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Levinson Is to Mr. Justice “Isaiah” as St. Paul Was to the Prophet Isaiah

Richard H. Weisberg*

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I. FORWARD

In his characteristically appealing way, Professor Sanford Levinson takes time to defend compromise. But what he finally shows is that the practice needs no such excellent advocates. We all live in a world of compromise: the Founders, the Court, even Louis Dembitz Brandeis. So what else is new?

II. COMPROMISING WITH PROFESSOR LEVINSON

In the interests of full disclosure, I need to inform my readers here that my entire quarter-century relationship of friendship with Levinson himself is based on compromise. I would cite three negotiations that are directly relevant to his present paper.

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A. Avishai Margalit

To lay down his predicate about different kinds of compromises, Levinson cites the Israeli philosopher Avishai Margalit, who has recently distinguished between “rotten” compromises and others that are more benign.¹ When Levinson and I first met twenty-six years ago (counting from the day I pen these words), it was to forge one of Margalit’s “acceptable compromises,” one relating, as it turned out, to Margalit’s own apartment in Jerusalem. Levinson and I both had teaching appointments at the Hebrew University. Margalit had this beautiful new place to rent. We worked out a deal for the apartment (and car) that accommodated each of us and our families, his for the fall semester, mine for the spring. During the transition, a period of five days or so, I recall needing to lodge my family at a hotel in East Jerusalem, while Levinson’s had to leave Margalit’s place a bit earlier than they would have wanted. It was five days of relative chaos, but for a good cause. It was kind of our own version of the Three-Fifths Clause.

B. Law and Literature

Professor Levinson and I have toiled in the ranks of those helping to establish the still relatively new interdisciplinary field called “Law and Literature.”² Levinson’s work in that area has always been supportive, but skeptical. Levinson does not really wish, despite his attraction to the field,³ to be known as a legal humanist. He willfully hides his humanistic heart behind the stonier traditional legal academic front of political pragmatism as embodied, of course, in his present paper.⁴ My part of the bargain is that I long ago forgave him this self-deception and have always delighted in arguing with him (as I do here) over the specific emanations that emerge from behind his articulate mask of hard-nosed realism.⁵

C. The Deal Behind this Responsive Essay

The words you are now reading resulted from a brief conversation

1. AVISHAI MARGALIT, ON COMPROMISE AND ROTTEN COMPROMISES 1, 128 (2010).

2. “Law and Literature” is an interdisciplinary movement that focuses on topics such as “restrictions on creative expression, hermeneutics (interpretive methodologies), and legal themes in works of literature, and exploring law as literature.” *Law and Literature*, BENJAMIN N. CARDOZO SCH. OF LAW (Nov. 18, 2007), <http://www.cardozo.yu.edu/MemberContentDisplay.aspx?ccmd=ContentDisplay&ucmd=UserDisplay&userid=10440&contentid=982>.

3. See, e.g., SANFORD LEVINSON, *Law as Literature*, in *INTERPRETING LAW AND LITERATURE* 155 (Sanford Levinson & Steven Mailloux eds., 1988).

4. Sanford Levinson, *Compromise and Constitutionalism*, 38 PEPP. L. REV. 821 (2011).

5. For our interchange on torture, see TORTURE: A COLLECTION 23–43 (Sanford. Levinson ed., 2004).

Levinson and I had at Princeton this past summer,⁶ where he gave a version of the Pepperdine "Compromise" essay.⁷ He asked me to write a response to the lecture, and then I asked him to write (separately) about my related work about French lawyers during World War II, which tells a cautionary tale for all those who would compromise basic professional principles in the name of expediency.⁸ It took several months, but we eventually reached an agreement. I did not get exactly what I wanted, but when he reads this essay he may find that neither did he.

D. Doing Justice to Sacred Texts

Reflecting on twenty-six years of friendly disagreements with Sanford Levinson, I have come to see—and will so focus my remarks here—that the principal issue separating us has to do with how we read our central guiding texts. When a stressful new event challenges us to preserve or discard our long-held and generally positive sense of a text's meaning, do we compromise or instead make every attempt to preserve its better values against the attack of easy expediency? These moments test our mettle, and the easier path is to discard the idea of doing justice to the text. Even where the text is generally valued positively over long periods of time by many otherwise opposing interpretive communities, those like Levinson who are "justice-skeptical" (and, in the Holmesian tradition, this includes most law professors) gradually—if not quickly⁹—permit a falling off of traditional understanding where expediency (its own "norm") demands compromise.

