Rabbi Hayyim Angel's book review of Prof. Joshua Berman's Ani Ma'amin

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Professor Joshua Berman (Bar-Ilan University) recently published a very important book on the interface between critical biblical scholarship and traditional Jewish faith. I reviewed his book in Tradition (Spring 2020), the journal of the Rabbinical Council of America. Enjoy the review, and I recommend the book!

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Book Review[1]

Joshua Berman, *Ani Maamin: Biblical Criticism, Historical Truth, and the Thirteen Principles of Faith* (Maggid, 2020), 321 pages

Joshua Berman has written a much-needed book for those in the Orthodox community who have read popular works on Bible criticism but who lack the tools to evaluate the merits of various theories or the religious implications of these theories. Informed by decades of research into both traditional and academic methods, Berman is uniquely qualified to address the religious and academic issues in the first book-length study of its kind.[2]

Berman's primary argument in the first half of his book is that most purported faith-science conflicts arise from misunderstandings of the nature of academic truth. There are several influential academic Bible theories, such as the documentary hypothesis that posits multiple human authors of the Torah to account for the contradictions and redundancies in the Torah, or arguments that many narratives lack archaeological corroboration and therefore are fictional and irrelevant. Berman posits that these are based on anachronistic assumptions about literature, history, and law, rather than on the world of ideas in ancient

Near Eastern texts and contexts. It is therefore critical from a scholarly perspective to shed these assumptions, and to attempt to understand the Torah as a literary creation of the ancient world. By doing so, we also may better appreciate the revolutionary religious and moral developments that the Hebrew Bible contributed to ancient Near Eastern culture and literature. These values transformed many areas of world culture.

Many of Berman's arguments in the first half of his book are summaries of his two earlier academic books published by Oxford University Press: *Inconsistency in the Torah: Ancient Literary Convention and the Limits of Source Criticism* (2017), and *Created Equal: How the Bible Broke from Ancient Political Thought* (2008). Because *Ani Maamin* is primarily addressed to the Orthodox community, Berman is careful to demonstrate the continuity of his ideas and methodology with classical rabbinic sources. For example, he cites Maimonides and Gersonides when discussing the literary and historical context of the Torah, and he explores the thought of Netziv and Rabbi Zadok HaKohen of Lublin on the relationship between the Written and Oral Law.

Berman does an admirable job in challenging the central assumptions of the documentary hypothesis. For example, proponents of that foundational theory of Biblical criticism maintain that Deuteronomy was written as a new version of history and law intended to replace the earlier books of the Torah. Berman notes many examples, however, where Deuteronomy clearly relies on the earlier Torah narratives and laws, and cannot be read as a stand-alone work. Berman asks why the Torah would retain conflicting narratives and laws. The source critics who proposed the documentary hypothesis respond that the Torah is an anthology of competing traditions that were brought together by later redactors. Berman argues, however, that the Torah's laws are not a compromise between different communities that had different laws, as the source critics argue. Rather, the collections of laws in the Torah are replete with conflicts without having their differences synthesized. "The sine qua non of a compromise document…is that it will iron out conflict and contradiction so that the community can proceed following one authoritative voice" (134). There are also no known ancient Near Eastern narrative anthologies of combined sources, nor compromise legal documents, to serve as precedents to this hypothesis. Finally, "why would the later author of Deuteronomy compose laws designed to replace laws spoken by God in Exodus, and replace them with laws whose authority is only that of Moses?" (135).

Regarding the documentary hypothesis theory of two spliced documents to create the Noah narrative, Berman identifies the many textual and methodological holes in that theory. Once again, there are no known examples of interwoven texts in the ancient Near East. Most strikingly, the complete flood narrative in the Torah features seventeen elements that are parallel with the Babylonian flood narrative, the Epic of Gilgamesh. Each purported document in the Noah narrative contains only some of these elements, whereas only the combined accounts (i.e., Genesis 6–9) contain all seventeen elements, in the same order as Gilgamesh. Based on these and several other arguments, Berman states that "the two-source hypothesis… should be rejected entirely on academic grounds, because it collapses under the weight of its own deficiencies" (126).

