

among various prospective purchasers, none of whom is an abutter. In such cases, Maimonides states that while "this, too, is included within the good and the right," the priority is not enforceable, "for the Rabbis only commanded regarding this by way of *hasidut*, and it is a virtuous soul which acts thus" (*Shekhenim*, 14:5).

66. Lev. 19:2.

67. *Yebamot* 20a.

68. I know of no satisfactory English equivalent for this term. It suggests a blend of spiritual elevation and refinement with scrupulousness and pietism. Perhaps "saintliness" comes closest, though more in the Jamesian than in the popular sense, of total selflessness or other-worldiness; but that too, has too ethereal a ring.

69. *Shekhenim* 14:5. The concluding talmudic quotation is from *Avoda Zara* 34a, the verse from Cant. 1:3.

70. Exod. 15:26.

71. *Beshalah, Massekhta D'Vayissa*, i (ed. Horowitz-Rabin), pp. 157-58; see also the notes there.

72. This is pointed up by the fact that Nahmanides (Exod. 15:26) quotes Rabbi Eleazar's statement and yet, in the same passage, refers the reader to his subsequent discussions of "the right and the good."

see also:

- Eugene B. Borowitz, "The Authority of the Ethical Impulse in 'Halakha' in Modern M. Samuelson's Studies in Jewish Philosophy & Culture: Essays of the Academy for Jewish Philosophy, 1970-1985, (Lanham, MD; University Press of America, 1987), 477-505.

A - J. David Bleich, "Is There an Ethic Beyond Halakha?" in *Eden*, 507-54

Halakha and Other Systems of Ethics: Attitudes and Interactions

DISCUSSIONS ON INTERACTIONS between different ethical systems are often beclouded by a habit of thought residual from earlier times when morality was identified with a particular religious basis. Thus today avowed secularists sometimes speak of *Morality*, with a capital M, having in mind some "natural morality" (as if such exists) by the standards of which all systems of religion, law or ethics are to be judged. After the sustained efforts of many thinkers, it is now widely accepted that no natural morality adequate to the needs of man and society can be unequivocally defined. Simple honesty requires that we who are Torah-loyal Jews state openly that our commitment is to the supernatural foundations of belief, in order that one may identify where these assumptions affect our conclusions. Simple prudence demands that as clear-minded investigators we acknowledge no claims of a so-called natural morality, so that we need not find ourselves confronted by spurious challenges. It is well therefore at the outset to define several terms that are essential to our analysis.

DEFINITIONS

An *ethical theory* sets forth principles: (1) to systematize rules for behavior, which is then described as moral or ethical; (2) to justify these rules in the light of basic truths about man,

the world, and God; (3) to promote understanding; and (4) to stimulate ethical behavior.

A *moral code* is a set of prescriptions and rules to guide behavior in specified circumstances.

Subsuming and underpinning a *moral code* is an *ethical theory*. It is conceivable that different ethical theories may correspond to the same *moral code*.

It is important to point out that any system that satisfies the definition of a *moral code* is not ipso facto worthy of approval. In fact, in terms of these definitions the term "moral" as applied to a code, does not imply a value judgment at all. The same applies to the usage of "ethical" in ethical theory. From the vantage point of some particular ethical theory with its characteristic definitions of *good* (and *evil*), some moral codes will be judged better than others, but obviously no two ethical theories need agree on such a judgment.

I

Halakha is a moral code, and the Torah makes known only a few of the most basic postulates about ultimate reality that constitute the framework of the ethical theory associated with it. This cannot be otherwise since it is impossible to formulate explicitly all the necessary assumptions about the nature of man, the character of human societies, the laws (if any) of history and nature, the relation of man to God, and the nature and attributes of God. Some of these are being progressively discovered, but all of them are certainly not known now. Moreover it is possible that adequate understanding of all of them will never be attained for it may very well be beyond the capacity of human intelligence. This leaves the field open for constructing partial and schematic conjectural ethical theories to serve as background for the given moral code that is the Halakha.

