

This is a continuation of Dr. Weiss's article in the Fall 1982 issue.

REFLECTIONS ON THE LAW OF THE RABBIS: Matrices and Dimensions

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THE PROSAICS OF SANCTITY

A Mystique of Action

Definitive differences between cultures can sometimes be perceived most clearly in the attempt to epitomize their motivating aspirations very concisely, by single-word value archetypes. In so rendering to their essence the major cultural antecedents in the making of Western man, a uniqueness of Judaic conception is brought into sharp relief.

For Greece, the word is *beauty* (“Beauty is truth, truth beauty, that is all ye know on earth, and all ye need to know”).⁷⁵ The apotheosis of aesthetics is a seminal theme in Western civilization, reaching dominance periodically, as in the Renaissance; beauty as such revered as ultimate good. It was not geographic and political concurrence alone that brought Judaism and Hellenism into mortal conflict, and engraved the conflict’s record permanently into Jewish eschatology and prayer.

For Rome, it is *order*. In the history of the West, order and obedience, uniformity and conformity, are Roman legacy come to the fore again and again as end values. Again, it is not coincidence that every form of authoritarianism that has made of these society’s goals as well as means has proven implacably hostile to the Jewish people.

Reason is the driving motivation of scientific rationalism; reason as such, not of necessity in concert with a system of ethics that draws directions and criteria. The battles that some proponents of Judaism have fought—erroneously—against scientific perspective in modern thought have undoubtedly been prompted far more by a refusal to consecrate reason and intellect in moral isolation than by any putative contradiction between knowledge of natural phenomena and Judaic teaching. That highly trained and highly intelligent Germans, scholars and scientists, played so central a role in the extermination of European Jewry has confirmed in our time the void of a rationalism disconnected from ethical imperative.

It is essentially abstract ritual, the magic of *sacrament*, that is at the pivot of Catholicism. The keys to deliverance do not lie, ultimately, with works or belief but with initiation to the sacrifice on the cross in the mystery of the Church’s rites. In the Lutheran streams of Christianity, *faith* and “faith alone” redeem; and, in the doctrine of Calvin, decision and choice are in effect taken out of man’s hands, his qualities and fate set by fiat of Divine *election*.

To all these ideations, Judaism dares radical contrast. In his options for completion and transcendence man is free, the instrumentality his—“Everything is in the hands of heaven except the fear of God, as it is said ‘And now, Israel, what does the Lord thy God require of thee, but to fear. . . .’”^{76, 77} The religion of Judaism is permeated by a mystique of action. The archetypic concept for the Jew is *mitsvah*; the medium of redemption is action, halakhah the materialization of the mystique.

There are, to be sure, contemplative and mystical strains in Judaism, but no pietism, ecstasy, or quietism are allowed currency if

not indissolubly tied to acceptance of the yoke of commandments—"I call heaven and earth to witness that whether it be Gentile or Israelite, man or woman, slave or handmaid, according to the deeds which he does, so will the Holy Spirit rest on him."⁷⁸ When the Tanna Shimon bar Yochai (the purported author of much of the *Zohar*) and his son Eliezer emerge from years of retreat in the desert and flamingly behold a world corrupt in its materialism, they come to peace when seeing an old man gathering sweet-smelling herbs in honor of the *Shabbat*.⁷⁹ It is the *mitsvah*, that transforms, not declarations of faith; beauty, order, sacrament are subsumed in the framework of *mitsvot*, and the Jew must constantly reelect himself to the priesthood of service. He can, as an individual, throw off the yoke of Heaven's kingdom and opt out of the People. Only the People itself is denied that freedom; it is forever nation to the King of Kings. In the midrash on Exodus 3:14, R. Johanan declares " 'I am that I am' to individuals, but as for the mass, I rule over them even against their desire and will, even though they break their teeth, as it is said 'As I live, saith the Lord God, surely with a mighty hand and with an outstretched arm, and with fury poured out, will I be King over you'⁸⁰, "⁸¹ and the midrash's commentary *Matnat Kehunah* elaborates "For the individual who wishes to choose Me, I shall be Lord, and if he wishes not, it is in his hands to cast off the yoke; but to the mass I do not give the freedom to cast off the yoke of heaven."

God is source of all sanctity; His glory fills the cosmos. Serving as His active partner in this world, man must participate in sanctity's actuation.

The Master of the Universe seems not content to exist unto Himself, ineffably enveloped in His essence; He seeks, instead, a dwelling place among human beings, within the House of Israel, and for this the people must enter the covenant of holiness. That entrance is not given passively. Rather, man is obliged to reflect and reciprocate the attributes of the Divine in a thrust of doing, and for the Jew the ground of action is the *imitatio dei* or *mitsvot*. The mystery is that in their course, man is transformed into a sanctifier; in the matrix of the commandments the Jew comes to share with the Creator the power to transmute. Man sanctifies place, not the place man;⁸² and by his will, symbols, and acts, even the most basic of his biological functions can take on transcendence. Without the volition and doing by the person, sanctity remains abstract and withdrawn from the tangible world of man. Halakhah is indeed a blueprint of personal and societal sanity, but it is also far more than that. It is the medium of illumination of all the corners of human existence.

The ambition to bring man to holiness is certainly not singular to Judaism. What is unique is the conception that the potential for holiness is resident in all aspects of existence and in the very tissues of man's physical being. The address of Judaism is simple and uncompromising: Denial, explicit or tacit, of the indivisible ubiquity of human capacity to sanctify and be sanctified cannot but consign to failure from the outset every effort to create a hallowed society. Judaism is unswerving in that insistence. To view man and his life as an immiscible pastiche of possibilities, of zones sacred and profane, negates the cohesiveness of human potentiality and legitimizes routes of escape from the pursuit of holiness. The capabilities for both the holy and the demonic are powerful and interwoven in all of man's fabric—the choice and choosing his—and an *a priori* sufferance of moral duality or indifference is also a coming to peace with imperfection and malevolence.

