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Maimonides' Sons: Episodes in Modern Jewish Thought

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Maimonides' Sons: Episodes in Modern Jewish Thought

By

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ABSTRACT

My thesis centers on three modern Jewish thinkers—Yeshayahu Leibowitz, David Hartman and Joseph Soloveitchik—and their philosophical relationship with and use of Maimonides. Maimonides is the central thinker in and the touchstone of Jewish philosophy, matched only by Aquinas in Catholic theology.

The first essay concerns the nature of halakha in the concluding chapters of *The Guide of the Perplexed* and Leibowitz's formalist understanding of the Law through those chapters. I defend this reading of Maimonides by employing David Shatz's provocative argument that 3.51 and not 3.54 constitutes the true end of the *Guide*. By arguing thusly a Leibowitzean reading of the conclusion is plausible and faithful to Maimonides' purpose in the *Guide*.

The middle essay covers Hartman's philosophy of halakha in association with Maimonides' philosophy of halakha. Three controlling aspects of Hartman's philosophy of halakha are examined: pluralism, rationalism and *lifnim mi-shurat ha-din*. I attempt to assess Hartman's use of Maimonides in determining these aspects, and find his interpretations of the Rambam to be generally in error.

The final essay looks at neglected second part of Soloveitchik's *Halakhic Man* and his seamless utilization of Maimonides to shape the concepts of creation, repentance divine providence, time and prophecy. I argue that Soloveitchik's use of Maimonides is closest to the Rambam's intentions, but that it also takes the fewest risks. Instead, Soloveitchik employs Maimonides as a prop and support to defend his radically new and radically strange vision of individual observant existence in modern times.

Introduction

This thesis, “Maimonides’ Sons: Episodes in Modern Jewish Thought,” centers on three major contemporary figures of modern Jewish thought—Yeshayahu Leibowitz, David Hartman and Joseph Soloveitchik—and their respective philosophical relationships with the giant of Cordova and Cairo, Maimonides, the preeminent Jewish philosopher. Maimonides’ influence on subsequent Jewish philosophy up to and including the present is paralleled only by the reach of Aquinas among Catholic philosophers. One way to look at the intellectual history of Jewish philosophy, though surely it is not the only way, is to determine adherence to or deviance from the general philosophical outlook and particular religious principles set forth by Maimonides.

Each of the thinkers profiled herein our thesis considers himself an heir to the broad Maimonidean legacy, whose grandest project is the strategy of combining meticulous religious observance with the study of and appreciation for alternate modes of philosophical and speculative discourse. But the Maimonidean legacy, as we will show, can be channeled in many directions. For Leibowitz, Maimonides is a positivist; for Hartman, he is a rationalist; and for Soloveitchik, the Rambam’s philosophy contains elements of both positivism and rationality. Yet, in varying degrees, each of three can claim legitimacy as Maimonides’ son, the inheritor of a religio-philosophic tradition that stretches over the centuries; sometimes dormant (as, for example, between the 14th and 17th centuries), sometimes flourishing. In the larger picture, what is at stake in the thesis is the shifting understandings of Jewish religious identity: that is, how is one to live with religious integrity while at the same time co-existing in a secular world often hostile or indifferent to religious expression? How does one maintain traditionalism in non-traditional societies, and how does one relate to this philosophically? These are some of the global questions embedded within the thesis. More directly, we address the equally important if somewhat narrower question about the degree of difficulty of harmonizing human reason and universal philosophy with a divinely revealed Law and the particulars of Torah.

The opening chapter is the most detailed. It begins with a survey of Maimonides' often conflicting opinions about the nature of Jewish law, halakha, in his magnum opus, *The Guide of the Perplexed*. The purpose of the chapter is three-fold: 1) to demonstrate the variety of potential interpretations concerning Maimonides' beliefs about the nature of halakha; 2) to show Leibowitz's attempt to cast 3.51 of the Guide in his own positivist mold; and 3) to ultimately defend that halakhic positivism reading by incorporating the scholarship of David Shatz, whose suggestive essay on the true end of the *Guide* helped orient our thoughts. Shatz argued, in our eyes persuasively, that 3.51 constituted the conclusion of the *Guide* rather than 3.54.

Leibowitz's Maimonides is first and foremost a halakhist, and philosophy is necessarily a handmaiden to legal exegesis. For Leibowitz, the philosopher, e.g. Aristotle, pursues knowledge that will give him[1] greater insight into the cosmos, his interior life, or man's proper duties in the world. Leibowitz suggests that Maimonides' pursuit was different. What he sought, contra the Greeks, was knowledge of God, a knowledge that it is not a detail or part of general human knowledge. Comprehension of the motion of planets, thus, is not comprehension of God. Leibowitz attempts to drive a wedge between secular, scientific consciousness and knowledge and religious consciousness. Both are very real, but say nothing to each other.

The next section proceeds to lay out Maimonides' attitudes towards the law from book one to 3.50, for example that the Law exists to tame matter, eradicate idolatry, or lead to the perfection of the body and soul. The preceding gave instrumental reasons for the observance of the Law, yet Leibowitz asserts that the *Guide*, in the end, locates the nature of halakha in a positivist understanding.

3.54 of the *Guide*, technically the final chapter, continues with the instrumentality of the Law, but refined. Maimonides maintains that the ultimate end of man, his true perfection, is the acquisition of rational virtues (in particular, knowledge of God by means of the Active Intellect). The Rambam states directly that the Law serves the singularly non-halakhic purpose of serving as preparatory training for this end. If, in fact, this chapter constitutes the conclusion of the *Guide*, then Leibowitz is wrong. He insists that the specific purpose of the Law is worship and

[1] A note on language: I have consciously and consistently employed the masculine pronoun to stand in as the generic Jewish human being. Because all three writers are traditional, and the positive Laws—such as studying Torah—in the tradition obligate only males, I have left aside the academic convention of using gender-neutral language.

not the fulfillment of a human such as the acquisition of rational virtues, no matter its philosophical sophistication.

The first hint that 3.51 may be the conclusion of the Guide comes at the beginning of the chapter, where Maimonides writes it represents a sort of conclusion. The reader is warned throughout the Guide that the author will disguise his true opinions, and demand of the attentive reader that he seek the roots under the topsoil. Even if Shatz and Leibowitz are incorrect, it will not be because of hubris or intentional distortion. Maimonides himself opens the *Guide* to such speculation.

The centerpiece of 3.51 is found where Maimonides lays out the true purpose of the Law. If Leibowitz is right, all of the instrumentality of the *Guide* here falls away. Everything discussed up to this point has been intellectual and moral training for the actual end of man: the worship of God through the halakha. David Shatz concludes that 3.54 thus conceptually precedes 3.51 because of its unsophisticated and deceptive depiction of human perfection and by extension the commandments. Only 3.51 highlights the stage of worship, instead of the emphasis of stage of apprehension. So it is that our reading of the Guide is given a Leibowitzean understanding. This is not to preclude other interpretations, but only to add to the stock of potential truths about the Maimonidean legacy.

Ultimately, Leibowitz's Maimonideanism seeks to segregate the religious from the secular, because each has its own independent standing and can best be judged by its own internal standards. We believe that Leibowitz's separation of religious and secular consciousness (through an admittedly idiosyncratic use of Maimonides), and his refusal to give into the psychologizing and humanizing tendencies of modern religion—Jewish or otherwise—represents the most philosophically thoughtful and religiously prudent way of being an observant Jew in the modern world. However, we recognize that his philosophical attitude is not merely a minority within this tradition, it is simply not acceptable to modern Jews, traditional or not. The demands of wrenching apart consciousness are too high, and perhaps of little appeal.

The intention of our chapter on David Hartman is to show that Maimonides can be used as the source for an account of Jewish life that serves as an extreme counter-balance to Leibowitz. He states that Leibowitz's project neglects the psychology of the believer, primarily in the relationship between man and God. Leibowitz denies any material or emotional tie between man and God (the only relationship—such as it is—takes place in the formal duties of

the Law), while Hartman insists that bonds must exist or the believer has little reason or incentive for his belief. Hartman maintains that religious consciousness has room for and need of human wants and desire—that is to say, that human concerns are not religiously irrelevant, as Leibowitz claims.

Those things that Leibowitz either denies or de-emphasizes in the halakhic life, Hartman sees as central: a religious life is essentially a moral, rational one. For this religious life to give meaning and purpose in the modern world, then a focus on the individual's particular relationship to his tradition and to God is a controlling assumption. Only by such a relationship, although still well within the context of a community, can a Jew realize his autonomy and his facility for independent reasoning, both of which are vital to an individual expression of faith.

There are three central tenets to Hartman's Maimonidean philosophy: 1) a pluralistic sensibility that permits the individual Jew to cultivate his independent reason, for he cannot be asked to submit uncritically to the claims of authority. We argue that the benefits of such a political move within a religious tradition are slight, and the cost pluralism exacts is far too high. Hartman maintains that each Jew can create his own *ta'am*—reason—for observing the Law and that this will have the effect of making Judaism more palatable than the narrow legalism often associated with it. He points to Maimonides in his quest for pluralism. Maimonides in the *Guide* discloses the *taamei hamitzvot*, the reasons for the commandments, and Hartman thinks individual Jews of today can do the same. But the reasons for the commandments in the *Guide*, according to scholars such as Isadore Twersky, are as defined and neutral as any scientific discipline. So, while there may well be reasons for the Laws, the reasons are not constructed by individual understandings—they have a mathematical precision, a formula by which they must be judged and measured.

The second tenet is rationalism. Hartman wants to cast his rationalism in the mold of Maimonides; that some of the particulars may differ, but that the essentials are the same. Maimonides' use of reason in shaping his comprehension of religious life appeals to modern religious rationalists such as Hartman who do not want to discard tradition. True loyalty to God and worship of God, Hartman maintains, occurs only when a believer bolsters his belief with reason, and rebuffs the heteronomy of positivism. As indicated in our thesis, this attitude presents a religious problem. In politics, authority is often to be looked at skeptically. But Judaism is a top-down religion; its impulses are not democratic—or monarchial, or collectivist,

as Judaism has no political allegiance. Reason for Maimonides, however, did not concern itself with the investigation of political authority, but instead physical and metaphysical matters—that is, how to best employ God-given reason to understand God's creation. As we note in the Hartman chapter, his rationalism simply has no resemblance to that of Maimonides' Aristotelianism. Hartman's emphasis on reason is regularly nothing more than common sense: it is a *philosophes'* creed rather than Maimonides'.

The last element in this chapter centers on the concept of *lifnim mi-shurat ha-din*. These are ostensibly ethical aspects above or outside the constrictions of the Law in Judaism. It is, for Hartman, an extra-halakhic aspect of Judaism, and one that he believes can be found in Maimonides as extra-halakhic. *Lifnim mi-shurat ha-din* plays an important role, for Hartman, in the commanded life. Hartman notes that the *Mishneh Torah*, a compendium of laws and religious directives, commences with a treatment of general philosophical themes. Hartman finds examples of *lifnim mi-shurat ha-din* in the *Mishneh Torah*: if a righteous man sees an animal whose burden has fallen off its back, he is obligated to help the owner place the burden back on the animal. According to Hartman, the righteous man waives his freedom from a task that compromises his honor or status. As a result, it is that only going beyond the strict letter of the Law can one demonstrate love for God. Nevertheless, Hartman is unable to demonstrate the material religious relevance of *lifnim mi-shurat ha-din*. We will argue, on the contrary, that *lifnim mi-shurat ha-din* does not involve a violation of halakha. It merely permits actions that the law does not require; it is optional, certainly commendable, but says nothing about the halakhic life. And nowhere does Maimonides counsel that all people should deviate from the middle path between excesses.

In terms of Jewish religious identity in the modern world, what we have said about Leibowitz is reversed in Hartman. Hartman's brand of broad rationalism, hitched to morality and a critical philosophical attitude, has had far greater influence among modern observant Jews. Despite this success, we fear that Hartman identifies his Maimonideanism too much with Enlightenment principles, and more particularly that he maintains that Judaism should change because the material conditions of Jewish life have changed. We do not believe this represents Maimonides at all.

Of the three thinkers profiled in the thesis, Joseph Soloveitchik is the one that has been most popularly identified with Maimonides. He saw the reverence for Maimonides in the

examples of his grandfather and father. In Soloveitchik's writing Maimonides does not appear as a figure forced into the proceedings to be used as a truncheon to bludgeon others who do not agree with his understanding. Instead, Maimonides appears gently in Soloveitchik's texts like a background figure in one of Turgenev's lighter novels. Although Soloveitchik has received much scholarly attention than Leibowitz or Hartman, his utilization of Maimonides in *Halakhic Man* has gone largely unexplored. In particular, we examine the second part of *Halakhic Man* and its five central concepts, with their Maimonidean underpinnings.

The first concept is creation. Soloveitchik does not bother himself about the creation of the world, as Maimonides does in the *Guide*, but about a more immediate modernist conception of creation: self-creation. For Soloveitchik, the story of creation did not detail metaphysical concepts or truths as it did for Maimonides, it instead was a story that laid out practical halakhot, in particular, the obligation for man to engage in creation and the renewal of the cosmos. This is a move from the objective world to the subjective self, and it is definitely not Maimonidean. But Soloveitchik is fully Maimonidean when he discusses the new moon, and the blessing for which re-creates the world and replenishes creation—it is the creative structuring of the world through Law. The second aspect of *Halakhic Man* is repentance, which is the ultimate act of self-creation. For Soloveitchik, as well as Maimonides, the penitent man is a new man; he creates himself, as he resolves never again to return to that sin. We argue that his view of repentance comes close to non-Jewish notions of sin and repentance, that only by reaching the bottom of sin can man know the majesty of self-creation. The next element is time. The fractures in the understanding of time—Jewish, Newtonian, Bergsonian—received attention from Soloveitchik. We suggest that, unlike in the creation section, Soloveitchik is faithfully Maimonidean here. Both understand time as reflecting divine order in the world, that the world of ordinary, sequential time can be bent to the halakha, as during Passover, when one is to imagine himself a contemporary of Moses, being led out of Egypt. The fourth section centers on divine providence. We make a case for a parallel between Soloveitchik's man of God and Maimonides' perfected man of the closing chapters of the *Guide*. Both assert that man is responsible for his measure of divine care. The more he concentrates on knowledge of God or self-creation, the more protection he receives. Knowledge of God and self-creation are ways in which to rise above the coils of biological existence; it is an expression that men are not coarse Darwinian ciphers. We do contend, however, than S is unnecessarily vague about how to achieve this state. Maimonides

was vague as well, but he laid out some of the elements of divine providence: a mind that is hooked to the Active Intellect. Soloveitchik fails to show the link between divine providence and the man of God. The final section is prophecy. Soloveitchik slightly shifts the model of the perfected man in the concluding part of Maimonides' *Guide* to the prophet. Despite this shift, each has a common end-point: the reception of the divine overflow. We contend that the crucial difference between the two centers on their respective personalities: the perfected man is essentially passive, but the divine overflow enables him to be a leader of men, while the prophet, in Soloveitchik's understanding, actively works toward the goal but refrains from making definitive decisions, unless pressed to do so. But ultimately both men are transformed, even if their purposes are different.

The larger implications of Soloveitchik's Maimonideanism for modern Jewish religious identity are evident in his emphasis on self-creation. He suggests that one can creatively use the *mesorah* (tradition), which includes Maimonides, to transform one's self into a man of God. Nevertheless, it is difficult to gauge the impact on this conception of self-creation for Jewish religious identity because Soloveitchik's philosophy is radically strange. However, we assume that it has wide appeal and application for modern Jews due to the fact that the tentacles of his thought have reached Jewish philosophers and laymen alike. Perhaps it is but the force of his personality that made the halakhic man, the man of God and the prophet such a powerful image, but the idea of creative impulses within a legal system like halakha has had and continues to have influence.

Ultimately, what we hope this thesis demonstrates is the variety and variability of Maimonidean interpretation among modern Jewish philosophers. Maimonides brought together so much in his thought, so much from so many sources: Jewish, Greek and Islamic. Due to this jumble of influences, perhaps only idiosyncratic interpretations of Maimonides are possible.

Chapter One

Four Cubits: Defending a Leibowitzean reading of Maimonides on the Law

Introduction

In one of the concluding chapters of his slender *Faith of Maimonides*, Yeshayahu Leibowitz, one of the most important if more peculiar interpreters of the modern Maimonidean legacy, designs a Maimonides who plots different ends of man: the simple fulfillment of the commandments, intellectual perfection and knowledge of God. Leibowitz first asserts that communal (or, if circumstances dictate, private) worship and the public observance of the commandments constitute the final aim of man, because that man perceives that God alone merits the ultimate values of devotion and contemplation. "The worship of God,' he stresses, 'by fulfilling the practical commandments, is the final aim, since the man who recognizes God has nothing to which he can attach a significance of value except the worship of God."[1] It is by way of the commandments, their implementation and execution, that faithful Jews cleave to God and forestall the enticements of *avodah zarah* ("foreign worship," or idolatry). Close on its heels, in the next paragraph, he emphasizes that man's enduring purpose is in fact to refine his intellectual faculties—the faculties necessary for theoretical speculation and rational discourse—so that he may come to know God. He adds later in the chapter that this knowledge of God is man's goal and not the perfection of his intellectual faculties or correct observance of the Law.

Leibowitz, we may say, gets into a philosophic entanglement, a thicket of possible contradiction from which he will have trouble extricating himself. The execution of the Law, knowledge of God, and the drive for intellectual perfection may well be compatible, but they are surely not the same. Distinctions are necessary, and one concept—law, knowledge or perfection—is obliged to be privileged over the other two. As Isaiah Berlin has argued in a different context, it is difficult, if not impossible, to achieve one aim without a subsequent loss of something else. If you want freedom, liberty, justice, or equality, you may have to curtail one or

[1] Yeshayahu Leibowitz, *The Faith of Maimonides*, trans. John Glucker (Tel-Aviv: MOD Books, 1989), 102

the other; there is no gain in one thing without a corresponding deficit in another. "Everything is what it is," Berlin writes. His discussion focuses on the positive and negative conceptions of liberty, where he stresses that "liberty is liberty, not equality or fairness or justice or culture, or human happiness or a quiet conscience."[2] A man may limit his liberty in order to allow the growth of, say, equality, but liberty and equality, though in part interrelated, are not the same. This is an important principle to keep in mind as we attempt to distinguish between intellectual perfection, knowledge of God and observance of the Law. One question we should pose to Leibowitz is that of whether we are able to uncover a dialectic where observance of the Law, intellectual perfection, and knowledge of God exist in harmony, satisfying the philosopher's need for intellectual stimulation and the Jew's duty to worship God.

This chapter will answer in the affirmative, in accord with Leibowitz. By employing David Shatz's provocative argument that 3.51 rather than 3.54 is the true end of the *Guide*, we will suggest that a halakhic reading of the *Guide*'s conclusion merits consideration and further inquiry.[3] Surely this is no final claim—we haven't struck the Comstock lode of medieval Jewish philosophy after all—on the Maimonidean legacy. Instead it is an addition, a potential extension, to the richness and complexity of the Rambam's handiwork.

Nevertheless, there does appear to be a confusion in the Leibowitzean definition of the purpose of the commandments, which the opening paragraph touches on. Yet the fault may not lie entirely with Leibowitz. "Maimonides,' Menachem Kellner hypothesizes, 'did too good a job of hiding his true views"[4] about the ultimate aim of man. The *Guide* and its subsequent commentaries, including Leibowitz's, have something unstable about them, a sure interpretive footing resisted by the difficulties of the text. Maimonides did not intend the *Guide* to be a manual for all perplexed Jews; a modicum of scientific learning, hitched to a strong moral sense,

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[2] Isaiah Berlin, "Two Concepts of Liberty," *The Proper Study of Mankind: an anthology of essays*, ed. Henry Hardy and Roger Hausheer (New York: Farrar, Straus and Giroux, 1998), 197. This essay has been republished in many places, most recently (2002) in another volume of essays, *Liberty*. It was given as a lecture first in 1958, with subsequent revisions.

