Rights, Commandments, and the Literature of Citizenship

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A commonly circulated list of "Sunday school bloopers" includes the following student error in its comic archive: "Moses went to Mount Cyanide and received the Ten Amendments." What makes the line worth retelling is the felt antagonism between commandments and amendments, between the Decalogue and the Bill of Rights. Both are composed of ten pronouncements. Both are nation-founding law codes animated by the idea of contract or covenant, the first establishing the nation of Israel and the second amending the U.S. Constitution. Both have become oddly unreadable. The Decalogue, written on the tables of the infantile mind through catechistic incantation, represents some of our culture's earliest exercises in rote memorization, posing an equal threat to intellectual and to ethical quickening. The Bill of Rights is illegible for other reasons: it is a surprisingly eclectic text, topical in its provisions, mixed in its itinerary, and often more powerful in what has been derived from it (e.g., the right to privacy) than in

The central conceit of this essay first took shape during work on an essay, coauthored with Kenneth Reinhard and forthcoming in *Diacritics*, about Jacques Lacan and the Ten Commandments. This essay remains indebted to the ongoing collaboration represented by that one. I began to develop the central comparison between the Decalogue and the Bill of Rights as an independent essay in a paper delivered at a conference on law and literature that was generously hosted by Brook Thomas at the University of California, Irvine, in 2001. Since then the essay has benefited from the comments of audiences at the University of California, Los Angeles, Center for Jewish Studies; the University of California, Davis; and New York University. I have also received helpful advice and encouragement from the editors at *MLQ* and from Jay Fliegelman of Stanford University, who served as a reader for this essay.

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what it explicitly guarantees (e.g., that no soldiers shall be quartered in any house without the owner's consent). Stretched here and narrowed there by momentous yet meticulous acts of judicial review, the Bill of Rights, not unlike the Decalogue, exists above all in and through its interpretations. Because the process of expansion and contraction has occurred largely in the courts, few who are not lawyers can recount the provisions in the Bill of Rights with any accuracy, let alone give an account of its architecture. Both texts are remembered forgetfully and loved most often in ignorance.

Because of their basic structure and import, the Decalogue and the Bill of Rights exist in fundamental tension with one another. The Ten Commandments come from outside, addressed to us by a speaker who is altogether other than us, namely, God. Whereas they are written in the second person ("Thou shalt not . . ."; "Remember the Sabbath day . . ."; "Honor thy father and thy mother . . ."), the Bill of Rights is written in the third person ("Congress shall make no law . . ."; "No soldier shall . . ."; "No person shall be held . . ."). If it is addressed to anyone, it is not to individual citizens but to the government, taken as the restricted delegation of the people's power to a central agency. In many ways, the Decalogue and the Bill of Rights do not conflict or even overlap with each other. There is no talk of speedy trials in the Decalogue, and no reference to the Sabbath or to idolatry in the Bill of Rights. Yet it is possible to read this and other declarations of rights as in effect overturning the Decalogue, insofar as they install a fundamentally secular form of subjectivity or selfhood in place of the older religious one.

At stake in the relation between commandments and rights are a number of linked logics that gather up the cruxes of modernity itself: the relations between revelation and reason, positive law and natural law, heteronomy and autonomy, vertical axes of subjection and horizontal networks of citizenship. Moreover, these cruxes define the fold of the two tablets themselves, between ritual commandments regulating humanity's relation to the terrible sovereignty of God (1–5 in the Jewish count) and ethical commandments governing interactions among neighbors on the normative horizon of the social (6–10). In the history of the three monotheisms, there are many ways to count to ten.[1]

[1] On different ways to count to ten (Jewish, Catholic, Lutheran, Orthodox, etc.) see Solomon Goldman, *The Ten Commandments* (Chicago: University of Chicago Press,

The story of the Decalogue's different countings—indeed, even their formalization as "commandments"—is in large part identical with the dialectical emergence of Christianity and Islam out of and in relation to Judaism's rhythms of letter and spirit, prescription and prophecy. Moreover, literature itself—its "history," in the sense of its constitutive implication in and formative dramatization of the patterns of epochal transformation—finds itself caught up in the same dialectics, intimately linked to the sublime opacity of divine revelation, on the one hand, and the secular exchanges of civil life, on the other. Indeed, literature may be the ultimate *galeotto* between sacred and secular representations, leaving imprints of the sacred in the sands of modernity while endowing revealed truth with the very different destiny of fiction.

This essay takes its direction from two major works in the field of law and literature, Brook Thomas's *American Literary Realism and the Failed Promise of Contract* and Victoria Kahn's forthcoming *Wayward Contracts: The Crisis of Political Obligation in England, 1640–1674*.[2] For Thomas, the *promise* of contract during the period after the American Civil War—the contract as a legal formalization of the promise, but also the dream of equality that accompanies it—dynamizes the literary scene of contract by engaging it with possible futures. The key word in Kahn's project is *romance*: by tracking the marriage contract in novels, poetry, and political philosophy after the English Civil War, she demonstrates how both royalist and liberal theories of sovereignty reconciled coercion and consent by imagining political obligation in romantic and erotic terms. Finding its own idiosyncratic itinerary through the landscapes of Thomas's America and Kahn's England via the overarching (or double-arching) question of the relation between commandments and rights, this essay attends to the covenantal status of the Decalogue, the figuration of that covenant as a marriage in rabbinic and philosophical traditions, and the fallout of this union in figurations of the church-state relationship in the early U.S. context.

1956), 30; and Margaret Aston, *Laws against Images*, vol. 1 of *England's Iconoclasts* (Oxford: Clarendon, 1988), 371–75.

[2] Brook Thomas, *American Literary Realism and the Failed Promise of Contract* (Berkeley: University of California Press, 1997); Victoria Kahn, *Wayward Contracts: The Crisis of Political Obligation in England, 1640–1674* (Princeton, NJ: Princeton University Press, forthcoming).

I begin by reading the Decalogue in the context of Judaism, with an emphasis on the Fifth Commandment as a meditation on the different shapes of covenant in the biblical tradition. I proceed to John Locke's antipatriarchal commentary on the Fifth Commandment, and I end by examining the implications of these exegetical maneuvers for the Bill of Rights, especially the First Amendment. The essay's first section uncovers the romance of covenant in the architecture of the Decalogue and its exegesis, in which the Fifth Commandment, to honor one's father and mother, is key because of its location at the transition between the ritual and ethical tablets of the law. In the narrative unfolding of the Decalogue, the parental couple embodies a first instance of civil society, a union that both negates and reinstitutes patterns of hierarchy through the operation of the contract. Locke is a powerful exegete of the paradoxes of contract and consent, which establish relations of formal equality between parties dramatically unequal on the sociopolitical plane; he revisits the Fifth Commandment to recalibrate the fundamental ratios of political theology—sovereign and subject, parent and child, husband and wife—for liberal philosophy. I then turn to the genesis of the Bill of Rights, using Marx's "On the Jewish Question" as a crib sheet on the fortunes of religion and civil society in America. By reading the relation between rights and commandments in the mode of romance and under the sign of covenant, I aim to use the discourse of rights to counter the disciplinary and hierarchical functionalization of commandments, and to deploy the discourse of commandments against the possessive individualism of rights.

Such work invites recourse to a hermeneutics that is neither biblical nor legal in the strict senses native to those fields, but *literary* in its provenance and methods. This hermeneutics takes its bearings from the birth of law into literature and literature into history at Sinai, working among genres and epochs with an ear attuned to the encrypted narratives, foundational metaphors, and dramatic scenarios that divide and join them. My larger project is to propose reading documents like the Decalogue and the Bill of Rights as exempla of a distinct genre and tradition of writing that I term the *literature of citizenship*, conceived as a series of open letters, formulated out of a loose yet exacting set of promises posed at determinate points of time but to indeterminate audiences. Although the literature of citizenship includes texts

from literary genres (Sophocles' *Antigone*, Shakespeare's *Othello*, Ralph Ellison's *Invisible Man*, Pedro Almodóvar's and Krzysztof Kieslowski's films), it also comprises foundational and occasional documents, such as the Decalogue and the Bill of Rights, the Declaration of Independence, Martin Luther King Jr.'s "Letter from Birmingham Jail," Vaclav Havel's *Open Letters*, and Michael Moore's *Fahrenheit 9/11*. Such texts are extraliterary (i.e., legal, epistolary, rhetorical, documentary), yet their incisive, iconic, inaugural, or interventionist forms dramatize and reconstitute key myths and rhythms for literature and politics in the West.[3]