Such peace is anathema to Judaism. The faith indeed does not demand the impossible; it *is* cognizant of human limitation; but it goads to an unrelenting striving for a higher reach, even beyond what seem the limits of each person's capabilities. That is why halakhah is so characteristically a system of tension, behavior at one and the same time set and defined and yet always directed towards the goal of *lifnim mishurat hadin*—"these are the things to which there is no finite measure. . . ." ⁸³ That is why the Jew can never be assured that he has completed the task, ⁸⁴ and also why the cadres of the righteous in each generation are of such heterogeneous character. On the substratum of halakhic satisfaction, individual men and women can erect their sanctuaries in a devotion of study or deed, prayer or tune, each person wrestling for transcendence in the dimensions *both* of halakhah and of his own nature and abilities.

And that is why halakhah is not satisfied to restrict its address to the patent heights of human being and endeavor. In its chain of celebration, no link is insignificant.

The commandments stand, to be observed and to be fulfilled *lifnim mishurat hadin*, whether or not human reason is equipped to penetrate their individual meaning. Some demands may always remain mystery, but the Jew is challenged, too, to illuminate his observances by the light of his understanding. ⁸⁵ One, broad frame of reference for surmise of the import and implication of many halakhot is here proposed: the Law as a process of value inscription and concretization by which the sublime and the ordinary are joined in *kedushah*.

The Dignity of All that Is

All things and phenomena are derivative of primal creation, and are endowed thereby with the sanctity that succeeds from the Creator. The *Tanya* (Shneur Zalman of Liadi, founder of the *Chabad* movement in hasidism) declares that the spark of Divine creativity remains forever resident in every particle of all matter—animate and inanimate—and that matter is preserved and kept from instantaneous reversion to chaos only by this quality.⁸⁶ This thought is distinguished categorically from pantheistic conceptions: Sanctity is not an amorphous, autonomous attribute of the existing cosmos, but is bestowed on creation, intercalated in all that is, *by* the discrete will and act of the Creator. And, the thought is not left suspended as mystic aphorism; rather, it is engraved in halakhah, and it propels a sequential tutorage to sensitivity.

Wanton despoliation of anything, of even the inanimate and plants, is forbidden. The fruit-bearing tree must be spared at time of war. When the writer, as child, once defaced a study-desk in his yeshivah classroom, he was reprimanded by the rabbi-teacher for ingratitude—the desk had served the pupil in his studies! Pain must not be caused an animal. The laws of slaughtering prevent the infliction of suffering, and the brutalization of slaughterer: he must be a man known for his gentleness and piety.

Of the many explanations ascribed to the order of *kashrut*, one seems inescapable: In a compromise with vegetarianism, *kashrut* teaches that not all that man wants, and is able to attain, is his for the taking. Man's mastery of the world is curtailed; he is given dominion as agent of the world's perfection, not as the great devourer of all that breathes.

And then—and feasibly perhaps only then—comes the inviolable dignity of fellow-man. Perhaps without the inculcation of sensitivity, to the inanimate and the rest of the living world, it is chimerical to demand that man "love" his neighbor. Why? How? We are phylogenetic inheritors of forceful instincts of aggression and territoriality; we are made of the stuff of other creatures, too, not only of the Divine breath given us; and we have persuasive biological cause to react instinctively even to the remote threat and competitor. It may be only in a constant imprinting of sensitivity and of recoil from violence that man can truly come to perceive in other men worth and fragility, and the stamp of the Divine.

The training of halakhah is progressive, and continuous. From out of the encompassing training ground of curtailment there evolve

the demands of discipline in interpersonal relationships. And from a foundation in respect and service to parents, humaneness to other human beings is exacted in widening circles, to family and clan and nation and all mankind. The sustenance of family is difficult as the crossing of the Red Sea, yet the charge to charity does not stop there; the poor of my town come first, but I owe justice and loving-kindness even to the unknown, distant stranger.⁸⁷

Choice is given to man, and a large measure of control of what is about him, but there is placed on him, too, the infinite responsibility of stewardship as partner with the Master of the Universe. Neither sexual passion nor any other are given free rein; norms and guidelines are set even on the most inspired human motivations, the love of man and the love of God, lest the intent fall short for lack of orientation or for a resort to unholy means.

Halakhah educates to refrain from deeds and objects otherwise in man's grasp. Ascetic withdrawals are not encouraged; yet renouncement of some that is possible is built into the specifications and context of the Law, is indeed a definition of holiness.⁸⁸

Judaism places trust in the imprinting of values far more than in theory and proclamation. Man is given the equipment of his flesh and blood for the tasks he is assigned, even for that of seeking transcendence; the infinite and ineffable can become substantive for him only in their integration into the totality of his being. There is no sentience divorced from the cells of my body; these set the boundaries of my experience and the lines of my projections. The search for sanctity and santification is circumscribed for each man by the individual appositions of his body, mind, and soul; the tangible and intangible, the temporary and the permanent, integrate in each unique human microcosm.

That integration must have a ground plan of learning. Judaism appears to begin with a teaching of deference for the individuality and integrity of all things, so that man, the great admixer, will sometimes be brought to pause. Perhaps it is to bring man to realize the limits to his temporal sway, and to awe—not an inherited trait—that he is at times held short of his powers at intervention. Perhaps that is one cause for the proscriptions against the mixing of wool and flax in his garments, ox and ass on his teams, grain and vine in his fields, milk and meat at his table; against the defacement of his body in mourning or joy; against other blurrings of distinction. Unbridled arrogation to hegemony is usurpation.

Perhaps the halakhot of purity and impurity carry an intention of contrast, conferring on man the ability to discern more clearly

purity in his physical mold. No unseemly thing is to transpire in the camps of the Children of Israel, and the soldier carries with him a tool to cover his ordure; but at the far from sublime moment of relieving nature, the Jew is bidden to acknowledge to the Creator the wondrousness of his form.

