Covenantal Nomism Revisited[1]

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Introduction

I have made two large-scale proposals about what we call for convenience "first-century Judaism," which actually covers more than a hundred years on either side of the year 1 CE. The more recent proposal is in a book called *Judaism: Practice and Belief*, which appeared in 1992, and I shall mention it first. I suggested that there was such a thing as Common Judaism, which included most Jews in the ancient world. Whatever their differences, they shared several practices and beliefs. Common Judaism is defined by a "laundry list" of beliefs and practices running from monotheism through Sabbath observance to sacrifice in the temple in Jerusalem (while it still stood).[2]

The other proposal appeared 15 years earlier, in 1977, in a book called *Paul and Palestinian Judaism*. There I suggested that all the main bodies of Palestinian Jewish literature (except 4 Ezra) between approximately 200 BCE and 200 CE reflect a common understanding of how a religion works. I called this a "pattern of religion" and defined it as how "getting in and staying in" were understood.[3] The basis of the

[1] Earlier versions of this paper were delivered at two regional meetings of the American Academy of Religion and Society of Biblical Literature: the Mid-Atlantic Region in March, 2004, and the Southwestern Region in March, 2007. I am grateful to several scholars who asked good questions and made interesting suggestions. Thanks also go to Craig Keener, with whom I corresponded extensively about the issues of covenantal nomism and works-righteousness.

[2] For common Jewish practices, see *Judaism: Practice and Belief 63 BCE–66 CE* (London/Philadelphia: SCM Press/Trinity Press International, 1992), pp. 236 f.; for common beliefs, see ch. 13. Further: John P. Meier, *A Marginal Jew: Companions and Competitors*, vol. 3 (New York: Doubleday, 2001), pp. 7–8, 329 and n. 158 (p. 384), 642; and most recently my "Common Judaism Explored," *Common Judaism. Explorations in Second-Temple Judaism*, ed. Wayne McCready and Adele Reinhartz (Minneapolis: Fortress, 2008), pp. 11–23.

[3] E. g. *Paul and Palestinian Judaism* (London/Philadelphia: SCM Press/Fortress, 1977), pp. 17 f., 543–52.

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pattern was the Election of Israel, which was how people who were Jewish got "in": they were born that way. Outsiders could convert and thus get "in," and insiders could remove themselves by rejecting the God who chose them. But the foundation was the Election. Next in importance was the Giving of the Law to the elect, who, by observing it, maintained their status in the covenant. From those two fundamental elements, perfectly illustrated by the exodus from Egypt and the giving of the law on Mount Sinai, other items fell into place. I shall quote a list of eight items that constitute what I called, from its main two component parts, "covenantal nomism."

> The distinctiveness of IV Ezra helps point up the degree to which the type of religion best called 'covenantal nomism' is common to Judaism as it appears in the literature considered here. The 'pattern' or 'structure' of covenantal nomism is this: (1) God has chosen Israel and (2) given the law. The law implies both (3) God's promise to maintain the election and (4) the requirement to obey. (5) God rewards obedience and punishes transgression. (6) The law provides for means of atonement, and atonement results in (7) maintenance or re-establishment of the covenantal relationship. (8) All those who are maintained in the covenant by obedience, atonement and God's mercy belong to the group which will be saved. An important interpretation of the first and last points is that election and ultimately salvation are considered to be by God's mercy rather than human achievement. (p. 42)

These are my two large proposals. In the present paper, we are concerned with some of the difficulties of the earlier one, covenantal nomism, which I described as an *underlying* common theology (e. g. pp. 69–73).[4] The argument was that many ancient Jews held *basic assumptions* that were not often mentioned as major principles, even though their presence both can and should be inferred. There were two main principles: confidence in the election and the accompanying requirement that Jews obey the law. Items 3 through 8 in the list above show how ancient Jews in general worked out the main implications of items 1 and 2. All eight of the component parts are mentioned frequently enough in ancient Jewish literature for us to be confident that they were in some people's minds. The problem is in showing that items one and two were fundamental, underlying principles.

It would have been better if I had first come up with common Judaism and later suggested covenantal nomism. If I had first established, on

[4] In *Paul and Palestinian Judaism,* note the following terms and phrases: "general understanding of religion and religious life" (p. 69); "common pattern … which underlies … " (p. 70); "basic religious principles" (p. 71); "what principles lie behind" (p. 71); not a "system" (pp. 73 f.); "underlying agreement" (p. 85); "the same underlying pattern" (p. 424); "basic common ground … in the various bodies of literature" (p. 424).

the basis of mere observation, the widespread agreement to a laundry list of practices and beliefs – two of which are the election and the law – covenantal nomism would have appeared as a reasonable extension of an accepted analysis. Alas! my brain just did not work this way. I first thought of covenantal nomism and only later of common Judaism. There are several factors that explain the sequence; I shall emphasize one of them:[5]

I had become focused on "legalism," which was the rubric under which I had first read about first-century Jews.[6] By the late 1960s, years of reading Jewish literature had persuaded me that this category was entirely wrong, and I needed a large theological construction to counter legalism, which at the time most Christian scholars saw as the *underlying* theology of ancient Judaism. Pointing out that one aspect of legalism was not true would have done no good at all in the climate of New Testament scholarship as it was then. I was not interested merely in publishing a critique of legalism, but rather in replacing it with a superior view.

Covenantal nomism, like legalism, is an academic generalization about a theology that was commonly accepted in ancient Judaism. We all need generalizations about cultures, historical epochs, religions, etc., and we use them all the time. The difficulty is to find generalizations that actually apply and that are neither trivial nor misleading. The negative argument of *Paul and Palestinian Judaism* and of this paper is that

[5] The other two are these: (1) I was rash in my youth and went after the more complicated issue first. I have now reached the happy stage of life at which I can blame my present errors on old age and approaching dementia and my former shortcomings on the folly of youth. But I do think that youth had something to do with the procedure. (2) Secondly, and more importantly, I had become engrossed with the inner workings of Rabbinic literature and especially the Rabbinic mind. The works of Max Kadushin were very important in my life, and I thought a lot about interconnections between one aspect of Rabbinic thought and others. (Titles include *A Conceptual Approach to the Mekilta*; *Organic Thinking: A Study of Rabbinic Thought*; *The Rabbinic Mind*.) This led me to look for an underlying and coherent outlook, not for a laundry list of apparently discrete items.

[6] I understand "legalism" to mean "salvation by one's own deeds, based on the enumeration of those deeds (whether good or bad)." Craig Keener has told me that some people that he has read may mean by "legalism" only that Jewish literature devotes an excessive amount of space to behavior or "works," and that they do not all use the charge "legalism" solely to refer to salvation by works. In case this is true: I regard the degree of emphasis on behavior as largely a question of genre and the issue of the day. Discussions of the Ten Commandments focus on laws; discussions of the Psalms do not. Within the Pauline corpus, Galatians and Romans are heavily weighted towards issues of "admission and membership": must Gentile Christians accept the Jewish law in order to be in the People of God? 1 Corinthians, on the other hand, is more heavily weighted towards behavior.

legalism does not apply to ancient Jewish literature *at all*: it explains nothing about it. Moreover, it is totally misleading: it misrepresents the material. I shall also point out below that ancient Judaism was not sufficiently individualistic to allow the view that Jews were a miscellaneous bunch of people, isolated from one another and from their own history, all of whom tried to save themselves by their own efforts, with no prior connection to God and with no group benefits.

One of the difficulties of the discussion has been that Christianity, and thus the critiques of Judaism offered by Christian scholars, focuses on individual salvation, whereas Judaism has been more concerned with the protection and preservation of the group. That is why I changed the category "soteriology" to "getting in and staying in." This allows a comparison and contrast, since both agree that being in a group that is approved by God is important – whether or not they equally emphasize individual salvation. Paul thought that people should be members of the body of Christ; Jews thought that Jews should be members of the people of Israel. The contrast between Paul and Judaism is how people "get in." In both, "staying in" requires certain forms of behavior, though they partially disagree on what the behavior is; thus Paul did not regard circumcision and Sabbath observance as necessary, but he did insist on "the law," defined as love of neighbor (e. g. Rom. 13.9), for those who were in the body of Christ.

Below, I shall take up a few of the criticisms that have been made of "covenantal nomism," but I shall begin by contrasting covenantal nomism with legalism, the theological structure that it was intended to replace. I traced the accusation of legalism back only as far as Ferdinand Weber (1897),[7] but it had been around much longer and was largely accepted in New Testament circles when I began my professional life.

The view that Judaism was "legalistic" meant that all individual Jews thought that they had to save themselves by their own merits. Fundamental to this argument was the assertion that Jews were in such a desperate plight because they were conscious of having *lost their status as elect*. In Weber's view, Jews generally thought that the golden calf incident cancelled the election and left them on their own.

This is a necessary and fundamental but imaginary assertion in Weber's work. There is no reason to hold it, except the prior conviction that all Jews were legalistic. Weber was intelligent and learned enough to see that the polemical accusation of "legalism" in fact required the assertion that Jews thought that they had lost the covenant.

[7] Ferdinand Weber, *Jüdische Theologie auf Grund des Talmud und verwandter Schriften* (Leipzig, 1897); see *Paul and Palestinian Judaism*, pp. 36–39.