A Tale of Two Tablets

Although Judaism and the different branches of Christianity count the commandments differently, all traditions concur that the Ten Commandments are organized around a fundamental fold or split. On one tablet stand the ritual commandments that regulate the relation between God and humanity, and on the other stand the ethical commandments that address the relations of human beings to each other. Christianity temporalized the two tablets into the image of a historical movement: from ritual to ethical law; from a national document to a universal one; indeed, ultimately from Judaism to Christianity. If the first tablet establishes a covenant between God and Israel, the second tablet generalizes that covenant to include all humanity. The second tablet would also appear, then, closer to a theory of rights, founded on the reciprocity of individuals in a horizontal social order, whereas the first tablet, framed by the cryptic name of God, approximates more closely a logic of pure command, resistant to economies of socialization and based on the radical heterogeneity between the giver and the receiver of the law. In Christian historical dialectics, the first tablet becomes identified with the Old Testament as the era of law, whereas the second becomes the hallmark of the brotherly love that drives the universal mission of the gentile church. As Christian typology (the figural relation between Old and New Testaments) is reborn and reworked

[3] I develop the idea of the literature of citizenship at length in *Citizen-Saints: Shakespeare and Political Theology* (Chicago: University of Chicago Press, forthcoming).

in the rhythms of modernity (from the old dispensation of faith to the new dispensation of reason), this split turns back on the Decalogue itself, which assumes the mantle of revealed law in opposition to the laws of nature and reason—that is, the discourse of rights. Thus the very statement that rights have replaced commandments is itself based on a certain mobilization of the Decalogue's defining fold between the ritual and the ethical, the revealed and the natural, the religious and the political, the particular and the universal.[4]

In the Jewish count, the Decalogue begins with God's statement of his historical bond with Israel: "God spoke all these words, saying, I the Lord [*YHVH*] am your God who brought you out of the Land of Egypt, the house of bondage" (Exod. 20:1–2).[5] As the rabbis have noted, there is a striking redundancy in the text's insistence on God's speaking: "God spoke [*v'y'daber*] all these words [*kol ha-davarim*], saying [*limor*]." To explain the iteration, the traditional commentary goes in two directions at once: toward the radical singularity of God's expression, on the one hand, and the equally sublime multiplicity of his speech, on the other. The medieval French commentator Rashi argues that God spoke the entire set of commandments in a single incomprehensible and terrifying utterance; Maimonides adds that God's speech lacked distinct phonemes; another commentary reinforces this image of radical condensation by suggesting that God's voice had no echo.[6] Yet Rashi then

[4] There is a vast literature on the Decalogue, most of it written from philological or pastoral perspectives. The most relevant *literary* readings include John Bossy, "Moral Arithmetic: Seven Sins into Ten Commandments," in *Conscience and Casuistry in Early Modern Europe*, ed. Edmund Leites (Cambridge: Cambridge University Press, 1988), 214–34; Calum M. Carmichael, *The Origins of Biblical Law: The Decalogues and the Book of the Covenant* (Ithaca, NY: Cornell University Press, 1992); and André Chouraqui, *Les dix commandements aujourd'hui: Dix paroles pour réconcilier l'homme avec l'humain* (Paris: Laffont, 2000). Jacques Lacan's comments on the Decalogue set in motion the train of thought developed here (*The Ethics of Psychoanalysis, 1959–1960*, ed. Jacques-Alain Miller, trans. Dennis Porter [New York: Norton, 1992], 79–83).

[5] Unless otherwise noted, translations and Hebrew text of the Ten Commandments are taken from Nahum Sarna, ed., *JPS Torah Commentary: Exodus* (Philadelphia: Jewish Publication Society, 1991).

[6] Rashi, *Chumash with Rashi's Commentary*, ed. A. M. Silberman, 5 vols. (Jerusalem: Feldheim, 1934), 2:102; Maimonides, excerpted by S. Y. Agnon, *Present at Sinai: The Giving of the Law*, trans. Michael Swirsky (Philadelphia: Jewish Publication Society, 1994), 260; H. Freedman and Maurice Simon, eds., *Midrash Rabbah*, 3rd ed., 10 vols. (London: Soncino, 1983), 3:336.

writes that after speaking the commandments all at once, God began to repeat them one by one, but even this was more than the people could bear, and they begged Moses to shield them from God's terrible voice by speaking the commandments for him. God spoke twice, a doubling that instituted the folds of tradition (2:102). Thus God repeats his own utterance, Moses transmits it, and the stone tablets on which the commandments are inscribed are destroyed and replaced. Moreover, the Decalogue appears twice in the Torah: first in Exodus and again in Deuteronomy, where Moses retells the story of the exodus to a new generation of Israelites born in the desert. In the primal scene of the enunciation and transmission of the Decalogue, the unbearable singularity of the law gives rise immediately to the repetitions that preserve it, a *deutero-nomos* (second law, second telling) that both transmits and deflects its force; in the words of Psalm 62, an authorizing topos for the exegetical tradition, "Once God has spoken; twice have I heard this."[7] The scene of transmission is already a scene of translation, tradition, and commentary—a scene of the law on its way to literature, caught between the immovable opacity of a singular instance of speech and its instantaneous fall into the historicity of interpretation.

This multitude of interpretations, moreover, is not simply an angelic choir of harmonized differences. The very insistence of the "Thou shalt not" in the delivery of the law infuses the commandments with the possibility of their breaking—whether the shattering of the stone tablets themselves in response to the idolatry of the golden calf, the transgression of specific laws on either an individual or a collective plane, or the revision of the laws in relation to historical emergencies. Walter Benjamin discloses the horizon of crisis that surrounds Sinai when he writes that the prohibition against murder "exists not as a criterion for judgment, but as a guideline for the actions of persons or communities who have to wrestle with it in solitude and, in exceptional

[7] Another midrash imagines God's voice mutating into seven voices and seventy languages, a divine cacophony that at once addressed all the peoples of the world and was comprehensible to none (Hayim Nahman Bialik and Yehoshua Hana Rawnitzky, *Sefer ha-aggadah: The Book of Jewish Folklore and Legend*, ed. and trans. Chaim Pearl [Tel Aviv: Dvir, 1988], 81). On Psalm 62:11 as a "call to exegesis" see Emmanuel Levinas, *Beyond the Verse: Talmudic Readings and Lectures*, trans. Gary D. Mole (Bloomington: Indiana University Press, 1994), 132.

cases, to take on themselves the responsibility of ignoring it."[8] The most pressing ethical acts may be those that require not the application but the suspension or amendment of the Decalogue.

What God speaks is above all his name, the unpronounceable tetragrammaton formed by the four letters *yood*, *hey*, *vuv*, and *hey*: "I myself [*anochi*] (am) YHVH." Jewish tradition counts God's initial utterance as the first of the "Ten Words" or Decalogue; in the Hebrew Bible the word *commandment* (*mitzvah*) does not appear in connection with this text. Is this first line a commandment or a declaration—or rather, are the jussive and the constative inextricable in this inaugural utterance? Hebrew does not use the present tense of the verb of being, and the line in question, "anochi YHVH Elohim," is no exception; hence the commandment cannot be taken, strictly speaking, as a declaration of existence, a definition of substance, or an exhortation of faith. The Ten Words, and especially this initial one, are at once creative, legislative, and descriptive, depositing in the apparently simple form of the statement a god otherwise than being.

The subject of religion constituted by the singular encounter with this name is also a political subject, insofar as the First Commandment, flowing from the historical event of liberation, establishes Israel as a "kingdom of priests and a holy nation [*goy kadosh*]" (Exod. 19:6) through a covenant (*berit*) between God and the Israelites. This element of national covenant or contract at the heart of the revealed law forms the main point of contact between biblical law and the classical political tradition. It is no accident that the monumental *Jewish Political Tradition*, edited under the direction of Michael Walzer, places the concept of covenant at the base of its archive. The selections on covenant begin with Moses at Sinai and end with Spinoza's *Theological-Political Treatise*, where the biblical motif of covenant comes face to face with liberal consent theory.[9]

[8] Walter Benjamin, "Critique of Violence," in *Reflections: Essays, Aphorisms, Autobiographical Writings*, ed. Peter Demetz, trans. Edmund Jephcott (New York: Harcourt Brace Jovanovich, 1978), 298.

