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# Halakhah and Ethics

## The Holy and the Good

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*Bradley Shavit Artson*

*Dedicated in loving memory to Rabbi Simon Greenberg ז"ל,  
a righteous man.*

Rabbi Ismar Schorsch claims<sup>1</sup> that ethics and morality are irrelevant for Judaism in general and for Conservative Judaism in particular: “ethical imperatives . . . have never been the universe of discourse in Conservative Judaism or, for that matter, in Judaism.”<sup>2</sup> In claiming that ethics ought to have, as a matter of principle, no place within discussions of Conservative Jewish belief or practice, in positing a conflict between piety and ethics, Rabbi Schorsch insists that “the era of ethical imperatives ended with the prophets”<sup>3</sup> and that “the rabbis rightly suspected ethical imperatives as subjective, arbitrary, and impermanent, a prescription for anarchy.”<sup>4</sup> This is not the occasion to enter into a discussion on the particular subject that generated his stand. But Rabbi Schorsch makes two claims that do require strong repudiation: that Conservative Judaism has always rejected ethical imperatives when it comes to *halakhic* change, and that the Rabbis of the Talmud did so well. I do not intend to assert the opposite extreme, suggesting that the Rabbis of the Talmud (or of Conservative Judaism) *always* valued ethics over precedent. There were occasions when they did not.<sup>5</sup> Nor do I want to assert that goodness is all there is to holiness. Indeed, much of Jewish law is

<sup>1</sup> Ismar Schorsch, “Marching to the Wrong Drummer,” *Conservative Judaism*, (XLV, 4), Summer, 1993, pp. 14–19.

<sup>2</sup> Schorsch, p. 17.

<sup>3</sup> Schorsch, p. 19.

<sup>4</sup> Schorsch, p. 19.

<sup>5</sup> See David Weiss Halivni, “Can A Religious Law Be Immoral?” *Perspectives on Jews and Judaism: Essays in Honor of Wolfe Kelman*, Arthur Chiel, ed., New York: The Rabbinical Assembly, 1978, pp. 165–170, and Elliot N. Dorff, “The Interaction of Jewish Law with Morality,” *Judaism*, 26, 4 (Fall, 1977), pp. 455–466.

intended to elevate spiritually, to align our efforts with divine vision. As such, holiness may sometimes move beyond the realm of the interpersonal and the ethical. But the claim that ethical discourse has no place in halakhic discourse, or that holiness can be legitimately acquired at the price of injustice or cruelty is a betrayal of the Torah and of the rabbis.

I propose to suggest why Rabbi Schorsch's position in both factually incorrect and religiously dangerous. I will first present some of the evidence that the Rabbis of the Talmud knowingly changed halakhic rulings for ethical reasons. Then I will present evidence that the founders and builders of Conservative Judaism, in every age, did the same. And finally, I will make a philosophical/religious argument for the centrality of ethics in any halakhic consideration.

### The Rabbis and the Good

Traditional Judaism, by which I mean the Judaism based on the Talmud and the Midrash, asserts that God's Revelation of Torah at Mt. Sinai took two forms: a written text embodied in the Five Books of Moses, and an oral tradition that was no less binding.<sup>6</sup> In many ways that oral tradition was *more* binding than the Torah, in that the written word was understood through the interpretations and assertions of the oral tradition—often guided by ethical concerns.<sup>7</sup> Though room was made for theoretical (i.e., *aggadic*) understandings that varied from the collective position of the sages, no such possibility was offered in the realm of halakhah. In cases involving behavioral norms, the Torah meant what the Sages defined it to mean, regardless of what the verse might originally have meant in context. As Rabbi Joel Roth has recognized, “. . . the *p'shat* of a verse is also not necessarily *de-oraita*.”<sup>8</sup> Because of the claim of a dual torah, traditional Judaism fashioned a reverence for the written word that simultaneously shifted the locus of ultimate authority away from precedent and placed it in the hands of those sages followed by each generation of faithful Jews: “Even if they [the Sages] point out to you that “right” is left and “left” is right, obey them.”<sup>9</sup>

Far from insisting that the *p'shat* (the contextual meaning of a biblical verse) is the last word, Rabbinic Judaism asserts that it is but the first word in a conversation that now takes place among rabbinic scholars.<sup>10</sup> And such is

<sup>6</sup> Mishnah Avot 1:1–18. For a fascinating history of Judaism built around this idea of a dual torah, see Jacob Neusner, *Torah Through the Ages: A Short History of Judaism*, London: SCM Press, 1990.

<sup>7</sup> “The Talmud, as a whole, is essentially a massive reinterpretation of Biblical law, because of new conceptions and advancing religious and ethical concepts.” Robert Gordis, “A Program for American Judaism,” in *Tradition and Change: The Development of Conservative Judaism*, Mordecai Waxman, ed., New York: The Burning Bush Press, 1958, pp. 241.

<sup>8</sup> Joel Roth, *The Halakhic Process: A Systemic Analysis*, New York: The Jewish Theological Seminary of America, 1986, p. 47.

<sup>9</sup> *Sifrei Devarim*, Section 154.

<sup>10</sup> “The establishment of the meaning of the *grundnorm* has always been entrusted to the sages. Thus, if the sages at one time said that the Torah meant X, and the sages of another time said that it meant Y, the legal status of X would be *de-oraita* until abrogated by later sages in favor of Y, which would then assume *de-oraita* status.” Roth, *Halakhic Process*, pp. 376–377.

the power (indeed, the responsibility) of the Sages that their authoritative interpretation may completely contradict the *p'shat* itself, as Rabbi Simon Greenberg wrote. “. . . Oral Law added countless *halakhot* to those found in Scripture, radically modified some, and to all intents and purposes nullified others.”<sup>11</sup> The Rabbis' motives were multiple: bringing the halakhah in line with new economic or social realities, integrating new technology or knowledge. But prominent among their motives was the mitzvah of doing what is right: as rabbinic scholar Boaz Cohen notes, “Many interpretations of the rabbis which apparently are a deviation from the letter of the Biblical law were undoubtedly animated by ethical considerations.”<sup>12</sup>

That the Tannaim and Amoraim integrated moral concern, even allowing it to mold halakhic development, remains a compelling model for us today. The Torah recognizes no real distinction between the legal and the ethical: “Do what is right and good in the sight of the Lord”<sup>13</sup> is a mandate for moral norms in an apodictic imperative. Laws that we would label as moral lie side-by-side with laws we would consider ritual, both deriving their force from the Divine commander whose will establishes them as binding. The rabbis never broke with that conception.<sup>14</sup> As Professor Saul Berman notes: “There was not yet any development of a specific moral order as distinct from the legal system in the talmudic period.”<sup>15</sup> As a result of this symbiosis of the ethical and the legal, halakhah was often shaped by ethical concerns: “Morality played a role in halakhic deliberations.”<sup>16</sup>

According to Professor Berman, that influence took three principal forms:

<sup>11</sup> Simon Greenberg, *A Jewish Philosophy and Pattern of Life*, New York: Jewish Theological Seminary, 1981, p. 436.