Now, no moral code can possibly be complete in the sense that it prescribes a suitable response in every conceivable circumstance. By its nature it treats of particulars or of usual and common situations. The same is true of Halakha as well, and so

corresponding to different partial ethical theories, different extensions of the moral code to situations not covered will be developed.

It should be noted as well that in a historicist view, which is certainly not foreign to Torah, man and society are not static and unchangeable;² rather some truths about human nature, for example, must be seen as time-bound and consequently ethical theories involving such postulates as well as some aspects of the moral code dependent upon them must be seen as evolving constantly. Such an approach is certainly applicable to gaps in the halakhic code or areas for which only the most general guidance is offered.

This position is perhaps best summed up in the following passage:

Our perfect Torah sets forth general principles for the cultivation of human virtue and for [ethical] behavior in the world, in the statement: "Holy shall you be. . ." This means, as the Rabbis said, "Sanctify yourself in what is permitted"—that one should not be drawn after lusts. Similarly the Torah says: "You shall do that which is right and good" meaning that one should deal well and uprightly with men. It was not appropriate in all this to command details, for the commandments of the Torah are obligatory for every period and all time and in every circumstance, but the virtues of man and his conduct vary according to the time and the people. The sages of blessed memory specified some useful particulars included under these principles, some of which they made binding law and others only rules recommended before the fact, but not binding or actionable after the fact, still other rules for those who seek the way of special piety.³

It is clear then that in at least two respects the Halakha is open-ended, so to speak. On the one hand, individual responsibility is the bulwark of the Torah life. That is so even where the law is precisely prescribed; for although there are circumstances where the law must be imposed by outside authority, these are severely limited and ideally would be eliminated.

There are, moreover, important areas where, as we shall see, the individual conscience, fashioned and motivated by the life and values of *mitzvo*t, is charged to decide for itself which is the right way. On the other hand, in the life of the community and the society as a whole, social, economic, technological, and other innovations and changes open up new scope for legislation to accomplish "that which is right and good."

II

The Rabbis see all of reality in terms of polarities. Thus they conceive the universe as being itself produced by the interaction of forces and serving as the arena for the creative interplay between opposed principles. *Rahamim* (Love) and *Din* (Justice) are the poles around which all of existence crystallizes, and the very act of Genesis, which brought being out of nonbeing, is the visible effect of the tension between *Rahamim* and *Din*. A midrashic parable illustrates this theme frequently encountered in the rabbinic literature.

A king had empty cups; said the king, "If I put hot water into them they will burst, if cold they will crack." What did the king do? He mixed hot water with cold, filled them and they stood. So said the Holy One Blessed be He, "If I create the world with the Rule of Love its sins will be great, with the Rule of Justice—the world cannot endure; I shall then create it with the Rule of Justice and the Rule of Love, and would that it endure!"⁴

In different contexts, the terminology varies. Thus *Din* is sometimes *Gevura* and *Rahamim* is called *Hesed*. Moreover the dialectics of *Din* and *Rahamim* were conceived of as of such all-embracing character that every fundamental antithesis was seen as but another manifestation of the counterpoint between Justice and Love. Under the influence of Aristotelian usage, *Gevura* and *Hesed* became identified with matter and form: *Gevura*, the principle of being—the substratum of existence, the ever present through all change, yet unchangeable—or in

another formulation, the passive or female element—passivity that in its constancy contains all things within itself; *Hesed*, the principle of action, or male element, forever reaching out, seemingly of no substance, yet imparting substance to all things and realization to every potential, endowing matter with meaning and significance, the power of love which in self-effacement submerges itself in its object and thus impregnates with the divine spark of life.