Judaism would have each fiber of the person affirm His glory—*kol atsmotai tomarnah, Hashem*.⁸⁹ The attaining of that ability, by all human beings in their infinite variegation of physical and spiritual endowment, necessitates a setting. Words alone may leave no mark, but the Jew who fastens phylacteries to arm and brow while pronouncing “And I will betroth (“bind”) thee unto me forever; yea, I will betroth thee unto me in righteousness, and in justice, and in loving kindness, and in compassion. And I will betroth thee unto me in faithfulness; and thou shalt know the Lord”⁹⁰ engages his material self in the acting-out of thought, and binds the abstract to a level of personal reality.

The God of Judaism is wholly boundless, and the Law of the Jew can know no recesses. His Oneness and omnipresence take on reality of meaning to man in the intransigent unification by halakhah of all the dimensions of existence, the exalted and the prosaic merging in the requital of sanctity to become unity.

INTENT AND STRUGGLE

Anguish and Divergence

Divergence of opinion characterizes the Law and its unfolding, inevitably. There is a guiding hierarchy of principle and precedence but also rivalry for effectuation in given circumstances, and anguishing dilemmas are often encountered in their applying. For instance, the preservation of life is a guiding dictum at the acme of the halakhic scale of values. Am I, then, obligated to risk my own, am I indeed permitted to do so, in the attempt to save another?⁹¹ May a community hand over to abuse or death a person wanted by a besieging army on promise that the siege will be lifted upon satisfaction of the demand?⁹²

Care for the recovery of a patient takes priority over most other halakhic considerations. Should, then, the patient be told the nature of his illness, even on request? The question must be resolved halakhically in the larger context: Will the knowledge speed or impede his return to health? But into the resolution there enter numerous factors, many uncertain and intangible—the psychological

state of that person, his situation in life, the prognosis of the malady—and the uncertainties cannot but be reflected in the idiosyncratic tendencies and weighings of the deciding rabbis.⁹³

No indignity must be inflicted on the body of the dead, nor may profit be reaped from his tissues, but even according to the most stringent rulings these concerns are overridden, and post-mortum examination in order if the information gained is likely to benefit another, ill person *at hand* whose condition has been refractory to treatment. How is the stipulation “at hand” to be taken? In light of the means of medical communication available when the *psak* (halakhic ruling) was first formulated, or of those now common?⁹⁴

The solutions sought from within the Law are often agonizingly elusive in the clamor of seemingly conflicting root values for requital. How, then, can the spirit of the Law be consummated faithfully when its renditions must always concretize in the exigencies of circumstance? How can the thrust be preserved over the centuries and millennia, when the passage is perforce by an inconstant medium—its judges?

There is indeed no uniform answer to be found for every halakhic quandary; and, there is a quintessential demand for comprehension on which the mainstream flow of halakhah is contingent.

Comprehension

It is not enough to be informed of the Law; its ethic must be fathomed, its contexts and matrices perceived discerningly. Without the insight, halakhah, as every framework of deportment, risks distortion and a regressive sliding into opaque, pedantic legalism. Signally sensitive to the danger, the Rabbis countered not only by constant frontal admonition, but by the very format they gave to the recording of the Oral Law. An interwoven meshwork of *aggadah* and halakhah, the volumes of the Talmud represent an ongoing dialogue of idea, ideal, and tangible jurisdiction. Only by an inclusive perspective are order and purpose revealed in what otherwise appears not infrequently as a fragmentation of assertions. It may not be at random, for instance, that the Mishnah in *Rosh Hashanah*⁹⁵ interrupts a treatment of the required devotion, technicalities, and time that pertain to the blowing of the *shofar* with the following sentences:

(It is written) “And it came to pass, when Moses held up his hand that Israel prevailed, etc.”⁹⁶ Now did the hands of Moses wage war or crush the enemy?

Not so; only the text signifies that so long as Israel turned their thoughts above and subjected their hearts to their Father in heaven they prevailed, but otherwise they fell. The same lesson may be taught thus. (It is written), “Make thee a fiery serpent and set it up on a pole, and it shall come to pass that everyone that is bitten, when he seeth it, shall live.”⁹⁷ Now did the serpent kill or did the serpent keep alive? No; (what it indicates is that) when Israel turned their thoughts above and subjected their thoughts to their Father in heaven, they were healed, but otherwise they pined away.

The analogies subsume the commandments of the *shofar*: It is a turning to the Father above that is at heart of the law of the ram’s horn.

The turning takes on, in itself, paramount value. The Father cannot be known to man. *Cognito dei* can only be approximation of the attributes He has disclosed; even to Moses, the final portal of knowledge remains shut.⁹⁸ Yet, the journey to come closer to an apprehension of God is an absolute imperative for all that it cannot be completed. Without the effort, there can be no cleaving to Him (*dvekuth*), and no entry into the partnership with Him for which man is created. The only option given the Jew for the striving to *dvekuth* is immersion, all his life, in the halakhic *imitatio dei*. But it is, too, beyond human capacity unerringly to follow in the path of His attributes—“For there is not a righteous man upon earth, that doeth good, and sinneth not”⁹⁹—and therefore the yearning to know and the intent of the walking are invested with decisive force.

The consequence assigned by the Rabbis to learning is balanced by their regard for motivation.

