Abraham: The World’s First (But Certainly Not Last) Jewish Lawyer,
Alan M. Dershowitz, Schocken/Nextbook, 2015 (ISBN 978-0-8052-
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The Jewish Encounters series developed by Schocken and Nextbook is
intended to draw contemporary Jewish intellectuals to write on classical
Jewish topics in an engaging manner, drawing on their special expertise.
Alan Dershowitz, arguably the best known Jewish lawyer and one who
has defended Jewish and other causes with intelligence and conviction,
chose to write about Jews who stood before the law. There are two types
of such Jews: Jews who were accused in court because of their Jewishness
and Jewish lawyers who defended the innocent or who failed to do so.

The second part of this book, thus, contains perceptive sketches of Jews
who were put on trial because they were Jews, beginning with a chapter

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on the blood libel and its roots in the trial of Jesus. There is also a chapter on Alfred Dreyfus, Leo Frank, Anatoly Sharansky, and a section devoted to the attacks on the Jewish state in the United Nations, in liberal and right-wing political venues, in holocaust denial, and in Iranian, Islamic, and Arab politics and education. In many of these issues, Dershowitz himself is well versed, having been involved as a passionate defense attorney.

The second part of the book also includes perceptive sketches of Jews who were lawyers who led the way in arguing for human rights and justice: Louis Brandeis, René Cassin, Judith Bader Ginsburg, Irwin Cotler, and even non-lawyers such as Jan Karski. He also includes sketches of Jewish lawyers who failed to stand up to defend justice, particularly for Jews or for the Jewish collective: Roy Cohn, Felix Frankfurter, and Bruno Kreisky.

Three aspects make this book interesting. First, Dershowitz knew many of these people, was active in many of these causes, and was an attorney in some of these trials. His personal recollections are additions to our knowledge. Second, Dershowitz claims that the loss of Jewry during the shoah and the rise of human and civil rights after the war caused Jews to be more active on behalf of Jews and the Jewish collective than they had been earlier (pp. 108–109). As he notes concerning Frankfurter: who wants his epitaph to read, ‘He could have helped, but he didn’t’ (p. 104)? His analysis is correct though I think Dershowitz underestimates the centrality of Martin Luther King’s leadership in helping Jews to become more publically aggressive for Jewish causes.

Third, and most interesting, Dershowitz sets his understanding of Jews and the law into an exegesis of the life of Abraham. He makes the first part of the book an exercise in exegesis, dividing Abraham’s career as a ‘Jewish lawyer’ into four stages: (1) Abraham, the idol-smasher of Ur of Chaldees who is put on trial for heresy (this is in the midrash, but since it is a legend well-known in Jewish culture, Dershowitz is within his exegetical rights); (2) Abraham, the one who argues with God for justice in Sodom, establishing the principle that justice should prevail and negotiating a criterion for the exercise thereof (Genesis 18); (3) Abraham, the failed lawyer who does not argue for his wife when she is taken by Avimelekh and Pharaoh and, more important, who does not argue for Ishmael when God tells Abraham to send him out into the desert where he is likely to die (Genesis 21) and, most important, who does not argue when God gives Abraham the clearly immoral command to sacrifice Isaac (Genesis 22); and (4) Abraham, the shrewd lawyer who buys the grave for his wife Sarah in public so that no claim can ever be laid against him.

Among the Jewish lawyers who are idol-smashers, Dershowitz includes the leftist Jews who fought against social and economic oppression (p. 83). Among the arguers for justice, he counts Brandeis,
Ginsburg, Cotler, and others (pp. 90, 98). And, among the failed lawyers, he counts Frankfurter, Kreisky, and others (pp. 104, 112), a very engaging typology and its application to Jewish figures and the law.

But Dershowitz has made an exegetical-theological error in his reading of the Akeda. I say this, not because Abraham is, or has to be, beyond reproach – surely there is room for that in a Jewish view of our ancestors – but because Jewish history is not about justice; it is about covenant. The action of our heroes and heroines is not about personal feelings or ethical convictions; it is about the continuity of the relationship of the Jewish people and God. Rebecca does not go to the trouble of having Jacob receive the blessing because she loves one child more than another. She acts because the covenant can only be transmitted through the son who already has the spiritual blessing and that fact must be made historically (legally?) clear. The same holds true for Sarah expelling Ishmael: it is not to guarantee the place of her son – that would be true in any case – but to make it historically (legally?) clear that the blessing will pass to Isaac.

Now, God has already told Abraham that he will be blessed (chapter 12), made a formal covenant with him (chapter 15), and reaffirmed His promises to him. So what does Abraham actually gain from going through with the Akeda? What does he receive, in terms of covenant, after the Akeda that he did not have before it? The text tells us plainly: ‘And the angel of the Lord called to him a second time from heaven and he said, “I swear by Myself”, says the Lord...’ (Gen. 22:15–16). Abraham gets God to actually swear – not say, not speak, not promise, not go through a covenaniding ceremony; but swear – and to swear by God’s Self – that, because Abraham has done what he has done, God will never abandon the Jewish people. Dershowitz is right: the Akeda is a ‘game of chicken’, but Abraham does not fail the test; he wins. The Akeda was never about illegal commands and immoral demands; it was about getting God to make a commitment that He can never back out of.

Dershowitz is right that, when the issue is justice, we protest, as Abraham did in Sodom, as the Psalmist does in Psalm 44, and as the tradition of the ‘trial of God’ continued to do in Jewish literature and liturgy (see my Facing the Abusing God: A Theology of Protest). But Dershowitz is wrong about the Akeda because that story is not about justice but about covenant. Would Dershowitz’s Jewish lawyers have passed that test? I think so, but that would be another book.

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