

Can an ancient system of law, promulgated under completely different social and cultural conditions, meet the needs of a modern society? One of Israel's foremost educators grapples with this problem in the following essay, which provides new insights into the contemporary relevance of seemingly obsolete laws. Dr. Joseph Goldschmidt, a noted writer and thinker, heads the Religious Schools Department in the Ministry of Education.

THE ETERNAL VALIDITY OF THE TORAH

All legislation is beset by two basic difficulties with respect to its concrete application years after its original enactment. The first of these difficulties relates to the finite number of rules which can be formulated in any document, no matter how comprehensive. Obviously there cannot be a specific law for every situation, for over a period of time the number of individual situations becomes infinite. Laws cannot be formulated *ad personam* since they would thus be limited to unique occurrences in time and space; rather they are expressed in general terms so as to embrace as large a number of cases as possible. The difficulty arising from this situation is exemplified whenever a law suit is appealed from a lower to a higher court, and learned judges try to clarify what the existing law said or intended to say in regard to such a case.

The second difficulty arises from the fact that legislation reflects generally prevailing notions on such fundamental issues as the rights of the individual or society, the powers of the state, proper forms of mutual agreements, and so on. The *body politic* usually will eventually change its fundamental outlook and these changes, in turn, will lead to attempts to reform the law in such a manner as to make it conform to prevailing attitudes. Thus, legislation is constantly in flux, mirroring the progress of ideas and the pressure for their realization.

The Eternal Validity of the Torah

It is in the light of the foregoing observations that we must examine the status of the legislation on which the life of the Jewish people is to be based. For, while the Torah clearly goes beyond the scope of a book of law, it certainly does deal with many topics that form the subject matter of codes of human law. Since we are committed to the divine origin of the Torah and its eternal validity, we must ask how this divine legislation is guarded against these difficulties which apparently beset any system of law.

THE LIMITATION OF LAWS

Let us first turn our attention to the question posed by the finite number of laws by which an infinite number of situations is to be controlled. The Torah employs two modes of legislation: (1) deducing specific regulations from a general rule and (2) inducing the general rule from specific regulations. An illustration of (1) is the commandment (Deuteronomy 6:18), "And thou shalt do what is straight (fair) and good in the eyes of the Lord Thy God." Ramban (*ad loc.*) observes: "Our masters strikingly interpret this verse by saying that it refers to compromise and equity. What they mean to say is that, after ordering us to observe His laws and ordinances, God now says: '*Even where He has not ordered you expressly*, make it your concern to do what is good and equitable in His eyes, for He loves the good and the equitable. And this is an important matter. For it is impossible to mention in the Torah rules governing all varieties of conduct between man and his fellow-man, *all* forms of economic activity, and *all* aspects of communal life and government. But after having specified many of them (e.g., 'Thou shalt not go about talebearing,' 'Thou shalt not take vengeance nor bear a grudge,' 'Thou shalt not stand by the blood of thy neighbor,' 'Thou shalt stand up before an old man,' and the like), He states in general terms, 'Thou shalt do what is good and fair.'"

Here we have a clear statement from an important authority that (1) the Will of God embraces the whole of the life of the individual, the society, and the state; (2) the Will of God is

not explicitly revealed for all conceivable situations. It is also quite clear from the passage quoted that for Ramban the urgency of the problem is almost exclusively experienced in the area of relations between man and his fellow man. Thus, he explains that the proper direction for action in this sphere is indicated by the laws concerning honoring and protecting your neighbor, refraining from causing him harm, etc. Moreover, the terms “good and fair” are applicable only to the social sphere and not to the ceremonial law, which pertains exclusively to man’s relationship to God.

In order to exemplify the alternate method of development of Torah law (from archetypal *din* to broad social objective), we shall analyze the “law of the railing” in detail.

(1) We are commanded in Deuteronomy (22:8): “When thou buildest a new house, thou shalt make a railing to thy roof, and thou shalt not put the guilt of blood on thy house, when a person should fall from it.”

(2) *Sifrei (ad loc.)* comments: “From the text we can derive only an obligation for the case when one actually built the house. But how do I know that the obligation extends also to the case where he bought the house, inherited it, or received it as a gift? For this reason it says: ‘Thou shalt not put the guilt of blood on *thy* house.’” And the query continues: “From the text we can derive only an obligation to make a railing around the roofs. How do I know that it also extends to cisterns, caves, trenches, and holes? For this reason it says: ‘Thou shalt not place the guilt of blood on *thy house.*’”

(3) *Sefer Ha-Chinnukh* (§538): “With reference to the removal of obstacles and sources of danger from all our dwellings it is said, ‘thou shalt make a railing.’”

