

## BOOK REVIEWS

*Erekhei Mishpat Veyahadut*, by ZEV FALK (Jerusalem: Hebrew University Press, 5740).

Reviewed by  
Emanuel Rackman

ערכי משפט ויהדות ע"י פרופ' זאב פלק

ירושלים תשמ"מ-הוצאת ספרים על שם י.ל. מאגנס-  
האוניברסיטה העברית.

Interest in *Mishpat Ivri* (Hebrew Law) is growing. However, not enough is being done to update the legal heritage of Judaism so that it may become an integral part of Israel's legal system. In the Diaspora—where the interest is rarely for practical purposes—most of the literature is designed only to enhance the pride of Jews in their "roots." In Israel the secularists avoid involvement for fear that the renaissance of the ancient law may magnify the role of the religious heritage in the legal order and this they dread. Many religionists also join with the secularists to exclude the traditional materials lest they become secularized as they constitute an important source for judicial decisions in Israel's courts.

Nonetheless there has been some progress in this area in the last few decades. The law schools of Israel's universities are to be credited with this progress and not the yeshivot despite their concentration on the study of Talmud. Yet almost no one has coped with one problem. In the process of updating a legal system one must reckon with the values which the updating is to

fulfill. The traditional rules, without updating, will never obtain the approval of any Israeli legislature. But what shall be the philosophy that governs the updating? Secondly, will that philosophy be consonant with the tradition or antithetical to it? Finally, can the updating be done without destroying the sense of historical continuity so that one can still recognize the root despite the revision or innovation?

Professor Zev Falk of the Hebrew University undertook to cope with these challenges and his volume "Legal Values and Judaism" contains a tremendous amount of source material and many exciting analyses. One may not agree with all of his theses but one would do well to begin with them in any further pursuit of the subject.

His major premise is that to upgrade Hebrew law and make it acceptable to moderns requires preoccupation with the legal values of the modern age and the extent to which the rules of Jewish law do, or can, fulfill them. In almost every case he evaluates both positive and negative replies. Though he is

deeply committed to the tradition, he does not hesitate to be critical. No one interested in advancing the cause of Hebrew law can afford to ignore his many challenges.

Because of the author's mastery of general legal philosophy he was also able to relate virtually all the problems to the rich literature available on that subject. Indeed, one cannot help but be impressed by the fact that though the giants in the development of Jewish law were unfamiliar with that literature, one finds ideas in their writings that approximate the diverse points of view developed by almost all the schools of legal philosophy in the Western world.

Professor Falk does not deal extensively with specific legal concepts such as contract, crime or property, but there is hardly an area commonly associated with general theories of law that he does not fully discuss. The relationship between law and justice, law and logic, and law and society (using Professor Julius Stone's classification) receive excellent treatment. The themes of most of the sections of the book involve the juxtaposition of antithetical values and the "veering between antinomies" that one finds in the Jewish legal tradition. Thus, for example, one finds in his book detailed consideration of fixity and flexibility, interests of the group versus interests of the individual, absolutism versus relativism, even reason versus emotion. Though the volume is a relatively small one, one cannot fault it for failure to relate to any aspect of the subject that is deemed important by the major writers on legal philosophy.

It is the opinion of this reviewer that with regard to the excellence of the volume there will be few dissenters. However, many will wonder whether Professor Falk is not too sanguine with regard to the possibility of coping with the herculean challenges to the cause he so faithfully espouses.

He minimizes, for example, the role of precedent in the judicial process of Judaism. Yet it is precisely in those areas

in which Jewish law requires revision that the binding character of precedent is felt so keenly. In family law, and especially with regard to the illegitimacy of offspring, the precedents are rigid. Even if one could prove beyond the shadow of a doubt that the definition of the word "mamzer" (bastard) in the Bible had been incorrectly understood for millennia, the definition that prevailed during those millennia will remain unaltered. A bastard will be a person who was born of an adulterous or incestuous intercourse and not that person to whom the Bible may have referred according to the newly discovered meaning.

Similarly, though Professor Falk discusses many sources from which it would appear that religious pluralism was a fact in many periods of Jewish history, he ignores the sad reality that in the modern period the polarization has become so bad that it would almost require a messianic revelation to achieve a *modus vivendi* between the warring ideological factions. Professor Falk's treatment of this subject almost gives the impression that Jewish history ended with the Second Commonwealth but, alas, he is very much aware of the acrimony of the controversies in the last two centuries—not to mention those of the middle ages.

Occasionally Professor Falk weakens a good point with a weak argument. For example, he argues for the centrality of ethics in Judaism by contrast with ritual and suggests that this represents a development in Jewish thought from the days of the First Commonwealth to the days of the Second. One proof is that the author of Chronicles lists ritual first while in the Talmud the study of Torah is mentioned first and the performance of good deeds is substituted for the term *mitsvah* (page 22). Where, in Jewish writings, could it be assumed that items are mentioned in the order of their importance! On the contrary, sometimes the most important is mentioned last.