The architects of the documentary hypothesis mistakenly read the narratives of the Torah as they would evaluate modern histories, and therefore concluded that the Torah's contradictions must have arisen from the hands of different authors. However, Tanakh has no concept of history in the way that we think of that discipline today. The authors of ancient literature, including Tanakh, harnessed accepted historical details for the purpose of exhortation. Pre-modern writers did not sift sources to paint as accurate a picture of the past as possible, but rather used what was known about the past to inspire and instruct. The listener would engage with these texts to learn the lessons those texts come to teach:

The Tanakh is a valuable account of the past, not because all it records is fact. It is a valuable account of the past because of the divine authority behind it; it is valuable because it casts the events of the past in a way that ensures that we come away with the most important messages those events have to teach. Our modern environment tells us we should read the news or learn about past events and then process the facts for ourselves, determine their meaning on our own. Our sacred sources insist that we come to the sacred

texts in submission with the belief and commitment that this alone is the best way to understand the meaning and lessons of the events that are portrayed. This is how God has authorized that we relate to these events (25).

Berman warns that we should not fall into today's historical bias, that "facts" which are considered "historical" are more valuable than other forms of teaching.

In this vein, Berman devotes a chapter to the historicity of the exodus from Egypt. Although we cannot hope to corroborate every point of the Torah's narrative from extant Egyptian records, the Torah's account contains several significant parallels to contemporaneous Egyptian artifacts and literary records that demonstrate the Torah's deep cultural familiarity with Egypt at the time of the exodus.[3] The Torah built a series of religious and moral lessons upon a historical core.

Tanakh did break rank with other ancient foundational narratives of surrounding ancient Near Eastern cultures. Tanakh presents a historical continuum, and depicts real people and events that occurred in known geographical settings. Ancient Near Eastern myth is generally set in places not easily identified by their readers, addresses realities of human existence, focuses on a small number of figures, and typically employs supernatural events and figures. In stark contrast, God's interaction with people in Tanakh is dynamic, and relates to many people over a long period of time. Berman observes that these fundamental differences reflect the different genre established by Tanakh:

The Tanakh is… a record of how God responds to Israel's actions across the history of their relationship in covenant… The surrounding cultures of the ancient Near East believed that there was no force that unilaterally controlled world events; the gods were in tension with one another, and this tension played out in the chaotic turns of world events. By contrast, the Tanakh posits that the world is controlled by a God who purposefully directs human—that is to say historical—affairs according to His will… Writing in this new convention makes sense only if the Tanakh assumes that it is telling us about individuals that really lived and events that really happened (37–38).

Hazal and classical commentaries generally assume that biblical stories are historical, but there is meaningful debate on that subject as well. The primary endeavor of traditional commentary is to uncover the religious meaning of our sacred texts, and that is precisely what the original prophetic authors intended for their audiences.[4]

In addition to bringing their anachronistic sense of history into their analyses, the source critics who created the documentary hypothesis, influenced by Aristotle, also imposed an expectation of consistency. Since there are contradictions in the Torah, these critics argued, the Torah must be a literary product of different hands, as a single author would not contradict himself. Berman, however, challenges this assumption. Can we be certain that the authors of biblical Israel shared Aristotle's notion that wise people do not contradict themselves? Shalom Carmy and David Shatz argue that:

The Bible obviously deviates, in many features, from what philosophers (especially those trained in the analytic tradition) have come to regard as philosophy… Philosophers try to avoid contradicting themselves. When contradictions appear, they are either a source of embarrassment or a spur to developing a higher order dialectic to accommodate the tension between the theses. The Bible, by contrast, often juxtaposes contradictory ideas, without explanation or apology.[5]

