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NOT IN HEAVEN

THE NATURE AND FUNCTION
OF JEWISH LAW

ELIEZER BERKOVITS

With a foreword by
Joseph Isaac Lifshitz

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R. Yehoshua rose to his feet and exclaimed:

לא בשמים היא

It is not in heaven.

Baba Metzia 59b

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Foreword

In his study of the Jewish community in Eastern Europe, focusing on the period from the sixteenth century to modernity, Jacob Katz described two authority figures—the rabbi and the *maggid*. The rabbi, the devoted Torah scholar, functioned chiefly as halachic authority. But it was not the rabbi's door that was always open to those in need of advice and inspiration; that was the role of the *maggid*. The *maggid* preached weekly sermons before large audiences, while the rabbi preached only twice a year—on the Sabbath of Penitence preceding the Day of Atonement and on the Great Sabbath preceding Passover. The difference between the rabbi and the *maggid* lay not only in the degree of their interaction with the Jewish masses; they also differed in their intellectual pursuits: the rabbi devoted most of his time to the study of Talmud and Jewish law, while the *maggid* turned his attention to mysticism.

The figures of rabbi and *maggid* can usefully serve as archetypes in investigations of Jewish intellectual and social life in other times and places, too, beyond the scope of Katz's historical study. The rabbi represents a leadership whose authority derives from an intellectual ethos and is bound up with the law as passed down and interpreted in the systematic halachic

tradition for generations. Consequently, his influence wielded on the community comes “from above.” By contrast, the *maggid* represents a leadership whose authority is charismatic, located “in the people”; that is, he acts from within the community and maintains direct contact with its members. Consequently, his influence comes “from below.” The rationalistic world of law and jurisprudence constitutes the rabbi’s spiritual environment, while the *maggid*’s world is a poetic or narrative one, abounding with all the sensuous, emotional, and mystical richness of human life.

In the national life of the nascent Jewish people, this paradigm seems to have been embodied in the clear-cut opposition between Moses, teacher of the law, elevated above the people, whose holiness made him remote and inaccessible, and Aaron the priest, lover and pursuer of peace, arbitrator and promoter of brotherly love, who became Moses’ spokesman. Several sources attest that a parallel social distinction to that obtaining between the rabbi and the *maggid* existed between agadists and halachists in the talmudic period. For instance, R. Abahu (the agadist) was awarded great honor in Caesarea and lauded as “Great man of your people, leader of your nation” (Sanhedrin 14a), while R. Akiva’s colleagues counsel him: “Akiva, what have you to do with agada? Cease your talk, and turn to [the laws concerning defilement through] leprosy signs and tent-covering!” (Hagiga 14a).

A similar dichotomy is evidenced in the Middle Ages. Certain sages, some of them widely acclaimed, were known as preachers (*darshanim*). Their renown stemmed from their righteousness and oratorical skill, in contradistinction to other sages of their time, whose greatness was attributed to their erudition

in Torah and their status as legal authorities. For example, Rabbi Judah Hehasid was revered as a holy man blessed with divine inspiration, not necessarily due to his command of Talmud and Jewish law. In reply to a question from Rabbi Judah, Rabbi Simha of Speyer explains why it is permitted to drink milk, even though most animals are ritually unclean after slaughter, and consequently theirs is the milk of a nonkosher animal: “Well do I know that you have put me to the test out of your great affection for me, asking me that question about milk; you should have asked me about meat, for even when an animal is examined, and its meat pronounced permitted for consumption, who has given that permission, inasmuch as most of them are not really kosher...”^{*} Rabbi Simha treats Rabbi Judah Hehasid with the utmost respect, answering his query as though Rabbi Judah were testing him, but in fact he dismisses the question altogether; in rabbinic historian Ephraim Urbach’s words: “Here we have another example of the difference between the legal authority, who decides what is permitted on the strength of law, and the pious man, cautious and tending to prohibit, due not to strength of *law* but to strength of *awe*.”^{**}

We may regard the two great Jewish streams in Eastern Europe—*mitnagdim* and *hasidim*—in light of the distinction between these two types of spiritual leaders. The *mitnagdim* can be considered the intellectual descendants of the rabbi, and the *hasidim* are those of the *maggid*. Indeed, several disciples of the

^{*} *Shibbolei Haleket* 2, p. 58. *Responsa and Decisions of the Rabbis of Ashkenaz and France*, in MS Bodl. 692, ed. and notes Efraim Kupfer (Jerusalem: Mekitzei Nirdamim, 1973), p. 8 [Hebrew].

