



A Moral Argument Against Absolute Authority of the Torah

Dan Baras¹ 

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Abstract

In this article, I will argue against the Orthodox Jewish view that the Torah should be treated as an absolute authority. I begin with an explanation of what it means to treat something as an absolute authority. I then review examples of norms in the Torah that seem clearly immoral. Next, I explore reasons that people may have for accepting a person, text, or tradition as an absolute authority in general. I argue that none of these reasons can justify absolute authority if the authority prescribes norms that we strongly judge to be immoral. I then respond to three objections to my argument. I end with a note explaining why, contrary to a popular trend, the narrative of the binding of Isaac is not a good place to start this discussion.

Keywords Jewish philosophy · Religious authority · Absolute authority · Morality and religion

This paper is an attempt to elaborate on a very simple thought: ‘The Torah is at least sometimes immoral; therefore we should not do everything it says.’ In particular I will argue against the view that the Torah should be treated as an absolute authority. This article is not (at least not directly) an argument against theism, against the morality of religious people or against any religion per se. Rather it is an argument against a particular doctrine adopted by many Orthodox Jews. Parallel arguments can be made against any view that treats some text tradition or person as an absolute authority provided that there are cases where this authority prescribes norms that we strongly believe to be immoral. I believe

✉ Dan Baras
dan.baras@mail.huji.ac.il

¹ The Martin Buber Society of Fellows, Mandel School for Advanced Studies in the Humanities, The Hebrew University of Jerusalem, Mt. Scopus, 9190501 Jerusalem, Israel

for instance that such arguments can be made just as convincingly against Christian and Muslim doctrines of absolute authority.¹

What is Absolute Authority?

In this article, I argue against the view that the Torah should be treated as an absolute authority. What does that mean?

First, the term ‘Torah’ has multiple meanings. When I use it in this article, I am referring to the set of norms that appear in a set of books, namely the Bible and the Talmud, as well as their developments in later halakhic literature. I need not provide a precise set of books or norms because my argument will not depend on such details. If the reader accepts some subset of this literature as an absolute authority, then it will most likely include at least some of the sources that I use as examples. And a few good examples are all that is needed for the argument to go through.

There are different ways that people might treat the Torah. Some do not attribute to it any normative significance; set those people aside for now. Among those that *do* attribute normative significance to it, we can distinguish between those who treat it as an authority and those who treat it as merely a source of inspiration. What distinguishes authority from inspiration? Suppose that I am about to leave home on a chilly day, and my mother, shocked by the way I’m dressed, says to me, ‘Put on a jacket so you don’t catch a cold!’ I might respond to this request in several ways. One response is, ‘Yes, she’s right; I really could catch a cold if I don’t wear a jacket, so I’ll take a jacket.’ In other words, my mother gave me a good idea that I would not have thought of on my own, but at the end of the day, I wore the jacket based on my own judgment, not because my mother requested that I do so. Another possibility is that I don’t really believe that wearing a jacket helps prevent colds, or perhaps I have no opinion on the matter, or perhaps I don’t even care whether I catch a cold, but that nevertheless, because my mother requested that I put on a jacket, I do so. In that case, my mother’s request serves as a *reason for action*, a consideration that I take into account when deciding what to do. This case differs from cases in which my mother’s request played merely a *causal role* in my decision, without assuming the role of a *reason*. Such considerations can come in different degrees. Some people take their mother’s words as one consideration among others. For other people, what their mother says is always a conclusive reason for action.

These distinctions will help us think about different ways in which people might treat the Torah. A person for whom the Torah is merely a source of

¹ Similar arguments set up against a more Christian backdrop are presented by Bradley (1999), Edwin (2010), and Fales (2010) among others. While they tend to be more concerned with arguing against the divine authorship of (parts of) the bible, my argument is more broadly against the doctrine of absolute authority, whether or not it is based on belief in divine authorship. In addition, my concern is not only with the Bible but with the Talmud as well. More generally, this paper is set up against an Orthodox Jewish backdrop, meaning that I am drawing my references mostly from Jewish sources and responding to arguments and ways of thinking that are popular among the modern Orthodox Jewish community as I know it.

inspiration is someone for whom the Torah serves as part of the cause for her acceptance of certain norms, which she ultimately adopts based on her own judgment. In contrast, if someone accepts the Torah as an authority, then that person believes that the fact that a certain action is prescribed in the Torah is an important consideration in favor of that action.² Among those who accept the prescriptions of the Torah as reasons for action, some accept them as merely defeasible reasons, that is, reasons that can be outweighed by other considerations. Others, however, accept the prescriptions of the Torah as reasons that, whenever applicable, outweigh any other considerations, meaning, that when the Torah says you should do something, then you should do it full stop, and it would be wrong for you not to. Conversely, if the Torah says that you should not do something, then you should not do it, full stop. No other considerations can outweigh the Torah. I will call this approach, which accepts the Torah as a conclusive reason for action, *treating the Torah as an absolute authority*.³ It is this last view against which I will argue in this article.

The following quote from Rabbi Joseph Dov Soloveitchik, considered by many to be the father of American modern orthodoxy, expresses this view:

The Almighty summons us to live halakhically, and we have no other choice. This is Torah; this is surrender; this is *kabbalat ol malchut Shamayim* (acceptance of the yoke of Heaven). (Soloveitchik 2010, p. 112)⁴

Similarly, his disciple and son in law, Rabbi Aharon Lichtenstein, in an article on morality and halakha, feels the need to emphasize that moral considerations can never justify an action that is contrary to halakha (in contradistinction to situations in which moral considerations appear in canonical sources as part of halakha):

² I do not propose this as a sufficient condition for authority generally speaking. Perhaps, the ordinary concept of authority includes some further elements. There is in fact a large literature on this topic. For instance, Joseph Raz (1988, Chapters 3–5) emphasizes that authority has a preemptive nature, i.e., that it is a reason to disregard other reasons. David Enoch (2014) emphasizes that when I'm commanded to do something by an authority, the authority creates a new reason for action that was not there before. Enoch calls this phenomenon 'robust reason giving.' These features of authority are unimportant in the context of the current paper. My target includes views that promote submission to the Torah even without the characteristics that Raz and Enoch specify, such as in the case of epistemic authority (see the 'Potential Reasons for Accepting an Authority' section). Despite the fact that my target may be broader than what the term authority suggests, it seems natural to me to call the doctrine as I do. If some readers prefer a different term, that shouldn't affect the argument. (I thank David Enoch for urging me to clarify this point).

³ My characterization of the doctrine of absolute authority is close to what Ronit Irshai (2017, p. 220) calls the *Akedah theology*, which she characterizes as the view 'that obedience to a Divine imperative embodied in Halakha is associated with the experience of binding up (Hebrew *Akedah*) all of our specifically human inclinations, desires, and needs, including our moral principles.' Elsewhere, Irshai (2018b) argues that the *Akedah* theology dominates contemporary modern orthodoxy and that Soloveitchik and his students are among the protagonists of this theological view.

⁴ Quoted and translated in Weil (2011). The original context is a sermon in which Soloveitchik preaches that the Jewish laws of marriage and divorce should not be modified despite the heavy price that some women (i.e., *agunot*) pay in its current state.

