



Between Obligation and Free Choice

Rabbi Gordon Tucker

As vice chancellor for Religious Life and Engagement, Rabbi Gordon Tucker focuses on enhancing Jewish life at JTS, enriching our study of Judaism with the joy and deep understanding that only lived experience can provide. A leading scholar and interpreter of Conservative Judaism, he also articulates the enduring power of JTS's compelling approach to Jewish law and Jewish life, while strengthening JTS's religious leadership through partnerships with organizations in the Conservative Movement and beyond.

Rabbi Tucker's current role brings him back to JTS, where he served as dean of The Rabbinical School from 1984 to 1992 and as assistant professor of Jewish Thought from 1979 to 1994. He was ordained at JTS in 1975 after receiving his A.B. at Harvard College. He also earned a PhD in Philosophy from Princeton University.

Rabbi Tucker served from 1994 to 2018 as senior rabbi of one of North America's foremost Conservative congregations, Temple Israel Center in White Plains, NY. Under his leadership, the synagogue flourished and was characterized by vibrant communal life and an exceptional devotion to Jewish learning. While at Temple Israel Center, Rabbi Tucker mentored numerous JTS Rabbinical School students who worked at the synagogue as part of the prestigious Gladstein Fellowship in Entrepreneurial Rabbinic Leadership. He served, as well, as an adjunct JTS faculty member, teaching courses in Jewish thought and ethics, the history and philosophy of Conservative Judaism, and leadership skills for rabbis.

Today Rabbi Tucker is Temple Israel Center's senior rabbi emeritus and a senior fellow at the Shalom Hartman Institute of North America. He previously served as board chair of the Masorti Foundation for Conservative Judaism in Israel and was a member of the Committee on Jewish Law and Standards of the Rabbinical Assembly.

In 1979-80, he was a White House Fellow, and served as assistant and chief speechwriter to U.S. Attorney General Benjamin R. Civiletti. He is the author of scores of articles on Jewish theology and law, and published *Heavenly Torah*, a translation of and commentary on Abraham Joshua Heschel's three-volume work on rabbinic theology. An anthology of his writings was published in 2014, under the title *Torah for its Intended Purpose*. Most recently, his new commentary on Pirkei Avot was published by the Rabbinical Assembly in 2018.

Babylonian Talmud Kiddushin 31a

They asked Rabbi Eliezer: How far must one go to fulfill the mitzvah of honoring one's father and mother? Rabbi Eliezer said to them: Go and see what one gentile did for his father in Ashkelon (his name Dama ben Netina). Once the Sages wished to purchase precious stones from him for the ephod of the High Priest for six hundred thousand gold dinars' profit. But the key to the chest holding the jewels was placed under the head of his father, who was sleeping, and he would not disturb him.

The next year the Blessed Holy One gave Dama ben Netina his reward, A red heifer was born in his herd, and the Jews needed it (for urgent purifications related to the Temple service). When the Sages of Israel came to him, he said to them: I know that if I were to ask for all the money in the world you would give it to me. But I ask only the sum that I lost due to the honor of my father.

And Rabbi Ḥanina says: And if this is related about one who is not commanded by the Torah to honor his father (for Dama was a gentile), and who nevertheless is given this great reward for doing this meritorious act, all the more so are those to be rewarded who are commanded to do that act and do so. As Rabbi Ḥanina says: One who is commanded to do an act and performs it stands higher than one who is not commanded to do that same act and still performs it.

Tosafot of Rabbenu Shmuel, Kiddushin 31a

This is the reason why commanded persons stand higher, because they worry and fear lest they violate it, while those who are not commanded have 'a loaf in their basket' and if they wish they can set the command aside.

[Useful background: The Mishnah in Tractate Yoma relates that when the person who was tasked to lead the "scapegoat" out to the wilderness on Yom Kippur was on his way (a distance of some 7+ miles in a hot dry landscape, in the midst of a fast), there were ten stations along the route, each of which had food and water, if the person leading the goat needed it. The Gemara there notes: "No one who led the goat ever needed this food and water, because one who has a loaf in his basket is different from one who does not have a loaf in his basket."]

Some explain that because the Holy One, blessed be He, does not need the commandments [to be carried out per se], only that they [those commanded] follow God's words, therefore **the commanded one is better, because they are fulfilling the will of their Creator**. But one who is not commanded, how did they fulfill the will of their Creator, given that they were not commanded anything?

From: Arnold Eisen and Steven Cohen, *The Jew Within* (2000)

“Our subjects emphasize personal meaning as the arbiter of their Jewish involvement.....Judaism must be strictly non-judgmental. Each person interacts with Judaism in ways that suit him or her. No one is capable of determining for others what constitutes a good Jew. ‘My way is not right or wrong, it's just my way’ [said one interviewee. And another] put it this way: ‘I don't have any problem with what anybody does [as far as Jewish observance is concerned], as long as they don't tell me what I have to do. So, if you want to be involved in something that's very dear to your heart that's fine, but don't sit there and tell me about something that is clearly an option in life, that I have to be doing it, and I should be doing it, because I am Jewish’.”