A favorite saying of the Rabbis of Yabneh was: I am God’s creature and my fellow is God’s creature; my work is in the town and his work is in the country; I rise early for my work and he rises early for his work. Just as he does not presume to do my work, so I do not presume to do his work. Will you say, I do much, and he does little? We have learnt: One may do much or one may do little; it is all one, provided he directs his heart to heaven.¹⁰⁰

The thought is not an isolated nicety of *noblesse oblige*. It comes to the fore recurrently, at times with pathos:

It happened that R. Hanina b. Dosa went to study Torah with R. Johanan ben Zakkai. The son of R. Johanan ben Zakkai fell ill. He said to him: Hanina, my son, pray for him that he may live. He put his head between his knees and prayed for him and he lived. Said R. Johanan ben Zakkai: If Ben Zakkai had stuck his head between his knees for the whole day, no notice would have been taken of him. Said his wife to him: Is Hanina greater than you are? He replied to her: No; but he is like a servant before the king, and I am like a nobleman before a king¹⁰¹

And it is brought to consummation in halakhic adjudication. In heated controversy on a point of law, the lone minority disputant, R. Eliezer, rallies preternatural signs in support of his position. The assembled Sages, however, remain adamant in theirs. When then a voice is heard from heaven proclaiming the correctness of the dissident scholar's stand, they refuse: Torah has been granted to Israel, and understanding of its message must now be sought in the council of the Rabbis, not in declarations from on high! And God? God smiles with joy: "My children have defeated me, my children have defeated me!"¹⁰² R. Eliezer is right, in fact, but it is the Sages' faithfulness to the divine assignment that carries: "Thou hast long since written in the Torah at Mount Sinai 'After the majority must one incline'."¹⁰³

'Elu Ve'elu Divre Elokim Hayyim

The truth that *halakhah* seeks to distill has a prismatic quality. It may lie on both sides of an issue contested for the sake of heaven. And in the final *de facto* ruling that fixes the course of action, the stance and character of the protagonists may enter as determinants.

For three years there was a dispute between Beth Shammai and Beth Hillel, the former asserting, "The *halakhah* is in agreement with our views" and the latter contending, "The *halakhah* is in agreement with our views." Then a *bat kol* (heavenly voice) issued announcing, "*elu ve'elu divre elokim hayyim* (the utterances of both are the words of the living God), but the *halakhah* is in agreement with the rulings of Beth Hillel." Since, however, "both are the words of the living God" what was it that entitled Beth Hillel to have the *halakhah* fixed in agreement with their rulings?—Because they were kindly and modest, they studied their own rulings and those of Beth Shammai, and they were even so (humble) as to mention the actions of Beth Shammai before theirs.... This teaches you that him who humbles himself the Holy One, blessed be He, raises up, and him who exalts himself the Holy One, blessed be He, humbles; from him who seeks greatness, greatness flees but him who flees from greatness, greatness follows....¹⁰⁴

How can patently conflicting rulings both be the word of the living, infallible God, and how is man to know which road to take? Later rabbinic authorities offer various rationalist solutions: The specific aptness of a halakhic decision may hinge on nuances of circumstances and time; the pertinence of one interpretation can sometimes come to light only in counterpoint to a less felicitous one, and both versions are necessary, accordingly, in pursuit of the way.¹⁰⁵ The Talmud itself appears to leave standing the mystery of truth diffracted in the prism of divine will:

And he took up the text and expounded: "The words of the wise are as goads, and as nails well planted are the words of masters of Assemblies, which are given from one Shepherd."¹⁰⁶ Why are the words of Torah likened to a goad? To teach you that just as the goad directs the heifer along its furrow to bring forth life to the world, so the words of the Torah direct those who study them from the paths of death to the paths of life. But (should you think) that just as the goad is movable so the words of the Torah are movable (i.e., unstable; of impermanent authority); therefore the text says: "nails," . . . the text says: "well planted;" just as a plant grows and increases, so the words of the Torah grow and increase. 'The masters of Assemblies:' these are the disciples of the wise, who sit in manifold assemblies and occupy themselves with the Torah, some pronouncing unclean and others pronouncing clean, some prohibiting and others permitting, some disqualifying and others declaring fit. Should a man say: How in these circumstances shall I learn Torah (i.e., in view of the contradictory opinions held by the Rabbis)? Therefore the text says: "All of them are given from one Shepherd." One God gave them (the divergent opinions do not originate from different revelations, but derive from the one Torah); one leader uttered them from the mouth of the Lord of all creation, blessed be He . . . and get thee a perceptive heart to understand the words of those who pronounce unclean and the words of those who pronounce clean, the words of those who prohibit and the words of those who permit, the words of those who disqualify and the words of those who declare fit.¹⁰⁷

The mystery stands as challenge. So does the imperative to wrestle with it. Verity is found in '*manifold* Assemblies' congregated in search of the One God's will, and the intent of the search transforms and catapults the seeker into the dimension of truth.

In the midrashic work '*Lekah Tov*' (also known as *Pesikta Zutarta*), Rabbenu Tuviah b. R. Eliezer writes:

This is the way of the world: Every (scholar, authority) in his generation . . . and all who serve the Lord our God in truth are called His servants . . . and no one generation can decide and rule for all . . . but rather, in each generation, the leaders of Israel inform the People of God of the way of God, and legislate and renew and add to what has come before, in the service of our Lord God. . . .¹⁰⁸

The courage of the scholars in claiming responsibility for the working out of divine law is strikingly evident not only in the formative periods of Judaism. The assertion is reaffirmed repeatedly, and in identical idiom, down to modern times. We hear it echoed, for instance, in the writings of the Maharal of Prague,¹⁰⁹ and in the declaration of the hasidic master known as the Seer of Lublin: (" . . . there are two Torahs, the Written Torah and the Oral Torah. The Written Torah is engraved and imprinted only in outline, whereas the Oral Torah is committed by the Holy One, blessed be His name, to each generation, so that the righteous of every age will

themselves interpret it and rule from it according to their intellect and the requirements of the time’);¹¹⁰ and we find it expressed today in the dictum that the Jew must follow the specific rulings of his *mara de’atra*, the halakhic authority of his own place and time.

