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REFLECTIONS ON THE LAW OF THE RABBIS: Matrices and Dimensions

PART I

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To Judy, for challenge and balance.

Wherever in text or notes the first letter of the word “Rabbis” is capitalized, the reference is to the Sages (“*hazal*”), i.e., the scholars of *Mishna*, *Baraita*, *Tosefta*, *Gemara*, and the Talmudic *Midrashim*; where the term is used without the capitalization, reference is to later rabbinic scholars or inclusively to both.

The disclaimer stated by the writer in the introduction to the notes of a preceding article (David W. Weiss, “Judaism and Evolutionary Hypotheses in Biology: Reflections on Judaism by a Jewish Scientist,” *Tradition*, 19 (1), 3-27, 1981) is appropriate for the present essay as well. The citation of sources has been, perforce, exceedingly limited and selective; only one or a very few references could be given in support of each of the arguments presented. In many instances, the choice reflects largely the writer’s personal preference; the reader must be aware that a vast corroborative literature could, in fact, be quoted in most instances, and that in others, divergent opinions from within the mainstream of Orthodox Jewish thinking could be brought forward. In choosing the citations here given, the writer has sought to have recourse to those most readily available to the general reader, where possible in English translation, and to those that are representative of normative positions.

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HALAKHAH AND ETHICS: A CRISIS OF DISASSOCIATION

Attrition

Misapprehension of the nature, purposes, and process of halakhah, always a signal danger to the perseverance of the Jewish people, has taken on new ominousness today.

Attack on halakhah is declamatory and vociferous from some quarters. Mounted without abashment in rejection of classic, normative Judaic conceptions of the world and of man's function, the incursions often come under the banner of Jewish "pluralism" and as a striving for legitimate, and indeed superior, alternatives. Halakhic matrices of Jewish being are dismissed, often out of hand, not merely as dispensable but as standing in essential confrontation with Judaic morality.

The inroads from other directions are perhaps no less serious for being implicit, in attitudes and action, rather than exhortative. The salient characteristic common to the undermining of halakhah from widely diverse sources is a startling disjunction of halakhah from ethics.

Exit from the Jewish community has been from the beginning a consequence, whether ostensibly unintended or frankly pursued, of denying halakhah's validity and of gross departures from its norms and means. In the past, however, the perennial challenge from the margins of Jewish thinking was usually transparent, demarcated by the latitudes of the extremisms from which it was engendered. Not so today. The hazard is far more insidious. Erosion of understanding of the dimension of halakhah, of its tenets, applications, and guardianship, is taking place over a broad range of the Jewish community's fractional movements, and is impelled by a leadership whose motivations of fealty to the Jewish people, and even personal observance, are often beyond question. Unless braked and reversed, the decay must lead to enfeeblement of the unique vehicle of continuity of the nation.

The writer essays these reflections on halakhah not, regrettably, from a springboard of expertise in Judaic law or philosophy, but rather from a sense of personal urgency. No matter how often, and how far better, the task has been undertaken, at a time when Torah is in peril of overthrow, rally anew to its defense is incumbent, individually, on every Jew.

Analytic dissection of the evolution of the present menace is beyond the scope of this article. Only the briefest allusion is possible, and it is requisite: Without at least a rough delineation of its convergent lines of descent, the crisis with which we are confronted cannot be brought to focus.

Lines of Descent

A root cause of the modern dilemma of the Jew who would be a Jew can be traced to a betrayal of courage at a crucial juncture in Jewish history: Emancipation and Haskalah in the wake of Napoleonic conquest.

The classic formulators of Judaic belief had perceived Torah as a vast domain,¹ to which nothing in science nor much in literary and artistic endeavor is intrinsically alien² or hostile.³ Their intimate, encompassing engagement with the world was living attestation, and legacy, of confidence in Judaism triumphant. Attribution of wisdom, accomplishment, and virtue to human beings of other nations is matter of fact in scriptural and talmudic literature; had Torah not been given, R. Yochanan proposes, ethics and etiquette could have been taught us even by the beasts.⁴ Knowledge of the cosmos is a vehicle of grace and devotion for the Psalmist ("For thou, O Lord, has made me rejoice through Thy work. I will exult in the work of Thy hands. How great are Thy works, O Lord, Thy thoughts are very deep. A brutish man knoweth it not, neither does a fool understand it. . . .");⁵ for Maimonides, involvement with all the spheres of wisdom is enjoined in the quest for understanding of God's ways: "The person should therefore devote himself to the understanding and comprehension of sciences and studies that will inform him concerning his Master, to the full extent of the human faculty to comprehend and attain"⁶ The biblical exhortation "After the doings of the land of Egypt . . . shall ye not do; and after the doings of the land of Canaan . . . shall ye not do; neither shall ye walk in their statues"⁷ has long been read selectively, to proscribe every semblance of idolatry and every pattern of behavior in clash with Judaic norms of morality⁸—not as prohibition to "build or plant in the style of other nations."⁹ The prerogative, indeed the exigency, of intelligent discrimination was already aphoristic in the talmudic defense of R. Meir, charged with not refraining from continued study with Elishah ben Abuyah, the master become apostate: "He found a pomegranate; he ate the fruit within it, and the peel he threw away!"¹⁰

The confidence crumbled together with the physical enclosures that had kept Jews at distance from Western culture. Rabbinic authorities strove to replace the ghetto walls with barriers of an ideology that was, in fact, dissonant to powerful strains in normative Judaic teaching. We tilted mortally against windmills. Too many rabbis of the 19th century fought rearguard battles of retreat from the world. Modernity was perceived as holding in itself, in its many manifestations, the seeds of apostasy, and especially where ideas and values of the outside world seemed

at first sight of sufficient analogy to those of Judaism to be feared competitive.

We failed, in our anxiety, to discriminate between the universality of ethical impulse and the singularity of Judaic apperception and composition. The failure spelled denial of Judaism's integrative grasp of the human situation, of the indivisibility of ethical thrust, and the corpus of its commandments and statutes. Definition of what is specifically Jewish narrowed, and in the mandates of Torah uniqueness came to be sought with mounting insistence on that which seemed most dissimilar from ambient environments of conduct and achievement. The ever growing stress on the more cursorily distinguishing aspects of Jewish law, custom, and behavior in all its branching derivations brought with it unavoidably the implication, no less forceful for being tacit, that in the realm of moral concerns and strivings Judaism has little to offer that is characteristic and exceptional.

In their implied abdication from faith in the eternal distinctiveness of its ethical address to humanity, the camp of loyalists lent strength and credence to the advocates of Judaism's equalization with renascent streams of common Western humanism. Avowedly or by inference, Judaism was thus lowered to one among many, parallel approaches to social justice, classified in its putative proximity to the best of Christianity's arrogations a constituent of the amorphous "Judaean-Christian heritage." The groundwork of pluralistic reduction of Judaism's uniqueness by a Jewish elite was complete more than a hundred years ago.

The groundwork has been re-enforced by murderous malevolence from Gentile nations. Unrelenting, violent enmity from adjacent communities can make not only for physical but also for inner, spiritual flight; it does not favor golden ages of intellectual exploration and confidence. Preparedness to study and weigh ambient secular culture has been renounced repeatedly in Jewish history, sometimes with passion, in recoil at persecution. In the negation, there was often little attempt to differentiate between secular values that were in fact posited in opposition or contradistinction to Judaic creed, and realms of creativity wholly apart from the terrain of religion, neutral and unforbidden.

