

Moonshine Shavuot: In Search of Obligation - Robert Cover and the Talmud

Rabbi Mishael Zion | Moonshine Shavuot 2015 | Text and the City

If you believe in mythical time, on this coming Saturday night the Torah will be given to you. Again. Shavuot doesn't celebrate a historical event from the past, but rather a real occurrence that is about to take place. You don't want to be caught off guard.

So we stay up all night and study Torah. Or at least we make a point, on this coming Saturday night, to study something. With a hevruta, teacher, child - or on our own. Mythical or not, we thus signify to ourselves that we are part of this thing called Torah, given to us anew each year.

This month's Moonshine, dedicated to Shavuot and the month of Sivan, offers a [Talmudic discussion](#) and [an article by a legal theorist](#), on the themes of Choice and Obligations, Rights and Commandments. Like all good learning, it's psychology, political science, history and current events all rolled into one, if you take it there... In case you haven't yet made other arrangements, this might make a fine offering for Shavuot night learning.

What was given on Shavuot? What does "receiving Torah" mean?

In one reading, it is about *mitzvah*, being commanded. On Shavuot we celebrate being part of a path and destiny which is larger than ourselves. We bow our head to the authority on the mountain which has chosen us as their tool. We shall obey and we shall hear.

In another reading, though, on Shavuot we received Text. With Divine Text came Human Interpretation: questioning, understanding, misinterpretation, debate. Text invites our full autonomous self to engage,

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study, challenge – as a way of seeking (divine) truth.

The authority of the text does not undermine my own authority, in fact it recognizes my autonomy, requires it, albeit challenging me to redeem myself from the vain and mundane. At its core lies a moment of personal choice.

These two readings play out – famously – in the Talmud (Shabbat 88), a text worth returning to each Sahvuot. The first opinion is that of Rav Avdimi.

Mount Sinai hovering over my head, I have no choice. Accept the Torah – or die. Generations later, I might never have stood at Sinai, but that is the whole point: it isn't about me. I am obligated.

Rava is having none of it though. “If that is the case,” says Rava, “then the binding nature of the Torah is like that of a contract signed under coercion – unenforceable.” Since God gave us text and law to study, we have developed based on it a self understanding of the importance of choice in the legal process. The Torah is a contract like any other – and must abide by the (human) rules set for it. (There's a third opinion, but that would take us to a whole other holiday. [Study the full text here](#)).

This classic discussion is played out in the essay “Obligation: A Jewish Jurisprudence of the Social Order” by the late and great Yale legal theorist Robert Cover. What is described about as an internal Talmudic debate, Cover takes as the basic difference between the “fundamental word” of the Western political tradition - “rights” - to that of Jewish law - “obligation”. Cover begins by playing out the two fundamental words of each tradition and the myths that fuel them:

Social movements in the United States organize around rights. When there is some urgently felt need to change the law or keep it in one way or another a “Rights” movement is started. The story behind the term “rights” is the story of social contract... making the collective arrangement the product of individual choice and thus secondary to the individual.

In Jewish law an entitlement without an obligation is a sad, almost pathetic thing... A child does not become emancipated or “free” when he or she reaches maturity, rather the child becomes bar or bat mitzvah – literally, one who is of the obligations” The basic word of Judaism is obligation or mitzvah. It is intrinsically bound up in the myth of Sinai, a myth of heteronomy. The experience at Sinai is not chosen.

When I first read this, I thought Cover was positing the power of Obligation as a traditionalist Jewish apologetic or as a conservative's yearning for a lost past. Yet as he deepens the discussion, it becomes

clear that he is expressing the yearning of the Liberal to obligate himself and his society in distributive justice:

A jurisprudence of rights naturally solves certain problems while stumbling over others. It has proved singularly weak in providing for the material guarantees of life and dignity *flowing from the community to the individual*. While we make talk of a right to medical care, the right to subsistence, the right to an education, we are constantly met by the realization that such rhetorical tropes are empty in a way that the right to freedom of expression or the right to due process are not... The “right to an education” is not even an intelligible principle unless we know to whom it is addressed. Taken alone it only speaks to a need. A distributional premise is missing which can only be supplied through a principle of “obligation”.

I believe that every child has a right to decent education and shelter, food and medical care; I believe that refugees from political oppression have a right to a haven in a free land... I do believe and affirm the social contract that grounds those rights. But more to the point I also believe that I am commanded – that we are obligated – to realize those rights.

Cover invites us to seek out this Shavuot how we can reclaim commandedness and obligation in service of the projects we believe in. The language of rights is powerful, but insufficient (as is the language of Obligation). It is an American question, and a Jewish one. No one likes being commanded, and yet we seek to be obligated to the things that matter most. Otherwise we'll never make it from the foot of the mountain to the promised land.

Dedicated to a theme in the Jewish month, **Moonshine** is a combination Dvar Torah and springboard for learning in the coming 30 days. **Moonshine** - in honor of the Hebrew month's commitment to the lunar cycle, with a hint of distilling fine spirits off the beaten track and - perhaps - intoxication. I'll be hosting an **online text study** about the most clicked on texts towards the end of the month. Details forthcoming.



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