And sometimes he oversimplifies a problem as in the case of religious plu-

ralism for Israel to which reference has already been made. For the goal which Conservative and Reform Jews seek in Israel is not the right to be—the right to organize synagogues and schools of their own with access to government funds comparable to that enjoyed by the Orthodox. They seek in addition the legitimation of their halakhic positions in the legal order. Thus the question is not whether the halakhah can permit religious toleration but whether the halakhah can suffer contradictory rules within the court system committed to it.

Can the rules of Reform Judaism applicable to “who is a Jew” co-exist with the traditional rules? Co-existence in this sense is sought by the non-Orthodox and for this problem Professor Falk’s sources offer no guidance.

Yet, a few negative criticisms do not mitigate from the value of the volume—its theses and its source material.

It certainly is an important first step in the direction of solving even the problems about which Professor Falk is more sanguine than this reviewer.

*Tormented Master: A Life of Rabbi Nahman of Bratslav*, by ARTHUR GREEN (University of Alabama Press, 1979).

*Reviewed by*  
Shalom Carmy

When *A Search For Truth*, Abraham Joshua Heschel’s study of the Kotzker Rebbe and Søren Kierkegaard first appeared, a very close friend wrote in a letter: “The difficulty with a biography of this duo is that the Kotzker tells us nothing about himself, while Kierkegaard has, if you will, told us too much.” If there is any truth in this remark, then the task of the Bratslav biographer is even harder.

On the one hand, R. Nahman is enormously self-preoccupied, fascinated by his own personality and obsessed with his world-historical significance; in the bargain, he is equipped with a Boswell, Nathan of Nemirov, who knew Nahman for only eight years, but spent the rest of his life preserving what he could of his Master’s. On the other hand, Nahman is committed to self-censorship, esotericism and mystification. His is the door-slamming, manuscript-burning way of the Kotzker (though the motivation may be different); he refuses to explain himself and, at crucial points, the “official” literature trails off into *et cetera*. His is also the self-dramatiz-

ing, revealing-concealing way of Kierkegaard: like the great Dane, he disguises himself enticingly behind the veils of fiction.

Compound R. Nahman’s peculiarities with the partisanship so typical of English treatments of hasidut. Men and women like Scholem, Joseph Weiss, Rivka Shatz-Uffenheimer and Ada Rapoport Albert have devoted their work to bibliographic and biographical detail, to Kabbalistic scholarship and the construction of abstract dialectical frameworks. These academic contributions have, only gradually, come to influence the popular works of writers like Buber, Heschel and Wiesel.

In Green’s book on Rabbi Nahman of Bratslav we find the best combination known to me, in the modern literature on hasidut, between the sense of existential involvement and the comfortable employment of objective scholarship. Attracted to R. Nahman, as he obviously is, he does not neglect to draw a clear line between what the documents say and what the biographer thinks they imply. He attempts to explain, without simplistically explaining away, the strange swings of mood which dominate the stories of the journey to Israel, the violent conflicts with other hasidic

rebbe, the reforming zeal and burning ambition which shatter against R. Nahman's social impotence, sharpening the frustrations of self-questioning and guilty asceticism, the confrontation with intellectualism and the prospect of death as he teaches his followers, for the last time, never to despair.

I am not sure how valuable the next of Green's book will prove for those students already steeped in the primary and secondary sources of Bratslav (though even such will benefit from the notes and bibliography). Moreover, some parts of

the book are a bit too long; in particular, the philosophical Excursus and the Excursus on the *Tales* add relatively little. For the interpretation of the *Tales*, we now have Rabbi Adin Steinsaltz, *Beggars* and *Prayers* which appeared too late to be noted by Green. The intelligent reader, however, will find this a responsible and articulate guide (though at the given price a rather expensive one) and will finish the book both well-prepared and eager to continue further the search for Bratslav.

*With God in Hell: Judaism in the Ghettos and Deathcamps*, by ELIEZER BERKOVITS (New York: Sanhedrin Press, 1979).

Reviewed by  
Michael Wyschogrod

"Some time after the publication of my book, *Faith After the Holocaust*," writes Eliezer Berkovits, "and after having delivered numerous lectures on that subject, I came to the realization that while I had attempted to show how it was possible to maintain one's faith in spite of the fact that not all the problems emanating from the Holocaust can be solved, I had overlooked dealing with the key issue, with the question: What is faith?" One of the tasks this book sets itself is to answer that question. But the book also sets itself another task. This task grew out of a conversation with the cultural director of a Jewish secular organization who told Rabbi Berkovits of an American rabbi who told a Holocaust memorial day meeting that in view of what happened in the camps, he could no longer believe in God. The cultural director reported to Rabbi Berkovits that the survivors present were greatly upset by the rabbi's conclusion. Rabbi Berkovits surmised that they must have been upset because the rabbi lost his

faith without having experienced the camps while many Jews who did experience the camps maintained their faith. The other task of the book is therefore to document this fact.