To account for the narrative discrepancies between Deuteronomy and the other books of the Torah, Berman appeals to analogies with Hittite vassal treaties. They often made treaties between themselves as suzerain (the more powerful king) and vassal nations (subordinate countries who depended on the suzerain for protection in exchange for loyalty and taxation). Among the numerous similarities between Hittite treaties and the covenant of the Torah, Hittite kings used updated language in their treaties to suggest changes in terms of the relationship between the suzerain and vassal. Hittites did not want the earlier versions of the treaty to be forgotten or supplanted. Rather, they retold stories with differences, and those differences were critical for understanding the change in the standing of the vassal. The vassal would

understand these changes in this manner, specifically by reading the earlier and updated versions together. Imagine a cuneiform version of "show track changes." Berman concludes that:

The Hittite kings "updated" the past to serve the needs of the moment… There was no desire to forget now the story had been told in previous generations. Rather, the retention of the previous telling of the history was crucial, even as that history was rewritten… Only by accessing the previous version of the history between the two kings would the vassal fully grasp the nuance of the new version of those events and properly digest the diplomatic signaling inherent in the telling… Every change in nuance between the accounts was carefully measured (101).

Similarly, Deuteronomy is a renewal treaty between God and Israel, who has been a rebellious vassal. The retold history highlights rebellions, leaving Israel on different terms with God as the people are about to enter the land. Deuteronomy is intended to be read along with the other, earlier Biblical books, not to replace them. Deuteronomy does not present a stand-alone recap of all Israel's history, but rather reviews only several critical points of the covenantal history from Sinai onward, often highlighting Israel's intransigence. Readers are expected to discern the nuanced differences to ascertain the change in Israel's standing before God after a generation of rebellions.

While Berman's critique of the documentary hypothesis is persuasive, and his alternative hypothesis is consistent with a contemporaneous ancient treaty-making technique, one might ask the same question that Berman levels effectively against the source critics: If Deuteronomy is a royal upgrade of a suzerain-vassal treaty where the nuanced differences redefine the relationship, why is the book largely presented in the mouth of Moses? Shouldn't God as sovereign restate the treaty Himself? Berman maintains that Moses acts as God's agent to tell them to recall the covenant, but it is unclear why God Himself should not command Israel to recall that covenant.

The conventional position adopted by classical commentaries appears closer to what is suggested in Deuteronomy: At the end of his life, Moses reviewed certain critical elements of the God-Israel relationship and gave them the tools for success in the Land of Israel in their relationship with God. Moses made rhetorical adjustments for his religious exhortation, and focused on events that strengthened the God-Israel relationship for future generations. This position arrives at the same approach as that proposed by Berman. We should read the narratives in the other books of the Torah alongside the accounts in Deuteronomy, paying close attention to the similarities and differences to ascertain the meaning of each passage. At the same time, this approach avoids making a complete analogy between Hittite treaties and the Torah, given that Moses is the speaker in Deuteronomy.

Regarding the legal verses in the Torah, Berman rejects the source critics' assumption that contradictions suggest different authors, with Deuteronomy intended as a comprehensive legal code to replace earlier codes. The critics' theory is based on another modern assumption that the Torah and other ancient Near Eastern legal texts are comprehensive codes. This assumption is rooted in the usage of statutory law in America, England, and Germany that became prevalent in the 19th century. Statutory law is a comprehensive system that supersedes all earlier laws and is binding on the courts. However, until the early 19th century, a majority of Germans, Englishmen, and Americans used common law. In a common law system, judges arrive at decisions based on the mores and spirit of the community. Written laws serve as resources for making decisions, but are neither comprehensive nor binding on the courts. Law in the Torah is common law, as are the other law collections of the ancient Near East. The Torah never instructs judges to use the written law, nor does it provide a comprehensive code of laws. For example, there are no laws governing how to get married in the Torah, even though Judaism recognizes marriage as an institution governed by Torah law itself. Contradictions reflect different parts of an ongoing legal process and require a complementary Oral Law from the very beginning, since there is no way to use the Written Law exclusively to govern a society. Berman submits that Deuteronomy is Moses' restatement and new application of earlier teachings of the Torah in anticipation of the people's entry to the Land of Israel.

