

JUDAISM
IN A POST-HALAKHIC AGE

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JUDAISM
IN A POST-HALAKHIC AGE

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Table of Contents

Preface	11
Ch. 1. The End of a Remarkable Era	16
Ch. 2. Law and Standards in a Changing World	43
Ch. 3. Is the Halakhah Viable? A View from Jerusalem	71
Ch. 4. Toward an Ideology for Post-Halakhic Jews	97
Ch. 5. The Halakhah and Jewish Identity	125
Ch. 6. Halakhah and Conversion	136
Ch. 7. Halakhah and Educative Ritual	157
Ch. 8. The Parameters of Jewish Law	175
Ch. 9. Reflections on the Future	195
Index	213

Dedicated
to my beloved wife,
Rhoda

“And Jacob loved Rachel”

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Preface

On Love and Criticism

I begin this preface with a few reflections on my father z”l. What I write about my love for him applies equally to my mother, but it was during my flight home to Israel after attending Dad’s funeral that the following thoughts came to my mind and are recalled now.

I loved my father intensely, and his memory will continue to be a blessing and a source of strength to me and those of my family and friends who were privileged to know him. Mine was and is the normal reaction of a human being to the loss of a parent who succeeded magnificently in acting out the role of teaching his or her children the art of living constructively and happily.

The “success” to which I have just referred relates to my father’s character and style of life and not to the degree to which I have met the high standard he set for me. Father and I, as well as my sister and late brother, suffered no intergenerational conflict, because our parent respected fully the independence of all his children. He never hesitated to criticize whatever he considered to be our failings or unwise decisions, but he never used irrational authority to bend us to his will. My late brother, my sister and I always considered ourselves as his spiritual beneficiaries. What is good in us we attributed to his teaching (and that of our mother); our inadequacies, we always knew, were our own doing.

Love, however, cannot be factored into component parts. It is a relationship between persons but not necessarily one of direct cause and effect. Love causes far more than it is caused. Like consciousness, love is a process of movement and change. As such, it cannot and should not be identified with its state at a particular moment. Just as there are different levels of awareness, so are there different kinds, qualities and intensities of love. When it is present, love knows no rest; when love loses its dynamism, it dies. If it prevails in one partner of a relationship but not in the other, it might energize the former, but it has lost its *raison d'être*. To ask "why do I love thee?" is senseless. But there is a point to inquiring, "how do I love thee?", as Elisabeth Barrett Browning properly phrased the question.

However, this is not a book about my father or my love for him. I have begun in this personal way in order to set the mood for my critique of the halakhic system. It is a critique born in love for my people and its tradition; it is intended to enhance and strengthen that same love on the part of those Jews who have the mistaken notion that love demands agreement and sameness and who think that to identify with the past one must walk in the exact footsteps of one's forebears. To love one's parents, it is neither necessary nor desirable to live in every way they live or lived. It is to respect their achievement, to build upon it, to appreciate their life's achievement in its own context, to recognize its limitations and to go beyond it whenever reason and need demand such action.

I love unconditionally the halakhic tradition and those who created, developed and adhered to it. My emotion is not dependent on the truth, validity or greatness of the system, although, as I shall emphasize, it was one of the most notable achievements of the Jewish people. I love it despite my belief that employing all its methods and remaining loyal today to some of its contents are detrimental to the health and welfare of Jews in Israel and the Diaspora. The reader will come upon much criticism, but I plead that he or she understand its mood and intent. Nowhere, I hope, shall I base my critique on the lack of integrity or decency of those who invented or interpreted the Halakhah. My love for my forebears, especially those to whom I feel most indebted for my spiritual outlook, is unimpaired by my inability

at times to feel comfortable in their embrace. Indeed, so great is my respect for the formulators of the Halakhah in pre-modern times, that I believe they would want me to be independent and honest. A good father might be unhappy when his children strike out in paths that seem to him to be strange or wrong or even dangerous. He will express his misgivings; but if he can feel that he has retained the love and respect of his offspring, he will come to terms with the fact that he cannot and ought not try to control the force of change, except by objective criticism.