Any ethic so independent of halakha as to obviate or override it clearly lies beyond our pale. (Lichtenstein 2004)⁵

Even more explicit is Rabbi Lichtenstein's disciple, Rabbi Chaim Navon, who writes:

The starting point must be that when a mitzva clearly contradicts our moral principles, we must, without a doubt, follow the mitzva. (Navon 2003)⁶

We can summarize the view that says that we must treat the Torah as an absolute authority as follows:

Doctrine of Absolute Authority: Whenever there is a course of action φ such that the Torah prescribes that you φ , that is a conclusive reason to φ . (And conversely, whenever there is a course of action φ such that the Torah prescribes that you do not φ , that is a conclusive reason not to φ).

The doctrine of absolute authority will be the target of the argument that follows. It is in one way a wide target and in another way quite narrow. It is wide in that it is compatible with a range of theological views regarding the precise explanation of the Torah's authorship and authority (for instance, is it literally the word of God, or something else?). On the other hand, it is narrow in that it is a very particular doctrine and it is difficult to say to what extent it is actually endorsed.

The doctrine of absolute authority of the Torah seems to be the typical Orthodox view.⁷ I believe that a commitment to this view is revealed by the fact that a typical Orthodox Jew will never dare say about any biblical or Talmudic verse that it is immoral and should therefore be rejected. Even when the Torah commands genocide, Orthodox people will not allow themselves to say, 'I do not accept this commandment.' They will seek interpretations that uproot the original intention of the verses, or else

⁵ Lichtenstein is not fully explicit on this, but I do believe that I am rightly attributing to him the view that the Torah has absolute authority. Lichtenstein's article is mainly concerned with cases in which moral considerations are recognized within Halakha. I am unaware of any place where Lichtenstein explicitly discusses seemingly immoral Halakhic norms other than a brief mention that such issues concerned him when he was young (Lichtenstein 1992).

Several commentators have inferred from Lichtenstein's article that he rejects divine command theories. See Harris (2003, pp. 42–44, 2006) and an online symposium organized by the Association for the Philosophy of Judaism: <http://www.theapj.com/symposium-on-aharon-lichtensteins-paper-does-jewish-tradition-an-ethic-independent-of-halakha/>. I do not think that the inference is justified. Lichtenstein does express the view that there can be a moral law that is independent of Halakha, but I do not see that he anywhere expresses a view regarding the source of that moral law. That is, I do not see that he claims anywhere that there are moral laws that are not only independent of halakha, but also independent of God's will or command.

⁶ And, being consistent, he continues to "prove" this claim by citing the Torah: "Proof to this may be adduced from the story of the Akeida. The very same Avraham who expected that God conduct Himself in a moral manner was himself prepared to execute an absolutely immoral Divine command without any protest or hesitation" (ibid.). See my critique of the tendency to turn to the binding of Isaac narrative below in section 'A Final Note: the Irrelevance of the Binding of Isaac'.

⁷ Compare: 'The term Orthodoxy is actually a misnomer for a religious orientation which stresses not so much the profession of a strictly defined set of dogmas, as submission to the authority of halakha' (Katzburg et al. 2007). Note though that, strictly speaking, submission to authority need not imply absolute authority, as defined here.

they will raise their hands in despair and say that there are things that limited beings like us cannot understand.⁸ Anybody accepting the Torah as merely a weak authority or as a source of inspiration should be able to say, ‘Yes, I love the idea of the Sabbath and the idea of respecting our parents, and perhaps many other ideas that I find in the Torah from which I will want to learn how to behave. However, in places where the Torah’s commands seem obviously immoral, I am willing to candidly pronounce that I oppose the Torah’s command and will not fulfill it.’

You may wonder whether any reasonable Orthodox person, even the most devout, would execute, or even want to execute, most of the norms that I mention as examples of immoral norms. Indeed, I chose those examples precisely *because* there is such widespread agreement on them. Is that evidence that, contrary to my claim above, even Orthodox Jews do not fully accept the Torah as an absolute authority? This is an interesting question, but not one that I aspire to resolve. I am arguing against a *doctrine*; the question of whether actual people fully and coherently believe it is a different question.

So as to be fully transparent, let me tell you where I personally stand with regard to these issues. Earlier in my life, I accepted the doctrine of absolute authority. So did my peers and anybody I admired at that point in my life. My beliefs have dramatically evolved since then, and today, I am completely secular and attribute no authority, divinity, or inspirational value to the Torah. In this article, I am addressing the beliefs of my previous self. I am not, though, attempting to persuade the reader to reject religion altogether, as I do. I have no complaint here against people who treat the Torah as a source of inspiration, or even as a weak (defeasible) authority. What bothers me, and has motivated me to develop this argument, is the inability that I find among my religious peers (and this was true of me a decade ago) to state clearly that they reject the passages from the Bible and Talmud that I will mention in the next section, as well as many others that are similarly morally appalling.

The structure of my argument will be as follows:

Premise 1: The Torah includes norms that we strongly judge to be immoral.

Premise 2: If the Torah includes norms that we strongly judge to be immoral, then it does not make sense to treat the Torah as an absolute authority.

Conclusion: Therefore, it does not make sense to treat the Torah as an absolute authority.

In the next section, I argue for premise 1. In the ‘[Potential Reasons for Accepting an Authority](#)’ and ‘[Why We Should Not Accept the Torah as an Absolute Authority](#)’ sections, I argue for premise 2. In the ‘[In the Name of Which Morality Do You Speak?](#)’ to ‘[Evolving Revelation](#)’ sections, I respond to some expected objections. In the ‘[A Final Note: The Irrelevance of the Binding of Isaac](#)’ section, I end with a note on the irrelevance of the binding of Isaac to this discussion.

⁸ See, for example, Amital (2005, pp. 30–32).

Examples of Immorality in the Torah

Why should you not treat the Torah as an absolute authority? The Torah includes immoral norms, including norms that unjustly harm people, and it inculcates harmful values.⁹

In order to substantiate my claim, I will bring examples from both biblical and Talmudic law. To further bolster my argument, I will comment as well on the Talmudic interpretations of the biblical examples, sometimes in footnotes. By doing so, I want to prevent the possibility of avoiding the issue by escaping from one to the other. If I were to bring examples only from the Bible, then some would respond, ‘In (Rabbinic) Judaism, the belief is that the written Torah was given together with an oral Torah and you cannot read the one without the other,’ assuming that the situation in the Talmud is better and the problem is solved. If, on the other hand, I were to give examples only from Talmudic law, I would open the door to a different response: ‘The Talmud is a human development of the divine Torah. True, the rabbis weren’t perfect and were influenced by their surrounding cultures. But that in no way harms their source of authority, which is the divine written Torah.’ Because I bring examples from the written Torah, this route is blocked as well.¹⁰

The list is long, and the items are mostly familiar. Still, I believe it is worth taking the time to read through at least some of them, because we do not always internalize the weight of these sources:

Observe the Sabbath, because it is holy to you. Anyone who desecrates it is to be put to death. (Exodus 31: 14)

The Torah does not present the death penalty as a mere theoretical idea. Numbers 15 adds a story that exemplifies an execution of the punishment:

While the Israelites were in the wilderness, a man was found gathering wood on the Sabbath day. Those who found him gathering wood brought him to Moses and Aaron and the whole assembly, and they kept him in custody, because it was not clear what should be done to him. Then the Lord said to Moses, ‘The man must die. The whole assembly must stone him outside the camp.’ So the

⁹ For additional presentations of moral problems in the Torah, see Bradley (1999), Edwin (2010), Gellman (2019, Chapter 4), Fales (2010), and Solomon (2012, pp. 121–125).