It is easy to argue against Weber's theory. If Jews were conscious of having lost what they once had, they would have mentioned it, lamented it, asked what happened and why. But they did not. Weber did, however, offer a thoughtful proposition, one that actually took account of ancient Judaism. The charge "legalism" is empty if the Jews believed in the covenant – this belief having approximately the same role as the Christian idea of prevenient grace:[8] God initiates the relationship, in gratitude humans conform their will to his. In Bultmann's terms, God's gift precedes his demand. The Jewish form of this is that first God called Abraham and brought the people out of Egypt, and then they gladly accepted his law. Thus Weber perceived that either ancient Jews accepted the traditional Biblical doctrine of election and therefore were not legalistic, or they held the view that the election had been cancelled, with the result that they became extreme individualists, having no prior collective advantages, each seeking his or her own salvation by obeying more often than transgressing. It is a rational alternative, but Weber chose the wrong answer. Such a dramatic change as surrendering the idea of the election and the covenant should be acknowledged or objected to; lack of such discussion points to continuity with inherited confidence in the election.

The Jewish view of the covenant is part of the even more fundamental assumption of a very large worldview, namely, that God created the world and that history is moving to a conclusion governed in general by the God of Israel, in which the Jewish people will be free or perhaps even dominant over surrounding people. There were several competing worldviews. The most obvious was polytheism, which Jews criticized vigorously. Apart from that, there are relatively few Jewish arguments against rival worldviews. For example, the major Jewish opinion, that history moves towards an end determined by God, was directly opposed by a position that educated Greek-speakers – both Gentile and Jewish – knew very well, namely, that history is cyclical and that all phases will be repeated. Jews only seldom argued against such basic Greco-Roman theories. Philo did engage the Stoic position that God and nature are identical, but he found it easy to dismiss.[9]

Since little surviving Jewish literature contains extensive argument against other views (except polytheism), our sources devote relatively little space to arguments in favor of their own. Nevertheless, all historians should agree that there was a distinctive Jewish worldview: God

[8] *Oxford Dictionary of the Christian Church*, second edition, ed. F. L. Cross and E. A. Livingstone (Oxford: Oxford University Press, 1974), s. v. "Prevenient Grace."

[9] See e. g. *Migration of Abraham* 179; *Who is the Heir* 97.

created the world, he chose the Jewish people, and he will ultimately protect and save them. These assumptions all lay too deep to need much proof, even when learned Jews knew that non-Jews held opposite opinions.

Criticisms

My argument in *Paul and Palestinian Judaism* actually has been fairly successful, as scholarly arguments go in a field full of divisions and controversies. Now some groups are organizing criticisms, partly – it seems to me – in order to maintain the view of Jewish works-righteousness, now called "merit theology." I have previously done very little by way of reply to the criticisms that have been piling up for thirty years, and even now I shall reply to only three points. The first and third of these (covenantal nomism does not summarize a lot of the material in Jewish literature; the Jews really believed in works-righteousness and were legalists in the Protestant sense) seem to have been the most frequent. The second criticism, to which I shall give the least space, is that covenantal nomism is true but is not very important. Some extremely knowledgeable scholars have made this proposal, and it requires discussion.

1. Covenantal nomism does not give an account of several of the topics of Rabbinic literature

The answer is simple but will take a several pages because the criticism reveals an issue that needs to be addressed. First, I did not say and never thought that covenantal nomism is a summary of the contents of Jewish literature. It is a basic, fundamental, underlying conception, seldom described or explained. This argument has eluded many scholars, who, it seems to me, do not grasp its force because they want to count explicit references to covenantal nomism and do not see presuppositions that are so fundamental that few people bother to argue that they are true, since there is no one to argue against. My "Common Judaism" can be tested by a survey of topics, but covenantal nomism is fundamental because it is presupposed.

All of us who do textual research become accustomed to the notion that important topics are those that are mentioned frequently. This is often true, and word studies are good and useful. Many of my happiest

hours have been spent at a large table with several texts and concordances spread out while I looked up words and phrases. Today, of course, computer search engines frequently replace concordances – which makes it even easier to overlook the context. In any case, word studies have a hard time finding underlying ideas and basic presuppositions. This is particularly the case with the words for "covenant" in Hebrew and Greek – *b^{e}rît* and *diathêkê*. In Rabbinic literature, the word "covenant" occasionally meant the broad conception that included the election of Israel,[10] but it frequently referred only to the covenant with Abraham and thus meant "circumcision" – a point of which I was well aware.[11] Once one has found the covenantal *idea*, however, one can discover more appropriate terms to look up in the concordance, such as "confess the exodus from Egypt," "accept the yoke of the kingdom of heaven," "accept the kingdom of heaven," and the like.[12] Similarly in Philo, the unimportance of the word "covenant" led Isaak Heinemann to write that Philo "did not know the concept of the covenant at all."[13] As I pointed out decades ago, if he had studied the importance to Philo of being in the Jewish *politeia* – commonwealth, citizenship, or constitution – he would have found the covenant conception.[14]

But finding the best terms to look up, while helpful, only scratches the surface if one is searching for really large cultural assumptions. Recently lots of scholars have been influenced by the view of some literary critics that we cannot know anything about a document except the words on the page. But students of ancient Judaism and early Christian-

[10] E. g. Sifre Zuta and Sifre Be-Midbar on Numbers 6.24–6, *Paul and Palestinian Judaism*, p. 105.

[11] E. g. *Paul and Palestinian Judaism*, p. 84, n. 21.

[12] *Paul and Palestinian Judaism*, pp. 94, 236 f.

[13] Heinemann, *Philons griechische und jüdische Bildung* (1929–32, repr. Hildesheim: Georg Olms, 1962), pp. 482–83, 564.

[14] "The Covenant as a Soteriological Category and the Nature of Salvation in Palestinian and Hellenistic Judaism," *Jews, Greeks and Christians. Religious Cultures in Late Antiquity. Essays in Honor of William David Davies*, ed. Robert Hamerton-Kelly and Robin Scroggs, *Studies in Judaism and Late Antiquity* 21 (Leiden: Brill, 1976), pp. 11–44, here pp. 31 f. I have now noted that Erwin Goodenough had already discussed the importance of the covenant idea in Philo. He wrote that Philo "still believed with all his heart that Jews had a special revelation of God in the Torah, and a peculiar relationship with him." See *Jewish Symbols in the Greco-Roman Period* 12 (New York: Bollingen Foundation, 1965), pp. 6–9, where Goodenough also wrote that Jews were "loyal to some common Jewish denominator." Moreover, "to the great majority of Jews the covenant has meant loyalty to … the God of Abraham, Isaac, and Jacob and of Sinai, and a sense that their very *raison d'être* arose from a unique relationship to that God." I regret that I did not recall these pages when I wrote *Paul and Palestinian Judaism* about a decade after I first studied *Jewish Symbols*.

ity usually want to be historians – as do I – not purist literary critics. Historians have to look for cultural assumptions. I would like to show (a) that there really are large worldviews whose importance cannot be established by counting words and (b) that they can be found.

In everything that follows, the part of ancient Jewish literature on which I shall concentrate is Rabbinic literature, because that is where other scholars find the alternative assumption: legalism.

a) Underlying principles

I shall begin by giving some examples that show what a fundamental cultural assumption looks like. These examples come from various cultures: one of the examples is from ancient Egypt, one is from the early United States, and the rest are current in our own place and time.

To save space and time, I shall do little more than mention the first two examples:

(1) One assumption that is perfectly clear in modern American advertising is, "What is New is Better." Other cultures have had the opposite view. We seldom state "what is new is better," but it is a key motif of modern U. S. society.

(2) Most people today believe in an unconscious mind, one that causes us to act and react in ways that are not deliberately intended. "Freudian slips" and "defense mechanisms" are part of modern discourse. These ideas were unknown in the eighteenth century. Today people assume them frequently but seldom explicitly attribute them to Sigmund Freud or his daughter Anna, and in fact they seldom state that belief in an active unconscious mind is standard in our culture.

(3) The Declaration of Independence and the Constitution of the United States fail to state a lot of presuppositions. They rely on knowledge of common and usual practices and also on the Enlightenment philosophy that the Founding Fathers had studied in their youths. I shall list just a few items.

(a) The Founding Fathers accepted the inequality of humans. The Declaration of Independence states that "all men are created equal." Since until a few decades ago "man" and "men" were routinely used as generics (meaning humans or humanity), a modern purist reader of the text, unaware of the political assumptions of the eighteenth century, might infer that women, slaves, minors, and people with no property had equal rights with free adult males. Similarly, the preamble to the Constitution refers simply to "We the People of the United States," who "ordain and establish this Constitution." In neither case do we find an

explicit statement of the presuppositions of the day: that only free adult males with property had full rights, including the right to vote. Some of the Founding Fathers knew that it was wrong to exclude slaves (for example), but they all agreed to do so. In this case, the presuppositions partially negate, rather than enhance, the specific words.

Some of the main positive principles that are unstated but assumed in the Constitution and the first Ten Amendments (the "Bill of Rights") are these:

(b) Government is in accord with Reason, which is the Law of Nature, and it does *not* depend on Revelation. The Constitution famously lacks words such as "God," "Jesus Christ," and "the Bible," although most of the Founding Fathers were Christian, while others were Deists who believed in God, though not in Christian doctrine as such. A historian can readily discover that the role of religion in the government was a frequent topic in the eighteenth century, and debates about it were sometimes heated.[15] The omission of the topic from the Constitution, as well as the limitation of the discussion of religion in the First Amendment, cannot be accidental: the "framers" of the Constitution omitted God, Christ, and the Bible intentionally, because they believed that government should be based on human reason.