[9] Michael Walzer, Menachem Lorberbaum, and Noam J. Zohar, eds., *Authority*, vol. 1 of *The Jewish Political Tradition* (New Haven, CT: Yale University Press, 2000). In Spinoza's account, "As in a democracy, they [the Hebrews] all surrendered their right on equal terms, crying with one voice, 'Whatever God shall speak, we shall do,' [Exod. 24:3] (no one being named as mediator), it follows that this covenant left

The road from Sinai to Amsterdam, however, is circuitous at the very least: the most immediate model of covenant available in the biblical period was not a "parity contract, where the contracting parties negotiate as equals," but the suzerain-vassal treaty, "where one party transparently imposes its will on another," usually following a military conquest or liberation (Sarna, 102n). Such treaties were written in duplicate on tablets of stone, one for the suzerain and one for the vassal; following this convention, a tradition dating from the Palestinian Talmud avers that each tablet contained the full Decalogue, with one copy for God and one for Israel (Sarna, 108n). It is as sovereign, the king of kings, that God sets his sublime name into play in the first tablet of the Decalogue: because he has liberated the Israelites from Egypt ("I am the Lord your God who brought you out of the land of Egypt, the house of bondage" [Exod. 20:1]), they owe him fealty recorded in the form of a treaty. The Second Commandment, against idolatry, establishes the priority of God's secret name over that of any other god that would compete with it: "This command . . . warns against violating the covenant by recognizing in any form or manner what other peoples accept as deities" (Sarna, 107n). The Third Commandment, "You shall not take the name of the Lord your God [*shem YHVH Elohechah*] in vain" (Exod. 20:7; *Oxford Annotated Bible* [1962]), is designed precisely to sequester the name in its status as unspeakable signifier, to maintain the validity of its sovereign signature. The Fourth Commandment, which enjoins observance of the Sabbath, begins to shift the weight of the Decalogue from the sanctity of God's name to the realm of human activity structured by it. The commandment calls up the cacophony of human activity—sons and daughters, slaves and cattle, settlers and strangers—in order to bring it to a momentary stillness, holding out that silence as the special resting place for the name that governs the covenant as its sovereign signatory.

The hinge between the two tablets is the Fifth Commandment: "Honor your father and mother, that you may long endure on the land that the Lord [*YHVH*] your God is assigning to you" (Exod. 20:12). Nahum Sarna notes that "this command forms the transition from the

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them all completely equal" (*Theological-Political Treatise*, ed. Seymour Fenton, trans. Samuel Shirley [Indianapolis, IN: Hackett, 1998], 196).

first to the second group of divine declarations, in that it simultaneously possesses both religious and social dimensions" (111n).[10] God's name is mentioned in this commandment (for the last time in the Decalogue), but its regulation is no longer the primary focus. Like the first four commandments, the primary impulse of the Fifth Commandment is upward, dictating a reverential attitude of honor or respect (*kavod*) that links parents and God in a circle of shared attributes of sovereignty. The purview of the Fifth Commandment, however, is human, not divine, and the respect it requires is due to two parties rather than centered on one. By naming the father and the mother as a couple, the commandment alludes to a second model of covenant that runs underneath that of the suzerain-vassal treaty, namely, the marriage contract. The *ketubah* or marriage contract is an ancient legal instrument in Judaism; indeed, the word simply means "written instrument" but, because of its ubiquity in Jewish life, has come to be applied exclusively to marriage writs. Spelling out the husband's financial and sexual obligations to his wife, both in marriage and in the event of a divorce, the groom delivers the signed contract to his bride for her safekeeping.[11] It is not in any simple sense a parity contract between husband and wife: the bride's father is a party because of the dowry. It is, in the language of the seventeenth-century jurist Samuel Pufendorf, "an 'unequal league' in which the wife owes the husband obedience and, in return, he protects her."[12] The *ketubah* is designed to protect the rights of the bride, the more vulnerable member of the union, more than those of the groom; less than equal in the marriage, she is more than equal in the scene of contraction. Unlike almost all other forms of contract in the Near East, including commercial transactions and the suzerain-vassal treaty, the *ketubah* is written only once, without duplicate, and it belongs exclusively to the wife as a memorandum of guarantees (Epstein, 32, 6).

The *ketubah* was ready at hand as a legal metaphor for conceptual-

[10] See also Kenneth Reinhard, "Freud, My Neighbor," *American Imago* 54 (1997): 188.

[11] Louis M. Epstein, *The Jewish Marriage Contract: A Study in the Status of the Woman in Jewish Law* (New York: Jewish Theological Seminary of America, 1927), 4–6.

[12] Quoted in Carole Pateman, *The Sexual Contract* (Stanford, CA: Stanford University Press, 1988), 51.

izing the nature of the covenant at Sinai during the Rabbinic period.[13] Read as a *ketubah*, the Decalogue signs into law the marriage between God and Israel, with these ten laws (and the Torah more generally) laying out the terms of their interaction. International treaties ended with the signers depositing their tablets in their respective temples, often "beneath the feet" of each parties' gods to indicate the sovereignty assuring the sanctity of the promise. So too, the ark designed in the desert to contain the tablets (Exod. 25:10–16) symbolizes the footstool of God's throne, "a prerogative of royalty" (Sarna, 160–61n). Yet the ark also discloses a more homely meaning, as the place of safekeeping where the bride retains her marriage contract against future crises—perhaps in a chest or casket, ready-at-hand and easily transported. In rabbinic thinking about covenant, the model of the marriage contract animates the unilateral thrust of revelation with the possibility of consent, mutual respect, and reciprocal obligation as well as the conditions for divorce. Although the sovereign force of the first tablet places the weight of obligation on Israel as the vassal in a treaty, the *ketubah* analogy implies the guarantee of something like rights for the weaker party in the covenant.

If the prohibition against idolatry implies exclusive fealty to a single sovereign in one model of contract, it also implies the limitations on polygamy brought into play by the *ketubah*. Thus the commandment against idolatry ends with a promise of contractual commitment from the jealous God: "For I the Lord your God am a jealous God, visiting the guilt of the parents upon the children, upon the third and upon the fourth generation of those who reject Me, but showing kindness [*hesed*] to the thousandth generation of those who love Me and keep My commandments" (Exod. 20:4; translation modified). The jealousy of the single God is marital in nature, and so is his kindness; Sarna comments that *hesed* "can express conduct conditioned by intimate relationship, covenantal obligation, or even undeserved magnanimity" (80n).[14] In

[13] Avrohom Chaim Feuer, ed. and trans., *Aseres Hadibros: The Ten Commandments: A New Translation with a Commentary Anthologized from Talmudic, Midrashic, and Rabbinic Sources* (Brooklyn, NY: Mesorah, 1981), 33.

[14] See also Sarna's commentary on the epithet *el kanna*, which he translates as "impassioned": "The present epithet *'el kanna'* is most frequently translated 'a jealous God,' a rendering that understands the marriage bond to be the implied metaphor for the covenant between God and His people" (110n).

the rabbinic tradition, the two tablets of the Decalogue are correlated to each other, with each ritual commandment keyed to the ethical commandment on the opposite side. (One effect of this hermeneutic tactic is to keep the ritual and the ethical tablets in continual dialogue with each other, in resistance to any reification of a single tablet by itself.) The First Commandment, declaring God's name, faces the Sixth Commandment, prohibiting murder; the rabbis explain that since man is made in God's image, destroying a human life is also an offense to God (cf. Gen. 9:6). The Second Commandment, against idolatry, faces the Seventh Commandment, against adultery: just as Israel must be faithful to its jealous God and is assured sustenance and respect in turn, so human beings must be faithful to their spouses, demonstrating a commitment that will repay in the continuity of the generations.

The civil world intimated in the Fifth Commandment leads into the social prohibitions of the second tablet. Glossing the synapse between the two tablets, Emmanuel Levinas writes: "But what is the positive meaning of the withdrawal of this God who says only his names and his orders? This withdrawal does not cancel out revelation. It is not purely and simply a non-knowledge. It is precisely man's obligation towards all other men" (123). It is as if the first tablet had proffered the tetragrammaton in order to defer it, putting it away to clear the space of proximity, the possibility of nearness, inhabited by the neighbor in the second tablet. In these final commandments, the clamor of village life returns after the silence of the Sabbath, teeming with scenes of murder, adultery, theft, deceit, and improper desire that evoke a whole world of narrative possibility and dramatic conflict. Each of these commandments can be put into the service of social utility by asserting the inviolability of property—the propriety of the person (murder), of the sexual relationship (adultery), and of objects (theft). The regimentation of social space instituted by these first three neighbor commandments is purified and transformed into the grounds of a private subjectivity by the protection of juridical speech (false witness) and the codification of desire itself (covetousness). Yet Levinas sets the second tablet of the Decalogue precisely against the equalizing force of utility and property. Unfolding the honor owed to parents into its own entablature, the relation to the neighbor, though fundamentally horizontal

and social, is never purely reciprocal.[15] The terrible command of the "Thou shalt not" makes no reference to equal protection. The neighbor borrows a quotient of alterity from the awful majesty of God, the honor due to parents, and the unequal contract of the *ketubah*. Accidental avatar of God, spouse, and parent, the neighbor—the ultimate Jewish mother?—is always owed more than one can expect in return.