¹⁰ In my biblical examples, I will be giving the front stage to the simple or plain meaning of the verses. This has troubled some readers of this essay. Their worry is that it seems that Rabbinic (as opposed to Karaite) Orthodox Jews, who are the natural targets of this paper, don’t accept the simple meaning as authoritative, only the Talmudic interpretations. So, let me say another word about this. As is well known, almost anywhere you look in Jewish law, you find a gap between the simple meaning of the biblical verse (p’shat) and the Talmudic interpretation of those verses (d’rash). I take it to be a historical mystery how precisely this gap came into being and how it was perceived among those who brought it about. This is also an issue that has long perplexed Jewish thinkers and there are different schools of thought on this matter, with very long traditions. There is indeed a school of thought that completely rejects (what I call) the simple meaning as a fallacious interpretation of the Bible. However, there is another long tradition of scholars who accept the simple meaning as part of the Torah, as divine and as authoritative, at least nominally. (For references and theological arguments supporting this view from within the Orthodox tradition, see Kasher (1956), Henshke (1977), and Bazak (2013).) My own conviction is that the most common-sense view is that the simple meaning generally reflects the original intention of the verses and that therefore, if it implies immoral norms, that’s sufficient for the argument that follows. However, since, as I demonstrate, immoral norms are apparent in Talmudic interpretations as well, my argument need not assume any specific view on this issue.

assembly took him outside the camp and stoned him to death, as the Lord commanded Moses. (Numbers 15: 32–36)

No restrictions of the law are mentioned here. For instance, the verses do not say that the law only applies to the desert period. The commandment is quite clear. The idea of the Sabbath as a holy day, a day that symbolizes a covenant between God and man, is an inspiring idea. Forcing its observance and executing those who do not observe the Sabbath, on the other hand, are morally objectionable. Concerning death penalty for mass murderers, perhaps even for murderers of any kind, we may debate and deliberate. However, I doubt that many readers would support a death penalty for the inobservance of the Sabbath. And indeed, to the best of my knowledge, in the generations that follow, we do not have any historical evidence of killing non-observers of the Sabbath. This is a pleasant surprise. Perhaps, it serves as evidence that ancient Jews did not treat the Torah as an absolute authority. (To me, it seems less probable that the explanation is that the original intention of the Torah was any different than its literal meaning).

The same can be said about capital punishment for forbidden sexual relationships:

If a man takes a wife and... [claims:] ‘I married this woman, but when I approached her, I did not find proof of her virginity,’ ... If the charge is true and no proof of the young woman’s virginity can be found, she shall be brought to the door of her father’s house and there the men of her town shall stone her to death. (Deuteronomy 22: 13–21)

It is worth noting that these verses are not even talking about a married woman betraying her husband. They are talking about a woman who lost her virginity prior to her marriage (but this was only discovered upon her marriage).¹¹ Notice that there is no parallel punishment for males. In fact, there is not even a commandment against male betrayal, as polygamy is permitted under the biblical law.

The Torah similarly decrees a death penalty for homosexual intercourse:

If a man has sexual relations with a man as one does with a woman, both of them have done what is detestable. They are to be put to death. (Leviticus 20:13)

After a murder at a gay parade in Jerusalem, I heard a number of rabbis announcing in public that killing homosexuals is against the Torah.¹² It is no

¹¹ In contrast to the simple interpretation, the Talmud has interpreted these verses as referring specifically to a woman who lost her virginity during the period of her betrothal. According to Halbertal (1997), careful reading of the Talmudic sources show how moral discomfort motivated the Talmudic scholars to offer an interpretation radically opposed to the simple reading of the biblical verses. Note that even if we accept the Talmudic interpretation, we remain with an unreasonable punishment, which is unfair in part because there is no parallel punishment for males.

¹² An English translation of one of those speeches can be found online: <http://www.eshelonline.org/rav-benny-laus-speech-given-at-shira-bankis-jerusalem-memorial/>. I stress that my comments here are merely theoretical. On a personal level, I find Rabbi Lau’s gay-inclusive activity highly admirable.

For a discussion of modern Orthodox and Conservative views on homosexuality, with many helpful references, see (Irshai 2018a). As exemplified by Irshai’s references, there seems to be a tendency among rabbis to focus on the prohibition and refrain from mentioning the death penalty. I suspect they do so because, even among people with conservative leanings, the death penalty is difficult to defend. That is precisely why I focus on the death penalty, rather than just on the prohibition of homosexuality.

surprise that these rabbis felt the need to make this proclamation. It is so obvious to them that the execution of homosexuals is immoral that, in order to defend their faith, they had to convince themselves and the crowd that there was no conflict between the Torah and morality. To me it seems more reasonable and sincere to accept as a fact that the Torah includes immoral commands and to consider what the implications of that fact might be.

Another example appears in the laws of war in Deuteronomy. The opening sounds charming and can serve as an inspiration as long as we imagine that the war is a just war:

When you march up to attack a city, make its people an offer of peace.
(Deuteronomy 20:10)

In this case, a restriction does appear. The call for peace is restricted to distant cities:¹³

This is how you are to treat all the cities that are at a distance from you and do not belong to the nations nearby. However, in the cities of the nations, the Lord your God is giving you as an inheritance, do not leave alive anything that breathes. Completely destroy them—the Hittites, Amorites, Canaanites, Perizzites, Hivites and Jebusites—as the Lord your God has commanded you. (Ibid. 15–17)

The Torah commands genocide. How is this genocide justified?

Otherwise, they will teach you to follow all the detestable things they do in worshipping their gods, and you will sin against the Lord your God. (Ibid. 18)

It is justified by saying that, if they are not killed, they will serve as a bad influence. The author felt no need to explain what wrongdoings, exactly, justify such a harsh command. The fear of a competing religion's influence is brought here as a justification for mass killing. Again, this commandment is not only theoretical. The book of Joshua describes the execution of this commandment in many cities (Joshua 6:22; 8:22; 10:28–40).

This way of treating other faiths reappears in many other laws related to idol worshippers. Deuteronomy prescribes how to handle a town whose citizens decided to worship other gods:

If you hear it said about one of the towns the Lord your God is giving you to live in that troublemakers have arisen among you and have led the people of their

¹³ There is an interpretive tradition according to which the restriction does not refer to the call for peace but rather to what must be done if peace is declined (Nahmanides, Deuteronomy 20:10; Maimonides, Laws of Kings and Wars, 6:6-7). According to this interpretation, the distinction between Canaanite cities and non-Canaanite cities is that in the former, women and children must also be killed, whereas in the latter, only men should be killed. I do not think that it is plausible for this to be the original meaning of verses. According to the logic stated in these verses, the worry that the Israelites would be religiously influenced by the Canaanites justifies killing non-combatants. Why should this worry dissolve if they accept peace? In any event, even if the call for peace applies to Canaanites as well, that does little to improve the situation. The conditions for peace are not exactly fair: 'If they accept and open their gates, all the people in it shall be subject to forced labor and shall work for you' (Deuteronomy 20:11).

town astray, saying, 'Let us go and worship other gods,' gods you have not known, then... You must destroy it completely, both its people and its livestock. (Deuteronomy 13:12–16)¹⁴

There are several moves apologists make to try to mitigate the immorality of the genocidal commandments.¹⁵ One popular claim is that the commands should not be interpreted literally. For instance, it is claimed that the command to destroy the Canaanites is intended to drive off the Canaanites or make a swift war, not really to kill them all. However, this does not seem like a plausible interpretation of Deuteronomy and Joshua. If the author did not intend for the commandment to be taken literally, then he or she was careless and irresponsible in choosing words, to say the least. Moreover, even the suggested non-literal interpretation seems immoral. How can the fear of negative influence justify such a war, even if the Canaanites are allowed to flee?