Rabbi Berkovits accomplishes this task very well. Basing himself largely on the work of Mordekhai Eliav in his *Ani Ma'amin* (Jerusalem, 1965, 1969), as well as other sources, we learn of numerous cases of spiritual heroism. We learn of Jews in the Warsaw Ghetto who hid in bunkers and studied Torah all day. We learn of Jews who traded several days' rations of bread for a pair of *tefillin* which were then passed around to hundreds in the same barrack. We are told of groups who woke up an hour before they had to in order to conduct morning services in the barracks of Auschwitz. We learn of Jews who never ate non-kosher food even under unimaginable conditions of starvation. And so on. It is easy to write such a list and it is even easy to take a somewhat detached and clinical view of such commitment. But it is not easy to do such things. And it is of the utmost significance that these stories be recorded with great accuracy and with all the evidence.

In recent years, the expression "myth of the Holocaust" has begun to appear. Some writers—the evil ones—mean by this that the Holocaust never happened, that it is an invention of Jews to justify their conquest of Palestine or some other similar purpose. These people are either insane or evil or both and need not be argued with. But there are those who use the expression "myth of the Holocaust" in a less insane way. By "myth" they mean any story that a group uses to orient it in the cosmos or in history. In this usage, the truth or falsity of the story is not the main issue. The Holocaust, it is argued, has become a myth because, for many Jews, it has become the central orienting event of their lives in the light of which all other experiences are interpreted.

While this second sense of "myth" is somewhat less offensive than the first, it nevertheless remains a thoroughly unacceptable term in relation to the Holocaust. It is essential that the Holocaust not be mythologized in any sense. It must not be mythologized in the first sense because the significance of the Holocaust was that it really happened and that it was not just a possibility. But it must also not be mythologized in the second sense because if it were to become the central interpretive story of Judaism, or even one of the central interpretive stories, Judaism as it has existed since the time of Abraham would be changed beyond recognition. Instead of redemption, Judaism would speak of an evil of such power that all holiness would be banished from creation. In short, any religion that would view the Holocaust as a central interpretive story would be a Satanic religion.

The Holocaust must therefore be de-mythologized. From my point of view, this means that the greatest possible care must be taken that the true facts be recorded, nothing more and nothing less. This cannot be easy. Those who survived the Holocaust underwent experiences of such magnitude that only

apocalyptic categories can begin to express them appropriately. Faced with the need to translate such experiences into languages drawn from normal human experience, the survivor is groping to express the ineffable and it is at this point that language and concepts break down to be replaced by obscure and unfathomable surrealistic images. The domain of myth has been entered.

I have little doubt that most of the stories Rabbi Berkovits tells are true. But I do wish he had documented them better. For example, the prayer of Yossel Rakover: Berkovits says it was dated April 28, 1943 and buried in the ruins of the Warsaw Ghetto. It is a powerful document of Jewish faith, in spite of everything that has happened. While it does not shrink from calling God to task for what he has permitted, it refuses to give up the trust by which Jews have lived over the centuries. The only problem with it is that it seems to be a work of fiction. A beautiful work of fiction, but still a work of fiction. There may be those who would maintain that if the prayer is powerful and theologically interesting, it matters little whether it was written by a real Jew during the last hours of the Warsaw Ghetto or by a talented writer in his spacious New York Westside apartment. But it seems to me that this is a matter of decisive importance and that is why I wish Rabbi Berkovits had checked it out more thoroughly.

With respect to faith, Rabbi Berkovits emphasizes the Buberian distinction between intellectual belief in the truth of propositions and trust, in the sense in which one person trusts another that he will carry out his promises. Only the latter is Jewish faith. Abraham trusts God that he will make his descendants into a great people even though his wife had become old and had not had a child. Still, Abraham trusted that God would fulfill his promise. From its inception, Jewish faith has consisted of trust in spite of evidence to the contrary.

## Book Reviews

Berkovits is not willing to accept the "leap of faith" which he identifies with Tertullian's *credo quia absurdum* (I believe because it is absurd). Judaism did not make the irrational a sign of the holy. Speaking of Jews, Berkovits writes: "They were trusting and they were questioning, but their trust did not weaken their questioning and their ques-

tioning did not undermine their trust." This combination did not leave "moments of faith" or "moments of trust" but continuous, steady and dependable trust and faith. There are no answers as to why the Holocaust happened. But Jewish faith did not die in the Holocaust. That is the message of this important book.

### REVIEWERS IN THIS ISSUE

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