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THE HALAKHAH'S PHILOSOPHY OF MAN

by

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REVIEW ARTICLES:

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Jewish religious thought suffers from a strange anomaly. Notwithstanding the pre-eminent role the Halakhah has played in shaping the structure of Jewish piety, few theologians and philosophers have attempted to formulate a Jewish philosophy grounded on halakhic elements. The appearance of Dr. Belkin's *In His Image* marks a notable departure from this deplorable situation. In this pioneering work, the distinguished president of Yeshiva University, a world-renowned exponent of traditional Judaism, has shown with remarkable success how halakhic resources can be tapped for the development of an authentically Jewish *Weltanschauung*. The epoch-making nature of this contribution is evaluated here by Rabbi Norman Lamm. An internationally known lecturer and author, Rabbi Lamm is Associate Rabbi of The Jewish Center in New York City and teaches Jewish philosophy at Yeshiva University. His articles — both popular and scholarly — have appeared in many leading Hebrew and English journals. A founder of TRADITION, he served until recently as Editor of this journal and is currently a member of its Editorial Committee.

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A century ago, Samson Raphael Hirsch pleaded for an autochthonous Jewish philosophy, one that would issue from *within* the framework of Judaism instead of being superimposed upon it from *without*. Because of this, Hirsch rejected the philosophy of Mai-

monides as an alien Greek graft on the body of Judaism, and proceeded to elaborate his own doctrine which he derived from Scripture, largely on the basis of the speculative philology so popular in his day.

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Despite all of Hirsch's achievements, and some of them are enduring, his particular philosophy — as opposed to his educational theories, his towering personality, and his influence on practical communal affairs — did not find a large responsive audience in the ranks of traditional Jewry. This was not due solely to the generally negative attitude towards philosophic thinking by latter day Talmudists, or to the fact that by now his brand of philology has been largely discredited. It is primarily because, in the eyes of Talmud-oriented Jewry, a *Jewish* philosophy, one that is truly indigenous or autochthonous, can be formulated only on the basis of the Halakhah. Hirsch, then, was right in demanding a "within" Jewish philosophy, but in overlooking the Halakhah he failed to satisfy his own requirements. It is not entirely surprising, therefore, to discover a contemporary scholar attributing Hirsch's own thought to a strong Hegelian influence — the very Hirsch who so sharply denounced Maimonides for borrowing from the Greeks! (See Noah H. Rosenbloom, "The 'Nineteen Letters of Ben Uziel,'" *Historica Judaica* [April, 1960], pp. 23-60.)

Hirsch's valid criticism has thus pointed to the gap in our literature and our thinking. The Halakhah, aside from its own religious significance, is the field in which so many of the creative Jewish geniuses of all times sowed

and reaped their most precious thoughts. Inevitably, therefore, the Halakhah contains, in capsule and coded form, the authentic *Weltanschauung* of Judaism. One can hardly delve more "within" than this!

It is with great pleasure, therefore, that we greet the appearance of Dr. Samuel Belkin's *In His Image*.^{*} This reviewer does not know of any previous work that has attempted, on this scale and with such qualifications of the author, this kind of ideational evocation on the raw material of the Halakhah. The author is a master of halakhic learning. He knows his material thoroughly, intuitively its hidden philosophic resources, and has the capacity to charm them out of their legal idiom.

Unlike so much of our modern literature on Jewish thought, the present volume eschews as futile the "attempt to discover an articulate and organized body of doctrines which can be characterized as 'Jewish Theology,' in the full sense of the term" (p. 15). In Judaism, one cannot divorce religious theories from particular practices. "It is in the Halakhah, therefore, that the philosophy of Judaism is to be sought" (p. 16).

Dr. Belkin limits himself to the philosophy of man. He shows how the Halakhah expresses the insights which, together, represent the sanctity of the human personality, a sanctity which derives from God's creation of man "in His image." His fundamental point is

* Abelard-Schuman, London—New York—Toronto, 1961.

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that Judaism is a "democratic theocracy" — a compound term which would appear awkward were it not so carefully defined and documented. "In Judaism," he tells us, "the recognition of the *demos*, the individual and the infinite worth of his personality, are but the necessary outgrowth of the acceptance of God's *theos* (rulership), a relationship succinctly summed up in the phrase 'democratic theocracy'" (p. 18). By "theocracy," Dr. Belkin, like Josephus, does not intend a hierarchy ruled by a High Priest. On the contrary, it implies that only God is infallible and that, therefore, for instance, even the High Priest must publicly confess his sins on Yom Kippur.