<sup>12</sup> Boaz Cohen, “Law and Ethics in the Light of the Jewish Tradition,” *Law and Tradition in Judaism*, New York: Ktav Publishing House, 1959, p. 216.

<sup>13</sup> Deuteronomy 6:17.

<sup>14</sup> I would venture that it is for that reason (that ethics are not segregated into a distinct realm of biblical or rabbinic thought) that there is no separate section of the Mishnah or Talmud or Jewish codes that deal with moral behavior. The very pervasiveness of ethics precludes discrete treatment (with the possible exception of *Pirkei Avot* and *Avot de-Rebbe Natan*). Under the influence of philosophy in the medieval period and later, a rich Jewish literature that was explicitly ethical did, indeed, develop the overt expression of what had been latent in an earlier period. See Joseph Dan, *Jewish Mysticism & Jewish Ethics*, Seattle: University of Washington Press, 1986, and Joseph Dan, “Jewish Ethical Literature,” *The Encyclopedia of Religion*, ed. Mircea Eliade, New York: Macmillan Publishing Company, 1987, 8:82–87.

<sup>15</sup> Saul Berman, “Law and Morality,” *Encyclopedia Judaica*, 10, 1480–1484, Jerusalem: Keter Publishing, 1972.

<sup>16</sup> Halivni, p. 168. Halivni writes to insist that the rabbis refused to allow ethics to abrogate a law completely. Instead, he says, they were subconsciously motivated by ethical concerns but used interpretation to “circumscribe the law, delineate it, sometimes even to limit it.” He does claim that they never were willing to completely abrogate a law. The evidence that he adduces does not support his claim that “Morality (our sense of morality) recedes before a Divine commandment . . . one cannot change a religious law” (p. 169). In fact, his own evidence argues that one can change a religious law for moral reasons, just that it is preferable to do so through interpretation rather than explicit abrogation. Professor Halivni's article is too brief—and was meant as a preliminary sketch to a more extensive study—to be more than a cautionary warning to those who would claim that rabbinic morality *always* overrode biblical precedent, or that it did so without attending to the precedent of biblical and earlier rabbinic law.

morality became a direct source of law, often justified as *mip'nei darkhei shalom*<sup>17</sup> or as *mip'nei tikkun ha-olam*.<sup>18</sup> The first rubric applied to “unequal distribution of religious honors, threat to the good reputation of a group or an individual, taking by force where property rights are uncertain, unearned benefit from the labor or initiative of another, and the exclusion of groups from societal privileges and responsibilities.”<sup>19</sup> The second rubric was applied to the case of the *mamzer*, the *agunah*, “the deterrence of theft and of non-punishable injurious behavior, the encouragement of lending and of returning lost property, the encouragement of care for orphans and destitute children, and the encouragement of public service in the area of law and medicine.”<sup>20</sup>

While the Amoraim did not use those two categories to generate new legislation, they did use *mi-shum eivah*, preventing hostility, as a category, both to explain tannaitic law and to generate their own rulings.<sup>21</sup> According to Professor Berman, “the role of morality as a source of law continued into the legal work of the Amoraim themselves, although it shifted from the realm of legislation to that of juridical interpretation.”<sup>22</sup> For that purpose, the Amoraim relied on two principal *p'sukim*. From “*ve-asita ha-yashar ve-ha-tov*, Do what is right and good in the sight of the Lord,”<sup>23</sup> the Amoraim developed laws restoring lost legal rights. From “*darkhei no'am*, her ways are pleasant ways,”<sup>24</sup> they precluded any legal action that would demean personal dignity or injure a marriage.

Not only was morality a direct source of law, but it was also a source of a higher standard of liability which later became legally binding. Thus, there were practices for which one was *hayyav be-dinei shamayim*, liable according to the laws of Heaven, although exempt from human punishment,<sup>25</sup> some of which result in *ruah hakhamim nohav heimenno*, the spirit of the Sages is pleased with him,<sup>26</sup> some behavior reflects *middah hasidut*, the standard of the pious,<sup>27</sup> and some is *lif'nim mi-shurat ha-din*, beyond the limits of the law.<sup>28</sup>

What is particularly striking about these specifically moral categories (one might even call them ethical imperatives) is that they came to have the force of law with the passage of time: “Many *rishonim* and *aharonim* insist on the partial or total enforceability of a good number of the laws denominated as *dinei shamayim*, *middat hasidut*, and *lif'nim mi-shurat ha-din*.”<sup>29</sup>

<sup>17</sup> See, for instance, Mishnah *Gittin* 5:8–9, *Pe'ah* 3:1, Mishnah *Hullin* 10:13, and Mishnah *Gittin* 5:4–5.

<sup>18</sup> See, for several instances, Mishnah *Gittin* 4:3–5:3.

<sup>19</sup> Berman, 1481.

<sup>20</sup> Berman, 1481.

<sup>21</sup> *Ketubot* 58b.

<sup>22</sup> Berman, 1482.

<sup>23</sup> Deuteronomy 6:18.

<sup>24</sup> Proverbs 3:17. See *Sukkot* 32b, *Tevamot* 15a.

<sup>25</sup> Mishnah *Bava Kama* 6:4 and *Bava Kama* 6:16–17.

<sup>26</sup> Mishnah *Shevi'it* 10:9, *Bava Mezia* 37a, and Mishnah *Bava Batra* 8:5.

<sup>27</sup> *Bava Mezia* 52b, *Shabbat* 120a, *Hullin* 130b.

<sup>28</sup> *Bava Kama* 99b, *Bava Mezia* 30b, *Ketubot* 97a, *Berakhot* 45b.

<sup>29</sup> See, for example, *Rema*, *Hoshen Mishpat* 12:2, and PDRS 132–153, 151.

Far from being “subjective, arbitrary, and impermanent,”<sup>30</sup> rather than threatening “anarchy.”<sup>31</sup> moral imperative was understood as an essential component of any truly religious law: “reinterpretations to create higher standards of enforceability were in fact part of the continuity of the process of the use of morality as a source of new law. In this way the use of morality to create private, higher standards of liability has often led to the eventual adoption of those new standards as law for everyone.”<sup>32</sup>

Clearly, moral and ethical imperatives exercise a profound influence on talmudic halakhah and interpretation. Ethical categories often directed the way the Rabbis used biblical verses and influenced their *p’sak din*. Some might caution, however, that we have been looking at Rabbinic interpretation only amidst novelty, where there is no definitive precedent or where the precedent could be open to multiple and conflicting impressions. The really hard issue, legally speaking, is how the Rabbis handle explicit biblical law when they find its results morally unacceptable—do the Rabbis refrain from performing a mandated act (*shev ve-lo ta’aseh*)? Do they engage in what is prohibited as an imperative (*kum ve-aseh*)? The halakhah is replete with examples of both types of Rabbinic involvement, for a whole host of different reasons. As Rabbi Joel Roth affirms, “it seems incontrovertible that the sages do possess the right to abrogate the Torah both actively and passively, and in both cases both temporarily and permanently. . . . In the final analysis, it is the judges-arbiters of the system who must determine whether or not the cause is sufficient for them to exercise their right to amend or to abrogate the Torah.”<sup>33</sup>

Examples of ethical Rabbinic interpretation that flies in the face of the *p’shat* are not hard to compile. Here I will limit myself to three examples which do what seems legally most difficult—faced with a clear biblical prohibition that they find ethically intolerable, the Rabbis summon the religious courage and loyalty necessary to soften the prohibition into a legal possibility. In some cases, they actually transform a prohibition into a requirement.