III. TOWARDS A LESS "FLEXIBLE" HERMENEUTIC

A. The Pragmatic Degradation of Biblical Norms

Levinson places his essay appropriately under the sign of Pepperdine's

6. The conference on "the Limits of Flexibility" was organized by Professors Peter Brooks and Richard Weisberg, and was held at Princeton University on August 10–11, 2010. Karen Donovan, *Princeton Conference Asks: Do We Need a 'Slow Law' Movement?*, CARDOZO LAW (Aug. 31, 2010), <http://www.cardozo.yu.edu/MemberContentDisplay.aspx?ccmd=ContentEdit&ucmd=UserDisplay&userid=10572&contentid=17176&folderid=540> (discussing the conference).

7. See Levinson, *supra* note 4.

8. See RICHARD H. WEISBERG, *VICHY LAW AND THE HOLOCAUST IN FRANCE* (1996). The relevance of my study to Levinson's thinking will become abundantly clear in these pages.

9. Professor Levinson's original response to *Bush v. Gore*, 531 U.S. 98 (2000), made in early 2001, was that it should push people "to the barricades." Levinson, however, writes more benignly about the decision in his current paper.

fine ethical mission statement.¹⁰ He is setting us up for the kind of reversal he is famous for. Of course he acknowledges that such ethical norms of behavior seem all well and good until we test them against the (supposed) realpolitik of men exercising power. (Perhaps coincidentally, there are no women in his essay.) The Bible and other sacred texts have their place, he seems to be saying, but not when the exigencies of power downgrade commandments to “suggestions” or transmogrify the Equal Protection Clause into a way to get the Republican candidate elected.

Of course, the tiresome process of making textual compromise our guiding norm was begun by men in different places and eras. Levinson is heir to the very religious tradition he invokes at the beginning of his essay: the sacrifice of ensconced positive textual meanings began big time around 2000 years ago when the Jewish Bible itself was artfully reconstructed to provide (against all the textual odds) for a prediction of Jesus-as-Messiah.¹¹ To make the unbelievable fully acceptable, these men then ensconced as a principle the very textual sloppiness they employed in the first place. So the “Bible” was split into two parts: the “Old” was thought to embody precisely the textual strictness that the “New” thinkers, like Levinson today, wished to jettison. They preferred a less harsh world that would be followed by a lovely afterlife, vouchsafed to those who performed one act of faith instead of having to follow the 613 daily strictures imposed under the “Old” regime. Levinson’s essay carefully notes this difference (perhaps I have influenced him here in ways I will reiterate shortly) when he observes early that Justice Brandeis was a Jew who was thought by many to embody the ethical toughness of the “Old” tradition even as he acted successfully in the “New” world. But even Isaiah,¹² the nickname for Justice Brandeis that evoked the man’s prophetic demand for justice, was, in Levinson’s view (over-stated, I

10. Sanford Levinson, *Compromise and Constitutionalism*, 38 PEPP. L. REV. 821, 824 (2011).

11. As Nietzsche tells the story:

However strongly Jewish savants protested, it was everywhere sedulously asserted that the Old Testament alluded everywhere to Christ and nothing but Christ, more especially His cross, and thus, wherever reference was made to wood, a rod, a ladder, a twig, a tree, a willow, or a staff, such a reference could not be but a prophecy relating to the wood of the cross: even the setting up of the Unicorn and the Brazen Serpent, even Moses stretching for this hands in prayer—yea, the very spits on which the Easter lambs were roasted: all these were allusions to the Cross, and, as it were, preludes to it! Did anyone who kept asserting these things ever *believe* in them? . . . They were engaged in a struggle, and thought more of their foes rather than of honesty.

FRIEDRICH WILHELM NIETZSCHE, *THE DAWN OF DAY* 84 (Oscar Levy, ed., J.M. Kennedy trans., 1924); accord RICHARD WEISBERG, *Nietzsche’s Hermeneutics: Good and Bad Interpreters of Texts*, in *NIETZSCHE AND LEGAL THEORY: HALF-WRITTEN LAWS* 149, 153 (Peter Goodrich & Mariana Valverde eds., 2005) (explaining my reading of this aphorism).

12. I have written about the degradation of understanding by the New Testament exegetes of the actual book of Isaiah in an essay relevant to these remarks. See WEISBERG, *supra* note 11, at 158. I am most of the way through a book that sources textual compromise to St John’s misreadings of the Jewish Bible, especially the book after which Justice Brandeis got his nickname.

believe),¹³ one of the Court's typical compromisers.