The resonant reaffirmation of light and grace, from out of the Judaic tradition, that was the hasidic riposte to Cossack destruction of South-eastern European Jewry is assuredly not the only reaction that can be marshalled to disaster. Perhaps, indeed, such rejuvenation was impossible to a European Jewry visited recurrently in the 19th and 20th centuries by massacre, and struggling simultaneously against both very real and spectral threats of assimilation. (It might be questioned if even the answer

of hasidism to the previous holocaust was unalloyed in its celebration of life and being. It is halakhah—the walking—which contours the tracks of daily engagement of the Jew, and anti-nomianism was not an insignificant strand in early hasidism. In the quest for closeness to God and knowledge of His ways, impatience with pedestrian halakhic mappings, and gropings for recondite substitutes, were clearly apparent elements.¹¹⁾ What has, in fact, been transmitted by many of the faithful among the survivors of recent cataclysms has been a further withdrawal, a turning inwards and a selective, clinging accentuation of those aspects of Jewish life that can be dismissed all too readily as restrictedly ceremonial, ritual, and even atavistic. It is a rejoinder of fear and trembling to physical decimation: If any bonds are loosened, if there not be closed out the world which gave birth to genocidal persecution, shall anything be maintained of that so precariously left in the shambles? For all the charity there may be in the internal relationships of “ultra-Orthodox” communities in the latter half of our century, the impression unmistakably communicated outwards is not rarely that of a regressive and insensitive obscurantism—of a stance foreign and contrary to the thrust of halakhah.

The impression is not entirely gratuitous. Priesthoods are, in reality, judged by the demeanor of priests. Stress on halakhic minutiae *can be* a sentient affirmation of the ultimate, divine authority at the basis of all Judaic action, and thereby of the *spiritual* equivalence of all commandments—“Be heedful of a light precept as of a grave one!”¹² But we witness such stress today by groups who claim the status of guardians of the faith and yet in this role invert ancient halakhic imperatives of resolution between conflicting religious demands.¹³ Deprecation of the vivifying aggadic domain of Judaism has been evident for long in the curricula of Eastern European yeshivot. What is now evident in addition aggravates the seriousness of a constricting halakhic sequestration and a jettisoning of due halakhic process: A claim to the stature of *defensor fides* must be confirmed and vindicated, in Judaism, by compatible fidelity of deportment and by incisive, discerning erudition; in their interactions with others, even *ex cathedra*, and in their learning, some at least of our guardians fall far short, far too often, of irreducible Judaic ideals.¹⁴ The message taken, then, is inescapable: halakhic legalism, cut adrift from Judaic credo and tenets, has a *raison d’etre* of its own, and it is that which is at the heart of authentic Judaism.

The conclusions unavoidably drawn in the recoil from this distorted image of Judaism have in turn lent substance to the dread of 19th century rabbis. Stigma need no longer attach to the rejection of Jewish identity; it can be framed a matter of principle, not as a sneaking away for cra-

venness or profit. If halakhah and Judaic ethics are not confluent and coincidental, but divorced from each other and in fact in rivalry for the Jew's allegiance, then choice must be made, and Jews of imagination and moral sensibility will search for ethics unencumbered by a contradictory, or at least superfluous, halakhic construct.

Rearguard holding actions are at times exigent. They are never in themselves attractive; they cannot propel forward. If it is a morally opaque formalism that is heard as Judaism's contribution to the age, the loss to the Jewish people of so many of its gifted and spiritually assertive members should not be astounding. If only gropingly, intelligent Jews often test what is purveyed as authentic Judaism by Judaism's own yardsticks. When the offering is not in keeping with the cognomens of Torah itself—"light," "mercy"—nor with its avowal: It is a law of and for life!,¹⁵ then there is falseness in the missive or in its transmittal, and less ambiguous pathways deserve exploration. And the camp-followers always poised to yearn for tinsel gods and ease, follow at the lead.

It is shocking, though not altogether surprising, to see proffered today in the agora of Jewish thought contentions such as these:

There is need for some passionate adherence to a position . . . which states clearly that we are living and must continue to live in a post-halakhic era. . . . The idea . . . that changes in law must be made only from within the halakhah itself and not as result of outside influence is plain nonsense . . . we ought now to acknowledge that we need a new philosophy for the legislation of law in Jewish life . . . there is little likelihood that most of the Orthodox will be open to real dialogue on the subject, but they should be viewed by us as . . . incapable of going beyond the confines of an Oral Law. . . . If it is to be argued that halakhah is after all a matter of *mitsvot maasiyot* (practical commandments) can we expect that questions of home ritual, public prayer, diet and the like should any longer be subsumed under law? . . . aren't we really talking about the areas of life which no enlightened society can legislate?¹⁶

and:

. . . for the rabbis of the Talmud, and assumedly for contemporary halakhists, in a conflict between morality and halakhic precedent, morality must recede. The Rabbis could offer no conscious consideration to morality in their alteration of the law, since such an argument would impugn the divine Lawgiver with a lack of moral sensitivity . . . whatever subconscious moral factors we may sense lying behind rabbinic changes, only exegetical and casuistic arguments were deemed rabbinic, stand independent of moral reason; or is the law derivative of moral imperatives? . . . not the sociology or the psychology but the morality of halakhah is the hard question. Does halakhah exemplify the moral imperatives of Judaism acceptable . . . Is Law separate or derived from morality? . . . At the heart of the halakhah issue lies the question of moral theology. . . . Does the Law, biblical or

and in that sense is divine, or does halakhah transcend and even demolish the mountains of morality before its judgments. . . . If the laws are impervious to moral argument, do we not risk the sanctification of immoral judgment?¹⁷

So, we have come to this, by men occupying Jewish pulpits: Halakhah a blind monstrosity, a juggernaut devouring peaks of morality; the rabbis of the Talmud, rishonim and *aharonim*, the authors of the responsa literature, martinets drilling to no purpose on parade grounds of casuistry; and the divine Lawgiver Himself—in the rather remote event of there being such an entity—a desiccated legalist-accountant shut-off, and shutting-off deluded believers, from brave new ages of post-halakhic enlightenment.

The concatenation of circumstances that has led to this pass can be understood, but understanding must not be equated with acquiescence. Without the framework of halakhah, Judaism cannot be. The understanding on which the future of the Jewish people is conditioned is that of its halakhic tradition. The fact of this tradition is halakhah as *anima mundi* of Judaism's universe, the matrix and impellant of Judaic ethics.

HALAKHAH: THE REALIZATION OF JUDAIC ETHIC

Halakhah has been viewed from many perspectives, its interpretation and appreciation given diverse accent. An authentic, keystone conception of halakhah, however, must proceed from the recognition that halakhah is the groundsubstance of Judaism, and that the walking and doing are sighted as the constant destination of *imitatio* and *cognito dei*. And as Judaism's unequivocal perception of the divine essence has been, unwaveringly for all the inexplicability of evil in the world, that of justice subjugated by mercy and compassion, the pursuit of halakhah is, by its nature, to mirror this ethic. The goal held out by halakhah lies in perseverance in the quest.

Imitatio and Holiness

Halakhah is the only tangible link between God, ineffable paradigm, and the Jew commanded to imitate. R. Hama son of R. Hanina asks:¹⁸ "What means the text 'Ye shall walk after the Lord your God?'"¹⁹ Is it, then, possible for a human being to walk after the *Shechinah*; for has it not been said 'For the Lord thy God is a devouring fire??' "²⁰ And the Gemara answers:

"But the meaning is to walk after the attributes of the Holy One, blessed be He.

As He clothes the naked . . . so do thou also clothe the naked. The Holy One, blessed be He, visited the sick . . . so do thou also visit the sick. The Holy One, blessed be He, comforted mourners . . . so do thou also comfort mourners. The Holy One, blessed be He buried the dead . . . so do thou also bury the dead.”

Holiness, the aim of the imitation, to be attained in *tsedek* and *hesed* (justice and compassion, or “loving-kindness”) toward other human beings.