If the covenant of the Decalogue stages a romance, its promised futures are riven with realism—with the possibility of adultery and divorce, of dissension and betrayal, of custody battles and property disputes. The marriage contract is designed precisely to stabilize obligation and control the progress of dissolution when the impulse of eros and the bonds of affection waver and wither. In reference to the Decalogue Paul writes, "Owe no one anything, except to love one another. . . . Love does no wrong to a neighbor; therefore love is the fulfilling of the law" (Rom. 13:8–10). For Paul, love fulfills the law in the sense of perfecting and even canceling it; in the transumptive narrative of Christian redemption, the Decalogue is dissolved into pure romance, the call to total love (Reinhard, 171). Yet, in the double entablature of the Decalogue, love is not enough; the law is required to establish procedures and parameters for interaction over time, in history, and in anticipation of catastrophe. With regard to parents, the word *love* does not appear in the Decalogue, but rather *kavod* (honor, respect). In the rabbinic tradition, the "honor" due to parents, like the respect between spouses, is a form of behavior that reflects the contractual grounds and anticipated conflict of civil union into a form of civil sentiment that is not reducible to any passion, though it borrows shades from many and is thus another word for ambivalence.

[15] Lacan makes a similar point in the register of psychoanalysis, associating the commandment against covetousness not with the objects of desire and exchange but with the "Thing" (*das Ding*) of an unbearable jouissance: "Let me add *das Ding* insofar as it is the very correlative of the law of speech in its most primitive point of origin, and in the sense that this *Ding* was there from the beginning, that it was the first thing that separated itself from everything the subject began to name and articulate, that the covetousness that is in question is not addressed to anything that I might desire but to a thing that is my neighbor's Thing. It is to the extent that the commandment in question preserves the distance from the Thing as founded by speech itself that it assumes its value" (83).

In the staging of Sinai as a marriage contract, revelation devolves into romance and law becomes liturgy and literature, but *eros* remains structured by *nomos*, parity in contract is subordinated to the immeasurability of the Other (deity, neighbor, and spouse), and the future promised by covenant remains riven by the possibility of failure, fallout, and renegotiation. The Fifth Commandment plays a key role in this complex marriage plot, since it links the ritual and ethical, vertical and horizontal, sovereign and civil tablets via the ligature formed by the parental couple. The commandment crosses the principles of divine hierarchy and social equality by deriving obligation from two types of similitude: each human being is both made in God's image and resembles its parents, whose contractual union in turn informs the structure of covenant binding the two halves of the Decalogue. The relation between God and Israel is thus echoed and revisited in the relation of Israelite to Israelite and vice versa, domesticating God into a bridegroom, on the one hand, and elevating the neighbor to a face of the divine, on the other. In both the romance and the realism of the covenant, divine and social orders irradiate each other, exchanging roles and metaphors in an escalating dance of creative obligation and marital discord in which divine and human singularity, and their divine and human marriages, echo and recalibrate each other.

Locke among the Rabbis

In later political theology, Jewish and non-Jewish, husband and wife figure both as mastheads of monarchy in patriarchal narratives of sovereignty and as creatures of civil association on a horizontal plane. The *ketubah*, like most marriage contracts, is a civil instrument—indeed, it institutes a key element in civil society, taken in Hegel's sense as the intermediate realm of associative and economic transactions that make up the sphere between the family and the state.[16] The marriage contract stands at the heart of family life, yet it raises kinship out of nature and into the realm of civil coexistence through the act of formal agreement, the transfer of property, and the legal anticipation of conjugal

[16] G. W. F. Hegel, *Philosophy of Right*, trans. T. M. Knox, pt. 2 (Oxford: Clarendon, 1942). Cited by section and page number in the main text.

discontent. The civil dimension of marriage becomes the symbolic repository of consent in the scene of sovereignty, whether conceived as the irrevocable transfer of rights to a single monarch or as a renegotiable contract among equal partners. The marriage contract operates again and again as the instrument that mediates or "marries" the horizontal and vertical dimensions of covenant, instituting a civil association based on consent while almost immediately subjecting it to hierarchical regulation. Be she Israel or England, in the political romance of the covenant, the bride is *she who consents to submit*, who enters freely into a contract that will henceforth install a law above her. The precise ratios of consent and submission are then subject to political, social, and sexual definition, debate, and even war.[17]

In the theological prehistory of this drama, Paul is a key figure. The epistle to the Ephesians presents a vision of marriage governed by the hierarchical symbol of the body politic headed by Christ as heavenly bridegroom, but softened and equalized by the staging of marriage as a species of neighbor love. The author of the epistle begins by saying, "Wives, be subject to your husbands, as to the Lord. For the husband is the head of the wife as Christ is the head of the church, his body, and is himself its Savior" (Eph. 5:22–23). In patriarchal theories of sovereignty, the Pauline set of corporate analogies would be extended to the state, with the king as head of the body politic and the people as his wife.[18] Yet the Pauline author immediately transposes the verticality of this image and the subjection it implies when he enjoins the husband to "love his wife as himself" (Eph. 5:33). Echoing the Levitical ideal of neighbor love (Lev. 19:17–18), taken by Jesus as the very essence of the second tablet of the Decalogue (e.g., Mark 12:28–33), the dictum issued to the Ephesians institutes the husband as *neighbor to his wife*, effectively rendering the marriage bond civil by drawing it into the

[17] Victoria Kahn, "Margaret Cavendish and the Romance of Contract," *Renaissance Quarterly* 50 (1997): 533. On marriage as a founding metaphor of political obligation see also Pateman; and Constance Jordan, "The Household and the State: Transformations in the Representation of an Analogy from Aristotle to James I," *Modern Language Quarterly* 54 (1993): 307–26.

[18] Gordon J. Schochet, *Patriarchalism in Political Thought: The Authoritarian Family and Political Speculation and Attitudes Especially in Seventeenth-Century England* (Oxford: Blackwell, 1975), 81; Gordon Kipling, *Enter the King: Theatre, Liturgy, and Ritual in the Medieval Civic Triumph* (Oxford: Clarendon, 1998), 237–50.

domain of social relations rather than sovereign power. Such equalization receives more radical figuration in the declaration delivered by Paul to the Galatians: "There is neither Jew nor Greek, there is neither slave nor free, there is neither male nor female; for you are all one in Christ Jesus" (Gal. 3:28). The effect is one of sublime equalization of social and sexual relations in the new citizenship in Christ, though in the speculative context of messianism rather than the pragmatics of domestic life.[19]

Locke's *First Treatise of Government*, written in response to Robert Filmer's *Patriarcha*, is an epochal intervention in the political history of the Fifth Commandment. Filmer, following a long line of conservative readers, uses the Decalogue to enforce the analogy between father and king:

> Whereas many confess that government only in the *abstract* is the ordinance of God, they are not able to prove any such ordinance in the Scripture, but only in the fatherly power; and therefore we find the commandment that enjoins obedience to superiors, given in the terms of "honour thy father." So that not only the power or right of government, but the form of the power of governing, and the person having that power, are all the ordinance of God. The first father had not only simply power, but power monarchical, as he was a father, immediately from God.[20]

In a brilliant piece of hermeneutics, Locke calls Filmer to task on this point throughout the *First Treatise*. As early as chapter 2 he writes, "I hope 'tis no Injury to call an half Quotation an half Reason, for God says, *Honour thy Father and Mother*; but our Author contents himself with half, leaves out *thy Mother* quite, as little serviceable to his purpose."[21] Locke returns to the point at length in section 61 (185), where he enumerates all the biblical verses in which the authority of father and

[19] On Paul and universalism in modernity see Alain Badiou, *Saint Paul: The Foundation of Universalism*, trans. Ray Brassier (Stanford, CA: Stanford University Press, 2003).

[20] *Patriarcha and Other Political Works of Sir Robert Filmer*, ed. Peter Laslett (New York: Garland, 1984), 144.

[21] John Locke, *First Treatise*, in *Two Treatises of Government*, ed. Peter Laslett, 2nd ed. (Cambridge: Cambridge University Press, 1970), sec. 6; 144.Both *Treatises* are cited by section and page number in the main text, as here.

that of mother are joined together, including the verses that place the mother first:

> For had our *A.* [author, i.e., Filmer] set down this command without Garbling, as God gave it, and joyned *Mother* to Father, every reader would have seen that it had made directly against him, and that it was so far from Establishing the *Monarchical Power of the Father*, that it set up the *Mother* equal to him, and injoyn'd nothing but what was due in common, to both Father and Mother: for that is the constant Tenor of the Scripture, *Honour thy Father and thy Mother*, Exod. 20. *He that smiteth his Father or Mother, shall surely be put to death*, 21.15. *He that Curseth his Father or Mother, shall surely be put to death*, Ver. 17. Repeated *Lev.* 20.9. and by our Saviour, *Matth.* 15.4. . . . Nay, the Scripture makes the authority of *Father and Mother*, in respect of those they have begot, so equal, that in some places it neglects, even the Priority of Order, which is thought due to the Father, and the *Mother* is put first, as *Lev.* 10.3. From which so constantly joyning Father and Mother together, as is found quite through the Scripture, we may conclude that the Honour they have a Title to from their Children, is one common Right belonging so equally to them both, that neither can claim it wholly, neither can be excluded.

