bound despite His breaches?

One might respond by constructing the contract asymmetrically. Alternatively, one might argue that we substantially repaired our breaches from the times of Tanakh by maintaining our identity, and to a significant

degree our observance, throughout centuries of exile and persecution. This assumes that a contract's enforceability is only suspended rather than ended by a breach, so that repairing the breach restores the status quo ante.

The problem this raises is that G-d might argue that He too substantially repaired His prior breach in 1948 and 1967, and therefore we are again obligated.

Alternatively, one might argue that one party's breach does not void the contract, but rather gives the other party the right to void it. So long as the right to void is not exercised, both parties remain obligated. Both G-d and we have chosen in the past not to void the contract despite the other party's current breaches. G might argue for a sort of probationary period in which we choose whether or not to void, during which our own breaches are not material. But I think that any such period must by now have expired; and if so, how do we determine how we have chosen?

Alternatively, G might argue that we chose to void the contract, and the relationship is now voluntary on both sides.

It is certainly interesting to consider what it would mean to be in a relationship with G-d that He can choose at will to leave. It may place us in the position of Avraham rather than of Yehoshua.

Here again, we need to make a distinction. Some at-will relationships are not governed by contracts at all. The parties simply make choices in response to each other's actions. Others begin with contracts and are governed contractually so long as both parties wish to remain in the obligation. Within the second category, some contracts judge the will of the parties ad hoc, while others have the contract as remaining in force until a

formal notice of withdrawal is properly communicated. G is compatible with either of these.

It seems to me that G, if intended to salvage something closely resembling traditional Judaism from what it perceives as the wreckage of the Shoah¹, is much more compatible with the second category. But it's not clear how we would determine that G-d is choosing to remain in the relationship. Any demand we make on Him would also be a sort of emotional blackmail – if You don't do this, we might leave.

I wonder if the claim that we cannot demand things of G-d is not more theologically revolutionary than the claim that G-d cannot demand anything of us, or at least than the claim that there was a period in the mid-to-late twentieth century period when He could not demand anything of us.

A fundamental difficulty I have with that revolution is that if my opening paragraph is correct, it denies that G-d loves us deeply, and discourages us from loving G-d deeply. Advocates of G often frame this theology as a national maturation step; but I think it is more likely the reverse.

The ur-source for G is Rava's famous statement on Shabbat 88a that even though the Torah was initially accepted in circumstances amounting to coercion, the Jews voluntarily reaffirmed their commitment "in the days of Achashverosh".² But the point of that text is precisely that maturity entails voluntarily entering into genuinely binding obligations.

Shabbat shalom!

¹ or really, as Elie Wiesel pointed out, from the trauma of the generation after the Shoah – if Wiesel was correct, this is a theology much more attractive to children of survivors than to survivors themselves

² So much has been written about this statement that I assume there are at least five explanations for why the era is identified by Achashverosh rather than by Mordekhai and Esther; but somehow I don't know of any.

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