^{**} E.E. Urbach, *The Tosafists*, p. 413.

Baal Shem Tov (Rabbi Israel of Medzhybizh) were *maggidim*: Rabbi Dov Baer, the Maggid of Mhezirech, and Rabbi Yehiel Michel of Zlotchov. The role of the *maggid* greatly influenced the formation of Hasidism, both in its appeal to the common people and in its spreading of mysticism. By contrast, the *mitnagdim*, even when they did pursue Kabbala, did so unobtrusively, concentrating instead on the study of Talmud and codes of law.

The division of roles between “rabbi” and “*maggid*” was perpetuated with the subsequent emergence of the *Musar* (religious self-improvement) movement. Rabbi Israel Lipkin Salanter revolutionized the Lithuanian yeshivot by demanding emphasis on moral development alongside study and ritual observance. His movement, placing as it did man at the center, also continued the *maggid* tradition with its renowned *maggidim*, such as Rabbi Jacob Joseph, the Vilner *maggid*, and Rabbi Moses Isaac Darshan, the Kelmer *maggid*, both disciples of Rabbi Salanter. The *musar* yeshivot enacted a separation of functions, the head of the yeshiva being charged with the instruction of Talmud, and the *mashgiach* (moral supervisor) with fostering a personal relationship with the students; the latter also gave the *musar* talk, a reincarnation of the maggidic homily. Although these addresses treated ethical matters for the most part, they were never completely removed from theological issues, in the manner of Rabbi Haim of Volozhin. An exploration of human nature was the central theme.

I point out and exemplify the distinction between the rabbi and the *maggid* because it sheds light on Rabbi Eliezer Berkovits’

philosophical personality. At the Slobodka yeshiva—where Berkovits' thought germinated—pupils studied mainly Talmud, setting aside about half an hour daily for the study of ethical literature. What set the yeshiva apart was its emphasis on human greatness. Rabbi Nathan Tzvi Finkel, known as “the Alter (Elder) of Slobodka,” founder of the yeshiva and its spiritual supervisor, placed great emphasis on Adam as the humanistic model. The Alter preferred morality sessions to Talmud lessons, not unlike a community *maggid*. The following is a portrait of Finkel and his thought by his disciple Rabbi Yehiel Jacob Weinberg, later to become director of the rabbinical seminary in Berlin:

The Alter's strength lay mainly in his insights into human nature in general, and Jewish nature in particular. “We still don't know man, his strength and the achievements of which he is capable”: “God created man in his own image”—this biblical verse should not be read in passing: we must seek to grasp it in all its profundity. Concealed beyond the material-external reality we perceive of as the human body and its physical needs is a dynamic-creative spiritual essence with qualities of the great Creator, blessed be his name.

The Alter reiterated this important idea throughout his life, entrancing his audience with his original formulations, basing his lessons upon biblical verses and dicta of the sages, thereby shedding new light on them. In his talks in his home, in the yeshiva, and on our walks together in the fields, he elaborated at length on his notion of man shut away in his prison, awaiting redemption and revelation—in other words, creation. The power of creation is given to man. Man's Creator gave him this power, of unlimited potency and scope. Man, when he so wills, can reach the heavens.

Who's to stop him? The theory of ethics seeks answers to this question.*

This humanistic worldview filtered down to Rabbi Berkovits when he was a student of Rabbi Weinberg's at the rabbinical seminary. A conception of man as the pinnacle of Creation, and morality as a tenet of Jewish law—these are the principles of Jewish thought that he learned from his teacher. Rabbi Berkovits, then, was nurtured in the maggidic tradition. As a disciple of this humanistic strand of the tradition, he entered the University of Berlin. His theological outlook, which he developed while a student at Rabbi Weinberg's yeshiva, stood in opposition to the idea of an alienated God as taught at the university. Rabbi Berkovits found an abstract, transcendental conception of God disturbing, not just when couched in the terms of modern philosophy but also as found in medieval Jewish philosophy. He could not accept an abstract God who does not care for man, his own creation. At the university, Rabbi Berkovits also took issue with Kantian ethics as minimized to the sum total of all obligations deriving from abstract categorical imperatives, an ethical view of the individual and his life as mere objects subordinated to the operation of behavioral rules. Although Rabbi Berkovits drew on his extensive knowledge of philosophy from his university days for the purpose of developing his ideas, his homiletic method and his deepest theological and moral convictions were shaped by the yeshiva, where he was exposed to the perspective that was to form the foundation of