[3] Shlomo Pines made a similar suggestion, although he left the idea dangling. "The beginning of the chapter [3.51] seems, or may seem, to indicate that it is the concluding chapter of the *Guide*…This beginning may appear to suggest that the chapter under discussion was at first intended by Maimonides to be the concluding chapter of the *Guide* and for this or some other reason, he wanted to give it a distinctive character as compared with the other chapters. Actually chapter 54 is the last chapter of the work, a fact which may, but does not necessarily mean that Maimonides changed his mind." Shlomo Pines, "Maimonides' Halakhic Works and *The Guide of the Perplexed*," *Maimonides and Philosophy*, ed. Shlomo Pines and Yirmiyahu Yovel (Boston: Martinus Nijhoff Publishers, 1986), 9

[4] Menachem Kellner, *Maimonides on Human Perfection* (Atlanta: Scholars Press, 1990), 11

was necessary. An effort must be made, however, to bring clarity where there is apparently only darkness; merely muddling through will not do, even if the *Guide*'s conclusion leaves us as perplexed as before. But first we need to attempt to understand the stumbling blocks, whether perceived or real, that Maimonides puts in front of us in knowing his position on the function of the Law. Therefore, we will parse the end of the *Guide*, with a concentration on 3.51 and 3.54, those dizzying, brilliant, often maddening chapters that have resisted easy interpretation and have confounded attempts to define the Maimonides of the *Guide*, with wildly divergent meanings for dissimilar groups: [5] mystics, e.g., Abraham Abulafia,[6] find comfort in his ideal of contemplation, rationalists, e.g., Hermann Cohen,[7] see them as the zenith of medieval Jewish sagacity, halakhists, e.g., Leibowitz, witness an intellectualized and majestic defense of halakhic life, and secularists, e.g., Shlomo Pines,[8] find a political philosophy that merges the best of Jewish and Greek learning. We would, however, do the reader a disservice if we did not first make some preliminary comments concerning Leibowitz's halakhic position,[9] a position that has commonly been termed 'halakhic positivism,' but for our purposes will be called 'halakhic positivism.'

Halakhic Positivism

Halakhic positivism can be defined simply enough: it takes the formal fulfillment of the minimum requirements of the commandments as the grounding imperative of Jewish religious life.[10] Halakhic positivist draws from the definition of secular legal positivism. "Legal formalism,' writes Eugene Korn in an essay arguing *against* a primary form of halakhic positivism, 'may be defined as the thesis that denies the need for individual discretion in the application of rules, because all valid judgments in a particular case follow objectively from

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[5] Herbert Davidson concurs. "Clashing, exaggerated pronouncements,' he writes, 'regarding the purpose of the commandments are a *façon de parler* in the *Guide*." Herbert Davidson, "The Middle Way in Maimonides' Ethics" *Proceedings of the American Academy for Jewish Research*, 54 (1987), 58

[6] See Moshe Idel's "Abulafia's Secrets of the Guide: a linguistic turn," *Perspectives on Jewish Thought and Mysticism* (1998).

[7] See A.S. Bruckstein's new translation of Cohen's *Ethics of Maimonides* (2003).

[8] See his translator's introduction to the *Guide*.

[9] Law (halakha) and commandments (mitzvot) will be used interchangeably. Surely they are not simple transpositions, but just as surely each does not exist without the other in the Jewish faith. And this is not the place to get in the discussion of whether Law/halakha is the Oral Law and the commandments/mitzvot make up the Written Law.

[10] I prefer 'halakhic formalism' to 'halakhic positivism' in order to distinguish it from the debate between halakhic positivism and natural law. Leibowitz's position can be defined as halakhic positivism, but the term halakhic formalism permits greater precision; that is to say, our concern is singularly with 'the Law' and not 'law' in general.

clearly formulated rules."[11] Of course halakhic positivism lays over this definition the particularities of Jewish life. We should pause to say what halakhic positivism is *not*: it has nothing to do with Kantian positivistic formalism, the positivistic formalism that demands that aesthetic judgment maintain its premises and truths across geography and generations, and the ethical positivism by which Kant attempted to generate universally applicable moral laws.

The title of this chapter evokes Leibowitz's halakhic positivism. Quoting Rabbi Ulla, Rav Chiyya bar Ammi[12] declared that, with the Temple in ruins and the subsequent dispersion of the Jewish people, God has nothing in this chastened world but the four cubits of halakha. To Leibowitz, this positivism establishes a necessary foundation for Jewish religious life, reigning in wayward impulses, taming the enticements of antinomianism. The halakhic demands of prayer, for example, are bounded by the sun's certain rising and falling, not by the unreliable human urge to worship his Maker. Maariv, Shacharit, and Mincha are performed within fixed time constraints. Thus, halakha "perceives man as he is in reality and confronts him with this reality—with the actual conditions of his existence rather than the 'vision' of another existence. Religion is concerned with the status, the function, and the duties of man, as constrained by these circumstances,"[13] such as the element of time—a part of natural reality—in prayer. Moshe Tendler supplements Leibowitz in giving an example of halakhic positivism:[14]

> "Empathy, charity, kindness are the results observance of the Torah commandments governing our mutual responsibilities. They are not the motivations of these observances. I feed the poor because the Torah so ordained…If my feeding of the poor depended upon the preexistence of a sympathetic soul, as presumed by ethical systems without religion or by those of other religions, the poor would all too often go hungry if I were not at that moment emotionally attuned."[15]

Halakhic positivism, finally, stresses that the "kernel" may not be separated from the "husk," as

[11] Eugene Korn, "Legal Floors and Moral Ceilings: A Jewish Understanding of Law and Ethics," *Edah Journal* 2, no. 2 (Tammuz 5762), 3
[12] B.*Berakhot* 8a
[13] Yeshayahu Leibowitz, "Religious Praxis: The Meaning of Halakhah," *Judaism, Human Values and the Jewish State*. ed. and trans. Eliezer Goldman (Cambridge: Harvard University Press, 1995), 12
[14] Tendler and Leibowitz have an important point of convergence outside of the halakhic life—and one that points back to Maimonides as well: both earned their coin and reputation as scientists, Tendler as a biologist and Leibowitz as a chemist, and Maimonides, in addition to being a physician and philosopher, was also a man of science.
[15] Moshe Tendler, *The Condition of Jewish Belief*, complied by the editors of *Commentary* (New York: Macmillan, 1966), 242

"substance is embodied in form."[16] The halakhic idea does not separate out from the specific *mitzvah*.[17]

The religious Jew, the man who takes on the yoke of the Torah and its commandments, must concern himself foremost with the straightforward duties of the Law, rather than *lifnim mi-shurat ha-din* (that which is more than the fulfillment of the Law). Halakhic life, according to Leibowitz, "precludes the possibility of man's shirking his duties by entertaining illusions of attaining a higher level of being. The religion of Halakhah is concerned with man and addresses him in his drab day-by-day existence."[18] Going above the Law, perhaps even abrogating part of it by means of over-exertion, potentially denies the Law's purpose: to order the life of man so that he may worship God properly. The Law handles the prose of existence and not the sweeps of poetry that descend upon man, which are irregular and as aimless as the Law is fixed and purposive. What matters is what endures, not the ephemerality of shadow-lives led by those who choose to put themselves beyond the Law's reach, according to Leibowitz. One adheres to the Law not out of a sense of meaningfulness or joy. This is not to say that these are inappropriate feelings; they have their place, and are enshrined in the Jewish tradition. But, for all that, they do not constitute legitimate reasons for the perpetuation of the Law. Rather, writes Leibowitz, the commandments are conformed to because it is the "duty"[19] of the Jew to regulate his life in accord with the Law, not because the Law harmonizes with his world-view, station in life or emotional well-being.

As Moshe Tendler has shown, and as Leibowitz asserted throughout his life, the Law dictates action. Correct action, in turn, points toward correct belief and further permits a social existence in which God is worshipped properly. But correct belief and social existence are residual, indirect consequences of the observance of the commandments. The commandments, according to halakhic positivists, do not express speculative philosophical positions (this is not to deny a strong philosophical underpinning, however), are not guides for a robust social

[16] Leibowitz, "Religious Praxis," 7
[17] Leibowitz: "An analogy with poetry is pertinent…Shakespeare expressed his *eros* in the very specific form of his collection of sonnets—one of the most moving masterpieces of world poetry. A naïve person may contend that it is possible to separate the essence of the Shakespearean *eros* from the artificial and intricate form in which he chose to express it. Such is not he case. Had Shakespeare taken the form of the novel or the essay, the *eros* conveyed would not have been the same. His *eros* could be expressed authentically in no other medium than that of the marvelous form chosen by him. Similarly, the content of Jewish faith—the stance of man before God as Judaism conceived it—can be externalized in one form only, the halakhic system." "Religious Praxis," 8
[18] Ibid., 12
[19] Ibid., 12

arrangement, and do not place ethics—the relations between man and man—at the center. Otherwise, Leibowitz suggests, "the observant Jew would be doing service to himself, to society, or to the nation. Instead of serving God he would be utilizing God's Torah for his own benefit as an instrument for satisfying his needs."[20] Finally, the halakhic positivist affirms that the execution of the Law has no end-point. No matter how often one fulfills his duty, he must gird himself to do it yet again the next day; halakhic practice is without end. Halakhic life does not set the Jew out a journey where, at its conclusion, he can rest his wearied feet and tired soul; there is no repose from an observant life. His reward is that he repeats, without alteration, what he has done the day previous. "Observance of the Torah,' Leibowitz proposes, 'in its entirety is merely the training of man for continuation of its observance."[21]

The Guide on the Law: 1.1-3.50

Among traditionalists, Maimonides the philosopher is often irrelevant, if not outright absent—it is the Rambam, the master of Jewish law and its chief post-Talmudic codifier, who matters. For modernists such as Pines or Lawrence Berman, although they gesture towards the religious basis of Maimonidean philosophy, their concern is focused primarily on interpreting Maimonides through his Greek and Islamic antecedents, leaving the halakhic corpus untouched.[22] But for Leibowitz, a synthesis of Maimonides and the Rambam works best, merging the grandeur of philosophic enterprise with halakhic exegesis and observance.[23] Leibowitz resists the easy balkanization: Maimonides the philosopher and Rambam the halakhic codifier. He says of Maimonides: "The very fact that the greatest philosopher of Judaism is the man who was its greatest *halachic* authority is of an extremely profound significance."[24] Despite this claim, it may strain the imagination to presume a one-to-one philosophical and religious correspondence of the author of the *Guide* with the author of the *Mishneh Torah*. They were written at different times, for different audiences, with different purposes. That is why I call Leibowitz's Maimonides a synthesis. In fact, he makes Maimonidean philosophy a handmaiden

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[20] Ibid., 17-18
[21] Ibid., 15
[22] This is not to deny the critical and scholarly importance of seeking out Maimonides' philosophical predecessors: this is what academics do. But there is another, and no less valid, manner in studying the *Guide*; that is, theologically. The distinction between philosophy and theology would be lost on Maimonides, however.
[23] Others have attempted this synthesis as well, with varying degrees of success: HaRav Soloveitchik, Isadore Twersky, David Hartman, Menachem Kellner, and, most recently, Kenneth Seeskin. I see in all these men a larger project to rescue Maimonides from, on the one hand, the obscurities of some of the haredim and, on the other, the papering over of his halakhic relevance by some secularists.
[24] Leibowitz, *Faith of Maimonides*, 11

to his legal works. The overwhelming majority of Maimonides' writings center on the detailing and explication of the Torah's commandments, their correct performance and meaning, a meaning not embedded in philosophical conjecture but rather in the worship of God. "This fact is a testimony to the quintessence of Maimonides' philosophical thought, which is not to be found in philosophy, but in faith,"[25] Leibowitz states. By privileging faith, not philosophy, he inverts the prejudices of modernity by charging that belief is the site of certainty, while philosophy is mere guesswork (though Maimonides did not see it that way, seeing no need to make unnecessary distinctions between an observant life and a philosophical one). Maimonides' philosophical project "is to underline the total significance of religious consciousness, which leaves no room for any other value."[26] The philosopher pursues knowledge that will give him greater insight into the cosmos, his interior life, or man's proper duties in the world. Leibowitz proposes that Maimonides' pursuit was different. What he sought, in contradistinction to the philosophers of Greece, was knowledge of God, a knowledge that "is not a part, or a detail, of general human knowledge."[27] It is time to turn to the *Guide* proper and the flux of interpretation about the Law therein.

In 1.54, Maimonides implies that the man who wishes to know God must study His attributes of action. He is not endorsing the mystical opinion that one can actually know God—such a belief borders on, if it doesn't cross over into, idolatry—instead he asserts that one can know His ways, what He does but not what He is. But he puts in front of us one of the stumbling-blocks mentioned at the beginning. If we follow Leibowitz's line of thought, the fulfillment of the Law trumps knowledge of God. At least in the first book of the *Guide*, Maimonides doesn't permit a Leibowitzean interpretation. "…[H]e who knows God *finds grace in His sight*,' he writes confidently, 'and not he who merely fasts and prays…"[28] It appears here that the Jew who simply discharges his minimal duty lacks the philosophic heft—the tools of rational insight and contemplation—to know God. They observe out of duty or tradition alone, and Maimonides scolds them as "the ignoramuses who observe the Law."[29]

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[25] Ibid., 14
[26] Ibid., 18
[27] Ibid., 15
[28] Moses Maimonides, *The Guide of the Perplexed*, ed. and trans. Shlomo Pines (Chicago: University of Chicago Press, 1963), 1.54, 123
[29] Ibid., 3.51, 619

Maimonides places yet more difficulties in front of the reader. Even before the dense intricacies of the final chapters, the *Guide* puts forward a number of different, perhaps contradictory, theses on the meaning, motivation and purpose of the Law. In 3.29, Maimonides assures us that the original objective of the Law was to eradicate idolatry, to stamp out that which leads to the worship of something other than God. Bringing idolatry to heel leads to true worship of God, but by the reasoning of 3.29 the commandments were passed down at first to halt the introduction of *avodah zarah* into Jewish worship.[30] 3.33 of the *Guide* locates the object of the Law in the extinguishing, or at least the attenuation, of impulses that direct the mind and heart to the puerile love of pleasure and seductions of sexual desire. The *Guide*, if looked at as a single, unbroken philosophic statement, takes a negative view of the body, for it is an attendant of the accident of matter, which by Maimonides' lights is to what evil attaches.[31] This negative attitude towards the "squalor of biological existence"[32] can perhaps be attributed to the ideal of contemplation that runs throughout the *Guide*.

The *Guide* further expands, or perhaps redirects, the purpose of the commandments in 3.31. Halakha now highlights three things: "opinions, moral qualities, and political civic actions."[33] Thus 3.33 and 3.29 could be folded into this chapter, but Maimonides does not make this explicit. Leibowitz writes that morality for Maimonides is *not* the purpose of the commandments, that he considers it as a transitional stage to the greater purpose—a knowledge of God that guides the Jew to the observance of the commandments. Morality, he counters, has no place in religious life. Like Kierkegaard[34] before him, he insists on the autonomy of religious

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[30] Ibid., 3.29, 517—"You know from texts of the *Torah* figuring in a number of passages that the first intention of the Law as a whole is to put an end to *idolatry*, to wipe out its traces and all that is bound up with it, even its memory as well as all that leads to any of its works."
[31] Ibid., 3.8, 433 backs this interpretation: "Also the commandments and prohibitions of the Law are *only intended* to quell all the impulses of matter" (emphasis added).
[32] Leibowitz, "Religious Praxis," 13. Leibowitz uses this phrase to note that the "largest section of the Mishnah, the first crystallized formulation of the Halakhah, is *Seder Taharoth*…," which details the halakhot as they pertain to the body and its functions. His larger point in all of this, of course, is that the Law concerns itself primarily with the externals of everyday life, both in the domestic sphere and in the public square. The Law covers the entirety of life from womb to grave. Its emphases must be, for example, first on the washing of hands rather than the search for perfection. That which takes place more often takes precedent over that which is less common (donning the *tallis* before donning the *tefillin*)—this is a Talmudic principle.
[33] Ibid., 3.31, 524
[34] Kierkegaard delimited the parameters of the ethical and the religious. Although he does not declare Kierkegaard's influence explicitly, Leibowitz drew on this in his rejection of ethical monotheism. Kierkegaard wrote, in *Fear and Trembling*, that the Kantian notion that "the ethical is the universal" does not apply to the sphere of the religious, which stands independent of moral directives. Morality is human; the religious is divine. Both are important, but just as surely both are different. Leibowitz, who refused to countenance the marriage of religion and ethics, adds that the line from the Shema (the third paragraph, drawn from Numbers 15:39)—"…remember all the commandments of

life apart from the exigencies of ethics, an autonomy that the general trend of modern Jewish philosophy has considered expendable as it favors ethical monotheism. He would agree with J. David Bleich, who asserts that "the norms of *halakhah* constitute the sole constraint upon human conduct," rejecting that "there is any content of natural morality that is not encompassed by the subject matter of the *halakhah*," and maintaining that "there is no room in Judaism for accommodation of the moral demands advanced by individual conscience."[35] Leibowitz argues, perhaps exaggeratedly, that Sophocles' Antigone and her demand for Polyneices' proper burial or Kant's *Grundlegung* are finer sources of moral edification than the Tanakh,[36] which has value and commands our devotion only insofar as it is the word of God. According to him, man's only merit follows from the fact that he was created in God's image, not from any naturalist conception of human life. Leibowitz, however, founders a bit. About the relationship of halakha and morality, he states it is "only of value as far as it is useful for removing the psychological obstacles from man's way toward perfection, which is the knowledge of God."[37] Yet as we will see in the last chapters Maimonides affirms that part of the intellectual perfection leading to the knowledge of God is the perfection of moral qualities.

For our last example of the obstacles that Maimonides erected to divert the wayward and inattentive reader from his true views, we turn to the famous passage in 3.27 where he introduces a two-pronged approach to the purpose of the commandments. The Law, he says, directs man to two separate yet intimately related goals: the welfare of the soul and the welfare of the body. The welfare of the soul inculcates proper beliefs regarding the Law, "corresponding to [the multitude's] respective capacity."[38] The welfare of the body consists of the enhancement of mutual relationships. This is done one of two ways: the elimination of iniquitous conduct among men and the propagation of virtues that can be employed in a properly ordered city. This seems, at first glance, inadequate. The welfare of the soul looks like little more than the reduction of the Law into psychological dispositions, while the welfare of the body appears to be little more than

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God and do them, and do not seek after your own heart and after your own eyes…"—"is a negation of Kant's great principle…[because] the believing man is guided by his consciousness of his standing before God, not before man. His judgment is not moral. Morality is an atheistic category." The quote from *Fear and Trembling* is found on page 54 of the Hong translation, published by Princeton University Press (1983). The Leibowitz quote comes from "The Religious and Moral Significance of the Redemption of Israel," *Judaism, Human Values, and the Jewish State*, 115

[35] See Korn, "Legal Floors and Moral Ceilings," 4

[36] Leibowitz makes this argument in "Religious Praxis," 11.

[37] Leibowitz, *Faith of Maimonides*, 59

[38] *Guide*, 3.27,510

(1) a basic ethical proposition (not wronging another) and (2) civic integrity (the virtuous city). Surely Maimonides meant more than these transparent, if important, truisms.

The welfare of the soul is held to be superior. It is, in fact, "the ultimate perfection."[39] Yet it is not perfection "achieved directly by the Law."[40] Halakha, according to 3.27, does not provide for knowledge of God; it points man to his appropriate course, warning him of possible missteps, *but is not perfection itself*. It seems that the Law is necessary, but necessarily secondary to the ultimate perfection: knowledge of God. Halakhic life has instrumental value, not ultimate; it is a way-station to something greater.[41]

3.54: the conclusion?

3.54, the ostensible end of the *Guide*, continues to judge the commandments by their instrumentality. That is to say, the commandments serve some alternate purpose outside the straightforward perpetuation of their observance. The majority of the comments in the *Guide* concerning the commandments can be construed as denying the autonomy of the Law, folding it into considerations such as idolatry and properly formed civic governance.

This chapter provides another wrinkle in Maimonides' comments on the nature and function of the commandments. He lays out a typology of perfection. The first two—perfection of possessions and of bodily constitution and shape—need not detain us, but the third perfection—the perfection of the moral virtues—provides an interesting contrast to the philosophical halakhic positivism we will see in 3.51. Maimonides places the majority of the commandments under the rubric of perfected moral habits. "Most of the *commandments* serve no other end than the attainment of this species of perfection."[42] These Laws, however, are training only for a final perfection. Perfected moral virtue "is, as it were, only the disposition to be useful to people; consequently it is an instrument for someone else."[43] If a man seeks no succor in society's care, scorns the pleasure of family and home, and fails in his duties towards other men, then these commandments, Maimonides appears to suggest, are pointless.[44] And this points up a

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[39] Ibid., 3.27, 511
[40] David Shatz, "Worship, Corporeality, and Human Perfection: a reading of *The Guide of the Perplexed*, 3.51-54," *The Thought of Moses Maimonides*, ed. Ira Robinson (Lewiston, NY: The Edwin Mellen Press, 1990), 83
[41] In *Guide*, 3.27, 512, Maimonides suggests that the Law does not "direct attention towards them [correct philosophical opinions leading to knowledge of God] in detail."
[42] Ibid., 3.54, 635
[43] Ibid.
[44] A few line later, he says as much: "For if you suppose a human individual is alone, acting on no one, you will find that all his moral virtues are in vain and without employment and unneeded, and that they do not perfect the individual in anything; for he only needs them and they again become useful to him in regard to someone else."

fundamental question: is 3.54 the *coup de grâce*, then, for the Leibowitzean model of halakhic positivism? Leibowitz, as we have seen, assures us that the Law and Maimonides' exegesis of it resists just this sort of partitioning of the Law, in which some commandments serve to inculcate moral virtues while others inculcate intellectual virtues. But Leibowitz has stressed that the commandments, given to Moses at Sinai and codified over the centuries, are to be observed because the Jew's duty is to worship God through his performance of the commandments, not because they underwrite moral rectitude or intellectual perfection.