(4) Maimonides, (*Mishneh Torah, Hilkhoh Rotzeach u-Shemirath ha-Nefesh* [11:4]) writes: “There is no difference between the roof and any other object that carries a danger and which may bring a person to harm or even death, as when he has in his yard a well or cistern, whether there is water in it or not, he has to make a wall around it ten cubits high or fix a cover to it so that nobody may fall in and die. Similarly with any other obstacle which is a danger to life, there is a definite

The Eternal Validity of the Torah

duty to remove it, to guard it and to use every caution and consideration with it, for it is said, 'Beware and take good care of thyself . . .' And if he has not removed them and left the dangerous objects about — he has neglected this commandment and transgressed (the injunction), 'thou shalt not put the guilt of blood on your house.' ”

(5) Maimonides, *Sefer Hamitzvot*, (Injunctions, §298) summarizes: "We must not leave dangerous traps and stumbling blocks *in our land and in our houses* lest people come to death through them. And this is His commandment 'thou shalt not put the guilt of blood on thy house'; and *Sifrei* says: 'Make a railing' is a positive commandment, and 'thou shalt not put the guilt of blood' is an injunction.' ”

We can thus note how the process of interpretation gradually covers all the possibilities that might be implicit in the original written commandment. A person's responsibility for his property does not at all depend upon the fact that he personally had built the house. By the same token, the danger of falling from the roof represents merely an illustration of potential sources of danger to human life. Finally, following Maimonides, we proceed from the individual to the collective responsibility of the state. In this way, there emerges from sundry isolated details the great rule of overall responsibility for safeguarding human life. In our time, this applies to situations never before existent or conceived. Thus, every traffic sign, every safety rule and appliance in our factories, every state or municipal law actually may share in the dignity of God's eternal commandment: "Thou shalt make a railing to thy roof." This does not minimize the validity, for all time, of the basic commandment. On the contrary, future action in given incidents is properly deduced from the wording of that model-commandment. This authentic interpretation of the original statement, conceived in the spirit of the sources, is the burden of the oral Halakhah.

It becomes clear that Judaism cannot be reduced to a limited number of specific regulations. The 613 commandments contain many archetypes that are designed to be applied in principle to an infinite number of situations. Apart from the well-known fact that sections of the Jewish civil law may be sup-

plemented by properly accredited judicial bodies, we have seen that certain *frame-laws* give rise to innumerable "religious duties." This is of special importance for our time, when, with the emergence of the State of Israel, we are confronted with the need for new legislation geared to the organizational and political realities of our age. Many, especially those who lack a positive incentive for efforts along these lines, doubt the feasibility of building a bridge between Halakhah and modern legislation. This is why the believing Jew, committed as he is to the validity of the Torah, must demonstrate that such a bridge is within the realm of possibility. We have attempted to do this by showing that safety legislation in industry, traffic, construction, etc., may be covered by Torah law, even though no such specific statutes are found in the law.

Similarly, we must show how the social philosophy contained in institutions such as *leket*, *shikchah*, and *peah** can be transposed from an agricultural to an industrial setting. It might well be that certain taxes or insurance paid by employers are, in a sense, the equivalent of leaving the forgotten sheaf to the poor, or that public work projects or government employment bureaus may represent the highest form of charity (cf. Maimonides, *Hilkhot Matnat Aniyim* 10:7)!

This should serve to show that modern legislation, designed to meet the changing needs of our time, may share in the tradition of ancient Torah law.

It is still felt by many that the area of ceremonial law constitutes the field of religion *par excellence*. Institutions such as prayer, study of the Torah, and observance of the Sabbath are meaningful only within the context of the religious experience. Many of these ceremonial commandments are regulated in detail by the law or are limited to specific periods of time. With respect to these laws, the development of technical knowledge may pose some novel problems; but essentially, the scope of the *Mitzvah* is circumscribed.

The applicability of such laws in future times and climes is of a different order from the applicability of the law of the

* See Leviticus 19:9 and Deuteronomy 25:19-21—Ed.