Of course, the Levinsonian syllogism easily adduced from Isaiah's long judicial career, is supposed to go like this: (1) find the most righteous among us; (2) identify a few of their compromises; and (3) conclude that compromise is the universal, indeed the only, "norm." I would remind Levinson that a good deal of work, including my own, tends to show that that easy logic itself flows from *the* major compromise in western thought: the compromising of "Old Testament" meanings by the original Christian exegetes.¹⁴

Those favoring compromise even of our most sacred positions—and they are most of us—have won the battle but not the war, which continues to be waged against them by a few people in each generation who, like Nietzsche, demand respect for sound textual readings and equate hermeneutic compromise with moral failure. For a while now, I (joined recently by Peter Brooks and Elaine Scarry, among others)¹⁵ have been thinking about the limits of hermeneutic flexibility. My claim has been relatively simple: there is a way of evaluating a textual reading along a spectrum that includes unacceptability. In other words, we believe, certain compromises with texts are "rotten." For a long time, both the simplicity of the claim and the fact that it is unfashionable had somewhat marginalized it. However, modes change, and today's critical, theoretical, and historical environments have opened considerably to positions akin to those reiterated and further developed in this paper.¹⁶

As Professor Levinson well knows, Nietzsche's aphorisms stand second only to the Jewish Bible (and maybe Melville's *Billy Budd, Sailor*)¹⁷ in my personal honor guard, and I have lost many deconstructionist friends by criticizing the grotesque misreadings of Nietzsche by Jacques Derrida, their hero.¹⁸ For it was Nietzsche who attacked consistently the deconstructive

13. When Levinson brings Brandeis down to earth, he is merely recreating the interpretive wheel the Gospel writers used to bring the old prophet Isaiah along to their improbable position. Levinson's section Brandeis as compromiser proves only that, as a novice Justice (in the "Starbird" case) and then as a more veteran member of a collegial institution, Brandeis would occasionally suppress dissents in cases "considered to be of no great consequence." Levinson, *supra* note 4, at 839–40.

14. See, e.g., HAROLD BLOOM, *JESUS AND YAHWEH* (2005).

15. See Donovan, *supra* note 6.

16. For a key moment in this turn, see Lawrence Buell, *Introduction: In Pursuit of Ethics*, 114 *PMLA* 7 (1999). Lawrence Buell was the chair of the English department at Harvard University at the time he published this article. *Id.*

17. HERMAN MELVILLE, *BILLY BUDD, SAILOR* (Harrison Hayford & Merton M. Sealts, Jr. eds., 1962).

18. Oddly, perhaps, my critique of early Christian exegesis has never lost me a single friend among Catholics or Protestants. See Richard H. Weisberg, *20 Years (or 2000?) of Story-Telling on*

readings of the Jewish Bible by the Gospel writers, and who in every other way, too, indicated his belief in a hermeneutic project that—contrary to those Christian interpretive strategies—could indeed postulate the true sense of a text.¹⁹

The debate about textual compromise will not be resolved soon, even in the pages of this fine law review. To his credit, and thankfully perhaps, Levinson largely deals here with the more mundane texts and traditions of the United States Supreme Court. How much distortion, Levinson asks in this variation on his theme, is permissible when the Court deals with such issues as standing (*Newdow*),²⁰ or equal protection (*Bush v. Gore*),²¹ or liberty and the pursuit of happiness (except for slaves, as seen in *Dred Scott*).²² Levinson doesn't have to dig down too much to find folks like Alexander Bickel or Chief Justice Rehnquist²³ and most other voices from Burke to today support his conclusion: "I hope that I have adequately demonstrated that 'compromise' is ubiquitous to constitutionalism."²⁴

I have already noted my agreement with my friend that destabilizing great texts, particularly great codes, has been fashionable for a long time. I concede the point and in deference to Professor Levinson's magisterial grasp of constitutional history and law, I would frankly never dare to challenge such a conclusion on the turf of the cases he discusses so well. But the pervasiveness of compromise cannot in and of itself demonstrate compromise's soundness. To be "ubiquitous" is not to be right. The nearly universal nature of compromise, thankfully, provides many historical examples of its deleteriousness, particularly when it is raised—as Levinson does here—to a norm. The antinomianism of the early Christians made life easier for their eventually huge flock but not necessarily better. Over two millennia, the great risks of overly flexible textual methods have emerged.²⁵

the Law: Is Justice Detectable?, 26 CARDOZO L. REV. 2223, 2230–36 (2005) (providing my detailed analysis of Derrida's *Force of Law and Spurs*); RICHARD WEISBERG, *On the Use and Abuse of Nietzsche for Modern Constitutional Theory*, in INTERPRETING LAW AND LITERATURE, *supra* note 3, at 181.