* Rabbi Yehiel Jacob Weinberg, *Responsa Seridei Esh*, pt. iv, Rabbi Nathan Tzvi Finkel (Jerusalem: Mossad Harav Kook, 1977), p. 310 [Hebrew].

his entire world. The Slobodkan worldview, the leitmotif running through all of his essays, is a moral framework that places man at the center of Creation, with morality being the major aim of halachic life. Clearly, Rabbi Berkovits did not see eye to eye with formalistic Jewish thinkers. The school of halacha in which Rabbi Berkovits' thought developed was one that propounded the principles of morality and justice.

The *musar* movement had many opponents, whose claims were founded mainly on fear of innovation, of changing the tradition. But there was also more substantive philosophical criticism. For instance, one of the movement's vociferous detractors, Rabbi Abraham Isaiah Karelitz, the Hazon Ish, denounced in particular the movement's antinomianism. In his view, halacha is to form moral life; no core of values exists outside of it: "Moral obligations at times coalesce with the rulings of halacha into a single entity, with halacha's determining what is morally prohibited or permitted."^{*} The Hazon Ish did not contest the importance of morality but believed that a solution to moral problems could be found not by perusing ethical works outside of halacha, but rather within halacha itself: "And the essential thing for curing these ills of the soul is the study of halacha as meticulously as possible, until it is ingrained and produces absolute love of the law."^{**} Studying volumes of moral instruction, as adherents of the *musar* movement did, was liable to cause damage worse than that wreaked by those who made no effort to mend their ways:

* Rabbi Abraham Isaiah Karelitz, *Hazon Ish: On Faith, Confidence and Other Matters* (Tel Aviv: Ministry of Defence, 1979), p. 21 [Hebrew].

** Ibid., p. 25.

People who possess good qualities and study books of moral behavior when they are young but do not study law, and thus have no love of the law in their hearts—such people are more likely to abuse the law than those who never pored over books of moral behavior, since the evil spirit is wont to cause obstinacy and arrogance in scholars, who then look down on common people, as if the scholar is set high above them, and anything he does appears in his own eyes generous and dutiful. It is but a laughing matter to him whether he is suspect of abusing the law, “for my actions are always on the right side of the law, as moral as could be.”*

According to the Hazon Ish, morality falls within the scope of Jewish law; ethics shouldn't be treated separately from it. Moreover, when moral betterment is unrestrained and untempered by knowledge of the law, it may lead to a mistaken and hence immoral decision.

To the Hazon Ish's criticism must be added a no less vexing problem: might not the elevation of the moral life to a higher level than the observance of ritual law be construed as belittling the ultimate objective of observing the commandments—closeness to God? Space does not permit us to reply to these criticisms in full, yet it should be emphasized that Rabbi Berkovits is not calling for an ethics dissociated from halacha. According to him, halacha does not contradict ethics at all when the student of Torah is aware of the moral aspect of the law. Rabbi Berkovits opposes formalistic legalism that ignores the moral underpinnings of halacha. Unlike the Hazon Ish, who advocated pure halachic meticulousness, Rabbi Berkovits

* Ibid., p. 27.

proposes *halachic study* geared toward uncovering the intrinsic moral values of halacha.

I shall draw upon a talmudic source affording a glimpse into the ethical thought of Rabbi Berkovits. The Talmud recounts a contest between priests that ended in a murder on the ramp leading to the altar:

Our rabbis taught: It once happened that two priests were equal as they ran to mount the ramp, and when one of them came first within four cubits of the altar, the other took a knife and thrust it into his heart. R. Tzadok stood on the steps of the Hall and said: Our brethren of the house of Israel, hear ye! Behold it says: If one be found slain in the land... then thy elders and judges shall come forth... On whose behalf shall we offer the heifer whose neck is to be broken, on behalf of the city or on behalf of the Temple Courts? All the people burst out weeping. The father of the young man came and found him still in convulsions. He said: "May he be an atonement for you. My son is still in convulsions, and the knife has not become unclean." [His remark] comes to teach you that the cleanness of their vessels was of greater concern to them even than the shedding of blood.*

The continuation of the talmudic passage explains that the tragedy went beyond the murder itself. The fact that the father, upon discovering that his son has been murdered, is more concerned about the ritual cleanliness of the knife than about his son's death—this is what the rabbis of the Talmud found so

* Yoma 23 a, b, Soncino English translation.

heinous. According to them, *that* was the tragedy that caused Rabbi Tzadok to cry out on the steps of the Temple Hall. The juxtaposition of this human incident with the halachic problem clearly indicates the talmudic sages' priorities. Halacha devoid of morality—a life of halacha that has sterilized the moral life—is unacceptable from the halachic perspective itself, and certainly fails to achieve its purpose.