The Eternal Validity of the Torah

railing on a house. Not being in possession of a house with a flat roof does indeed free me of the duty to make a railing. But the Torah commands me to take that case merely as an instance of my responsibility for all my property, for the security and safety of all I have, and even for promoting safe living conditions all over my country. When shall I know that I have done my duty by that law? When may I be at rest to consider my duty discharged? When am I free from the duty to "let my brother live with me"? When can I be content that I have done my share of "deeds of loving-kindness" to my fellow man, remembering that our Sages have already said that while alms can be given in money only and to the poor only, acts of loving-kindness may be performed also by one's own person and both to the rich and to the poor?!

How different this is from the "ceremonial laws," even regarding the holiest moment of the year! When I have fasted on Yom Kippur, when I have prayed on a week-day at the proper hour in the manner prescribed, I may say I have done my duty reasonably well, allowing that my concentration or my attention to detail might have been more perfect. But after making allowance for such human shortcomings, which may affect all we do, I can not say that the duty of that particular Yom Kippur or the duty of that day's morning prayer continues to occupy my mind. These duties do not hold me in a state of continuous religious tension — only insofar as the course of time brings on a repetition.

In contrast to them, laws pertaining to our relationship to our fellow man are never completely fulfilled, for the very reason that they are not fixed in complete detail for all time. Every new unit of time bids man anew to examine his responsibilities under these laws and to dedicate himself to their realization with all the energy, zest, and vision called for by this never-ending task. Far from being religiously irrelevant or even inferior, the social legislation of the Torah represents a dynamic area especially suited to engaging perpetually the mind of the religious individual and to holding him in a con-

stant state of alertness, and self-criticism.* It constitutes a fruitful source of religious effort through which all of human life will be suffused with the desire to fulfill God's will.

II

NEW WAY OF THINKING

We must now consider the difficulty which arises out of the clash between contemporary values and those underlying an ancient system of law. In secular law, the statutes embody the opinions of society at a given time. Gradually, changes in the social, political, or cultural climate lead to revision of the law. But what happens to the law of the Torah when the Jewish people modifies its outlook on many vital issues?

It must, of course, be borne in mind that Israel differs radically from all other nations in one important respect: it alone entered the world with a divinely formulated program for its way in the world — the Torah. Israel was born together with its ideal image of its national destiny. Every deviation from this ideal constitutes a transgression. And time and again, through the messages of the Prophets and the teachings of the Sages, Israel was beckoned to return to its proper course. In order to fulfill its national destiny, Israel had to live up to the demands of the Torah as expressed in the Halakhah.

We cannot rule out the possibility that there may be a conflict between the laws of the Torah and the actual standards of the "collective Jewish mind" at any given epoch. Our people is not immune to the pressure of social and cultural forces, nor is it insulated from the currents of contemporary thought. But it is our contention that corrective measures are always

* Notwithstanding the author's insistence upon a sharp cleavage between social and ceremonial laws, it cannot be denied that the latter, too, frequently possess features which the author ascribes only to the former. We need merely allude to such commandments as loving God, sanctifying the Name, or even studying Torah to call attention to the fact that many laws which do not fall under the category of social legislation can make inexhaustible demands upon the individual.—*Ed.*

The Eternal Validity of the Torah

within reach. New trends of thought which raise questions concerning the justice or propriety of our law can always be examined for their validity in the light of the divinely revealed principles that the Torah wishes us to cherish. We are thus subjected to a continuous educational process. While we are subject to the same forces and pressures as all other human societies, the balancing force of the letter and spirit of the Torah acts on us to keep us on the path of our unique destiny.

The synthesis of this dialectical process accounts for the flexibility that exists in Torah law. A good example is provided by the Jewish attitude towards capital punishment. While the Torah obviously envisages the use of the death penalty, we observe in Rabbinic literature a pronounced tendency to curtail its use to such an extent as virtually to abolish it. Other examples can no doubt be found, where current opinion of what is desirable and feasible in the application of the law has made itself felt within the boundaries of the Halakhah and without overstepping its absolute limitations. But the general picture is nevertheless clear: the Torah demands of us constant efforts to maintain and, when necessary, to renew our full loyalty to the Law. If this view is accepted, we possess the key for understanding the eternal validity of the Torah.

As is well known, the law of the Torah concerns itself with every aspect of our personality and regulates every area of our life. But since the modern mind, with its emphasis upon self-expression, finds this notion of total submission to an all-embracing law exceedingly uncomfortable, we might well ask where there is any room for self-expression within the comprehensive legal system envisaged by the Torah.