Another popular claim is that the Canaanites were really evil—like Nazis—so this is not killing of innocent people. However, in the Bible, these nations are not described as being anything like Nazis. In Leviticus 18: 24–28, the described sins are sexual transgressions such as homosexuality and incest—hardly moral justifications for genocide. In Deuteronomy 12:31, they are blamed for sacrificial infanticide. Admittedly, killing all of the infants is one way to end such infanticide, but it is not a very reasonable way. Nor does the Bible bother to tell us how widespread these practices were or restrict the commandment to people who engaged in them. Furthermore, even if they were like the Nazis, our experience with the Nazis should teach us that the proper response is not to commit genocide against all Germans.

As mentioned, these are only examples. One might add to these the verses that command the killing of disobedient children (Deuteronomy 21:18–21); the commandment to destroy the descendants of the Amalekites, including women and children (Deuteronomy 25: 17–19; Samuel I 15); the commandment to cut off the hand of a woman who gets involved in a fight and holds a male's genitals (Deuteronomy 25: 11–12); the commandment against marrying a bastard for no sin of his own (Deuteronomy 23:3); and more.

I will use the case of slavery to transition from biblical examples to Talmudic ones. The Bible and the Talmud both permit and institutionalize slavery. Apologists tend to argue that the laws of the Hebrew slave are significantly more humane than slavery laws practiced among neighboring cultures at the time, and that biblical slavery only ensures an income to poor people who are forced to sell themselves as slaves. The slavery laws that appear in Leviticus 25 support this view:

If any of your fellow Israelites become poor and sell themselves to you, do not make them work as slaves. They are to be treated as hired workers or temporary residents among you. (Leviticus 25: 39–40)

The Israelite slave must be set free after six years (Exodus 21:2) or on the Jubilee (Leviticus 25:40) and cannot be treated ruthlessly (Leviticus 25:43). What the apologists tend to ignore is the laws regarding non-Israelite slaves:

¹⁴ Regarding the development of this law in the Talmud, see fn. 14.

¹⁵ See, for instance, Copan and Flannagan (2014) and Medan (2000).

Your male and female slaves are to come from the nations around you; from them you may buy slaves... You can bequeath them to your children as inherited property and can make them slaves for life, but you must not rule over your fellow Israelites ruthlessly. (Leviticus 25: 44–46)

The implication is that non-Israelite slaves may be treated ruthlessly. Here, a Talmudic interpretation makes things worse. According to one view in the Talmud, not only is it permitted to attain a non-Israelite slave for life, but it is also forbidden to set non-Israelite slaves free (Sota 3B). This view is accepted as authoritative by later authorities. Thus, Maimonides rules as follows:

It is forbidden for a person to free a Canaanite slave.¹⁶ Anyone who frees such a slave violates a positive commandment, for Leviticus 25:46 states: ‘And you shall have them work for you forever.’ (Maimonides, Laws of Slaves 9:7)

Part of the experience of a slave can be learned from the following law. A person who strikes his slave to death is only punished if the slave dies within a day or two. Why? ‘[S]ince the slave is their property’ (Exodus 21:20–21). The underlying assumption is that the slave is the property of the master and that it is permitted for the master to beat the slave as long as the strikes are only painful and not deadly. The Talmud interpreted this law as applying to non-Jewish slaves alone. The biblical verse makes no hint of this restriction, but even if you accept the Talmudic interpretation, I hope you will agree that this is an immoral way to treat non-Jews.

With regard to some of the above laws, Talmudic law is a significant improvement. It dramatically restricts many of the disturbing biblical laws, rendering them almost inapplicable.¹⁷ Almost inapplicable, that is, but not *fully* inapplicable. For example, according to Talmudic law, many conditions must be satisfied in order for the death penalty to apply, rendering it unlikely that it will ever apply in the foreseeable future. Nevertheless, if a Sanhedrin were to be formed and two witnesses were to warn a person not to desecrate the Sabbath and he were to do so anyway, then he would still deserve stoning even according to the Talmudic law. Because limited applications of the problematic biblical laws are still part of Talmudic law, they all serve as examples of immoral laws.

To these problems, new ones are added. Let us begin with the status of women.¹⁸ A women’s testimony is considered invalid; she cannot work in the temple, and she cannot become a king or serve in any role of authority. A father has the authority to marry off his daughter against her will if she is below the age of 12. At any age, divorce

¹⁶ The term “Canaanite” in this context is used to refer to any non-Jew.

¹⁷ The most extreme examples are the laws regarding idol-worshipping towns (Deuteronomy 13) and rebellious children (Deuteronomy 21). In both cases, the Talmud adds so many restrictions to the biblical law that, according to one opinion in the Talmud, these laws were never meant to be implemented (Sanhedrin 71A). This very radical interpretational move comes very close to uprooting the biblical law. See Halbertal (1997, pp. 42–68; 122–44), for careful analysis. What should we conclude from such cases? It is difficult to know whether they sincerely thought that all they were doing was interpreting the Bible, or whether their claim that they are interpreting the Bible is mere excuse and that they actually did not treat the Bible as an absolute authority. Sometimes, they talk as if they believe that their authority outweighs that of the Torah. However, it is not clear how seriously they took this idea according to Hayes (2006).

¹⁸ For a survey with many references, see Ross (2004, pp. 14–22).

is completely under the control of the husband, with a limited power of intervention reserved for male jurists. In prayer, for anything holy (such as Kaddish and Kedusha), and when there is a need for a quorum, females do not count. Males bless God every morning for not making them women, and the Talmudic triage says that one must give preference to saving the lives of males over those of females.¹⁹

Let us move on to non-Jews and Jews with non-Orthodox beliefs. *Birkhat ha'minim* is a part of the rabbinic daily prayer intended to curse the *minim*. It is not clear whether the term *minim* is intended to denote some particular group, such as the Christians, or any person differing in their beliefs. Either way, some group that believes differently is being cursed three times a day. In addition, regarding a Jew who has converted out of his or her religion, the rabbinic law is that if you see them in danger—for instance, if they fell into a well or a pit—not only should you not give them a hand, but you should kick away the ladder so that they die. Maimonides sums this law as follows:

The term *apikorsim* refers to Jews who deny the Torah and the concept of prophecy. If there is the possibility, one should kill them with a sword in public view. If that is not possible, one should develop a plan so that one can cause their deaths. What is implied? If one sees such a person descend to a cistern, and there is a ladder in the cistern, one should take the ladder, and excuse oneself, saying: 'I must hurry to take my son down from the roof. I shall return the ladder to you soon.' Similarly, one should devise other analogous plans to cause the death of such people.²⁰

In tractate Yoma (83A; 85A), the assumption is that a non-Jew in danger on the Sabbath should not be saved. In practice, most of the Rabbis of our time rule that it is permitted to save the life of a non-Jew on the Sabbath. However, the reasoning is *not* that his or her life has value but rather that, if the non-Jew is not saved, then the non-Jewish community will retaliate and Jewish lives will be in danger.²¹

The purpose of this paper is not to blame the authors of the Bible or the Talmud. The question of whether these norms are bad is independent of the question of whether the author should be blamed for promoting them. It is unfair to judge the authors of the Bible from such a great distance of time and culture. The biblical norms are no worse, to the best of my knowledge, than norms practiced in Mesopotamia at the time and derive from deeply ingrained normative beliefs that were popular in the area. It is quite

¹⁹ Mishna Horaiot 3: 7; Shulchan Aruch, Yoreh De'ah 252:8. A survey of the development of this law in post-Talmudic halakha can be found in Green (2015). Green ends up defending the view that this law should not be practiced today, but his full commitment to the authority of the Halakha is revealed by the fact that he does not dare to say that this Halakha is wrong and should not be accepted even without a Halakhic basis. He also repeatedly says that this Halakha is not applicable *today*, *not* that the Halakha is morally wrong and was morally wrong even when it was invented.