In this volume, Rabbi Berkovits is crying out, as Rabbi Tzadok did on the steps of the Temple Hall. At the core of his many books and essays is a ceaseless striving to reconcile morality with traditional practices. Writing in the terrible aftermath of the Holocaust and its destruction of the Jewish world, Rabbi Berkovits mourned the loss of the world of Torah. Unhappily he witnessed attempts to restore the world of Torah and Jewish law and preserve halachic scholarship after most of the talmudic scholars had been lost, by inclining toward the written text—an orientation that had more than a hint of formalism about it—and a concomitant neglect of man and his moral values. As a modern *maggid*, Berkovits called for a return to the moral life, a return that is not at odds with halacha, but acts within halacha itself.

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Jerusalem

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Introduction

The term “halachic Judaism” needs some explanation. It is not to be understood as a form of Judaism that is opposed to agadic Judaism, a distinction propagated by some authors. There is no such thing as agadic Judaism. Halacha and agada are intrinsically interrelated. The great halachists of the Talmud are also the great agadists. I use the term “halachic Judaism” on the basis of my understanding of the meaning and function of halacha. Halacha is the bridge over which the Torah moves from the written word into the living deed. Normally, there is a confrontation between the text, which is set, and life, which is forever in motion. Even such an apparently easily understood commandment as “Thou shalt do no manner of work on the Sabbath day” requires lengthy explanation. There is an obvious need to define what is meant by “work.” As soon as one undertakes that task, he is involved in the confrontation between a real-life situation and a text. There are innumerable possibilities for human behavior and action, innumerable human needs and problems arising from them. How to apply to them the specific definition of “work” requires further explanation and interpretation. How to face the confrontation between the text and the actual life

situation, how to resolve the problems arising out of this confrontation, is the task of the *Torah sheb'al peh*, the Oral Law. This second Torah, ever since the days of Moses, handed down from generation to generation, accompanies the *Torah shebiktav*, the Written Word, along its journey of realization in the innumerable concrete situations through which the Jewish people passes in the course of its history. It is the wisdom of Torah implementation in the daily life of the Jewish people. It makes the Torah *Torat hayim*, living teaching and relevant law. The essence of the Oral Torah is the halacha. As the root of the word (*haloch*—walk, go) indicates, halacha teaches the way along which the Jew is required to walk in accordance with the Torah. Halacha is the application of the Torah to life. But since there is no such thing as life in general, since it is always a certain form of life at a specific time in history, in a specific situation, Torah application means application to a specific time in a specific situation. The result of this process is what I call halachic Judaism.

Our generation has witnessed probably the most radical transformation of the conditions of Jewish existence since the destruction of the Second Jewish Commonwealth in 69–70 C.E. On the one hand, European Jewry—its many-centuries-old communities, its entire living tradition and its numberless institutions of learning, its experience and wisdom, accumulated through the ages and handed down from generation to generation—an entire national culture and civilization, has been wiped out by international inhumanity and barbarism. On the other, we have been granted the miraculous return of our decimated people to its ancient homeland, as it always not only hoped but knew would one day happen. This greatly weakened people, in the diaspora as well as in the State of Israel, is confronted with

unparalleled challenges to Jewish physical as well as spiritual survival. The Torah has to become effective anew in the midst of revolutionary changes in the world as well as in the condition of the Jewish people. There has never been greater need for halacha's creative wisdom in applying the Torah to the daily realities of human existence than in our day. Maybe our generation has to learn that wisdom anew. We certainly have to become aware of it anew. It is essential that halacha regain its original nature and function. As a contribution toward that end, we have undertaken this study as an attempt to define the nature and purpose of classical halacha. On the basis of what we have found, we have also given some indications of the direction in which we believe it is incumbent upon us to move in the present situation.