The theme of holiness is relentless in Scripture and its rabbinic exposition, and the formula unswerving: The commonplace act takes on transcendence as the doing is directed in imitation of God. Redemption from bondage is to establish His overlordship the sole authority over the House of Israel as organic society. The testament of statutes and laws, both those morally self-evident and those arcane, is bracketed recurrently throughout the pentateuchal text:

“For I am the Lord your God; sanctify yourselves therefore, and be ye holy; for I am holy; . . . for I am the Lord that brought you up out of the land of Egypt, to be your God: ye shall therefore be holy, for I am holy; Ye shall be holy; For I the Lord your God am holy; I am the Lord your God; Sanctify yourselves therefore, and be ye holy; for I am the Lord your God. And keep ye my statutes, and do them: I am the Lord who sanctifies you; I am the Lord your God, who has set you apart from the peoples; And ye shall be holy unto me; for I the Lord am holy, and have set you apart from the peoples, that ye should be mine; And ye shall keep my commandments, and do them: I am the Lord. And ye shall not profane my holy name; but I will be hallowed among the children of Israel: I am the Lord who hallow you, that brought you out of the land of Egypt, to be your God: I am the Lord.²¹

There is an importunate rhythm of Divine disclosure in the Law’s juxtaposition of the prosaic to the sublime. God is the ubiquitous preceptor; the teaching is cadenced by a reciprocity of love. The placing of *tefillin* (phylacteries) is contrapuntal celebration:

R. Nahman b. Isaac said to R. Hiyya b. Abin: What is written in the *tefillin* of the Lord of the Universe? - He replied to him: “And who is like thy people Israel, a nation one in the earth.” Does, then, the Holy One, blessed be He, sing the praises of Israel?—Yes, for it is written: “Thou has avouched the Lord this day . . . and the Lord hath avouched thee this day.” The Holy One, blessed be He, said to Israel: You have made me a unique entity in the world, and I shall make you a unique entity in the world. . . .²²

God teaches Israel to pray.²³ He demanded sacrificial offerings so as to wean His children away from alien tables to His own.²⁴ In the hours of

His day He Himself sets standards for the pursuits of the nation:

Rab Judah said in the name of Rab: "The day consists of twelve hours; during the first three hours the Holy One, blessed be He, is occupying Himself with the Torah, during the second three He sits in judgment on the whole world, and when He sees that the world is so guilty as to deserve destruction, He transfers Himself from the seat of Justice to the seat of Mercy; during the third quarter, He is feeding the whole world, from the horned buffalo to the brood of vermin . . ."²⁵

In their celebration of Him as God of Justice, the rabbis, talmudic and post talmudic, consistently perceive the theme of *middah k'neged middah* (measure for measure) as transected and transformed by a divine attribute beyond equity—compassion. It is compassion which is the ultimate miracle,²⁶ and which in *imitatio dei*, becomes morally incumbent on man: to act *lifnim mishurat hadin* (beyond the stricture of the Law).

Lifnim Mishurat Hadin

Rav Aharon Lichtenstein points out in his lucid essay "Does Jewish Tradition Recognize An Ethic Independent of Halakhah?"²⁷ that the "impetus for transcending the *din* (in its narrow reading, law as specified precept; judgment, as even-handed dueeness—DWW) is itself part of the halakhic corpus." The Jew turns constantly to God in supplication to be reckoned *lifnim mishurat hadin*; that His "*hesed*, endureth forever"²⁸ is an article of faith. And in the integrative skein of the *imitatio dei* which makes halakhah the dialectic between God and man, it is to the realization of *lifnim mishurat hadin* in His deeds that the Jew is directed.²⁹

The "four ells of the Law"³⁰ circumscribe intimately the life of the Jew:

R. Phineas b. Hama said: Wherever you go, pious deeds will accompany you. "When thou buildest a new house then thou shalt make a parapet for thy roof" (Deuteronomy 22:8); If you have made for yourself a door, the precepts accompany you, as it is said, "And thou shalt write them upon the door-posts of thy house" (Deuteronomy 6:9); if you have put on a new garment the precepts accompany you, as it is said, "Thou shalt not wear a mingled stuff" (Deuteronomy 22:11); if you have gone to cut the hair of your head, the precepts accompany you, as it is said, "Ye shall not round the corners of your heads" (Leviticus 19:27); if you have a field and you have gone to plough therein, the precepts accompany you, as it is said, "Thou shalt not plow with an ox and ass together" (Deuteronomy 22:10); if you are about to sow it, the precepts accompany you, as it is said, "Thou shalt not sow thy vineyard with two kinds of seed" (Deuteronomy 22:9); and if you reap it, the precepts accompany you, as it is said, "When thou reapest thy harvest in thy field, and hast forgot a sheaf in the field" (Deuteronomy 24:19).

God said: "Even if you are not engaged on any particular work but are merely journeying on the road, the precepts accompany you. Whence this? For it is said, 'If a bird's nest chance to be before thee in the way (Deuteronomy 22:6) . . .'"³¹

The Law is the unique mystery in the possession of Israel that miters the nation to God.³² There are, to be sure, scales of exaltation in the stating of the Law, but the corpus is totally suffused by the motivating philosophy: Action in the similitude of a Holy God whose being is compassion and justice. This is the ethics of Judaism. When the student scrutinizes any one aspect of the Law, his point of departure must be recognition of halakhah's monadic thrust; any analysis framed differently is foredoomed to distortion.

But perhaps this thesis of halakhah is an idealized one? It must be questioned whether these propositions are truly rooted in Scripture and in the writings of the rabbis? The answer is that they assuredly are.

The logos of the biblical address to man—"And now, Israel, what doth the Lord thy God require of thee, but to fear the Lord thy God, to walk in all His ways, and to love Him, and to serve the Lord thy God with all thy heart and with all thy soul;"³³ ". . . and what the Lord doth require of thee: Only to do justly, and to love mercy, and to walk humbly with thy God"³⁴—is reflected in the dominant rhythms of Mishnah and Gemara and the subsequent unfolding of the Oral Law veraciously and pervasively. For the Jew, the realm of *torah she b'ktav* and *torah she-b'al-peh* are integral parts of one corpus, one teaching, one Torah. They cannot be divorced, and they cannot be understood in separation. Oral Law amplifies, interprets, modulates, and applies to the changing circumstances of individual and society the thrust of scriptural bidding. The Law derives inclusively from Sinai;³⁵ but also, the Law that has been addressed to the Jew at and since Sinai has been filtered and shaped by the Sages and by the scholars of later generations and is come down to us, in effect and practice, the Law of the Rabbis. In the broad area circumscribed, at the one edge, by categoric Pentateuchal directives, and on the other by injunctions of stated rabbinic authorship, it is indeed often exceedingly difficult to pinpoint the geneology of halakhot. The attributions *mi d'orayta* and *mi d'rabbanan* are at times uncertain and disputed. With the purpose of bringing a more recently formulated ruling under the aegis of scriptural imperative, or of underlining its sanctity, talmudic and later rabbis frequently seek to fuse halakhic authority to its bedrock origin. Thus, they invoke the overlying concept of *da' at ha'torah* ("in the spirit—or sense—of Scripture") to buttress the force of a ruling; or, designate it as consistent with the teachings of Moses, and as akin

to halakhah transmitted orally from Sinai. Referring to laws classified in Talmud as *takkanot* (regulations) of the prophets, DeVries points out that "the concept *d'rabbanan* (of rabbinical authority) is not chronological but qualitative, so that such statements can be *d'orayta* (of Sinaitic authority) even if first revealed in the words of a late prophet, and *d'rabbanan* even if attributed to Moses, if they were transmitted as a *takkanah* or the confirmation of an ancient custom. . . ." ³⁶ We must add to this that even Pentateuchal statements of seemingly incontrovertible clarity often devolve on the Jew as laws nuanced and faceted by rabbinic thought, and not infrequently to effects rather different from those perceived as the plain reading of the text. In the integrative global construct of halakhah, the question of whether this demand on me is from the Torah or the Rabbis is an academic one, of no substance for deportment.