²⁰ Maimonides also applies this to people who deny the authority of the oral law, i.e., the Talmud (Mamrim 3:1–2). His opinion is cited as authoritative in *Shulchan Aruch*, Yoreh De'ah 158:2. The source of this law is the Babylonian Talmud, Avoda Zara 26B.

Once secular Judaism became well established in the nineteenth and twentieth centuries, rabbis seem to feel uncomfortable with this law. In typical Talmudic fashion, it has since become standard among rabbinical authorities to reinterpret the law so narrowly, that it is practically never applicable. See *Chazon Ish*, Yoreh De'ah, Shechita, 2:16 (an English translation of the relevant passage, as part of another example of such an argument, is available here: <https://www.etzion.org.il/en/torah-perspective-status-secular-jews-today-part-1-2>).

²¹ For an example and survey of relevant sources, see Rabbi Ovadia Yosef's discussion and ruling in *Yabiahu Omer*, OH 8:38.

possible that the authors are even worthy of praise for being enlightened relative to others in their time. Regardless, my claim is that the norms are bad and that, therefore, even if the authors of the Bible are praiseworthy, they should not be treated as absolute authorities. I note that the possibility of distinguishing between our judgment of the authors from our judgment of the content is only possible for those who believe that the authors of the Bible are people who cannot be blamed for their ignorance. This possibility is not available to anybody who believes that the author of the Bible is an omniscient and omnibenevolent god. For such a person, the belief that a given precept of the Torah is wrong is inconsistent with his or her belief regarding the perfection of the author. Such a person faces a tension within her beliefs.

Potential Reasons for Accepting an Authority

Why treat the Torah as an authority? Several general reasons for accepting authority come to mind.

Sometimes people attribute to someone what I will call *basic authority*, defined as authority that is not explained by any additional principle. Sometimes parents teach their children, dictators their subjects, and commanders their subordinates that they have authority to decide what is allowed or forbidden—not because they know better, not because they are owed a favor, and not for any other reason, but just because they decide. I assume that most readers are not willing to attribute this type of authority to humans, but some are willing to attribute this type of authority to God. In their opinion, we are obligated to do what God commands not in order to achieve some benefit, nor because we owe God obedience in return for his creating us, nor because we believe that God knows better than we do, but simply because it is part of God's nature that he has authority and that we must obey him. God has the power to decide what is right and what is wrong, and there is no further need to explain why I ought to obey him.

This view might be a consequence of a broader divine command theory (DCT), according to which what makes a norm a moral obligation is God's command or God's will, and therefore, without God, there cannot be moral obligations. Some people accept DCT because they are already convinced that God exists and that just as God created the world, it seems plausible that he created morality. Some people accept this view because, in their opinion, the only way to make sense of what it means for something to be a moral obligation is for it to be commanded by an authority. For somebody who accepts DCT, there may be reason to accept the Torah as an absolute authority if he or she accepts an additional assumption: that the Torah reliably conveys God's will. Without this further assumption, even if God does decide what is moral, nothing follows with regard to the Torah.

A second type of justification for accepting an authority is *epistemic*.²² Sometimes, I have reason to believe that somebody has more information than I have in some field or is more skilled in drawing inferences from the available information in that field. In such

²² Some people think that it would be more appropriate to call such a person an expert and to reserve the term 'authority' for other sorts of cases. However, my use of the term is broader, as explained in the opening section, and I think that this usage is appropriate in this context. I am interested in the various ways in which one can take the fact that the Torah commands ϕ to be a conclusive reason to do ϕ .

cases, I ought to trust his or her judgment more than I trust my own. For example, it makes sense to listen to your doctor when the doctor recommends a certain treatment for an illness. Even in the domain of morality, there can be cases in which we should treat a person as an epistemic authority—such as when the moral status of an action depends on its consequences and there is somebody who is more expert than I am in estimating the probability of those consequences. For example, officials making public health decisions should consult doctors and economists when making their decisions. A different type of moral epistemic authority occurs when I know that my own judgment is likely to be biased and therefore I have reason to follow someone else’s moral judgment. For instance, faced with a moral dilemma in which I stand to benefit from a possibly less moral course of action, the right thing to do may be to submit to somebody else’s judgment. True, it is impossible to avoid bias altogether, as I may be biased in my choice of authority. We likely can never be fully free of bias, but accepting an authority may sometimes be a reasonable way to decrease the likelihood that bias will influence a decision.

It is common among theists to attribute epistemic authority to God. That is, theists often believe that ‘God knows better than I do what is good, and therefore I will listen to God even when I do not understand the reasons for God’s commands.’ This attitude can be transmitted to the Torah if we are convinced that it was authored by an omniscient and omnibenevolent God. Another reason to accept the Torah as epistemic authority is based on the assumption that the authors were people who were a lot smarter than we are. I believe that epistemic authority is the most common explanation for the Torah’s authority among Orthodox Jews. This view leads to a popular response to moral problems in the Torah: ‘There are some things that we do not understand.’ The idea is that although the norms may seem immoral to us, that perception may be due to our limited knowledge.

A third type of justification for authority is accepting an authority in order to solve *coordination* problems.²³ For example, we need an authority to settle traffic laws in order to minimize car accidents. I would have no reason to choose one lane rather than the other without legislation that defines on which side of the road cars should drive. However, once legislation decides that, in this country, cars must drive on the right side, we all have a clear reason to act accordingly. Similarly, an army commander does not always know better than her soldiers how a mission would be best accomplished. However, in order for the mission to be accomplished, the soldiers must be coordinated, and for this reason, somebody must play the role of commander, and everyone else must obey her commands. Often, it is better to have many people coordinate on a suboptimal plan than to have only a few people follow an optimal one. Therefore, even if a soldier believes that he has better judgment than his commander, it still makes sense to obey his commander.

A fourth type of justification is *psychological*. People sometimes accept an authority in order to overcome a weakness of the will (*akrasia*). For example, one way to become a better runner is to download and follow an online training program. I imagine that if I did so, I would not really stick to the program and therefore would not achieve my goals. Every day, I would deliberate once again about whether I had the energy to go out for a run and whether this training was necessary. A much more efficient way to train is to join a running club with a coach. By treating the coach as an authority—by shutting my mind off and just doing what the coach tells me to do—I am much more

²³ My description of this type of justification of authority is inspired by Raz’s discussion of political authority (see above, note 2), though it is not meant to represent his particular views.

likely to achieve my own goals. Even if the coach's training program is no better than any program that can be downloaded from the internet, there is a higher chance that I will take the training seriously if I treat the coach as an authority.

The justifications given for the two latter types of authority can help us, I believe, explain some benefits that people often gain from religion. If, generally, religious people give more to charity, spend more time with their families, or are more involved in their communities, my guess is that they do so not—or at least not only—because these activities are valued more by religious people than by secular people. The fact that there are clear norms that govern these activities helps religious people overcome their weakness of the will and be coordinated in their actions.²⁴ I have come across people who are convinced that the Torah is humanly authored but who refuse to give up treating it as authoritative. It is difficult to find clearly stated views among these people, but it seems that they will opt for justifications of the latter two types.