The interested student, familiar with talmudic learning, will find a treatment of our subject that is much more intensive, both in breadth and in depth, in our work *Halacha: Its Authority and Function*, recently published in Hebrew by Mosad Harav Kook in Jerusalem.

Finally, may I be permitted a personal confession. While all my life I have endeavored to take my stand on the foundations of halachic Judaism as it was handed down to me in my father's house, and as I have acquired it from my studies in yeshivot and later from my great teacher Rabbi Yehiel Weinberg, of blessed memory, at the Hildesheimer Rabbinical Seminary in Berlin, in this work I was determined to be guided exclusively by the traditional halachic material as I found it and as I have learned to understand it over the years. My ideology did not produce this work; the work fortified the ideology.

CHAPTER THREE

What Is Halacha?

We shall now attempt to sum up the meaning of our analysis. We have examined the ways halacha functions. What does it tell us about the essential nature of halacha?

Halacha is the wisdom of the application of the written word of the Torah to the life and history of the Jewish people. However, this wisdom and its implementation cannot be contained in any book. No written word can deal in advance with the innumerable situations, changes of circumstance, and new developments that normally occur in the history of men and nations. The eternal word of the Torah required a time-related teaching in order to become effective in the life of the Jewish people. This was the tradition passed on by the living word from generation to generation, the *Torah sheb'al peh*, the Oral Torah, beside the *Torah shebiktav*, the Written Torah. The need for it has been clearly described by philosophical as well as halachic authorities. R. Joseph Albo, in his *Ikarim (Book of Fundamentals)*, explains it as follows:

The Torah could not be complete in such a manner that it should be adequate for all times. New details are continually

occurring in the affairs of men in customs and actions, too many to be included in a book. Therefore, God revealed to Moses orally some general principles, only briefly alluded to [i.e., in the Written Torah], so that, with their help, the sages in each generation may deduce the new particulars [of the law appropriate for the new situation].¹

While these considerations apply to the entire ambit of human reality, other commentators emphasized the specifically ethical aspects of the problem and its solution. Thus, Nahmanides, commenting on the verse “you shall do that which is right and good in the sight of the Eternal,”² has the following to say:

...at first the Torah said, “you shall guard his statutes and testimonies which he has commanded you”; now it adds: but also in matters about which he did not command you, set your mind to doing what is good and right in the eyes of God, for he loves the good and the right. This is very important. It is impossible to mention in the Torah the entirety of [what should be] human conduct with neighbors and friends, in all business activities and all the improvement of society and the state. But after a great many of them [i.e., instances of what should be the right conduct in particular] are mentioned..., the Torah states generally that one should do what is good and right.³

Using these remarks of Nahmanides somewhat differently from the context for which he intended them, one might say that even the “particulars”—such as “you shall not be a tale-bearer,” “you shall not stand idly by the blood of your neighbor,”

etc.⁴—are generalities that require some understanding of their realization in numerous life situations. Commenting on the biblical words used by Nahmanides, one of the great commentators on the halachic work of Maimonides explains:

The meaning is that one should conduct oneself properly and with goodness toward one's fellow men. It would not be correct [for the Torah] to command these matters in detail. The Torah was given for all periods and all times and concerning all subjects—and that was necessary. But human qualities and conduct change with the times and the people. So our sages recorded some helpful [decisions regarding] details that they derived from the general principles, some of them as binding laws, others to be done [but without consequences if not done] or recommended as pious deeds.⁵

All three of these authors in a way make clear the need for the Oral Torah to accompany the written word on its journey through the history of the Jewish people. The crystallization of the Oral Torah into a system of teachings and norms for human conduct is the halacha.

By some of the words in our last quotation, one may be guided to an appreciation of another problem present in the application of the Torah to the human condition in its daily reality. In a sense, every system of established law has to cope with a problem that derives from its generality. The law has to formulate general principles, but life situations are always particulars; there is something unique about each of them. In this sense, every law is to some extent “inhuman.” The problem is much more serious when the basis of the law is the revealed

word of God, which by its very nature is timeless. How can an eternal truth and command take notice of the ever-changing needs of the fleetingly uncertain human condition? God's revelation was not the absolute word of God—which could not be received by any human being—but the word of God addressed to man. However, if that should make any sense, would it not mean the relativization of the absolute?