**Elyakim Krumbein, "בענין מצווה ועושה," *Da'at Website* (Herzog College),
<http://www.daat.ac.il/chazal/maamar.asp?id=19>**

A commandment has two polar aspects. One of these is rooted in the mysterious haze that enveloped Mount Sinai, out of which the voice of the Blessed Holy One broke forth. This aspect of the command is unresolved, since it will only be fulfilled in a reality not yet known. The second aspect is rooted in the immediate reality, which a person encounters after having wondered in suspense about when the moment of command would arrive, and in which that person now knows with exactitude what is required. When those conditions come into being – e.g. the festival arrives and one is holding the four species, or when his son is before him on the eighth day of his life, with the circumcision implement present – it is then that a person apprehends the connection between the present reality and the voice of Sinai. The voice of the Commander then calls out from the present reality. The berakhah for the mitzvah is how this recognition is expressed. The Sages believed that one should not fulfill a mitzvah simply in reliance on an ancient command, as if it were a payment on an obligation taken on in the past. A person should be able to declare: “We were commanded concerning what is happening right at this moment.” That is, the command renews and completes itself in the immediacy of the present. But that can happen only if a person is attuned to it.

Robert Cover, "Obligation: A Jewish Jurisprudence of the Social Order," *Journal of Law and Religion* 5.1 (1987): 65-74.

The story behind the term "rights" is the story of social contract. The myth postulates free and independent if highly vulnerable beings who voluntarily trade a portion of their autonomy for a measure of collective security. The myth makes the collective arrangement the product of individual choice and thus secondary to the individual.

"Rights" are the fundamental category because it is the normative category which most nearly approximates that which is the source of the legitimacy of everything else. Rights are traded for collective security. But some rights are retained and, in some theories, some rights are inalienable. In any event the first and fundamental unit is the individual and "rights" locate him as an individual separate and apart from every other individual...

The basic word of Judaism is obligation or mitzvah. It, too, is intrinsically bound up in a myth--the myth of Sinai. Just as the myth of social contract is essentially a myth of autonomy, so the myth of Sinai is essentially a myth of heteronomy. Sinai is a collective--indeed, a corporate--experience. The experience at Sinai is not chosen. The event gives forth the words which are commandments. In all Rabbinic and post Rabbinic embellishment upon the Biblical account of Sinai this event is the Code for all Law. All law was given at Sinai and therefore all law is related back to the ultimate heteronomous event in which we were chosen--passive voice.

Michael Walzer, *Exodus and Revolution* (1985)

The covenant is an explicit incitement to action. "You are committed: now do what God requires." It must sometimes have surprised men and women who had never stood, even in imagination, at the foot of Sinai (or in any similar place) to be told that they wore the Lord's collar.....But when the people engage themselves again — it doesn't matter whether they are repeating an event in their own history or in someone else's history — they make themselves into free men and women. Having committed themselves, of course, they are in an important sense unfree, bound to obey the law. Since they have bound themselves, however, they are *freely bound*.

George Schrader, "Autonomy, Heteronomy, and Moral Imperatives," *Journal of Philosophy* LX:3 (1963)

Duty can be analyzed in any one or more of the following ways, each of which fulfills the general condition that it be regarded as a phenomenon of volition. We might view it: (a) as a command deriving from a source beyond the self, e.g., God, or another person; (b) as a demand laid upon the subject through its own act and, hence, reflexive in character; and finally (c) as involving the reciprocal demand-response of a subject and one or more beings to which it is related. The first alternative (a) would regard duty as essentially heteronomous in point of origin, the second (b) as basically autonomous, and the third (c) as a combination of the two. The last alternative would allow for the possibility that moral duty can be based upon contractual relationships.

Babylonian Talmud Kiddushin 31a (continuation)

Rav Yosef -- who was blind -- said: "Originally, I would say that if someone could demonstrate to me that a blind person is exempt from fulfilling the *mitzvot*, I would throw a party for the sages. For though not being commanded, I yet perform the *mitzvot*. But now that I have heard what Rabbi Hanina said: 'Those who do acts that they are commanded to do rank higher than those who do the very same acts, but are not commanded to do so', then on the contrary: If someone could demonstrate to me that a blind person is commanded to do the *mitzvot*, I would then throw a party for the sages."

Bob Dylan, "Gotta Serve Somebody" (1979) — partial lyrics

You may be an ambassador to England or France
You may like to gamble, you might like to dance
You may be the heavyweight champion of the world
You may be a socialite with a long string of pearls

Refrain

But you're gonna have to serve somebody, yes
Indeed you're gonna have to serve somebody
Well, it may be the devil or it may be the Lord
But you're gonna have to serve somebody

You might be a rock 'n' roll addict prancing on the stage
You might have drugs at your command, women in a cage
You may be a business man or some high-degree thief
They may call you doctor or they may call you chief

Refrain

You may be a state trooper, you might be a young Turk
You may be the head of some big TV network
You may be rich or poor, you may be blind or lame
You may be living in another country under another name

Refrain