(c) Since "all" are equal, no one ought to harm another in his or her life, health, liberty, or possessions. The Fifth Amendment to the Constitution supplies these rights but does not reveal the logic (because all are equal). For that, one must read what the "framers" of the Constitution studied when they were youths.[16]

[15] See, for example, Jefferson's autobiography in *Thomas Jefferson, Writings* (New York: The Library of America, 1984), p. 40, on the effort by some to insert "Jesus Christ" into Virginia's statute of religious freedom. Jefferson took the failure of the amendment to show that the legislators intended to protect "the Jew and the Gentile, the Christian and Mahometan, the Hindoo, and infidel of every denomination."

[16] The philosophy that underlies the American constitution, and specifically points (b) and (c) in the present text, was clearly articulated by John Locke, *The Second Treatise of Government*, §6: "The *State of Nature* has a Law of Nature to govern it, which obliges every one; And Reason, which is that Law, teaches all Mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his Life, Health, Liberty, or Possessions": *Locke. Two Treatises of Government*. ed. Peter Laslett, student edition (Cambridge: University Press, 14th reprint, 2003), p. 271. The *Two Treatises* were originally published in 1689 and became fundamental in education and political thought in the eighteenth century. The *Minutes of the Board of Visitors of the University of Virginia*, March 4, 1825, state that "as to the general principles of liberty and the rights of man …, the doctrines of Locke … and of Sidney … may be considered as those generally approved by the fellow citizens of this, and the United States." Locke, Sidney and others had been read by the Founding Fathers when they were schoolboys. Jefferson himself considered Locke one of the three greatest men

(4) I shall now give an example from the ancient world of a common cultural assumption that is quite different from ours and also quite different from the assumptions to be found in the Bible. For this exercise, we turn to Egypt and in particular a book by Henri Frankfort, *Ancient Egyptian Religion: An Interpretation*. Frankfort asked if there is any unity behind the bewildering variety of Egyptian religious expressions. He thought that there was: all "were rooted in a single basic conviction, to wit that the universe is essentially static. The Egyptian held that he lived in a changeless world." This was not "an articulate doctrine," but it nevertheless decisively "determined the forms he [the Egyptian] gave to his state and his society, to his literature and his art."[17]

Ancient Egyptians, of course, were conscious of various sorts of change: dynasties rose and fell; Egyptian armies were not always equally successful. But they assumed that these fluctuations were simply "rhythmic movement[s] contained within an unchanging whole" (p. 13).

Creation, which texts endlessly discuss, was an important topic precisely because creation is what really matters in a universe that never changes (p. 50). The articulation, that it "never changes," however, is implied rather than stated directly.

Frankfort analyzes Egyptian dramatic productions, advice on morality and behavior, views of death, and much more to prove that the idea of changelessness underlies them. He points out more than once that this conception is seldom if ever spelled out explicitly, but he nevertheless argues that Egyptian life and thought were based on it.

It seems to me that in the field of ancient religion Frankfort is the best example of a scholar who did what I tried to do, though I did it less ably than he.

(5) For the final example of really powerful and controlling but unstated assumptions, I wish to take a topic that seems to me to provide the closest possible analogy to early Rabbinic literature. It is modern Biblical scholarship. I shall refer to New Testament scholarship, but everyone will understand the analogy. The similarity between Rabbinic literature and Biblical scholarship first occurred to me, unfortunately, seven years after I completed *Paul and Palestinian Judaism* and five years after it was published. In 1982 I attended the New Testament seminar in Cambridge that was chaired by Professor Morna Hooker. Geoffrey Styler took minutes, which he read at the beginning of each meeting. It was

who had ever lived (along with Francis Bacon and Isaac Newton). See *Thomas Jefferson, Writings* (n. 15 above), pp. 479, 939–40; cf. p. 1176.

[17] (Mineola, NY: Dover Publications, 2000), p. vii. The work was originally published by Columbia University Press in 1948.

listening to the minutes that brought home to me the similarities between our activities and those of the ancient Rabbis. The minutes recorded what took place, and thus they usually lacked an introduction to the problem of the day. We all knew why the day's topic was an issue, and it was unnecessary for the secretary to tell us.

Neither the seminar nor the minutes ever revealed a single thing about our *motives*. Why were so many learned people there, demonstrating that they spent their lives in a most minute investigation of a short text? We never discussed the topic because we knew the answer – or, more precisely, we knew the range of answers. Some may have held that the New Testament was literally the revealed word of God. Others might have said that Christianity is one of the most important movements in the history of the world and that any amount of effort is worthwhile if it reveals the meaning and significance of just a small bit of the text of the New Testament. I have never been in a graduate seminar in the New Testament where anyone present felt called upon to explain why she was devoting herself, body and soul, to its study.

In a doctoral or a senior seminar, motives and importance are assumed, not discussed; broader issues are assumed, not discussed. One focuses on the precise topic of the day. Rabbinic literature reads very much like the minutes of a meeting of modern Biblical scholars.

I wrote this about the Rabbis in *Paul and Palestinian Judaism*:

> [Religious principles] … are not discussed as such. Rabbinic discussions are often at the third remove from central questions of religious importance.[18] Thus the tractate Mikwaoth, 'immersion pools', does not consider the religious value of immersion or the general reason for purity, much less such a large topic as *why* the law should be observed. It simply begins with the classification of the grades among pools of water. This does not mean that there were no religious principles behind the discussion; simply that they (a) were so well understood that they did not need to be specified and (b) did not fall into the realm of halakah …. This sort of literature, which deals with questions of detail rather than principle, … [permits] inferences as to what principles lie behind the discussions as a whole. (p. 71)

I proposed that "the only reason for elaborating and defining [human] obligations under the covenant is that God's faithfulness and justice in keeping his side are beyond question" (p. 82), which I still regard as correct.

[18] Cf. Neusner, *The Rabbinic Traditions about the Pharisees Before 70*, 3 vols. (Leiden: Brill, 1971), pp. 235, 238; see further, section three below. [Footnote in the original.]

It would seem to me folly to say that faculty members and doctoral students who sit in seminars discussing details of Biblical exegesis have no principles or that the range of their principles cannot be inferred. It seems greater folly to assume that the Rabbis studied the sacred text as thoroughly as they did but that we have no explanation of why they did so.

The Rabbis can go on for page after page without referring to Election or Mt. Sinai or Atonement – just as New Testament scholars can go on for page after page without referring to the revelation of God in Christ. I would suggest that covenantal nomism functions in Rabbinic literature according to the analogy with modern Biblical scholarship: it explains the entirety, though of course the explanation is rarely explicit. Covenantal nomism explains why the Rabbis spent so much time and energy combing through every line of the Bible and debating its significance. It gives a better explanation of Jewish assiduousness in study, I think, than the proposed underlying theology called "legalism," or now "merit theology," which is that they studied to find ways of earning brownie points or merit badges. The Rabbis studied the Bible for the same reasons Christian scholars do, for love of it and because it was God's great gift to them, not out of fear that they could not otherwise pile up enough merits.

b) Covenantal nomism as an underlying principle

We must ask the following question: *If* it be granted that there are such things as cultural assumptions, and *if* it be granted that the Rabbis had some, *how* can it be proved that "covenantal nomism" in particular was a common assumption, visible in most of the extant Jewish literature that comes from the period 200 BCE to 200 CE? One reviewer, who partially got my argument, stated that I could just as well have proved that the Rabbis knew atomic theory, because they do not discuss it. This is merely a statement in favor of capitulation to word counting and a refusal to probe deeply.

There are lots of arguments that reveal the presence of covenantal nomism even when the words do not appear, of which I shall summarize three. I shall focus on one that is not emphasized in *Paul and Palestinian Judaism* and one that is entirely absent, while repeating only one of the major arguments in the book.

(1) First, I wish to emphasize a point that I undervalued in *Paul and Palestinian Judaism*: covenantal nomism is clear in the Biblical narrative and could hardly have been missed by close readers of the Bible, such as

the Rabbis. And they did not miss it: frequently they point out the precedence of God's grace to requirements laid on humans.[19] Covenantal nomism assumes the seminal importance of two figures, Abraham and Moses: God chose Abraham and his descendants, brought them out of Egypt, and gave Israel the law through Moses. The pattern of covenant and law, grace and requirement, is absolutely clear in the sequence of those great events. This obvious Biblical base would have strengthened my claim if I had had the wisdom to appeal to it more forcefully. One has no reason to think that the Rabbis read Einstein or Fermi, but one cannot doubt that they studied the Bible.

(2) Next, I would remind the reader of one of my main arguments in *Paul and Palestinian Judaism*: the view that atonement is possible for all transgressions is ubiquitous. It comes up every time the topic of atonement comes up, for example in the Tannaitic Midrashim on Biblical passages that refer to atoning sacrifices. There are also tractates in the Mishnah that deal with atonement. The very idea of atonement or restoration assumes a prior good status – being "in" in the language of *Paul and Palestinian Judaism*.[20]

Rabbinic literature offers different "systems" of atonement. In the Bible, one finds various transgressions, and here and there one finds sentences about atonement, forgiveness, and restoration; the Rabbis matched up transgressions and atonements in various ways (pp. 157–80), so that a specific means of atonement would rectify a specific set of transgressions. What is common to all of these efforts is that atonement is guaranteed to all Israelites who are willing to receive it. In the Rabbinic discussions, atonement for transgression includes the sin about which the Bible says there is no atonement – taking the name of the Lord in vain. The Rabbis got around that exception with ease (pp. 159–60), which simply reveals their underlying assumption that God is ready and willing to forgive his straying children for anything. Though they strayed, they were still his children and could correct their paths.