The problem is by no means a novel one, though it has confronted us with increasing intensity over the last century. It has been customary to say that Judaism refuses to consider the individual and his needs. No doubt, the Halakhah is marked by a tendency against splitting up a law or a rule into many different individual possibilities because this might introduce an element of uncertainty and arbitrariness into a system which should be stable, clear, and easily intelligible (אם כן נתת דבריך לשיעורין).

Similarly, the Halakhah often leans towards conformity. Thus, with respect to the need for concentration at the time of prayer, we find, for example, a talmudic opinion that a person who finds himself unable to concentrate should preferably not pray at all. Later authorities, however, decided to disregard such individual cases and prescribed the regular recital of prayers, irrespective of the frame of mind of the worshipper (*Tur Shulchan Arukh, Orach Chayyim, 98*). These are only slight indications of a tendency towards conformism, subjugating the individual's emotions and inclinations because he is first and foremost a servant of the Lord. This denigration of self was the ideal of the "faithful servant" (*eved ne'eman*). It seems that as a result of such pressures not only were the masses of our people historically anonymous, but a large measure of anonymity was achieved even among the spiritual leaders of the nation. As has been so frequently pointed out, many famous authorities are commonly known only by the names of their books (*Or Zarua, Tur, Chatam Sofer, etc.*) or by abbreviated names (e.g., Rashi, Rambam, Maharsha). The living personality of the author remains in obscurity; his development, his inward and outward struggles until he reached his productive stage, were either altogether unknown because nobody cared to write it down, or at best known only to a few researchers. The world at large felt itself entitled to enjoy the fruit without giving a thought to the laborer who produced it.

Such an attitude was more easily fostered among Jews at a time when the non-Jewish world had similar tendencies, as was the case in Europe during the Middle Ages. But now amidst a totally different mental climate in the world, and with increased areas of contact between the Jewish people and other cultures, we must ask ourselves whether this particular trend is the only authentically Jewish one in our tradition.

Upon closer examination, we note that there are two ways in which the role of the individual comes to the fore in the realm of religious practice. 1) As we have noted previously, the evolution of social and civil legislation particularly calls for an element of human creativity in the area of divine law. The method described by us makes it possible to reconcile

The Eternal Validity of the Torah

the acceptance of what had been transmitted to us through the ages with the search for new form and content in the light of present conditions. While we thus obtain a measure of freedom for action, there is another vital factor that enlarges the role of the individual. 2) Each historic situation calls for specific priorities on types of action. Although no law may be abrogated, certain laws must be stressed. Thus, according to the *Tanna de-bei Eliyahu Rabba*, the leaders of the Jewish nation were censured for not recognizing the necessity of the moment, and not giving priority to a certain commandment:

“And when Israel had entered their land it was the duty of the Sanhedrin which Moses and Joshua had left behind, and amongst whom was Phinehas, son of Eleazar, to gird themselves with iron girders and lift up their robes and go on circuit through all towns of Israel, one day to Lakhish, one day to Hebron, and one day to Jerusalem, and thus to all the other places in Israel, and *to teach the people of Israel how to live in the Land and how to administer it*, thus for a year, or two or three years, until the Jewish people were well settled in their Land and the name of the Holy One was hallowed. But they did not do so; as soon as they were in the Land, every one went to his vineyard or his olive grove and said to himself, ‘Live in peace, oh, my soul.’”

This incident exemplifies the stressing of a specific religious duty for a specific historical situation. Since the old-established inhabitants had forfeited, through moral corruption, the right to the land (cf., Genesis 15:16), the Israelites could take hold of their possessions permanently only if they maintained their spiritual superiority through a Torah life. This called for a maximum educational effort. The leaders of the people should have understood that educational work was the foremost religious duty of that hour!

We might thus note that at each given moment the hand of history points to a particular obligation which commands our maximum attention and which provides the highest fulfillment of our religious aspirations. While no other duties are abrogated, each historic situation demands its special priority and concentration on a particular area.

This leads to another important consideration. Just as there is place for a “time index” in the religious consciousness of the

nation, so there may be room for a “personal equation” which determines priorities in the religious consciousness and activity of the individual. It follows from this that the eternal validity of the Torah relates not only to the dimensions of time and space, but also to a third dimension: the individual human personality. An analysis of that dimension as a cornerstone of living Judaism is called for; it may be offered at some future time.