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THE IDEOLOGICAL FOUNDATIONS OF THE HALAKHAH

Halakhah is the way of life formulated by the Torah for the guidance of mankind and Israel.¹ But Halakhah is also a vast system of thought that extends over the limitless ranges of human experience subjecting them to its critical scrutiny in the light of the principles, regulations and laws revealed at Sinai and unfolded in the religious literature of subsequent millenia. The Halakhah is dual in character; it is empirical and ideal, pure and applied, method and legislation. Pure Halakhah contains the *a priori* postulates which subject the world to its quantitative and qualitative norms. For the ideal Halakhah the actuality of its norms or their realizability may be of no consequence. The intellectual preoccupation of the great men of Halakhah has, to a great extent, been the ideal construction rather than its practical application. But, in addition to its ontological character, the Halakhah has its normative side. It seeks to impose its forms on mundane reality. The ethos which derives from the halakhic *a priori* constitutes the goal of the Halakhah. "Great is study for it culminates in practice."²

A pertinent question has recently been raised³ as to whether the characteristics of the "man of Halakhah"⁴ could not easily be attributed to personality types known in Roman Catholicism. This writer is not in a position to know to what extent a Roman Catholic "Halakhah" operates in the life of a devout adherent of that faith. After all, did not Paul set out to demolish the authority of the traditional Halakhah in favor of salvation through the "blood of the lamb"?⁵ Yet despite the initial anti-nomianism of Gentile Christianity, Roman Catholicism has set

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up its own "halakhic" forms with its rigorous demands and insistence on precision both in the performance of its sacraments and in its directives for daily conduct in various phases of life. In the long run, however, the question raised about Roman Catholic "Halakhah" may not be too significant, because we may be dealing here with vestiges of Jewish influence, as is probably also true of the "halakhic" counterparts of the Islamic way of life.

More significant is the question whether the Halakhah as such is a specifically Jewish phenomenon. If Halakhah simply stands for a body of rules and regulations that discipline the lives of groups and individuals, then the term could be applied to codes of behavior that control the lives of followers of any religious system (or political structure, for that matter). All societies, from the most primitive to the most advanced, impose upon their constituents norms of conduct, religious taboos, and rules of etiquette which, more or less, approximate halakhic standards. The strictness of primitive taboos in certain areas of life is well known, and has already been noted by various Jewish medieval thinkers.⁶ Maimonides states in the *Guide*: "The fourth (purpose of the laws of purity) is to ease unpleasant restrictions and to order things in such a manner that questions of uncleanness and cleanness should not prevent a man from engaging in any of his occupations."⁷

Yet we are convinced that the Halakhah is the uniquely Jewish response to the divine call and that the halakhic act is the truly sacred act. The uniqueness of the Halakhah is not its regulative character, nor even its range, comprehensiveness, intensity and precision. What makes it unique, I believe, are rather the objectives that it has set out to accomplish and the religious principles upon which it is established and which it seeks to further. The Halakhah may be unique also in terms of its methodology, but this quality is primarily of interest to students of logic and comparative thought. For us the uniqueness of Halakhah consists in its contents, in the realm of ends towards which it strives, in the ideology in which it has its genesis and in its mandatory character. The Halakhah is the divine law for man, not merely a tool for the avoidance of mis-

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fortune or for the attainment of blessings from on High. It is the supreme concretization of the will of God for mundane existence. Above all else, it seeks for man the achievement of the goal for which he was created: the attainment of his Godlikeness — the unfolding within him of his divine image.

I.

The Halakhah is not a mere random collection of rules and statutes. It is a system of thought and conduct based on a classification of six hundred and thirteen commandments.⁸ Subdivided into positive and negative commandments, they are categorized into those that pertain to man's relation to God and those that govern his relation to his fellowman. The commandments also have been classified as *torot*, *chukkim*, *mishpatim*, *edot*, and *mitzvot*. This classification goes back to the Torah itself and is highlighted in the 19th and 119th Psalms.⁹

A comprehensive analysis of the divine commandments was attempted on a large scale by Maimonides.¹⁰ In modern times, the most thorough attempt was made by Rabbi Samson Raphael Hirsch in his *Nineteen Letters*, *Chorev*, and *Commentary to the Pentateuch*. In these works a total philosophy of the Halakhah is expounded, perhaps the most thorough attempt to achieve this goal in the history of Jewish rational thought. The Kabbalists have, in their own way, constructed thorough and heaven-soaring metaphysical systems whereby every aspect of the Torah and every detail of the Halakhah assume their proper niche in a cosmic framework.¹¹ But not many of the rationalistic thinkers of Judaism have dared to do the same for the Halakhah within the scope of their own world-outlook.

The Halakhah is a harmonious system, not a monolithic one, and, in spite of differences and apparent discrepancies, it must be viewed as an organic whole. This striving for unity is evident in the presumed harmony behind the disparate halakhic positions maintained by various sages.¹² The Halakhah is a Revelation which emanates from the One Shepherd of Israel. We must endeavor to find the Revealer in the Revelation in all its aspects, ramifications, and divergencies. For students of the Torah the

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proposition "Both views are the words of the living God" is more than a mere verbalism. It is a principle which directs them to deeper understanding and more penetrating insights. Through discovery of the *reasons for the commandments*¹³ one is able to see the unity permeating the entire structure of Halakhah. It becomes the task of every generation to continue in the enterprise of searching for the *reasons of the commandments*. How much more relevant has this task become for our generation when surrender to blind commitment is very difficult for thoughtful people.