- The Book of Numbers explicitly prohibits the nullification of vows: “If a man makes a vow to the Lord . . . he shall not break his pledge; he must carry out all that has crossed his lips.”<sup>34</sup> Not only is there no explicit mention of *hattarat nedarim*, annulling vows seems to be expressly forbidden. Candidly admitting that “the laws of absolution of vows hover in the air and have nothing to support them,”<sup>35</sup> the Rabbis nonetheless develop such clear procedures for the nullification of vows that they express surprise that Jephthah failed to go to a Sage when his vow turned

<sup>30</sup> Schorsch, p. 19.

<sup>31</sup> Schorsch, p. 19.

<sup>32</sup> Berman, 1483.

<sup>33</sup> Roth, p. 199.

<sup>34</sup> Numbers 30:3. All translations from the Hebrew Bible are taken from *TANAKH: The Holy Scriptures*, Philadelphia: Jewish Publication Society, 1988.

<sup>35</sup> Mishnah *Hagigah* 1:8.

tragic.<sup>36</sup> Nowhere in the vast talmudic literature on vows do the Rabbis specify any single motivation for overriding the plain meaning of the Torah. Yet *midrashim* like the one in which Rabbi Akiva nullifies the vow of a child<sup>37</sup> seem to suggest an overarching commitment that the laws of the Torah should not produce needless suffering.

- When the Book of Leviticus authorizes the Kohen to bury his close relatives, it seems to explicitly forbid his burying his own wife: “None may defile for any person among his kin, except for the relatives that are closest to him: his mother, his father, his son, his daughter, and his brother; also for a virgin sister. . . . But he shall not defile himself as a kinsman by marriage and so profane himself.”<sup>38</sup> Professor Baruch Levine writes that “the simple sense is that a priest, in the role of husband, is not permitted to attend to the burial of his wife.”<sup>39</sup> Later Rabbinic tradition not only authorized such participation but mandates it, as Maimonides affirms: “As regards the wife of a priest—one must render himself impure, even against his will; but the duty to render himself impure is only by enactment of the Scribes. They gave her the status of a *met mitzvah* [a dead person whom one is commanded to bury].”<sup>40</sup> The moral need to assure that the woman would be buried and treated with dignity transformed a biblical prohibition into a Rabbinic mandate. As the Talmud wisely observes in a different context, “Great is human dignity, since for its sake one may violate a prohibition of the Torah.”<sup>41</sup>
- Deuteronomy explicitly forbids a descendant of an Ammonite to join the Jewish people: “No Ammonite or Moabite shall be admitted into the congregation of the Lord; none of their descendants, even in the tenth generation, shall ever be admitted into the congregation of the Lord.”<sup>42</sup> The *p’shat* is pretty clear and unambiguous—no Ammonite can ever become Jewish. Yet the Mishnah records, by name, the poignant plea of Judah, an Ammonite who sought conversion to Judaism. He “stood before them [the Sages] in the House of Study and said to them. ‘Am I permitted to join the congregation?’” The Mishnah records Rabbinic argument and (for the Mishnah) extensive citation of biblical verses, and then abruptly declares, “They permitted him to join the congregation.”<sup>43</sup> It isn’t difficult to recognize the Rabbinic resolve to right a wrong through an interpretation that vitiated the *p’shat* of the Torah. And the Rabbis responded to that ethical

<sup>36</sup> Judges 11:30–40 and *Midrash Bereshit Rabbah* 60:3.

<sup>37</sup> *Sifrei Zuta* on verse 4.

<sup>38</sup> Leviticus 21:2–4.

<sup>39</sup> Baruch A. Levine, *The JPS Torah Commentary: Leviticus*, Philadelphia: The Jewish Publication Society, 1989, p. 142.

<sup>40</sup> Maimonides, *Mishneh Torah, Hilkhhot Avel* 2:7.

<sup>41</sup> *Berakhot* 19b.

<sup>42</sup> Deuteronomy 23:4.

<sup>43</sup> Mishnah *Yadayim* 4:4.

imperative out of loyalty to the very Torah they subverted/interpreted/renewed.<sup>44</sup>

Many more instances of the religious daring of the Tannaim and the Amoraim have already been adduced throughout the past century to justify Conservative Judaism's dynamic and pluralist approach to halakhah as squarely rooted in classical rabbinics.<sup>45</sup> By now it is commonplace to point to the case of the *ben sorer u'moreh*, the rebellious son whose capital punishment was made impossible by ingenious Rabbinic interpretation,<sup>46</sup> or the replacement of retribution through compensation based on re-reading the verse "an eye for an eye,"<sup>47</sup> or the same treatment that relegated the destruction of an idolatrous city beyond the realm of the possible,<sup>48</sup> or the way the Rabbis added requirement upon requirement until capital punishment was virtually impossible to apply,<sup>49</sup> or that they allowed the violation of Shabbat in order to save a life<sup>50</sup> (an exemption found nowhere in the Torah and certainly without precedent)<sup>51</sup> or the way the Rabbis restricted the right of a father to sell

<sup>44</sup> Some other instances of *lavin*, biblical prohibitions which the rabbis deflected or reversed through interpretation, are the prohibition against leaving home on Shabbat (Exodus 16:29), the prohibition against touching the corpse of an unclean animal (Leviticus 11:8), the prohibition against adding or detracting from the mitzvot (Deuteronomy 4:2 and 13:1), see *Eruvin* 96a and *Sifrei Devarim* 82, the prohibition against shaving the beard (Leviticus 19:27), and the prohibition against wearing the clothes of the other sex (Dt 22:5) see *Nazir* 59, the prohibition against making any images (Ex 20:30). Of course, there are many positive commandments whose contextual meaning was altered (subverted?) through rabbinic interpretation as well: for example, the Torah explicitly mandates piercing the ear of a female Hebrew slave (Dt 15:17), and the rabbis prohibit that act (*Sifrei Devarim* 122, *Kiddushin* 17b, and *Mishneh Torah, Avadim* 4:1).

<sup>45</sup> See, for example Robert Gordis, "A Dynamic Halakhah: Principles and Procedures of Jewish Law," *Judaism*, 28:3, pp. 263–282 and his *The Dynamics of Judaism: A Study in Jewish Law*, Bloomington and Indianapolis: Indiana University Press, 1990, Elliot Dorff, "Towards A Legal Theory of the Conservative Movement," *Conservative Judaism*, 27:3, Spring 1973, pp. 65–77, Jacob Chinitz, "Amendment to Jewish Law," *Conservative Judaism*, July/August, 1961, 28–34, Theodore Friedman, *Be'er Tuvia*, Jerusalem: The Masorti Movement, 1991, and Gordon Tucker, "A Principled Defense of the Current Structure and Status of the Committee on Jewish Law and Standards," (unpublished).