The consequences of this thesis are evident throughout the book. Thus, to give but a few examples that come to mind, a sin against man is regarded, as well, as a sin against God (pp. 41, 47). The denial that only one person (such as the High Priest) is sacred is, *ipso facto*, an affirmation that every human personality possesses sanctity (p. 61). Rabbinic law regarding validity of witnesses and trustworthiness is particularly based on both the positive and negative aspects of the above thesis: the sacredness of every personality, and the denial that any one person is immune from error. The belief in God as Creator and Possessor of the world makes it imperative that man fashion for himself a way of life patterned on such a belief. This is the essence and intent of the halakhic

life: to translate the abstract principle into simple actions of daily living.

Furthermore, God as sole Possessor implies that no human being can claim complete and unequivocal ownership of another human. This corollary is abundantly illustrated by the author. Thus the Pharisees, as opposed to the Sadducees, did not hold the master responsible for damages caused by his slave, for they denied that any one man can be so completely owned by another as to be totally subject to him and bereft of his own will and responsibility (p. 63). The same theory governs the relationships of parents and children (pp. 162 ff.) and employers and employees (pp. 113 ff.). More interestingly, the belief in God as sole Owner also denies to a man any claim to exclusive possession of his self. That is why Maimonides rules that just as one must submit to martyrdom rather than transgress any of the three cardinal sins, so is one forbidden to yield his life in order to avoid violating any of the other commandments (p. 102). This reviewer would add the explanation of RaDBAZ (on Maimonides, *Hil. Sanhedrin* 18:6) of why self-incriminating testimony is unacceptable in a Jewish court. Man, he says, is not the ultimate master of his own body and hence cannot, by his own testimony, yield it to death, or to corporal punishment (which is considered a minor form of capital punishment). (See also *Shulchan Arukh Ha-rav, Ch. M., Hil. Nizkei Guf ve'Nefesh*.)

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It is a popular misconception that Judaism, in its emphasis on the community and on social responsibility, somehow downgrades the value of the individual and subordinates his interests and personality to that of the collective. It is, of course, true that Judaism greatly encourages the awareness by man of his neighbors and his obligations to society and people. *Kenesset Yisrael*, in the eyes of the Rabbis, is more than just a fortuitous aggregate of individuals of Jewish persuasion. It has its own value, and indeed its own life. The Kabbalah even identifies it with the *Shekhinah*. Yet to assert, on this basis, that Judaism ignores the individual in favor of the community is a gross fallacy, to which Dr. Belkin gives the lie in the current volume. He marshalls convincing proof, from the Halakhah, that "individualism" is more accurately the authentic attitude of Judaism, without degrading into the kind of indifference to society and community that, in other systems, often accompanies such an emphasis. *In His Image* should serve as the corrective to the current notions, without, at the same time, falling into the error of the opposite extreme.

Our author thus observes that, negatively, Judaism acknowledges the primacy of the individual and the sacredness of his personality by not recognizing, as did the Romans and Greeks, a separate metaphysical entity known as the State or City. There are no "crimes against the state" or "against society"; there are only crimes

against the individual or the individuals who, in the aggregate, make up the collective group (p. 117). The Halakhah does not have the concept of "city property" (p. 120), and it does not require fines, stipulated in the Torah and legislated by the Rabbis, to be paid to the government (p. 121). On the positive side, the Halakhah abundantly protects one's privacy (pp. 126 f.). If the reader is piqued by Dr. Belkin's statement that "Jewish law . . . is more concerned with individual morality than with the protection of society" (p. 216), he should remember that Judaism does not look upon the individual as a powerless and uninfluential prisoner of his environment who can do no more than angrily shake his fist at the sky; his communal responsibility is based on "the unique concept that one individual can by a single action, either good or bad, determine the ultimate existence of the entire world" (p. 137), a concept firmly entrenched in the halakhic scheme and extravagantly developed by the Safed Kabbalists.