The perfection of moral virtues is not the final perfection either. Maimonides claims that the biblical prophets as well as the philosophers—the Greeks and their later Jewish and Islamic interpreters—maintain with him that the perfections of worldly goods, health and moral habits, their accumulation and practice, do not amount to the final perfection. The "true science," the final perfection, to which man should aspire "is knowledge of Him."[45] "[T]rue human perfection,' Maimonides writes, '…consists in the acquisition of the rational virtues…This is in true reality the ultimate end…through it man is man."[46] This species of perfection instructs man in the true beliefs "concerning the divine things."[47] Where is the place of the Law in this perfection? The Law urges the excellent man, the philosopher-scientist-talmudist, to struggle for true human perfection and sets him on his way, but the Law cannot effect the transition from the attainment of moral virtues to acquisition of the rational virtues (the knowledge of divine intelligibles, understanding of God's attributes of action, the passing away of worldly concerns, et al.). What this species of perfection lacks is a role for the commandments outside of basic training for another, higher level of perfection and the place of the worship of God.[48] In fact, Maimonides goes so far as to state that the prescriptions and motivations for the Law, its implementation and practice, serve the singularly non-legal purpose of "being but preparations

[45] *Guide*, 3.54, 636
[46] Ibid., 3.54, 635
[47] Ibid.
[48] Kellner has a helpful summation: "The claim that the *summum bonum* consists in perfection of the intellection [part of the acquisition of the rational virtues] and that such perfection constitutes the necessary and sufficient condition for attaining a share in the world to come goes against the grain of rabbinic Judaism, with its emphasis on perfection through observance of God's commands and on purity of motive. This position found its classic expression in the well-known dictum, 'study is not the main thing, but action.' For Maimonides, as Shlomo Pines notes, there is no room for 'saintly simplicity' of the sort approved of, if not necessarily prized by, the Rabbis." Kellner, *Maimonides on Human Perfection*, 3. One can understand, and even sympathize with, those medieval rabbis who sought to ban or burn the *Guide*. They were surely misguided and shortsighted, but their emphasis on the performance of the commandments did not seek philosophic justification. Their parochialism may seem quaint yet one is hard pressed to deny that they had the best interests of Judaism, for the multitude of the people, in mind.

made for the sake of this end"[49]; that is, knowledge of God. Halakha attends, in 3.54, only to a preliminary stage of religio-philosophic life. The Law is like a ship on a long sea voyage, on a journey with a definite destination. It keeps man from the harm of roiling waves, jutting coral and menacing wind. It can put man into port, but once in drydock only knowledge of God can put one's feet on land. If 3.54 is the true conclusion of the *Guide*, then the Law is necessary but not sufficient, of contingent but not ultimate value.

If this chapter is indeed the end of the *Guide*, then Leibowitz again stumbles. He writes, correctly, that the true human perfection admits no value for nature or natural reality. In 3.54, nature falls away, leaving an almost ethereal perfection wherein the excellent man breaks free of the fetters of natural reality by returning to his true state, which is the intellectual contemplation of God afforded by the acquisition of rational virtues. But Leibowitz insists that this breaking away from nature "direct[s] man toward the worship of God,"[50] not to rational virtue, which serves the ends of man. Rational virtues, for Maimonides, aid the excellent man, or the one aspiring to such excellence, to the assimilation of God's attributes—"loving-kindness, righteousness, and judgment"[51] (Jer. 9:23)—which lead to the ultimate perfection, the one perfection that one may can confidently glory in, that is, "apprehension of Him."[52] Leibowitz understands this passage to mean that God's attributes are not ascribed to God Himself, but rather as implications of the world of nature.[53] And the crucial implication of God's loving-kindness, righteousness and judgment is found in "God's creation [of the world], insofar as man can grasp it and understand its laws."[54] Loving-kindness signifies "the very existence of the world."[55] Righteousness represents "the existence of living things possessing powers implanted in them."[56] Judgment indicates "the sequence of events succeeding one another by the necessity inherent in the relations between them."[57]

[49] *Guide*, 3.54, 636
[50] Leibowitz, *Faith of Maimonides*, 38
[51] See *Guide*, 3.54, 637
[52] *Guide* 3.54, 638
[53] Leibowitz or his translator misidentify the passage from Jeremiah ("loving-kindness, righteousness, and judgment") as 9:24, not as 9:23. See *Faith of Maimonides*, 60
[54] Leibowitz, *Faith of Maimonides*, 60
[55] Yeshayahu Leibowitz, "Divine Governance: a Maimonidean view," *Judaism, Human Values, and the Jewish State*, 57
[56] Ibid.
[57] Ibid.

For all that, however, what is absent, at least from a halakhist perspective, from 3.54 is any mention of the commandments. If 3.54 is truly the end, then a Leibowitzean interpretation fails, takes false turns and leads the reader along the wrong corridor of Maimonidean philosophy. Maimonides assures us in 3.54 that "apprehension of Him" manifests the apex of religious life and philosophic inquiry, without gesturing towards the role, even if subordinate, of observance and worship. Worship of God, Leibowitz emphasizes, arises from and takes place in "the fulfillment of God's commandments."[58] The ostensible concluding chapter of the *Guide*, in short, undercuts the elevation of the Law we will observe in 3.51, while at the same time lionizing a contemplative, wisdom-based apprehension of God.

3.51 and Maimonides' True Purpose

Whereas 3.25-49 sets up a template of reasons behind the commandments and concerns all religious Jews, and 3.54 presents more abstruse rationales for the commandments, 3.51 negotiates man's observance of the them. The concluding chapters, 3.51-54, were never intended to include all Jews, only those with the requisite scientific, philosophical and theological preparation. Before we turn our attention to 3.51 one may well ask: can the Law, which is objective, fixed and public, split and serve dual purposes—one Law for the multitude, one for extraordinary individuals? This breaks principles of halakhic exegesis (the Thirteen Rules, e.g.), which state that the Law must maintain consistency and constancy so far as it is possible.[59] Can we have halakhic stability if, as David Shatz assumes, "the Law can obviously operate on multiple levels, corresponding to the multiple stages of human development"?[60] How does one rely on the Law if it becomes unhinged from its foundation, functioning differently for different people? In fact, what stops one from dividing beyond the multitude and exceptional individuals? Maimonides was aware of these potential outgrowths of antinomianism; he sought to bring them to heel.

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[58] Ibid., 105

[59] One could counter, with some justification, that consistency or unity are problematical if not outright impossible in the Talmud, as it is a series of tractates on widely divergent matters—the rabbis left nothing untouched—composed over hundreds of years in very different socio-political contexts in Eretz Israel and Babylonia. Nevertheless, the rabbis valued consistency as a sign of balance and a gesture towards God's orderly creation. "In [the] Talmud,' one author writes, 'because there is one creator of the universe and one revealer of the law, there must ultimately be an internal consistency between the world and the law, and among the laws themselves. The underlying unity of creation and revelation leads us to expect an internal consistency in halakhah. The job of the Talmud is to discover that unity." Eric M. Chelven, "Discovering the Talmud." *First Things* 85 (August/September 1998), 43

[60] Shatz, "Worship, Corporeality, and Human Perfection," 85

3.51 has a curiously tantalizing beginning. Maimonides asserts that this chapter is in fact a sort of conclusion. And since we are warned throughout that he will disguise his aims, play lesser men for fools, and demand of the attentive reader that he seek the roots under the topsoil, it is not so great a leap to presume that 3.51 actually completes the *Guide*, as Shatz suggests. Maimonides promises to flesh out an outline of what he calls "the worship as practiced by one who has apprehended the true realities peculiar only Him after he has obtained an apprehension of what He is; and it also guides him toward achieving this worship, which is the end of man…"[61] What the nature of this worship is, whether prayer, contemplation, or halakhic adjudication, is unclear, at least at this point. He tries to clarify this by stating that the excellent individual, the man who seeks ultimate perfection, gives his full attention to God, forsakes anything other than God, and trains his intellect toward a knowledge of God. Following the Leibowitzean model, however, observance of the commandments, and not this vague Maimonidean "worship," attunes man to God, directing concentration to Him. By "vague" I mean only that he does not delineate the act of worship: is it sitting alone in bed at night, contemplating God? Is worship the workaday durability of halakhic life in, for example, business dealings, or what Lionel Trilling more generally called the world of "ordinary undistinguished things"[62]? Maimonides proposes worship, but we are left wanting.

3.51 further strains the Leibowitzean model. Leibowitz assures the reader that—and he apparently believes Maimonides to be in concord as well—the bond between man and God arises from halakha; that is to say, only the Law *binds*. However, the *Guide* sees the bond forming around the intellect. After grasping God's attributes of action, Maimonides says, the excellent individual should dedicate himself to knowing God, "and strengthen the bond between you and Him—that is, the intellect."[63] The bond is braced by love,[64] which, although one of the 613 commandments, may well prove unreliable. It is an emotion; it waxes and wanes.

At 3.51:622, Maimonides presents the halakhist with a gift: a clear interpretation of what he sees as the purpose of the commandments.

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[61] *Guide*, 3.51, 618
[62] Lionel Trilling, "Reality in America," *The Liberal Imagination: essays on literature and society* (New York: Viking Press, 1950), 4
[63] *Guide*, 3.51, 620
[64] *Guide*, 3..51, 621

> Know that all the practices of the worship, such as reading the *Torah*, prayer, and the performance of the other *commandments*, have only the end of training you to occupy yourself with His commandments, may He be exalted, rather than with matters pertaining to this world…

This passage—along with other hints—prodded David Shatz into proposing a provocative thesis: that 3.51, not 3.54, is the real end of the *Guide*. For the reader who desires to defend a halakhist, Leibowitzean version of the *Guide*,[65] then Shatz's suggestion is an excellent conceptual tool. He puts forward the theory that 3.51 "conceptually precedes"[66] 3.54 because 3.54 offers an unsophisticated and deceptive depiction of human perfection and, by extension, the commandments, as Maimonides ties perfection and the Law together. 3.51, on the other hand, preserves his desire to "conceal complexities, tensions, ambiguities, and uncertainties that characterize his real view."[67] Shatz notes that 3.54 neglects the "stage of worship," underscoring instead the "stage of apprehension,"[68] and surely apprehension cannot be man's final aim. Something must follow apprehension, otherwise the excellent man is a dilettante and not a knower of God. The excellent man, unimpressed by the rationalizations of 3.25-49, may fall into antinomianism, a rejection that discards the philosophically crude, if socially necessary, reasons for the Law. Shatz argues, then, that 3.51, in contradistinction to 3.54, is an answer to antinomianism. For the excellent man, the commandments serve as a manual for a "new, higher telos: the commandments assist him in directing his thought to God,"[69] thoughts which are filtered through the performance of the Law.[70]

Ultimate perfection now is the refinement of the observance of the Law, that it be performed with correct actions and thought. In 3.25-49 man is taught the underlying principles of

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[65] The halakhist interpretation that will be defended here is a response to alternate construals of the *Guide* over the past century. The principal theories are: (1) the replication of God's ethical attributes as ultimate perfection, expounded by Hermann Cohen, Julius Guttman and Steven Schwarzschild; and (2) the replication of God's governance of the universe by establishing virtuous city-states, expounded by Leo Strauss, Shlomo Pines, and Lawrence Berman. This typology is found in M. Kellner's *Maimonides on Human Perfection*, 8ff.

[66] Shatz, "Worship, Corporeality, and Human Perfection," 77. It is important to state that Shatz's primary concern is with showing that human perfection in 3.51 is fuller and more nuanced than in 3.54. The commandments play an important secondary role in the essay.

[67] Ibid, 91

[68] Ibid, 79

[69] Ibid, 86

[70] Isadore Twersky notes that even this rationalization can have antinomian implications for the philosophically inclined Jew. In fact, he labels it "philosophical antinomianism." "[K]nowledge of the goal—[that is, intellectual perfection]—deludes or seduces the person into thinking that the prescribed action is dispensable. If he has reached his destination, he may assume that he has license to bypass the intermediate steps. If he should erroneously perceive the prescriptions and proscriptions as *merely* instrumental, with no intrinsic authentication or self-validating worth, the philosophically attuned person may end up ignoring them, completely substituting the ultimate goal for the normative performance." Isadore Twersky, *Introduction to the Code of Maimonides (Mishneh Torah)* (New Haven, Connecticut: Yale University Press, 1980), 393

the commandments, in accordance with his reason. They are instruments for morality, good governance, and maintenance of a sound body and an upright soul. Now the man of 3.51 who has perfected his qualities, "finds out,' writes Leibowitz, 'that this faith has no other practical expression except through the fulfillment of these commandments themselves."[71] We are offered a remarkable dialectic. Leibowitz calls this dialectic a feedback mechanism, a model drawn from the discipline of cybernetics. The affiliation of Law and philosophy shoot across conceptual synapses in this model: "the *halachah*, which is an instrument for educating man toward faith, is then reconceived—by means of this faith—not as a means, but as the purpose itself. Maimonides' immense philosophical accomplishment has no significance other than bringing man to understand that the worship of God and the fulfillment of Torah and *mitzvot* are the very final purpose attainable by man."[72] All of the philosophical premises of the *Guide* come home to roost in this chapter, as philosophy purges false knowledge of God. All of the intellectualizing tendencies, noble in themselves, peppered throughout the *Guide* serve only to reinforce the infinitely greater purpose of halakhic observance. The latent Platonism and overt Aristotelianism of the *Guide* serve to straighten the spine of the philosophically sensitive if religiously errant Jew, to draw from the well of Greek wisdom in order to demonstrate the eternal validity, and philosophic sophistication, of halakhic life. After supping with Plato and Aristotle, Avicenna and Averroes, the excellent man realizes that the fulfillment of the Torah, its *hukim u'mishpatim*, alone permits man to occupy himself with God, with Maimonides marching out morality and welfare of the body and soul as the training ground for the Jew's acceptance of the Law. But that training is instrumental; its value, while great, is contingent. It is contingent because an ethical life and a virtuous polity are human ends, susceptible to the corruptions of character or the accidents of matter. They are, in a word, humanistic. And Leibowitz scorns the effort to backdoor humanism into religion. Humanism, to Leibowitz, borders on idolatry: man wields the scepter, wears the crown, acts as if the world should conform to his purpose. Thus, if the commandments serve the ends of man (morality, welfare of body and soul, etc.), then God is an instrument of man. For Leibowitz, then, 3.51 rights the matter: "…performing the commandments, not because they have reasons in relation to man, but because they are the commands of God—this in itself is the final aim."[73]

[71] Leibowitz, *Faith of Maimonides*, 24
[72] Ibid.
[73] Leibowitz, 106

The foregoing demonstrates why it calls for little imagination as to why the patriarch Abraham and the drama of Mount Moriah play such a central role in his philosophy. Abraham, in Kierkegaard's terse phrasing, teleologically suspended the ethical. In the Akedah, Abraham is asked to sacrifice Isaac, the son of his old age. Even though this event takes place before the giving of the Law, Leibowitz's Abraham remains the exemplar of faith because he was enjoined to do his duty even if it meant the annulment of the Covenant of the Pieces, which had been a divine promise. He stresses that "the duties of faith take precedence over all human needs, interests, and values, even those of the divine promises embodied in visions of the future."[74] Leibowitz's Maimonides, in fine, holds that apprehension, morality and spiritual welfare serve only to further man's definitive end, which is the worship of God by means of the commandments, like Abraham before us.[75]

Coda

We can conclude that a Leibowitzean interpretation of the *Guide* with 3.51 as its terminus can justify the halakhic model that he seeks to defend, but it will not hold if the 3.54 is the end. At 3.51:622, with the reinforcement of Shatz's reading and Leibowitz's feedback mechanism, Maimonides stresses that "all the practices of the worship, such as reading the *Torah*, prayer, and the performance of the other *commandments*, have only the end of training you to occupy yourself with His commandments, may He be exalted, rather than with matter pertaining to this world…" The final aim of Jewish religious life moves from good governance, the inculcation of correct moral opinions and welfare of body and soul to the more bracing, and religiously sound, performance of the commandments. "…[T]he very purpose [of 3.51 and the *Mishneh Torah*] to which this means leads us is revealed to be nothing but the idea of the performance of the commandments."[76] Leibowitz continues on to say that observance of the commandments makes possible human perfection, but it is neither the purpose of the commandments nor the highest end of man's life. The man of halakha (that is, the man of 3.51), distilled and refined in the person of Maimonides, occupies himself with God and performs "the commandments, not because they

[74] Leibowitz, "The Reading of Shema," *Judaism, Human Values, and the Jewish State*, 41

[75] One can argue that Abraham died long before the promulgation of the Law. However, the rabbis held (and hold) that the seed of the commandments was already planted within the patriarchs, that they lived within the strictures of the Law despite living before Moses. Such was their merit.

[76] Leibowitz, *Faith of Maimonides*, 106

have reasons in relation to man, but because they are the commands of God—this in itself is the final aim of man."[77]

But halakhic positivists needn't despair that Maimonides, as Kellner writes, "did too good a job of hiding his true views." There are numerous defensible and judicious readings of the end of the *Guide*, and Leibowitz presents one of them. Isadore Twersky endorses the halakhist approach: "Maimonides believed that knowledge stimulates and sustains proper prescribed conduct which in turn is a conduit for knowledge, and this intellectual achievement in return *raises* the level and motive of conduct."[78] Twersky likely would not have gone as far as Leibowitz in shunting aside morality and good governance, but he did recognize that the Law makes Judaism distinctive. Leibowitz of course denies that morality and good governance ultimately promote the worship of God, as ethics and political administration are not the same as observing the Law. Morality and good governance have their value, but it is a lesser one than the value of divine service. The Law, which for the halakhist is of divine origin, does not demand of the Jew that he should observe and take note of right and wrong, but instead that he should observe and take note of right and wrong in the eyes of God, and this occurs only through the performance of the mitzvot. Philosophy, then, is merely an instrument of internal coercion to greater observance of the commandments, according to Leibowitz.

In summary, if Maimonides indeed intended 3.54 to be the *Guide*'s conclusion, then Rav Chiyya bar Ammi's assertion that God has only in His world the four cubits of halakha is meaningless as an element of Oral Torah. But if 3.51 is the terminal point of the *Guide* then, at least by Leibowitz's lights, God's four cubits are secure.

The next chapter makes those same cubits a little less secure. Whereas Yeshayahu Leibowitz narrows the scope of halakhic life and drives a wedge between religious and secular consciousness, David Hartman will widen the range of halakhic activity by insisting on the viability of secular reason within the commanded life. Hartman's Maimonideanism is quite divergent from Leibowitz's, but no less idiosyncratic.

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[77] Ibid.
[78] Twersky, *Introduction to the Code of Maimonides*, 511

Chapter Two

Halakhic Latitudinarianism: David Hartman on the commanded life

Anglican Impromptu

In late 17th century England, a growing confidence, settled pattern of life and relative prosperity on the island allowed the Anglican church, whose attentions had been directed to consolidation of its power and the usual shenanigans and meddling of the Crown, to turn to larger questions about itself. A prominent group of Anglican divines— most notable among the group was the Archbishop of Canterbury, John Tillotson—began repulsing the advances and advantages accrued by the Puritans under Cromwell and the persistence of High Church formalism. The Latitudinarians, as they came to be called,[1] emphasized a moderate temper, belief in science and progress, cultivation of virtues outside the dogmas of the Church, freedom of interpretation and reason. One of the major theological works produced by the Latitudinarians was Joseph Glanvill's *The Agreement of Reason and Religion*. They were involved in pluralistic dialogue of a sort centuries before it became the fashion. Presbyterians and even Non-Conformists were potential partners. But Latitudinarianism deemphasized the role of unified dogma and the conventions of ritual practice in Anglican theology, in favor of morality, reason and toleration as spiritual goals, moving them from their political, secular context into a theological dimension. Latitudinarians lacked the theological toughness and demand for standardized observance that marked the thought of William Laud, a High Churchman and Archbishop of Canterbury in the first half of the 17th century. Wordsworth's poem "Latitudinarianism," one of his *Ecclesiastical Sonnets*, sings of this division within Anglican

[1] Their name was originally applied to the Cambridge Platonists. See Aharon Lichtenstein's *Henry More* (1962) for more information on one of the most important Cambridge Platonists. The author of *Henry More* is, of all things, *rosh yeshiva* at Yeshivat Har Etzion in Jerusalem. Lichtenstein is the son-in-law of Rabbi Joseph Soloveitchik.

thought: “Yet Truth is keenly sought for, and the wind / Charged with rich words poured out in thought’s defence; / Whether the Church inspire that eloquence, / Or a Platonic Piety confined / To the sole temple of the inward mind.”[2] The question posed is this: is it the forms of worship and belief that the Church prescribes as divine writ what matters, or is it the reflections of a rational, autonomous mind that make up the religious life? Where does God’s Truth dwell, asks Wordsworth, with the Church or the individual?