All of these discussions of atonement, to repeat, presuppose the prior state of grace, as Christians might call it, or the prior condition of being "in," in the language of *Paul and Palestinian Judaism*. If there is atonement, there is also election and, of course, the law, which defines transgression and atonement. That is, if you have atonement you have covenantal nomism.

[19] See, for example, *Paul and Palestinian Judaism*, pp. 92–7.

[20] See "Salvation by membership in the covenant and atonement," *Paul and Palestinian Judaism*, pp. 147–82.

(3) The third argument is an appeal to history: Jews remained loyal to the God of Israel and loyal to one another. The importance of group identity and cohesiveness is overwhelmingly obvious if one casts even a cursory glance at ancient Judaism. An enormous number of ancient Jews lived outside of the Holy Land: either to the east (Mesopotamia) or to the west (Asia Minor, North Africa and Europe). Some doubtless blended into the common culture, but to a remarkable degree they held together as a distinctive group, being even more unwilling than the Spartans (as Josephus remarked) to give up their native constitution, their laws, and their customs, while being willing to die on behalf of their God and his people.[21] The people who died in the Maccabean revolt or in the two revolts against Rome were not engaged in the petty piling up of merits, they were being loyal to a way of life, to their fellow Jews, and to the one who chose Israel and decreed the nation's distinctive cultural characteristics. Unhappily, I did not have the wit or wisdom to include this argument in *Paul and Palestinian Judaism*, although it does appear in *Judaism: Practice and Belief*. War is only the most extreme example of the loyalty of Jews to God and to one another. One may also examine pilgrimage to Jerusalem, payment of the temple tax, and other topics.[22] Legalism does not explain loyalty to God and the group, but covenantal nomism – its alternative – does.

2. In some Jewish literature, covenantal nomism is true but not very important

This criticism appears in a paper by Daniel Falk on Jewish prayers and psalms that is printed in a work called *Justification and Variegated Nomism*.[23] I regard this as a fine paper. Falk perceives the importance of analyzing presuppositions, and he carefully notes that the covenant is

[21] On the loyalty of Jews to their God and his laws, and the lack of similar loyalty among others, see Josephus, *Apion* 2.225–235, 271–280. His point was entirely correct: Jews continued to form a distinctive group, Spartans did not.

[22] *Judaism: Practice and Belief*, pp. 130, 144, 237 f., 256 f., 264 f. I quote from p. 144: "We have seen throughout how intertwined were religion and patriotism: the God of Israel was God of the world, but he had chosen the nation of Israel … Loyalty to the community was inseparable from loyalty to the deity who called it into being; group identity and devotion to God went together."

[23] Daniel Falk, "Prayers and Psalms," *Justification and Variegated Nomism*, vol. 1, *The Complexities of Second Temple Judaism*, ed. D. A. Carson, Peter T. O'Brien, and Mark A. Seifrid. *Wissenschaftliche Untersuchungen zum Neuen Testament* 2. Reihe 140 (Tübingen: Mohr Siebeck, 2001), pp. 7–57.

either explicitly mentioned or is presupposed in the material that he covers. This is what one should expect. Prayers and psalms, the subject as his paper, are addressed to God, and when one addresses God one tends to be conscious of his mercies and of human dependence on him.[24] Nevertheless, Falk manages to criticize covenantal nomism. He notes that in some of the material, especially the Dead Sea Scrolls and the Psalms of Solomon, the "covenant" that is so important is not the covenant with all Israel, but a covenant with a restricted group within Israel.[25] He asks how suitable covenantal nomism is in the analysis of the Psalms of Solomon and replies that the answer is "somewhat equivocal." He continues,

> If we have in mind a formulation that the psalmist(s) would recognize and agree with, there is little doubt in my mind that they would find Sanders's 'covenantal nomism' more congenial than the judgments of his critics …. But to designate [the psalmists'] restricted group-centered soteriology 'covenantal nomism' is ultimately not very helpful.[26]

Similarly, in commenting on the *Hodayot* in the Dead Sea Scrolls, Falk points out that the "distinctive quality of the practice of religion … is its sectarian context, above all that one is a member of the covenant only by individual transfer …."[27]

I entirely agree with his observations about the redefinition of the covenant in the Psalms of Solomon and the hymns from Qumran. I wish that Falk had noted that, discussing the Dead Sea Scrolls, I made the same point: "the general pattern of religion which we found earlier in Rabbinic literature is also present in Qumran, although there are striking differences and special emphases …" With regard to the election, "the emphasis … reflects the sectarians' acute self-consciousness of being chosen, not as a nation, but as individuals."[28] And I discussed the same issue – the small group versus all Jews – in dealing with the Psalms of Solomon.[29]

[24] The question of the attitude of self-confidence or of reliance on God is partially a question of genre: halakhah presupposes human ability to solve specific issues; addresses to God (prayers and psalms) presuppose dependence on divine grace: *Paul and Palestinian Judaism*, pp. 224, 266f., 292, 297, 376.

[25] Cf. Mark Adam Elliott, *The Surviviors of Israel. A Reconsideration of the Theology of Pre-Christian Judaism* (Grand Rapids: Eerdmans, 2000).

[26] Falk, p. 51.

[27] Falk, p. 34.

[28] *Paul and Palestinian Judaism*, p. 320.

[29] *Paul and Palestinian Judaism*, p. 408. My conclusion on the balance between the small group and the nation of Israel, however, was a little different from Falk's.

One of my concerns at the time, however, was to point out that the *pattern* or *structure* in Qumran was the same as in Rabbinic literature, and that this structure is completely different from *legalism*. Falk supports that contention entirely, in which case I would incline to the view that my work was at least a little helpful, since Christian scholars were still writing about the legalism of the Dead Sea Sect.

3. Ancient Judaism was "variegated":
covenantal nomism was present, but there were competing theologies, especially "merit theology," belief in salvation by works

The view is fairly widespread that there are sentences in Rabbinic literature that do not correspond to my "pattern." There are many scholars who still wish to find a completely different pattern in Rabbinic literature and to do it in the old fashioned way, by finding prooftexts that they can fit into a scheme of their own devising. (Well, actually, it is a scheme of Luther's devising, but that is another issue.) The other pattern is usually legalism (or merit theology), and the sentences usually have to do with reward and punishment. It is sometimes believed that sentences on reward and punishment imply rejection of the grace of God and reliance on human achievement. Although the situation may have improved a little in recent years, historically the principal way in which New Testament scholars have "used" Rabbinic Hebrew has been this: find a sentence; declare it to be a dogma, firmly held by all Rabbis; extrapolate the sentence into a full set of dogmatic propositions. In the process, the scholar in question would extrapolate by writing down what he or she *would* have thought had he or she regarded the sentence as a component part of a systematic theology. This makes it quite easy to find more than one "underlying" theology in Rabbinic literature.

a) Philip Alexander on two competing soteriologies

To consider this argument, that a theology of "merit" competes with "covenantal nomism," I turn to another of the best papers in *Justification and Variegated Nomism*: "Torah and Salvation in Tannaitic Literature" by Philip Alexander.[30] This is an extremely useful article, in which Alexander compares the implied system of salvation in the Mishnah with that in Sifre Deuteronomy (Sifre Devarim, the Tannaitic, or early

[30] "Torah and Salvation in Tannaitic Literature," *Justification and Variegated Nomism* (n. 23 above), pp. 261–301.

Rabbinic, Midrash or commentary on Deuteronomy). Alexander argues that in Sifre Deuteronomy one sees that the covenant is prominent – as one would expect, since it is a main feature of the Biblical text on which the Rabbis are commenting. In this work, many passages mention the covenant explicitly, while many others presuppose it. (Alexander, like Falk, perceived the importance of looking for presuppositions.)

In the Mishnah, however, "the overwhelming impression … is of God making a precise reckoning of the deeds of humankind and meting out exactly calculated reward and punishment."[31] This allows Alexander to draw conclusions that are in harmony with the aim of the volume, *Variegated Nomism*, namely, that there is more than one "system" in Tannaitic literature. In his "concluding theses," Alexander generalizes his view of the Mishnah to cover all of early Rabbinic literature: "Tannaitic Judaism can be seen as fundamentally a religion of works-righteousness, and it is none the worse for that." But (he continues) "the doctrine of the election of Israel" stands in "dialectical tension with the basic works-righteousness."[32] Thus the election of Israel, in Sifre Deuteronomy, is one view, while works-righteousness, in the Mishnah, which he thinks is dominant overall, is in tension with that view. Alexander proposes that one must study one document at a time, letting each document have its own view, before offering general conclusions.[33]

I shall itemize a few objections to Alexander's conclusions. As in the case of Falk's article, I disagree less with the analysis along the way than I do with the conclusions, though I shall also refer to some aspects of the Mishnah that Alexander either does not discuss or does not evaluate as I would.

(1) As everyone knows, the Mishnah consists largely of legal (halakhic) debates. The covenant requires no debate, and reliance on it is not a matter of law, and so the Mishnah does not devote a tractate to it. (There is also no tractate on monotheism.) But the notion that God gave Israel the Land, before they brought the tithes and offerings, and that offerings are presented in response to that initial gift – "prior grace" in classical Christian terminology – crops up at the expected place in the Mishnah's discussion of agricultural offerings (e. g. Maaser Sheni 5.14).

