

Response to Rabbi Dr. Barry Freundel

BY ROBERT A. BURT⁺

Rabbi Freundel writes about ethical norms in the Hebrew Bible that arose, either from God's direct command or implicitly from His actions, and established a model for human conduct. Near the end of his essay, however, he shifts focus to discuss occasions in the Hebrew Bible when human beings "challeng[e] God . . . with ethical thinking."¹

In this response, I want to focus on these extraordinary occasions. Two related possibilities seem to follow from these occasions, at least so far as the Hebrew Bible is concerned: First, the possibility that God is not the source of all moral norms; Second, that human beings can be independent authors of moral norms—or can have independent capacity to recognize moral norms—that bind God Himself.

The most striking instance of human challenge to God's morality is in two separate instances immediately after God led the Israelites from Egypt. On the first instance God saw that the Israelites had turned away from Him to worship the Golden Calf and told Moses that He intended to destroy the entire people and to begin again, with Moses as the patriarch of a new chosen people. Moses urged God not to do this.² He advanced two contrary arguments. His first argument was, "[w]hy should the Egyptians say, '[w]ith evil intent he brought them out, that he might kill them in the mountains and exterminate them from the face of the earth?'"³ This is an instrumental ground, not a moral ground—an appeal to God's reputation, perhaps even to his vanity. But Moses then set out a different ground which had a more directly moral import. Moses said, "[r]emember your servants Abraham, Isaac and Israel, and how you swore to them by your own self, saying, 'I will make your descendants as numerous as the stars in the sky; and all this land that I promised, I will give your descendants as their perpetual heritage.'"⁴ The moral norm here is that promises must be kept, and according to Moses, God Himself was obliged to honor this norm.⁵ Whatever the basis for these arguments—whether they are merely instrumental or whether there is some intrinsic moral grounding for them—Exodus

⁺ Alexander M. Bickel Professor of Law, Yale Law School.

¹ Barry Freundel, *God's Gift and Mindfulness of the Ethical Dimension as Human Response*, ante, pp. 414-15.

² *Exodus* 32:11.

³ *Exodus* 32:12.

⁴ *Exodus* 32:11-13.

⁵ There is also an instrumental justification for this norm quite aside from its intrinsic ethical dimension; that is, if God made solemn promises to the patriarchs and then subsequently violated those promises, who would trust Him for the future? Moses himself might have thought that God's promise to make him the founder of a "great nation" would be no more trustworthy than his prior promises to Abraham, Isaac, and Jacob.

tells us “the LORD relented in the punishment he had threatened to inflict on his people.”⁶

Two chapters later, in the second instance, God instructed Moses to carve two stone tablets, like the original tablets that Moses had shattered when he saw the Israelites worshipping the calf; and when Moses presented these new tablets to God, according to Exodus:

The Lord passed before [Moses] and cried out, “[t]he LORD, the LORD, a merciful and gracious God, slow to anger and rich in kindness and fidelity, continuing his kindness for a thousand generations, and forgiving wickedness and crime and sin; yet not declaring the guilty guiltless, but punishing children and grandchildren to the third and fourth generation for their fathers’ wickedness!”⁷

God’s stirring self-portrayal that He is a God of mercy and forgiveness would have been quite hollow if He had killed all the Israelites because of their disobedience. It seems that Moses had instructed God about the moral norms that He should follow in his conduct—that He should be a forgiving rather than an exclusively vengeful deity—and God had accepted Moses’s instruction.

Several months later, God once again was fed up with the Israelites. He complained to Moses, “[h]ow long will this people spurn me? How long will they refuse to believe in me, despite all the signs I have performed among them?” And he proposed once again to wipe them out and to make Moses “a nation greater and mightier than they.”⁸ Once again Moses protested. He first set out a similar argument about the unfavorable impact on God’s reputation with the Egyptians, and he offered the slight variation that the Egyptians would conclude that God lacked the power to control the Israelites.⁹ But then Moses added a new argument: “[L]et the power of my Lord be displayed in its greatness, even as you have said, ‘The LORD is slow to anger and rich in kindness, forgiving wickedness and crime.’”¹⁰ In other words, Moses appealed to God’s conscience, to His ideal image of Himself—an ideal, I would say, that God had absorbed from Moses’ teaching.

These encounters between God and Moses are extraordinarily rich and complex—much more so than can be explored in any depth in this response. But these two encounters strongly suggest that, according to the Hebrew Bible, there are moral norms that govern even God’s conduct. Although He has brute power to disregard those norms, He is willing to constrain Himself with reference to those norms and to acquiesce in human beings’ invocation of them against Him. There is something stunning in this possibility—that God’s moral sensibility is sometimes less perfect than mankind’s grasp of morality and that God is prepared to learn moral lessons from mankind.

⁶ *Exodus* 32:14.

⁷ *Exodus* 34:6-7.

⁸ *Numbers* 14:11-12.

⁹ *Numbers* 14:13-16.

¹⁰ *Numbers* 14:17-18.