The history of 17th century Anglicanism helps highlight some of the tensions within contemporary Jewish religious life. There is an association of ideas between, on the one hand, David Hartman’s philosophy of halakha and the Latitudinarians’ reconstruction of Christian life and, on the other, between Leibowitz’s observations on the forms and structures of the commanded life and the High Church emphasis on correct practice and belief.

Hartman, as we will argue, attempts to justify his brand of traditional Judaism while at the same keeping the faith contemporary with the changing mores, ideals and ideas of the times. As the Latitudinarian Edward Stillingfleet wrote in *Origines Sacrae*, there is a need “to give a statement of Christianity more satisfying to the present temper of this age.”[3] Hartman’s entire philosophic enterprise, even if not explicitly stated, has the same aspiration for Judaism: to bring together religion with modernity, faith with reason, without losing any of the fundamentals of both. The conflicts that the *haredim* and the secularists perceive between Judaism and modern life are illusory, for Hartman justifies this claim by offering a rationalist interpretation of Maimonides, one that endorses Maimonides as a man of faith and a man of reason. The Rambam adhered to the Law without withdrawing from his times, and Hartman follows this path.

Prologue: Autonomy, Heteronomy and Authority in Kant

Although the hubs of Enlightenment were to be found in London, Edinburgh and Paris, its ideas clandestinely traveled to pockets of Central Europe and even St. Petersburg, the easternmost outpost of European thought.[4] One of the places it took root was the study of a Königsberg professor, Immanuel Kant, whose contrast of autonomy and heteronomy in the *Critique of Practical Reason* is of central importance to our understanding of David Hartman’s

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[2] William Wordsworth, “Latitudinarianism,” *The Ecclesiastical Sonnets of William Wordsworth*, ed. Abbie Findlay Potts. (New Haven: Yale University Press, 1922), 164

[3] Edward Stillingfleet, “Preface to the Reader,” *Origines Sacrae* (London, 1666).

[4] See Solomon Volkov’s *St. Petersburg: a cultural history* (1995) or Orlando Figes’ *Natasha’s Dance: a cultural history of Russia* (2002)

philosophy of halakha.[5] In his *Critique* Kant outlined the distinctions of a free will that constituted its own law—Rousseau would say much the same[6]—and a coerced will that permitted itself to be commanded. Since man is a moral being, capable of making delicate separations between right and wrong, autonomy devolves upon his self once he matures into a creature of reason. There is, Kant asserts, "autonomy in the principle of morality by which reason determines the will to action."[7] Autonomy raises man above his passions, the narrows of belief and ideology, and positions him instead in the realms of universal moral law and reason, which cut across geography and historical context. Despite varying in particulars, the parameters of truth and ethical conduct, for Confucius in 6th century BCE China, Socrates in Athens or Kant in East Prussia, persist because they are universally available to all men of reason in the form of categorical imperatives. "Never choose,' Kant admonishes, 'except in such a way that the maxims of the choice are comprehended in the same volition as a universal law."[8] Although the individual's actions and choices are autonomous, independent of dry custom and theological fustiness, rational men, because they tap into the universal, will come to a rough consensus about the appropriate virtues, about what is permitted and what is forbidden.

But the reach of autonomy extends beyond choice. Only an autonomous man can be a moral man. Despite the contingencies of birth, environment and socio-economic conditions, an autonomous, rational morality does not blink before these same contingencies: a moral failing for a well-heeled aristocrat reckons as a moral failing amongst the impoverished as well. A morality centered on autonomy insures that the culpability for neglect of one's moral duty to obey the categorical imperative falls upon the autonomous actor and not any divine cause or societal deficiency. The opposite holds true as well. If the autonomous actor's moral life is praiseworthy, then all credit redounds to him. Lacking autonomy, the responsibility for moral lapses would be consigned to their abstract heteronomous sources: God, the nation-state et.al. "The autonomy of the will,' Kant maintains, 'is the sole principle of all moral laws and of the duties conforming to them; heteronomy of choice, on the other hand, not only does not establish any obligation but is

[5] For a sense of Hartman's Kantianism—not integrated into this essay—see his new book on the Rav, *Love and Terror in the God Encounter: the theological legacy of Rabbi Joseph B. Soloveitchik* (volume 1), 56ff.
[6] Rousseau writes in *The Social Contract*, Book 1, Chapter 8, that "obedience to a law which one has prescribed to himself is freedom."
[7] Immanuel Kant, *Critique of Practical Reason and other writings in moral philosophy*, ed. and tran., Lewis White Beck (Chicago: University of Chicago Press, 1949), 152. Hereafter shortened to *CPrR*.
[8] Ibid, 97

opposed to the principle of duty and to the morality of the will."[9] The man who does not actuate his autonomy, then, not only acts irrationally but immorally too. (For Hartman, as we will detail, the happy convergence of autonomy and, with it, the possibility for a moral life cannot be separated out; they are interdependent.)

The seductions of heteronomy, of course, cannot be so easily dismissed. A life of ease, a life without the hardscrabble pull of idealism and compromise, would appear at first of finer quality. A man's choices would already be preset; the limits on action would restrict him to a tapered range of theological, moral or political options—a Procrustean bed of other's making. No great struggles with faith would ensue, no dank existential worry would trouble him, for he keeps to the well-trod path of the ancients—his ancestors, the king's crown or religious community.[10] Yet it is precisely this aspect of the heteronomous life that Kant cautions us against. To Kant, an autonomous self, a willing self, needs a stiff spine and must not be a soft wax upon which anyone or anything may inscribe its strange law. He instructs:

> If the will seeks the law which is to determine it anywhere else than in the fitness of its maxims to its own universal legislation, and if it thus goes outside itself and seeks this law in the property of any of its objects, heteronomy always results. For then the will does give itself the law, but the object through its relation to the will gives the law to it.[11]

And that is ultimately what autonomy is: a self creating its own law, through "the property of the will,"[12] that merges with and contributes to universal reason.

These opening remarks about Kant will frame our account of David Hartman's philosophy of halakha, which is ostensibly constructed with the bricks of Maimonides' thought and the mortar of Kantian autonomy. It is an attempt to integrate the emphases of modernity with the philosophical principles of the Rambam. His philosophy also represents the most comprehensive counter-argument to Yeshayahu Leibowitz. We will argue that Hartman's

[9] Ibid, 144
[10] For Kant, the insidious nature of heteronomy can creep into a man's life even when it appears that he makes rational choices. Beck, in his commentary to the *Critique*, points up this fact: "A reason which is the slave of the passions, a will which follows the promptings of desire and chooses laws of nature as its guide in satisfying them, a principle or maxim whose content is the condition of an act of choice, and the imperative which directs this choice of a specific action—all these can be called 'heteronomous,' even if the laws are laws of nature or even of God." Louis White Beck, *A Commentary on Kant's Critique of Practical Reason* (Chicago: University of Chicago Press, 1960), 102-03. Hartman will not travel this far with Kant. I believe that Hartman would see this as a kind of moral blind alley that potentially denies the emotive features of autonomy as well.
[11] Kant, *CPrR*, 97
[12] Ibid, 102

Maimonidean edifice is built on loose foundations, as his philosophy of halakha represents a distortion, however well-intentioned, of Maimonides' description of the Law.

In this chapter, we will open our discussion with some observations regarding his critical appraisal of Leibowitz's philosophical evaluation of the halakhic life, then point to three aspects of Hartman's philosophy of halakha that are of central importance in delineating this contrast to Leibowitz's position. We will lay out his ideas and then critique them point by point. These aspects concentrate on 1) pluralism within the details of halakhic adjudication and observance, 2) a religious rationalism that aspires to and seeks union with the universal sphere of human reason and 3) a singularly non-legal feature, an extra-halakhic ethical dimension that in Hebrew is known as *lifnim mi-shurat ha-din*, which is collapsed into religious life. Although Hartman's philosophy of Judaism cannot be reduced to three elements, these are the most evident in his philosophy of halakha. These values diverge sharply, both temperamentally and substantively, from Leibowitzean monism, non-rationalism and halakhic formalism. And it stands to reason that their appropriations of Maimonidean philosophy clash and rattle against each other as well. We will argue that Hartman's philosophy of halakha permits too much flexibility within the understanding and observance of the Law, that his rationalism is not Maimonides' rationalism, and that the supererogatory claims of *lifnim mi-shurat ha-din* siphons off the commandness of the Law and redirects it to the individual's discretion, a discretion that is untrustworthy within a system of Divine Law. And the claim is staked through our argument that Hartman is less faithfully Maimonides' son than Leibowitz, although both take great liberties with their master's work.

Hartman's Critique of Leibowitz

Hartman understands, as does Leibowitz, that traditional religious observance has declined and, despite a hardy but small *ba'al teshuvah* movement, there is little optimism that the tide will stem. But it is the issue of what to do with this sociological detail that divides Hartman and Leibowitz. The latter prefers to close ranks, as he recognizes that if the prophets of Israel could not reform a single soul, then how much less probable for contemporary Torah sages.[13] A return to practice, for Leibowitz, relies exclusively on individual initiative. On the other hand, Hartman sees opportunity in crisis, a chance to expand the possibilities of traditional Jewish

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[13] See Leibowitz's response to Hartman in the latter's *Conflicting Visions: spiritual possibilities of modern Israel* (New York: Schocken Books, 1990), 86

religious life. In the face of "the weakening of Halakhah as the defining characteristic of Jewish experience,"[14] the task of Jewish philosophy is to rework and renew the halakhic life. He wants to take the halakhic life seriously, but leaven it with an appreciation of pluralism, dialogue and political action. While Leibowitz may welcome pluralism, dialogue and political action as well in the secular sphere, they are to him foreign impositions, a kind of unwanted sortie on the halakhic life. There is the sacred—that is, halakha—and there is the profane; they do not speak to one another. As Leibowitz writes in "Religious Praxis": "There is no holiness outside the sphere of divinity, which is the sphere shaped by divine imperative, not by human values; a sphere in which human action is dedicated to service of God."[15]

Hartman notes that one of Leibowitz's criticisms of his work turns on the question of the role of psychology in shaping religious law and life and the glossing of the psyche with a religious patina. Leibowitz's worry is that at the heart of Hartman's philosophy of halakhic life is the trumping of divine worship and the ascendancy of human values, no matter how beneficial they may be. Leibowitz asserts that Jewish law focuses man's attention on worship and not the fulfillment of human want or desire. Hartman, conversely, sees rewarding contact between God and man in the Sinaitic relationship. "The crucial issue between Leibowitz and myself," Hartman responds,

> is whether worship of God and human self-realization are mutually exclusive. Leibowitz's theocentric Akedah model of worship drives a wedge between consciousness of God and consciousness of self. There is no place for a covenantal religious consciousness in his system. The *mitzvot* are completely one-directional, representing solely the will of the individual to worship. It is because the covenant is abandoned in Leibowitz's perception of Judaism that he can force one to choose between humankind and God, between the ethical and the *mitzvot*. But when, as in my view, the *mitzvot* are seen as embodying the full covenantal interaction of human beings with God, then our humanity remains an essential component of our relationship with God.[16]

The separation in halakhic attitudes comes down to their respective views on the comparative importance of what transpired on Mount Moriah and at the foot of Sinai. What happened at Sinai, for Hartman, was the formation of a political community, committed to divine service. The *akedah*, according to Leibowitz, confirms the abjuration of human values in worship. How else to explain Abraham's willingness? Leibowitz, thus, separates out the worship of God from

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[14] David Hartman, "The Joy of Torah." *Midstream*, (December 1979), 30
[15] Leibowitz, "Religious Praxis," 24
[16] David Hartman, *A Living Covenant: the innovative spirit in traditional Judaism*, (New York: The Free Press, 1985), 110

human interests, as the *akedah* baldly demonstrates that God's ways are not our ways, His concerns not our concerns. Hartman calls this sort of halakhic valuation an "*akedah* consciousness, [notable for] its total unintelligibility."[17] Leibowitz's anti-subjectivism, because it gestures toward the ineffable (although, it is vital to say, not the mystical), forswears any potential common religious understanding, which explains Leibowitz's emphasis on fixed religious practice. Feeling plays no part and, according to Hartman, nurtures "isolation."[18] He further states that this *akedah* consciousness is an "exaggerated claim,"[19] for it wrenches the human element out of the commandment, making it pure worship with little or no connection to lived experience or political undertaking. The exacting, and value-free, anti-subjectivism of Leibowitz stands in sharp contrast to Hartman's emphasis on the active role of human reason and emotion in shaping religious values, as we will see.

Hartman, certainly, demurs at Leibowitz's suggestion that human psychology, our sense of need and desire, share no part in halakhic consciousness. Hartman charges that the repudiation of the psychological features of halakhic study and practice permits no attainment of human aspirations, that the Torah serves no purpose other than the limited, immanent logic of divine worship. He answers Leibowitz's charge thusly:

> My own philosophy of Judaism characterizes the covenant not only in strictly legal terms as constituting the normative conditions binding a person to Halakhah, but also in terms of a full interaction of God and the human being such that his or her humanity is neither denied nor ignored, but remains an essential component of the God-human relationship embodied in Halakhah.[20]

Between God and man in Hartman's philosophy of halakha is an expansive dialogical filiation, a sense of interdependence that is missing in Leibowitz, who stresses the absolute transcendent otherness of God, a God who can only be worshiped, not known, within the four cubits of halakhic life. It will be essential to keep this distinction in mind.

Moving from the psychology of the believer, Hartman turns his critique to the more public concerns of halakhic intention and legitimation and institutional prayer. He begins by

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[17] David Hartman, "Halakhah as a Ground for Creating a Shared Political Dialogue among Contemporary Jews." *Kinship and Consent: the Jewish political tradition and its contemporary uses*, ed. Daniel Elazar, 2nd Edition, (New Brunswick and London: Transaction Publishers, 1997), 539

[18] Ibid.

[19] Ibid, 555. He goes on to note that "for Leibowitz, anything that deviates from the model of the *akedah* is self-worship, i.e., idolatry. It is doubtful whether his understanding of Judaism can illuminate a tradition which recognized stages of growth in man's religious development, and allowed for a variety of motives in the performance of *mitzvot*. Given the tradition's uncompromising attitude toward idolatry, this tolerance toward practice is not understandable within Leibowitz's categories."

[20] Hartman, *Conflicting Visions*, 95

making a key discrimination within the commanded life. *Kavanah*, intention, can be understood in two senses: *kavanah latzet* and *kavanah ha-lev*. The former is simply the discharge of halakhic obligation—one prays, for example, because commanded to pray, not out of some inner, personal need. Even if the desire to perform the *mitzvot* is wanting, the Sages instruct, one performs them regardless. But this sort of formalism, for Hartman, withers in the face of the richness and pluralism of halakhic life, where he finds that intention—human autonomy or *kavanah ha-lev*—is considered a supreme value. Viewing the *mitzvot*, in particular those regulating prayer, as concerned solely with the worship of God as obligation is to open a fissure between the commandments and the covenant. "Leibowitz," Hartman writes,

> in recognizing only *kavanah latset* and subsuming all *mitzvot* under the rubric of the Kantian notion of duty, ignores the important distinction between relational intimacy and normative responsibility. The *mitzvot* that express relational intimacy demand of the individual a distinct *kavanah* and invite the bringing of all his or her individual yearnings into the practice of the *halakhah*. It is not the will alone that is invited to be active in such *mitzvot*, but the human being as a total personality. Even though the individual Jew hears all *mitzvot* within the context of community, nevertheless *mitzvot* such as prayer and the Shema, which structure the relational dimension of covenantal immediacy, must be appropriated in a personal individual way. Behavioral conformity, acting from a sense of duty and commitment to halakhic rules, suffices only when relational dimension is not the dominant spirit of the *mitzvah*.[21]

Hartman shuns what he sees as submissiveness to traditional authority—a kind of heteronomous thinking—in this view. He wants to open up the potentialities intrinsic to the halakha, and hitch them to both an individual's moral sense and sense of self-value, which can only be realized in a loosening of the yoke of the commandments. Maimonides himself suggests that the yoke is not heavy: "For these are manners of worship in which there is no burden or excess…"[22] This is not to say that Hartman desires to have the commandments discarded and debased—indeed he does not—but rather make them a joy, a sentiment of passion missing in the rigorous legalism of Leibowitz. This legalism, Hartman maintains, gives rise to an apathetic attitude toward the commandments. About prayer, he says, "it matters little to Leibowitz if the worshipper is bored by the prayers or fails to identify with their content. On the contrary, indifference to what is being said may in fact be requisite for authentic worship. The form is what matters, not the specific details—entreaties for rain, good health or an untroubled soul, for instance—embedded

[21] Hartman, *A Living Covenant*, 165-66
[22] *Guide* 2.39, 380

within the form.[23] The formalism here draws principally from *Guide* 3.26 where Maimonides, in a general discussion of *ta'amei ha-mitzvot*, notes, inter alia, that it is a fool's hunt to seek out why, in the sacrifices, "*seven lambs* and not *eight* have been prescribed."[24] Leibowitz, therefore, refuses to disentangle the particulars of prayer from their structure, because structure lends consistency to a halakhic community devoted to the worship of God, a community that would dissolve if halakhic adjudicators considered individual preference and desire. To Hartman, there's a whiff of the inhuman in these thoughts, as human concerns are immaterial to proper prayer.

Perhaps, thinks Hartman, there can be a middle way between Leibowitz's formalism that permits no individual expression and the quid pro quo faith of those who expect a commensurate relationship between man's prayers and actions and God's bestowal of gifts upon man—a kind of cosmic benefits package. He affirms a "third type [who] offer prayer because they seek to express their faith in God's covenantal concern and acceptance."[25] Leibowitz, on the other hand, is unwilling to consider human need as a criterion of prayer. The error in that view, Hartman writes, consists in the "fail[ure] to

> distinguish between two kinds of need. There is the need of a helpless dependent person who cries out for help in economic distress or asks the doctor to heal his sick child. Different from this, at least potentially, is the need of lovers to share with each other the situations of vulnerability that either may experience. When you discuss your needs in a love relationship, you do not necessarily expect your beloved to solve your problems. Reassurance and comfort may be gained simply through knowing that your beloved listens to you in your anguish and that you are not alone in your plight. I understand petitional prayer as expressing the need of covenantal lovers of God to share their total human situation with God.[26]

Moreover, only by such an understanding can a Jew realize his autonomy, his facility for independent reasoning that gives license to personal prayer. Halakhically prescribed prayer only initiates the life of prayer. If Leibowitz is correct about the mandate of commanded worship, he maintains, then this "is a sign that obligatory prayer has crushed something essential to the prayer experience."[27]

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[23] What Robert Frost said about free verse applies to Leibowitz's thoughts on the importance of form. Frost famously maintained that free form poetry is like playing tennis without a net. It may look like tennis, but whatever it is, it ain't tennis. Meaning is represented in form.
[24] *Guide* 3.26, 509 and Hartman, *A Living Covenant*, 162
[25] Hartman, *A Living Covenant*, 164
[26] Ibid.
[27] Ibid, 170

Leibowitz's model of prayer as pure divine worship, a moment when the supplicant is a vessel for the halakha and not an independent value apart from the moment of worship, is part of a larger construction of the commanded life as one without the assistance of *ta'amei ha-mitzvot* (reasons for the commandments, an assistance even Maimonides draws on in his philosophy, which Leibowitz papers over in an attempt to remake the Rambam into a halakhic formalist. The inner, human logic of the commandments does not diminish the Torah, according to Hartman, but instead frees up motivations, a wider space for the exercise of Kantian autonomy, for the performance of the *mitzvot*. Observance of Shabbat, for instance, does not involve man bending his autonomous will—after all, he is a thinking reed, Pascal observed— in submission to God's centrally generated law. Shabbat means more than the application of Law to life:

> …I may observe the laws of the Sabbath in order to awaken a sense of my creatureliness—that is, in order to become fully conscious of the fact that God alone is Creator of the universe and that no human individual may relate as absolute master to anything created by God. By abstaining from acts prohibited on the Sabbath, I become conscious of the implications of the concept of a Creator God, namely, that humankind is not the absolute master of nature who can exploit it without restriction.[28]

From the crudities of submission evolves a deeper, more grounded alertness and responsiveness to God's Law, attuned to the specifics of individual context. Unwilling to imagine a creative human role in giving meaning to and, if necessary, modifying the Law, Leibowitz's philosophy of halakha[29] remains outside the pale of options for modern Jews.[30]

Pluralism and Halakhic Individuation

Central to David Hartman's philosophy of halakha is the extension of individual interpretation and control of the Law and—affiliated with this assertion—the flowering of a pluralist approach to the commanded life. By pluralism, we mean a philosophical-practical move to widen, or make flexible, halakha; inclusion in the place of exclusion. But the cost Hartman's

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[28] Hartman, *Conflicting Visions*, 96

[29] One of Hartman's more cogent criticisms of Leibowitz (and one I believe seriously underdeveloped) is the latter's use of Maimonidean philosophy of halakha. Leibowitz, writes Hartman, divorces Maimonides from the medieval philosophy upon which the Rambam cut his teeth. The anti-metaphysics of Leibowitz denies the possibility of knowledge of God and nature. "This modern epistemological framework, however, cannot be used to understand Maimonides. It is not his world. For him, the view of the world seen from the vantage point of Aristotelian physics and astronomy has ultimate religious significance. For Leibowitz, it cannot have this role. Leibowitz, therefore, is reduced to making *halakhah* the exclusive vessel of the life of faith and worship. (*Halakhah* must become an essential constituent of the notion of worship). Since all truths claims lack any cognitive value, the only one left over from Maimonides for Leibowitz is the yearning to worship. Leibowitz compresses the Maimonidean passion into the will to worship, but in doing so he cuts off that passion from the intellectual roots that nourished it." *A Living Covenant*, 121

[30] In addition, see David Singer's "The Unmodern Jew," in the journal *First Things* (June/July 1991)

philosophy may be too high. That is, by cutting off top-down authority—the *poskim* and their mandate to adjudicate and enact divine Law—a diverse and unregulated set of practices and beliefs are likely to fill the vacuum. Despite this complication, to which Hartman does not give sufficient weight, he asserts that modern Jewish observance, following the breakdown of the *kehila* after the Enlightenment and most normative religio-cultural arrangements, must permit opportunity for an individual "to cultivate his independent reason; he cannot be asked to submit uncritically to the claims of authority."[31] Halakha needs to rise to meet the challenges of the day, the challenges that take place in the contested spaces of modernity. And one of the most pressing is pluralism.