The Torah speaks to all generations and to all individuals. Not merely does every person have to apply the practical norms of the Halakhah to his own unique situation, but he must seek to make it meaningful as he performs the act.¹⁴ The actual dissimilarity among human beings (which justifies the right to differences and individuality for thereby God's greatness is manifested)¹⁵ compels a dynamic and flexible view of the character of Halakhah. Our mystics teach us that all the world is in a constant state of flux. In an expanding, growing, and unfolding universe, it is unbelievable that the divine Torah itself does not participate and partake of this dynamic quality.¹⁶ All our sages who wrote *chiddushim* (novellae) on all phases of halakhic (as well as aggadic) research were tacitly committed to this concept of novelty. Perhaps for this reason Halakhists continue to deal with problems which have engaged the attention of their predecessors in past generations. Every age looks at the same problems with different eyes, as does every individual. This unique insight which is the divine gift to every individual constitutes that individual's portion in the Torah for the attainment of which he always prays.¹⁷

The immutability of the Torah is one of the basic tenets of our faith.¹⁸ The Torah represents the eternal will of God. Nevertheless, the application of the will of God cannot remain static. The Torah was given to Israel and its sages who are to serve as co-workers with the Giver of the Torah in everlastingly recreating it under varying circumstances and changing conditions so that it may properly serve the purpose for which it was given. In search for the appropriate application of Halakhah at any

given historical moment, the sages of Israel discover that what was revealed at Sinai was waiting to be disclosed at the moment when the need for this discovery became indispensable.¹⁹

The idea that the Halakhah is historically conditioned should not seem strange. That Halakhah transcends time and space is not a meaningful concept, since it is intended to operate *within* the confines of historical and spatio-temporal reality.²⁰ However, only the Torah can define the relationship of its laws to time, space and history, and set the conditions under which its commandments are binding. Within these limits its imperatives are absolute.²¹

At the same time the Torah makes possible a wide latitude of personal initiative in the observance of the commandments. These areas of individual aspiration are included in the numerous general commandments among which are those that issue a call to do the good and the right,²² strive for holiness,²³ walk in the ways of the Creator,²⁴ seek the ways of pleasantness and peace,²⁵ go beyond the measure of the law,²⁶ and aspire to achieve the highest level of piety.²⁷ This latitude, of course, calls for the assumption of a greater range of responsibilities on a far more intensive level. It challenges man to seek the road that leads to Godlikeness and the sanctification of God's Name.

That the Halakhah is a vast open system of thought and practice imbedded in a powerful and dynamic universe, rather than a fixed and static one, makes it possible for the people bound by it to go from strength to strength in endless search for its God on high. Because of its character, the Halakhah must keep open to the universe and attuned to all currents of thought. Since the Torah derives from the Creator, Who is guiding the universe towards never-ending goals, the openness of the Halakhah and its eternal vitality is made possible.

II.

Halakhah is neither theology nor anthropology, but it is obviously based on both. As a phase of Torah, Halakhah is the earthly embodiment of the divine word²⁸ and derives from the essential character of God. With man its primary concern,²⁹ the

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Torah must have a doctrine of God and a theory of man to which its Halakhah corresponds. Theology and anthropology are preconditions of Halakhah. For this reason it would be correct to say that the acceptance of God as the Ultimate Reality cannot be included within the framework of Halakhah, since all of Halakhah is predicated on the truth of this assumption.³⁰

In what way does the theology of Judaism find its explication in the Halakhah?

The reality of God is the ground upon which everything in the Torah is based. While there are proponents of non-theistic ethics for whom the goal of human survival is the paramount principle, for the Torah the will of God is the source of all concepts of right and wrong. The Halakhah is the will of God, an expression of His nature.³¹ For men this means that there obtains a relationship between God and the universe, a concept which, of course, has a significance for man which it does not have for God.³²

The relationship of God to the universe involves two concepts: the transcendence of God and His immanence.³³ The doctrine of transcendence proclaims the freedom of God from subjection to inexorable fate. It emancipates Him from any possible limitation by any existent force outside of Him. God is a free agent, limitless in His creative powers, recreating and refashioning the world ever anew. God, Who is Himself unshackled, is the Creator of freedom. Man's freedom is the product of the divine freedom. The very possibility of Revelation is grounded in the divine freedom. It is at this juncture that theology and anthropology intersect. Because this universe has its origin in a Being Who is free and has chosen man to be free, the Halakhah which makes demands upon man as a free agent is made possible. It is God Who has redeemed Israel from the house of bondage, who calls upon Israel to accept His yoke not as slaves subject to a tyrannical master, but as free men who voluntarily choose His service out of reverence and love.³⁴

God's transcendence is the ground for the doctrine of *creatio ex nihilo*. An uncreated world would be transcendent in respect to God as He is transcendent in respect to the world. In a pantheistic cosmos no transcendence obtains. God and the universe are co-extensive, even where God is infinite in His

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attributes. Because God's power over the universe is unlimited, He has made it possible for man to act upon the universe and lead it to higher and higher levels of grandeur. The profound religious significance of *creatio ex nihilo* is not merely that Revelation and a supernatural operation upon history are predicated upon this doctrine, but that a self-sufficient universe (at least in its finite modes) could not possibly be that kind of dynamic universe as the one created by God Who, calling it into being from eternal nothingness, enables it to rise to unimaginably lofty heights limited only by His infinity. The possibilities of man's ascent are likewise unlimited, except for the bounds set by his Creator.

While the doctrine of transcendence makes Halakhah possible, the doctrine of immanence determines the character of the Halakhah. Because God created the world, we conclude that "the earth is the Lord's and the fulness thereof, the world and they that dwell therein" (Ps. 24:1). The universe is His possession³⁵ in which he finds delight.³⁶ He is transcendent to it but He also dwells with it³⁷ because He loves it, and He fills it with His overflowing goodness.³⁸ The world and all that is therein are, therefore, to be regarded as divine creations to which attaches the sacredness wherewith God has endowed His creation. God's creation may not be employed for purposes not sanctioned by the Creator. Man's control over the world, as well as the rights of all creatures, are determined by Him Who is the Author of all things and has placed the world at man's disposal to bring it to perfection and lift it up to the highest goals of eschatological fulfillment. It is He Who, at the same time, distinguishes between darkness and light, between the holy and the profane, and between the pure and the unclean. In the first chapter of Genesis God reveals Himself in two capacities: as the Creator and the Divider.³⁹ The two major divisions of Halakhah, the positive and the negative, are based on these two aspects of divine activity. The positive in Halakhah reflects on a human level the creative activity of God. The negative bespeaks the finite and unredeemed character of the universe wherein the evil derived from man's freedom is countered and overcome by means of man's withdrawal from contact with it.

The concept of the unity of God is essential for the un-

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divided commitment demanded by the Halakhah, which formulates the imperatives of God. Any multiplicity of deities is based on an assumption of the bifurcated character of the universe. Under such conditions there can be no undivided commitment to the good. Man would constantly be torn between loyalties.⁴⁰ A spiritual concept of God is likewise fundamental for the halakhic outlook. Corporeal characteristics attributed to God would ultimately result in a denial of the divine transcendence. He would then come to be regarded as a superhuman being, partaking both of human frailties as well as virtues. Instead of being the originator of all being, He would be regarded as included within the order of creation. Right and wrong would no longer be determined by Him. As a finite God, He would be a victim of a pre-existent good and evil over which He could exercise no ultimate control. Thus, the goals of Halakhah for never-ending perfection would be impossible. The ideal of *Imitatio Dei* towards which the Halakhah directs the human personality would easily be corrupted.