The Torah is the model of the world. We are told:

The Torah is likened to two paths—one through fire and one through snow. If one turns towards this one he dies by fire; if one turns towards the other he dies by snow. What shall one do? Let him go in the middle.⁵

Thus Maimonides explains that the Torah's code of behavior represents the middle way, which if a man follows he will suffer neither burn nor frostbite.⁶

Yet, the "mean" may be a tenuous one for by its very nature, it must in many circumstances represent a compromise between the demands of love on the one hand and justice on the other. Under more trying conditions it may require a choice between alternatives all of which are guilt laden. It is evident that if love bids one act one way and justice another, even where the choice between them or a third alternative is prescribed by the Halakha, it is only on the level of behavior that the dilemma is resolved; so far as motivation is concerned there is no escape from the paradox. Yet the motives for our actions are inevitably involved in determining their ethical character. In fact, the Rabbis see motives as the characteristic determinant of virtue. Interestingly enough, Maimonides singles out as examples David and Elijah, who displayed harshness and anger, albeit in righteous causes, to show how lack of love results in loss of virtue even though in practice the exigencies of justice leave no room for choice.⁷ It is not surprising therefore that the Halakha itself recognizes the suspension of the usual halakhic criteria in those instances where conflict on the motivational level is acute.

The archetype is our father Abraham. So boundless is his love for man that he rebels against accepting the divine decree against the wicked cities of Sodom and its allies. Scripture says, "Abraham approached,"⁸ and Midrash comments: "R. Elazar explained thus, 'For war—I come; for conciliation—I come; for prayer—I come.'"⁹ Abraham does not shrink from war, as it were, against the Almighty, and driven by love he hurls an accusation against "the Judge of all the earth."

The question reappears in various guises. In order to save lives, is every action justified? Based on talmudic remarks about Esther and Yael,¹⁰ Rabbi Joseph Colon saw it as permissible for a woman to surrender to or even arouse the adulterous lust of bandits in order to save the lives of their captives.¹¹ More recently Rabbi Ezekiel Landau demurred.¹² The same question is discussed in our own time by Rabbi Yehiel Weinberg.¹³ All the authorities agree that in extreme cases, there is no prescribed course of action, and the woman's own conscience must be her guide, for only she can determine what her true motives are. Not only an overwhelming challenge of love can suspend the usual norms. The same applies to the stern demands of justice. "Said R. Elazar ben Yaakov: I have heard that [the court] may inflict penalties which are not prescribed in the Torah."¹⁴ After transcribing this ruling, Maimonides adds a warning: "All these things are according as the judge sees that this one [the accused] is culpable and the circumstances require it. In everything, his deeds must be for the sake of Heaven, and let not the dignity of men be light in his eyes."¹⁵

Lest one allow oneself too much freedom in taking liberties with established judicial procedure he concludes, "It is the glory of the Torah only to act in accordance with its statutes and ordinances."

III

It is only in cases of overriding urgency that the individual is given the liberty to probe his own motives and act as he sees fit regardless of the usual rules. Nonetheless even when the stakes

are not nearly so high, the Rabbis recognized, at least, ex post facto, the justification for illegal deeds stemming from pure motives.

Said Rabba bar Hanna in the name of R. Yohanan: What is it that is written: For the ways of the Lord are upright—the righteous walk in them and sinners stumble in them. . . . It is analogous to Lot and his daughters. They—whose intention was for good [*mitzva*]¹⁶—the righteous walk in them. He—whose intention was to sin—sinners stumble in them.¹⁶

A general conclusion from this discussion is: "Great is a transgression for the sake of [God]." In fact the discussion turns on the point whether it is superior to a *mitzva* without proper intent or whether they are equal, but all are agreed that intent is no less significant than realization.¹⁷

The Hialakha sets up a hierarchy of norms, enabling decisions to be taken in some cases of conflict. However, as we have seen, this is not a complete ordering in the sense that some pairs of conflicting values are equally weighted and consequently halakhic decision rules do not always apply. Moreover, even where a comparative scheme exists and a certain course of action is indicated, the scale is not univalent since intent and motivation can at least cancel out the priority.

This is true not only in considering actions (according to the usage of W. D. Ross)¹⁸ as units consisting of an act together with a motive. Even with reference to acts alone, that is, behavior unrelated to intent, there are instances where the clash of commandments is unresolved and the individual is free to apply extra-halakhic desiderata to determine what is right.