<sup>46</sup> Deuteronomy 21:18–21 and *Sifrei Devarim* 218 and 219, Mishnah *Sanhedrin* 8:4, and *Sanhedrin* 69b–72a.

<sup>47</sup> Rabbi Zecharias Frankel saw this as so momentous that he wrote, "Not in vain was the day declared a festival when the Pharisees overcame the Sadducees and ruled that the Biblical statement: 'An eye for an eye, a hand for a hand' was not to be taken literally, but was designed merely to indicate that the proper compensation should be imposed for such injury (*Megillat Ta'anit*, Chapter 4). This was a triumph not because of the humanitarian interpretation that it proposed, but, mainly, because it led to the establishment of the principle that the letter of the law is not decisive, but rather that the spirit must animate the law and raise it to a divine status worthy to become a norm to man who is himself endowed with spirit." Waxman, p. 48.

<sup>48</sup> Deuteronomy 13:13–19 and Tosefta *Sanhedrin* 14:1.

<sup>49</sup> See Basil F. Herring, *Jewish Ethics and Halakhah for Our Time: Sources and Commentary*, New York: Ktav Publishing House and Yeshiva University Press, 1984, Chapter 6.

<sup>50</sup> *Shabbat* 132a and *Yoma* 42a.

<sup>51</sup> That is, without precedent in the biblical period. In the revolt of the Maccabees (I Maccabees 2:32–41) we read for the first time of the disastrous results of adhering to precedent and of the rather rapid halakhic change implemented for the sake of saving life—regardless of the lack of authorization from any *posek* whatsoever.

his daughter into slavery<sup>52</sup> or to compel his daughter to marry,<sup>53</sup> or the way they softened the harsh treatment of a suicide,<sup>54</sup> or Hillel's *prosbul*,<sup>55</sup> which overrode the venerable institutions of *shmittah* and *yovel* (positive and negative commandments) which prevented economic devastation—surely that is a pressing ethical imperative!<sup>56</sup>

Time and time again our Sages, of blessed memory, showed the courage to use the power that the halakhic system placed into their hands. They did not seek the central meaning of the Torah in its Ancient Near Eastern context (what it meant long ago). Instead, they asserted the religious vitality of the Torah by interpreting it in the light of their own living Jewish communities (what it means for us today). Prophets may claim to speak timeless words directly from God, unalterable through the ages, but prophecy—as Rabbi Schorsch reminds us—is finished. Rabbinic interpretation, a more malleable and responsive medium, speaks in many voices to many listeners. Its message moves across each age, addressing contemporary concerns and integrating more recent perspectives, allowing a new revelation to emerge from this ongoing meeting of God and humanity in a place of justice and holiness: “One is commanded perpetually to derive new teachings from the Torah . . . for it is incumbent every moment to labor in the study of Torah and to innovate to the full extent of one’s abilities.”<sup>57</sup>

In claiming that vast power for themselves, the Sages wrought enormous changes for Jewish religious practice, changes which became normative for subsequent generations. “The morality of one generation frequently became the law of the next.”<sup>58</sup> We now accept their innovations and hardly notice their break with the rulings of an earlier age. But their *p’sak* was hotly contested for many centuries and required a willingness to interpret in the light of their own ethical imperatives and the needs of their communities, rather than being shackled by precedent simply for the sake of precedent. “The rabbis conceived the law to be a subtle synthesis of its letter and spirit.”<sup>59</sup>

<sup>52</sup> Exodus 21:7–11 and see Mishnah *Sotah* 3:8 and *Sotah* 23b, Mishnah *Ketubot* 3:8, *Mishneh Torah*, *Avadim* 4:1, Palestinian *Arakhin* 5:7, *Mishneh Torah*, *Avadim* 4:2, *Kiddushin* 18a.

<sup>53</sup> While a father has the right to establish a betrothal for a *ketanah* or a *na’arah* (*Kiddushin* 44b and *Shulhan Arukh*, *Even Ha-ezer* 37:13), some of the talmudic sages already opposed this power (*Kiddushin* 41a).

<sup>54</sup> See Haim H. Cohn, “Suicide,” in *The Principles of Jewish Law*, Menachem Elon, ed., Jerusalem: Keter Publishing House, 1974.

<sup>55</sup> Mishnah *Shevi’it* 9:3, 10:4 and *Gittin* 36a–37a. The *prosbul* violated the explicit biblical prohibition recorded in Deuteronomy 15:2. Extending Hillel’s audacity even further, later rabbis permitted the collection of a debt even without a *prosbul* (*Gittin* 37b, *Shulhan Arukh*, *Hoshen Mishpat* 67:33)! While some authorities sought to restrict the authority to issue these writs to the highest possible courts, subsequent practice authorized all *battei din* (*Gittin* 36b, Isseries to *Hoshen Mishpat* 67:18).

<sup>56</sup> “I deem it perfectly permissible, indeed a divine mandate, to provide for the sustenance of the children of the covenant.: Rabbenu Tam, *Or Zarua*, BM, section 202.

<sup>57</sup> TaZ, *Orah Hayyim* 545:13.

<sup>58</sup> Berman, p. 1484.

<sup>59</sup> Boaz Cohen, “Concerning the Jewish Law of Domestic Relations,” *Law and Tradition in Judaism*, New York: Ktav Publishing House, 1969, p. 102.



Halakhah allowed for precisely that supple blend of coherence through form, and direction through ethics and holiness, so necessary to sustain Jewish life.

Rather than providing evidence that “the deep-seated sanctity of the past prevailed over the ethical demands for individual fulfillment,”<sup>60</sup> rabbinic Judaism traditionally embodied a commitment to read the deep-seated sanctity of the past as the mandate for righteousness. Recognizing that “no one can be termed truly pious who is not good toward his fellows,”<sup>61</sup> the Rabbis were often willing to reinterpret the details of that past to accord with those overriding ancient values the details were now seen to contradict.

### Conservative Judaism and the Good

Having established that justice and goodness were central to the ancient Rabbis. We must also meet another aspect of Rabbi Schorsch’s challenge to the validity of ethical imperatives. He claims that this concern over infusing halakhah with an ethical core is a deviation, not only from talmudic Judaism but also from the wellsprings of Conservative Judaism. Having demonstrated that ethics often provides direction to talmudic halakhah, it remains for us to examine the place of morality within a specifically Conservative/Historical approach to halakhah.

The earliest generations of Conservative Jews saw themselves as locked in battle against the excesses of the early Reformers and the neo-Orthodox. As such their primary polemics were directed against jettisoning the Torah entirely and against freezing it in place. One looks in vain for explicit discussions of the Jewish law or halakhah. That terminology (and perhaps those concerns) didn’t flower in the movement until much later. Nonetheless, the earliest founders of Conservative Judaism made clear that Jewish tradition was not frozen in any text (however authoritative), that ultimate authority rested with the Jewish people (in contradistinction to the Torah or the Talmud), and that changes which reflected the needs of the age were a religious necessity.