Similarly, atonement is a major topic in the Mishnah, and atonement implies restoration to a prior good status, not the initial achievement of that status. Although Alexander has a discussion of repentance and

[31] Alexander, p. 284.
[32] Alexander, p. 300.
[33] Alexander, pp. 298 f.

atonement, his principal conclusion is that "Nothing could be further from Tannaitic thought than the notion of an inexorable justice operating blindly or mechanistically." That is, he sees repentance and atonement as mitigating the harshness of a system of works-righteousness. Since Israel "must choose to exercise those means," however, repentance and atonement do not nullify the underlying works-righteousness.[34] This is, basically, the old Christian assessment: repentance is merely one more good work. In the not-entirely-vanished Christian view, it goes in the scales on the plus side, while God's judgment is entirely based on the balance of the scales: repentance itself is a meritorious achievement that helps the scales to tilt in favor of the individual being judged.[35]

The principal flaw here is moving from the Mishnah as a document to the assumption that it represents an entire worldview and thus that there were actual human beings who thought that the only thing that God cares about is the balance of deeds. This is the decision that leads to the assessment of repentance as merely a mitigating factor in a system in which God's principal role is counting merits and demerits. Jewish life was not restricted in this way. Atonement was much more fundamental than the mere elimination of individual misdeeds: it restored people to an original relationship with God. Atonement is part of the covenant, the basic agreement between God and Israel: he will be their God and they will be his people; they shall flourish, and even when they fall upon hard times, God will secure the continuity of the nation. Israelites should obey the law; when they do not, they should make atonement. And once a year, the Day of Atonement wipes out all transgressions; the Rabbis would later say, the Day plus repentance.[36] One ought not to *start* the discussion of atonement with the assumption of strict legalism: that is an academic decision, not one taken by ancient Jews.

In real life, Jews observed the "set times" – the Sabbaths, the feasts, and the great fast (the Day of Atonement) – thinking of the mercies of God, not merely of their own obligations. It is a heartless treatment of them to decide to begin their religious lives with the legal opinions,

[34] Alexander, p. 288.

[35] On Christian scholars who have held that Jewish belief in repentance does not overthrow the charge of legalism, see *Paul and Palestinian Judaism*, p. 36 (Weber); pp. 46f. (Bultmann); pp. 52f. (Thyen).

[36] In Sifra *Emor* pereq 14, there is an interesting discussion of the various Biblical requirements for the Day of Atonement. In this passage the Rabbis conclude that the Day atones even if there is no solemn assembly, no scapegoat, etc; in effect, it atones without the temple (which one would not know from reading Leviticus). They then debate whether or not repentance (unmentioned in the Biblical passages on the topic) is required and conclude that it is. This is the general Rabbinic opinion.

rewards, and punishments that are now found in the Mishnah. *There were no groups of Jews whose entire worldview consisted of legal debates.* They all believed in the Bible, including, for example, the calendar of special days. At the festivals they did not think only of the rules of observance, but also of the appropriate Biblical passages, such as the Avowal in Deut. 26. When the farmer brought the first-fruits to the temple at *Shavu`ot* (the Feast of Weeks), he was to speak (or at least refer to, one supposes) "the Avowal," in which he states that he is bringing the first-fruits from the land that the Lord had given his ancestors. The Avowal continues by summarizing the election of Abraham, bondage in Egypt, the exodus, and the gift of the Land.[37] Real life was not the same as the life that we might infer if the legal debates in the Mishnah actually constituted an entire "Judaism" [see (3) below].

Repentance and atonement play the same role in Judaism as in Christianity. In both religions repentance and atonement are total cures; in both, humans must *seek* forgiveness; and in both there is a divine guarantee of that forgiveness. In some forms of Christianity (those that reserve baptism for believers), repentance rescues the lost person who suffers from original sin; but in other forms of Christianity and in most forms of Judaism, including especially Rabbinic Judaism, atonement *restores* the individual to a prior good relationship with God, and the good relationship depends on acts of God (either the election of Abraham and the exodus or the death of Christ) that the penitent sinner could not have earned, since he or she was not alive at the time.

A second, though lesser, complaint is that even Alexander's very warm description of atonement (pp. 286–88) does not give an adequate account of its prominence in the Mishnah. Besides the fact that a tractate, Yoma, is dedicated to the Day of Atonement, there are numerous other references, which demonstrate that the Rabbis assumed throughout that people could atone for transgressions, thus reestablishing their place in the people of God.[38]

Besides noting the implication of divine grace that appears when the discussion is of offerings from the produce of the Land, and emphasizing the large role of atonement in the Mishnah, I would like to call attention to one other passage that clearly indicates belief in God's reli-

[37] For a brief description of the feasts and the fast, see *Judaism: Practice and Belief*, pp. 132–143.

[38] The verb *kîpper,* "atone," by a rough count, is found in over thirty *mishnayot* (paragraphs in the Mishnah), leaving Yoma out of account. I did not count the appearances of the noun *kîppûrîm*, which appears in numerous combinations. The frequent occurrence of *yôm ha-kîppûrîm* (the Day of Atonement) in diverse tractates results in a large number of appearances of the noun.

able, unearned grace: the end of tractate Sotah, in which a litany of troubles leads to the repeated question, "On whom can we rely?" The answer is, "on our Father in Heaven" (Sotah 9.15). This passage refers to the Great Revolt and is attributed to R. Eliezer the Great, a student of R. Yohanan ben Zakkai. Therefore it probably comes from shortly after the war, when trust in God might have been a little difficult, which would explain why R. Eliezer emphasized it.

So, when it fits the subject under discussion (as in the passages on offerings, sacrifices, and atonement), and sometimes even when it does not (e. g. the end of Sotah, where the topic is the suspected adulteress), the Rabbis of the Mishnah show confidence that God gave them the land, that he will forgive their transgressions, and that ultimately he will stand by them.

(2) Like most Jewish scholars, who are not deeply immersed in the hard realities of Protestant polemics, Alexander and Falk do not realize the full weight of the charge of legalism: there is no relationship with God apart from what the individual can earn, and this makes Judaism a religion – in Billerbeck's terminology – of *Selbsterlösung*, self redemption, pulling one's self up by one's own bootstraps. It is telling that Alexander wrote that one could characterize the Mishnah as representing "a religion of works-righteousness" and added, "it is none the worse for that" (p. 300). He does not grasp the seriousness of the charge: no relationship with God except what the *individual* achieves.[39]

In the view of the Protestant scholars who systematized the polemic against Judaism, one *must* begin the assessment of Judaism on the basis of the *Christian* assumption of the original lostness of humanity and the profound corruption of human nature – and then imagine that each individual Jew had to work his or her way out of an impossible situation, with no help from God.[40] Jews, unlike many Christians, did not posit original depravity but assumed that they inherited a favorable re-

[39] At the Southwestern regional meeting of the Society of Biblical Literature and American Academy of Religion, when I read Alexander's statement that Judaism is "none the worse" for being legalistic, there was an audible gasp from the audience. It is almost the worst thing that some Protestants can imagine.

[40] See the discussion of Bousset in *Paul and Palestinian Judaism*, pp. 215–17; the full reference is: Wilhelm Bousset, *Die Religion des Judentums im neutestamentlichen Zeitalter*, ed. H. Gressmann, Handbuch zum Neuen Testament 21 (1903; Tübingen: Mohr Siebeck, 1966), pp. 374, 389. We may compare to Bousset's view the fact that, to make Jewish legalism reasonable, Weber had to maintain that all Jews thought that they had *lost* the grace of God shown in the election (above, following n. 7). Weber's requirement that one must begin with the assumption of Jewish exclusion from the love of God was possibly as deeply theological as Bousset's view, depending on the Christian theology of original sin and depravity.

lationship with God. Christians have simply denied that that is true, and then, ignoring the exodus and the covenant, proceed to a system of reward and punishment that is applied to people who inherited not a place in the covenant, but rather basic sinfulness and the accompanying damnation. As Bousset wrote, "Human nature is so corrupt that man must change himself completely if he wants to approach God" (n. 40). Works-righteousness was the Jews' only way out, but often that would fail. The state of the legalistic Jew was almost hopeless.[41]

But even without being conscious of the theological basis and the enormous weight of the Christian charge, "legalism," I think that Alexander could readily have found more evidence of covenantal nomism than he did. If, for example, he had asked himself why the Rabbis produced the Mishnah – why they studied the law and tried to obey it – he would probably have agreed with my answer, that they studied and strove because God had already chosen them as the people to whom he gave the law. Why else would they study it? Why did they form a group to study this particular document, a group that was entirely Jewish?

Tannaitic literature presupposes the prior existence of the group that is loyal to God and the Bible – and thus presupposes the election. Similarly all Jewish literature *and* Jewish history presuppose the special relationship between the people of Israel and God, as well as the binding ties that gave the people a strong group identity.

(3) I wish to focus a little more closely on the fact that Philip Alexander accepts a significant part of what I call the "Neusner fallacy," namely, that each literary product includes a worldview and contains everything that its authors or editors thought to be important.[42] That

[41] The Christian scholars who were inventing or systematizing this view of Rabbinic Judaism were obsessed with "certainty of (individual) salvation" and seem to have been ignorant of the fact that this concern was not prominent in ancient Jewish thought. They imagined that individual Jews were frantically seeking to be saved but were finding no religious security and consequently had no hope. If, of course, an individual did seem confident of salvation, he was immediately attacked as arrogant, which was even worse than being filled with *Heilsunsicherheit*. On these topics, see *Paul and Palestinian Judaism*, pp. 225–30. For an essay by a scholar who held such views, see K. H. Rengstorf, "Hope in Rabbinic Judaism," *Theological Dictionary of the New Testament*, vol. 2 (English translation; Ann Arbor: Eerdmans, 1964), pp. 523–29, *s.v. elpis*.