The vast and varied body of the Oral Law spans in its discursive, dialectic format not only rulings that are normative and binding, but also a multitude of views and opinions by its authors that are not demanding of acceptance. ³⁷ It does not yield easily to cursory perusal, but for all its complexity and apparent contradictions, the Oral Law is impelled consistently by the voice of mercy and compassion that echoes in the passages of Pentateuch and Prophets. The groundplan of Torah in its entirety is the same. The groundplan is salvational: Man perfecting the world in the image of the kingdom of God: ³⁸ God large in the organic society of Zion.

Neither can there be made a categoric division within the Oral Law between aggadic ideals and halakhic rendition. Halakhah wills on man to attain sanctity and transcendence in the crucible of his somatic being. Man is not asked to disdain the substance of his tissues, but rather to rise above their animal limitations and transience. Negation of the body is a belying of his being:—creature at once flesh and blood and bearer of the divine likeness. Only in the sanctification of the wants and passions of flesh and blood can he attain to the potentials of his mosaic nature. ³⁹ In denying either of the elements of his making, man commits violence to himself and rejects his role as witness to the fulgent meaning of human existence. Judaism refutes any conception of man's body as indifferent receptacle of pure spirit; to achieve its life, the soul must infuse the structures of its enclosure, and while man lives, the shell and the contents are indivisible. It is to the realization of this unity that halakhah speaks. The language is to man, and the ideals communicated perforce subsume the wholeness of man's form. No aspect of being is disregarded. The possibility of grace is resident in all human action. Perhaps to carry out *this mitsvah*, now, did I come to this crossing.

The *aggadic* ethical moment penetrates the ordinance of Oral Law

unmistakably.

The Gemara prohibits the reading of *Megillat Esther* on the Sabbath because “the eyes of the poor are lifted (in expectation) to the reading of the *megillah*.”⁴⁰ It is on the day of the reading that distribution of gifts and monies to the indigent is obligatory, and the poor must not be kept waiting in disappointment until after the Sabbath. Legal disadvantage of a competing claimant is a consideration argued as such, by some tannaim, in his favor.⁴¹

The sages, says a mishnah, are well pleased when action is prompted by a standard of morality that the doer shoulders voluntarily, above the minimum of halakhic prescription,⁴² and the norm of “the sages are—or are not—well pleased” (*ruah hakhamim nohah hemeno*) is invested, in halakhic contexts, with a virtual autonomy of moral, albeit extra—or supra—halakhic, significance.⁴³

A gemara in the Tractate *Baba Metsia*⁴⁴ resorts to a quotation from the Book of Proverbs (not a common scriptural source for Rabbinic decision!) to exact behavior *lifnim mishurat hadin*:

“Some porters (negligently) broke a barrel of wine belonging to Rabbah son of R. Huna. Thereupon he seized their garments; so they went and complained to Rab. “Return them their garments,” he ordered. “Is that the law?” he required. “Even so,” he rejoined: “*That thou mayest walk in the way of good men.*”⁴⁵ Their garments having been returned, they (the porters) observed, “We are poor men, have worked all day, and are in need; are we to receive nothing?” “Go and pay them,” he ordered. “Is that the law?” he asked. “Even so,” was his reply: “*and keep the path of the righteous.*”

It is not the finite letter of the Law that is mandated, but rather the spirit with which the Law is imbued and which obliges consummation beyond the strict confines of any one statute.

The duty is echoed in a succeeding mishnah:

One who engages laborers and demands that they commence early or work late—where local usage is not to commence early or work late—he may not compel them. Where it is the practice to supply food (to one’s laborers), he must supply them therewith; to provide a relish, he must provide it. Everything depends on local custom. It once happened that R. Johanan b. Mathia said to his son, “Go out and engage laborers.” He went and agreed to supply them with food. But on his returning to his father, the latter said, “My son, should you even prepare for them a banquet like Solomon’s when in his glory, you cannot fulfil your undertaking, for they are children of Abraham, Isaac and Jacob. But, before they start work, go out and tell them, “(I engage you) on condition that you have no claim upon me other than bread and pulse.”⁴⁶

For the Sake of Man, For the Sake of Perfection, For the Sake of Peace

There is another nuance evident here, stressed powerfully throughout talmudic thought: account of the reality of the human situation and, indeed, of human frailty.

To prevent attachment of the stigma of *mamzerut* (bastardy; the status in Judaic law of the offspring of liaison between a married woman and a man not her husband, and of incestuous relationships) to a child, Gemara stretches likelihood to its limits: An infant born as long as twelve months after the husband's known departure is considered legitimate—perhaps he returned for a visit unknown to others, perhaps this was a long-protracted pregnancy!⁴⁷

The death penalty is set in Scripture for multitudinous crimes, but the Talmud finds it biblically axiomatic to so hedge the requirements of witness and other proofs of intentional culpability that effectuation of capital punishment becomes virtually impossible. A court that sentences to execution even once in seventy years is condemned as a hangman's tribunal.⁴⁸

And still another principle: "For the sake of improvement of the world."

"We have learnt: One who is half a slave and half a freedman serves his master one day and himself the other day: this is the view of Beth Hillel. Said Beth Shammai to them: You have made it right for his master, but you have not made it right for himself. He may not marry a bondwoman; nor may he marry a free-woman. Should he abstain from marriage? But then was not the world created only for propagation? as it is said: "He created it not a waste, He formed it to be inhabited"⁴⁹ For the improvement of the world (*tikun haolam*), therefore, his master must be compelled to set him free, and the latter must give him a bond for the half of his value. Thereupon Beth Hillel retracted and gave their ruling in accordance with the view of Beth Shammai."⁵⁰

In former times, a man was allowed to bring together a *bet din* (court of law of three persons) wherever he was and cancel the *get* (writ of divorce). Rabban Gamaliel the Elder, however, laid down a rule that this should not be done, because of *tikun olam* (so as to prevent abuses: lest the bearer should give it to the woman in ignorance that it was annulled and that she then marry on the strength of it).⁵¹

"A widow has by rights no power to recover her *ketubah* from the property of orphans save on the taking an oath (that she had not received any part of the *ketubah*), but the rabbis refrained from imposing an oath on her. Rabban Gamaliel the Elder thereupon made a regulation that she should take any vow which the orphans choose to impose on her and so recover her *ketubah*. Similarly, witnesses sign their names to a *get*, because of *tikun olam*. Hillel the Elder also instituted the *prosbul* (a statute for facilitating commercial transactions) because of *tikun olam*.⁵²

R. Johanan b. Gudgada testified that a deaf-mute girl who has been given in marriage by her father can be divorced with a *get* (although being deaf-mute she is not capable of giving consent, and although her marriage, having been contracted by her father, is a binding one), and that a minor (orphan) daughter of a lay Israelite married to a priest can eat of the *terumah* (although her marriage is valid only by the rule of the rabbis and not of the Torah; she may accordingly partake of what is *terumah* in rabbinic law), . . . and that if a beam which has been stolen is built into a building, restitution for it may be made in money, so as not to put obstacles in the way of penitents (that is, if the person who has wrongfully appropriated the lumber were forced to disassemble the building so as to return the stolen component itself, he would not return in penitence).⁵³

These passages are not isolated, nor gerrymandered in support of a modern-liberal apologetic.⁵⁴ They are representative of the essential philosophy of the Law: *Lifnim mishurat hadin*, the preservation and dignity of individual human life, sanctity, and also, joy. The principles are pellucid and omnipresent in the value structure and hierarchy of mainstream halakhah.