The teaching is unmistakable. Intent and the *struggle* to comprehend and to near are axiomatic constituents of the halakhic matrix. Without this teleology, obedience can only too readily turn lifeless, become grotesque. The warning of the Ramban is timeless: Unresponsive to the inner voice of the Law that summons to sanctity, one risks a life of abomination even while fulfilling the specific articles of halakhah.¹¹¹ ‘R. Joseph learnt: ‘And thou shalt teach them the statutes and the laws, and shalt show them the way wherein they must walk, and the work that they must do’¹¹²—‘And thou shalt show them’—this refers to their house of life (*Rashi*: industry and trade); ‘the way’—that means the practice of loving deeds (*gemilut hasadim*); ‘they must walk’—to sick visiting; ‘wherein’—to burial; ‘and the work’—to strict law; ‘that they must do’—to act beyond the requirement of the Law (*lifnim mishurat hadin*). . . . R. Johanan said: Jerusalem was destroyed only because they gave judgments therein in accordance with biblical law. Were they then to have judged in accordance with untrained arbitrators?—But say this: because they based their judgments strictly upon biblical law, and did not go beyond the requirements of the Law (*lifnim mishurat hadin*).’¹¹³ To act *lifnim mishurat hadin* compels aspiration and a grappling for enlightenment; the alternative is desolation.

Tension and Partnership

Judaism will not validate an intangible, discarnate attachment to moral principle as adequate for man’s attainment. Judaism is intolerant in its insistence that the absolute values it posits be gripped and imprinted into the substance of the person on templates of halakhah. Without that engraving, the address of God to man remains elusive, unreal. It is by the intermediacy of accessible halakhic dicta that man must set out to encounter the divine.

There is a cardinal tension in the Law that relates practice to understanding; a dialectic spirituality. The Jew must live with the tension; it guarantees the dynamism of his moral existence.

God and Torah recede to unreality without the ethical construct of halakhah—

R. Huna and R. Jeremiah said in the name of R. Hiyya b. Abba: It is written ‘They have forsaken Me and have not kept My law’¹¹⁴—would that they had

forsaken Me but kept My law, since by occupying themselves therewith, the light which it contains would have led them back to the right path. R. Huna said: Study Torah even if it be not for its own sake, since even if not for its own sake at first it will eventually be for its own sake. . . .¹¹⁵

Observance of the Law is statutory: In satisfaction of its dictates there is resident, intrinsically, the opportunity for grace, humanity, transcendence. But when observance comes to be complacent, frozen in convention and rent away from the struggle to *imitatio* and *cognito dei*, it is at hazard of losing trenchancy.

The Law must be heeded, and it must be apprehended. Apprehension of the motivating reasons and inner demands of halakhot is not constrained, but open to the variegated powers of human imagination. And it is the complementary task of the individual to recruit, constantly, the strength of conscience and intellect to the transformation of all observance from form and mannerism to the sublime: approximation of the Giver of the Law.

But is it given to heed the Law when some pronounce clean and others unclean, some prohibit and others loosen, some negate and others approve? “Get thee a perceptive heart to understand. . . !” But where lie the margins of error? When are the farther edges of permissibility trespassed? Do the criteria lie only with individual perception and intent? If that were so, the stream of the Law would quickly lose direction and dissipate in an unrecognizable delta of personal branchings.

Resolution is inherent in the role that has devolved on *knesset Israel*—the body organic of the Jewish people—in its unceasing interaction with God. The People is not merely a passive receptacle of a static revelation. The dialogue is, rather, open-ended, and the People active respondent and forge of Torah, the crucible in which revelatory disclosure is held forever incandescent, dynamic, timeless.

Torah is at once abiding and in continuous flux: Its authority and authenticity are immutable, but both our percipience of its address and the specifications for our behavior change.

Rab Judah said in the name of Rab, When Moses ascended on high he found the Holy One, blessed be He, engaged in affixing coronets to the letters (small strokes written on top of the letters). Said Moses, “Lord of the Universe, Who stays Thy hand (i.e., is there anything wanting in the Torah to make these additions necessary)?” He answered, “There will arise a man, at the end of many generations, Akiba b. Joseph by name, who will expound on each tittle heaps and heaps of laws.” “Lord of the Universe,” said Moses, “permit me to see him.” He replied, “Turn thee around.” Moses went and sat down behind eight rows (of Akiba’s disciples; and listened to the discourse on the law). Not being able to follow their arguments he was ill at ease, but when they

came to a certain subject and the disciples said to the master “Whence do you know it?” and the latter replied “It is a law given unto Moses at Sinai” he was comforted. . . .¹¹⁶

The medieval talmudist Yom Tov Ben Avraham Ishbili (“Ritba”) gave lucid exposition to the dual truth of halakhic magistracy: “The Lord of the Universe committed decision (of halakhah) to the sages of Israel in each generation, and if they decide in one generation that a ruling is thus and in another that the ruling is different, behold both are the words of the living God.”¹¹⁷

The idea is echoed by the hasidic master Levi Yitzchak of Berditchev. In discussing a conflict of opinion between, ostensibly, the *Rishonim* Rabbi Shlomo Yitzchaki (*Rashi*) and Rabbenu Tam on the *mitsvah* of *tefillin*, the Berditchever writes that the latter ignored *Rashi’s* claim that Moses our teacher sided with him and asserted that, the Torah having been given, it is now in our hands to interpret the Law by the tools of our intelligence. Levi Yitzchak goes on to refer to the Talmudic term ‘*teku*’ which appears frequently to indicate that a Rabbinic dispute remains unresolved:

“*teku*” is an acronym, meaning “The Tishbite (Elijah the Prophet) Shall Resolve Difficulties and Problems.” At first glance, this would seem surprising! This shall take place after the coming of the Redeemer. Why, then, shall Elijah be the one to resolve the outstanding difficulties, seeing that Moses himself shall be there, who gave us Torah and *mitsvot*—why shall it not be he who shall provide the answers? . . . Let us consider the matter briefly. With regard to the controversy between Beth Shammai and Beth Hillel (viz., *Eruvin* 13 b), it is said that the utterances of both are the words of the living God. This is to be understood as meaning that a person learns the rulings of the holy Torah according to his comprehension. If the person is immersed in the world of *hesed* (goodness, grace, mercy, love, charity, kindness) then all (that he rules) is pure, permissible, and acceptable. And so the opposite: If his measure is that of *gevurah* (might, strength, in contradistinction to kindness), then (his rulings are not accepted). And behold, the character of Beth Hillel was the character of *hesed* and therefore Beth Hillel ruled with leniency, whereas Beth Shammai had the character of *gevurah* and accordingly tended to stringency, although in truth each one, from his position, (spoke the) utterances of the living God. . . . And behold, the Rabbis who came after the generation of Beth Shammai and Beth Hillel saw that the world must be conducted in *hesed* and for this reason set the law as it was taught by Beth Hillel in every instance for leniency. And now consider, who is able to ascertain this, that the world must be managed in *hesed* so that the law shall be laid down according to his opinions? Only one who lives in this world can know how the world should be conducted, but someone not of this world cannot conceive of this at all. Now, Elijah is forever alive and never tasted the taste of death (*Note*: In the Scriptural narrative, Elijah did not die, but ascended living to heaven; and, tradition has it that he has since walked the earth in disguise as God’s emissary to the Jewish People), and therefore it is he who is apt to resolve difficulties and problems of the Law for he knows how the world is to be conducted.¹¹⁸

Again, the centrality of mercy and love as the criteria of living halakhah, and again, the Jew as repository of the tradition, dynamically engaged in its perception and unfolding.

Rav Shmuel Ashkenazi of Jerusalem pointed out to the writer that Levi Yitzchak of Berdichev was, in fact, inaccurate with regard to the supposed debate between *Rashi* and Rabbenu Tam: Rabbenu Tam invokes Moses to come and adjudicate between himself and his opponent, who was not *Rashi* but either Rabbi Eliahu of Paris or Rabbi Ephraim of Regensburg.¹¹⁹ In one of the versions of this polemic, Moses decides against Rabbenu Tam and the latter refuses to accept the verdict and exclaims: Moses, you have erred! This arrogation of responsibility is not wholly surprising in light of the talmudic precedent of refusal to heed even a heavenly voice that calls out to support a minority opinion!

The Jewish people indeed possess an inheritance of contentiousness with God since Abraham argued the case for mercy to Sodom and its evil precincts; the drive to dispute with the Master of the Universe, on the strength of His revealed ethics, has come to recent prominence in hasidism, God Himself being invited to courts of justice to justify His ways or ordering the affairs of the world.¹²⁰ (The view by Conservative scholars of a “Catholic Israel” as active partner with the Divine in setting the Law only recapitulates a very old, formative proposition.)

Halakhah should not be thought of as “changing” or “developing” with time, as if in labile metamorphosis under the sway of fluctuating circumstantial determinants. “Unfolding” is the far more accurate designation of halakhic kinetics (“The Holy One, blessed be He, gave the Torah unto Israel like wheat from which to derive fine flour, or like flax from which to make a garment.”)¹²¹ The fulcrum of the Law’s concern is at the constant core of man’s nature. The inflections that take place in the modes, conceptions, and behavioral norms of individuals and societies may appear formidable but they are, in fact, accessory, not basic, to the human situation. Halakhah is indeed inclusively responsive to the permutating needs posed by fluid constellations of second-order experiential variables, both in the sweep of its axiomatic tenets and in its indigenous tools of application, but the Law’s thematic ground line does not, need not, and must not change. The unfolding is a dynamic variation of immutable themes.

There must be guidelines, clearly, to the passage of the unfolding. When can God be imagined to smile “My children have defeated Me?” But the guidelines for a living Torah cannot be static. The compass point indeed transects time, but the charting requires

the uninterrupted interaction of the partners, God and *corpus mysticum* of the People of Israel in the matrix of revealed Torah. Not a passive relationship, but the contending that brought Jacob to be Israel. The engagement, eternal, makes for an indivisible fabric. It is specious exercise to attempt to unravel and identify skeins of the Divine and of the human in the flowering of the Law. Since Sinai, halakhah is the composition of a melded partnership.

The safety of charting can be assured only by intimate adhesion to the community of Israel that arrogates to divine partnership.¹²² That is why removal from that body organic is ultimate heresy. The life of the soul has its individual, personal dynamics, the contention of the People with God its collective own, and the Jew must move throughout his days in each of these dimensions and between them; it is the rhythm of halakhah.

(To be continued)

NOTES

75. Keats, John. *Ode on a Grecian Urn*.
76. Deuteronomy 10:12.
77. *Niddah* 16b.
78. *Tana d.b. Eliahu, Rabbah*, Chapt. 9:a.
79. *Shabbat* 33.
80. Ezekiel 20:33.
81. *Exodus Rabbah* 3:6.
82. Meir Simchah Hacoen of Dvinsk, *Meshekh Hokhmah*, on Exodus 19:13.
83. *Mishnah Peah* 1:1.
84. *Mishnah Avot* 2:21.
85. A sharp distinction must be made between the *search* for import and context of specific *mitsvot* that are set forth in Scripture without explication, and the attempt to *delimit* a commandment to temporal insight. The search is a component of the challenge of Judaism to the Jew; it has come to puissant expression in classic Judaic literature; it is never to be judged accomplished; newer and more profound understandings are rewards of perseverance. A static or stipulatory affixation of purpose to a *mitsvah* is, in contrast, impermissible constraint. It holds dangers of anthropocentric and anthropomorphic strictures on the manifestation of Divine will. The distinction appears to be at the heart of a Talmudic passage that is, at first sight, perplexing: the Mishnah in *Berakhot* (5:3) states "If one (in praying) says 'May Thy mercies extend to a bird's nest' . . . he is silenced," and the *Gemara* amplifies: "What is the reason for silencing him? . . . Two *Amoraim* in the West, R. Jose b. Abin and R. Jose b. Zebida, gave different answers; one says it is because he creates jealousy among God's creatures, the other, because he presents the measures taken by the Holy One, blessed be He, as springing from compassion, whereas they are but decrees." The latter interpretation seems puzzling (see, *Maharsha* [Edels, Samuel Eliezer b. Judah Halevi, 1555-1631], *Hiddushei Aggadot*, on *Megillah* 25a, where a similar reading is found following Mishnah 4:9). *Rashi*, on the *Gemara* in *Berakhot* (33b), translates the 'measures' of the Holy One as His *mitsvot*, and continues: "And He made them not for compassion, but to place on Israel the statutes of his decrees, to make known that they (Israel) are His servants and the keepers of His commandments, decrees, and