[42] Alexander, pp. 298 f. See Jacob Neusner, "Parsing the Rabbinic Canon with the History of an Idea: the Messiah," *Formative Judaism: Religious, Historical and Literary Studies*. Third series: *Torah, Pharisees, and Rabbis*, Brown Judaic Studies 46 (Chicago: University of Chicago Press, 1983), p. 173–98; *Messiah in Context. Israel's History and Destiny in Formative Judaism* (Philadelphia: Fortress, 1984); *Midrash in Context. Exegesis in Formative Judaism* (Philadelphia: Fortress, 1983); *Torah. From Scroll to Symbol in Formative Judaism* (Philadelphia: Fortress, 1985). I have discussed aspects of these works in "Common Judaism Explored," n. 2 above.

is not true of any book in any culture, as far as I know, and I do not think it should be applied to ancient Jewish documents. Alexander's partial acceptance of the Neusnerian thesis that every document contains its own worldview allows him to argue that Sifre Deuteronomy is not legalistic, but that the Mishnah is, and that therefore there are competing worldviews that cannot readily be reconciled.

The Neusner of the mid–1980s might hold this opinion, since he also argued that each document contained the worldview of a separate social group (see n. 42). This is the part of the Neusnerian fallacy that Alexander does not accept: he knows that the Rabbis who produced the Mishnah constituted basically the same group of humans as those who appear in Sifre Deuteronomy.[43] I shall offer just a little detail about the overlap between the names in the Mishnah and those in Sifre Deuteronomy.

Of the eighty-one names of Rabbis in Sifre Deuteronomy, fifty-four are also in the Mishnah, which is two-thirds (sixty-six percent).[44] More important, the Rabbis whose opinions are most often cited are the same. I list them in alphabetical order: R. Akiba, R. Eliezer (the Great), R. Ishmael (b. Elisha), R. Joshua (b. Hananiah), R. Judah (b. Ilai), R. Meir, and R. Simeon b. Yohai.

Alexander grants that the two documents came from the same milieu, but he still insists that they have opposing soteriologies and argues that it is premature for us to harmonize them. This seems to me to be an error. The two documents belong to different genres, and genre makes a difference when it comes to the contents of a work. The Mishnah, to repeat, is a collection of legal opinions by subject matter, while Sifre Deuteronomy deals both with the laws of Deuteronomy and with the narrative. It is the narrative that contains the clear references to a covenant relation between God and Israel, and if one pulls the laws away from the prefaces to them, and from the narrative surrounding those

[43] Alexander, p. 268: "the Mishnah and the Tannaitic Midrashim have emerged from the same literary and historical milieu and share a broadly similar worldview."

[44] These numbers are approximate. To make the estimate, I compared the lists of Rabbis in English translations: *The Mishnah*, ed. and trans. Herbert Danby, corrected ed. (Oxford: Oxford University Press, 1938, often reprinted), pp. 799–800; *Sifre. A Tannaitic Commentary on the Book of Deuteronomy*, ed. and trans. Reuven Hammer (New Haven: Yale University Press, 1986), pp. 551–53. The Mishnah is much longer than Sifre Deuteronomy, and the editors apparently made some effort to be comprehensive in citing scholarly opinions. There are eighty-one named Rabbis in Sifre Deuteronomy, 134 in the Mishnah (not counting the sages before the Tannaitic period), with the result that the percentage of overlap is much greater in Sifre Deuteronomy than in the Mishnah.

prefaces and laws, one may have no occasion to mention the covenantal context. And that is what the Mishnah does: it pulls laws out of context for legal debate. This does not mean that the Rabbis who are quoted in the Mishnah lived or thought of the laws without seeing them in context. On the contrary, the very same Rabbis also commented on the election and the covenant as they appear in the narrative sections of the Pentateuch.

I offer an analogy with the view that we should read the Mishnah in isolation and derive from it a complete soteriology: We would just as well look at a modern volume that collects the opinions of important judges who ruled on tax law, and then say that it presents a view of the U. S. or Britain (or wherever) that does not include patriotism, and that it is the opposite of views to be found in histories of the nation, where patriotism is perfectly clear. Of course a compilation of opinions on tax law does not include a chapter on patriotism, but this does not mean that the legal authorities who are cited were ignorant of patriotism or were opposed to it. Rather, commenting on the law reveals that the judges respected the institutions of the government that produced the law and thus that they were patriotic, even though they did not say so in ruling on taxes.

Thus I see the authorities quoted in the Mishnah as being, on average, the same as the ones in Sifre Deuteronomy and as having the same views.

(4) This leads to a final comment on Alexander's article: In discussing Sifre Deuteronomy, he emphasizes the enduring quality of the covenant and the fact that "the covenant cannot finally fail" and that "it depends ultimately on God and not on Israel" (pp. 296–97). In the conclusion, he does not see how to reconcile this perception with "works-righteousness" (pp. 300–1.). But, once one notes that the Mishnah and much of the material in the Tannaitic Midrashim derive from the same circles, one should realize that the Midrashim have already done the work of putting confidence in the covenant and legal requirements together: obedience and disobedience, reward and punishment, are set within a covenantal context in the Midrashim, just as they are in the Bible; all of the Mishnaic Rabbis had studied the Bible, and many of them contributed to the Midrashim.[45]

[45] I wish that someone with younger eyes and greater energy than I would compare the names of Rabbis in the Mishnah with those in the Mekhilta (on Exodus), Sifra (on Leviticus), and Sifre Be-Midbar (on Numbers).

b) Reward and punishment in ancient literature and in Protestant polemics

(1) I shall now discuss in more detail reward and punishment, a major theme in Jewish literature, as in the Bible. In *Paul and Palestinian Judaism* I emphasized reward for obedience and punishment for disobedience. The requirement of obedience is item number 4 on the list of the characteristics of covenantal nomism above, and reward and punishment constitute number 5; the index reveals several discussions of the topics.[46] As every reader notes, there are a lot of such statements. Do they presuppose the existence of a different underlying theology?

The Rabbinic insistence on reward and punishment, above all, is the evidence upon which Alexander relies in stating that the Mishnah in particular and early Rabbinic literature in general reveal a theology of works-righteousness,[47] and it is these statements that have always been cited as proving that ancient Jews had to save themselves by works or merit. By quoting some sentences out of their larger context one can draw the picture of a tit-for-tat religion, in which God's treatment of humans is entirely his *response* to their obedience or disobedience, which are the *initial* factors. By culling these sentences, one can pull obedience and disobedience out of the historical and literary context of the election and the exodus.

I still think that I did justice to reward and punishment in *Paul and Palestinian Judaism*, but I shall replay just a bit of my argument. This time I shall start with Christian literature, focusing only on Paul and Matthew.[48]

Paul wrote this:

> All who eat and drink without discerning the body, eat and drink judgment against themselves. For this reason many of you are weak and ill, and some have died. But if we judged ourselves, we would not be judged. But when we are judged by the Lord, we are disciplined [perhaps better, chastised] so that we may not be condemned along with the world. (1 Corinthians 11.29–32)

Here, Paul accepts the common Jewish view that people should behave correctly, that God takes account of their actions, that if they do not correct themselves he will punish them, and that the punishment atones.

[46] The index to "Punishment" in *Paul and Palestinian Judaism* requires 4.3 lines; that to "Reward and punishment" requires 9.5 lines. On "reward" see further John Meier, *A Marginal Jew*: *Mentor, Message, and Miracles*, vol. 2 (New York: Doubleday, 1994), n. 178 on pp. 388–89.; John Calvin, quoted below at n. 53.

[47] Alexander, pp. 284, 300.

[48] Cf. the section on judgment by works in Paul, *Paul and Palestinian Judaism*, pp. 515–18.

Paul thought all this without being a legalist. Where should we suppose he learned it?

Paul further wrote that "all of us must appear before the judgment seat of Christ, so that each may receive recompense for what has been done in the body, whether good or evil" (2 Corinthians 5.10). The phrase "all of us" probably refers to all Christians, and here Paul plainly states that sins that survive mortality (presumably those not adequately punished before death) will be presented to Christ, who will treat them in accord with justice. If it is true that those in view in this passage are Christians, it is all the clearer that reward and punishment function within the system that leads to salvation: *reward is not salvation and punishment is not damnation*. Punishment is the preface to salvation, as it also is in 1 Corinthians 5.3–5 and 11.29–32.

This is the same as the Jewish view: reward is not salvation, punishment is not damnation.[49] Reward and punishment, both in Paul and among non-Christian Jews, play out in a bigger context, that of the love of God who reaches out to people and who will save those whom he punishes. Punishment is part of their atonement, whether it is applied before or after death.

Staying with reward and punishment in the New Testament, we come to Jesus according to Matthew, who is always threatening people that if they do not shape up they will be cast into the outer darkness or into a furnace of fire (Matthew 8.12; 13.42, 50; 22.13; 24.51 [gnashing etc., no darkness or fire]; 25.30; also Luke 13.28). Jesus is also reported to have cried Woe! upon two villages, Chorazin and Bethsaida, for not repenting and to have threatened a third village, Capernaum, with Hades (Matthew 11.20–24; Luke 10.13–15).