Far from venerating “the deep-seated sanctity of the past” over “ethical demands,”<sup>62</sup> Rabbi Zecharias Frankel, writing in 1845, insists that the positive historical school “recognizes that the task of Judaism is religious action, but it demands that this action shall not be empty of spirit and that it shall not become merely mechanical, expressing itself mainly in the form.”<sup>63</sup> Not only is fidelity to form denigrated, but the goal is to integrate new ethical and spiritual postures into Judaism itself: Positive-Historical Judaism “affirms both the divine value and historical basis of Judaism and, therefore, believes that by introducing some changes it may achieve some agreement with the concepts and conditions of the time.”<sup>64</sup> Note that Judaism is to change to

<sup>60</sup> Schorsch, p. 18.

<sup>61</sup> *Kiddushin* 40a.

<sup>62</sup> Schorsch, p. 18.

<sup>63</sup> “On Changes in Judaism,” Waxman, p. 47.

<sup>64</sup> Waxman, p. 48.

accord with the concepts and conditions of the age. The dynamism of Judaism and its responsiveness to the needs of the people is a core conviction of the Positive-Historical approach.

Alexander Kohut, for many years a professor of Talmudic Methodology at the Jewish Theological Seminary, affirms Frankel's insight when he remarks (in 1885) that "with the ancient spirit of Judaism there was ever the tendency toward legitimate reform. . . . That which still has a hold upon the hearts of men and women, which still retains vitality, should be preserved as sacred."<sup>65</sup> Even more explicitly affirming the power of the ethical imperative, he insists that "the people clings to the traditional so long as it possesses moral force and spiritual power."<sup>66</sup> For this scholar of Talmud and a proponent of Conservative Judaism, moral force is a key catalyst in determining the form of halakhah in each new age.

Though he did not address morality as a specific force within Judaism, it was no less a personage than Solomon Schechter who explicitly transferred ultimate authority in Judaism away from any text or body tradition, away from any rabbis or professors, and planted it firmly in each generation of Jews:

Since the interpretation of Scripture or the Secondary Meaning is mainly a product of changing historical influences, it follows that the centre of authority is actually removed from the Bible and placed in some living body, which, by reason of its being in touch with the ideal aspirations and the religious needs of the age, is best able to determine the nature of the Secondary Meaning. This living body . . . [is represented] by the collective conscience of Catholic Israel as embodied in the Universal Synagogue.<sup>67</sup>

Far from idealizing precedent as superior to "ideal aspirations" (might we call that ethical imperatives?). Schechter insists that "collective conscience" is supreme. Values motivate Jewish action (not form): "[Judaism] insists upon the observance both of the spirit and of the letter; spirit without letter belongs to the species known to the mystics as 'nude souls,' *nishmatin art-lain* . . ."<sup>68</sup>

Schechter's students and faculty continued his emphasis on the Jewish people as supreme arbiters of Jewish norms, guided by their sense of right and the needs of the people. As Henrietta Szold writes in 1913, "So long as injustice is not perpetrated, a cause that will outlast and benefit generations must be set above individuals."<sup>69</sup> Note her caveat that a Jewish practice, no matter how beneficial to the generations, must not perpetuate injustice. Regardless of its potential gains, no halakhah could retain legitimacy if it was immoral or cruel.

<sup>65</sup> "A Talmudic Disquisition," Waxman, p. 70.

<sup>66</sup> Waxman, p. 72.

<sup>67</sup> Solomon Schechter, *Studies in Judaism*, New York: Atheneum, 1970, p. 15.

<sup>68</sup> Solomon Schechter, *Seminary Addresses and Other Papers*, Cincinnati, 1915, p. 2.

<sup>69</sup> "Catholic Israel," Waxman, p. 119.

No less a rabbinic scholar than JTS Talmud professor Louis Ginzberg, writing in 1918, insists that “tradition has indeed brought with it from the past much that is good and true and eternal, but also things that were good and true and temporal.”<sup>70</sup> He also recognizes that “the religion of the Jews must have its roots in the past, and yet nourish him in the present world. It must have the power to take up and assimilate new ideas, all the while retaining a real continuity with the past from which it has sprung. Historical Judaism does not want to live on residues, nor on substitutes, but attempts to create new equivalents for old values.”<sup>71</sup> Continuity, for Ginzberg, implies an openness to new ideas and a willingness to integrate those new ideas into the structure of traditional Judaism. Distinguishing between the eternal and the temporal is a far cry from “the deep-seated sanctity of the past.”

By the late forties, the battle against Reform had lost some of its sting. The rapid ascendancy of the Conservative movement, the lack of growth among the Orthodox, and our association with Zionism and its values created a safe space to create a Conservative identity beyond polemics with our sister movements. In doing so, many rabbis began to call for an expanded and empowered Law Committee and to speak of the identity of Conservative Judaism without feeling the need to stab at excessive reform. What was the role of ethical imperatives for that generation?

Rabbi Louis Finkelstein, in 1937, asserts that “we, therefore, accept Judaism as a system of justice, but as a justice which, far from being blind, is very clear-sighted. To do this is to change Judaism from an ossified museum piece into a living and vital tradition. . . . The Torah endures in human life and must partake of the vitality, the adaptability, and fluidity of all living organisms. To effect this plan is not to break with traditional Judaism, but to return to it.”<sup>72</sup> For Louis Finkelstein, the symbol of Conservative Judaism triumphant, Judaism itself, is a “system of justice!”

This sense that Jewish law must respond to ethical imperatives motivates Rabbi Finkelstein to assert in his famous 1927 speech, “The Things that Unite Us”: “. . . we regard the legalism of the rabbis as the finest and highest expression of human ethics”<sup>73</sup> and “if the shifting of values and the introduction of new devices will actually bring Jews back to God, to the Torah, and to the synagogue, they will doubtless be accepted.”<sup>74</sup> However tenacious he may have been in his personal practice, Rabbi Finkelstein recognized the theoretical necessity for Judaism, as a system of justice, to change in the light of “justice, truth, mercy, and love” because “their applications differ under varying conditions.”<sup>75</sup> Altering Judaism in the face of ethical imperatives, for Louis Finkelstein, was nothing less than a return to traditional Judaism.

<sup>70</sup> “Our Standpoint,” Waxman, p. 133.

<sup>71</sup> Waxman, p. 136.

<sup>72</sup> “Tradition in the Making,” Waxman, p. 194.

<sup>73</sup> “The Things that Unite Us,” Waxman, p. 317.

<sup>74</sup> Waxman, p. 319.

<sup>75</sup> Waxman, p. 193.