19. My colleague Stanley Fish and I have also "had it out" on similar issues. See Richard H. Weisberg, *Fish Takes the Bait: Holocaust Denial and Postmodernist Theory*, 43 CRITICAL Q. 19 (2001) (elaborating on an exchange between Fish and myself at Emory University).

20. *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1 (2004).

21. *Bush v. Gore*, 531 U.S. 98 (2000).

22. *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857).

23. For my own recent take on Chief Justice Rehnquist's particularly insidious form of textual distortion, see Richard H. Weisberg, *The First Amendment Degraded: Milkovich v. Lorain and a Continuing Sense of Loss on Its 20th Birthday*, 62 S.C. L. REV. 157 (2010), which is a kind of sequel to Richard Weisberg, *How Judges Speak: Some Lessons on Adjudication in Billy Budd, Sailor with an Application to Justice Rehnquist*, 57 N.Y.U. L. REV. 1, 42–58 (1982).

24. See Levinson, *supra* note 4, at 842.

25. See WEISBERG, *supra* note 8 and the many responses to it that are summarized and further answered in RICHARD H. WEISBERG, *Differing Ways of Reading, Differing Views of the Law: The Catholic Church and Its Treatment of the Jewish Question During Vichy*, in 2 REMEMBERING FOR THE FUTURE: THE HOLOCAUST IN AN AGE OF GENOCIDE 509–30 (John K. Roth et al. eds., 2001).

My task today is to deconstruct the word "compromise" in order to show the risks involved in furthering what I have called an "overly flexible hermeneutic." The essential claim of my paper today is that there are limits on interpretive creativity, limits demarcated by violations of understanding brought to certain texts by long-standing hermeneutic traditions.

B. *The Example of Vichy Law*

In *Vichy Law and the Holocaust in France*,²⁶ I argued that a form of flexible deformation of ensconced textual understandings gradually permitted French lawyers, influenced by their religious leaders in many cases (the most infamous of which I shall shortly recount), to overcome their native aversion to indigenous anti-egalitarian laws against the Jews. To reach an infamous eventual product of nearly 200 laws against Jews promulgated for the most part without significant German pressure and often surpassing through French "logic" even the Nazi racial precedents, French lawyers during World War II first needed to leap a hurdle not present in most other countries victimized by Hitler—they had to reckon with their ingrained belief in *egalitarianism*, a staple of the French legal system since 1789 and one that endured throughout the first decades of the 20th century. These were turbulent years that included the Dreyfus trial (which did not, of course, involve any statist racial legislation). The compromise with received codified meaning occurred over a four-year period, during which—with the help of Catholic hermeneutic flexibility strikingly evocative of Levinson's mainstream approach to compromise—the French little by little degraded their traditional understandings of the word "equality." Under color of Vichy law, some 75,000 Jews were sent "to the East" and 3000 more perished in French-run camps.²⁷

As in the earliest period of textual deformation from whose lessons (as I shall show) secular people gained sustenance in their remarkable overturning of the excellent older (Biblical) code, ordinary French lawyers forced to deal with their training as egalitarians were partly motivated by a feeling of "emergency" or "necessity."²⁸ For Vichy lawyers, judges, and

26. WEISBERG, *supra* note 8.

27. See generally WEISBERG, *supra* note 8 (discussing the killing of Jews in French death camps "in the East").

28. This tendency to "compromise" during emergencies began with St. Paul. The belief was that the world was ending and something radically "new" was required. This helps to explain his need to deform the Jewish Bible to address the "crisis." See, e.g., BLOOM, *supra* note 14; DAVID KLINGHOFFER, *WHY THE JEWS REJECTED JESUS: THE TURNING POINT IN WESTERN HISTORY* (2005); FRANKLIN H. LITTELL, *THE CRUCIFIXION OF THE JEWS* (1975); TRUDE WEISS-ROSMARIN, *JUDAISM AND CHRISTIANITY: THE DIFFERENCES* (1943); A.N. WILSON, *PAUL: THE MIND OF THE*

academicians, the crisis after the French defeat by Hitler also seemed crushing and almost eschatological in its dimensions. All periods of interpretive departure are marked by some semblance of “emergency” conditions—real or imagined. Thus Vichy stands as a cautionary example for post-9/11 Americans dealing with a range of “new” issues like how far to go with interrogation techniques, wiretapping, executive power, etcetera. More to the basic argument of this paper, overhasty departures from established norms previously received as “good” have occurred with usually baleful results since Paul, John, and other writers in the first century moved to abolish constraints on textual understanding. Their move has affected people’s actual behavior, as in Vichy.