While the critics' theories are again weakened by Berman's analysis, one still may wonder why *Hazal* and classical commentaries, living in ages when common law was widespread, viewed contradictions between legal verses in the Torah as requiring resolution. While they would agree with Berman that we require an Oral Law and that the Written Torah is not a comprehensive legal code, it appears that they did view the Written Law as somewhat more binding on the legal system than what Berman's analysis yields. Additionally, in the real time of Exodus and Leviticus, the people expected to enter the land shortly after Sinai, since the sin of the spies and God's decree of forty years of wandering had not yet occurred. Why would these collections of laws not reflect a similar emphasis as Deuteronomy? Further study is required of the relationship between the laws in Deuteronomy and the other law collections in the Torah.

Having presented the usage of history and law in the Torah as following ancient Near Eastern conventions rather than modern conceptions, Berman identifies the revolutionary ideas of the Torah from within its ancient context. After enumerating several of the central innovations of the Torah, Berman concludes:

Throughout the ancient world, the truth was self-evident: all men were *not* created equal… [The world they created] was ordered around a rigid hierarchy, where everyone knew his station in life, each according to his class. For the first time in history, the Torah presented a vision… with a radically different understanding of God and man. It introduced new understandings of the law, of political office, of military power, of taxation, of social welfare… What we find in the Torah is a platform for social order marked with the imprint of divinity (178).

The Torah's religious and moral sense so vastly eclipses anything produced by its neighbors that one can better appreciate what God wanted Israel and humanity to recognize:

See, I have imparted to you laws and rules, as the Lord my God has commanded me, for you to abide by in the land that you are about to enter and occupy. Observe them faithfully, for that will be proof of your wisdom and discernment to other peoples, who on hearing of all these laws will say, "Surely, that great nation is a wise and discerning people." For what great nation is there that has a god so close at hand as is the Lord our God whenever we call upon Him? Or what great nation has laws and rules as perfect as all this Teaching that I set before you this day? (Deuteronomy 4:5–8)[6]

Berman's book is vital for understanding the relationship between faith and academic Bible study, where we can benefit from those texts as useful tools in learning and appreciate the staggering revolution of the Torah within its ancient context. We should not impose our modern Western notions of history or Aristotelian consistency onto the Torah, nor should we impose our modern sentiments of statutory law onto the Torah. By focusing on the Torah's eternal lessons, by attuning ourselves to differences between narratives to refine our understanding of the message of each passage, by recognizing that the Written Law was never intended as a comprehensive code of law but always required an Oral Law, we can maintain complete faith in revelation without hiding from the beneficial aspects of contemporary scholarship.

In the second half his book, Berman places Maimonides' formulation of the thirteen principles in *Helek* into its historical context, noting that Maimonides was the first Jewish thinker who included God's revelation of the Torah through the uniquely superior prophecy of Moses as essential aspects of Jewish belief. This fact alone explains the rabbinic views that allow for minor narrative additions to the Torah through later prophets. Significantly, Maimonides does not include these elements of belief when ruling on who is a heretic in *Hilkhot Teshuva*. Berman analyzes the sources and concludes that Maimonides would consider one who believes that God revealed parts of the Torah to later prophets to be mistaken, but not a heretic:

The Rambam's view in *Hilkhot Teshuva* is that one must believe that all of the Torah is from Heaven. If one believes that at God's behest another prophet added to the narrative portions of the Torah, then for the Rambam, that person is erroneous in his belief, but not deemed a *kofer baTorah* [a heretic] (240).

Berman further argues that later *posekim* did not use Maimonides's thirteen principles of faith to exclude people from the community when they were otherwise *mitzva*-observant.

I leave it to the experts in *pesak* and Maimonidean studies to evaluate Berman's arguments regarding the fate of the misguided. If Berman is correct, he makes a significant contribution to our understanding of the halakhic status, in Maimonides' view, of much of contemporary Jewry, including many within the Orthodox community. Given Maimonides' prestige and widespread acceptance as the primary source of the principles of Jewish faith, Berman's analysis is exceptionally valuable.