Rabbi Finkelstein surrounded himself with skilled administrators and teachers who reflected his passion for centrist Judaism. These rabbis also shared an insistence that Judaism was nothing if it was not ethical and just. Thus, Vice-Chancellor Simon Greenberg affirms that “to be ‘right as God gives us to see the right’ is as sacred a duty as has ever been enjoined upon us.”<sup>76</sup> He also insists that “When, therefore, not only our reason but ‘all our bones’ tell us that a halakhah dealing with interpersonal relations inflicts injustice or humiliation upon an innocent person, we have a profoundly religious obligation to question it and to make every effort to change or annul it rather than to defend it by an appeal to the dictum of ‘I have ordained a law, etc.’ Such a halakhah perverts and discredits the heritage.”<sup>77</sup> Basing his philosophy of Judaism on the ground-breaking work of Max Kadushin, Rabbi Greenberg argued for an understanding of halakhah as the concretization of the values of the aggadah. Just as the Rabbis of the Talmud shifted the value-concepts they had inherited, Greenberg insists that each generation must do the same, out of loyalty to traditional Judaism: “. . . the process of concretizing the ethical values that inhere in the biblical-rabbinic tradition has not and never should be terminated. The termination of this process would spell the certain stunting and the possible death of the whole tradition.”<sup>78</sup>

Perhaps it was a similar understanding that led Seminary Codes Professor (and Law Committee Chair) Boaz Cohen to state that “in our days when the people have taken so many liberties with the ritual, we should insist upon their performance and adopt a stringent attitude just as Rab did when he noticed violations of the law due to ignorance in his day (*Hullin* 11a). . . . On the other hand when justice to individuals is involved, in such cases there is no question but that the courage to be mild is more meritorious (*Berakhot* 60a).”<sup>79</sup> What is that if not an assertion that ethical imperatives must override halakhic precedent when human suffering or degradation is at stake?

Other prominent Conservative voices have affirmed that profoundly moral stance. Rabbi Robert Gordis wrote that “the recognition of God in the world and the drive for ethical perfection are the two great Jewish contributions to the world—two that are really one.”<sup>80</sup> Vice-Chancellor Max Arzt insisted that “There are . . . situations where the law must be adjusted by authoritative remedial action. I refer to the injustices resulting from the arrested development of the Halakhah in matters of marriage and divorce. . . . Failure to take action constitutes an inexcusable delay in the amelioration of human tragedy.”<sup>81</sup> Arzt was united with the Finkelstein Seminary and with the Conservative movement in his insistence that the law must change to correct

<sup>76</sup> Greenberg, *Jewish Philosophy*, p. 441.

<sup>77</sup> Greenberg, p. 458.

<sup>78</sup> Greenberg, p. 446.

<sup>79</sup> Boaz Cohen, “The *Shulhan Arukh* as a Guide for Religious Practice Today,” *Law and Tradition in Judaism*, New York: Ktav, 1959, pp. 88–89.

<sup>80</sup> Waxman, p. 243.

<sup>81</sup> Waxman, pp. 149–150.

injustice, and that one standard by which a halakhah is judged is whether it ameliorates human tragedy.

That moral core has continued more recently as well. As Committee on Jewish Law and Standards Chairman Seymour Siegel instructs, "If we apply our ethical values to the structure of Jewish law, if we incorporate our ethical values into Jewish law—only then do we remain true to the tradition of Judaism, a tradition which sees the whole of life as its province, and seeks to create a way of life in response to *derekh ha-Shem*, the way of God, a life of righteousness and justice."<sup>82</sup>

The words of two younger scholars will affirm a continuing commitment of our movement to a traditional halakhah responsive to ethical imperatives: Rabbi Gordon Tucker writes "Separate halakhah from theology, separate it from morals, allow rabbis to use discretion when God and the good seek to determine their decisions and you have sacrificed much of the power of halakhah."<sup>83</sup> Rabbi Elliot Dorff asserts, "we cannot justify inaction on grievous matters simply because the hardships involved have been suffered over a long period of time. The past *does* cast a vote, but *not* a veto. Therefore, if we find good and sufficient reason to change the law, either in order to alleviate a bad situation or to encourage a good one, we should do so forthrightly."<sup>84</sup>

From its inception, the Positive-Historical school, now Conservative Judaism, affirmed that Judaism developed over time, often in response to ethical imperatives. The great teachers and thinkers of the Conservative movement taught that sacred truth to their students, the rabbis, who implemented it in the decisions of the Committee on Jewish Law and Standards over and over again. Repeatedly, Conservative *poskim* allowed their sense of justice to direct their rulings, just as their talmudic predecessors had before them.<sup>85</sup> Thus, the immoral plight of the *Agunah* was allowed to override the more formal requirement that a *get* must be given freely and without any prior constraint (1951 and 1954). In violation of the *p'shat* of the Torah, a *kohen* was allowed to marry a convert or a divorcee (1954 and 1968) and to perform funerals (1929), despite the Torah's prohibition. The majority of the Committee on Jewish Law and Standards authorized lighting a flame on Shabbat (to drive a car to a synagogue), despite the Torah's explicit prohibition (1950). *Mamzerut* was annulled in 1970, and the Committee authorized shifting *Brit Milah* from the biblically-mandated eighth day if that was necessary to preserve the sanctity of Shabbat (1988). Above-ground burial

<sup>82</sup> "Ethics and Halakhah," *Conservative Judaism and Jewish Law*, Seymour Siegel, ed., New York: The Rabbinical Assembly, 1977, p. 131.

<sup>83</sup> Gordon Tucker, "God, the Good, and Halakhah," *Judaism*, 38:3, Summer, 1989, p. 371.

<sup>84</sup> Elliot Dorff, "Towards a Legal Theory of the Conservative Movement," *Conservative Judaism*, 27:3, Spring 1973, p. 75.

<sup>85</sup> All of the following decisions by the Committee on Jewish Law and Standards are referenced in David Golinkin, *An Index of Conservative Responsa and Practical Halakhic Studies: 1917-1990*, New York: The Rabbinical Assembly, 1992.

(1964) and autopsies for medical benefit (1958) were permitted, as was organ donation (1953 and 1969).

The Committee authorized the use of non-*bekhshered* wines on specifically moral grounds (1952 and 1964), and no less an authority than Rabbi Isaac Klein called for the obviation of the biblically-required ritual of *halitzah*, again on moral grounds.<sup>86</sup> He also permitted an adopted child to use the adopting parents' Hebrew names for an *aliyah*.

More recently, the moral thrust of the Committee's efforts have continued apace:<sup>87</sup> allowing the conversion of a non-Jew who is married to another non-Jew, even though that action creates an intermarriage, allowing a synagogue to make a profit on interest-bearing bonds, encouraging the use of both parents' Hebrew names when a child receives an *aliyah*, and even allowing a rabbi to officiate before a cremation or at the cemetery. The inclusion of the names of the matriarchs in the *Amidah* is a clear expression of the supremacy of moral principle over precedent, as is the authorization of using cemeteries in which non-Jews are buried by our Reform colleagues—a contemporary expression of the Mishnah's use of *mip'nei darkhei shalom*.

Given the stirring statements of our movement's leadership from its inception, given the practical application of ethical imperatives to halakhah in the rulings of the Law Committee from the 1920s until today, it is clear that our movement understands respect for tradition to impel deference to ethical imperatives. We are, after all, commanded to pursue justice.

Conservative Judaism has been engaged in that pursuit throughout its history. In each age, good men and women may have differed as to what constituted the proper application of justice in specific cases, but all shared the conviction that righteousness remains our goal, that morality is the base on which righteousness stands. There can be no holiness without goodness.