Archival documents and interviews revealed that French lawyers (even some who were in the government) were averse to indigenous laws that so compromised their own traditional understandings of the law, not to mention the encoded constitutional-level texts they had been trained to revere. No crisis (again, the word was used loosely even as post-War France revealed the normalcy of life in Vichy and even in the Occupied Zone) could easily jar them from their trained professional instincts; the laws their own autonomous government had passed were bizarre. The point was made early by a young law professor, who wrote in a prominent law journal, and although he knew his audience would include Nazis and Vichy officials, thought all his colleagues would accept his argument. His name was Jacques Maury, a professor at the Toulouse Law School. Virtually immediately after Vichy promulgated its first anti-Semitic laws (October 3–4, 1940), Professor Maury published his uncompromising sense of the existing interpretive traditions and how Vichy’s new, anti-Semitic laws violated it. Maury noted that the 1940 legislation went much further than any restrictive legislation passed before and that “[t]he French people find themselves placed in three categories of non-identical status. There is an increasing abandonment of our long-held rule guaranteeing equality in their rights as well as in their responsibilities to all French people.”²⁹

Professor Maury was neither punished nor (sadly) endorsed by any government or collegial group. His insistence on the preservation of the Old “code” was not heeded by the legal community. His peers enjoyed, even amidst the worst tyrants of the century, the same chance he had to protest directly against the bizarre, offensive new laws. They chose instead to adapt to it, rejecting their training and traditions. Compromise of this sort, encouraged by specters of “emergency,” often prevails. So it did in Vichy France.

APOSTLE (1998).

29. Richard H. Weisberg, *Three Lessons from Law and Literature*, 27 LOY. L.A. L. REV. 285, 293–94 (1993) (quoting Jacques Maury, J. OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE, doc. 169 (Oct. 18, 1940)).

C. The Levinsonian Norm, Exemplified at the Vatican in 1941

To produce within an entire community of lawyers a willingness to deform tradition and to compromise with such a key, ingrained feature of foundational French law, there had to be in place a *hermeneutic principle* of flexibility. (Levinson wishes to re-instantiate exactly this principle in his remarks today.) All historians now agree that the fear of the Germans in France was not a factor in the gradual ripening of home-grown laws that violated egalitarian norms still dear to the legal community in France throughout World War II. What occurred was a classic but fascinating variation on "compromise," one that puts the Levinsonian approach to the subject under the microscope. The French found a source for the eventual surrender of the egalitarian norms that explains better even than traditional anti-Semitism the tragic promulgation of the 200 Vichy laws and regulations against the Jews. The "Talmudic" Jew, the very model of righteous adherence to "the Book," was to be expunged from the French community, stripped of wealth, placed in hideous French-run camps where 3,000 died, and eventually—under color of Vichy law—sent "to the East." The "compromise" principle, which had its hermeneutic origins in the early Christian interpretations of the Jewish Bible, was always there in French-Catholic thinking, and it presented explicitly on a singular occasion during Vichy itself.

Marshal Philippe Petain, Vichy's octogenarian leader, had jumped the gun on any Nazi pressure whatsoever by promulgating anti-Semitic laws as one of his government's first orders of business. As the first law snowballed into what would become a flood of statutory and judicial activity relating to the Jews, Petain may have had misgivings. Perhaps his aging body called attention to the eventual fate of his immortal soul, but whatever the reason, this not particularly religious French Catholic commissioned an inquiry by his emissary to the Vatican to find out if the Church had any objections to Vichy's racist policies.³⁰ A lawyer, Leon Berard, took most of the summer of 1941 to answer his leader's question. As war raged and Jews were being killed in the East and targeted for round-ups in his own home country, lawyer Berard interviewed dozens of Vatican officials at the highest levels. He finally provided a description of the Church's answers to Petain's basic question: "Does the Catholic hierarchy object to my regime's laws defining and excluding people just because they are Jews?" Berard begins by explaining that—yes!—the Church is firmly opposed to racism of all kinds, that Vichy's focus on grand-parental heritage managed to define as Jews