There may be additional ways of justifying the acceptance of an authority. For instance, some people seem to believe that it is intrinsically valuable to follow a tradition and therefore believe that if my tradition commands me to do something, then that command serves as an independent reason to do so.²⁵ And there may be other justifications, but that possibility will not affect my argument in the next section, as I will explain.

Why We Should Not Accept the Torah as an Absolute Authority

In this section, I will divide the four types of justifications for authority into two groups and divide my arguments accordingly. I will first argue that the immoral norms in the Torah give us reason to believe that the origin of the Torah is not an authority of the first two types. Next, I will argue that the latter two types of justifications can never justify absolute authority.

Typically, religious authority is based, in one way or another, on the assumption that an omniscient and omnibenevolent god exists. Therefore, discussion of the existence of God has direct implications for the discussion regarding the Torah's authority: any reason to believe that God does not exist can be a reason to reject the Torah's authority. The God debate is long and complicated, and this paper is not intended to contribute to that debate. Instead, in this paper, I am interested in reasons to reject absolute authority that are independent of this question. One way to do so is to assume for the sake of argument that such a god exists.

Let me begin with basic authority. As already mentioned, often such views are based on a general divine command theory of morality. That is, the view that not only does God have basic authority, but nothing can be right or wrong unless God decides that it is so. One holding such a view might respond to the moral challenge thus: 'You claim that parts of the Torah are immoral? In the name of which morality do you speak? I believe that God decides what is moral and what is not, and therefore whatever the

²⁴ Jonathan Haidt (2012, Chapter 11) surveys empirical evidence regarding the benefits of religion and argues that it supports an evolutionary explanation of religion—in particular, that religions evolved to enhance cooperation.

²⁵ Given my broad characterization of authority (see note 2), any case in which one has a reason to do an action ϕ whenever some subject S says to ϕ , counts as authority-like. For instance, if I love S and want to please S, and take this as a reason to do whatever S tells me to do, that counts as a kind of authority by this article's lights, even if it sounds a bit unnatural to call it so. My argument in the next section applies to such cases as well. (I thank Yehuda Gellman for bringing this kind of example to my attention).

Torah prescribes is necessarily moral.’ Rabbi Shlomo Aviner, an influential Israeli rabbi, writes along these lines:

Any morality and any justice whose source is in the hearts of the righteous people of the world, has no standing whatsoever but from its derivation from the word of God... If indeed man is commanded to do what is right and just, it is only because that is what the creator decreed. (Aviner 1975, p. 65)²⁶

However, there are some very general reasons to reject DCT. There are developed metaethical theories that compete with DCT and some famous arguments against it, such as Plato’s Euthyphronian dilemma and Cudworth’s challenge.²⁷ DCT implies that if God would have commanded us to kill millions of innocent people, that action would become moral; this consequence is difficult to digest and seems like a reason to reject that theory.²⁸ In addition, although some people think that DCT is the default and most prevailing religious position, in the Jewish context, Sagi and Statman (1995a) argue—convincingly, I believe—that DCT stands in tension with most of the Jewish canonical writings prior to the twentieth century.²⁹ For instance, in the Bible, there are multiple stories about people arguing with God about the justness of God’s decisions. If the Bible had assumed DCT, we would have expected God to respond, ‘Quiet! I decide what is moral.’ But this interaction never occurs. There is a lot of literature on DCT in general and specifically with regard to Judaism, and I do not mean to add to that literature here. I mention these issues simply because they support my claim that we should be more confident that the abovementioned norms in the Torah are immoral, rather than that they are made moral by being God’s command.

Even if in the end the reader is convinced by DCT, or is convinced anyhow that God has basic authority, it does not follow from the fact that God can decide what is moral that the best way to know what is moral is by consulting the Torah. To support this conclusion, one must justify another assumption: that the Torah expresses God’s command. There is a plausible alternative even from the perspective of somebody who accepts DCT. A benevolent creator would likely give us the power to judge what is right and what is wrong. If he gave us moral sensitivities, he likely would not have given us moral sensitivities that would lead us astray. If our conscience tells us clearly that genocide, killing homosexuals, and discrimination against women are immoral acts, then that is a good reason to believe that God has so decreed even if the Torah says otherwise.

Furthermore, on what does faith in the divine origin of the Torah rely? One possibility is that this belief also relies on intuitions that are not essentially different from our moral intuitions regarding the above examples. Returning to Rabbi

²⁶ My translation. Aviner argues that only Jews, not Palestinians, have rights over the land of Israel, because so says the Torah, even if this claim is contrary to universally accepted conceptions of justice.

²⁷ For a concise discussion of the various versions of DCT and a presentation of these arguments, see Wainwright (2005) and Zagzebski (2005).

²⁸ This objection, if sound, applies more generally to the view that God has unconstrained basic authority, whether or not it is based on DCT.

²⁹ Harris (2003) argues that many of the early traditional Jewish texts do not clearly contradict some versions of DCT. Even if Harris is correct, it remains the case that the canonical sources prior to the twentieth century do not express any commitment to DCT. At the very least, this fact suggests that it would be wrong to consider DCT as *the* default or Orthodox view in Judaism.

Soloveitchik, with whom I opened this paper, he seems to express this general approach to religious faith when he says that ‘the experience of God is the basis of certainty’ (Soloveitchik 2008, p. 157).³⁰ The view seems to be that he has certain experiences that seem to him like experiences of God, and such experiences justify the belief that God exists. Similarly, some think that when studying the Torah, they experience its divinity, and such experience justifies the belief that the Torah is divine. If so, then when we experience immorality in the Torah, when we read passages blatantly inconsistent with what we experience as moral, that should serve as no less reason to reject the view that the Torah is divinely authored than should experiences of divinity serve as reasons to accept this view.

In sum, if we could be sure on independent grounds that God decides what is moral and that God wrote the Torah and there told us what he decided, then we could accept the Torah as an absolute authority. But we cannot be sure of any one of those claims, at least not more than we can be sure of certain moral judgements that we have. Therefore, the fact that we are quite sure that genocide is wrong—and that slavery and the death penalty for sexual transgressions and desecrating the Sabbath are wrong—is a reason to reject these assumptions and not treat the Torah as an absolute authority.

From here, I move to epistemic authority. When I visit a doctor, as an initial default attitude, it makes sense to treat the doctor as an epistemic authority with regard to my health. However, if I become convinced that the doctor’s prescriptions are harmful, then her status as a medical authority should diminish. One way in which this might happen is if the doctor repeatedly gives me prescriptions that eventually turn out to be harmful. However, this is not the only way that her authority can be diminished. If the doctor prescribes to others medications that I judge to be harmful, even if she never prescribes them to me, then I should stop trusting her. The more reasons I have to believe that a significant subset of the doctor’s prescriptions are harmful, the more convinced I should be that this doctor is not worthy of trust. The same considerations apply to the Torah. The more sure I am that a significant portion of the Torah’s precepts are immoral, the more convinced I should be that the author of the Torah is not an epistemic authority with regard to morality. I don’t even need the majority of precepts to be immoral to make this inference. It is enough that there is a significant presence of precepts that are evidently immoral, or that I am more convinced that they are immoral than I am convinced that the author of the Torah is an epistemic authority, for me to reject the epistemic authority of the Torah.