### The Holy and the Good

Having established that talmudic halakhah was often shaped by ethical imperatives, and that the Conservative movement articulated that shining precedent in the writings of its founders and their students and implemented that agenda through the working of its Law Committee, we may assert as a matter of historical fact that halakhah in both its classical and Conservative embodiment has indeed been shaped and guided by righteousness and justice.

Historically, morality and halakhah have proceeded arm-in-arm, beyond questions of history, however, the larger philosophical and theological issue remains: Why is it imperative, as servants of God and Torah, that we refuse to sunder morality from halakhah, righteousness from piety? Why must veneration of our past impel involvement in the disruptive and contentious questions of social and individual justice that so beset our age?

<sup>86</sup> Isaac Klein, *Responsa and Halakhic Studies*, New York: Ktav, 1975, pp. 13–21.

<sup>87</sup> See Joel Roth, "Unit XXXVIII: Supplement," Isaac Klein, *A Guide to Jewish Religious Practice*, New York: The Jewish Theological Seminary of America, 1992, pp. 523–534.

Of late, several voices have been raised claiming that holiness may require unethical behavior. One source for that claim is a strain in modern philosophy, most notably the philosophy of Søren Kierkegaard, who insists that religious faith is not rational, hence that it requires a “teleological suspension of the ethical.”<sup>88</sup> As Marvin Fox notes, “The religious, as thus conceived, is beyond the ethical, is absolutely distinct from the ethical, and even requires a suspension of the ethical.”<sup>89</sup> For Kierkegaard, Abraham is admirable precisely because “the true knight of faith is a witness, never a teacher, and therein lies his deep humanity, which is worth a good deal more than this silly participation in others’ weal and woe which is honored by the name of sympathy, whereas in fact it is nothing but vanity.”<sup>90</sup>

A second source for the renewed popularity of the idea that the holy stands in contradiction (or, at best, indifference) to ethics, emerges from the work of Rudolph Otto and the phenomenologists of religion. In attempting to create an autonomous area for religion (hence, for the study of religion), Otto “portrays the holy as a power far greater than, and lying far beyond, the human realm.”<sup>91</sup> By shifting the center of religious focus away from reason alone (whose limits had been convincingly adumbrated by Immanuel Kant) and toward the “sense of the numinous,” Otto shifts the center of religiosity to the feelings of the individual encountering the holy.<sup>92</sup> With feelings and experience now dominant, ethics becomes less significant. Who, after all, can impose their moral lenses on someone else’s direct experience? Perceived experience is individual (as opposed to communal) and an assertion of emotion (which cannot be subject to rules or standards). On the other hand, ethics and morality are intrinsically social and public. The experience of the numinous, hence, is amoral at best.

Precisely because the central focus of emotion and experience must be individual and based on feeling, it generates a notion of holiness parallel to, and separate from, morality. Viewing religion as a mystery requiring unquestioning assent generates a holiness in which morality is a snare.<sup>93</sup> Precisely

<sup>88</sup> Søren Kierkegaard, *Fear and Trembling*, translated by Walter Lowrie, Princeton: Princeton University Press, 1945.

<sup>89</sup> Marvin Fox, “Kierkegaard and Rabbinic Judaism,” *Faith and Reason: Essays in Judaism*, New York: KTAV, 1973, p. 116. For a very different understanding of Kierkegaard’s thought, see Jacob L. Halevi, “Kierkegaard and the Midrash,” *Faith and Reason*, pp. 125–140.

<sup>90</sup> *Fear and Trembling*, pp. 122–123.

<sup>91</sup> “Idea of the Holy,” Willard G. Oxtoby, *The Encyclopedia of Religion*, 6:431–438.

<sup>92</sup> In fairness, it should be noted that Otto did not endorse the denigration of the rational, writing instead that “no one ought to concern himself with the ‘Numen ineffabile’ who has not already devoted assiduous and serious study to the ‘Ratio aeterna,’” Foreword, *The Idea of the Holy*, London: Oxford University Press, 1976.

<sup>93</sup> Such a view is found in the thought of Yeshayahu Leibowitz, *Judaism, Human Values, and the Jewish State*, Eliezer Goldman, ed., Cambridge: Harvard University Press, 1992. Although Leibowitz candidly admits that his understanding of Judaism “shall not be bound by . . . sources. (3)” and that he is “fully aware that the sources include expressions of views and opinions which differ considerably from one another and are at times even opposed to those set forth here.(3)”

because Judaism (in both its talmudic and its Conservative modes) understands the central focus to be God's revelation (through verbal discourse) to an entire people, it must reject such a lonely notion. Holiness, within Judaism, is communal, subject to debate. It is dynamic. Precisely because the sacred is both verbal and social, morality becomes an intrinsic part of being a *tzaddik*. For us, holiness presupposes goodness: "the good is the base, the holy is the summit."<sup>94</sup> A Jew can be good without being holy, but a Jew cannot be holy without being good.

Understanding halakhah to mandate ethical norms is in part a reflection of our shared understanding of revelation as a dynamic interplay between the human and the divine. Someone who affirms the literal verbal nature of revelation (that every word of the Torah and the Talmud was given by an active God to a passive Moses) could plausibly defend refusing to alter the halakhah in the light of contemporary morality. After all, if the Creator of the Universe wants something, it would be both arrogant and suicidal to resist—as Korah discovered. However cogent the faith of a literalist, that position is untenable for those of us who affirm the divine revelation of Torah but deny that the revelation was either verbal or literal. The vast preponderance of Conservative thinkers—from Frankel to contemporary Conservative theologians<sup>95</sup>—affirm a dynamic interplay between God's active role of *matan Torah* and Jewry's active role of *kabbalat Torah*. As *Emet Ve-Emunah* reminds, "We also reject fundamentalism and literalism, which do not admit a human component in revelation, thus excluding an independent role for human experience and reason in the process."<sup>96</sup> Once we admit an active human role in the formation of Torah, there is little cogency in the retention of admittedly immoral positions unless one posits an evil God or glorifies a limited ancestry.

Truthfully, however, even with a more literal understanding of revelation, one can still assert the importance of integrating ethical stances into the halakhah. We are not, after all, Karaites, who see only the *Tanakh* as sacred. Precisely because the Oral tradition is open-ended there is room for seeing a continuing revelation in a developing halakhah. Doubtless many of the *Tanna'im* and *Amora'im* whose *p'sak din* has been quoted earlier would have affirmed a more literal understanding of Sinai's revelation; yet they were still comfortable modifying the halakhah as noted. Accepting our authority as equal to theirs, we could still affirm a literal revelation that empowers us to actively interpret according to moral norms, although adherents to such a theology might be more hesitant to introduce change. In any case, there has

<sup>94</sup> Abraham Joshua Heschel, "Toward an Understanding of Halakhah," Siegel, p. 136.

<sup>95</sup> One thinks, in that category of Howard Addison, Elliot Dorff, Ze'ev Falk, Elliot Gertel, Neil Gillman, Monford Harris, Louis Jacobs, Harold Kushner, Jacob Neusner, Harold Schulweis, Byron Sherwin, Gordon Tucker, David Wolpe, among others.