- statutes even with regard to matters on which Satan and idolaters could present the argument 'What is the need (i.e., purpose, use, justification) of this commandment?' " All commandments stand, to be rendered satisfaction, even those whose specific significance remains wholly recondite; and, when meaning is ascribed to law, it must be with caution and reserve, so that observance not become contingent on the *imputation's* attractiveness or acceptance. The same consideration may underlie the Talmudic practice of not revealing the avowed reason for a Rabbinic measure during the twelve months after its pronouncement, lest disaccord with the motives undermine statutory observance (*Avodah Zarah* 35a).
86. Shneur Zalman of Liadi (1745-1813), *Likkutei Amarim, Shaar Haylehud Ve'Haemunah*, Ch. 1.
 87. *Pesahim* 118a: "R. Shizbi said in the name of R. Elazar b. 'Azariah: A man's sustenance is as difficult (to provide) as the dividing of the Red Sea, for it is written, 'Who giveth food to all flesh,' and near it, 'To Him who divided the Red Sea in sunder.' *Baba Metsia* 71a: "R. Joseph learnt: 'If thou lend money to any of my people that is poor by thee;' (this teaches, if the choice lie between) my people and a heathen, 'my people' has preference; the poor or the rich—the 'poor' takes precedence; thy poor (thy relative) and the (general) poor of thy town—thy poor come first; the poor of thy city and the poor of another town—the poor of thine own town have prior rights. . . ." See also, *A Rabbinic Anthology*, C.G. Montefiore and H. Loewe, eds., Jewish Publication Society of Philadelphia, 1960, Chapt. XVI (On Charity) for a representative selection of Rabbinic thought on charity, and of the Sages' emphasis on the inclusiveness of the mandate—charity to be extended to all who are in need—and on the obligation to accomplish it in awareness and respect of the recipient's innate human dignity, status in life, and sensibilities.
 88. *Leviticus Rabbah* 24:5,6; Nahmanides, *Commentary on the Torah*, on Leviticus 19:2.
 89. Psalms 35:10.
 90. Hosea 2:21-22.
 91. *Baba Metsia* 62a; see also: Rosenbaum, Irving J. *The Holocaust and Halakha*, Ktav Pub. House, N.Y., 1976; Guttmann, Alexander *The Holocaust. An Anthology of Responsa*, Jewish Institute of Religion, Cincinnati, 1975.
 92. Daube, David *Collaboration with Tyranny in Rabbinic Law*, Oxford Univ. Press, 1965.
 93. Aviner, Shlomoh Chaim Hacohen, "Ha-amadat Holeh Mesukkan Al Matsavo," *Assia*, 5(3), 39-43, 1978, and discussion by Glick, Shimon on the subject, *Assia*, 5(4), 33-34, 1978.
 94. Jacobovits, Immanuel *Jewish Medical Ethics*, Bloch Publishing Co., N.Y., 1975, Ch. 12, pp. 132-152.
 95. *Mishnah Rosh Hashanah* 3:8.
 96. Exodus 17:11.
 97. Numbers 21:8.
 98. Exodus 33:18-23; and see Note 35.
 99. Ecclesiastes 7:20.
 100. *Berakhot* 17a.
 101. *Berakhot* 34b.
 102. *Baba Metsia* 59b.
 103. Exodus 23:2.
 104. *Eruvin* 13b.
 105. *Rashi* Ketubot 57a; 'Hida' (Azulai, Haim Joseph David, 1724-1806), *Marit Ha'ayin*, on *Eruvin* 13b; and, *D'vash Le'pi*, 4:11.
 106. Ecclesiastes 12:11.
 107. *Hagigah* 3b.
 108. R. Tuviah b. R. Eliezer (11th Century), *Pseikta Zutarta (Midrash Lekah Tov)*, on Genesis, Buber, S., ed., Rom Publishers, Vilna, 1880, p. 78.
 109. Judah Loew ben Bezalel of Prague ('Maharal,' 1525-1609), *Bel'er Hagolah*, "Yahaduth" Publishers (Standard Edition), Jerusalem, 1971, pp. 19-21. (See also: Azulai, H.J.D., See Note 105).