Unfortunately, there are intolerant or fearful fathers and those whose love for their children is possessive. Inevitably, by over-reaction, by coercion, by arrogating to themselves all rights of decision or by underestimating the intelligence or strength of the younger generation, parents often become estranged from those whom they want and need so desperately. This is what has happened in the relationship between most of contemporary Jewry and the halakhic tradition. The halakhic faithfuls, observing the loosening of ties to the Rabbinic way of thinking and behaving, have too often adopted a policy of rigid adherence to what they believe to be the true and eternal tradition. When they succeed, they sometimes produce a generation more stringent than their own. It becomes insufficient to be orthodox; one must be *haredi*, traditional to the extreme. Meanwhile, the ultra-loyalists drive a wedge between the Halakhah and Jews who have become accustomed and dedicated to open-mindedness.

To put the matter differently, traditions are borne by men and women who turn to their people's history of adjustments to the vicissitudes of life and regard it as an important ingredient in the education of their children. Modern-minded parents look to the heritage of the past for inspiration in preparing their sons and daughters for freedom and growth. Others aim to convince their offspring to cherish the cocoon-like and seemingly safe atmosphere of a classical life-style. Many Jews, it is true, are intoxicated by the halakhic way of life – its rich texture, its uniqueness, its aura of holiness and its challenge to worship God through study, probity and spirituality. The Torah, they are convinced, contains the *mitzvot* – the observances and the moral values and acts that are God's commands and inherently proper forms of human

behavior – that constitute “our life and the length of our days.” (Dt. 30:20 and the Ahavat Olam prayer of the Maariv or Evening Service.)

The qualities that characterize the halakhically observant Jew give expression to the idea that human fulfillment can best be achieved by the study and observance of Torah, which is synonymous with the Halakhah. Never mind that this view of life is one-sided in its assignment to women of a limited role in the halakhic scheme as conceived by strict constructionists. Those who would open wide the gates of learning and expand the roles that women should play in society are accused of altering the divine plan and leading mankind to degradation. On their part, halakhists who agree to the need for equalizing the status of women are hampered by the cumbersome procedure which adherence to the Halakhah imposes upon them.

There is something to be said for those who fear the modern world. It is not a pretty picture that we see all around us – unprecedented violence, cruelty, sexual perversion, excessive permissiveness that brings no happiness, satiety that breeds boredom, purposelessness and all the other manifestations of social malaise and ennui that cast doubt on the quality and worthwhileness of human existence. Yet to respond by holding stubbornly to the past is futile. The Halakhah offered an admirable stability for the Jewish community only as long as the conditions of its intellectual and social surroundings lent themselves to the interpretation of classic texts that were and are so central to the halakhic spirit. Halakhic loyalists charge Jews who have stepped in any way beyond the confines of the Torah with heresy and treachery. But the sensitive souls among the latter – and they are legion – are motivated by love of the Jewish people and a desire to vitalize its heritage in keeping with the needs and insights of ever-changing human culture.

At this point, the careful reader will call attention to a seemingly oversimplified presentation of the halakhic case. Are there no moderates and modernists among halakhic-minded Jews? Of course there are, but as far as I have been able to ascertain, they have been playing a holding game. In one way or another, they claim that all that has to be done is to enable the Halakhah to perform its historic task of adjustment to change. They assert that since Torah is life itself, it is and must always be in flux. Hence all we need do is to remain

loyal to the authority and method of the Halakhah, while adapting its content to the requirements of the hour. In the following chapters, I shall endeavor to indicate why these liberal constructionists misread the radical nature of the revolution that has affected many a human mind during the last few centuries. Like all revolutions, this one too has caused serious dislocations, confusions and thoughtless vandalism. Nonetheless, it necessitates the use of new instruments and strategies and calls for a pace that cannot be generated by an outmoded social machinery.

We must resist the temptation to compare the demise of the Halakhah to that of the grandfather's clock which stopped when the old man died. The past, indeed, has retreated and with it many hallowed ideas and practices. But we are here concerned with a living and virile people, that continues to transmit a vital heritage from one generation to the next. As long as the Jewish people lives, it will have to relate to its inherited culture in a constant process of study, interpretation and reinterpretation, adaptation and enrichment. If we look upon the Halakhah as a noble stage in the history of our people, we must accord it due honor and respect. Nevertheless, it must also be seen in perspective. Only thus can its valid insights continue to guide us. Its mistakes and lack of foresight must be forthrightly and firmly rejected or, where possible, corrected. Love and criticism are both essential in and to human growth. I hope the following pages will bear out this assertion and help pave the way to a post-halakhic era in the continuous, creative career of the Jewish people.