There is a considerable body of halakhic opinion that the imperative "You shall not stand by the blood of your neighbour"¹⁹ is accorded equal status with that of self-preservation, so that one is free to choose to sacrifice his own life to save another's, although it is not required by the law. The individual's own ordering of the priorities will of course imply a subjective scale

of values that the Halakha accepts as valid though not universally so.

IV

The permanent needs of society for a legal system that is characterized both by continuity in time and universality in scope imposes a requirement for considerable standardization and uniformity of practice in most areas. Nonetheless, every individual must see it as a challenge to himself to study the Halakha, to know it and understand it, to acquire its patterns of thought, and to be sensitized to its values and thus enable himself to make his own decisions. Thus "Mar Zutra explained in the name of Rav Hisda: Whosoever studies Scripture and Mishna, diagnoses a *terefa* for himself and engages in halakhic analysis, concerning him it is written: 'If you eat the labor of your hands, happy are you'²⁰—in this world 'and it be good with you'—in the world to come."²¹ The biblical reference is explained by Maharsha (ad loc.) as follows:

"Happy is one who fears God," that is, if a case of doubtful *terefa* occurs and he fears God and is strict with himself and refrains from eating it he shall be happy in the world to come . . . but "if you eat the labour of your hands" is a higher degree. That is, one who exerts himself to resolve the doubt, finds it permitted, and then eats it, earns for himself a double reward as it is written, "*happy are you*"—*in this world*; for he eats of it, "*and it be good with you*"—*in the world to come* for he exerted himself in Torah.

The crucial point is that though no one is born with the right to make his own halakhic decisions, every one is duty bound to acquire that right by diligent study of Torah. The resolution of the Halakha as a dialectical process is not one that necessarily takes place always at a particular level of authority, and there is much room for individual judgement rather than mere obedience.

In this connection, the following statement of Maharal, although not a ruling, gives us an insight into what I am trying to convey:

It is more fitting and more correct that one should determine the law for himself directly on the basis of the Talmud, even though there is a danger that he will not follow the true path and not decide the law as it should be in truth. Notwithstanding, the sage has only to consider what his intellect apprehends and understands from the Talmud and if his understanding and wisdom misleads him, he is nevertheless beloved by the Lord when he decides in accordance with his mind's dictates . . . and he is superior to one who rules from a later prepared code without knowing the reasons which are the ground of the decision. Such a one walks like a blind man on the way.²²

To my knowledge, nobody else puts it quite that sharply, nor that strongly, but it is not really an unique view that everyone ought to study the sources, analyze the various opinions, and reach his own conclusions rather than merely submit to authority. The process of halakhic decision is not meant to release us from the struggle of conscience or the toil of the intellect that must be involved in any decision if it is to be a worthwhile spiritual experience. If every decision, every act of choice, is to be laden with meaning it must be the outcome of a process in which all the forces of the soul are involved, not only the overcoming of temptation important though that is in itself.

Obviously, in many cases there are purely technical procedures for resolving legal issues and these leave little room for individual variation. That is essential for the orderly development of society. But even with all that there are still situations, such as we have noted, where the ultimate decision must be the individual's alone, taken in the privacy and loneliness of his own conscience, where the immediacy and ethical awareness of the demands of love or justice are such that only the individual himself can confront the storms within his heart and determine which demand shall prevail.

We turn now to the sphere of public law prescribed and administered by due authority. Because of the profound change in the status of the Jewish people that took place in our time—because of the hiatus of almost two thousand years in the development of the Halakha as applied to whole areas of national life—there is a tremendous need for new laws, and our generation is faced by an awesome challenge. The need for new law will, of course, be filled. It is being filled every day. The legislation of the Israeli Knesset already fills quite a few volumes and will continue to grow. There is, however, a real danger that unless in our time we succeed in recapturing the all-embracing character of the Halakha, of endowing with halakhic validity at least some significant parts of the legislation that today is made by the Knesset, the nature of the Jewish people as the people of the Torah will be distorted if not completely erased. What distinguished us throughout our existence was precisely the fact that we were the bearers of the Halakha, that we built what was essentially a voluntaristic society imposing on ourselves the disciplines of the Halakha as set forth and developed through the generations.