God, Who is the Creator and the Only One, demands a reverential attitude towards the world He has created. He has created the world out of love. In His goodness He maintains it, and by His grace He provides for its sustenance.⁴¹ Not a single item is excluded from the sphere of divine interest since everything exists for the purpose designated by its Maker. All of creation stands at His service and fulfills His holy will.⁴² God has imposed His law and order upon the physical world. All creatures are kept within their bounds by the limits of natural law and thus obey the will of God.⁴³ Revelation, which at its lowest level represents the imposition of a divine order upon the physical and biological realms reaches its peak in the demand for law and order in the life of man. It is the character of God as Creator and Sustainer of the world, His transcendence and immanence, that determines man's relationship to the universe. The essence of the Law embodied in His Revelation is determined by the very nature of God, since it has its origin in Him.⁴⁴ The Halakhah reflects not merely the will of God, but that which is identical with His will — His essence.

The anthropology of Halakhah is based, as stated above, on

the concept of freedom. Man is free to choose, and man's true humanity is achieved in his free submission to the will of God. The Halakhah recognizes fully the animal in man. In some states he may be "similar to the ass."⁴⁵ Man's kinship with the beast manifests itself in a number of ways. Man eats and drinks as does the beast but no aspect of his instinctive deportment does he abuse to a greater degree, and with the unhesitating support of his intellect, than the sexual. Even man's propensities toward violence and aggressive behavior are held more in check. Natural man, not ennobled by Halakhah, and dominated by his uncontrolled impulses, degrades himself and lowers himself to the level of an animal.⁴⁶

What renders man human in the eyes of the Halakhah is the voluntary submission to a life of responsibility, and the acceptance of the divine commandments as norms of behavior. One who is bound by divine commandments (*ben mitzvot*) has attained the true status of humanity.⁴⁷ It is not his mere possession of reason that enables him to rise to that level, for by itself it can be used to further his irrational and destructive drives. By using reason to achieve a life of service within the scope of the divine commandments, man rises from the sub-human state to the human.⁴⁸

The range of duties is not the same for all. Some are subject to more obligations than others. But one's essential humanity is not minimized by the fact that one has fewer duties to perform, even though the level of "holiness" (*kedushah*) may rise by the increase in duties.⁴⁹ Race, color, and other circumstances, irrelevant to the performance of the divine commandments, are of no account. It is the relationship to the divine commandments which determines one's stature as a human being.⁵⁰

All men, within the scope of duties that applies to them, may ascend to higher and higher levels. Perhaps what R. Simeon ben Jochai had in mind when he declared "You are called man"⁵¹ is that the full attainment of humanity is the product of an undivided commitment to that which renders a man a man — the obligation to observe the divine commandments. The less committed a man is, the less human he is. Nevertheless, even he who is farthest removed from the embodiment of true humanity,

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is still not totally deprived of humanity, either because of his own potential virtues or those of his descendants or because he irrevocably bears upon himself even if only faintly, the imprint of the divine image.⁵²

The Halakhah is not committed to any particular theory of psychology, except that it vigorously opposes such as will totally deny man's responsibility. It does not concern itself with the various types of souls or phases of the soul. However man's psyche may be constituted, the Halakhah is content with the assumption that man is a creature that can choose between good and evil and can acquire a knowledge of right from wrong, which makes him capable of acting in the light of this knowledge. It assumes that by concentration on the study of the Torah man can overcome his selfishness, his aggressiveness, and the extremes of his sensual desires. There are times when, in order to achieve this end, the study of the Torah is impotent and only the marshalling of all the spiritual resources at one's disposal, such as the power of faith and the anticipation of death, can give man the strength to overcome the evil forces within him. There may be times when even these media will fail and man will succumb. But he has it within his power to avoid an open desecration of God's name.⁵³ The Halakhah takes cognizance of the weakness of man, but it does not extenuate the failure to strive to overcome his weakness.⁵⁴ While recognizing the role of both heredity and environment — the choosing of good mates, of a good education, and so on — as important factors in the moulding of personality, the ultimate determinant in the case of the undisturbed human being is his free will.⁵⁵

Though primarily concerned with man's life upon earth, Halakhah does not ignore his fate after death. The doctrine of reward and punishment in this life as well as after death are halakhic presuppositions. Acceptance of this doctrine as well as belief in the Resurrection of the dead are halakhic imperatives,⁵⁶ even though the manner in which they are to be accepted is not dogmatically formulated.

Halakhah grants reason a significant place in the elaboration of its principles and, sometimes, in serving as a source for ha-

lakhic norms.⁵⁷ What conscience approves or disapproves is given recognition, because the normal human personality has within it the capacity for distinguishing between right and wrong, and this capacity (*derekh eretz*) has priority over Torah in terms of chronology as well as in respect to its binding authority.⁵⁸ Nevertheless, the Halakhah derives its norms primarily from the revealed texts. Its processes of thought remain discontent with resort only to reason and conscience as the ultimate arbiters of right and wrong. The Halakhah seeks to transcend reason and conscience by finding standards of behavior imbedded within the very structure of the universe and flowing out of that divine wisdom with which the world was created.⁵⁹

III.

The Halakhah, like the Torah, is both particular and universal. There is the Halakhah for all humanity, the Seven Commandments for the Children of Noah.⁶⁰ This universal Halakhah requires explication and expansion in every generation in accordance with the specific needs of that generation. Every people and religion carries within it a vestige of this primeval, binding-on-all, Halakhah. But there is also the particular Halakhah which is the unique possession of Israel and binding upon it alone. The two systems of Halakhah are undoubtedly inter-related⁶¹ and aim toward a common goal. It is to the subject of the teleology of Halakhah that we must now address ourselves.