Lacking a central authority like the papacy, Hartman argues, Judaism can make room for a diversity of practice and observance. It is essential, in fact, if the rift between the religious, the semi-religious and the religiously indifferent (and the divisions in the groups themselves) is not to become total. He understands that there will always be necessary disagreements, but that the points of contact are, or should be, stronger than points of difference.[32] Within the Law itself there is a multiplicity of religious beliefs. "One who has a deep appreciation of the logic of the *halakhic* system can never be certain that his actions represent the only possible cognitive response to the Torah of God. Alternate ways of practice are present in a system that applies *Torah mi-Sinai* to its everyday life."[33] Hartman goes on to quote the Talmudic dictum, "these and these are the words of the living God,"[34] to demonstrate the varieties of Judaism among even the Sages. Although the ultimate authority is vested in God's Torah, the responsibility for the determination of its exercise is not in heaven, but ascertained by human capacities that are apt to fail and misapply. Hartman holds up this halakhic pluralism as a model for a reconstructed Jewish communal polity. With the wealth of alternatives in the secular world, Jewish religious

[31] David Hartman, *Maimonides: Torah and Philosophic Quest*, (Philadelphia: Jewish Publication Society of America, 1976), 103
[32] Solomon Spiro, in an incisive critique of Hartman's pluralism, notes that "a halakhic person can share a common language with his non-halakhic counterpart, but not a common *spiritual* language. The halakhic person, for example, will love his neighbor because God has commanded it. There is a spiritual motivation and context for the entire concept and practice of this commandment. The non-halakhic person will subscribe to the concept and practice of loving his neighbor for a variety of reasons: the good of society, a commitment to love of humanity, or a very utilitarian or Hobbesian self-interest. Both the halakhic and non-halakhic are sincere in expressing their love of their neighbors, but their motivations are different: one is spiritual, the other secular." Solomon Spiro, "Halakha as a Ground for Creating a Shared Spiritual Language—a Rejoinder," *Tradition* 16, no. 3 (Spring 1977), 55
[33] Hartman, "Halakhah as a Ground for Creating a Shared Political Dialogue among Contemporary Jews," 537
[34] B.T. Eruvin 13b

life must find for itself new sources of thinking that confront honestly, or perhaps accommodate, the enticements of modernity.

Surely, however, neither pluralism nor individualism participate conspicuously within the observant life. Halakhic pluralism, based on a reading of *ta'amei ha-mitzvot*, implies a multiplicity of observances, yet this multiplicity comes at too high a cost: the estrangement from normative rabbinic practice. And the benefits from multiplicity are slight: "the rich adventure of being exposed to multiple points of view."[35] There are variances in, say, Sephardic and Ashkenazi communities, but they are not variances in the demand for uniformity of practices. Each may dine on different food for Shabbat, but the food is kosher. A larger question needs to be asked: what is gained by pluralism? Certainly not an increase in practice. It stands to reason that if a kind of relativism creeps into the observant life, then that life, and its norms in particular, ceases being a life that demands compliance with the duties inherent in halakhic regulation. In fact, the sense of duty falls away altogether and what remains are rights[36]—the individual's right to inscribe his own halakha, no matter the absence of his halakhic knowledge. Halakhic life knows limits—that is of one of its defining features—and seeks them out through the rabbinic application of Divine law. Pluralism, at least Hartman's, doesn't buffer any external imposition on Jewish religious practice that an individual chooses to bring in. Autonomy, the very source of pluralism and individualism, in the secular sphere is sensible and noble, but run amok in the halakhic life it debases.

Because the rabbis can make no final claim upon halakhic certainty, this means that "a rational foundation for the development of a pluralistic sensibility"[37] can be established. Extending from this "pluralistic sensibility" is the meeting-point of dialogue in Judaism. As no decision is final, arrogance is set aside and pluralism prospers. Yet all is not well. Instead of attending to dialogue many Orthodox partisans have employed halakha as a cudgel against other Jews, "an instrument for divisiveness, subtle aggression, and spiritual isolation. Instead of *mitzvah* awakening the individual to embrace *klal yisrael*, it is often, and mistakenly, viewed as calling for the isolation of the individual from the community."[38] These men, among whom he

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[35] Hartman, "Halakhah as a Ground for Creating a Shared Political Dialogue among Contemporary Jews," 538

[36] For a critique of rights talk in general, see MacIntyre's *After Virtue*. "The truth is plain,' he asserts, 'there are no such rights, and belief in them is one with belief in witches and unicorns." Alasdair MacIntyre, *After Virtue: a study of moral theory* (Notre Dame, Ind.: University of Notre Dame Press, 1984), 67

[37] Hartman, "Halakhah as a Ground for Creating a Shared Political Dialogue among Contemporary Jews," 537

[38] Ibid, 548

includes Leibowitz, restrict halakha to the codes, the formal laws of halakhic life, severed from its spirit and covenantal intimacy with God. Hartman would go so far as to forbid halakhic instruction centered on the *Kitzur Shulhan Arukh*, the indispensable guide to observance for Orthodox Judaism. The *Kitzur* does not sanction multiple construals of the Law, presenting only a sort of mitnagdic Judaism. A "rote catechism,"[39] he scolds, a Thirty-Nine Articles of the Jewish faith, if you will.[40] The dismissal of a pluralistic sensibility withers the creative impulse so necessary to the maintenance of the Law and denies the individual Jew his interpretative privileges. It cripples the emotional life. Teaching only one approach to halakha, as is done in most *yeshivot*, "inhibits the growth of a religious personality capable of engaging seriously and totally in the creative adventure of discovering new-yet-old vistas in one's religious life."[41]

But the contention that intra-Jewish dialogue and halakhic creativity/pluralism firms up support for the Law seems flawed. It's what the recently deceased Daniel Patrick Moynihan, in a different context, called defining deviancy down.[42] By Hartman's line of argument a greater appreciation for the Law will grow out of these elements and, by extension, greater observance. He writes in *A Living Covenant*: "a human sensibility that is open to and appreciative of the possibilities of pluralism is the foundation from which one can build a new epistemological understanding of revelation and *halakhah*."[43] Yet this calls for compromise, a compulsory watering down of the force of the commandments in the observant life. With the exception of matters of intra-communal concern such as the status of the state of Israel, which is a secular matter, there is little to be gained by halakhic Jews—and I do not mean Orthodox Jews alone—engaged in dialogue. A greater comprehension of other views, perhaps. But an acceptance of these views?—out of the question. And while Hartman calls upon observant communities to endeavor towards a broad toleration, he is guilty of his own small tyranny. Hartman's allegedly pluralistic sensibility does not permit the continued study and use of the *Kitzur Shulhan Arukh*,

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[39] Ibid, 538. He goes on to give an odd analogy. Compare the *Kitzur* to the Talmud, Hartman says. The *Kitzur* "is like a bath tub as against an ocean. When swimming in an ocean, multiple strokes in various directions are possible. In a bathtub you immerse yourself and passively soak in water without having much maneuverability. There is a spiritual adventure and diversity in the ocean of Talmud. There is limiting spiritual monism and religious passivity in the study of the *Kitzur Shulhan Arukh*." Some of those "various directions" beloved by Hartman may be wrong directions, proscribed by Torah. In the ocean a man, if going the wrong way, will drown—unlikely in a bathtub.

[40] See E. Shochetman's "On the Contradictions in the Shulhan Arukh, and the Nature and Aims of this Work" (Hebrew) *Assufot* 3. Shochetman argues that even in Karo's concise compilation of Laws there are multiple rulings on the same *mitzvot*.

[41] Hartman, "Halakhah as a Ground for Creating a Shared Political Dialogue among Contemporary Jews," 536

[42] See Moynihan's "Defining Deviancy Down," *American Scholar* (Winter 1993).

[43] Hartman, *A Living Covenant*, 18

even though many Jewish communities have chosen it as the normative shorthand guide to halakhic practice.

In addition to being selectively applied, Hartman's pluralism relativizes the forms or structures that make up those paths are simply not as important as the effort to make one's way to God. A private, spiritual and *autonomous* understanding of the commandments links up in harmony with the larger community. There is no essential tension between the inner drive of the spirit and communal forms of worship. Although the external modes of observance and public understandings of the commandments cannot be dispensed with, the internal, personal meaning of *ta'amei ha-mitzvot* is what gives them force. For Hartman, only an individuated appreciation of the Law permits a sense of personal responsibility towards God's commands. Each Jew is invited to do more than the perfunctory observances; he is not an automaton. In the personal experience of religion a Jew becomes a true halakhic man. The subjective, independent and creative impulses that exist under the surface of the Law diminish the need for Leibowitz's tedious legalism. An individual mitzvah is not a barren legal detail that needs only application. In fact, Hartman argues,[44] true application of the commandments occurs only after thoughtful reflection and the understanding that follows that reflection. No nervous worry need result if a diversity of reasons for the mitzvot are developed, as each individual Jew finds comfort and security in the knowledge that he has thought through the meanings, private and public, of God's Law. The Jewish people are one, but their Law, its individual comprehension and application, is many.

What might worry someone about Hartman's point is the anthropocentrism intrinsic to his thought. Does a focus on the individual's needs "direct his heart to heaven"[45] or will he fashion an idol of out of his own psychology? Sensitivity to creative capacities and pluralistic visions has little to do with the worship of God. It is inner-directed rather than outer-directed. Human creation and legal pluralism are human values with no attachment to the source of actual Creation and Law: the God of Israel. Hartman's philosophy ultimately ends up in subjectivity. This is not a value statement, but a consequence of his thought. All halakhic matters, according to Hartman, center on the subject, not the ostensible object of halakha.

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[44] Ibid., chapter three *passim*

[45] Yeshayahu Leibowitz in his response found in Hartman's *Conflicting Visions*, 89

Hartman further maintains that the individual understandings of the commandments are the transition points in halakhic pluralism—"a bridge from behavioral separation to cognitive communication,"[46] a space for the cultivation of individual intellectualization. While this may well form a bridge, it is, from a Maimonidean point of view, unsound. Twersky argues in his *Introduction* to the *Mishneh Torah* that the Rambam did not perceive *ta'amei ha-mitzvot* as a space for complete intellectual freedom. (He points specifically to the beginning of Maimonides' discussion of the reasons for the Law [3.26].)"…At least in part, [it] is as precise and objective as any scientific discipline. Ample knowledge, judiciously interpreted and applied, yields precise reasons. This is not hubris or bumptious reliance on one's opinions, but disciplined and constructive use of intellect and insight."[47] Therefore, reliance on multiple construals of the Law without an acknowledgement that there is a philosophic method, with principles to be applied, to *ta'amei ha-mitzvot* reduces Hartman's contention to, at worst, mere chatter, or, at best, hope (for pluralism and dialogue) in the place of philosophically cogent arguments. Nowhere does Maimonides state that the reasons for the commandments have plural understandings, although they are (theoretically) rational. The equation (*r* equals *p*) of rationality (*r*) with plurality (*p*) is a false equivalence: no solid evidence from the data set of medieval Jewish philosophy permits such an evaluation.

Modern Maimonidean Rationalism

David Hartman is Maimonides' son most obviously in the sphere of philosophic rationalism. It is Hartman's particular brand of ethical rationalism that numbers him among the disciples of Kant,[48] as well. His work attempts to update rationalism to be compatible with modernity. Of Maimonides yoking together Torah and the Greek philosophical tradition, Hartman writes: "…he tries to show pious Jews how their commitment to Halakhah can be enriched by a philosophical understanding of God. Maimonides leads the halakhic Jew toward a unification of the particularity of Torah and the universality of philosophy. This goal constitutes the core of his concern as a Jewish philosopher."[49] It is not the contemplative rationalism of Maimonides that Hartman draws on, but instead it is the Rambam's emphasis on reason's role in the shaping of halakhic life that makes his philosophy attractive to moderns like Hartman.

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[46] Hartman, "Halakhah as a Ground for Creating a Shared Political Dialogue among Contemporary Jews," 541
[47] Twersky, *Introduction to the Code of Maimonides*, 402
[48] Kant himself noted that he learned his ethical rationalism from Rousseau.
[49] Hartman, *Maimonides*, 66

Fidelity to Jewish practice is possible only when rationally understood. "True loyalty to God,' Hartman writes in his book on Maimonides, 'is manifest by one who trusts his reason and refuses to follow authority indiscriminately."[50] As this statement demonstrates, Hartman prefers a selective interpretation of Maimonides in place of a detailed examination of the particulars of Maimonides' philosophy and legal decisions. (Maimonides surely expected the majority of the Egyptian community, which he oversaw, to follow his adjudications of divine Law. Not everyone could master philosophy and the intricacies of halakha—and then integrate them.) David Singer supports this: "…[Hartman] does not limit himself to a 'strict constructionist' reading of the Maimonidean legacy. On the contrary, he is happy to invoke the 'spirit of Maimonides' and then develop a position of his own."[51] This selective reading is certainly permissible and understandable: the immediate concerns of medieval Jews are not identical to those of modern Jews. Hartman does not map Maimonides' worldview onto his own. Instead, he takes Maimonides' core thoughts about the relationship of reason to Law and revelation and situates them in a modern context.

At times, the rationalism of Hartman is of a negative sort. Reason reduces itself to merely being the opposite of authority. Obedience produces "authoritarian" types, where reason produces types defined by "independence."[52] For Maimonides, Aristotelian rationalism anchors his philosophy, gives to Judaism the speculative backbone it needs to inquire into first things, causation, creation and moral conduct; that is, some of the pertinent foundations of the true halakhic life as Maimonides saw it. Reason, in Hartman, exists as a necessary counterbalance to the undercurrents of heteronomous discourse in much of contemporary observant Judaism rather than a fully fleshed out philosophical principle. Reason de-emphasizes the emotionally ossified legalism of Leibowitz, though it does not eliminate the divine character of ritual law, and instead touts the merits of "rational discernment"—a faculty possessed by the Maimonidean philosophic rationalist of *Guide* 3.51-54—that guides men to "a reflective, sensitive, and critical moral disposition."[53] And this disposition is not a worked up shape of our own vain imagining, but a divine gift. For Hartman, the Covenant between God and the Jewish people involves the trust He has in their ability to apply the energies of reason in sanctifying the profane. Through a rational-

[50] Ibid, 106
[51] David Singer, "The New Orthodox Theology." *Modern Judaism* 9, no. 1 (February 1989), 41
[52] Hartman, *Maimonides*, 104
[53] Hartman, *A Living Covenant*, 184

ethical devotion to God's commandments Jews create religious community, not by the cloister of *haredi* Talmud study (although study is vital) or the stern, school-marmish formalism of Leibowitz.

The problems with Hartman's rationalism in his philosophy of halakha are not nearly as remarkable as we saw in his pluralism. He employs the 'essence' of Maimonidean rationalism but does not follow the Rambam to his philosophic conclusions: that rationalism, fastened to Talmudic learning, sets man on the path to intellectual perfection, the perfecting of the intellect which leads to true knowledge of God. Although Hartman views his rationalism as of a piece with his philosophy of halakha, I wonder, as suggested above, if it is nothing but the exploit of reason to combat unquestioned authority. That is, Hartman's rationalism is standard common sense: be discriminate in assessing the powers of authority, the extent of tolerance, the middle path, the golden rule—Enlightenment rationality writ large. At best, Hartman's rationalism endeavors to demonstrate that we are reasonable creatures, and that very reasonableness is an indispensable attitude that one must cultivate in order to lay the foundations for a halakhic life. What is missing is the Maimonidean admission, which occurs in a chapter long on philosophical speculation, that "man's intellect indubitably has a limit at which it stops. There are therefore things regarding which it has become clear to man that it is impossible to apprehend them."[54] Whereas Hartman insists that we take counsel with reason, Maimonides, according to Marvin Fox, maintains that reason has a stopping-point, "not primarily [as] a matter of religious dogma, but simply sound philosophy to know and have regard for the limits of human reason."[55] We will see the limitations of reason in our analysis of non-rational ordinances, the *hukim*.[56]

Hartman notes that his rationalism derives from the *Guide*'s insistence that God discloses His attributes of action—rational action, to be sure—in the workings of nature: that there are rational laws ordered to man's purpose and life and beneficial to him as well. That the Law is rational, that something about God's intentionality in the world can be known, is at the heart of both Maimonides' and Hartman's philosophy of halakha. The entirety of the Law, not just the *mishpatim* (rational ordinances) but the *hukim* (non-rational ordinances) too, has determinate intent: nothing in God's giving of the Law falls outside reason's broad purview. "One of Maimonides' theological innovations,' Hartman maintains, 'was to transform this distinction into

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[54] *Guide* 1.31, 65
[55] Fox, *Interpreting Maimonides*, 38
[56] See Fox, *Interpreting Maimonides*, 43ff.

one between those *mitzvot* whose rational purpose was self-evident and those whose rational purpose could be discerned only after careful reflection. All the *mitzvot*, then, were rational and could in principle be justified in terms acceptable to medieval philosophers, Jewish or non-Jewish."[57] All those who utilize their autonomy and their reason will notice that the world is overseen by a munificent God, whose stable Laws demonstrate that order reigns rather than incoherence or divine indifference. As Hartman points out, rationalism *cum* universalism is not only evident in the *Guide*. In his explication of the Mishna, Maimonides asserts that the seemingly obscure beliefs concerning *ma'aseh bereshit* (the story of creation) and *ma'aseh merkavah* (the story of the Chariot) are linked "with the cognitive disciplines of physics and metaphysics. This identification denies any intrinsic mystery to the hidden teachings. In principle, these teachings are capable of being understood by all men of reason because, according to Maimonides, the criteria upon which they are based are universal criteria of knowledge."[58] In order to understand the particulars of halakhic life, then, one must have access to general human knowledge—the hard sciences such as astronomy and the humanistic sciences such as philosophy. A single-minded approach to study—that is, one limited to *Talmud Torah*—weakens comprehension of the Law. In the study of the sciences, fresh strategies in the understanding of halakha emerge. Only when one abandons, as Maimonides did, religious parochialism, can rationalism, and thus a non-submissive halakhic stance, flourish.