For much of our historical career in the Diaspora we had to live with a truncated Halakha. Today, most of these areas are being filled. If they are filled with non-halakhic legislation we may find ourselves not only with a truncated Halakha but with a truncated Jewish people. On the other hand, the practical necessities of our time are such that it is not conceivable to provide that legislation other than through the instrumentality of, as it has been called, *Medinat Hahok* rather than *Medinat ha-Halakha*. The need to overcome this confrontation, to resolve this paradox, is, I think, the crucial need of our time.

“You shall observe and do, for it is your wisdom and your understanding in the eyes of the nations. For they will hear these

ordinances and will say, ‘Surely this great people is a wise nation and understanding. . . . What people is there so great that it has righteous ordinances and judgments like the whole of this Torah which I put before you today.’”²³

That the nations can recognize the superiority of the Torah’s moral code implies that its validity is unpaired (at least to a great extent) even in the absence of some of the specifically Jewish postulates about God underlying it. Presumably for the nations other postulates suffice to validate the code. It would then have the status of a *nomos* in the sense described by Maimonides.

A Law the whole end of which and the whole purpose of the chief thereof, who determined the actions required by it, are directed exclusively toward the ordering of the society and of its circumstances and the abolition in it of injustice and oppression . . . the arrangement, in whatever way this may be brought about, of the circumstances of the people in their relations with one another and provision for their obtaining in the opinion of that chief, a certain something deemed to be happiness—you must know that Law is a *nomos*.²⁴

The Torah provides the ultimate grounds of obligation. “Holy shall you be, for holy am I, the Lord your God.”²⁵ It gives not only understanding within the limited framework of a particular human society, rather it “desires to make man wise . . . so that he should know the whole of that which exists in its true form.”²⁶ However, as we have seen, where the Halakha is undefined, a *nomos* may be admitted, and even where the Halakha is explicit, the functional value of a *nomos* is recognised to the extent that in practice it yields identical guidance.

The radically different and rapidly changing social and economic conditions of our time leave wide areas of life for which Halakha is undefined. Indeed, it is remarkable that in much of *dinei mammonot* (i.e., civil law) as presented in the Talmud and the codes, there is relatively little law derived from explicit

successful. On a pragmatic level, the task of formulating such a code gives an opportunity for cooperation with circles who are not yet prepared to accept the authority of Torah, but for whom ethical considerations are important.

Concern with moral standards that leads to moral action is regarded by the Halakha as virtuous in its own right. For even where there is no acknowledgement of the divine sanction, contemplation and observances of the Torah's moral code is itself beneficial.

Said R. Hiya bar Ba: "They have forsaken Me," for this I would forgive them. Have they "Kept My Torah?" For if they forsook Me and kept my Torah, the heaven in it would draw them near to Me.²⁷

The state of Judaism in our time is such that although large segments of our people have little interest in God, many of these same people are deeply committed to ethical norms. Whether this devotion is a vestigial influence from the past or whether its roots are in contemporary experience is immaterial. To secure the unity of our people and to renew its loyalty to the covenant, a promising approach is through a common ethic within the framework of Torah.

Even though we find that for practical pragmatic reasons the Halakha cannot yet be given total jurisdiction for all Jews, we must strive to cooperate with them and reach agreement with them at least in partial areas where common concerns and shared conceptions of righteousness prevail. Our faith in *Netzah Israel* must be such that if we can make a little progress at a time, the day will come when the Torah will fill our lives completely.

1. On these definitions compare, Abraham Edel, *Science and the Structure of Ethics* (Chicago, 1969), pp. 7-10.
2. See, e.g., Maimonides, *Guide of the Perplexed*, III:29 and III:32.
3. *Maggid Mishneh to Shekhenim*, 14:3.

scriptural passages, rather much that is deduced from principles of equity that are more or less universally acknowledged. To fill the lacunae in the Halakha, to cover the vast new needs of commerce, social legislation, economic planning, international relations, and so forth, ethical directives based on halakic principles of justice can be formulated, which might just as well be propounded as *nomos*. To take just one example, there is ample precedent for the practice of incorporating various commercial rules of non-Jewish provenance into the corpus of Halakha. The generally recognized norms of commerce are sanctioned by Torah law because they serve a vital purpose in regulating an important area of activity, provided only that they do not conflict with other halakic provisions and are adjudged by Torah authorities to advance desirable ends.