It is true that the Halakhah nowhere explicitly states its teleology, but it is quite obvious that as it locates its source in divine wisdom it must be related to the divine plan for creation. While formally the Halakhah is a special schematization of the space-time continuum, the man of Halakhah is concerned with the transformation of time and space into a domain of holiness.⁶² Certainly the requirement of Halakhah that performance of a divine commandment be preceded by a specific blessing emphasizes the notion that we achieve sanctification by means of the fulfillment of the commandment. While one's obligation has been fulfilled even when the divine commandment has been performed under duress, provided one has not repudiated its divinely obligatory

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character, or even has carried it out as a matter of rote, nevertheless *ab initio* one is required to recite the benediction before the sacred act, so that one becomes conscious of what he is about to do and becomes imbued with its goal.⁶³ Does not the Biblical text state explicitly: "That ye may remember and do all My commandments, and be holy unto your God" (Num. 15:40; cf. Ex. 13:9)? The performance of the commandments may not require specific intention, but the act must be performed consciously.⁶⁴ A reduction of Halakhah to orthopraxy and behaviorism, ungrounded in ideology and unmotivated by teleology, renders it nothing but a desiccated skeleton.⁶⁵

Since the study of the Torah is the supreme imperative of the Halakhah, it may rightly be assumed that within this Halakhah one can find the key to its teleology. No one, I am certain, will maintain that the commandment to study the Torah is limited only to the formal or practical aspects of the Halakhah, whether presently applicable or not. The commandment includes the study of the narrative portions of the Torah, as well as the prophetic writings and the Hagiographa.⁶⁶ One studies them in order to understand and to observe. We do not read the narratives of the Sacred Scriptures for amusement or enjoyment of their superb literary qualities. They contain the unfolding of the will of God for man and Israel. Through them, through the prophetic writings, as well as the wisdom literature, we achieve insight into the reasons for the specific commandments and the Halakhah as a whole. That the commandments are reasonable is a presupposition of the Torah. That they have meaning within the scope of mundane human existence is clearly spelled out.⁶⁷ Our duty is only to proceed and study. Our sages have indeed maintained that we are unable to fathom the depth and the ultimate meaning of the commandments, but they have never failed to demonstrate their rational significance for our daily life.⁶⁸

The question was raised by R. Isaac as to why it was necessary to begin the Torah with an account of the creation of the world rather than with the first commandment.⁶⁹ R. Isaac's answer, superficially understood, addressed itself to the specific problem of his day — the right of the Jewish people to the Holy Land.

However, as clarified by Nachmanides,⁷⁰ there is more to R. Isaac's answer than meets the eye. The Torah of Moses was given by God, as Maimonides states, "to straighten the pathway of every creature and to direct every man to the truth, and this purpose includes all nations within its scope."⁷¹ The account of the creation of the world and the early history of mankind is undoubtedly intended not only as background for the history of Israel, but as the pre-ample to the entire Torah. The purpose of the Torah is made clear in the first eleven chapters of Genesis which deal with the twenty generations that preceded the appearance of Abraham.⁷² The Gaon of Vilna has expressed this truth in his own unique way when he asserted that the Torah is the record of the history of all mankind, of every individual, and of every existent being, down to the least blade of grass and grain of sand, from the beginning of time until its end.⁷³

While the Halakhah undoubtedly has its own principles of logic and hermeneutic rules, we would be wrong in maintaining that the Halakhah can be divorced from ideology and theology. The ideological ground of the Torah in all its ramifications is clearly set forth at the very beginning of the Book of Genesis. It is not in vain that the Gaon of Vilna states that the entire Torah is included within its very first verse.⁷⁴ What the preamble affirms is that this world has been created by God, that He rejoices in His handiwork and delights in its goodness, and that He has created man in His image.⁷⁵ In this divine image all human beings share, either as an inherent possession or as potentiality. The image of the divine in man sets him apart from the animal kingdom and endows him with a unique character unparalleled in all creation.⁷⁶

The chapters of Genesis that follow speak to us of God Who reveals His will to man. His desire is that men know Him and that they live in close proximity with Him. When they turn away from Him, He admonishes them, punishes them, and even washes man from the face of the earth, when all hope for his improvement vanishes. But God wants mankind to survive and learn to know Him and walk in His ways. When Noah's progeny fail to fulfill the divine goal, God selects Abraham and his seed as bearers of the divine blessing to mankind. In the

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course of the struggle for Israel's emancipation, the ultimate goal to be achieved by this people always remains aloft. We are constantly reminded that the supreme intervention of Almighty God in the history of mankind was to lead to the recognition of the Supreme God, even by the bitterest enemies of Israel, until the day when the glory of God will fill the entire earth.⁷⁷

The concept of paternal blessing, which dominates the narrative portions of the patriarchal period, underscores the profound significance of blessing as the third aspect of *Imitatio Dei* which man is to emulate. The first chapter of Genesis reveals God as the One Who creates, divides, and blesses.⁷⁸ In its loyalty to God and His revealed Law, Israel enhances creation, separates the holy from the profane, and distributes blessings to all of existence. These are tasks with which the Jewish individual and people have been entrusted. God has made them the medium of His blessing, until the time when all nations will once more deserve to receive it directly from His hand. "On that day Israel will be the third to Egypt and Assyria in the midst of the earth, whom the Lord God has blessed saying: Blessed be My people Egypt, My handiwork Assyria, and My heritage Israel."⁷⁹

It has been charged that to hope for blessing as a consequence of the observance of the divine commandments⁸⁰ represents a materialistic outlook, unworthy of higher religion. There can be nothing farther from the truth. God has created man so that he be worthy of the receipt of His blessings. Man's failure to observe His commandments is not only an act of rebellion against his Creator, but constitutes a disruption of His plan for man and His world. Observance of His commandments is not only an act of surrender to His will, but the means whereby God's blessings are distributed to the world and its creatures.⁸¹

The *telos* of Jewish existence, and hence the teleology of the Halakhah, can be conceived of in no terms other than the impartation of blessings on all levels of reality. Israel has been charged with the guardianship of the world, and with the task of testifying to its character as a divine creation. Israel is to serve as the preserver of the divine image in the world, and to make clear for all time that man and the world are to be regarded as the handiwork of God is its bounden duty.⁸² Maimonides has

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maintained that through a knowledge of the universe we can achieve the love of God. The obverse is also true — that by means of the love of God we acquire a love for the world He has created.⁸³ The love for His creatures and the dignity with which they are to be treated is universal in its application.⁸⁴