My reliance on these episodes with Moses may, of course, overstate the case. It may be that Moses was unique and that he was entitled to say things to God that other humans are not. After Moses' death, *Deuteronomy* tells us that "[s]ince then no prophet has arisen in Israel like Moses, whom the LORD knew face to face."¹¹ There are, however, at least two other occasions in the Hebrew Bible—as Rabbi Freundel mentioned—when human beings appear to criticize and challenge the morality of God's conduct.

On the first of these occasions, Abraham urged God not to destroy Sodom and Gomorrah if there were a sufficient number of innocent people in those cities.¹² The premise of Abraham's appeal seemed to be that no innocent person should be punished for the sins of others. However, the lesson we can draw from this encounter was less clear than in Moses' case. God directly invited Abraham to comment on His intention.¹³ He did not solicit Moses' opinion in the same way. Moreover, the moral norm that Abraham invoked was strangely muddled by his failure, ultimately, to insist that the presence of even one innocent person was sufficient to stay God's hand. Abraham began his appeal by asking God if He would destroy cities if there were fifty innocents people there, and God relented.¹⁴ Abraham then progressively ratcheted downward from forty-five to forty, and so on, down to ten innocents; at each lesser number that Abraham invoked, God again relented.¹⁵ But then, strangely, Abraham stopped at ten innocent people, as if he were willing that the entire city be destroyed notwithstanding the presence of nine innocent person—or indeed, even just one innocent.¹⁶ As it happened, God made sure that Abraham's nephew Lot and his family escaped the cities before destroying them.¹⁷ It, thus, appears that God did not kill a single innocent person in the conflagration, notwithstanding Abraham's lapse. It may be that God had already decided to constrain Himself and consulted Abraham only to test Abraham's grasp of the moral principle that God had already endorsed in silence; and it may be that Abraham failed God's test by stopping at ten innocents. This episode is, thus, somewhat ambiguous; nevertheless, there is good reason to read it as Abraham's challenging God's intention on moral grounds and God relenting in response—even though Abraham did not follow through with the full logic of the moral imperative that he was invoking.

The other great occasion when a human being challenged God's morality is in the Book of *Job*. I cannot begin to do justice to the richness and complexity of this book, but in a quick summary fashion, I would suggest that Job was bold and explicit in challenging God's morality for inflicting punishment on him. Job effectively invoked the same moral norm that Abraham had raised with God. Job said quite clearly: I am innocent of wrongdoing and it is unjust of You, God, to punish me notwithstanding

¹¹ *Deuteronomy* 34:10.

¹² *Genesis* 18:23-32.

¹³ *Genesis* 18:17-20.

¹⁴ *Genesis* 18:24-26.

¹⁵ *Genesis* 18:28-32.

¹⁶ *Genesis* 18:32.

¹⁷ *Genesis* 19:23-24.

my innocence.¹⁸ God, however, never explicitly acknowledged His wrongdoing or, even more importantly, Job's right to criticize God's morality. When God finally appeared to Job from the whirlwind, he berated Job for daring to challenge him and mocked him for his powerlessness in the face of God's own awesome capacities.¹⁹

Nonetheless, the book of *Job* conveys an implicit message in God's conduct that, perhaps, contradicts His angry dismissal of Job's complaint. God did, after all, choose to appear "face to face" with Job, as he had also done with Moses. He did not directly answer any of Job's indictment of Him, but he did choose to appear. And after Job's final speech, God turned to Job's friends and threatened to punish them for failing to speak the truth as Job had done.²⁰ What could this "truth" be that God referred to, except Job's insistent claim that God was behaving unjustly and immorally? God, moreover, restored to Job twice the fortune that He had previously destroyed, which may have been an implicit acknowledgment on God's part, as He had commanded in the book of *Exodus*, that a thief is obliged to repay his victim double the stolen amount.²¹

I dwell on these episodes, and not the many other instances that Rabbi Freundel discussed, in which God is the clear source of moral norms because I am intrigued by the implication that can be seen in the Hebrew Bible: God is not the sole source of morality, and human beings also have a legitimate role in propounding moral norms that bind even God Himself. God, of course, has the brute power to ignore those moral norms as they apply to His conduct. But, in fact, human beings have the same brute power. The only question is what consequences follow when God or humans exercise this wrongful power. The Hebrew Bible clearly indicates that God can punish humans for their sins. The Bible also implies—though it does not dare to say this directly—that humans can punish God for His sins by losing faith in Him, by deserting Him. This was the consequence, the "punishment," with which Job initially confronted God when he threatened, in his grief and anger, to give up hope and die. "For soon I shall lie down in the dust," Job said, "and should you seek me, I shall then be gone."²²

This wish for a relationship on both sides—from God to mankind and from mankind to God—is the core source of the moral norms that arise in the Hebrew Bible, both for human beings and for God Himself. Notwithstanding the wrongdoing that each is capable of inflicting on the other, that core source of morality is the need and the love that each has for the other.

¹⁸ *Job* 6:9-10.

¹⁹ *Job* 38:1-40:2.

²⁰ *Job* 42:7-9.

²¹ *Exodus* 22:8.

²² *Job* 7:21.