The only problem in this element of Hartman's rationalism, and it is as much Maimonides' problem, centers on the assertion that *ta'amei ha-mitzvot* can be a constituent of general philosophy. The contention that non-rational ordinances, the *hukim*, can be rationally understood, along with the *mishpatim*, in the idiom of Aristotle—a key claim of medieval Jewish philosophy from Saadiah onwards—smacks of accommodationism, an opening gesture towards assimilation, and not the rigors of speculative thought. Only if the Laws are rational can Jews participate in the larger world culture, so the argument goes. This very notion seems implausible, however. Take, for example, most of the Laws codified in Maimonides' own *Sefer Ha-Mitzvot.* Among the negative commandments (*mitzvot lo ta'aseh*) is "the exhortation against eating parched grain of the new crop before the passage of the sixteenth of Nissan. As the Exalted One said: 'And bread, and parched grain, and fresh ears you shall not eat, etc.' One who eats an olive-

[57] Hartman, *A Living Covenant,* 90
[58] Hartman, *Maimonides*, 30

size of it receives stripes."[59] Nothing in this commandment commends itself to medieval rationalism, Kantian universalism or Hartman's update of Maimonides. Due to this fact, some scholars have attempted, with notable success, to show that Maimonides acknowledged a ceiling for rationalism, that there was a point at which it ceased.[60] One can point to the final *mitzvah* in *Sefer Ha-Mitzvot (mitzvot lo ta'aseh)* where Maimonides concedes, with both philosophical and halakhic integrity intact, that reasons for the Law can undercut the Law as well as strengthen it. In *Sanhedrin* (21b), Solomon, due to the "greatness of his knowledge and wisdom," felt that if he knew the reasons for the commandments, then he "would find some way to get around them. For even this most perfect of men erred in this and could not see his acts in any way leading to transgression."[61] Maimonides further asserts, in the *Guide*, that "God hid the causes for the commandments in order that they should not be held in little esteem, as happened to Solomon…"[62] What Maimonides is doing here, claims Josef Stern, is "hint[ing] at a still stronger constraint on *possible* human knowledge of causes for particulars."[63] Every commandment may have a reason, but those reasons may not be known to us. More importantly, the status of the commandments is not contingent:

> In view of this consideration, it also will not be possible that the laws be dependent on changes in the circumstances of the individuals and of the times, as is the case with regard to medical treatment, which is particularized for every individual in conformity with his present temperament. On the contrary, governance of the Law ought to be absolute and universal, including everyone, even if it is suitable only for certain individuals and not suitable for others; for if it were made to fit individuals, the whole world would be corrupted and *you would make out of it something that varies*. For this reason, matters that are primarily

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[59] M.T. *Sefer Ha-Mitzvot: Mitzvot Lo Ta'aseh* (Mitzvah 191), trans. Shraga Silverstein (New York and Jerusalem: Moznaim Publishing Corporation, 1993). The scriptural quotation is from Leviticus 23:14.

[60] See Shlomo Pines, "The Limitations of Human Knowledge According to Al-Farabi, ibn Bajja, and Maimonides," *Studies in Medieval Jewish History and Literature*, ed. Isadore Twersky (Cambridge, Mass.: Harvard University Press, 1979); Alexander Altmann, "Maimonides on the Intellect and the Scope of Metaphysics," *Von der mittelalterlichen zur modernen Aufklärung: Studien zur jüdischen Geistesgeschichte*, (Tübingen: J.CB. Mohr 1987); and Twersky's *Introduction to the Code of Maimonides*, 391-397, 401-403 and 458-459. Simon Rawidowicz, however, noted that the turn in some scholar's work to the non-rationalist underpinnings of Maimonides likely will not have larger consequences for the discipline as a whole. "While this trend to re-discover the non-rationalistic elements if Maimonides' philosophy, or at least to keep the proper balance between the various motives in his system, in order to free it from a too one-sided rationalistic interpretation, may gain ground in the field of the history of Jewish philosophy, it will probably for a long time to come have to reckon with strong resistance. For Maimonides' 'rationalism' is too established an axiom—from the older generation till Samuel David Luzzato on the one hand and Ahad Ha'Am and his followers on the other—to yield its ground, or even to accept its modifications." Quoted in Fox, *Interpreting Maimonides,* 36

[61] M.T. *Sefer Ha-Mitzvot: Mitzvot Lo Ta'aseh,* Mitzvah 365, p. 220

[62] *Guide*, 3.26, 507-08

[63] Josef Stern, *Problems and Parables of Law: Maimonides and Nahmanides on Reasons for the Commandments* (Albany: State University of New York Press, 1998), 31

intended in the Law ought not to be dependent on time and place; but the decrees ought to be absolute and universal, according to what He…says: *As for the congregation, there shall be one statute for you*.[64]

Stern comments:

> Here Maimonides makes three claims: (1) The Law, unlike medicine, cannot be made to fit every need of every individual in every circumstance. (2) Precisely for this reason, the *first* intentions of the Law ("matters that are primarily intended") should be independent of time and place; that is, they should be purposes that are appropriate ends to seek in all circumstances, or reasons that are beyond the *changing* contingencies of time and place. (3) However, the decrees or commandments themselves…are to be absolutely—that is, unconditionally—and universally—that is, without exception—binding despite the fact that they are the products of *second* (in addition to first) intentions that generally are appropriate only in some times and places and take into account historical conditions that change.[65]

It is a noble effort to place the whole of Jewish life and thought alongside that of other religions and other cultures, and it partially works. Yet the *hukim* do not have reasons—they can be given contingent reasons, but Maimonides maintains that contingency is false substantiation—that are immediately evident to the rational mind, and to maintain that all the Laws are rational—that is, available to the human mind after reflection—is an insult to their Author, to reason itself and to Jewish philosophy. Jewish philosophy, even a Jewish philosophy of halakha, is possible without suggesting that Divine ordinances are part of universal thought or that without *ta'amei ha-mitzvot* the Law would wither.

Lifnim mi-shurat ha-din

In order to understand the centrality of extra-halakhic considerations in Hartman's philosophy, it is imperative to remember that the idea of *lifnim mi-shurat ha-din* (the ethical aspects of Judaism outside of the formal *halakhot*) did not first propose itself to him as a speculative principle but as an experience. As a *yeshiva bokhur* and later in his training for the rabbinate, Hartman recoiled at the idea that prayer, his personal prayer to the God of Israel, was constrained by the time-structure of petitional life and the fact that the halakha prescribed the "ruling that required one to pray even when one was unable to concentrate and bring the proper devotional attitude to the prayer service."[66] His teachers assured him that halakha stipulated proper observance and not the intentions attached to that observance. Appropriate sentiments are commendable; sentiments, however, do not fulfill the Law. For Hartman, as for most Jews, this emotional minimalism will not hold. The autonomous self, the independent cognitive being, gets

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[64] *Guide*, 3.34, 534-35
[65] Stern, *Problems and Parables of Law*, 40
[66] Hartman, *A Living Covenant*, 160

lost in the homogeneity of halakhic performance as does a concern for the emotional-religious maturation of the individual Jew. This sort of halakhic nominalism squanders the animating energies of the spiritual life, a life that should take formal communal worship seriously but recognize that it is not the terminal point of spiritual existence: it should be a catalyst for the inner workings of the spirit. Moreover, halakhic minimalism focuses the believer's attention on the discharge of his obligation in place of a concentration on "one's personal relationship to God. If that were the only way of understanding prayer in Judaism, it would seem to be a factor undermining the critical independent spirit I believe is necessary for the full flowering of a mature covenantal relationship with God."[67] This relationship wilts in the face of much contemporary observant practice, according to Hartman.

From Maimonides, Hartman draws out a constituent part of the love of God that is not rooted in the commandment to love and fear God. This element of love was not that expressed in the acceptance of the Covenant, rather it articulates itself in one's individuated reflections on the majesty of God's creation, the grandeur of His rule over all created things. The *mitzvot* are not the complete and final manifestations of religious life, as halakhic positivists believe. Hartman argues, as he claims Maimonides argues, "that experience of the God of being is not exhausted by notions of covenantal mutuality…"[68] It evokes thoughts of the perfected man of *Guide* 3.54 who utilizes the Law as a necessary stimulus to greater knowledge of God, which is extra-halakhic and man's greatest glory. Jewish religious life contains the commanded life, but is not constrained by it. Observance of the Law becomes one part of the knowledge of God, but by no means the entirety. According to Hartman, the application and performance of halakhic decrees was not primary in Maimonides' thinking. The formalist's service to God through the commandments alone left out one of the Rambam's central teachings about why one worships—that is to say, loves—God: "His perfection."[69] This rational knowledge of God and His perfection leavens the seeming harshness of halakhic restriction with the free play of the reasoning mind, a mind that, like the halakha, is a gift from God. For Hartman and Hartman's Maimonides there is a fortunate congruence between divine Law and "a spiritual life dedicated to philosophic knowledge of God"[70]—that is, *lifnim mi-shurat ha-din*. To support this contention

[67] Ibid, 161
[68] Hartman, *A Living Covenant*, 267
[69] Hartman, *Maimonides*, 94
[70] Ibid, 104

that an essential symmetry—or, at worst, a lack of necessary conflict—emerges from a healthy equilibrium of legal obligation and extra-halakhic principles, Hartman points to Maimonides' use of Biblical and Talmudic quotations in the *Guide* and the *Mishneh Torah*. The *Mishneh Torah*, ostensibly a compendium of juridical details concerning the duties of halakhic life, opens "with a treatment of various philosophical themes. Is this not a strange way to begin a strictly legal codification? Does it not suggest that Halakhah demands more than the obedient readiness to follow norms," asks Hartman?[71] He points also out that the *mitzvot* of prayer outlined in the *Mishneh Torah* are found in the *Guide* too. But in the *Guide* they do not appear as straightforward commandments. In the *Guide*—more precisely, the end of the *Guide*—these *mitzvot* point to "the highest form of worship as contemplative love of God based upon the valid apprehension of Him and His acts."[72] Out of the contemplative form of petitional life, Hartman is able to make his argument that it is the individual's prayer—Maimonides' "service of the heart"[73]—that is paramount in creating intimacy with God, while communal prayer is consigned to a secondary if still vital role. Service of the heart, then, is perhaps the most obvious manifestation of *lifnim mi-shurat ha-din* in Hartman's oeuvre. This non-halakhic formulation, finally, allows for the cultivation of individual, spiritual capacities outside of the suffocation of halakhic positivism. It is not a replacement of the Law, but an important element in the stimulation of religious growth.

For example, Hartman gives the reader an aggadic reading of *lifnim mi-shurat ha-din* out of the sources of Maimonides' *Mishneh Torah*. If a righteous man, a *hasid*, witnesses an animal's burden fall from his back, then the righteous man, no matter his social station, is obligated to help the animal's owner restore the load to the animal's back, "whether the burden is suited to it or too heavy for it."[74] The *hasid* here demonstrates "in this act the capacity of meekness" because "he waives his exemption from a task that compromises his dignity."[75] And this is what separates the *hasid*, who forms part of an elite, from the multitude of believers. Anyone can perform the perfunctory duties of the Law, but only by going beyond the letter can one demonstrate his imitation, and therefore love, of God. Requirements are just that: a pre-arranged

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[71] Ibid, 48-9
[72] Hartman, *A Living Covenant*, p. 178
[73] See Deuteronomy 11:13, M.T. Laws of Prayer 1:1, *Guide* 3.32, B.T. Ta'anit 2a, P.T. Berakhot 4a, and Hartman, *A Living Covenant*, p. 178
[74] Qtd. in Hartman, *Maimonides*, p. 91
[75] Robert Eisen, "*Lifnim mi-shurat ha-din* in Maimonides' *Mishneh Torah*." *The Jewish Quarterly Review* 89, no. 3-4 (January-April 1999), 305

responsibility, which says nothing of the Jew's philosophical reflections on God's role in world, His love, mercy and justice. "The halakhic category,' Hartman writes, 'of *lifnim mi-shurat ha-din* reflects the behavior of one who has transcended self-interest and legal obligations based upon reciprocity."[76] Louis Newman, however, who outlines all of the Talmudic uses of the term in a helpful essay, suggests that *lifnim mi-shurat ha-din* is not some fuzzy overcoming of the self and its interests and certainly not a lifting out of the legal personality. After laying out the Talmudic examples of *lifnim mi-shurat ha-din*, Newman concludes: "It is particularly important to note that in no case does acting *lifnim mi-shurat ha-din* entail violating a legal duty…The term does not encompass acts of conscientious objection, for example, by which one violates the recognized law out of a duty felt to a higher authority. In short, the concept of *lifnim mi-shurat ha-din* sanctions certain actions which the law does not require, but never those which the law does not permit."[77] The equivalent of *lifnim mi-shurat ha-din* in Anglosphere jurisprudence is the waiver, which is "a voluntary relinquishment or renunciation of some right, a foregoing or giving up of some benefit or advantage, which, but for such a waiver, a party would have enjoyed."[78] Simply put, *lifnim mi-shurat ha-din* allows a refusal of a positive right, and as such does not constitute a supererogatory ethic.

Hartman correctly notes that the *Mishneh Torah* begins with Maimonides' thought on important philosophic concerns. Although it is shot through with philosophical notions, these notions are not by themselves manifestations of extra-halakhic reflections within the *Mishneh Torah*. Rather, I would argue, the philosophy of Maimonides' codes are part of the building blocks of a comprehensive understanding of the halakhic life and, as with Leibowitz's feedback mechanism, "law is both cause and consequence, catalyst and crystallization, of the cognitive goal, just as it is both stimulus and sequel to love of God."[79] Linking the supererogatory claim of *lifnim mi-shurat ha-din* with the *Guide* has some merit (consider the extra-halakhic bases of 3.54

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[76] Hartman, *Maimonides*, 94
[77] Louis E. Newman, "Law, Virtue and Supererogation in the Halakha: the problem of '*lifnim mi-shurat ha-din*' reconsidered," *Journal of Jewish Studies* 40, no. 1 (Spring 1989), 74. Although Newman does not do so, it is worthwhile to ask if *lifnim mi-shurat ha-din* is of particular importance in Talmudic thinking. It appears only nine times in the Babylonian Talmud (Bava Kama 99b, Bava Metzia 30b (twice), Ketubot 97a, Bava Metzia 24b, Berakhot 45b, Berkahot 7a, Avodah Zarah 4b, and in Mekhilta de Rabbi Shimon bar Yohaia collection of midrashim Despite its appearance in Maimonides, this concept only seems to be materially substantive—that is, taking the role of some controlling assumption—in modern Jewish thought, where an anxious worry about the merit of its undertaking relative to general philosophy and culture threatens at times to overwhelm it.
[78] Renzo Bowers, *A Treatise on the Law of Waiver* (Denver: W.H. Courtright Co., 1914), 19
[79] Twersky, *Introduction to the Code of Maimonides*, 363

in particular), but it is simply too limited in the *Mishneh Torah* for it to have wider application. *Lifnim mi-shurat ha-din* is, as Louis Newman has pointed out, a morality "which is entirely voluntary…a form of saintly behavior that is optional—and not even necessarily desirable in comparison with behavior according to the mean."[80] It is voluntary because *lifnim mi-shurat ha-din* is applied in proportion to a man's "great[ness]" which is found in a character that is above reproach and "devot[ed] to the study of Torah,"[81] and greatness is an aspiration that is achieved through diligence and reflection, but even earnest attempts may fall short. Hartman attempts to force through a reading of *Mishneh Torah* that makes the realizations of "spiritual capacities" by an individual a marking point for the legal initiation of *Lifnim mi-shurat ha-din*. Working from *Hilkhot Yesodei ha-Torah*, Hartman maintains that if an excellent man discovers lost property that is not his own, he is obligated to return it to his owner, even if it is below his dignity to be seen carrying objects.[82] Newman proposes, on the other hand, that this action is not mandatory, because it deviates from the middle path, even if it is a laudable deviation such as excessive piety. "In [Maimonides'] view, such actions are in no way required, for in general people do not have the ability, much less the duty, to become saints. Indeed…[it] is generally not even desirable."[83] Maimonides himself severely limits the actionable space of *lifnim mi-shurat ha-din*. It is commendable, but, for the most part, superfluous. "The ancient saints trained their dispositions away from the exact mean toward the extremes; in regard to one disposition in one direction; in regard to another in the opposite direction. This was supererogation. We are bidden to walk in the middle paths which are the right and proper ways, as it is said, 'and you shall walk in His ways.'"[84]

Coda

There is no need to reiterate Hartman's positions or our critiques of those positions, but a few final, general comments are in order. Hartman's importance in this work is to show the extreme counterweight in modern Jewish religious thought to Leibowitz. As we noted in the introduction, his thought is, for the greater part, everything that Leibowitz's is not. But, irony of ironies, both men grudgingly respected each other and both were (Hartman is still alive)

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[80] Newman, "Law, Virtue and Supererogation in the Halakha: the problem of '*lifnim mi-shurat ha-din*' reconsidered," 77-78
[81] M.T. Foundations of the Torah, 5:11
[82] Ibid.
[83] Newman, "Law, Virtue and Supererogation in the Halakha: the problem of '*lifnim mi-shurat ha-din*' reconsidered," 78
[84] M.T. Laws of Belief, 1:5

observant. And, whether for good or ill, Hartman's philosophy of halakha is in the ascendant, while Leibowitz's may simply not be possible for modern Jews, although a few do lean heavily on it in their own philosophy of the commanded life. Hartman, *in fine*, has managed a large task: reconciling liberalism with halakha, reason with the Covenant and the placing of extra-halakhic considerations in the forefront of Jewish religious life. It will be interesting to follow the continuation of Hartman's thought and the possibility that it could come into major conflict with thinkers who stress a more formalist account of the halakhic life. All the same, our objections to Hartman's philosophy of halakha remain. The role of autonomy in the halakhic life is simply not as expansive as Hartman would have his readers believe. The directives of religion defined by and through its Law cannot rest on a shaky pluralist foundation. Additionally, Maimonides is not the rationalist that Hartman wishes him to be. His rationalism is the rationalism of Aristotle; that is, metaphysical rationalism. Maimonides did not storm the fortress of authority; he was authority. But that does not entail creative aridness—authority is not necessarily a stultifying force, as we shall see in the following chapter.

The final thinker that will be considered in these chapters, Joseph Soloveitchik, may appear at first glance to emphasize that same formalist description of halakhic life, but as we shall see he struck out on a radically new—and, in many ways, radically strange—path, one distinct from both the positivism of Leibowitz and the rationalism of Hartman. His Maimonides is a whirlwind of creative vitality.

Chapter Three

A Constant Guest: The Maimonideanism of *Halakhic Man*

Introduction

> I remember when I was growing up I was a frightened and lonely boy. I was afraid of the world. For me, the world was a cold and strange place. I imagined that everyone was mocking me. But I had one friend; do not laugh at me, it was the Rambam [Maimonides]. How did we become friends? Simply, we met. Maimonides was a constant guest in our home. During the days when my father was a newlywed, supported by my grandfather, the pious Gaon Rabbi Elijah Feinstein of Pruzhana, father studied Torah day and night. A small group of outstanding young scholars gathered around him and eagerly absorbed his teachings.
>
> My father studied with his disciples in the room where my bed was located. My wont was to sit on my bed and listen to my father's words. He constantly quoted Maimonides. His method was to first open the Talmud and analyze the text under discussion and the relevant commentaries. He would generally say: "These are the explanations of Rabbi Isaac of Dampierre and the other authors of Tosafot. Now, let us analyze the explanations of Maimonides…[for] the Rambam decides the halakhah…[1]

Of the three modern Jewish thinkers discussed in these chapters, Joseph Soloveitchik's claim as the rightful heir to the Maimonidean legacy is the most immediate and the most recognized. His father (R. Moshe Soloveitchik [1879-1941]) and grandfather (R. Chaim Soloveitchik [1853-1918]) saw themselves as heirs to Maimonides' insistence on the importance of both secular and Torah studies for an authentically Jewish life, and they passed on this inheritance to their progeny. We see this heritage honored in the very name Maimonides School, the name of the Jewish high school Soloveitchik founded in suburban Boston. Unlike Leibowitz and Hartman, however, Soloveitchik never devoted a work to fully explicating his Maimonideanism. Instead, Soloveitchik wove Maimonides seamlessly into his writings.

No work of Soloveitchik is more Maimonidean than *Halakhic Man*. Whereas the previous thinkers discussed in our thesis consciously re-worked Maimonides to fit their own purposes, Soloveitchik's Rambam rests more lightly, more effortlessly in his compositions.

[1] *The Rav: The World of Rabbi Joseph B. Soloveitchik*, ed. Aaron Rakeffet (Hoboken, NJ: KTAV, 1999), 247-49

Although Maimonides appears to be of a piece with his own philosophy in *Halakhic Man*, Soloveitchik does not recoil from disagreeing with his master: on the matter of the *piyyutim* (liturgical poems set apart from the standard prayer service), Maimonides rules that they are to be avoided because "they predicate of God qualitative attributions that, if predicated of a human individual, would designate a deficiency in him..."[2] Soloveitchik argues, on the contrary, that during the Days of Awe the *piyyutim* serve as praises to "divine mercy and grace…when our entire existence thirsts for the living God,"[3] thus obviating, for the time, the prohibitions against attributing positive qualities to God. Maimonides had insisted, in *Guide* 1.51-1.60, that positive attributions have no merit, and are religiously irrelevant. Nevertheless, disagreements, at least explicit disagreements, with Maimonides are rare in *Halakhic Man*.