<sup>96</sup> *Emet Ve-Emunah*, New York: The Jewish Theological Seminary, The Rabbinical Assembly, United Synagogue of Conservative Judaism, Women's League for Conservative Judaism, Federation of Jewish Men's Clubs, 1988, p. 20.



been a Conservative consensus about the divine/human interplay in revelation for over 150 years, so hiding behind simple precedent is, for us, neither cogent nor courageous.

Nor would such a posture reflect loyalty to the Torah and its traditions. The core of the Mosaic revolution is its refusal to sunder the connection between morality and ritual, between God's will and righteousness. An examination of any of the major law codes of the Torah reveals an inextricable blend of the two: laws of Sabbath observance next to laws honoring parents next to laws prohibiting idolatry next to laws of sacrifices next to laws providing for the poor.<sup>97</sup> Whether historically accurate or not, the Torah's portrayal of neighboring pagan religions is one of moral depravity in the name of ritual punctiliousness. Children are sacrificed according to time-honored tradition, because the Canaanites "appreciate the sacredness of the public realm"<sup>98</sup> and those who would object on moral grounds don't protest because they don't dare "impose their foibles and idiosyncracies into lofty principle and public policy."<sup>99</sup> It is precisely that exclusive focus on maintaining ritual propriety, regardless of ethical content, that caused Moses and the prophets of Israel to recoil in disgust. While portraying pagan religion as ritually rigid and morally blind, the Torah constantly makes moral claims. This is the God, after all, who liberates slaves to make God's greatness known to the nations! This is the God who postpones the Israelite conquest until the moral depravity of the Canaanites reaches sufficient heights to morally justify the Israelites' assault, and who insists that Israel feed the hungry and care for the widow and orphan in order to merit living in the land. Rabbi Abraham Joshua Heschel speaks from the Torah's perspective when he insists that "Judaism is not another word for legalism. The rules of observance are law in form and love in substance. . . . The law is the means, not the end; the way, not the goal."<sup>100</sup>

Intrinsic to the notion of monotheism is the insistence that there can be no appeal from the will of the one God. Hence, the establishment of a firm moral order becomes possible. Precisely because there is no competition, precisely because Israel's God is eternal, the Jews can count on just recompense and retribution for their deeds. In that regard, the prophets did little more than reiterate the fusion of the moral and the sacred that Moses had already established. The very possibility of a moral order (or any order at all) is a logical consequence of the monotheism of the Torah.<sup>101</sup>

<sup>97</sup> Found at the beginning of the Holiness Code, Leviticus 19.

<sup>98</sup> Schorsch, p. 17.

<sup>99</sup> Ibid.

<sup>100</sup> Abraham Joshua Heschel, *God in Search of Man*, New York: Farrar, Straus and Giroux, 1972, p. 323

<sup>101</sup> See Mary Douglas, "The Abominations of Leviticus," *Purity and Danger: An Analysis of the Concepts of Pollution and Taboo*, London: Routledge & Kegan Paul, 1966, pp. 41-57, for this assertion demonstrated with a biblical topic that would seem long on ritual and short on ethics.

To sever the connection between the two, to make halakhah morally neutral, or unresponsive to ethical imperatives, is not only a deviation from its historical forms, not only a betrayal of the vision of one hundred years of Conservative Judaism, it is a rejection of the core of Mosaic religion. The Torah insists on the unstable alliance between ethics and ritual, teaches commitment to morality through legal norms. In effect, that ethical monotheism hints that we can know the sanctity of the Law by the goodness of its laws. As JTS Professor Shalom Spiegel notes at the 1957 Seminary Conference on "Law as a Moral Force," "A clear distinction . . . [must] be made not only between *rite* and *right*, but also between *custom* and *law*. However ancient or venerable, however conducive to social cohesion or to public safety, a legal practice must recommend and validate itself ever anew by one test and one test only: that it serves the end of justice."<sup>102</sup>

God's authority, nature, and goodness are inseparable. This fusion is unique to God and constitutes the base of God's rule. That authority is false which is immoral, or indifferent to morality, and it takes courage to reject false authority. The mentality of slaves is one that prefers authority of any kind, so long as it is secure: "If only we had died by the hand of the Lord in the land of Egypt, when we sat by the flesh pots, when we ate our fill of bread!"<sup>103</sup> In freeing us from slavery, God liberates us from the power of false authority (Pharaohs then and now) and allows us to serve the one whose seal is truth,<sup>104</sup> whose throne is justice and compassion.<sup>105</sup>

Why is the link between morality and ritual, between *musar* and halakhah so unstable? Because many of those for whom goodness is all-consuming are tempted to see their understanding of goodness as sufficient to overturn all consensus, all due process. The anti-abortion militants who murder doctors, and the gulags of the Communists, stand as testimony to the havoc that a perceived monopoly on "goodness" can induce. Goodness without guidelines is wild.<sup>106</sup> On the other hand, many of those whose passion is order, whose love is ritual, can be guilty of sacrificing all for the sake of correct form: the Hindu blazing of widows on funeral piers and the medieval Christian practice of burning heretics illumine the dangers of ritual as an ultimate goal. Ritual without goodness is evil.

Those who are passionate about one extreme often trample over the other and justify their violence either as an act of righteous indignation or of strict faith. The temptation to revert to the stance of the Canaanite is strong indeed. Yet the genius of the Torah lies in its holding us to a difficult synthe-

<sup>102</sup> Shalom Spiegel, "Amos vs. Amaziah," *Essays in Judaism Series*, New York: The Jewish Theological Seminary of America, 1957, p. 44.

<sup>103</sup> Exodus 16:3.

<sup>104</sup> *Shabbat* 55a.

<sup>105</sup> *Pesikta de-Rav Kahana*, 151b, Section 28, *Va-Yikra Rabbah* 29:3.

<sup>106</sup> I am paraphrasing Heschel's trenchant aphorism: "Halacha without agada is dead, agada without halacha is wild." *God in Search of Man*, p. 337.

sis, one that recognizes that ethics must be cultivated through repetition, rehearsed through ritual, and that ritual must be enlisted to the service of justice. Either extreme is tempting for its simplicity. Both make sense in a world of chaos and purposelessness. But the notion of a single God who created the world out of love and who insists on righteousness renders each extreme logically suspect and behaviorally prohibited.

In each age, there have arisen voices who have urged a rejection of the core Mosaic ideal and a return to dead ritual or to ethical fanaticism. Both threaten the establishment of God's sovereignty on earth, a monarchy based on the realization of holiness and of decency. Morality must be the base on which ritual stands, the point toward which holiness aspires, the norm which halakhah seeks to enforce, else we are little more than latter-day Canaanites and the Exodus was for nothing.

*Bradley Shavit Artson, the Book Review Editor for Conservative Judaism, is Rabbi of Congregation Eilat, Mission Viejo, California, and the author of the forthcoming book, It's a Mitzvah! Jewish Living Step-by-Step (Behrman House).*