You might think that we should not trust our own ability to judge who is an epistemic authority with regard to morality and which norms are immoral. In response, I argue that we are not able to think about ourselves as beings with such faulty judgment, nor is it reasonable for us to do so.³¹ Consider: If I don’t trust my judgment at all, then I can’t trust my judgment to tell me to accept some source or other as an absolute authority. If I really cannot trust my judgment, then on what basis will I decide whether God exists and what exactly he commands? Any reasonable view of epistemic

³⁰ I believe that this quote well exemplifies his general view. For some developed experience-based justifications for belief in God’s existence, see Alston (1991), Gellman (1997), Plantinga (2000), and Swinburne (2004). While these authors develop their justifications differently, my point about a parity of reasoning between religious and moral beliefs applies to all of them.

³¹ A nice formulation and elaboration of the general argument that I apply here appears in Egan and Elga (2005).

authority must at the very least assume that I can trust myself regarding my ability to identify epistemic authorities. We can therefore never be justified in accepting global epistemic authorities (that is, authorities over all of our judgments) but only authorities restricted to specific domains. Therefore, when we consider whether it is plausible to accept the Torah as an absolute authority, we must assume that we can trust our judgment of this matter. Of course, I do not claim that we should think of our judgment as perfect. Of course it is not. But we have no judgment other than our own, at least at the stage in which we are figuring out who to trust. Therefore, we should trust our judgment.

From here, I move to coordinative and psychological authority. There is a significant difference between the first two types of authority and the latter two. When something is an authority of one of the first two types, it follows that I am epistemically inferior to that authority. In the case of epistemic authority, being inferior to it in that way is part of its definition. Regarding basic authority, if somebody decides what is moral, then that person knows better than I do what is moral. On the other hand, the latter two types of authority do not imply that the authority has any epistemic advantage. If it is clear to me that obeying the commander will actually bring about morally worse consequences than disobedience, all things considered, then of course I should not obey the commander. Similarly, if I conclude that in a given case I will actually save lives by driving on the left side of the road or that I will train better if I do so on my own, then clearly that is what I should do. With such authorities, although I do block my own judgment and accept the authority, this blocking is conditional and is not based on the assumption that my judgment is inferior.

Indeed, when I accept an authority, even if it is coordinative or psychological, doing so implies that I should to some extent set aside my own judgment and not deliberate over each action. It is partially so that we will *not* have to deliberate each action that we accept such authorities. But we do so, at least when we do so justifiably, because we believe that in the long run it is better to do so—not because we believe that our judgment is inferior to that of the authority. Therefore, it is clear that at the moment when I face a case in which obeying the authority will cause a harm that cannot be justified by such long-term considerations, then I should not obey the authority. The only justification I can think of for not relying on my own judgment when I judge that obeying the authority is immoral, all things considered, is that I believe that I am epistemically inferior to the authority and that I do not accept the authority on coordinative or psychological grounds. However, I have already argued against the attribution of epistemic authority to the Torah.

It follows that the latter two types of justification of authority can never justify absolute authority. That is, they always leave a space for one's judgment to outweigh that of the authority. If I accept the Torah as an authority only because I would like to be coordinated with the religious community to which I belong or to help me overcome akrasia, it does not make sense to obey in cases in which the harm stemming from obedience outweighs any justification provided by such considerations. This last argument does not only apply to coordinative and psychological authorities; it applies equally to any authority that lacks epistemic superiority. If we do not assume that we are epistemically inferior to the authority, then there will be cases in which we should trust our own judgment and disobey.

I have argued that the immoral norms in the Torah give us reason not to consider it to be a basic or epistemic authority. I have also argued that any other type of justification of authority cannot be absolute authority. I have hereby completed my main arguments. In the remainder of this paper, I will respond to expected objections.

In the Name of Which Morality Do You Speak?

I imagine interlocutors responding as follows: ‘In the name of which morality do you argue against my belief? What is morality? Why should I believe that morality is more important than the Torah? And why are you so sure that what is immoral in your eyes really is immoral?’ These are, no doubt, heavy questions. Arguments for and against different responses to these questions are far from resolved. Fortunately, in this context, I need not convince the reader of any specific metaethical view in order to make my argument. It is sufficient that you, the reader, believe that people should not be held as slaves and that homosexuals should not be executed, for you to have reason to reject the doctrine of the Torah’s absolute authority. We need not worry here about precisely what it takes for these judgments to be true. The argument is primarily aimed at people who already agree with at least some of my judgment of the examples of immoral norms in the Torah, and I suspect that most of my readers will fall into this category.

Still, I will say a bit more. Some people are tempted to think that expressions of the form ‘x is morally impermissible’ just mean ‘x is morally impermissible according to the accepted standards of twenty-first century Western society.’³² This is a mistake. True, the opposition to slavery is more prevalent in the twenty-first century than it was in previous centuries, including at the time of the Torah’s authorship. However, slavery is not impermissible *because* people in the twenty-first century think that it is. Slavery is impermissible because it so deeply harms the slave.³³ Similarly, the execution of people who do not observe the Sabbath is not immoral because, in the modern period, the dominant view is that all people have a right to freedom of religion. The execution of such a person is immoral because of the tremendous wrong done to the person executed. True, our ancestors thought differently about these matters, but thinking differently does little to reduce the harm done by such actions even in the past. In general, the rate of acceptance of a norm in a given period does little to affect its inherent moral status. If in the Islamic State sexual enslavement of Yazidi women is acceptable, does the fact that it’s an accepted societal norm make it in any way more permissible? Can they justly respond to our critique by saying ‘you have no right to criticize us on the basis of your modern, transient Western values’? I hope the reader agrees with my negative answer to these questions.

³² Again, a quote from Soloveitchik is instructive: ‘We should not judge or evaluate laws of the Torah according to the standards of a secular system... It is inappropriate to try to make an eternal Halakhic norm fit transient values of a neurotic society’ (Soloveitchik 2010, pp. 113–114) (my translation from the Hebrew). This line of thought is also central in Deutsch (2015).

³³ This is what I believe, and I hope you do to. Note that I’m not making a claim here about what *caused* me to believe as I do. These, no doubt, include my genes, brain structure, and the cultural environment in which I grew up. Nor is the claim here about the truth-maker of my belief, that is, what it is that could make my moral belief true, whether it be Platonic mind-independent moral facts, or a particular relation to individual or communal desires or inclinations. Therefore, even relativists should endorse the claim in the text above; they would only add that this claim is true from my perspective, but it may not be true from a different perspective.

However, why should we think that the harm to a person's freedom of action is a strong consideration against slavery?³⁴ At some point, explanations come to an end, and I have nothing to say except that it seems intuitive or self-evident to me. It is like asking why we should think torturing an innocent person is inappropriate and immoral. An imagined interlocutor might argue, 'Ah ha! So you pose against the Torah your own human and all too fallible judgment. Why think that morality corresponds to your judgments? Maybe what the Torah says is actually what is moral.' However, the force of such a response derives from ignoring something important: Why think that the Torah has absolute authority? On what grounds can somebody accept such an attitude if not based on one's all-too-fallible judgment? At the end of the day, anything we believe must be founded on our fallible judgment. Therefore, the claim that this or that bit rests on our fallible judgment—and that, therefore, it can't be trusted—carries no weight. Ultimately, we must weigh our reason on the only scale that we possess: our own judgment.