The concept of the divine image in man is a basic presupposition of the Halakhah. Thus by walking in the ways of God, man becomes Godlike. The divine attributes, by which we can mean nothing other than the modes of His entering into relationship with the world He has created,⁸⁵ become the ideal of human behavior. I have suggested elsewhere⁸⁶ that the very term Halakhah itself derives from the Biblical phrase “to walk in the ways of God.”⁸⁷ A detailed study of the commandments of the Torah and their halakhic ramifications, this writer believes, should demonstrate the character of the Halakhah as a medium for the implementation of *Imitatio Dei*.⁸⁸ The knowledge of the Torah, the correlate of the knowledge of the divine attributes, is thus to be identified with the knowledge of God, that the Lord executes lovingkindness, justice and righteousness in the midst of the earth.⁸⁹

The Halakhah is grounded in the will of God, but there is nothing man can do that can in any way benefit God. Whatever He ordains is for the benefit of the world that He has created. The Torah has been given to us for our benefit; and the commandments are to be fulfilled so that it may be well with us,⁹⁰ and that mankind will be purified and ennobled.⁹¹ Through the Torah, whose ways are ways of peace and pleasantness,⁹² peace will be achieved in the world, a goal which the Halakhah postulates.⁹³

The acceptance of this-worldly goals on the part of the Halakhah need not exclude ultimate metaphysical and mystical goals which transcend those of the rational Halakhah. *Homo Halakhicus* (*Ish ha-Halakhah*) can be *homo religiosus* as well as *homo mysticus*. The mundane and metaphysical goals of Halakhah or the Torah are not antithetical. They merely apply to different levels of experience, personal or historical. The fact that many of the great Halakhists have at the same time been outstanding protagonists of the Kabbalah and profound mystics

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confirms the truth that the presumed tension between the Halakhic and the Kabbalistic is not real.⁹⁴

The study of the Torah as the supreme obligation of the Jew is not divorced from *Imitatio Dei*, even if it has no bearing on practical problems. The study of the Torah was never meant to be a mere intellectual exercise, but a means for the ennoblement of the spirit of man. "Whosoever is engaged in the study of the Torah for its own sake will achieve many things. He will become a lover of God and a lover of His creatures. He will bring joy to God and joy to His creatures."⁹⁵

Even the study of the non-practical aspects of the Torah has its effect upon one who studies Torah for its own sake. The study of the Torah is the equivalent of performance where the sacred act cannot be actualized. The moral goal toward which the commandment is directed is implemented in the orientation of the heart toward that goal.⁹⁶

Maimonides maintained that many of the commandments are historically conditioned.⁹⁷ At the same time he undoubtedly believed that the Halakhah transcends the conditions from which it may have originated initially, as is clear from his inclusion of what he regarded as historically conditioned laws in his great Code. He has, likewise, made it clear from the *Sefer ha-Madda*, with which his Code opens, what he regards as the basic goals of Torah and Halakhah — namely, the fulfillment in our lives of the knowledge of God, His love and fear, the sanctification of His name, *Imitatio Dei*, the rejection of polytheism and idolatry, the ceaseless striving to know His will through study, and the striving to better our ways through repentance. In our study of Torah it is our duty to seek to discover in what way the Halakhah in all its details seeks to embody the goals it has set out to accomplish.⁹⁸ In this manner we may enable the Halakhah to rise to new heights and make possible the achievement of its Messianic purposes.

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NOTES

1. On the universal aspects of the Halakhah see my *Yesodei Ha-Dat Ha-Universalit* (Bloch Publishing Co., 1936).

2. *Kiddushin* 40b. Some of the statements in this paragraph are based on Dr. Soloveitchik's classic paper "Ish Ha-Halakhah" (*Talpiot*, 1944) p. 667, 690.

Rabbi Soloveitchik's writings do not reflect clearly his views on the teleology of the Halakhah. In his paper on "Ish Ha-Halakhah," he seems to express contradictory views. In one place he maintains that the ideal halakhic forms rather than their realization constitute the objective of halakhic thinking (p. 667). Elsewhere he states that the ontological approach merely serves as a vestibule through which one enters into the temple of the normative conception. The man of Halakhah perceives the world as an object to be subjected to religious deeds and sacred acts (p. 690). In his paper "Mah Dodekh Midod" (*Hadoar*, XCII, 39) R. Soloveitchik espouses very strongly the doctrine of the complete autonomy of the Halakhah as a discipline completely independent of moral or pietistic motivations. It is difficult for this writer to see how the Halakhah can be divorced from its ultimate goals. In a more recent paper (*The Lonely Man of Faith*) Rabbi Soloveitchik does speak of the teleology of Halakhah in terms of the oscillation of man between majesty and covenant (*Tradition*, Summer, 1965, pp. 50-1). In Dr. Aharon Lichtenstein's exposition of Rabbi Soloveitchik's thought (*Great Jewish Thinkers of the Twentieth Century*, B'nai Brith Great Book Series, Volume III, p. 281 ff.), the ideal character of the Halakhah in his thinking is totally ignored and instead its normative and teleological character is underscored. A clarification of this problem by Rabbi Soloveitchik is a desideratum.

There are areas of Halakhah, of course, where the Halakhah appears more patently to operate as an autonomous discipline (e.g., *lulav*, *shofar*, *sukkah*, etc.). In others, multiple moral factors operate (e.g. *agunah*), where precedence may have to be given to one factor over the other in terms of what appear to be autonomous halakhic concepts. But even in these instances, where halakhic dialectics may disguise the teleological factors, the presence of the latter is not to be denied and must be fervently sought.

3. In *Judaism*, Volume 15, Number 2 (Spring, 1966), E. B. Borowitz, "The Typological Theology of Rabbi Joseph B. Soloveitchik," p. 209.

4. This term apparently was coined by Dr. Soloveitchik.

5. Cf. Hebrews 10:10; 13:12, 20.

6. *Kusari* II, 50. Cf. Deut. 10:12 ff.; Isa. 43:23; Rashi, *ibid.*; Micah 6:3-8.

7. *Guide* III, Chap. 47 (New Translation by Dr. S. Pines, p. 594).

8. *Makkot* 23b. Nachmanides in the First Root of his *Sefer Ha-Mitzvot* is somewhat hesitant about the authenticity of the Mosaic origin of the number 613.