Whereas Filmer takes the Fifth Commandment as the emblem of hierarchy par excellence, Locke neatly rotates the verticality governing Filmer's analogical thinking onto the horizon mapped by what he calls "conjugal Society" (secs. 78–79; 319–20). Locke's conception of marriage as civil society rather than monarchy in miniature allows him to argue for the civil basis of political obligation. Breaking with a long tradition of socially conservative readings of biblical treatments of marriage, Locke insists that the joining of father and mother implies equality between the two partners, a liaison witnessed in the grammar of the commandment, in the contract of marriage, and, ultimately, in the networks of civil association in which that contract will figure for Locke.[22]

[22] Peter Laslett comments on the radicality of the passage: "In denying, as he seems to do here, that the Fifth Commandment has anything to do with political obedience, Locke was repudiating far more than the principles of Filmer. He was attacking a tradition of Christianity, and particularly of Protestant Christianity. Luther, for example, develops his whole doctrine of political and social authority as a commentary on the Fifth Commandment (*Von den Guten Werken*, 1520 [1888]), and Tyndale argues in a precisely similar manner in his *Obedience of a Christian Man*, 1528 (1848)" (*First Treatise*, 187n).

In *The Sexual Contract* Carole Pateman rightly emphasizes Locke's preservation of a core of natural subjection at the heart of the marriage bond (52–55). I would dramatize this paradox as a constructive tension in Locke's thought, and in the political tradition more generally, rather than as a reactionary reinscription of archaic patriarchalism. I concur with Gillian Brown's more generous assessment of Locke, which she helpfully calculates in terms of his American legacy: "Those Americans excluded, either implicitly or explicitly, from the eighteenth-century narratives of individualism—women, Indians, slaves, Catholics, Jews, Muslims, and later immigrants to the continent—have continued to demonstrate the applicability of Locke's ideas to those whose perceived oddity has disqualified them from the full benefits of society."[23] Speaking to the feminization of consent in the early American literature of citizenship, Brown writes, "Consent relies upon the presence of the disenfranchised, who mark the condition from which a consensual society distinguishes itself. So long as consent operates, consent recalls the unentitled" (14). In Locke, Brown argues, consent is associated with the wife, the minor, and the primitive because consent is always a question—a question not only addressed to the particular subject (are you capable of consent?) but posed by the subject to the civic order that fails to acknowledge her (why haven't you asked *me*?). Locke uses the linked figures of the wife, the mother, and the child, put into political play by the Fifth Commandment, to introduce a measure of virtual or formal equality into a social field deeply variegated by the accidents of nature and history. In Locke's *Two Treatises* the concepts of legal minority and of the marriage contract slide a discourse of reserved rights, untapped capacities, and future equality into the infinitely pocketed and stratified terrain of the ancien régime. The operation of consent, implying formal equality among social unequals, adjusts itself to the uneven topography of the inherited social field in order to remap and rezone it. In the Lockean tradition, consent functions as hypothesis and fiction, operating most powerfully precisely when it involves a citizen who is legally incompetent, appearing physically or mentally unequal to the

[23] Gillian Brown, *The Consent of the Governed: The Lockean Legacy in Early American Culture* (Cambridge, MA: Harvard University Press, 2001), 11. Jordan similarly gives a generous interpretation of Aristotle's definition of marriage as a form of constitutional rule.

equality guaranteed her by the law. In such cases, the citizen's consent has to be guarded, secured, sheltered (by the constitution) but also called forth, evoked, elicited, and imagined (by the other resources of literature, religion, and philosophy).

In Locke's counterconservative reading of the commandment on which the Decalogue's two ritual and ethical tablets turn, conjugality is a principle of ligature, not of subordination; hence its affinity to thinking about social bonds and biases generally. Moreover, Locke explicitly brings in the discourse of rights to explicate the Fifth Commandment: "The Honour they have a Title to from their Children, is *one common Right* belonging so equally to them both, that neither can claim it wholly, neither can be excluded" (emphasis added). Rather than read the commandment in terms of the children's obligation, Locke emphasizes the parental couple as the bearers of a right shared in common. Furthermore, in his chapter "On Paternal Power," which begins with a critique of the term's sexual reductiveness, Locke vastly limits parental rights by insisting instead on the rights of the child vis-à-vis the parents, who are "by the Law of Nature, *under an obligation to preserve, nourish, and educate the Children* they had begotten" (sec. 55; 305). Although children do owe their parents honor, *kavod* is not absolute but relative, responsive to the quality and quantity of parental attention: "The subjection of a Minor places in the Father a temporary government, which terminates with the minority of the Child: and the *honour due from a Child*, places in the Parents a perpetual right to respect, reverence, support and compliance too, more or less, as the Father's care, cost, and kindness in his Education, has been more or less" (sec. 67; 312). Although Locke's aim in these polemical rereadings of the Fifth Commandment is not to challenge domestic arrangements but to break down the singular authority of the monarch, he opens the door to thinking about rights in terms of commonality, community, and reciprocal obligation rather than vest them in the sovereignty of either the monarch or the individual absolutely conceived.

Recall that the rabbis had distinguished honor from love in their reading of the Fifth Commandment. Locke, aiming to upset the absolutist appropriation of the commandment, was more concerned to distinguish honor from obedience: "'Tis one thing to owe honour, respect, gratitude and assistance; another to require an absolute obe-

dience and submission" (*Second Treatise*, sec. 66; 311). In the political sphere, of course, this means that one could honor a king—or perhaps the office of kingship—without necessarily obeying him; in certain circumstances, disobeying the king might constitute the highest form of respect (the same paradox intimated in the phrase *civil disobedience*). Locke notes that among the Jews, a divorced mother is still owed the respect of her children, regardless of what their father might command in this situation (sec. 62). Since her "right to Honour from her Children" is not "Subject to the Will of her Husband," the father's power must be "very far from *Monarchical*, very far from that *Absoluteness*" that Filmer would give to it (sec. 63; 309). Divorce, associated by Locke with the civil life and laws of the Jews, enters the scene of politics as a possible fate of both domestic union and founding metaphors of sovereignty and civility.[24]

Locke is brilliantly attuned to the dramatic possibility of covenant-in-crisis that from the very instant of its transmission impels the Decalogue toward manifold literary and historical futures. In the Decalogue, in the prophets, and in Locke, obedience to parents is the hinge between the vertical and the horizontal, between sovereignty and civil society, between commandments and rights. On the one hand, Locke separates a discourse of rights out of the discourse of commandments, breaking the received hierarchalism of the Decalogue by finding within it a place for civil society. On the other hand, conjugality as a model of contract infuses the discourse of rights with a communal, relational potential that itself partakes in the ethics of obligation put forward by the Decalogue. Locke uses the discourse of rights to reread the Decalogue, reclaiming it from its patriarchal functionalizations, but he also uses the implicit conjugal content and framework of the Decalogue to conceive of rights in social terms. His exegetical engagement with the Fifth Commandment, moreover, both supplements and goes beyond his emphasis elsewhere in the treatise on property: although the institution of the family develops and preserves property, it also presents a model of distributed responsibility and shared rights that is not identical with property.

[24] On the specifically Jewish politics of divorce in Milton and his contemporaries see Matthew Biberman, "Milton, Marriage, and a Woman's Right to Divorce," *Studies in English Literature* 39 (1999): 131–53.