It's All a Matter of Interpretation

Sometimes, I come across the following response: 'How do you know what the Torah says? It all depends on interpretation. In fact, the meaning of any text depends on interpretation. History has taught us that every verse has received more than one interpretation, the difference sometimes being very extreme.'³⁵

In response, I note three conditions that any response along these lines must satisfy in order to succeed. First, it is not sufficient to just claim that the Torah is open to interpretation. What must be shown is that once properly interpreted, the problem is resolved. That is, that we are not still left with a Torah that includes a sufficient amount of clearly immoral norms for my argument to go through.

Second, in order for the doctrine of absolute authority to have substance, there must be restrictions on what are and are not considered valid or reasonable interpretations. If, to take an extreme example, one's interpretive practices imply that for any course of action that I might want to take, I can interpret the Torah in such a way that will result with the Torah allowing me to take that course of action, then the claim that I treat the Torah as an absolute authority would lack any substantive content.

Finally, the interpretive methods being used to achieve these results must be plausible. In particular, since they will imply that in many instances, the proper interpretation the Bible and the Talmud is distinct from their simple meaning, such a practice needs to be explained and justified.

Although I have not exhausted in this article all theoretical possibilities, I do not believe that all three conditions can be met by a single theory.

³⁴ I stress that the question here is normative: what is it that justifies this belief? It is not a causal question about what actually causes my belief (see previous note).

³⁵ See, for instance, Sacks (2015, p. 207).

Evolving Revelation

Other people put forward responses of the following type: ‘You are evaluating the Torah on the basis of the social reality with which you are familiar, but doing so is anachronistic and unfair. The Torah was given in a specific place and time in a specific social context. The norms are appropriate for that specific context. Unlike the Sadducees and Karaites, who stick with the Bible alone, Rabbinic Judaism always knew how to adjust halakha to match evolving social realities. This adjustment explains why the Talmudic norms are different from the biblical norms, and halakha continues to develop and evolve. Indeed, these days, halakha is a bit stuck for a variety of reason, including the lack of a central authority like a Sanhedrin to propagate change. But it does evolve nevertheless, and it will eventually end up consistent with what we deem to be moral.’³⁶

There are a number of problems with this line of thought. One problem is that it places the contemporary believer in a difficult position because it implies that the current halakha is very far from what it should be. For example, women should be considered valid witnesses and count for a quorum, and they should be able to break up a marriage just as men can. Unfortunately, the system is stuck, and until it is freed from its stuckness (and the prospects for this happening in our lifetime seem dim), many people will be harmed. The only justification for this situation is a bureaucratic one: that we lack the institution that can make such changes.

A more difficult challenge to the evolving revelation model is that it only works if the biblical and Talmudic norms were moral at the time when they were given. An extreme version of an evolving revelation theory, according to which the Torah expresses the will of an omniscient and omnibenevolent God, implies that the biblical norms must be the best norms that such a God could reveal at the time (and likewise for the Talmudic norms and Talmudic period). If one adopts a less extreme view regarding the authorship of these norms, then the expectation that these norms be the best possible for their time is somewhat decreased, but the norms still need to be good enough (i.e., very good) to justify accepting the Torah as an absolute authority. Now, we must ask, are these norms—institutionalized slavery, genocide of the Canaanite nations, and the death penalty for those who don’t observe the Sabbath and for women who lose their virginity prior to their marriage—really the best norms that an omniscient and omnibenevolent God could have devised during the biblical period? Are these norms good enough to justify treating this system as an absolute authority? It seems highly implausible that they were good enough even back then. It is difficult for me to imagine any plausible circumstances in which these norms would be the best that one can give.

³⁶ See, for instance, Sacks (2015, p. 208). An influential source of inspiration for this approach is a passage in Maimonides’ *Guide for the Perplexed* (3:32), where he explains why the Torah commands animal sacrifice. According to Maimonides, the ancient Israelites were so used to the idea of animal sacrifice as a mode of worship for gods that it would have been difficult for God to command any other mode of worship. Rabbi A.Y. Kook adopted this model as an explanation for the laws of slavery (*Iggerot Hareayah* I, pp. 92–107). Both of these sources are often quoted by apologists.

A Final Note: the Irrelevance of the Binding of Isaac

The argument developed in this article seems quite simple. It is therefore surprising that it is difficult to find arguments of this sort in contemporary literature on morality and religion. Although there are a variety of possible explanations, I would like to address one in particular.

In the literature on religion and morality, it has become customary to turn to the biblical story of the binding of Isaac (Genesis 22) for discussion of conflicts between morality and religion.³⁷ This trend, I believe, is unfortunate. Let me explain why. We should distinguish between two types of conflicts: (1) conflicts between commands issued by God and our moral judgments and (2) conflicts between the prescriptions of a religious tradition and our moral judgments. The binding of Isaac has led scholars to focus on the former type of conflict, whereas the conflict I am discussing is of the latter type. The difference is that the former includes a presupposition that the latter lacks.

In the binding of Isaac narrative, there is a presupposition that God has revealed himself to Abraham and commanded him to sacrifice his son. If any view about conflicts between religion and morality is to be deduced from this narrative, it will be about situations in which a person knows for certain that God exists and that a given norm has been decreed by God. The focus on the binding of Isaac can divert our attention from the type of dilemma that is more relevant to actual religious people, who should not just assume that the norms included in their religious tradition were prescribed by God. For actual religious people, the fact that a religious norm seems immoral should be a reason to believe that it was not decreed by God. For actual religious people, even the existence of God should not be taken as an unquestionable presupposition. Indeed, if I am justifiably convinced that an omniscient and omnibenevolent being instructed me to φ , it makes perfect sense to think of that as a conclusive reason to φ . However, you and I are never in such a position. For us, the focus should be on the type of conflict between morality and religion discussed in this paper.

Conclusion

I have now completed my argument against treating the Torah as an absolute authority and responded to the most common objections that I receive. Where do I hope this will leave you? By arguing against the doctrine of absolute authority, I hope to urge the acceptance of two consequences, one theoretical and another practical. On a theoretical level, even if you accept the Torah as authoritative or inspirational in some way, when you come across immoral parts of the Torah, I want to urge you to state explicitly: "I reject this verse or passage!" rather than seek excuses or avoid the question. On a practical level, I'm arguing for the view that there are times when you should not do what the Torah prescribes. When it is clear to you that the Torah is prescribing something immoral, then you should not accept the prescriptions of the Torah.

³⁷ Examples of works on conflicts between morality and religion that focus on the binding of Isaac include Adams (2002, pp. 277–291); Deutsch (2015); Spero (1983); Sagi and Statman (1995b); Wainwright (2005, pp. 180–208); and the Akedah theologians discussed by Irshai (see above fn. 3).

A friend of mine used to go around asking (Orthodox Jewish) friends: “Suppose it was Sabbath, and you found yourself alone with a gentile who was badly injured. Saving the life of this gentile would require desecrating the laws of Sabbath. In particular, it would require squeezing liquid out of a piece of cloth. The life of this gentile is dependent on this action. However, if you decide not to save the gentile, so as not to desecrate the Sabbath, nobody will ever know about it and there will be no further consequences. Would you save the gentile?” (According to the Talmudic law presented above in the “Examples of Immorality in the Torah” section, saving the gentile should be forbidden). In response, some said they would not save the gentile. Most said they would save the gentile, but could not provide a justification for this action. Nobody (aside from me) said that they reject the Talmudic law because it is wrong. I find this very disturbing. And that is why I wrote this article.

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