All of this sounds very much as if Jesus, Paul, and the authors of the gospels expected correct behavior, took transgression seriously, held people responsible for it, and maintained that it must be punished or atoned for in some way. Yet New Testament scholars do not accuse Jesus, Paul, and the authors of the gospels of legalism. The truth is

[49] People often seem surprised when I point out that in ancient Judaism and early Christianity "punishment" does not mean "damnation" and "reward" does not mean "salvation." This is perfectly clear in the literature. To take only a few examples: in Rabbinic literature punishment atones (*Paul and Palestinian Judaism*, pp. 168–172, citing especially Adolph Büchler, *Studies in Sin and Atonement* [New York: Ktav Publishing House, 1967]); in the Dead Sea Scrolls some punishments exclude from the community, but others are intra-covenantal and maintain the transgressor within the community (pp. 284–87); in the Psalms of Solomon the pious are chastised but saved (pp. 390–97); in Paul those in Christ are punished for their transgressions but not destroyed (pp. 515–18).

that Jesus and his followers inherited their views of God's justice along with their views of God's grace from Judaism.

For those who think that any expression of tit for tat-ism proves legalism, I can offer Matthew 6.14: "For if you forgive others their trespasses, your heavenly Father will also forgive you; but if you do not forgive others, neither will your Father forgive your trespasses." That is the clearest single expression I know of the view that forgiveness can be bought by a good deed. And the truth is that in its general tone Matthew is far more judgmental and "legalistic" than any section of Jewish literature.

But I do not accuse the author of Matthew of being a legalist – though he was too judgmental for my taste. But a legalist? No. Even when a form of works-righteousness seems to predominate, I remember that Matthew as a whole is set in the context of God's gracious gift in Christ.

I shall have no problem with people who say that ancient Jewish literature includes strict accounting for behavior and that God is depicted as treating behavior in accord with justice, *if only they will say the same of early Christianity*. On this point, the two are in fact the same, so let us admit it and let us stop accusing ancient Jews of legalism merely because they thought that God is just.

The idea that God is just and rewards correct behavior while punishing bad behavior does not oppose the idea that he saves by grace, since punishment is efficacious and results in atonement. The opposite of saying that God punishes and rewards behavior appropriately is that he is capricious and pays no heed to individuals' actions when doling out reward and punishment. Neither Jews nor Christians thought that.

(2) I wish now to address a few remarks to Protestant critics. I have always thought that covenantal nomism was more important for Christian scholars than for Jewish. Christians – specifically Protestants – came up with the charge of "legalism"; Christians, not Jews, regarded "works-righteousness" as horrible – as the discussion of Alexander on p. 20 shows; covenantal nomism arose out of my concern over false charges leveled by Christians.[50] Perhaps immodestly, I thought that cov-

[50] On the origin of the charge of legalism in Protestant polemics, see George Foot Moore, "Christian Writers on Judaism," *Harvard Theological Review* 14 (1921) 197–254, especially 228–234. "It is not catholic doctrine which is the explicit or implicit antithesis of Judaism, but Lutheranism of a peculiar modernized type…" (pp. 230–231). See also Bernard Jackson, "Legalism," *Journal of Jewish Studies* 30 (1979) 1–22. "The origins of our term thus lie in seventeenth century Protestant theological debate. It was not until the nineteenth century…that 'legalism' was used as a term of criticism of Judaism" (p. 6).

enantal nomism might be useful for Jewish scholars to consider as well, but the close context of *Paul and Palestinian Judaism* was New Testament scholarship.

In the 1960s and 1970s liberal forms of Protestant Christianity were predominant among New Testament scholars. As the century went on, conservative and evangelical Protestant scholars began to become more numerous, and now (or so it seems to me) they constitute a substantial majority. This has brought to the fore more concern with Protestant dogma, including even the arcane debates of the period after Martin Luther and John Calvin. We all must beware of the temptation to read later concerns into ancient material. When those concerns come from right wing Protestants, they become more *dogmatic*. Older criticisms of Judaism were often based on Humanism (ritual is externalistic and trivial; Judaism makes people either arrogant or anxious; etc.), but now criticisms are more likely to be based on Protestant dogma.

As an example of this, I wish briefly to discuss the use of the word *synergism* in criticizing *Paul and Palestinian Judaism*. Etymologically, the word means "cooperation" or "working together." According to the *Oxford Dictionary of the Christian Church*, synergism was the term used of "the teaching of P. Melanchthon that in the act of conversion the human will can co-operate with the Holy Spirit and God's grace."[51] Although, unfortunately, I did not keep notes, I have seen arguments to the effect that even on my reading ancient Judaism was synergistic, which is almost as bad as being legalistic: instead of entirely ignoring the grace of God (as in legalism), synergists held that grace did not stand entirely alone, because humans had to cooperate by acts of the will. In the criticisms as I recall them, the cooperation was not actually between grace and human will, but rather between grace and human deeds (which may be a distinction without a difference).

Alternatively, since I argued that on grace and works Paul and Judaism agreed, my reading of Paul was synergistic.[52] That is, I produced a quasi-legalistic Paul: "my" Paul, like "my" Jews, thought that salvation could be partly earned by human achievement.

[51] *The Oxford Dictionary of the Christian Church*, 2nd ed., ed. F. L. Cross and E. A. Livingstone (Oxford: Oxford University Press, 1984), s. v. "Synergism."

[52] I am indebted to correspondence with Craig Keener for gaining at least a little clarity on what some may mean by the charge "synergism." Although I have not kept notes of people who in years gone by used the word "synergy" in criticizing my work, I have recently seen it in Douglas Campbell, *The Quest for Paul's Gospel* (London: T&T Clark International, 2005), p. 15: my reading of Paul is "fundamentally synergistic."

According to the best of my (amateurish) knowledge of the Reformation, my analysis of Paul (salvation is by grace and faith; deeds are required and are rewarded or punished; punishment of those in Christ leads to salvation) is quite compatible with the views of its two greatest figures, Luther and Calvin; whether it is compatible with the views of all of their followers or not, I am not competent to judge. Commenting on Galatians 5.14, Luther wrote, "the Apostle therefore earnestly exhorteth the Christians to exercise themselves in good works, after that they have heard and received the pure doctrine of faith."[53] The title of Ch. 18, Book III, of Calvin's *Institutes of the Christian Religion* is, "Justification by Works not to be Inferred from the Promise of a Reward." He continues: Philippians 2.12 and John 6.27 show that "*work* is not opposed to grace."[54] I agree entirely with these quotations. I would point out the chronological aspect of Luther's statement: good works are not injurious to those who have already put their faith in Christ. The Jewish equivalent is that the call of Abraham and the exodus from Egypt precede the giving of the law (above, pp. 5, 13).

It seems to me that at some point Protestants became hyper-sensitive about the role of correct behavior ("works") in the religious life and generated the fear that using "work" and "salvation" too close together implied reversion to Roman Catholicism or some other heresy. As Heikki Räisänen humorously remarked about such extreme sensitivity, "one gets the impression that zeal for the law is more damaging than transgression."[55]

I would be pleased to know more about the history of elevated anxiety whenever human behavior is brought into close contact with salvation. Despite my limited knowledge of this history, it seems obvious to me that many New Testament scholars are more concerned with the *precise* relationship between human deeds and divine grace than people were in the first century, before their eyes and ears had been sharpened by the debates of the Reformation. I believe that the intense concerns that arose from post-Luther and post-Calvin debates on "works" are sometimes inadvertently retrojected into the first century.

[53] Martin Luther, *A Commentary on St. Paul's Epistle to the Galatians*, revised and completed translation based on the 'Middleton' edition of the English version of 1575 (London: James Clarke, 1953, third impression 1961), p. 487.

[54] John Calvin, *Institutes of the Christian Religion*, English translation John Allen (Philadelphia: Presbyterian Board of Christian Education, 1935), pp. 50–51.

[55] Räisänen was referring to Rudolf Bultmann, but the remark has much wider application. See "Legalism and Salvation by the Law," *Die Paulinische Literatur und Theologie*, ed. Sigfried Pedersen (Aarhus: Forlaget Aros, 1980), p. 68.

Many Protestant scholars assume the *eternal truth* of the formulations that derive from the debates of the Reformation, and this naturally inclines them towards retrojection: those people, long ago, should have accepted the views that I now accept, because these views have always been true. I offer a useful quotation from Hartwig Thyen, who argued that in Judaism repentance is a human achievement within a strictly legalistic setting: "Since we, obligated by our Reformation inheritance, know how even the slightest trace of the thought of merit and synergism corrupts the idea of grace at its root," we need not wonder that in Judaism even repentance "is locked into the petty system of calculation," and confession is regarded as "meritorious." He concludes that the value of repentance in Judaism is subordinated to the "dogma of retribution" or "reward" (*Vergeltungsdogma*).[56] The argument is that *in reality* (which only a few of us know) any thought at all of merit and cooperation (synergism) between human and God *necessarily* destroys the idea of grace. Since this is true, we know that it *must* have happened in Judaism, since ancient Jews sometimes thought about obedience and disobedience, reward and punishment.