9. See *Yoma* 67b on the distinction between rational and irrational commandments; see also Introduction to R. Nissim's *Sefer Ha-Mafteach* to Berakhot; Rav Saadia, *Emunot ve-Deot* III, Ch. 1. The classification of *Torot*, *Chuk-*

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kim, etc., is already found in the Torah, e.g., Deut. 6:20, *et passim*.

10. *Guide* III, 31-50.

11. Cf. the writings of R. Chaim Vital in which he develops the Kabbalistic implications of the various commandments. See the volume on *Taamei Ha-Mitzvot* in the series of the Lurianic writings published by R. Yehudah Leib Ashlag. See also *Derekh Mitzvotekha* by R. Menachem Mendel (the Tzemach Tzedek) of Lubavitch.

12. *Eruvin* 13b. See my paper in *Tradition*, Vol. 8, No. 2 (Summer, 1966), p. 35, note 6.

13. On this subject see I. Heinemann, *Taamei Ha-Mitzvot be-Safrut Yisrael*, 2 volumes (Jerusalem, 5714, 5716).

14. This is implied by the benediction which precedes the performance of the halakhic act: (*Shulchan Arukh, Orach Chayim, V*). See below note 63.

15. *Sanhedrin* 37a.

16. On the dynamic character of the universe see *Orot Ha-Kodesh* by R. Abraham Isaac Kook, Vol. II, p. 531 ff., and notes by R. David Ha-Kohen, *ibid.*, p. 637 ff. See *Chagigah* 3a: "It is impossible for a study-session without novelty." See also *Midrash Talpiot, Anaf Chiddushei Torah; Targum, Shir Ha-Shirim* 5:10; *Targum, Isa.* 12:3; *Deut. Rabbah* 1, 12; and especially *Gen. Rabbah* 49, 12; 64, 4.

17. See Commentary *Eitz Yosef* in the *Siddur Otzar Ha-Tefillot*, Vol. I, 679, in the name of R. Moses Alshekh and the Gaon of Vilna.

18. Maimonides, *Commentary to the Mishnah, Sanhedrin*, Chap. X, Ninth Principle; *Mishneh Torah, Yesodei Ha-Torah*, IX, 1.

19. See *Chiddushei Ha-RIM al Ha-Torah* (Jerusalem, 5725), p. 206. Cf. RITVA to *Rosh Ha-Shanah* 12b; *Rashi to Shabbat* 69b; *et passim*.

20. The truth of this proposition is obvious to anyone even slightly familiar with Halakhah. Since Halakhah deals with mundane reality it must be conditioned by the limitations of the latter. Historic circumstances also determine the application of a great many commandments, e.g., *Arakhin* 29a, *Sanhedrin* 20b, *Negaim* VII: 1 (cf. *Mareh Kohen, Intro. to Neg.* 39), *Kiddushin* 36b ff., *Sotah* 47a-b, *Avodah Zarah* 8b, *Zevachim* 112b. Halakhic decisions are not always absolute. Cf. *Eduyot* 1:5; *Maim. Mishneh Torah, Mamrim* II, 1. According to the Kabbalists, the opinions of the School of Shammai will prevail in the future world. See *Mikdash Melekh* on *Zohar* (Kopust, 1810) p. 48a; also cited in *Likutei Torah* by R. Schneur Zalman, *Bamidbar*, 54b. Cf. *Sotah* 27b, *Kiddushin* 72b, *Lev. Rabbah* 9:7, Nachmanides to *Lev.* 23:17. Some laws are contingent on uncontrollable human desires. See *Kiddushin* 21b, *Sanhedrin* 81b, *Deut.* 19:6; 12:20; 17:14. In the Messianic era the laws pertaining to wars will no longer apply. See *Shabbat* 63a. See also *Gittin* 60a; *Berakhot* 54a, 63a. The influence of personality on halakhic decisions is touched upon in Introduction to *Tanya* and *Iggeret Ha-Kodesh*, No. 13. Cf. *Makkot* 7a. See also *Niddah* 61b; cf. *Iggeret Ha-Reiyah* II, 250-1. See also *Or Ha-Chayim* to *Lev.* 11:3; *Yalkut Reuveni* (Amsterdam, 1700), 118a.

21. See R. A. I. Kook *Iggeret Ha-Reiyah* I, 93. On temporary abrogations see

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Yevamot 89-90; *Tossafot* *ibid.* 89b, s. v. *kevan*. On the Kabbalistic view, see Gershom G. Scholem, *Kabbalah And Its Symbolism* (Schocken Books, 1965, New York), Chapter 2. That certain laws of the Torah are at the present time inoperative, bears an intrinsic relationship with our emotional and practical inability to implement these laws. We may find it difficult to reconcile ourselves to the re-establishment of the sacrificial system in a reconstituted Sanctuary in Jerusalem (more on aesthetic, than on moral grounds; see *Franz Rosenzweig* by Nahum N. Glatzer, Schocken Books, New York, 1961, p. 351-2). But to offer sacrifices is actually impossible and, according to many opinions, at the present time prohibited (cf. *Responsa Binyan Tzion* by R. Jacob Ettlinger, No. 1). In the future when the glory of God will be made manifest and all men will see that the Lord has spoken, the sacrificial order will appear in an entirely different light. Cf. Isaac Breuer, *Der Neue Kusari* (Frankfurt a.M., 1934), 370 ff.; *ibid. Nachaliel* (Tel-Aviv, 5711), 402 ff. For a parallel instance see *Iggerot Ha-Reiyah* I, 20 ff. on the basis of *Jre. Tal. Sanhedrin* VII, 2.

22. Deut. 6:18; 12:28; *Sifre*, *ibid.*; cf. *Bava Metzia* 16b, 108a.

23. Lev. 19:2; see Commentary of Nachmanides, *ibid.*

24. Deut. 26:17. Cf. my paper in *Judaism*, Vol. 12, No. 1: *The Doctrine of the Image of God and Imitatio Dei*.

25. *Gittin* 59b; Maim. *Mishneh Torah*, *Megillah ve-Chanukah*, end.

26. *Bava Metzia* 30b.

27. *Ibid.*, 83a.

28. *Shabbat* 138b. See *Tanya*, Chap. 5.