The hermeneutics of rights and commandments that takes shape in and between Locke and the Bible invites extension to other features of the Fifth Commandment, to further moments of the Decalogue, and to related passages and impulses in Locke's own writing and that of his inheritors. For example, the Fifth Commandment, expressed in purely positive terms, is the only one to promise a reward. The full verse runs, "Honor your father and mother, that you may long endure on the land that the Lord your God is assigning to you" (Exod. 20:12). The rabbis read the promise of long endurance as a reference to the health of the social fabric, which depended on respect for parents; such a reading lies behind the authoritarian tradition on which Filmer draws, and is frequently echoed in conservative discourse today. Yet we might reread the Fifth Commandment with Locke in mind: long endurance *on the land* reasserts the horizontality of civil society within and against the fundamentally vertical movement of command from above. There is support for such a reading in the Torah itself. The prophet Ezekiel, for example, lists dishonor of parents in a series of sins that are not easily recuperated to an authoritarian vision: "Every one of the princes of Israel in your midst uses his strength for the shedding of blood. Fathers and mothers have been humiliated by you; strangers have been cheated among you; orphans and widows have been wronged in your midst" (Ezek. 22:6–7).[25] Ezekiel's rebuke is directed against bad princes, not bad subjects—against the abuse of power from above rather than political insubordination from below. He begins with an attack on tyranny and ends with crimes against strangers, orphans, and widows; in his vision of the Decalogue disregarded, dishonor to parents forms the transitional crime between the malfeasance of princes and the neglect of neighbors.

And what of property, in and between Locke and the Decalogue? We have seen that it is possible to read the entirety of the Decalogue's second tablet in terms of the protection of the self-possession of the person.[26]

[25] Both Sarna (113n) and Rachel S. Mikva, ed., *Broken Tablets: Restoring the Ten Commandments and Ourselves* (New York: Jewish Lights, 2001), 61, cite this verse from Ezekiel in their glosses of the social significance of the promise of long endurance in the Fifth Commandment.

[26] Not surprisingly, Spinoza put property at the center of the state founded by contract at Sinai: "Nowhere else did citizens have stronger right to their possessions

What distinguishes the rights implied by the second tablet from the property rights that animate the liberal tradition, however, is that what David Novak has called "covenantal rights" belong not to the addressee but to the addressee's *neighbor*: they are always *someone else's rights*.[27] Moreover, the second tablet does not stand alone; separating it from the first tablet by identifying it with rights reifies the ethical moment of the second tablet at the expense of its ritual delivery of God's name. If property, following Locke, equals nature mixed with labor, then the key commandment for supplementing and modifying the property rights intimated by the second tablet—entailing them, as it were, limiting their transfer, reasserting their limits in Revelation—is the Fourth Commandment, establishing the Sabbath. In his provocative commentary on the Decalogue in his seminar on the ethics of psychoanalysis, Lacan notes, "But I believe that that extraordinary commandment, according to which, in a land of masters, we observe one day out of seven without work . . . that suspension, that emptiness, clearly introduces into human life the sign of a gap, a beyond relative to every law of utility" (81). The Sabbath institutes a principle of anti-economy in the operations of civil society and hence calls for a certain suspension of the models of subjectivity founded on property rights. The commandment creates a period of equality for the community of creatures who observe it: "You shall not do any work—you, your son or daughter, your male or female slave, or your cattle, or the stranger who is within your settlements" (Exod. 20:10). Around this suspension in the economy of existence the individuals of civil society congregate, resting from the labor that transforms nature into property and divides humanity into classes.

The Sabbath, long linked to the messianic impulse in Jewish thought and life, thus promises a moment of emancipation in Marx's sense: "a *restoration* of the human world and of human relationships

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than did the subjects of this state, who had an equal share with the captain in lands and fields" (205).

[27] David Novak, *Covenantal Rights: A Study in Jewish Political Theory* (Princeton, NJ: Princeton University Press, 2000). On the nonreciprocity of obligations to the neighbor, an argument made by way of Levinas and Lacan, see Kenneth Reinhard, "Kant with Sade, Lacan with Levinas," *Modern Language Notes* 110 (1995): 785–808.

to *man himself*."[28] If the second tablet as a whole anticipates the order of property rights, it does so by granting usufruct only to the neighbor. Sabbath rest, the heart of civility, is at once heteronomous and covenantal, unilateral and community creating, irreducible to reason yet instituting the possibility of political rationality and social justice as such. One might recall here Thomas Jefferson's famous revision of "life, liberty, and *property*" to "life, liberty, and *the pursuit of happiness*" in the drafting of the Declaration of Independence.[29] In this foundational revision, deeply Lockean in its content and rhythm, one strand in Locke's thinking gives way to another, insofar as the preservation of property at the heart of the commercial contract is included in the greater social romance implied by the pursuit of happiness. In the movement from the protection of property to the pursuit of happiness lies the chance of a covenant between rights and commandments, freedom and obligation, individual and communal interests. We might also say that in this unremarked gap lies the promise of literature in its messianic dimension—literature as an open narrative or "pursuit"; literature as *deuteronomy*, second telling, interpretive reinscription; and these revisions as responses to and forms of historical "emergency" in the double sense of crisis and new birth.

[28] Karl Marx, "On the Jewish Question," in *The Marx-Engels Reader*, ed. Robert C. Tucker, 2nd ed. (New York: Norton, 1978), 46. Gregg Lambert has written provocatively on Marx, Lacan, and the Sabbath: "God's command, therefore, is without regard to the division of labor, not only understood as the division of the activities and classes that belong to the mode of production, but also as the division of the time that is determined by the process of production. God's Sabbath corresponds to the process of the production of the world. Lunch appears after the workday is finished. But that is God's time in which a day has been proven to last a thousand of ours. What is important to remark in this 'time' is that God has no knowledge of any particular process of production, but categorically declares a certain moment to be Lunch, and categorically demands his order be strictly obeyed according to his own time, which is heterogenous to the time of production. Now, this would be enough to offend any rational or economic order, since it would let the cheese spoil, the meat decay, etc." ("Redemption: Lacan avec Marx," *Journal for Cultural and Religious Theory* 2, no. 1 [December 2000], par. 8, www.jcrt.org/archives). Kenneth Reinhard and I have developed the Lacanian commentary in "The Subject of Religion: Lacan and the Ten Commandments," *Diacritics* (forthcoming).

[29] On the genealogy of the phrase *the pursuit of happiness* from Locke, George Mason, Francis Hutcheson, and others see Gary Wills, *Inventing America: Jefferson's Declaration of Independence* (Garden City, NY: Doubleday, 1978), 244–55.

The Bill of Rights and the Constitution of Civil Society

We have seen Locke taking the Jewish precedent of divorce as an occasion for meditating on the limits of political obligation. It is not incidental to my project here that the concept of civil society finds itself repeatedly if not systematically articulated around the legacy of the Jews. In his essay "On the Jewish Question" Marx takes the question of Jewish emancipation and citizenship as an occasion to reverse Hegel's distinction between civil society and the state. According to Hegel, civil society is an incomplete form of human existence insofar as the particular and the universal remain sundered, unconscious, and abstracted from each other; in the state, however, the ideal citizen embodies and embraces the subsumption of individual social life in the framework of national institutions (sec. 182; 122–23). Marx turns the tables, reading the state as the purely imaginary resolution of the contradictions that characterize the reality of economic life in modernity. Rather than transcend or synthesize the extreme instrumentalization of human existence in bourgeois society, the state reinforces and supports the social divisions created and maintained by the exchanges of capital. For Marx, *bürgerliche Gesellschaft*—its instrumental reduction of every aspect of human interaction to a means—is the truth belied by a state designed not to heal but to maintain the economization of existence. At the same time, civil society, insofar as its atomized individuals come together in social instances for specific ends, is also the arena in which new forms of human interaction and emancipation can be fashioned (46). In political theory after Hegel and Marx, the location of civil society between the *oikos* and the *polis*—its informal, recombinatory, and associative nature, its infinite capacity for reshuffling, expansion, and contraction; its link to desire and drive; and, perhaps most important, its identification with labor, with the creative and industrious capacities of human life—has made it both the factory in which capital reproduces itself and the workshop in which dominant social and political modes can be rethought, contested, or renewed.

Following a long line of cultural associations between the Jew and civil society that includes Marlowe's Jew of Malta and Shakespeare's Shylock, Marx nominates the Jew as the exemplar of the particular-

izing strain of civil society.[30] In a brilliant piece of reverse typology, he declares: "From the beginning, the Christian was the theorizing Jew; consequently, the Jew has become the practical Christian. And the practical Christian has become a Jew again." He ends by calling for a final divorce between civil society and Judaism—in other words, the overthrow of capital: "The *social* emancipation of the Jew is the *emancipation of society from Judaism*" (52). If the Jews of Germany epitomize the structural complicity between Judaism and civil society in Marx's thinking, the United States is the locale where religion's purely civil status has been most profitably pursued, thanks to the legal separation of church and state guaranteed by the First Amendment: "The infinite fragmentation of religion in North America, for example, already gives it the *external* form of a strictly private affair. It has been relegated among the numerous private interests and exiled from the life of the community as such" (35). Far from withering away, however, religion thrives in its new context, reinforcing the privatizing tendencies of the bourgeois city of man under a secular state that has taken over religion's universalizing and spiritual functions: "If we find in the country that has attained full political emancipation [*sic*], that religion not only continues to *exist* but is *fresh* and *vigorous*, this is proof that the existence of religion is not at all opposed to the perfection of the state" (31).