The problem is further complicated by the fact that the application of the Torah to life throughout the history of the Jewish people had to be entrusted to man. It had to be, because “the Torah was given not to God’s ministering angels” but to mere man. Once the Torah was revealed to the children of Israel, its realization on earth became their responsibility, to be shouldered by human ability and human insight. That is, we suggest, the ultimate meaning of R. Yehoshua’s bold stand: “The Torah is no longer in heaven!”⁶ One pays no attention to a voice from heaven in matters of the realization of Torah on earth. So is it intended and explicitly stated in the Torah itself. It could not be otherwise. The divine truth had to be poured into human vessels; it had to be “humanized.” Having left its heavenly abode, it had to be accommodated in the modest cottages of human uncertainty and inadequacy. This, in essence, is the task of the halacha. The “humanization” of the word of God requires that in applying the Torah to the human condition, one takes into consideration human nature and its needs, human character and its problems, the human condition in its ever-fluctuating dimension, the Jew and the Jewish people in their unique historical reality.

We have gained some insight into how this task is accomplished by halacha. As the “wisdom of the feasible,” halacha

safeguards the effective, pragmatic functioning of the economic and social structure of an autonomous Jewish society. We have also seen how, in a conflict between the consequences of a law in a specific case and the ethical demand in that case, the ethical element is given sufficient authority to modify or curb the applicability of the law. We observed it especially in the halachic effort to strengthen the rather inadequate status of the woman as it appears in the written Torah. It was done to the extent that in certain cases a way was found to *compel* a husband to divorce his wife of *his free will*, thus, on one hand, ensuring that the wife is freed from an intolerable bond, and on the other, not violating the biblical law that a *get* (writ of divorce) has to be given freely by the husband. In other cases, to protect a woman from becoming an *aguna* (i.e., married to a non-existent husband), reason was found not to apply the biblical law of testimonies that requires two witnesses. One of the most far-reaching efforts in this area was the basis of the halachic authority to annul a marriage retroactively.⁷

No less significant is the effort to render the application of the Torah to life relevant to the contemporary situation. To recall just one example: In the Torah the *halitza* ceremony was instituted only as a way out for a recalcitrant brother-in-law who refused to marry the widow of his brother who died without leaving any children. However, when mores changed, the halacha gave preference to *halitza* over *yibum* (levirate marriage), some authorities discouraging the latter, others even forbidding it. The requirement of contemporaneous relevance found expression in the midrashic reading of a verse in Psalms that yielded: "It is time to act for God; let them dissolve the Torah."⁸ It has also been formulated in the two other guiding

principles we have discussed. As to the personal responsibility of the halachic authority, one teaches: “A *dayan* should decide in accordance with his own understanding of the case before him”; concerning the public’s attitude toward the halachic authority, the other states: “You have only the judge of your own days to turn to.”⁹

This latter view we shall quote in full as it has been formulated in the Talmud.¹⁰ In one place in the Bible, the early judges in Jewish history—Jerubbaal, Bedan, and Jephthah—are categorized with the prophet Samuel;¹¹ in another passage, Samuel is compared to Moses and Aaron.¹² The logical rule of identity that if $A = B$ and $B = C$, then $A = C$ gives us the midrashic equation that:

The Torah has equated three scarcely significant personalities [i.e., the three judges] with three highly important ones [i.e., Moses, Aaron, and Samuel] to tell you that Jerubbaal in his generation is like Moses in his; Bedan in his time like Aaron in his; Jephthah in his days like Samuel in his own. This is to teach you that once a person has been appointed “the provider” for the community, may he be ever so insignificant, he is like the mightiest among the mighty. And so it is also said: “And you shall come unto the priests, the Levites, and unto the judges that shall be in those days.”¹³

How could it have occurred to anyone to go to a judge not living in his own days? (In other words, what need was there to emphasize “the judge that shall be in those days”?) This means to say: You have to go only to (i.e., to inquire only of) the judge of your own time. Furthermore, it is said: “Do not say: ‘How

was it that the former years were better than these?” Thus says the Talmud. Ecclesiastes continues: “for it is not out of wisdom that you inquire concerning this.”¹⁴ The word of God has to be rendered meaningful in each generation. That is the secret of its eternal validity.