This chapter focuses on the neglected second part of *Halakhic Man*. The revolutionary first part, with its argument that halakha is a quasi-scientific model for empirical study, has deservedly received the lion's share of attention.[4] But it does not concern us, except peripherally. The preponderance of Maimonideanism in *Halakhic Man* surfaces in the second part, centered on five interrelated themes: creation, repentance, time, divine providence and prophecy. We will argue that Soloveitchik—in the virtual, and stunning, absence of critical literature regarding Soloveitchik's adherence to or deviance from Maimonides[5]—blends the Rambam into *Halakhic Man* with meticulous indirectness (e.g., direct quotation without comment), leaving it up to the scholar to tease out the Maimonidean implications of his work. Although generally solidly Maimonidean, points of conflict do arise (e.g., creation) between Soloveitchik and Maimonides and it will be necessary to unpack those sites of divergence.

Creation

The concept of creation in *Halakhic Man* does not touch heavily on the medieval concerns regarding creation; that is to say, the actual, physical creation of the world. In the second book of the *Guide* Maimonides discusses the various philosophically vexing opinions concerning creation advanced by the Law (God creates matter ex nihilo), Plato (God creates the world from a pre-existent and co-eternal matter) and Aristotle (the world is not created, but

[2] *Guide* 1.59, 141
[3] Joseph Soloveitchik, *Halakhic Man*, trans. Lawrence Kaplan (Philadelphia: Jewish Publication Society, 1983), 58
[4] Elliot Dorff's "Halakhic Man: a review essay," Reiner Munk's *The Rationale of Halakhic Man* and David Hartman's *A Living Covenant* are prominent examples.
[5] Hartman's *Love and Terror in the God Encounter* (2002), a book length study of Soloveitchik, devotes only fifteen pages (81-96) to the second part of *Halakhic Man*, and even then offers only a cursory summary, with extensive quotation.

eternal).[6] For Soloveitchik, on the other hand, the created status of the world is not simply a metaphysical fact, but also has normative consequences. He writes, without referencing Maimonides or concerning himself with Plato or Aristotle, that "Judaism affirms the principle of creation out of absolute nothingness."[7] The external trappings of creation and the disputes about the nature of the world and the heavens that exercised Maimonides and the medievals shifted to the interior in modern Jewish thought, as the Aristotelian worldview no longer remained tenable.[8] Whereas Maimonides places the preponderance of his emphasis on teasing out the metaphysical implications embedded in the physical creation of the world (whether ex nihilo or otherwise)[9], Soloveitchik appears to contradict the Rambam when he maintains that

> if the Torah spoke at length about the creation of the world and related to us the story of the making of heaven and earth and all their host, it did so not in order to reveal cosmogonic secrets and metaphysical mysteries but rather in order to teach *practical* halakhah. The Scriptural portion of the creation narrative is a legal portion, in which are to be found basic, everlasting halakhic principles, just like the portion of *Kedoshim* (Lev. 19) or *Mishpatim* (Exod. 21). If the Torah then chose to relate to man the tale of creation, we may clearly derive one law from this manner of procedure—viz., that man is obliged to engage in creation and the renewal of the cosmos.[10]

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[6] Maimonides lays out the three opinions regarding creation beginning in *Guide* 2.13

[7] Soloveitchik, *Halakhic Man*, 102. Soloveitchik wrote *Halakhic Man* in Hebrew (*Ish ha-halakha*), and it was published in 1944.

[8] In the *Guide*, Maimonides maintains that since no there is no scientifically verifiable manner in which to discover the origins of the world, he sides with the Torah. See Herbert Davidson, "Maimonides' Secret Position on Creation," *Studies In Jewish Medieval History and Literature*, ed. Isadore Twersky (Cambridge, Mass.: Harvard University Press, 1979)

[9] Maimonides, in 2.13, appears to accept the traditional view of creation out of nothing, yet he suggests later that the Platonist position that the world was formed from preexistent matter is permissible. In 2.25 Maimonides writes: "If, however, one believed in eternity according to the second opinion we have explained—which is the opinion of Plato—according to which the heavens too are subject to generation and corruption, this opinion would not destroy the foundations of the Law and would be followed not by the lie being given to miracles, but by their becoming admissible. It would also be possible to interpret figuratively the texts in accordance with this opinion. And many obscure passages can be found in the texts of the *Torah* and other with which this opinion could be connected or rather by means of which it could be proved" (*Guide* 2.25, 328-29). This seemingly unacceptable incongruity—that the opinion of Plato has validity along with the opinion of the Law—has bothered, for good reason, many scholars of Maimonides. The best suggestion, or at minimum most plausible, that I have read is put forth by Seeskin: "Why, then, does he allow people to believe the Platonic view? I submit that the answer has less to do with esotericism than with human psychology: The imagination balks at the idea of creation ex nihilo. Since it is tied to material things, it cannot conceive of creation except as a causal process that involves an agent and a patient…Recognizing that not everyone would be able to accept creation ex nihilo, but wanting to preserve a workable idea of creation and a respect for rabbinic interpreters, Maimonides himself makes a concession: Though Platonism may not be correct on every point, it does not do serious damage to the biblical text and it preserves the idea of divine volition." Kenneth Seeskin, *Searching for a Distant God: the legacy of Maimonides* (New York: Oxford University Press, 2000), 86. Seeskin's book stands as the best introduction to Maimonides, at least in English.

[10] Soloveitchik, *Halakhic Man*, 100-01

The world of creation for Maimonides, then, achieves importance through the universal philosophic principles it underwrites: the notion of a First Mover, the orderly, and therefore philosophically 'good,' motion of the stars and planets, et al. The relevance of creation for the modern Jew,[11] according to Soloveitchik, centers on the notion of self-creation and man as partner with God in creation "from within [the] narrow, constricted 'four cubits,' hands soiled by the gritty realia of practical Halakhah."[12] Creation has moved from a distinct objective matrix in the *Guide* to a focus on the subjective element in creation; that is to say, the consequence or result of creation: man, particularly in his role as facilitator for further creation. In fact, Soloveitchik's thorough re-working of the concept of man as creator extends so far as to call the creative man—creative in Torah application (*hiddushei Torah*), of course—"*borei olamim*,"[13] a term traditionally reserved to God alone.[14] The significance of this should not be overlooked, for perhaps Soloveitchik here suggests that positing man as creator is a new way, a new language, for conceptualizing *imitatio Dei*, instead of the hoary view of imitating God's attributes of action (mercy, kindness, etc), to walk in His ways.[15] For Maimonides, *imitatio Dei* focuses on ways of detaching oneself from the corruptions of matter. Why is this so? "In a nutshell,' Kenneth Seeskin maintains, 'the reason is that Maimonides accepts enough of the Platonic worldview to regard earthly matter as the source of evil and sees *imitatio Dei* as a way of freeing ourselves from the ties of matter. We saw that acts like a dark veil that prevents us from apprehending immaterial things as they really are and causes all acts of disobedience."[16] The *Guide* stresses that the *mitzvot* exist solely to "quell the impulses of matter,"[17] impulses that blind men to reality and obstruct any imitation of God. Thus, continues Seeskin, "*imitatio Dei* is a process of purification by which the soul transforms itself from an earth-centered existence to a heaven-

[11] Important to keep in mind is the fact that all moderns, including Jews, are at two scientific removes from the Aristotelian conception of the universe, as we passed through the secular, mechanized universe of Newton to, at present, the instabilities of an Einsteinian world.
[12] Soloveitchik, *Halakhic Man*, 4
[13] *Borei olamim* means creator of worlds.
[14] Soloveitchik points to examples (page 101) of man-made creation in the Talmud in order to demonstrate that man is "*borei*" as well. In *Sanhedrin* 65b, Rava is said to have created a man and Rabbis Hanina and Oshia, after studying the *Sefer ha-Yetzirah* on erev Shabbat, created a calf. Two humble rabbis on the questions of genetics and cloning millennia before they arose in the modern West!
[15] See tractate *Sotah* 14a: "What does the text 'You shall walk after the Lord your God' mean?...The meaning is to follow the attributes of the Holy One…as He clothed the naked, so do you clothe the naked; as He visited the sick, so do you visit the sick; as He comforted mourners, so do you comfort mourners; as He buried the dead, so do you bury the dead."
[16] Seeskin, *Searching for a Distant God*, 96
[17] *Guide*, 3.8, 433

centered one. Since our grasp of the heavens is limited, the process is also one in which the soul comes to accept its own insignificance and to abandon any form of self-promotion or self-assertion."[18] Soloveitchik, of course, insists on the self-assertion of the creative man. Halakhic man partners with God, through the halakha, "in the renewal of the cosmos,"[19] to fix the cracks in creation. If this is so, then Soloveitchik's picture of Jewish philosophical life once more frustrates the Maimonidean worldview. This naturally does not deny the influence of Maimonides, but merely complicates the matter.

Creativity, the area of actionable space where creation occurs, is so central to *Halakhic Man* that Soloveitchik asserts that "the most fundamental principle of all is that man must create himself. It is an idea that Judaism introduced into the world."[20] Conversely, Hermann Cohen (1842-1919), another major influence on Soloveitchik, insisted that ethical monotheism was the idea that Judaism bestowed upon the world, that man's singular aim was ethical perfection and through that perfection we come to know God.[21] While both Soloveitchik and Cohen saw action as primary in Jewish life,[22] the former understood it taking place within the limits of halakha and the latter, who dispensed with *halakhot* when they did not meet the standards of ethical universalism and who understood action as taking place in the social sphere. In Christianity, the role of human creativity, writes Zvi Kolitz, has troubled thinkers from the Early Fathers to Aquinas and Ockham to the present. Pascal, for example, "was tormented all his life by the question of whether the individual human factor has any creative role in the Christian domain. Pascal's great problem was whether the initiation of the religious relationship is placed entirely in God or 'whether man's creativity is called upon.'"[23] But the worries of a brilliant Jansenist are not the worries of Soloveitchik. Man as creator, his halakhic creativity, does not trouble him.

The material aspect of human creation consists of rectifying defects in Creation. During the creation of the world, God left some of His work undone so that man would complete it.

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[18] Seeskin, *Searching for a Distant God*, 100
[19] Soloveitchik, *Halakhic Man*, 105
[20] Ibid., 109
[21] For Cohen, however, God is not the commanding God of Sinai. Instead, God is known through ethical action; He has no independent standing outside of His creatures.
[22] Cohen, before Soloveitchik, asserted that man is a self-creator, as when he writes on repentance: "A turning away from sin is possible. Man can become a new man. This possibility of self-transformation makes the individual and I. Through his own sin, man first becomes and individual. Through the possibility of turning away from sin, however, the sinful individual becomes the free I." Hermann Cohen, *Religion of Reason Out of the Sources of Judaism*, trans. Simon Kaplan (Atlanta: Scholars Press, 1995), 193
[23] Zvi Kolitz, *Confrontation: the existential thought of Rabbi J.B. Soloveitchik* (Hoboken, NJ: KTAV, 1993), 5

"The Creator, as it were, impaired reality in order that mortal man could repair its flaws and perfect it."[24] Halakhic man renews creation by means of his creative implementation of the Law. His most profound thoughts concentrate on actuating the ideal halakha in the real world, of bringing the transcendent world of Jewish law into the "gritty realia" of actual Jewish law. In the section on creation, Soloveitchik points to the blessing over the new moon as an act of restorative halakhic creativity. The wax and wane of the moon are signs of the world's imperfections and their replenishment. This merges, according to Soloveitchik, the scientist and the halakhist, as his use of Maimonides demonstrates: "The very court which would make its astronomical calculations 'in the same manner as the astronomers, who discern positions and motions of stars, engage in calculations,' would go outside and recite a blessing over the new moon."[25] The calculations needed to discover the date and time of the new moon's arrival yokes together Jewish legalism and scientific accuracy. Thus the calculations are one "of the many branches of the Law."[26] When the phase of the moon is dark, or quarter or half-full, then chaos overwhelms creation. Matters are only set aright when the moon becomes full again, and its fullness acknowledged by and through the halakha. Soloveitchik further links up, metaphorically, the replenishment of the moon with the perfection of the Jewish people. He quotes from the blessing over the new moon: "He bade the moon renew itself for those who were burdened from birth, who like her will be renewed and will extol their Creator on account of the name of His glorious kingdom."[27] Creation's cracks will be sealed when chaos and the void (whether because of a darkened moon or the darkened "spiritual-historical"[28] fact of exile) collapse—and in their place, the restrictions of the Law that will buffer against chaos and void. Though Maimonides did not employ such existential language, he too believed that the Law ordered, and re-ordered, the cosmos to fit Divine Law. Both Soloveitchik and Maimonides, though separated by centuries, perceive in the blessing over the new moon the actual structuring of the world through Law. The elegance of order, of creation and stability out of chaos and flux and the beauty of fullness unite the disciple Soloveitchik and the master Maimonides.

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[24] Soloveitchik, *Halakhic Man*, 101
[25] Ibid., 106. The Maimonides quote comes from M.T. Laws of the Sanctification of the New Moon 1:6.
[26] M.T. Laws of the Sanctification of the New Moon, 19:13
[27] Soloveitchik, *Halakhic Man*, 107
[28] Ibid.

Repentance

The meaning of Soloveitchik's normative account of creation receives its fullest treatment in his discussion of repentance (*teshuvah*), the ultimate act of self-creation, or, more accurately, self re-creation. He harnesses the ancient concept of repentance to the modernist enterprise of self re-creation, both of which are triggered by an "absolute decision of the will and intellect together."[29] In repentance, the sinner, the transgressor against God's *mitzvot*, sheds his old skin, and through repenting prepares the path for a new skin. And repentance, not atonement,[30] takes place in the heart's turning away from sin, as Maimonides indicates in the Laws of Marriage—the sin is removed by means of "thoughts of repentance in his heart."[31]

In *Halakhic Man*, repentance is not merely an act, intellectual or otherwise, but more importantly it is a change in status, a shift from being one person to being someone else entirely. "It is a creative gesture which is responsible for the emergence of a new personality, a new self."[32] It consists of a promise, as Soloveitchik quotes Maimonides, to "resolve in his heart never to return to this sin again."[33] The analogy closest to repentance comes from the sciences: Imagine a sinner as a glass of water, but a change in his state converts him to ice. Physically, he has the same properties, but his status has undergone a complete alteration. That initial impulse to be a better man than he is now represents the controlling habit of feeling and action in the repentant sinner. His personality transforms under the *mitzvah* of repentance, so much so that it is like he has a new identity: "I am another person and am not the same man who committed these deeds,"[34] writes Maimonides. Such is halakhic man's creative capacity.

Repentance does not merely contend with a possible future self, pledged to God and His Law, but also to a past self, a return—another meaning of *teshuvah*—to some primal, lost yet recoverable aspect of the creative personality. Only when the sinner "abandons his sin,"[35] as

[29] Ibid., 112
[30] Soloveitchik notes a discrepancy in Maimonides' opinions regarding repentance. In Laws of Repentance 1:1, Rambam apparently asserts that repentance comes through verbal confession (*viddui*). On the contrary, in Laws of Marriage 8:5 Maimonides maintains that repentance is achieved through reflection, a reflection that intends that the sinner not commit the same sin. However, Soloveitchik argues (*Halakhic Man*, 111) that what we see as conflicting standards are actually two isolable laws: a) repentance as dissociating the sinner from his sin (a change in condition), and b) repentance as atonement, the act of restitution. The first is a private, interior move and the second is public. Soloveitchik points to Maimonides' Laws of Testimony and Laws of Evidence to back this novel interpretation.
[31] Soloveitchik, *Halakhic Man*, 111
[32] Ibid., 112
[33] Ibid. and M.T. Laws of Repentance 2:2
[34] M.T. Laws of Repentance 2:4 and *Halakhic Man*, 112-13
[35] Ibid., 2:2 and *Halakhic Man*, 112

Rambam stresses, can the condition for the possibility of return occur. His return comprises a) a consideration of past deeds,[36] b) a future that molds a new self and c) "an examination of the cause located in the past in light of the future, determining its direction and destination."[37] Put together the three elements of return find their material halakhic importance in this sense: "the sin gives birth to *mitzvot*, the transgression to good deeds."[38] That is to say, one can only know the good (the *mitzvah*, in this case) when one smashes against the bad (*averah*, sin). Through the sin comes the *mitzvah* of repentance and the opportunity to change one's life. Yet this can have a dark underside. Soloveitchik's idea of repentance parallels in significant ways the Russian and Greek Orthodox view of sin (*amartia*) and repentance (*epitimia*). In Dostoevsky's *Crime and Punishment*, for example, Raskolnikov only comes to embrace a repentant life after the particularly heinous act of bludgeoning an old woman. And his repentance is all the more magnificent, for Dostoevsky, as a result of the heinous nature of the crime, and the added fact that a prostitute leads him to repentance. This vision, which Soloveitchik also embraces, has dark consequences; namely, that sin is positive because it can lead to its divestment. No matter the size of the sin, it has its point of repentance. He quotes Maimonides (Laws of Repentance 7:4) on the matter: "In the place where repentant sinners stand, even the wholly righteous cannot stand." Soloveitchik concludes the section on repentance thusly: "*Historical crimes, past aberrations, can, at times, descend upon dry bones like the life-giving dew of resurrection, to which world history so amply testifies*" (emphasis added.) This is Maimonides misused and abused—in 1944 (the year of *Halakhic Man*'s publication)! Surely, the sinners of '44 could not be placed above the wholly righteous. By sins, of course, he means Israel's sins, but it takes little imagination to see the exploitative possibilities in Soloveitchik's statement.

Time

Around the start of the twentieth century, in literature and the sciences, a revolution in the conceptualization of time began. No longer was time to be seen as merely discrete, quantifiable variables: moment *x* moving seamlessly into moment *y*, with verifiable mechanistic precision. In

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[36] Here we seem to have an inconsistency. In part one of *Halakhic Man*, Soloveitchik de-emphasizes a focus on past sins, while here encouraging the sinner to review his life. In part one (74-75) he writes: "If a person has sinned, then the Halakhah of repentance will come to his aid. One must not waste time on spiritual self-appraisal, on probing introspections, and on the picking away at the 'sense' of sin. Such a psychic analysis brings man neither to fear nor to God nor, most fundamental of all, to the knowledge and cognition of the Torah." In part two (115) he entreats the sinner to "retrospective reflection upon the past." Perhaps part one distinguishes Halakhic Man from Repentant Man? Is Halakhic Man the man that the sinner wishes to emulate, to become?

[37] Soloveitchik, *Halakhic Man*, 115

[38] Ibid., 116

literature the notion of time's stability came under question by some of the giants of modernism: Faulkner, Proust et al. Linear events collapsed into modern mythologies: Faulkner's Yoknapatawpha County and Proust's Paris. The sense of time is scrambled in the Benjy and Quentin sections of *The Sound and the Fury*, and the famous scene where Marcel bites into the Madeleine cake in *Remembrance of Things Past*. Benjy's portion of *The Sound and the Fury* is one of the masterpieces of modern American literature. A retarded, middle-aged man, Benjy's thoughts run together, as Faulkner provides glimpses of the interior of Benjy's mind. Events of twenty years ago seem contemporary (the reader needs a detailed book on *The Sound and the Fury* to keep pace with time shifts in the novel, as they often happen mid-sentence), whereas present phenomena are given an older, vaguer feel. For Marcel, the smell and taste of the Madeleine cake interlaces memories, which suddenly come to the fore, of eating cake as a child at his aunt's home in the French countryside with the present-day savoring of the Madeleine.

Time's natural progression ceases; events, remembered partially and fitfully, swirl around the consciousness, blending together past and present experience, the flood of prior memories becoming entangled with contemporary action. Time, we may say, can repeat itself; the past is never past. For philosophers such as Henri Bergson, time exists as something intuitive and experienced, as opposed to a Newtonian conception of time as isolated, bounded and sequential.[39] Time is thus heterogeneous and broken. Soloveitchik puts the matter thusly:

> The dualism bound up with the concept of time has been well known since Bergson. The distinction between the concept of mathematical time, frozen in geometrical space and entirely quantifiable, and the perception of time as pure, qualitative duration, forming the very essence and content of consciousness ad streaming ever onward (and only the act of memory can enable one somehow to grasp hold of this rushing stream), was largely responsible for the rebellion of the human sciences (*geisteswissenschaften*) against the methodology of the mathematical, natural sciences. Nowadays, philosophy operates with a dual conception of time: (1) mathematical-physical time; (2) historical time.[40]

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[39] Among modern philosophers James and Bergson opposed the conception of time advanced by Hegel. Mircea Eliade asserts that Hegel appropriates Jewish and Christian ideas of historical time and fits them into his own peculiar scheme: "the universal spirit *continually* manifests itself in historical events and manifests itself *only* in historical events. Thus *the whole* of history becomes a theophany; everything that has happened in history *had to happen as it did*, because the universal spirit so willed it." Mircea Eliade, *The Sacred and the Profane* (New York: Harvest Books, 1968), 112. James, Bergson and others cut through this metaphysical morass and denied that history cuts time into measurable, discrete unfoldings.