110. R. Meir Rothenberg Halevi, citing the Seer of Lublin (1745-1815), In: *Or La'Shamayim*, Lemberg, 1850, p. 48.
111. Nahmanides; see Note 88.
112. Exodus 18:20.
113. *Baba Metzia* 30b.
114. Jeremiah 16:11.
115. *Lamentations* Rabbah, Proems 2.
116. *Menahot* 29b.
117. *Hiddushei Ha-Ritba* (Yom Tov ben Avraham Ishbili, 1250-1330), on *Eruvin* 13b. There are repeated assertions in Rabbinic literature to the effect that the words of the Rabbis are no less important and precious to Israel than those of Scripture itself, and perhaps, in the hyperbole of Rabbinic enthusiasm, even more so. For instance, the *Gemara* in *Avodah Zarah* (35a): "What is the meaning of the words 'For thy love is better than wine?' When R. Dimi came (from Palestine) he explained it thus: The Congregation of Israel declared to the Holy One, blessed be He: Master of the Universe! The words of thy beloved ones (*Rashi: divre sofrim*) are more pleasant to me than the wine of thy Torah." I. Epstein adds (Note, in Soncino Edition): "The verbal expositions of the Sages are more precious than the written words of the Torah. (For it is the unwritten Law that supplements the written Law and completes it.)"
118. R. Levi Yitzchak of Berditchev (1740-1810), *Kedushath Levi*, Jerusalem, 1958, pp. 316-317.
119. Heilprin, Yechiel ben Solomon (1660-1746), *Seder Hadoroth*, Part I, p. 208; Naftali Maskil L'Eitan, ed., Yitzchak Goldman Pub., Warsaw, 1877.
120. Rosenthal, Shlomo G., *Hitgallut Hazaddikim*, Jerusalem, 1959, pp. 52-54; Judah Loew b. Bezael ([Maharal], 1525-1609), *Tifereth Maharal*, Lodz, 1914, pp. 83-85.
Importunity for justice from a just God is a recurrent theme in Judaism; e.g., *Berakhot* 31b, 32a.
121. *Tana d.b. Eliahu, Zuta*, Chapt. 2. The idea is also expressed in Talmud that a task may be left uncompleted, intentionally, by the authorities of one generation so as to leave room for the efforts of a later: "R. Joshua b. Zeruz, the son of R. Meir's father-in-law, testified before Rabbi that R. Meir ate a leaf of a vegetable in Bethshean (without tithing it). (Note: Bethshean is in the Galilee. R. Meir regarded it as territory outside Palestine, and therefore its fruits and vegetables were free from tithes; for the rule relating to tithing fruits and vegetables, being a Rabbinic junction only, applied to Palestine proper.—I. Epstein, in Soncino Edition.) On his testimony, therefore, Rabbi permitted the entire territory of Bethshean (i.e., as free from tithe). Thereupon his brothers and other members of his father's family combined to protest, saying, The place which was regarded as subject to tithes by your parents and ancestors will you regard as free? Rabbi, thereupon, expounded to them the following verse, 'And he (Hezekiah) broke in pieces the brazen serpent that Moses had made; for unto those days the children of Israel did offer to it; and it was called *Nehushtan*' (Kings II, 18:4). Now, is it at all likely that Asa did not destroy it? Or that Jehoshaphat did not destroy it? Surely Asa and Jehoshaphat (Note: preceding, righteous rulers) destroyed every form of idolatry in the world! It must therefore be that his ancestors left something undone whereby he (Hezekiah) might distinguish himself; so in my case, my ancestors left room for me to distinguish myself. From this is to be learnt that whenever a scholar reports a decision (however strange it may sound), he should not be made to move... from his tradition. Others say, He should not be rejected... And others says, He should not be regarded as arrogant..." (*Hullin* 6b-7a). This passage cannot, obviously, resolve the constant dilemma of competing halackhic traditions; it does provide another, salutary example of the open-ended and undaunted dialectic of Rabbinic decision making.
The dictum of Rabbinic authority finds still more daring expression: Even where a decision reached by a duly constituted court is thought factually erroneous, it can nonetheless be binding on the community. A moving illustration is provided in the account of the agitated dispute between Rabban Gamaliel, on the one hand, and R. Joshua and R. Dosa b. Harkinas on the other, regarding the fixing of the date of the new moon and of

Yom Kippur (*Mishnah Rosh Hashanah* 2:8-9): "R. Akiba went (to R. Joshua) and found him in great distress (because he had been ordered by R. Gamaliel to profane the Day of Atonement, R. Gamaliel having set that day on a date other than that accepted as correct by R. Joshua). He said to him: I can bring proof (from the Scripture) that whatever Rabban Gamaliel has done is valid, because it says, 'These are the appointed seasons of the Lord, holy convocations, which ye shall proclaim in their appointed seasons' (Leviticus 23:4) (which means to say that) whether they are proclaimed at their proper time or not at their proper time, I have no appointed seasons save these. He (R. Joshua) then went to R. Dosa b. Harkinas (who had equally disagreed with Rabban Gamaliel's setting of the time), who said to him: If we call in question (the decisions of) the Bet Din of Rabban Gamaliel, we must call in question the decisions of every Bet Din which has existed since the days of Moses up to the present time. For it says, 'Then went up Moses and Aaron, Nadab and Abihu and seventy of the Elders of Israel,' (Exodus 24:9). Why were not the names of the Elders mentioned? To show that every group of three which has acted as a Bet Din over Israel is on a level with the Bet Din of Moses (seeing that most of the members of that Bet Din—the seventy Elders—also bore no names of distinction; i.e., R. Dosa b. Harkinas too accepts the ruling of Rabban Gamaliel despite his substantive disagreement with it). He (R. Joshua) thereupon took his staff and his money and went to Jabneh to Rabban Gamaliel on the day on which the Day of Atonement fell according to his reckoning. Rabban Gamaliel rose and kissed him on his head and said to him: Come in peace, my teacher and my disciple—my teacher in wisdom and my disciple because you have accepted my decision." The *Tosefta* (*Rosh Hashanah*, 1:18, Lieberman, S., ed., Jewish Theological Seminary, N.Y., 1961, pp. 311-312) amplifies: "Jerubaal (Gideon) in his generation as Moses in his generation, Bedan (Samson) in his generation as Aaron in his generation, Yiftah in his generation as Samuel in his generation, to teach you that even the most minor among minors, if he be appointed *parnas* over the community is reckoned as the greatest among great."

It is in the spirit of passages such as these that the former Chief Rabbi of Israel, Rav Abraham Isaac Kook (1865-1935) coined the aphorism: "The new shall be sanctified, and the sanctified renewed."

122. See for instance *Shabbat* 119b for an unambiguous exposition of the partnership concept: "R. Hamnuna said: He who prays on the eve of the sabbath and recites 'and [the heaven and the earth] were finished,' the Writ treats of him as though he had become a partner with the Holy One, blessed be He, in the creation. . . ."