30. See WEISBERG, *supra* note 8, at 421.

many baptized Roman Catholics, that morally the Church firmly opposed these kinds of laws, etcetera.³¹

But then the long letter came to what I call its “compromising kicker.” Harking to its 1500 year old tradition of textual distortion, the Church during World War II managed to espouse a strict moral edict while also compromising utterly. As Berard describes the Church’s “bottom line” to his leader:

[A]n essential distinction that the Church has never ceased to admit and to practice, for it is full of wisdom and reason: the distinction between *thesis* and *hypothesis*, the thesis in which the principle is invariably affirmed and maintained, and the hypothesis, where practical considerations are organized . . . Conclusion[:] the law of 2 June 1941³² contradicts a principle held by the Roman Church. But it does not at all follow from this doctrinal divergence that the French State is threatened with . . . even a censure or disapproval that the Holy See might express in one form or another regarding the Jewish laws As an authorized person at the Vatican told me, they mean no quarrel with the Jewish laws.³³

The limits of compromise—not only practiced but actually *theorized*—have been reached. A great moral authority files for moral bankruptcy and finds a norm—a “hypothesis”—to justify its misreading. Roman Catholicism, like the Gospels that set infinite flexibility of understandings into high gear, is *intransigent* about its own flexibility. The moral opportunity, the chance to be hard-nosed and stubborn and to insist on righteousness, was lost forever.³⁴

D. *Is the Battle for Textual Integrity Over?*

Harold Bloom prefaces a powerful chapter of his recent *Jesus and Yahweh*—a chapter whose consistent theme of the unacceptability of many Pauline Biblical readings duplicates the argument I make here—with this provocative sentence: “It is now altogether too late in Western history for pious or humane self-deceptions on the matter of the Christian appropriation of the Hebrew Bible.”³⁵

31. See *id.* at 421–24 (quoting Berard’s letter at length).

32. This was Vichy’s most comprehensive racial law, which defined “Jew” as an individual with three or more Jewish grandparents or with only two if married to a Jew or unable to sustain the burden of proving non-Jewishness. See WEISBERG, *supra* note 8, at 58–81 (discussing the law of 2 June 1941).

33. *Id.* at 423–24 (quoting Berard’s letter to Petain).

34. See JOHN CORNWELL, *HITLER’S POPE* (1999); DAVID KERTZER, *THE POPES AGAINST THE JEWS* (2001); MICHAEL PHAYER, *THE CATHOLIC CHURCH AND THE HOLOCAUST* (2000).

35. BLOOM, *supra* note 14, at 72.

I read Bloom to be making his own pragmatic "compromise" with 2000 years of interpretive distortion. Whether "rotten" or benign, this is a compromise that I cannot accept. The battle still rages as to whether, again, there are identifiable limits to interpretive deformation, to the kinds of compromise Levinson is principally discussing.

IV. BACKWARDS

I have an unyielding sense of respect for Sanford Levinson as among our generation's foremost constitutional scholars. Nothing that he says in his present paper mitigates that respect, which cannot, however, extend to acceptance of his claim that the ubiquitousness of compromise entails its normative acceptability.

In every generation, we need to examine the history of textual compromise, and I have tried to do that fairly briefly in this response. Of course, I have not argued that sacred texts should not be permeable. On the contrary, as a Talmudic scholar has put it, there is always a tension between creative change of received textual meaning and unacceptable textual distortion:

A viable system of law must not sacrifice either its spirit or its letter. Hasty compromises, unfounded alterations, and whimsical abandonment of legal traditions lead only to chaos. In order for a legal system to endure and flourish, it is necessary for the law to be flexible, elastic, and fluid, as well as definitive, clear, and steadfast.³⁶

36. SAMUEL N. HOENIG, *THE ESSENCE OF TALMUDIC LAW AND THOUGHT* 13 (1993). The reader inspired to test the limits within traditions that also encourage interpretive creativity might read Hoenig's description of the approaches of Rabbi Akivah and Rabbi Yishmael. *Id.* at 28–31. The former's "fabulous acumen and ingenuity," however, could not have encompassed a reading of, say, Isaiah chapters fifty-two and fifty-three that purported to prophesy any single individual—much less a teacher like Jesus—within such verses as "the suffering servant," "the man of sorrows," etcetera. The Jews (and many Christians) have resisted such a compromised reading for 2000 years—a small miracle, perhaps.