[40] Soloveitchik, *Halakhic Man*, 120-21

Bergson stressed that actual time is measured by the chronometer of interior experience, the flow of thought, reflection, action and meaning that merges past, present and future in what he would call an "endless flow."[41] The following is an example—first used by Einstein, I believe—to demonstrate the variability and subjectivity of time: "Put your hand on a hot stove for a minute, and it seems like an hour. Sit with a pretty girl for an hour, and it seems like a minute."

For Maimonides, time moves easily from the metaphysical to the physical and back. Time initiates with the creation of the world—a rejection of Aristotle, who "holds that time cannot be conceived to have a beginning."[42] Aristotle goes against the opinion of the Torah as "time belongs to the created things."[43] In Maimonidean philosophy and classical Jewish thought, time, while created (*contra* modern physics), is neither linear nor cyclical (which is an area of agreement with modern physics). Time progresses, one year passes into the next and "the world goes its customary way."[44] But during the Jewish holidays, the linear progression of time is suspended, as Maimonides and Soloveitchik attest. In the Passover season, "a man must regard himself as if he came forth out of Egypt"[45] like Moses and the Israelites. Time thus reverses itself.[46] Reading the *Haggadah* bleeds past and present together and conventional notions of time's forward thrust halt. Time is granted, however briefly, the element of holiness, moving out of the Newtonian world of determined clocks and calendars (e.e. cummings called time "a colossal hoax of clocks and calendars"[47]) into a syncopation of time unique to religious experience. Time, according to Soloveitchik (and here he is implicitly referencing Maimonides), then "is measured by the standard of our Torah, which begins with the creation of heaven and earth."[48] Halakhic man is exhorted to assimilate the events of the Torah into his time consciousness, to remember (*zakhor*), for example, the destruction of the Temple and mourn on *Tisha B'av* so that it becomes "a powerful, direct experience."[49] An aperture, as it were, opens up; time fractures, and the past pierces the present, and points to the future. "The fleeting,

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[41] Henri Bergson, *Creative Evolution*, trans. Arthur Mitchell (New York: Macmillan, 1911), 3
[42] *Guide*, 2.30, 349
[43] Ibid.
[44] B.T. *Avodah Zarah* 54b
[45] See *Halakhic Man*, 118 and M.T. Laws of Hametz and Matzah 7:6
[46] Physicists traditionally hold that scientific time is reversible in theory as well.
[47] e.e. cummings, "if(touched by love's own secret)we, like homing," *100 Selected Poems of e.e. cummings* (New York: Grove Press, 1989), 113
[48] Soloveitchik, *Halakhic Man*, 117. See also *Guide* 2.29-30.
[49] Ibid., 118

evanescent moment is transformed into eternity,"[50] as the Egyptian exodus and the freedom that follows prefigures the future release from exile—"the redemption from Egypt is linked to the future redemption,"[51] which Maimonides intimates as well.

But for all of this concern with the non-linearity of time, Soloveitchik maintains that the Jewish conception of time does not resemble Bergson's conception of time. On the contrary, Judaism seeks to transform the seeming subjectivity of time into objective data. Judaism's 'data set' is its holidays and the prescribed prayer times, and this is set against the subjective flow of time in the void. "Judaism,' he writes movingly, 'disapproves of too much subjectivity, of an undue emphasis on quality…Judaism does not desire a flowing stream of time but rather wishes to establish a time that is fixed and determined."[52] As we saw with Maimonides and the calculations for the blessing over the new moon, demarcating time is precisely what Jewish law does. The goal of halakhic man therefore is situated in the actualization of ideal halakha in the world, by marking out objective boundaries of time from the "endless flow" of chaos. Just as Maimonides unpacks the world by imposing order (Divine creation) on the apparent formless blank of nature, Soloveitchik creates a fastness—viz., halakha—that one may retreat to in order to hold off "the forces of negation and nothingness."[53]

Divine Providence

The question of God's guiding hand in history, God's providential care, has exercised the whole of Jewish, and general, philosophy. Maimonides and Soloveitchik are no exception. As Soloveitchik notes, "the belief in individual providence is a cornerstone of Judaism, both from the perspective of the Halakhah and from the perspective of philosophical inquiry. It is the tenth of Maimonides' thirteen fundamentals of faith."[54] Because divine providence rests on man, Maimonides, according to Soloveitchik, separates man from the rest of creation due to the fact that man has someone to whom he must account for his deeds. He quotes the Rambam, taking the latter's position as his own: "Divine providence watches only over the individuals belonging to the human species and that in this species all the circumstances of the individuals and the good

[50] Ibid., 119
[51] Ibid., 118-19
[52] Ibid., 121
[53] Ibid., 107
[54] Ibid., 124. The thirteen principles of faith (*shloshah asar ekarim*), found in the introduction to Maimonides' commentary to the Talmudic tractate *Sanhedrin*, are read after morning prayers. The tenth fundamental—divine providence—asserts that the believing Jew holds fast to the principle that God is cognizant of their actions, and the eleventh fundamental asserts that the believing Jew is aware that God rewards observance and punishes violations of the commandments.

and the evil that befall them are consequent upon their deserts…"[55] God's providence, naturally, can only benefit those capable—due to the capacity of reason—of making distinctions between good and ill. Put in more precise terms, man "differs in his ontological nature from all creatures."[56]

In the last four chapters of the *Guide*, Maimonides makes the distinction between man as a biological entity (a blank fact) and the perfected man who rises above the coils of nature. Soloveitchik, implicitly, uses this model to distinguish between "species man" and creative/halakhic man, or what he calls the "man of God."[57] Again, like Maimonides' typology, Soloveitchik's man of God is responsible for his own individual providence as well. God metes out justice in proportion "to the deserts of the men concerned through equitable judgment in which there is no injustice whatsoever."[58] Soloveitchik concurs with this opinion: providence "is dependent upon man himself."[59]

Species man lives out a life of random existence, without purpose, direction or meaning. He gives in to the urges of his nature, refusing to lift himself out of slavery to his passions. Soloveitchik quotes Maimonides: "As for the ignorant and disobedient, their state is despicable proportionately according to their lack of this [divine] overflow, and they have been relegated to the ranks of the individuals of all the other species of the animals."[60] Species man does not create; he reacts.[61] He understands himself only as a biological entity, a bundle of nerve-endings, muscles and bones, destined to vanish at death. Species man resembles, if anything, the shades in Dante's Hell. "Empty-handed he goes to the grave, bereft of *mitzvah* performances, good deeds, and meritorious acts, for while living he lacked any sense of historical responsibility and was totally wanting in any ethical passion."[62] As Maimonides maintains in the *Laws of Repentance*, a

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[55] Ibid., 124. The quotation from the *Guide* is found at 3.17.
[56] Ibid., 125
[57] Ibid.
[58] *Guide* 3.17, 469
[59] Soloveitchik, *Halakhic Man*, 125
[60] Ibid., 126. See *Guide* 3.17-18
[61] The English poet Stephen Spender pointed out something similar, even though his concerns were surely far from Jewish philosophy. Spender noted among his contemporaries a conflict between two types of "I": the "I" of Voltaire, proactive and dynamic, and the modern "I," passive and reflective. "The Voltairean 'I' acts upon events. The modern 'I'…is acted upon by events." See Irving Howe, "The Idea of the Modern," *Selected Writings 1950-1990* (New York: Harcourt Brace Jovanovich, 1990), 143
[62] Soloveitchik, *Halakhic Man*, 127

man who will not raise himself above the state of nature will die like a beast and be denied immortality, and God will not watch over him.[63]

Standing over and above species man is the man of God, or the perfected man, in Maimonidean parlance. The man of God is a "*borei*," a creator in the fullest sense. He has lifted his life out of the state of nature and he has left lasting imprints of creativity in all that he wills.[64] He creates his destiny, marks out the territory of his life. Soloveitchik gushes: "His whole existence, like some enchanted stream, rushes ever onward to distant magical regions…For, indeed, it is the living God for whom he pines and longs."[65] But here Soloveitchik is more vague than even Maimonides regarding how the man of God is to go about achieving this goal. Surely, he must be ambitious, but ambition must have aim, direction. At least Maimonides delineates some of the capacities necessary for a perfected intellect: scientific knowledge, philosophic curiosity and a thorough acquaintance with the Talmud and its commentaries. With Soloveitchik, the individual man of God is simply loosed upon the world, prepared to act, for "he recognizes the destiny that is his, his obligation and task in life."[66] Yet his action will be frustrated without training. We are certain that Soloveitchik intends for the man of God to have familiarity with Talmud, science and Maimonides, but without his acknowledgement of such training we are left with an incomplete picture of how the man of God achieves providence through what Maimonides calls the "divine overflow."[67] In fine, the man of God appears, at this critical juncture in Soloveitchik's discussion of providence, to be just another creature of modernism, little different than the ambitious young men that populate the novels of Stendhal, Hardy or Hemingway. But, counters Soloveitchik, he is more than a creature of modernism; he is also an observant Jew, for whom "the fundamental of providence is here transformed into a concrete commandment, an obligation incumbent upon man." Soloveitchik thus closes the section on providence with a delicate balancing act: Judaism neither contradicts modernity nor is identical with modernity. The notion of man as self-creator may be predominantly modern, but its purpose is Jewish.

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[63] See M.T. Laws of Repentance 8:1 and *Halakhic Man*, 161-62, footnote 132

[64] Although the question need not detain us in this chapter, we can ask the question: stripped of the religious trappings, how different is Soloveitchik's man of God from the Nietzschean *Übermensch*, who equally raises himself above the mediocrity of the mass of humanity.

[65] Soloveitchik, *Halakhic Man*, 128

[66] Ibid.

[67] *Guide* 3.17-18, *passim*. See *Halakhic Man*, 126

Prophecy

In the *Guide*'s concluding chapters (3.51-54), Maimonides presents his readers with a model of human perfection: the man who could link his material intellect with the Active Intellect in order to receive the "divine overflow," the intellectual equivalent of divine providence. Each man, according to his capacity, was to structure his life on this type of human personality. In *Halakhic Man*, Soloveitchik shifts the model from the man of perfection to the prophet. The properties of each are similar, and they a have common end-point: the reception of the divine overflow.[68] The major difference between the perfected man and the prophet centers on the detailing of the personality: the perfected man receives the divine overflow passively (a culmination of the perfection of the body, soul and intellect) but is thus granted qualities of leadership, whereas the prophet, in Soloveitchik's understanding, actively works toward the goal in his role as creator but declines positions of power. Perfected men "achieve perfection to an extent that enables them to govern others,"[69] whereas the halakhic men/prophets "avoid serving in rabbinical posts. They rather join themselves to the group of those who are reluctant to render practical decisions."[70]

Prophecy, for Soloveitchik, has two interrelated features: a) "prophecy as a reality—i.e., that God causes men to prophesy; b) "prophecy as a norm—i.e., that each person is obliged to aspire to this rank…"[71] Soloveitchik quotes Maimonides: "It is one of the foundations of religion to know that God causes men to prophesy."[72] The cause, as with Moses' prophecy, is not always direct: the cause in Moses' case (and in the case of Soloveitchik's model of the prophet) is the rational faculty endowed by God. Maimonides then outlines the habits, moral and intellectual, that the prophet must possess: a suppression of evil tendencies, a fit body, a mind that has risen above daily concerns, thoughts centered solely on the love and fear of God. Soloveitchik's conception of the prophet, we speculate, holds close to Maimonides' definition of Mosaic rather than ordinary, prophecy. Alvin Reines lays out the important distinctions:

> Mosaic prophecy is an emanation that flows from God through the medium of the Active Intellect upon the rational faculty. Ordinary prophecy, by way of comparison, is defined as 'an emanation that flows forth

[68] Soloveitchik, *Halakhic Man*, 128
[69] *Guide* 2.37, 374
[70] Soloveitchik, *Halakhic Man*, 24
[71] Ibid., 128-29
[72] M.T. Laws of the Foundation of the Torah 7:1

> from God through the medium of the Active Intellect, first upon the rational faculty, and then upon the imaginative faculty. The essence of a thing, which is given by its definition, is *per proximum genus et differentiam*. Comparing the definitions of ordinary and Mosaic prophecy, we have the following: The genus of ordinary prophecy is 'an emanation that flows from the rational faculty upon the imaginative faculty.' The genus of Mosaic prophecy is 'an emanation that flows from the Active Intellect upon the rational faculty.' In accordance with the requirement that two things to which the same term is applied amphibolously cannot share constituent elements of their essence in common, the proximate genera as well as the specific differences of the two kinds of prophecy differ. The fact that in both Mosaic and ordinary prophecy the Active Intellect emanates upon the rational faculty constitutes only an accidental similarity, since in the former the prophecy itself is pure concept, whereas in the latter, owing to the participation of the imagination in assisting the intellect to apprehend the prophetic emanation, the actual prophecy is intellectualized phantasy. Between prophetic knowledge that is pure concept and prophecy containing material representations there exists an essential difference.[73]

What is important about the above discussion is that Mosaic prophecy lacks the imaginative faculty, making it purely rational and natural. And in the Aristotelian-Maimonidean worldview, the natural and the rational are identified with the good. As Maimonides notes in his Introduction to *Helek*, "the human intellect will cleave to the active intellect, and here will overflow from the active intellect onto the human intellect a mighty overflow."[74] For Soloveitchik, then, the prophet becomes the ultimate self-creator, due to the fact that he employs his rational capacities to become a man of God, united by the Active Intellect. The imaginative aspect of ordinary prophecy is wholly absent in *Halakhic Man*: "veridical dreams," the most vital manifestation of ordinary prophecy, plays no role for Soloveitchik's prophet. Once this level—the prophet—is reached, halakhic man satisfies his deepest wish, and, as Maimonides states, "he is turned into another person. And he will understand that he is not the same as he had been…"[75] The prophet thus breaks the binding shackle of blank biological existence; he creates himself anew through repentance and providence, no longer a mere species man. And this insight Soloveitchik credits to Maimonides, who in the *Mishneh Torah*, uses an Aristotelian framework to facilitate for the believing Jew the philosophically sound principle of "prophecy as an act of self-creation and self-renewal."[76] Maimonides, according to Soloveitchik, strikes the hammer blow to determinism: we are more than the sum total of our nature, and "choice is granted to every

[73] Alvin Reines, "Maimonides' Concept of Mosaic Prophecy," *Hebrew Union College Annual* 40 (1969-70), 332-33
[74] See Soloveitchik, *Halakhic Man*, 130
[75] M.T. Laws of the Foundation of the Torah 7:1 and *Halakhic Man*, 130
[76] Soloveitchik, *Halakhic Man*, 134

human being."[77] Like Leibowitz, Soloveitchik argues that rising above the Newtonian physical universe and the Darwinian animal world is the true goal of halakhic man, both source and conclusion of exertions. Halakhic man, through the implications of creativity that we have discussed, "discovers his freedom in the halakhic principle, which is deeply rooted in his pure soul."[78]

[77] M.T. Laws of Repentance 5:1 and *Halakhic Man* 136-37
[78] Soloveitchik, *Halakhic Man*, 136

Conclusion

Throughout our three chapters on modern Jewish appropriations of the Maimonidean legacy we have assessed the value of arguments put forward by three thinkers: Yeshayahu Leibowitz, David Hartman and Joseph Soloveitchik. Like a stockbroker seeking out inefficiencies in a derivatives market, we have tested the philosophical metrics and relative worth of their respective Maimonideianism, of how far they stray from or adhere to the original intentions—as difficult as they may be to measure—of the Rambam. By way of conclusion, here are the final assessments:

The opening chapter centered on the various roles Maimonides, in the *Guide*, assigns the commandments, and Leibowitz's response to them. We argued that his positivist case could be made if and only if the final chapter was chapter 51, rather than the technical conclusion of the book in chapter 54. It was a difficult case to argue but a worthwhile one, as David Shatz showed. It permitted a radical new insight into the purpose of the Law: that the ostensible teleology of Maimonides—that is, that the function of the Law focuses on the perfection of the body and soul, leading to union with the Active Intellect— in fact hid the singular rationale of the commandments—the worship of God. Notwithstanding the uniqueness of this argument—it is unacceptable for most scholars of Maimonides—it has clarity and can be supported through Maimonides' texts. However, we do recognize that the selective use of the *Guide*'s comments on the Law leaves Leibowitz open to charges of over-emphasis on some features (3.51) along with an underdeveloped appreciation for others (3.25-3.50). While we acknowledge the mixed success of Leibowitz's management of the Maimonidean legacy, we can confidently assert that his case for a positivist/formalist reading of the Rambam is cogent and worthy of further reflection and study.

The Moses Maimonides of David Hartman parallels most closely another Moses: Moses Mendelssohn, the central figure of the *Haskalah*. The *Haskalah* was the Jewish Enlightenment of the 18th century, linked to the general Enlightenment culture of Western

Europe. Mendelssohn held close to the principle features of the Enlightenment: a discriminating use of reason, skepticism towards traditional authority, a stress on the universality of ethics in place of the particulars of belief and a sensibility about the world that can be described as pluralistic. If Hartman's Moses was Mendelssohn instead of Maimonides, then his appropriation would have been spot on. But Maimonides was not a well-heeled 18th century German burgher. Hartman wrenched Maimonides out of the philosophical matrix of medieval Aristotelianism, and attempted to pass him off as a *philosophe*. The endeavor failed. Maimonides was neither a pluralist, nor an *Aufklärung* rationalist (he was an Aristotelian metaphysical rationalist), nor an ethicist of the type depicted by Hartman. It is not from an absence of understanding that Hartman misreads Maimonides (he is often intelligent and always thoughtful), but rather from an ideological need to coerce the Rambam into philosophical and religious attitudes that he would not countenance.

The thinker most at comfort with Maimonides among the three covered in this thesis is Soloveitchik. Due to the high level of comfort and ease of use with which Soloveitchik utilized Maimonides, his success is, in some ways, the hardest to determine. Soloveitchik's Maimonides was as much a proof-text as a presence in *Halakhic Man*. No large claims of novel interpretive strategies were advanced by Soloveitchik in his use of the Rambam. Instead, Maimonides was tactically deployed to reinforce Soloveitchik's innovative conceptions of creation, repentance, time, divine providence and prophecy. In this regard, he was the most successful. But Soloveitchik also took the fewest chances with Maimonides; he had a bigger gamble: the total revaluation of traditional Jewish thought in light of new scientific and mathematical models of reality. In the quadrant of risk, then, Soloveitchik's use of Maimonides was located in the best quarter: low risk, high reward.

The above paragraphs describe the immediate concerns of this thesis. However, a global question is embedded within the thesis as well. The nature of Jewish religious identity in the modern world is close to the hearts of all three thinkers. Leibowitz proposes a split in consciousness and epistemology. Knowledge of God and knowledge of the world are not antithetical; they simply have nothing to do with one another. One knowledge has no points of comparison with the other. This points to a Jewish identity

that allows for a fully secular life and a fully religious life. For Hartman, religious identity does not involve a split in knowledge and epistemology. He seeks integration of the religious self and the secular self that Leibowitz wants to keep apart. Soloveitchik, we would argue, exploits modernity for Jewish ends. All the advances in the sciences lead to greater opportunity for halakhic creativity. Moreover, Soloveitchik uses the model of the sciences to look at halakha as a data set, as when he discusses the dimensions of a natural spring and whether it fits the halakhic dimensions for constructing a spring for use for immersion.[1] Although our sympathies are with Leibowitz and his demand for the removal of human psychology from the epistemology of belief, it is Soloveitchik who most ably brings together philosophy and faith. Soloveitchik is able to use the philosophical tools of modernity to serve the Jewish aims of a religious life. He comes closer than Leibowitz and Hartman to harmonizing universality with particularity. And Maimonides is his model and guide for this endeavor.

Other sons of Maimonides are worthy of critical attention: Hermann Cohen, David Novak, Lenn Goodman, to name a few.[2] The three sons discussed here, however, were the most public of Maimonides' modern sons and their use of him reached the widest audience. Each approached the Rambam in their unique way, with greatly varying levels of accomplishment. Little secondary work has been done on their extensive relationship with Maimonides, but I hope our contribution, no matter how small, is a step in the right direction.

[1] Soloveitchik, *Halakhic Man*, 20

[2] Hermann Cohen, *Ethics of Maimonides*, trans. Almut Sh. Bruckstein (Madison: University of Wisconsin Press, 2003); David Novak, *Natural Law in Judaism* (Cambridge: Cambridge University Press, 1998); Lenn Goodman, *God of Abraham* (New York: Oxford University Press, 1996). Maimonides plays a central role in Goodman and Novak, but the latter has a more complex, more nuanced view of the Rambam.

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