From our point of view, such a code imbedded in the Halakha acquires greater significance by virtue of its becoming part of a total system. Thus to use our example from the field of commerce, many a *Din Torah* (i.e., a hearing in a rabbinic court) that takes place today in Israel (and it goes without saying, in the Diaspora) involves careful consideration of much non-Jewish legislation that is inextricably implicit in the definition of the various contracts, undertakings, and so forth. In Israel, as in other lands, new legislation in these areas is frequently promulgated. While this legislation must be taken into account by the rabbinic courts, under present conditions halakic authorities do not contribute to framing it at all. Yet, it ought to be possible for Halakhists to take a more active part in proposing needed legislation imbued with the Torah's spirit that would be acceptable also to the nonreligious elements in Israel.

Perhaps, a more urgent subject is that of traffic laws. Israel has earned a tragic distinction for carnage on the roads. There is an imperative need for research leading to legislation on highway construction, traffic control, automobile safety standards, and related matters. This ought to be a major priority for religious Jews and this is certainly an area where joint efforts with other sections of the community could be highly

4. *Bereshit Rabbah*, 12.
5. P.T. *Hagigah*, 2:1.
6. Maimonides, *Shemonah Perakim*, chap. 4.
7. *Ibid.*, chap. 7.
8. Gen. 18:23.
9. *Bereshit Rabbah*, 49.
10. *Sanhedrin*, 74b.
11. *Responsa Maharik*, 137.
12. *Noda be-Yehuda*, Tinyana, 161.
13. *Seridei Esh*, v. 3, sec. 109.
14. *Sanhedrin*, 46a; P.T. *Hagigah*, 2:2.
15. M.T., *Sanhedrin*, 24:10.
16. *Horayot*, 10b; cf., *Nazir*, 23a.
17. Cf., Abraham I. Kook, *Mishpat Kohen*, sec. 143 (end).
18. W.D. Ross, *Foundations of Ethics* (Oxford, 1939), p. 115.
19. Lev. 19:16. Of the considerable literature on the subject, see *Baba Mezia*, 62a, the controversy between Rabbi Akiba and ben-Petura; Kook, *Mishpat Kohen*, sec. 143, and sec. 144, pt. 15, 16; Malbim to Lev. 19:18; *Pithet Teshuva* to Y.D., 252:6.
20. Ps. 128:2.
21. *Hullin*, 44b.
22. Maharal, *Netivot Olam: Netiv ha-Torah*, 15.
23. Deut. 4:6.
24. Maimonides, *Guide of the Perplexed*, II:40.
25. Lev. 19:2.
26. Maimonides, *Guide of the Perplexed*, II:40.
27. P.T. *Hagigah*, 1:7.

The Limits of Self-Sacrifice

WE ARE LIVING IN AN AGE WHEN JEWS, as individuals and as a community, are the recipients of all kinds of demands that, in the name of a "higher goal," call for various degrees of Jewish self-abnegation and self-sacrifice. The reintroduction of the quota system in American universities, favoring the Blacks and discriminating against the Jews, is one illustration of this. Advice proffered the state of Israel by assorted New Leftists and Third Worldists on what Israel's borders should look like is another. A third, again with immediate reference to the Jewish situation in the United States, has to do with various schemes of integrating previously mainly Jewish neighborhoods. And then there is the compulsory busing of school children to make sure of racially balanced schools—with all that this implies in terms of increased violence and lower academic standards; the ever increasing rates of taxation to pay ever higher compensation to so-called welfare cases; the urging of Jews—with or without the threat of violence—to abandon their businesses in Black neighborhoods, at considerable loss to themselves; and so on and so forth.

I

Now, it is quite clear that, in all of the above instances, we are dealing with conflicts of interests—not exactly a totally unprec-