Theology, here as often (see n. 41), supplies historical information about the way Judaism must have been. In this theology, the quotations from Luther and Calvin above would prove that their ideas of good works and reward had destroyed the notion of grace. Possibly – all things are possible – the right wing of the Reformation is right: this post-Luther and post-Calvin theology is identical with God's own opinion, and all the rest of us are condemned to hell for denying God's grace. But, as historians, we must pay attention to what those people, back then, thought. And the answer is that none of them – the Rabbis, Paul, the authors of the Gospels, Luther or Calvin – held the view that the slightest notion of good deeds, reward, and punishment attacks the idea of grace at its root. They all spoke quite freely about obedience, reward, and punishment. We should not accuse ancient people of being guilty of transgressing fine distinctions that were newly forged in the heat of the Protestant Reformation and have been accepted by relatively few people in the entire span of human history, including Christian history.

[56] Hartwig Thyen, *Studien zur Sündenvergebung im Neuen Testament und seinen alttestamentlichen und jüdischen Voraussetzungen*, *Forschungen zur Religion und Literatur des AT und NT* 96 (Göttingen: Vandenhoeck u. Ruprecht, 1970), p. 75. The full text of the passage in German is quoted in *Paul and Palestinian Judaism*, p. 53; the English translation is in n. 71.

After this digression into "synergism," I wish to return to my main point in this section of the paper: the books of the New Testament, and in particular the letters of Paul, *do* present the views that works are necessary, that good works are rewarded, and that bad deeds are punished. If one wishes to use "synergism" in a denigrating sense for Paul, so be it. My own understanding of both Paul and non-Christian Jewish literature, however, is not that people save themselves by works, but rather that they are rewarded or punished for works within a large context in which God saves and punishment atones. Salvation of individuals (Christianity) and redemption of the people of Israel (Judaism) are both by the grace of God and cannot be earned by merit.

c) Further points on the "two soteriologies" model

(1) It will be useful briefly to discuss the phrase "works-righteousness," which is sometimes used as a synonym for "legalism" or "merit theology." The term comes from Paul's passages about being "righteoused by faith, not by works of law." I have already made the most important point: in Judaism acts of obedience, or "works," function in the context of the covenant. The elect accept the law given by God and *obey* it.[57]

There is, however, a significant issue of terminology that many readers of *Paul and Palestinian Judaism* have missed, and I shall try to clarify it here. The word or words for "righteousness" (or "justification") and "being righteoused" (or "justified") are not always used in the same way in Paul's letters as they are in the other literature studied in *Paul and Palestinian Judaism*. In Judaism, a righteous person (one who is *tsadîq*) is a good Jew, a member of the covenant, who obeys the law and repents of transgression: thus a Jewish righteous person is *righteous by the law.* The righteous person does not earn but rather *maintains* his or her status within the covenant.

The sentence in Paul's letters that is often taken to be the polar opposite of the Jewish view is "no one is righteoused [or justified] by works of law" (e. g. Galatians 2.16). In Galatians and Romans,[58] the verb "to

[57] On the difficulties of translating the verb *dikaioun*, "to justify" or "to righteous," into English, see *Paul and Palestinian Judaism*, pp. 470–72; *Paul, the Law, and the Jewish People* (Philadelphia: Fortress 1983; London: SCM Press, 1985), p. 6 and n. 18 (pp. 13 f.); *Paul*, Past Masters Series (Oxford: Oxford University Press, 1991), pp. 45–7. Unfortunately in the reprint of this small book (in Oxford University Press' *Very Short Introduction Series*, 2001, p. 54) the press botched the chart of terms and translations so badly that the discussion is incomprehensible.

[58] In the two usages outside of Galatians and Romans – 1 Cor. 4.4 and 6.11 – the passive verb "to be justified" or "righteoused" means "to be held innocent" (4.4) or "to be cleansed" (6.11). These two passages may refer to an aspect of transformation, but

righteous" ("to justify") or, more frequently, the passive "to be righteoused" ("to be justified"), usually does not refer to status maintenance, but rather to *change of status*. It means "be transformed," "become a member of the body of Christ," "die with Christ," and the like. This is clear, for example, in Galatians 3.6–29, where "being righteoused by faith" blends into becoming "one person in Christ Jesus" by faith. Philippians 3 follows a similar course.[59]

Paul quite accurately said that one cannot become Christian by observing the Jewish law: that is the meaning of "no one is righteoused [justified] by works of law." This is not an assault on either the Jewish view that Jews should observe the law or the universal view that people should obey God, but a plain statement that doing so does not make one a member of the body of Christ.

To put this another way: there is a verbal contrast between the Jewish view, that a righteous person is righteous by the law, and Paul's view, that no one can be righteoused by the law. But the contrast is only verbal, since the two phrases refer to different topics: the uprightness of people in the covenant who try to do God's will, thus maintaining their status (the Jewish view), and the need of everyone to become a new person in Christ, a transformation to a new status that is not achieved by obedience to the Jewish law (Paul).

Jewish righteousness by the law comes by observing it, and Paul *approved* of this activity, though he found it to be worth nothing in comparison to gaining Christ and thus acquiring a *new* "righteousness," a righteousness that involves "becoming like him in his death" (Phil. 3.6–10). *That*, he held, is the flaw of Judaism: not that Jews observe the law, but that they do not thereby share Christ's death, which he regarded as essential.[60]

in the immediate context they are not parallel to being "one person in Christ Jesus" and the like. Even in Romans, the passive form of *dikaioun* does not always mean "be transformed": e. g. Rom. 2.13. For the parallels between "to be justified [righteoused]" and "to die with Christ" (and similar phrases), see the next note.

[59] On "be righteoused" as sometimes indicating change of status, see further *Paul and Palestinian Judaism*, pp. 470–72, 493, 502–08, 544–46; *PLJP*, pp. 6–10 (with charts showing the parallels between "being righteoused by faith" and other transfer terms, such as participating in Christ's death).

[60] At the conclusion of my discussion of Paul's critique of Judaism, I wrote that "*this is what Paul finds wrong in Judaism: it is not Christianity"* (*Paul and Palestinian Judaism*, p. 552). For reasons I have never comprehended, some people have imagined that this means, "Paul had no relationship with Judaism." In context, the sentence as I wrote it is clear: the absence of Christ is Judaism's fault in Paul's view (not that Jews obeyed the law). Perhaps if I had said "the *only* fault that Paul can find is …," or something of that sort, no one could have misconstrued it.

Paul's statement against being "righteoused by the law" as a means of attaining Christ does not imply that he did not believe in correct behavior after people transferred to the body of Christ. On the contrary, he was a perfectionist. Nevertheless, only occasionally did he use the righteousness terminology for Christian behavior.[61] He frequently employed other sets of terms, including especially the vocabulary of purity. To take just one example of Paul's admonitions to correct behavior: "Just as you once presented your members as slaves to impurity [*akatharsia*] …, so now present your members as slaves to righteousness [*dikaiosynē*] for sanctification [*hagiosmos*]" (Rom. 6.19). "Impurity" and "sanctification" (or "holiness") are important terms in the sacrificial cult, and here Paul applies them to ethical behavior. He clearly believed that the behavior of one's body ("your members") was important. In Rom. 6.19 he combined the "righteousness" terminology with purity terminology. The combination was common in Judaism, but on the whole purity terminology is more prominent than righteousness terminology when Paul discusses correct behavior, which is unusual.[62]

Thus: Jewish literature speaks about people who are righteous by the law. Paul encouraged upright behavior in various ways. One of them was by urging Christians to avoid *impurity* (Romans 6.19), to live *pure* and *blameless* lives (cf. Philippians 1.10), and to be "without *blemish*" (Philippians 2.15, like a priest in Leviticus 21.17 or a sacrificial animal in Leviticus 22.19).

The issue between "Paul" and "Judaism" was not whether or not people should behave correctly, fulfill "the law," and do good deeds. Everyone agreed they should. The issue was whether or not people should be members of the body of Christ. Here they parted company. Paul and Judaism agreed that there was an "in group," but they disagreed entirely on the basic membership requirement. They all believed that those "in" should behave correctly (though they did not agree about some of the details of behavior.) Somewhat confusingly for later readers, Paul sometimes used the verb "to righteous" or "to be righteoused" for

[61] I am not presenting a full study of the *dik-* (right-) vocabulary in the Pauline letters. There are many instances in which Paul uses terms in a standard Jewish way, as will be seen by studying *adikia*, *adikos*, and *dikaios*, for example. What is peculiar to Paul is the way he uses the cognate verb. His relative disuse of *dikaios* to describe correct behavior is unusual in comparison with other Jewish authors.

[62] See *Paul and Palestinian Judaism*, pp. 450–52; *Paul, the Law, and the Jewish People*, pp. 6 and n. 20 (p. 14), 45 and n. 138 (p. 63); most thoroughly, Michael Newton, *The Concept of Purity at Qumran and in the Letters of Paul*, Society for New Testament Studies Monograph Series 53 (Cambridge: Cambridge University Press, 1985).

the transformation of the person who dies with Christ, and he pointed out that this does not come by obeying the law.

(2) One final word on legalism: there has never been a historical *community* of people who believed that they could save themselves entirely by their own efforts. That requires a conception of isolated individuals: not a national group, but individuals with no collective benefits, no solidarity with any form of saving history, standing entirely on their own face-to-face with a judgmental and unforgiving God. Such communities are a fiction created by polemic. If there ever were such a community, it would not have included first-century Jews. One of the main things that we know about them is that they were steadfastly loyal to their God and to their people. They identified themselves with one another and with the God who gave them distinctive laws and customs. They all knew that the people to whom they were loyal were members of a group chosen by God. They did not see themselves as isolated individuals.

My fondest hope is that judgmental Christians would look at Jewish literature the same way they look at their own, since it, too, is based on the idea of God's gracious choice.