Another productive avenue to arrive at the same communal conclusion is the position of Menachem Kellner, who surveys classical Jewish thinkers and concludes that Maimonides' dogmatic view is a minority position. The majority adopt the view that one is a heretic only when one willfully denies a tenet espoused by Jewish thought, or willfully accepts a tenet denied by Jewish thought. Otherwise, one is mistaken but not a heretic.[7]

Berman's book is an important contribution to scholarship, and to our religious pursuit of truth in the context of Tanakh study. He challenges readers to examine critically the assumptions they bring to the text. Those who ignore ancient Near Eastern laws and narratives lose a vital tool to evaluate the eternal messages of the Torah. At the same time, it is possible to exaggerate the parallels and analogies between the Torah and other ancient Near Eastern texts. Regardless of the proper balance, Berman provides a fresh perspective on Deuteronomy and its relationship with the other books of the Torah, and expands our horizons in learning, methodology, and religious growth.

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[1] This essay appeared originally in *Tradition* 52:2 (Spring 2020), pp. 142-150.

[2] Another important, recent book that addresses related issues is Amnon Bazak, *Ad HaYom HaZeh [Until This Day: Fundamental Questions in Bible Teaching]*, (Yediot Aharonot-Tevunot, 2013); see also my Review Essay, "Faith and Scholarship Can Walk Together: Rabbi Amnon Bazak on the Challenges of Academic Bible Study in Traditional Learning," *Tradition* 47 (2014), 78–88. Bazak surveys various religious and academic challenges that arise throughout Tanakh study and its encounter with academic theories. Berman's book contributes meaningfully to this discussion by focusing primarily on the assumptions of ancient Near Eastern writers, determining where there is overlap with Tanakh, and where Tanakh was revolutionary in its context. In the process, Berman also deflates several pillars of certain academic theories that many perceive as challenges to faith, as will be discussed in this essay.

[3] For further discussion, see, for example, James K. Hoffmeier, *Israel in Egypt: The Evidence for the Authenticity of the Exodus Tradition* (Oxford University Press, 1996); Kenneth A. Kitchen, *On the Reliability of the Old Testament* (Eerdmans, 2003).

[4] See Hayyim Angel, "Controversies Over the Historicity of Biblical Passages in Traditional Commentary," in Angel, *The Keys to the Palace: Essays Exploring the*

Religious Value of Reading the Bible (Kodesh Press, 2017), 115–131.

[5] "The Bible as a Source for Philosophical Reflection," in *History of Jewish Philosophy*, vol. 2, ed. Daniel H. Frank & Oliver Leaman (Routledge, 1997), 13–14. Cf. Joseph B. Soloveitchik, *Days of Deliverance: Essays on Purim and Hanukkah* (Ktav, 2007), 29.

[6] See also Jeremiah Unterman, *Justice for All: How the Jewish Bible Revolutionized Ethics* (Jewish Publication Society, 2017).

[7] Menachem Kellner, *Dogma in Medieval Jewish Thought: From Maimonides to Abravanel* (Littman Library of Jewish Civilization, 1986); Menachem Kellner, *Must a Jew Believe Anything?* (Littman Library of Jewish Civilization, 1999). See also the review essay by David Berger, *Tradition* 33 (1999), 81–89. Kellner's second edition of *Must a Jew Believe Anything?* (2006) contains a response to Berger's review. See also Marc B. Shapiro, *The Limits of Orthodox Theology: Maimonides' Thirteen Principles Reappraised* (Littman Library of Jewish Civilization, 2004), and Hayyim Angel, "Dogma, Heresy, and Classical Debates: Creating Jewish Unity in an Age of Confusion," in *Increasing Peace Through Balanced Torah Study*. *Conversations* 27 (Institute for Jewish Ideas and Ideals, 2017), 22–29.