In his chapter on "Man and Public Consciousness," Dr. Belkin rightly remarks that the Talmud distinguishes between two types of "separationists." They are the *poresh min ha-tzibbur*, he who disassociates himself from the community proper, in its social sense, and the *poresh mi-darkei ha-tzibbur*, he who separates himself from the "ways" of the community, meaning that he does not accept the religious norms of Jewish society or, as Dr. Belkin puts it, "one who

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rebels against the theocracy of Judaism" (p. 135). The writer (in an article in *Hadoar*, May 25, 1956) has pointed out that the difference between these terms, as the Talmud uses them, is based on two different conceptions of the term *tzibbur* or community. Jeremy Bentham's definition is nominalistic — an imaginary body, merely a collection of individuals here and now. This would be equivalent to the term *min ha-tzibbur*. Another definition, advanced by Walter Lippmann in his *The Public Philosophy*, visualizes the community as a metaphysical entity, transcending the identity of its members at any given moment. This ideal notion of *tzibbur* implies certain norms that are timeless and independent of society's mores at any specific time. Thus the *mi-darkei ha-tzibbur*, i.e., the eternal Torah-ways of *Kenesset Yisrael*, a collectivity which, in its covenant with God, includes the living, the dead, and the unborn.

Dr. Belkin states that, apparently, Maimonides does not recognize this distinction (p. 135; although the note on p. 260 is not entirely clear on this matter). The writer would like to suggest that perhaps Maimonides can be interpreted as accepting the dichotomy that Dr. Belkin finds in the Talmud, but further distinguishes, in the category of *poresh mi-darkei ha-tzibbur*, between two types of those who "rebel against the theocracy of Judaism." First are those who deny the fundamentals of Judaism in principle (an absolute category, comprising those

mentioned in the last half of Maimonides, *Hil. Avel* 1:10), and second, those who abstain even from the minimal observances kept by the community as part of their social structure (a relative definition, compromising those described by Maimonides in the first half of the above Halakhah). Admittedly, the difference is not crucial, but it has interesting side-lights for the understanding of our contemporary communal situation.

In the course of this book, one can find a number of pertinent analyses of the controversies between the Pharisees and Sadducees, such as their dispute over responsibility of bondsmen, mentioned above, the problem of punishing the king (pp. 65-6), and the most interesting discussion of the conflict regarding false witnesses (pp. 203-5). In all these cases, the reader discovers new and fascinating insights. What a pleasure — and relief — to find a first-rate scholar reminding us that the Rabbis discussed issues on their own merits and did not articulate halakhic opinions merely to disguise their vested interests or advance pet economic theories. We have become so accustomed to the socioeconomic approach of the contemporary practitioners of *Wissenschaft des Judentums*, with its implied rigorous determinism, that we are caught by surprise when an author teaches us that the Rabbis really meant what they said, and that they took ideas *qua* ideas quite seriously. Thus, in analyzing the Pharisee-Sadducee debate on the responsibility for damages incurred

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by slaves, Dr. Belkin writes (pp. 62-3):

Whatever may be said of the Pharisees, they certainly did not constitute the wealthier portion of the community, nor were their views and decisions shaped by a desire to protect "vested interests." Their refusal to hold a master responsible for his slaves' actions, therefore, was not directed by economic considerations. The opinion of the Pharisees can be understood only in the light of their concept of the sacredness of the human personality.

Dr. Belkin thus dismisses the sociological and economic motives that some have read into these debates as "ingenious and fanciful interpretations" (p. 61).

In his superb analysis of "the rebellious son" (pp. 170-3), our author again disputes those who "mistakenly claim that the Rabbis wanted to abolish the Biblical concept of *patria potestas*, or that in their 'liberality' the Tannaim endeavored by juristic contortions to mitigate the severe penalty parents can, according to the Torah, impose on a misbehaving son." Instead, Dr. Belkin maintains and demonstrates, the Sages "based their decisions not on such grounds but rather upon profound religious convictions as well as on established traditions."

Dr. Belkin is thus consistent in presenting Jewish thought on the basis of an internal analysis of the Halakhah and of the concept of man created in the image of God, the fountainhead of its inspiration. "Modern Jewish scholarship has tried to explain Judaism in terms which are alien and do not apply

to it" (p. 16). No such accusation can be placed against the author of *In His Image*.