Marx places the privatization and proliferation of religion in the American culture of rights purely on the negative side of civil society, under the Judaizing sign of economic instrumentalization. However, religious particularizations, and the rights that protect such diversity, can also offer sites for reconceiving the universal being of humanity from within civil society, outside or in response to the abstract mediations of the state—sites, that is, for the social emancipation imagined by Marx in the same essay. The question of religious affiliation in the eighteenth century formed part of what Ernesto Laclau analyzes as the

[30] On the Jews of Marx, Marlowe, and Shakespeare see Stephen Greenblatt's landmark early essay "Marlowe, Marx, and Anti-Semitism," *Critical Inquiry* 5 (1978): 40–58; and Richard Halpern, "The Jewish Question: Shakespeare and Anti-Semitism," in *Shakespeare among the Moderns* (Ithaca, NY: Cornell University Press, 1997), 159–226.

central dialectic of democratic politics, in which "a succession of finite and particular identities . . . attempt to assume universal tasks surpassing them."[31] In the U.S. context, the efflorescence of religious sects and schisms, with their challenges to civic inclusion and redefinition, formed the crystallizing element in a line of further flash points in the history of citizenship, including race, class, gender, and sexuality. To reclaim the history and debates about religious tolerance within this liberal line is to rethink not only the formal terms of citizenship (who's in, who's out, and why) but also the genealogy of key texts and concepts in the literature of citizenship, including the Decalogue and its exegeses.

The preamble to the Constitution, aiming to "form a more perfect Union," to "insure domestic Tranquility," and to secure liberty for "Posterity," evokes the marital imagery associated with national covenants in both conservative and liberal iterations of political theology, beginning with the Decalogue itself. The ratified Bill of Rights opens, Sinai-like, with the First Amendment, whose first provisions address the status of religion in the new republic: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." The next three amendments, concerning the right to bear arms, the quartering of soldiers, and security against unreasonable searches and seizures, flow out of the revolutionary context; the Fifth through Eighth Amendments concern due process and the rights of the accused; and the last two amendments, clearing a space for future debate and interpretation, reserve rights not enumerated in the Constitution for the people and the states. The Bill of Rights proceeds by way of an inaugural tabulation of liberties concerning expression, proceeds by way of a mixed and occasional set of seven amendments concerning personal security in relation to federal powers, and concludes with the extraordinary blank check of the final two amendments. In none of the ten amendments is the word *citizen* employed; the Bill of Rights as initially ratified was designed to protect the power of the states to determine their own slates of rights. The resulting internecine argument

[31] Ernesto Laclau, *Emancipation(s)* (London: Verso, 1996), 17. Michael Hardt and Antonio Negri write that "in the eighteenth century religion was the field of social conflict that produced the most dangerous threat to stability" (*Labor of Dionysus: A Critique of the State-Form* [Minneapolis: University of Minnesota Press, 1994], 235).

about rights, property, and citizenship that exploded in the Civil War was brought to a precarious, deeply provisional legal close by the passage of the Thirteenth, Fourteenth, and Fifteenth Amendments. Waves and counterwaves of judicial rulings, fighting to contract or expand the scope and meaning of the Civil War amendments, eventually led to the rendering of the Bill of Rights as a national document, applicable to all citizens, and in some cases to all persons, over against the power of individual states.[32] The process is by no means irreversible, as we see in current judicial debates involving national security, the limits of due process, and the church-state relation.

What's religion got to do with civil liberty? Early drafts and models of the First Amendment make clear the positive link between free religious affiliation and civil society. James Madison, the main composer of the Bill of Rights, though initially an unwilling and skeptical one, drafted the following proposal: "Fourthly. That in article 1st, section 9, between clauses 3 and 4 [of the Constitution], be inserted these clauses, to wit, The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, or on any pretext, infringed."[33] Madison specifically ties civil rights to reli-

[32] *Plessy v. Ferguson* (1896), which argued for the legality of "separate but equal" accommodations for minorities, is the most famous of a series of cases that resisted the national implications of the Civil War amendments. See Brook Thomas, ed., *Plessy v. Ferguson: A Brief History with Documents* (Boston: Bedford, 1997). *Gitlow v. New York* (1925), brought in response to antisedition legislation during World War I, did just the opposite, laying the groundwork for using the Fourteenth Amendment's strategic citation of the Fifth Amendment to incorporate the other rights protected in the Bill of Rights into a national document (Patrick, 117–29). For a "substantive" (and broad) rather than "procedural" (and narrow) view of the "unenumerated rights" reserved by the Ninth Amendment see Ronald Dworkin, "Unenumerated Rights: Whether and How *Roe* Should Be Overruled," in *The Bill of Rights in the Modern State*, ed. Geoffrey R. Stone, Richard A. Epstein, and Cass R. Sunstein (Chicago: University of Chicago Press, 1992), 381–432.

[33] James Madison, proposal presented in the U.S. House of Representatives, June 8, 1789, *Congressional Register*, June 8, 1789, 1:427, rpt. in *The Complete Bill of Rights: The Drafts, Debates, Sources, and Origins*, ed. Neil H. Cogan (New York: Oxford University Press, 1997), 1. For an introductory history of the Bill of Rights in documents see John J. Patrick, *The Bill of Rights: A History in Documents* (New York: Oxford University Press, 2003). For a cultural history of the Bill of Rights see Michael J. Lacey and Knud Haakonssen, eds., *A Culture of Rights: The Bill of Rights in Philosophy, Politics, and Law—1791 and 1991* (New York: Cambridge University Press, 1991).

gious belief; indeed, throughout these documents religious identifications emerge again and again as the prime markers of social conflict and division—the most visible sign of diversity and division in the body politic, the greatest threat to social order and cohesion, and hence the most powerful magnet for state persecution. The protection of religion stands at the head of the Bill of Rights because religious identifications formed the navel of civil society, as the means of its normative reproduction and internal disciplining, most certainly, and as a source of internal fragmentation and separation as well, but also as the laboratory for experimental assembly and affiliation that might transform the texture of civil life, and as the lightning rod for potentially divisive styles of group identifications that would ultimately replace religion in the contests of democracy.

Many of the early documents that form the background to the establishment and free exercise clause of the First Amendment build a certain shelter for religious expression, only to retract or severely limit that protection. Thus Article XVI of the Fundamental Constitutions for East New-Jersey of 1683 begins by cautiously asserting religious freedom:

> All Persons living in the Province who confess and acknowledge the one Almighty and Eternal God, and holds [*sic*] themselves obliged in Conscience to live peacably [*sic*] and quietly in a civil Society, shall in no way be molested or prejudged for their Religious Perswasions and Exercise in matters of Faith and Worship; nor shall they be compelled to frequent and maintain any Religious Worship, Place of Ministry whatsoever.

Note the link between the free practice of religion and what the document calls "civil Society." On the one hand, there is no civil society, no public space of free association, without religion, whose modes of congregation emblematize social organization more generally in this period. On the other hand, the peace and quiet of this civil society already assert a limit to religious freedom that the document then confronts directly, first by restricting public office to those who "profess faith in *Christ-Jesus*" and then by extending this problem from the magistracy to the public sphere at large:

> Nor by this Article is it intended, that any under the Notion of the Liberty shall allow themselves to avow Atheism, Irreligiousness, or to

> practice Cursing, Swearing, Drunkenness, Prophaness [*sic*], Whoring, Adultery, Murdering or any kind of violence, or indulging themselves in Stage Plays, Masks, Revells or such like abuses; for restraining such and preserving of the People in Deligence and in good Order, the great Council is to make more particular Laws, which are punctually to be put in Execution.[34]

The East New-Jersey constitution effectively reasserts the Decalogue as the proper limit of the right to religious freedom, marshaling key ideas from both the ritual and the ethical tablets to restrict religious, sexual, and social excesses as well as forms of congregation associated with class identities. It is striking, moreover, that the article links religious liberty to poetic license: the space of religious identification is also the space of public theater ("Stage Plays, Masks, Revells or such like abuses"), which both in its dramatic content and its scene of public fraternizing provides opportunities for transgression. All of these areas are announced as the subject of "more particular Laws" to be enforced by the state. Here the Decalogue (re)enters the field of civil society in its most disciplinary modality, as a fence not simply to individual freedoms but to freedoms *conceived as possible consequences of religious toleration*. Thrust as a counterweight to the imagined excesses of religious expression, the Decalogue, itself *in potentia* a design and support for civil society, becomes an instrument of civil limitations and hence a mortgager of its own future, an abrogator of its own promise.