29. See S. R. Hirsch, *Gesammelte Schriften* (Frankfurt a.M., 1902), I, 89. Zeev Javitz in his *Toledot Yisrael* (Tel-Aviv, 5700), XIV, 54 attributes the phrases "menschliche Theologie" (which the Torah is not) and "Goettliche Anthropologie" (which the Torah is) to R. S. R. Hirsch and cites the above passage in the *Gesammelte Schriften*. While the idea is there, I have not found the source of the expression. Surprisingly, I have found this expression in Prof. Heschel's *God In Search Of Man* (Jewish Publication Society, 1956), p. 412: "This is why the Bible is God's anthropology rather than man's theology." Cf. also *Nachaliel* (above note 21), pp. 39-40.

30. Cf. Nachmanides in *Sefer Ha-Mitzvot*, Positive Commandment 1.

When Maimonides states that the knowledge of God is a positive commandment, perhaps he intends not knowledge as such, which is a presupposition of the entire Torah, but rather that we accept it as our duty to reflect upon this truth and have it before our mind's eye at all times. For this reason, I believe, the Ten Commandments contain no statement about the existence of God. The Revelation could not have possibly taken place (at least in the form that it did) without a prior assumption on the part of the people that God does exist. The first of the Commandments calls attention to the fact that God Who brought the people out of the land of Egypt is now addressing them as the Revealer of the Torah. That He created heaven and earth was already an accepted truth. See Ibn Ezra to Ex. 20:2 in the name of R. Yehudah Ha-Levi.

31. See *Tanya*, Ch. 4, based on Maim. *Mishneh Torah*, *Yesodei Ha-Torah*

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II. 10. See note in *Tanya*, Chap. 2: cf. *Maim. Guide* I. 57.

32. Cf. *Ibid.*, 52.

33. *Maim. Mishneh Torah, Yesodei Ha-Torah* I, 1-2. In conformity with the Biblical-Midrashic conception which envisages God as the Place (*Makom*) of the world (Deut. 33: 27; Ps. 90:1; *Gen. Rabbah* 68,9) it might be more proper to speak of the *immanence of the world in God* rather than the accepted *immanence of God in the world*. The concept of *Shekhinah* (the indwelling of God in the midst of humanity) represents a unique relationship not between God and the Universe, but between God and Mankind, and later, between God and Israel (except in the Kabbalah, where *Shekhinah* has an entirely different meaning).

34. On the question as to whether the original acceptance of the Torah was voluntary or under compulsion see my paper in *Hadarom*, Vol. II, pp. 157-9. While the children of Israel are spoken of as *servants of the Lord* (Lev. 25:55), it is, nevertheless, through submission to God and His Law that man attains his true freedom (*Avot* VI:2). What this statement means is, undoubtedly, that as long as man is directed by his primitive and undisciplined impulses he is acting compulsively. Only when guided by commitment to a transcendent goal is man liberated from self-seeking obsessiveness. Maimonides explains the right of the courts to coerce recalcitrant individuals into conformance on the ground that by coercion the individual is enabled to do that which he intellectually and spiritually wishes to do but in which he is prevented by uncontrollable obsessiveness. See *Maim. Mishneh Torah, Gerushin* II, 20 and *Ketuvot* 86a-b. Nachmanides limits the application of coercive measures only to defiant rebels against the Law (Commentary to Ex. 20:8). An individual may use force to prevent crimes against his person or property (*Baba Kamma* 27b), or to prevent a transgression committed on his premises (see *ibid.* 28a). On the prevention of murder and severe sexual assault see *Sanhedrin* 73a ff. Cf. *Ketzot Ha-Choshen* to *Choshen Mishpat* III, *Netivot Ha-Mishpat, ibid.*, and *Meshovev Netivot, ibid.*; Or *Samaech* to *Gerushin* II, 20 and to *Mamrim* IV, 3; *Merome Sadeh* to *Bava Kamma, ibid.* The use of compulsion, moreover, is not to be regarded as anything but an extreme measure to be employed judiciously and discriminately (*Yam Shel Shelomoh* to *Bava Kamma, ibid.*). The use of force on children and pupils should be understood also in the same light, as a means for liberating them from primitive impulses. Penalties for crimes are conceived as a means of atonement (see *Sanhedrin* 47a-b; cf. Commentary of R. S. R. Hirsch to Gen. 9:6). Of course, penalties may be inflicted as special emergency measures (*Ye-vamot* 90b). See also *Meshekh Chokhmah* to Ex. 24:3. For a recent discussion of this subject (of which there is curiously very little, to this writer's knowledge, in modern Jewish writing) see R. A. Lichtenstein in *Judaism* (Fall, 1966), p. 402 ff. See also, *ibid.* p. 400. It might be pointed out that compulsion is exercised until the culprit consents to do (expressed as *rotzeh ani* or *kabbalah*), not until he actually does. The action or inaction must be the product of the will. All that is required is a readiness to exercise one's will for the good. Even if the commandments are not given for enjoyment, "but as a yoke on our

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necks" (Rashi to *Rosh Ha-Shanah* 28a), they still should be carried out voluntarily. See, nevertheless, Ez. 20:32-33.

35. Gen. 14:19; Ps. 104:23; *Avot* VI, 10.

36. Ps. 104:31; *Gen. Rabbah* 9, 2, 4; 12, 1.

37. Ex. 8:18. See the mystery referred to in the Commentary of Nachmanides. Cf. above note 33.

38. See my paper: "The Concept of Hesed in Judaism" in *Yavneh Studies* (Fall, 1962), pp. 27-41.

39. Gen. 1:4, 6-7.

40. *Sifre*: to Deut. 6:5.

41. Ps. 145:15-16; *Avodah Zarah* 3b; *Birkhat Ha-Mazon*, First Blessing. Cf. above, note 38.

42. Jer. 5:22; 33:20, 25; Ps. 148:6; cf. Gen. 8:22; see also Jer. 31:34-35; *Jer. Tal. Kilayim* I, 7; *Sanhedrin* 42a; *Sifre* to Deut. 32:1.

43. Cf. note 1, *op. cit.* p. 10, note 4.

44. *Tanya*, Chap. 5; cf. R. A. I. Kook, *Orot Ha-Kodesh*, Vol. III, Sec. *Ha-Musar Ha-E-lohi* (p. 1 ff. of text).

45. *Yevamot* 62a; 98a. Cf. also *Kiddushin* 40b.