It is obvious that halacha in its essential nature is the most potent antidote to fundamentalism. But is not the human share in it too overwhelming? We have seen how some biblical commandments, such as those concerning the “rebellious son” and the “idolatrous city,” were completely abrogated.¹⁵ A superficial study may give the impression that often, instead of rejecting a biblical command outright, the halacha attempts to get around it. For instance, instead of saying that we cannot accept the cancellation of all debts every seventh year because it is unworkable, Hillel introduced his *takana* of the *prozbul*.¹⁶

Let us consider the method by which halachic innovations are introduced or the law of the Torah is applied to a concrete situation. We shall use a halachic example known as “the share of sons in the *ketuba* of their mother,” or, in talmudic language, *ketubat b'nin dichrin*. This was a *takana*, a regulation introduced by the sages, that a husband should undertake that in case his wife died before him and he inherited her, he in turn would bequeath his wife’s inherited dowry to the sons he had by her, as their inheritance. This made sense in a polygamous society. By such an undertaking only the mother’s children would ultimately inherit the dowry she brought into the marriage. Without it, all the children of the father would share in the estate.

Why was the *takana* introduced? The Talmud explains: “So that a father would be ready to give to his daughters as would

42. Yevamot 90a.
43. Psalms 119:126.
44. Yoma 49a.
45. Brachot 54a and Rashi ad loc.; for the verse quoted, see Ruth 2.
46. See Rashi on Yoma 49a.
47. Temura 14b; Gitin 60a.
48. For the story, see I Samuel 6:14; for the discussion, see Avoda Zara 24b.
49. Ezra 8:35; Temura 15.
50. Nehemiah 8:4; Yoma 69b.
51. Menahot 96a–b.

CHAPTER THREE

1. R. Joseph Albo *Sefer Ha'ikarim* 3:23.
2. Deuteronomy 6:18; regarding the halachic significance of this verse, see the discussion in chapter 1, “The Priority of the Ethical.”
3. Nahmanides on Deuteronomy 6:18.
4. Leviticus 19:6.
5. Cf. Maggid Mishneh on Maimonides, *Mishneh Torah*, Laws of Neighbors 14:5.
6. See the discussion in chapter 2, “Not in Heaven.”
7. See the discussion in chapter 1, “The Example of Marriage and Divorce Law.”
8. See the discussion in chapter 2, “It Is Time to Act for God.”
9. See the discussion in chapter 2, “Only What the Judge’s Eyes See.”
10. Rosh Hashana 25b.
11. I Samuel 12:11.
12. Psalms 99:6.
13. Deuteronomy 17:9.
14. Ecclesiastes 7:10.
15. See the discussion in chapter 1, “The Priority of the Ethical.”
16. See the discussion in chapter 1, “The Wisdom of the Feasible.”
17. Jeremiah 29:6.

18. Ketubot 52b.
19. See the discussion in chapter 2, “It Is Time to Act for God.”
20. See the discussion in chapter 2, “‘Uprooting’ Biblical Commandments?”
21. See the discussion in chapter 1, “The Priority of the Ethical.”
22. See the discussion in chapter 1, “The Wisdom of the Feasible.”
23. Isaiah 54:13.
24. See the discussion in chapter 2, “‘Uprooting’ Biblical Commandments?”
25. Some of them are discussed in chapter 1, for instance, regarding “The Example of Marriage and Divorce Law.”
26. See the discussion in chapter 1, “Common Sense.”
27. See the discussion in chapter 1, “The Wisdom of the Feasible.”
28. See the discussion in chapter 1, “The Priority of the Ethical.”
29. See the discussion in chapter 1, “The Priority of the Ethical.”
30. See the discussion in chapter 2, “These as Well as Those Are Words of the Living God.”
31. See the discussion in chapter 2, “‘Uprooting’ Biblical Commandments?”
32. Exodus 34:27.
33. Cf. Immanuel Kant, *Grounding for the Metaphysics of Morals*, trans. James W. Ellington (Indianapolis: Hackett, 1981); the quotations are from Kant, *The Philosophy of Kant as Contained in Extracts from His Own Writings*, selected and translated by John Watson (1891).
34. For a more detailed discussion of this subject, see my *Crisis and Faith* (New York: Sanhedrin, 1976).

CHAPTER FOUR

1. See Genesis Rabba 16:7.
2. Temura 14b; Gitin 60b.
3. See the discussion in chapter 2, “It Is Time to Act for God.”
4. Maimonides, *Mishneh Torah*, introduction.
5. See the discussion in chapter 1, “Common Sense.”
6. Temura 14b.

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