As if to announce its own relation to religious discourse, the First Amendment of the ratified Bill of Rights begins immediately with the question of religion: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." In relation to religion, the First Amendment is at once a protective tent and a dividing wall: it shelters religious expression, yet it also declares the sovereignty of the secular by separating church and state. The word *respecting* in the phrase *Congress shall make no law respecting an establishment of religion* is of special interest. Arrived at late in the drafting process, *respecting* was apparently chosen to give the broadest scope to the separation of church and state. It was not enough simply to prohibit

[34] *Fundamental Constitutions of East New-Jersey* (1683); *New Jersey Land Grants*, 162, 164 (cited in Cogan, 24).

the establishment of a national religion; any laws "respecting"—touching on, implying, suggesting—such an establishment also had to be precluded. Yet—to use literary rather than legal hermeneutics—the word also implies that a new kind of regard for religion is instituted in the very creation and regulation of the divide between church and state. Under the new constitution, any federal law that even suggested preference for one sect over another would show a *lack of respect* for the integrity and diversity of religious expression protected in the free exercise clause.

If the East New-Jersey constitution is an example of this failure with respect to religion, later drafts and precursors of the First Amendment could be said to err in the opposite direction, by using the language of natural rights, grounded in individual conscience, rather than of social practice to imagine religious freedom. Madison's initial draft, submitted to the House of Representatives on June 8, 1789, included a reference to "the full and equal rights of conscience," a phrase that Roger Sherman developed in a counterproposal several weeks later:

> The people have certain natural rights which are retained by them when they enter into society, [*sic*] Such are the rights of conscience in matters of religion; of acquiring property, and of pursuing happiness and safety; of Speaking, writing and publishing their Sentiments with decency and freedom; of peaceably Assembling to consult their common good, and of applying to Government by petition or remonstrance for redress of grievances. Of these rights therefore they Shall not be deprived by the government of the united States. (rpt. in Cogan, 1)

Note that the text of the First Amendment as it was finally ratified by the states in 1791 drops all reference to individual conscience:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The two versions group together a similar set of rights, but on different grounds. Sherman's proposal links freedom of religion, press, and assembly to "natural rights" associated with "conscience." The revised amendment, along with the Bill of Rights as a whole, avoids the discourse of natural rights altogether, remaining within the more cau-

tious British tradition of positive law and "social rights," which exist only within the civil orders in which they are exercised.[35] By disengaging religious freedom from individual conscience, the First Amendment emphasizes the social dimension of religious freedom from the very start, as its ground and essence rather than its accidental or secondary afterlife. Instead of moving from one individual right to another (as Sherman's draft initially does), the ratified text presents a cascade of expanding scenes of congregation and public expression. *Free exercise* of religion—the word *exercise* indicates the public, regimented, and ritualized nature of the acts under discussion—flows into *freedom of speech*, also implying a distinctly public dimension, and *freedom of press*, which formalizes, disseminates, and archives free speech. (The ratified amendment does not adopt Sherman's reference to "Sentiment," with its subjectivist connotations, or "decency," which evokes the prescriptively normative vision of the East New-Jersey constitution.) Public speech in turn flows into the right of assembly, of properly political rather than merely religious congregation. The amendment ends with the right to petition the government, to submit formal protests and complaints to the state that have presumably been formulated and agreed on in those acts of assembly. Conscience is nowhere mentioned—perhaps because it is the fruit rather than the fount of the public sphere, produced by instances and institutions of congregation rather than preceding them.

In the collective process of its drafting, both in Congress and in response to prior models, the First Amendment achieves a kind of social *poesis*, a linguistic making of social life. The final document of the Bill of Rights eschews the descriptive detail of the earlier state bills; in place of an excessively vivid picture of present life, the First Amendment admits the free imagining of an undisclosed future. In the sheer restraint of its language, the First Amendment is an open letter, composed at a particular moment but to an unknown future it aims to bring into being through the very spareness of its diction, a point made

[35] The due process clause presumes a legal system, the prohibition against quartering soldiers without consent presumes a military infrastructure, and so on. On the tension between natural law and positive law in the drafting of the Bill of Rights see Rex Martin, "Civil Rights and the U.S. Constitution," in *The Bill of Rights: A Bicentennial Assessment*, ed. Gary C. Bryner and A. D. Sorensen (Provo, Utah: Brigham Young University, 1993), 27–62.

explicit in the Ninth Amendment's reminder that "the enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." If the First Amendment is an authentically open letter, its rights nonetheless take shape in a set of social institutions rather than in the state of nature. By favoring law over philosophy, social rights over natural rights, the First Amendment folds religious freedom into a distinctly social and political vision of human congregation, assembly, and exercise. Whereas Sherman's privatizing sequence of rights affirms Marx's negative analysis of the complicity between religion and capital in American civil society, the text of the First Amendment leaves open the possibility of other, more creative and activist alliances between religious and political forms of congregation in the United States, and hence a more dynamic vision of civil society more generally.

The East New-Jersey constitution is not simply an artifact of more primitive times. In the current moment, unfortunately, there are far too many analogues. The questioning of "character" in American public life, for example, uses the Ten Commandments to chip away at rights—not only the right to privacy but also the right not to follow the Decalogue in its status as revealed law. So, too, the current drive to hang the Ten Commandments in courtrooms as a warning to criminals eclipses the Bill of Rights' guarantee of due process with apotropaic reminders of a more archaic, more punitive mode of thinking. If we are to recover the call of the commandments in the discourse of rights, it is not to limit the scope of rights but to deepen and expand them by opening them up onto the fields of social responsibility and interactivity that form their forgotten ground. Moreover, the literature of citizenship comes forward precisely in the gap between rights and commandments, understood as the markers of several distinct and not always parallel sets of concerns: between individual and community as a constitutive tension in every social formation, but also between revelation and reason as two distinct destinies of the logos in the West. In the Decalogue this tension defines the very relation between the two tablets of the law, creatively divided between ritual and ethical prescriptions; in the drafting of the First Amendment, a later vicissitude of the same dialectic underwrites the negotiation of the positivism of social rights and the logical priority of natural rights.

This tension also takes shape in a neighboring set of problems worked through by the literature of citizenship, namely, the relation between the particularity of specific cultures and the universalism promised by rational law. Citizenship falls on the side of universalism in its promise of formal equality to those enrolled in its rosters, yet its definitive ties to some mix of locale, nativity, language, and custom as well as its constitutive exclusions of internal and external demographies bind citizenship to a persistent particularism. In this regard, I define citizenship as a form of *limited universalism* that equalizes its members in a new public sphere, but at the cost of specific identities: those naturalized in its ranks must give up prior loyalties and forms of affiliation, while those beyond its pale are often branded with the stigmata of a reified otherness. The literature of citizenship comprises those forms of public expression that constitute, dramatize, evaluate, or reimagine this once and future passage between particular identities and universal memberships. For many of us, the word *citizenship* evokes the patriotic policing of social, sexual, and national norms. Indeed, citizenship's attempt to rezone the complex landscape of religious, ethnic, sexual, and economic differences in terms of formal equality and due process has been, at every step of its articulation, compromised by collusion with privilege and the lure of nationalism. Yet the literature of citizenship, by insistently addressing itself to questions of access and equity, stakes out a unique position, insufficiently remarked in the current culturalist discourses of the humanities, to conceive the rights of minors and minorities in a universal framework. The literature of citizenship invites us to approach questions of community, sovereignty, and difference from a vantage point *other than culture*, even and especially when culture itself emerges as a concept inhering in but not identical with that of citizenship and the public norms it assembles.

Who is my neighbor? Who is a citizen? What is a creature? What is a person? These fundamental questions about group membership and identity have been posed repeatedly in relation to the Decalogue and the Bill of Rights within the specialized exegetical traditions that have grown up in response to them and in the larger arena of their public reception in civil society—in literature and liturgy, in jokes and icons, on cathedral doors, courthouse lawns, and bathroom walls. Born into the travails of hermeneutic contestation, the Decalogue and the

Bill of Rights belong to the literature of citizenship not least because they are repeatedly caught between particularizing and universalizing impulses. Does the Decalogue belong to the Jews, or to all humanity? (And who is a Jew?) Does the Bill of Rights protect the autonomy of the states against the federal government, or does it protect the rights of citizens against the states? (And who is a citizen?) In the unfolding drama of such questions, these foundational documents bear witness to the imaginative and political struggle between local ecologies of cult, culture, and community and more universal and impersonal economies of law and historical belonging. These tensions, revisited and reworked in the literature of citizenship, exist at the heart of the covenantal consciousness of the West in both its documented failures and its surviving promise.

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