46. Cf. *Chagigah* 16a. See Ps. 49:13, 21. Cf. *Gen. Rabbah* 56, 2. It appears that the predominance of the sexual element in the life of the heathen and the *eved kenaani* renders them close to the animal. See *Gittin* 13a; *Yevamot* 98a; *Ketuvot* 11a; cf. *Pesachim* 113b. The institution of *eved kenaan* had its origin in the sexual demoralization of man (Gen. 9:22ff).

47. Cf. *Kiddushin* 35b; *et passim*.

48. Nevertheless, the possession of intelligence as such renders man the equivalent of the angels. See *Chagigah*, *loc. cit.*

49. See my paper "The Meaning of Holiness" (*Tradition*, Winter 1964-5), pp. 58, 60.

50. See above, note 47.

51. *Yevamot* 61a.

52. See *Bava Kamma* 38a; *Sanhedrin* 38a; *et passim*. Cf. *Avot* III:18, Commentaries of *Tossafot Yom Tov* and *Tiferet Yisrael*.

53. *Berakhot* 5a; *Moed Katan* 17a.

The seeming aggadic character of these passages should not mislead us into refusing to recognize them as essentially halakhic. They do, after all, refer to acts which are facets of the halakhic commandment of repentance. See *Mishneh Torah*, *Teshuvah* VII, 1. Moreover, I am unable to agree with Dr. Wurzburger ("Meta-halakhic Propositions," *Leo Jung Jubilee Volume*, New York, 1962, p. 215) that Halakhah and Aggadah do not form a continuum, unless we wish to limit the term "Aggadah" to the purely legendary. But of this some other time, God willing.

54. *Moed Katan*, *Ibid.*

55. See *Nedarim* 20a; *Kiddushin* 70a-b, *Maim. Mishneh Torah*, *Issurei Biah* XIX, 17; *Avot* III, 19; *Maim. Mishneh Torah*, *Teshuvah*, V.

56. *Sanhedrin* 90a.

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57. *Ketuvot* 22a; *et passim*.
58. *Tanna-debe-Eliyahu*, Chap. 1; see also *Orot Ha-Torah* by R. A. I. Kook (Jerusalem, 5700), p. 17. Cf. *Maim. Shemonah Perakim*, Chap. 6; *Eruvin* 100b.
59. See above, note 44.
60. See above, note 1.
61. *Sanhedrin* 59a; *Maim. Mishneh Torah, Melakhim VIII*, 11.
62. See above note 49.
63. Although the prefixing of the benediction to the halakhic act is of rabbinic origin it is intended to make us aware of the profound sanctifying character of the act. See R. J. B. Soloveitchik in "Ish Ha-Halakhah," p. 689. Cf. also R. A. Lichtenstein in *Judaism, op. cit.*, p. 402, note 34.
64. This excludes *mitasek* (*Rosh Ha-Shanah* 32b), the unconscious or accidental performance.
65. Cf. Walter S. Wurzbarger, *op. cit.*, p. 211 ff.
66. See *Kiddushin* 30a. I believe this is so obvious that no further documentation is necessary to confirm this proposition. Cf. R. J. B. Soloveitchik *op. cit.* p. 710 ff. One the Psalms, see *Midrash Tehillim* (ed. Buber, Chap. 1, 8.)
67. Deut. 4:6; 10:13; Lev. 18:5; *et passim*. Cf. Hillel's statement (*Shabbat* 31a). *et passim*. Cf. *Hillel's statement* (*Shabbat* 31a).
68. See Commentary of R. S. R. Hirsch to Deut. 24:17.
69. Rashi to Gen. 1:1.
70. Commentary to Pentateuch, *ibid.* Cf. *Chiddushei Ha-RIM Al Ha-Torah, ad locum*.
71. Maimonides' *Epistles* (Leipzig ed.), Part II. See also work cited in note 1, p. 19, and notes 17 and 18.
72. Cf. *Avot* V, 2-3.
73. Cf. *Be'er Yitzhak*, Commentary to *Aderet Eliyahu* (Sinai Publishing, Tel-Aviv), p. 3.
74. Cf. *ibid.*
75. Gen. 1:1, 27, 31. The sanctification of the Sabbath (*ibid.* 2:3) in some sense represents a sanctification of the world created in the preceding days. This may be implied in *Sheeltot*, I.
76. *Avot III*, 18.
77. Ex. 7:5; Num. 14:21.
78. Gen. 1:22, 28; 2:3.
79. Isa. 19:25.
80. Lev. 26:3 ff.; *et passim*.
81. See *Iggerot Ha-Reiyah*, I, 339-40.
82. Isa. 49:6 ff; 42:1-4; *Yalkut Isa.* 455.
83. See R. Loewe of Prague, *Netivot Olam, Netiv Ahavat Ha-Rea*. Cf. *Commentary to Shir Ha-Shirim* by R. Azriel (or R. Ezra), published in the *Collected Writings of Nachmanides* (ed. by R. C. B. Chavel), p. 522.
84. See work cited in note 38, p. 36 and notes; also 33-4; *Berakhot* 19b; cf. *Maim. Mishneh Torah, Sanhedrin XXIV*, 9; *Bava Batra* 123a; 22a.
85. See *Maim. Guide I*, 53.

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86. In paper cited in note 24, p. 65.
87. Deut. 26:17.
88. A partial attempt to do this has been made in the *Commentary to Shir Ha-Shirim* cited above, note 83, pp. 525, 535-6.
89. Jer. 9:23.
90. Job 35:6-7. See above note 67.
91. *Makkot* 23b; *Gen. Rabbah* 44, 1.
92. Pro. 3:17.
93. See above, note 25; cf. also Maim. *Mishneh Torah*, *Melakhim* X, 12.
94. We have only to mention the names of R. Joseph Karo, the Gaon of Vilna, R. Schneur Zalman, R. Menachem Mendel (Tzemach Tzedek), R. Chayim of Volozhin and R. Kook, among the latter day Halakhists. Cf. Dr. Wurzburger, *op. cit.*, 220-1. Rabbi Soloveitchik, on the other hand, seems to affirm the reality of this tension (*op. cit.*, 682 ff.).
95. *Avot* VI, 1.
96. See *Menachot* 110a; cf. *Iggerot Ha-Reiyah I*, 305, in reference to *halakhot* that call for intolerance.
97. *Guide* III, 37.
98. Cf. also concluding passage of *Mishneh Torah* (*Melakhim* XII ,end).