Every precept is suspended when in contrariety to the preservation of life, but three: the prohibition of idolatry, murder, and incest—crimes which in the eyes of Judaism compromise irreparably the dignity of existence. The incumbency of guarding human life is given very broad reading in the Talmud, and in the codes thereafter. Laws of *Yom Kippur* are abrogated to permit the partaking of food craved by a pregnant woman, since denial might be endangering.⁵⁵ Decisive weight is given to the emotional as well as physical well-being of a woman endangered by a problematic pregnancy.⁵⁶ Consideration for the person's safety is eminent throughout halakhic literature whenever satisfaction of an obligation is cast under a shadow of imperilment.

Scripture instructs total war against the heathen inhabitants as the Israelites approach Canaan. Moses, however, contravenes the command; he sends messengers to treat with Sihon—and the rabbis hold that God does not censure the contravention, and learn from his sufferance the greatness of the ways of peace.⁵⁷

It is not biologic existence only that is constantly at the pivot of judgment. The preservation of peace—*darke shalom*—and of the individual's worth and rights are a prevailing halakhic motivation:

The following rules were laid down because of *darke shalom*:

A priest is called up first to read the Law and after him a Levite and then a lay

Israelite, because of *darke shalom*. An *eruv* (a measure introduced to enable tenants in a courtyard to have unrestricted access to the premises of other tenants on the *Shabbat*, by depositing food in which all have a share in the dwelling of one of the tenants) is placed in the room where it has always been placed, because of *darke shalom*. The pit (water receptacle) which is nearest the head of the (irrigation) water-course is filled from the first, because of *darke shalom*. (The taking of) beasts, birds, and fishes from snares (set by others) is reckoned as a kind of robbery (whatever taken must be returned to the setter of the snare, even though according to Torah law the latter has not acquired ownership until the quarry has actually come into his possession), because of *darke shalom*. . . . (To take away) anything found by a deaf-mute, an idiot, or a minor is reckoned as a kind of robbery (although such persons cannot legally acquire ownership), because of *darke shalom*. . . . If a poor man gleanes on the top of an olive tree, (to take the fruit) that is beneath him (fallen as result of his gleaning) is counted as a kind of robbery (although it does not become his until he has handled it). . . . The poor of the heathen may not be prevented from gathering gleanings, forgotten sheaves (in the field after harvest), and the corners of the field (after harvest), because of *darke shalom*.⁵⁸

Truth, the rabbis hold, is one of the pillars of ethical conduct and a foundation of the world. Yet in the cause of peace, taught the School of Rabbi Ishmael, God Himself is prepared to speak less than the whole truth:

Great is the cause of peace, seeing that for its sake the Holy One, blessed be He, modified a statement; for at first it is written, "And Sarah laughed within herself (on being told by the visitors that she was to bear a son), saying: After I am waxed old shall I have pleasure, my lord being old also?"⁵⁹ while afterwards it is written, "And the Lord said unto Abraham: Wherefore did Sarah laugh, saying: Shall I of a surety bear a child, who am old?"⁶⁰

God does not add, in speaking to Abraham, that Sarah had also referred to his great age, so that marital harmony would not be disturbed. In post-talmudic law, the archetype "for the sake of peace" becomes a criterion, often overshadowing other considerations, in defining the course of behavior.

On Human Dignity and Worth

Sensitivity to the intrinsic dignity of man: That, too, goes far beyond an occasional elegance of rhetoric. It is a *leitmotiv* of Scriptural narrative

and of talmudic aggadah and it enters potently into the continuum of Judaic jurisprudence.

The Mishnah in Sanhedrin refers to the Scriptural account of Cain and Abel in instructing "How were witnesses to be inspired with awe? Witnesses in capital cases were brought in and intimidated thus:

Perhaps what ye say is based only on conjecture, or hearsay, or is evidence from the mouth of another witness, or even from the mouth of a trustworthy person? Perhaps ye are unaware that ultimately we shall scrutinize your evidence by cross examination and inquiry? Know then that capital cases are not like monetary cases. In civil suits, one can make monetary restitution (if the witness causes financial loss through giving false testimony) and thereby effect his atonement; but in capital cases he is held responsible for his (the accused's) blood and the blood of his (potential) descendants until the end of time. For thus we find in the case of Cain, who killed his brother, that it is written "The bloods of thy brother cry unto me":⁶¹ Not the blood of thy brother, but the bloods of thy brother, is said, meaning his blood and the blood of his (potential) descendants. . . . For this reason was man created alone, to teach thee that whosoever destroys a single soul, Scripture imputes to him (guilt) as though he had destroyed a complete world; and whosoever preserves a single soul, Scripture ascribes (merit) to him as though he had preserved a complete world.⁶²

The individual is an irreplaceable cosmos. The biblical proscription against hatred for the oppressor, Egypt—we did, after all, survive there somehow as strangers!—is explicit.⁶³ Hillel paraphrases the Golden Rule in answer to the heathen's mocking demand to be taught the essence of Torah on the instant.⁶⁴ In the midst of a treatise on torts, Mishnah and Gemara thunder out: Deceit and oppression are not offenses against property only. To embarrass, denigrate, or cheapen the value of another human being are included in the category of criminality, are indeed transgressions ranked as approaching the ultimately unforgiveable.⁶⁵

Is it not nearly impossible, then, or at the least heavily burdensome, to live halakhically when all man's doings are encompassed by the Law? No! Torah does not lightly dismiss human infirmity. It comes to grips with it in compassion; it makes allowance; it seeks to strengthen; and it is cognizant of the responsibility that rests so inclusively on the Jew—to be sanctified. The cognizance of human nature is always at the fulcrum of the drive to lift man higher. The sights are not set on unattainable absolutes, the "yoke of the Kingdom of Heaven" and of the commandments never so heavy as to force man to shift the obligation to realms of abstraction and to serve with lips only a code beyond grasp. The ideals that halakhah posits are counterpoised, and set into the context of human capability. The thought does come to the fore that the Jew is born to very formidable tasks.⁶⁶ But they are never insurmountable, and there is in parallel another, insistent address that melds with the Law, and in transmuting its quality poises it above all formalism: the demand to joy.

Joy

Joy must be a context and orientation for halakhah. The Psalmist sings: Serve the Lord in joy!⁶⁷ The *Shechinah*—God's presence—does not dwell in a place where there is not joy.⁶⁸ The head of the household must show largesse to his family on the holyday, and lest that duty be treated cavalierly, the benefice to be rendered is spelled out.⁶⁹ A man is relieved of the obligation to sleep in the *Sukkah* in the event that he would have to do so alone because of a lack of privacy and comfort for his wife—separation on the nights of the festival is not compatible with joy.⁷⁰ Husband and wife are bidden to the act of love on the *Shabbat*; it is a means of making the sanctified day replete in joy.⁷¹ The *Shabbat* must be honored with an additional meal, with delicacies, a festive raiment, flowers and light, by whatever conduces to joyfulness.