One might expect that precisely because he refuses to reduce all halakhic controversies to conflicts between social classes and the like, our author would adopt an apologetic approach. But that is not so. He tries to show us what Judaism is, not what a large number of contemporary Jews like to think it is. The reader will not find here any catering to current prejudices. Judaism is not presented by Dr. Belkin as a kind of ideological mannequin tidily dressed up in all the shiny phrases of up-to-date, doctrinaire, middle-class liberalism. He may refer to Judaism as "a democratic theocracy," but he does not allow the reader to imagine that Moses prefigured Jefferson or that Maimonides was a Jewish George Washington. Thus: (p. 145):

Nowhere in rabbinic sources do we find reference to the present day method of preserving a democratic order, namely the selection of officers through the instrumentality of public election, by which process the elected officer becomes, in essence, an agent through whom the public will is expressed. Nonetheless, it is to be recognized that there is hardly a democratic constitution which gives as clear and firm an enunciation of the fundamental principles of a spiritual democracy as did the Rabbis of old in their theocratic approach to life.

A similar refusal to descend into the kind of intellectually dishonest apologetics that marks much of our contemporary religious writ-

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ing is this paragraph on p. 183:

It has been averred that women are given almost no status in the Bible. On the other hand, it is also possible to claim that the Rabbis in their interpretation and definition of a woman's legal rights reached "ultramodern" concepts of "suffrage" or freedom. In truth, neither of these statements is correct. The Bible is concerned with safeguarding the rights of women, but only out of moral and religious considerations.

On almost every point, Dr. Belkin quotes not only talmudic sources but also Philo, and occasionally Josephus. This is understandable for one who has distinguished himself in the world of scholarship by his learned contributions to the literature on the Alexandrian philosopher. Some of the passages cited are most inspiring as well as informative, and, seeing Philo side by side with the traditional halakhic sources, one becomes aware of the fact that Philo located himself squarely within the Jewish tradition, although his influence was much greater on non-Jewish than on Jewish circles. Dr. Belkin also points out the occasional discrepancies between Philo and the Tannaim (cf. pp. 49, 104). Nevertheless, one wonders if both these splendid tasks — that of elaborating a Jewish philosophy of personality as it emerges from the Halakhah, and that of reconstructing Philo as a creative thinker within the halakhic tradition — might not better have been accomplished separately. Incidentally, the Philo bias of the author is interestingly revealed, indirectly,

in the following sentence on p. 214: "According to the oral tradition the name 'Lord' stands for strict justice while the name 'God' denotes mercy and graciousness." Usually it is reversed: *Elohim* (God) implies justice and severity, while the Tetragrammaton (Lord) designates the attribute of mercy and compassion. However, there are two sources which change the symbolic value, and where "God" stands for love while "Lord" stands for justice: Philo, and the *Midrash Tadshe*. This striking similarity, against the rest of the oral tradition, is one of the points presented by a leading authority on Philo in proving that both *Midrash Tadshe* and Philo drew upon a common source, an ancient Hellenistic Midrash. The article appeared in *Horeb*, April 1951. The author — Dr. Samuel Belkin!

Every chapter and sub-chapter is filled with new and striking insights, so that it is difficult for a reviewer to select one above others for illustrating the excellence of this superb volume. The halakhist will note, here and there, some fine points — such as the interpretation of *hefker* (p. 199) — which betray the acumen of the Lithuanian-trained *rosh yeshiva*. Those not well versed in the intricacies of halakhic thought will find little difficulty navigating the "ocean of the Talmud" in this book, for the author has distilled it for us in pure, clear form. It is impossible not to finish this absorbing, important book without a sense of pride at being identified with this sacred tradition, and without a

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sense of amazement at the profundity the author has uncovered for us in what otherwise might seem no more than dry legalisms.

There are two questions that perplex this reviewer. First, why has not someone done this kind of work before? Here is a book that has been in search of an author for all these many years — why has no one come forth until now? The second question is, where does a man find time for this sort of literary and scholarly creativeness when he is so completely overburdened by the more mundane tasks of administration, fund-raising, and community relations that are the lot of the modern university president? I wonder if our author unconsciously had himself in

mind when he wrote (p. 151):

Living in a society in which scholarship was a prerequisite for practical contributions to the well-being of the community, many a scholar in ancient times must have faced this problem. Should he isolate himself in an ivory tower and dedicate his entire life to the study of the Torah or should he apply his knowledge to public service?

The author seems to imply that we have before us an either/or alternative: a life of scholarship or a life of public service.

This reviewer begs to differ. He knows that both can be done and done exceedingly well, though he knows not how. Proof: the author of *In His Image*, the president of Yeshiva University.