The act of love, song, and the spread table are instruments of grace and worship in halakhah as they are approached in joy. Joy, and the intention of the act, transform. The repast not graced by words of Torah is an abomination, that at which Torah is spoken a banquet worthy of the *Shechinah's* presence.⁷² The Gemara holds that man shall have to give account for every legitimate pleasure that came his way and on which he turned his back.⁷³ And despair, antithesis of joy, comes to be seen as prototype and genesis of sin and as denial of a God who has not, despite abundant cause, despaired of man.⁷⁴

(To Be Continued)

NOTES

1. Yehudah Halevi, *Kuzari*, 1:11.
2. David W. Weiss, "Judaism and Evolutionary Hypotheses in Biology. Reflections on Judaism by a Jewish Scientist," *Tradition*, 19, Spring 1981.
David W. Weiss, "Randomness and Determinism in Nature: Language and Perspectives," *Tradition*, 20, 1982.
3. David W. Weiss, "The Dimensions of Nature and Religion - Conflict or Complementarity?" In: *Reflections on Progress*, O. Westphal and U. Westphal, eds. (Denzlinger Druck- und Fotosatz-Center, Denzlingen: Privatdruck, Freiburg i. Breisgau), 1980. Lecture presented at Symposium, "Reflections on Progress," Max Planck Institute, Freiburg, November, 1979.
4. *Eruvin* 100b.
5. Psalms 92:5-7.
6. Moses b. Maimon (Maimonides [Rambam], 1135-1204), *Mishneh Torah, Mada, Yesode ha-Torah*, Chapt. 10:11.
7. Leviticus 18:3.
8. *Avodah Zarah* 11a; Moses b. Nachman (Nachmanides [Ramban], 1194-1270), *Commentary on the Torah*, on Leviticus 18:2; Hirsch, Samson Raphael (1808-1888), *Commentary on the Torah*, on Leviticus 18:3-5.
9. *Sifra* (*Torat Kohanim*), on Leviticus 18:3.
10. *Hagigah* 15b.
11. Walter S. Wurzbarger, "Pluralism and the Halakhah." *Tradition*, 4, Spring 1962.
12. *Mishnah Avot* 2:1.

13. A telling instance of such inversion came to light in the recent controversy in Israel concerning amendment of the law pertaining to autopsies and organ transplantation. Kidney transplants afford to patients in renal failure a life saving measure sometimes more assured, lasting, and compatible with normal function than artificial dialysis. Spokesmen of certain Orthodox groups nonetheless attempted to persuade patients and physicians of the decisive halakhic preference of self-imposed forbearance with dialysis. It is frightening to witness bald overruling of *pikkuah nefesh* and its adjunct obligations, in stress on the proscriptions against reaping "profit" from human remains or visiting "indignity" on the dead. Not even the most stringent of earlier, classic responsa on autopsy come near justifying this turning over of halakhic priorities. (Another rationale advanced by some of the antiautopsy protagonists may be even more disturbing: It is argued that removal from the body of a tissue that can sustain the life of another human being "cuts at the roots" of the belief in resurrection! Woe, by that token, to the chances for immortality of all those whose fate at physical demise has been other than immersion in formaldehyde.)

Value contraposition appears to be, in fact, a problem subsidiary to a new development on the right, the growing tendency by some religious enthusiasts, often poorly informed, to denominate at will their norms of behavior and those rabbinic rulings acceptable to them as flatly, literally *me d'orayta* (of biblical authority). It is not uncommon today for passersby in certain districts of some Israeli cities to be informed, unsolicitedly, that Scripture itself has set the standards for sleeve length and other appurtenances of female fashion; nor to hear Pentateuchal authority invoked in opprobrium of such looseness as mixed basketball and mixed hiking excursions by children of (Orthodox) youth movements—notwithstanding the peculiar failure at discovery, at other times and in other communities, of any such elements in basic Torah law by scholars of no lesser perspicacity or standing. Imbuing all halakhic unfolding with derivational Sinaitic authenticity—*da'at ha'torah*—is one thing, an intrinsic quality of the halakhic process and in keeping with the normative position that all law, knowledge, mystery, and prophecy are subsumed in the Torah revealed at Sinai (see, Nachmanides, Introduction, *Commentary on the Torah*). Apposition of all halakhic demands at any equivalence of urgency and import is clearly another. That flies in the face of the guidelines of halakhic geneology, precedence, and resolution, and impoverishes Judaic law of its built-in dynamism and means of multifaced actuation. Scale and accent are undeniably integral features of the architecture of halakhah—a pluralism *within* the Law. The care is not unwarranted that spurious *extra-halakhic* "pluralism" may achieve legitimization in a failure at distinctions. But no less a peril to normative Judaism are the halakhic stagnation that must result from a flattening of halakhah's nuanced qualities and vibrancy, and from the ensuant trivialization.

14. In talmudic hyperbole, the mere carelessness of an unseemly spot on his garment is condemning of the *talmid hakham* (*Shabbat* 114a). For a comprehensive discussion of the standards imposed, and self-imposed, on the sages of the Talmud, see: Ephraim E. Urbach, *The Sages. Their Concepts and Beliefs*, Magnes Press, Hebrew University, Jerusalem, 1975, Chapt. XVI.
15. Leviticus 18:5; Deuteronomy 30:11-20.
16. Jack J. Cohen, "Women Rabbis: A Post-Halakhic Option," *Sh'ma*, 10(182), 11-12, 1979.
17. Harold Shulweis, "When Ethics and *Halakha* Collide," *Sh'ma*, 10(182), 13-14, 1979.
18. *Sotah* 14a.
19. Deuteronomy 13:5.
20. Deuteronomy 4:24.
21. e.g., Leviticus 11:44-45; 19:2-3; 20:7-8; 20:24,26; 22:31-33.
22. *Berachoth* 6a.
23. *Rosh Hashanah* 17b.
24. *Leviticus Rabbah* 22:8; See also Maimonides, *Guide to the Perplexed*, Part III, Chapt. 46.
25. *Avodah Zarah* 3b.
26. Meir Simchah Hachohen of Dvinsk (1843-1926), *Meshekh Hochmah*, first paragraph on Leviticus 26.
27. Aharon Lichtenstein, "Does Jewish Tradition Recognize an Ethic Independent of *Halakha*?" In: *Modern Jewish Ethics*, M. Fox, ed., Ohio State University Press, 1975, pp. 62-88.
28. Psalms 136.

29. *Mekhiltah*, Yitro, *Massekhta d'Amalek* (edition of C.S. Horowitz and I.A. Rabin), Warman, Jerusalem, 1970, ii, p. 198.
30. *Berakhot* 8a: "Raba said to Rafram b. Papa: Let the master please tell us some of those fine things that you said in the name of R. Hisda on matters relating to the Synagogue! - He replied: Thus said R. Hisda: What is the meaning of the verse: 'The Lord loveth the gates of Zion (*tsiyyon*) more than all the dwellings of Jacob?' The Lord loves the gates that are distinguished (*m-tsuyanim*) through *Halakhah* more than the Synagogues and Houses of study (where *aggadic* lectures were delivered, but which were not devoted to the study of *halakhah*). And this conforms with the following saying of R. Hiyya b. Ammi in the name of 'Ulla: Since the day that the Temple was destroyed, the Holy One, blessed be He, has nothing in this world but the four cubits of *Halakhah* alone. So said also Abaye: At first I used to study in my house and pray in the Synagogue. Since I heard the saying of R. Hiyya b. Ammi in the name of 'Ulla: 'Since the day the Temple was destroyed, the Holy One, blessed be He, has nothing in His world but the four cubits of *halakhah* alone,' I pray only in the place where I study. . . ." This *aggadic* conception of the greater sanctity of houses of study than of the formal synagogue has come to expression in the Codes (see, Maimonides, *Mishneh Torah*, *Ahavah*, *Hilkhot T'fillah V'Birhat Kohanim*, Ch. 8:3), and remains in force to the present - one of many clear instances of the translation of rabbinic *aggadah* into religious practice.
31. *Deuteronomy Rabbah* 6:3.
32. *Pesikta Rabbati*, Ch. 5, Section 1 (on Numbers 7).
33. *Deuteronomy* 10:12.
34. *Micah* 6:8.
35. Nachmanides, Introduction, *Commentary on the Torah*. [The Ramban's view of the concurrent origins, authenticity, and authority of Written and Oral Law is a distillation of normative rabbinic thought (see for example, *Berakhot* 5a; *Megillah* 19b). For a midrashic allegorization of this idea, see, *Tanna dede Eliahu Zutah* (see, Note 121.). If this position is accepted, that indeed the whole of the Law was revealed to Moses at Sinai, it still remains a moot point how much of the missive was handed on by Moses and how much was received intact by the Sages; put another way, the question pertains to the level of "originality" of Rabbinic jurisprudence (see, Harry C. Schimmel, *The Oral Law: A Study of the Rabbinic Contribution to Torah She 'be 'al 'peh*, Feldheim Publishers, N.Y., 1971, Ch. 1). What remains undisputable in any event is that the Law in its totality is shaped by the transactions of the Sages (and, too, of authorities who came after them), to whatever relative extent their proceedings and measures were impelled, on the one hand, by orally transmitted Sinaitic canon and, on the other, by a shouldering of responsibility for the modulated unfolding of Torah in its quintessential spirit.]
Of the numerous rabbinic statements that stress the elemental significance of the Oral Law, only one need be quoted in illustration: "R. Johanan said: The Holy One, blessed be He, made a covenant with Israel only for the sake of that which was transmitted orally, as it says, 'For by the mouth of these words I have made a covenant with thee and with Israel' (Exodus 34:27)" (*Gittin* 60b). See also Yerushalmi, *Peah*, Ch. 2.
36. Benjamin DeVries, "Halakhah," In: *Encyclopedia Judaica*, (Keter, Jerusalem), 1973, Vol. 7, p.1157.
37. Shmuel Ha-Naggid (993-1055), *Introduction to Talmud*.
38. See the prayer "*Alenu*," one of the oldest in the liturgy, with which every formal service is closed.
39. The Midrash holds that even man's evil inclination is a vital component of his being, to be channelled constructively:

"Nahman said in R. Samuel's name: "Behold, it was very good" (Genesis 1:31) refers to the Good Desire; "And behold, it was very good," to the Evil Desire. Can then the Evil Desire be very good? That would be extraordinary! But for the Evil Desire, however, no man would build a house, take a wife and beget children; and thus said Solomon: "Again, I considered all labor and all excelling in work, that it is a man's rivalry with his neighbour" (Ecclesiastes 4:4) (*Genesis Rabbah* 9:7).

In the personal confession recited immediately before the beginning of the *Yom Kippur*

eve service (*Tefillah Zakkah*), the Jew reflects on the purpose for which each of his organs exists and on the misuses to which he has employed them:

. . . . You have created in me ears, to hear words of sanctity and Torah, woe to me, for I have profaned them to hear words of abomination, slander, and all sorts of forbidden things . . . You have created in me mouth, tongue, teeth, and throat, and gave them the power of speech, to pronounce the holy letters of the *aleph-bet* with which You created heaven and earth and their hosts and with which You wove Your holy Torah, and by this power have separated man from beast; and I have been not even like a beast, for I have profaned my mouth with abominations, slander, falsehood, levity, curses, insult, dealings on the Sabbath and Holy Days, and false vows . . . You have created in me hands and the sense of touch, to fulfill *mitsvot*, and I have profaned them; to strike at my neighbor . . . You have created in me legs, to pursue the task of *mitsvot*, and I have profaned them in the pursuit of evil . . . I have examined all my limbs and organs and have found them faulty, from the sole of my foot to the crown of my head . . . ”

40. *Megillah* 4b.
41. *Mishnah Ketubot*: 9:2,3; *Ketubot* 84a.
42. *Mishnah Sheviit*: 10:9.
43. *Baba Metsia* 48a.
44. *Baba Metsia* 83a.
45. *Proverbs* 2:20.
46. *Mishnah Baba Metsia* 7:1.
47. *Yevamot* 80b; Maimonides, *Mishneh Torah, Issure Biah* 15:19. A more recent instance of the rabbis' insistence on extending biological probability to the furthest so that a child can be considered offspring of a legitimate marriage is provided by the responsum of the *Nodah bi-Yehudah* (Landau, Ezekiel b. Yehudah, 1713-1793, *Noda bi-Yehudah, Mahadura Kama*, Part 2, Responsum 69).
48. *Mishnah Makkot* 1:10.
49. *Isaiah* 45:18.
50. *Mishnah Gittin* 4:5;
Haggigah 2a, b.
51. *Mishnah Gittin* 4:2.
52. *Mishnah Gittin* 4:3.
53. *Mishnah Gittin* 5:5.
54. The Rabbis at times invoked for themselves, and with an almost surprising self-assurance, the law's sympathetic acceptance of man's personal circumstances. Thus, for instance, the mishnah in *Berakhot*: (2:6) recounts "(Rabban Gamaliel) bathed on the first night after the death of his wife. His disciples said to him: You have taught us, sir, that a mourner is forbidden to bathe. He replied to them: I am not like other men, being very delicate," and the succeeding Gemara (16b) amplifies: "How did Rabban Gamaliel justify his action? He held that the observance of *aninut* (the mourning of the first day; or, the period before burial) by night is only an ordinance of the rabbis . . . and where it concerns a delicate person the rabbis did not mean their ordinance to apply." In the next mishnah (*Berakhot* 2:7) it is related that "when Tabi his [Rabban Gamaliel's] slave died, he accepted condolences for him. His disciples said to him: You have taught us, sir, that condolences are not accepted for slaves? He replied to them: My slave Tabi was not like other slaves: He was a good man." It must be noted, however, that the weight given in halakhah to individual human circumstance is operative in both directions: More is expected of some persons than of others! For instance, the mishnah in *Bikkurim* (1:3) states: ". . . *Bikkurim* (first-fruits) are not to be brought before Pentecost. The men of Mt. Zeboim brought their *bikkurim* before Pentecost, but they were not accepted . . . " However, the final halakhic ruling on the matter is that *bikkurim* brought early *are* accepted, and stored for use until the festival. Why, then, were those of the men from Mt. Zeboim refused? Because they were men of distinction, and others would come to rely on their example in the erroneous belief that the *mitsvah* of the first-fruits should be carried out prior to Pentecost (for discussion and sources on this issue, see Kahati's commentary on the mishnah). The larger obligation carried by persons of learning and renown is emphasized repeatedly in rabbinic law and thought, as is the greater severity of punishment they must bear for transgression. For instance, the early death of Elimelech in Moab is ascribed to his shortcoming, as a leader, in not caring adequately for his people in *Erets*

Yisrael during severe famine, and in leaving the country with the intent of settling beyond its borders (Ruth Rabbah 1:4; *Midrash Tanhuma*, *Sh'mini* 9; *Zohar Hadash* 77a, 78a).

55. The abridged *Code of Jewish Law* ('*Kitsur Shulhan Arukh*') compiled by Rabbi Solomon Ganzfried (1804-1886), which serves to the present as practical *halakhic* guide to Jews of many communities, states the regulation as follows (translation by Hyman E. Goldin, Star Hebrew Book Co., New York, 1928, Ch. 133, pp. 89-90):

"If a pregnant woman was affected by the odor of a certain edible and desired it, and it is certain that unless she partakes thereof she and the child may be in danger, therefore, if she said, 'I must eat,' even though her face did not undergo a change, or if it is noticeable that her face had undergone a change, although she did not say anything, she is quietly told it is Atonement Day, which has often the effect of allaying her desire. If, however, her mind is not soothed thereby, she is fed in the following manner: At first she is given just a taste, thus, the finger is dipped in the soup or the like, and applied to her mouth, for one drop will often tend to allay her desire. If, however, this is ineffectual, she is given less than the required quantity, but if her mind is not yet calmed thereby, she is given as much as she requires . . . When food is given to a woman in pregnancy or confinement, or to a sick person, it is placed before them, and they are told as follows: 'If you are sure that you may possibly be in danger unless you eat as much as you require, you may eat ordinarily until you feel satisfied. If, however, it is possible for you to eat less than the required quantity at one time, then act as follows . . .'"

The talmudic basis for this ruling is stated succinctly in *Yoma* 82a:

Our Rabbis taught: If a woman with child smelt the flesh of holy flesh (i.e., forbidden her to eat), or of pork, we put for her a reed into the juice and place it upon her mouth. If thereupon she feel that her craving has been satisfied, it is well. If not, one feeds her with the juice itself. If thereupon her craving is satisfied it is well; if not one feeds her with the fat meat itself, for there is nothing that can stand before (the duty of) saving life, with the exception of idolatry, incest and bloodshed . . .

This cardinal principle is in force even with regard to a *questionable* threat to life (*Mishnah Yoma* 8:6), and is reaffirmed unmitigatedly in the basic Codes (for example, Maimonides, *Mishneh Torah*, *Zmanim*, *Hilkhot Shabbat*, Ch. 2; *Hilkhot Shvitat Asor* 2:9).

56. Menachem Elon summarizes succinctly the prevailing *halakhic* position:

The majority of the later authorities (*aharonim*) maintain that abortion should be permitted if it is necessary for the recuperation of the mother, even if there is no mortal danger attaching to the pregnancy and even if the mother's illness has not been directly caused by the fetus (*Maharit, Resp.* No. 99). Jacob Emden permitted abortion "as long as the fetus has not emerged from the womb, even if not in order to save the mother's life, but only to save her from the harassment and great pain which the fetus causes her" (*She'elat Yaver*, 1:43). A similar view was adopted by Benzion Meir Hai Uzziel, namely that abortion is prohibited if merely intended for its own sake, but permitted "if intended to serve the mother's needs . . . even if not vital"; and accordingly decided that abortion was permissible to save the mother from the deafness which would result, according to medical opinion, from her continued pregnancy (*Mishpetei Uzziel, loc. cit.*) . . . In recent years the question of the permissibility of an abortion has also been raised in cases where there is fear that birth may be given to a child suffering from a mental or physical defect because of an illness, such as rubella or measles, contracted by the mother or due to the after effects of drugs, such as thalidomide, taken by her. The general tendency is to uphold the prohibition against abortion in such cases, unless justified in the interests of the mother's health, which factor has, however, been deemed to extend to profound emotional or mental disturbance [see also Unterman, In: *No'am*, 6(1963), 1-11; Zweig, *ibid.*, 7(1964), 36-56] See also *Encyclopedia Judaica*, (Keter, Jerusalem) 1973, Vol. 2, pp. 100-101.

57. *Deuteronomy Rabbah* 5:13:

. . . R. Joshua of Siknin said in the name of R. Levi: God agreed to whatever Moses decided. How? . . . God commanded him to make war on Sihon, as it is said, "And contend with him in battle," . . . but he did not do so, but (as Scripture has it), "And I sent messengers," . . . God said to him: "I have commanded you to make war with him, but instead you began with peace; by your life, I will confirm your decision; every war upon which Israel enter, they shall begin with (a declaration of) peace" as it is said, "When thou drawest nigh unto a city to fight against it, then proclaim peace unto it."

In the following paragraph, the *Midrash* (5:14) continues:

Who fulfilled (the command in) this section? Joshua the son of Nun. R. Samuel b. Nahman said: What did Joshua do? He published an edict in every place he came to conquer wherein was written, Whosoever desires to go, let him go; and whosoever desires to make peace, let him make peace; and whosoever desires to make war, let him make war. What did the Gergashite do? He turned and went away from before them (Israel). And God gave him another land, as beautiful as his own, namely, Africa; with the Gibeonites who sought to make peace Joshua made peace; but the thirty-one kings who came to fight with him God caused to fall into his hands . . .

Through paragraph 5:15, the *Midrash* elaborates on the greatness of peace: "Come and see how great is the power of peace . . ."

58. *Mishnah Gittin* 5:8.

59. *Genesis* 18:12-13.

60. *Yevamot* 65b; *Baba Metsia* 87a.

61. *Genesis* 4:10.

62. *Mishnah Sanhedrin* 4:5.

63. *Deuteronomy* 23:8; see also *Mekhiltah* on *Exodus* 13/17.

64. *Shabbat* 31a.

65. *Mishnah Baba Metsia* 4:10; *Baba Metsiah* 58b; see also *Tosafhot* on that page ("Except for three who descend . . .").

66. *Eruvin* 13b:

"For two and a half years were Beth Shammai and Beth Hillel in dispute, the former asserting that it were better for man not to have been created than to have been created, and the latter maintaining that it is better for man to have been created than not to have been created. They finally took a vote and decided that it were better for man not to have been created than to have been created, but now that he has been created, let him investigate his past deeds or, as others say, let him examine his future actions."

67. *Psalms* 100:2.

68. A passage in *Kings II* 3:14-15 (And Elisha said: 'As the Lord of hosts liveth, before whom I stand, surely, were it not that I regard the presence of Jehoshaphat the king of Judah, I would not look toward thee, nor see thee. But now bring me a minstrel.' And it came to pass, when the minstrel played, that the hand of the Lord came upon him.") is basis for the following talmudic exposition (*Shabbat* 30b):

" . . . the Divine Presence rests (upon man) neither through gloom, nor through sloth, nor through frivolity, nor through levity, nor through talk, nor through idle chatter (or, vain pursuits), save through joy (in the fulfillment) of *mitsvah* . . . Rab Judah said: And it is likewise thus for a matter of halakhah (i.e., that the study of the Law must be set into a context of joyfulness)."

See also, *Pesahim* 117a. The Rambam elaborates: "The prophets did not prophesy whenever they pleased, but had to concentrate their minds, resting, joyous and cheerful, and in solitude. For the spirit of prophecy does not descend upon one who is melancholy or indolent, but comes as a result of joyousness. . . ." (Maimonides, *Mishneh Torah, Mada, Hilkhot Ye-sode ha-Torah*, Ch. 7:4).

69. *Pesahim* 109a.
70. Moses ben Israel Isserles, ('*Rama*') (1530-1572), on *Shulhan Arukh, Orach Hayyim* 2:639.
71. *Zohar* (on *Va'yakhel*), Vol. IV, pp. 193-194 (Soncino Edition). See also, *Baba Kama* 82a; *Ketubot* 62b (and *Rashi* on the passage); *Rosh* (Asher ben Yechiel, 1250-1327) on *Baba Kama*, Chap. 7:19; Maimonides, *Mishneh Torah, Nashim, Hilkhoh Ishut*, 14:1; *Shulhan Arukh, Orach Hayyim*, Par. 280.
72. *Mishnah Avot* 3:4.
73. *Yerushalmi, Kiddushin*, concluding paragraph of Ch. 4.
74. The *Ba'al Shem Tov* (Israel ben Eliezer *Ba'al Shem Tov*, 1700-1760, founder of modern *Hasidism*) is quoted: "To serve the Lord in awe and joy . . . awe without joy is bitter gall. One should not feel regret (pain) at serving the Lord, blessed is His name; but should serve Him always only in joy. . . ." (*Ba'al Shem Tov* on the Torah, *Parshat Noach*, Par. 5). For the overriding importance attached in hasidism to joy in the service of God and to the renouncement of despair in all circumstances, see, *Sefer Meshivath Nefesh. Hishtapkhut Hanefesh*, published by the Publication Fund of *hasidei Bratzlav*, Jerusalem (Salant St. 36), 1977; and, sayings ascribed to R. Nachman of Bratslav (1772-1811) cited in: *Likkutei Maharar*, Part II, Entry 78, Lipo-Friedman Pub., Tel Aviv, 1968; *Likkutei Halakhot, Hoshen Mishpat, Hilkhoh Halva'ah, Halakhah* 5, Section 5; *Likkutei Halakhot: Hoshen Mishpat, Hilkhoh Avedah V'Metsiah, Halakhah* 2, Section 2.