Chapter 1

The End of a Remarkable Era

The tradition of every vigorous people undergoes constant motion and irresistible metamorphosis. When attempts are made to arrest this process of transformation, as occurs when the tradition becomes an end in itself, a people loses its capacity to resist the relentless surge of environmental forces. Such a danger faces the Jewish people today in the current efforts to revive the halakhic system as its very substance.¹ I put forth this assertion while claiming just as vociferously that the Halakhah is one of the most remarkable achievements in Jewish history. Paradoxically, then, the argument of this book is that in order for the Jewish people to advance creatively during the 21st century, it must retain its love for the halakhic tradition while eschewing some of the theory and practice that constitute the halakhic methodology and content.

It is extremely difficult to provide a satisfactory definition of the term “Halakhah,” although there is nothing mysterious about its essential elements. The word itself means a path or a way, somewhat akin to the tao of Taoism. Halakhah is often mistranslated as law, thereby depriving it of its much broader significance. For our purpose, let us join those for whom the Halakhah is the substance of Judaism. We observe with R. Ulla that “since the destruction of the Temple, nothing in the world has been of significance to God beyond the four cubits of Halakhah.”² Halakhah thus replaces the Temple as the locale of God’s revelation.

¹ Berakhot 8a

² See M. Avot 6:1.

It is in the constant study, interpretation and practice of Halakhah that the Jew is to seek and execute God's will. This regimen is a life-long career. The halakhic tradition is spread across a vast expanse of texts that include the Bible, the Mishnah, two sets of Gemara (the Babylonian and Jerusalem Talmudim), commentaries, codes, responsa and countless monographs on specialized subjects. Indeed, no single individual can hope to exhaust the field, although there have been many scholars with encyclopedic minds who have attempted to scale the peak of this very endeavor.

Halakhah is often conceived as a synonym for Torah, another term with a wide range of connotations, from its designation as the pentateuchal scroll read in the synagogue to its usage as the title for the whole spectrum of classic and modern religious texts. However, Halakhah is not simply the subject matter of study. Like Torah, it also demands that one busy oneself in its practice,³ whether in worship, ritual, human relations or the conduct of civil affairs. The masters of the Halakhah were the government-in-exile of the Jewish people. The underlying philosophy of the Halakhah

³ Zeev Falk, noted legal scholar, also called attention to the confusion in the terminology of "Halakhah" and "Torah." He wrote: "We ought to warn against the use of the term Halakhah as a substitute for Torah, which is a result of the conflict between the Orthodox and those who hold other views. The emphasis on Halakhah bespeaks rigidity and formalism. These are not proper ways to lead humans to God's service. Torah also includes Aggadah, ethics and piety, while Halakhah pertains to the legal order. Torah not only decrees; it teaches and convinces. Contrastingly, Halakhah decrees and spreads discipline. Torah also embraces views of the minority and views that have been rejected, whereas the Halakhah confines itself to the tradition, Torah also obviously refers to the literal meaning of the Scriptures, popular opinion, ethics and thought, while halakhah deals only with laws. Therefore, confining ourselves to halakhah deprives us of recourse to all this spiritual wealth in our resolution of existential problems and in our concern about current needs. Such an approach represents the transformation of Orthodox Judaism to a kind of sect, which distances itself from the living Torah and the human and national values of Jewish civilization." [Zeev Falk, *Dat HaNetzah Vetzorkhei HaShavah* (Siah Meisharim, Jerusalem, 1986), 83-84. The translation is my own, JJC.] I believe that Falk's description of the Halakhah is too narrow. I prefer to see it as a form of Torah covering the latest two millennia of Jewish history.

supplied not only a rationale for the life-style of the Jewish individual; it also gave the Jewish people the essential elements of its nationhood.⁴

All living peoples have to adjust their social systems to the changing conditions of life. The Halakhah, which is amazing in the length of its survival, owes much of its success to the flexibility of its outstanding scholars in utilizing its adaptability to the fullest. The story of halakhic evolution has been documented in every age,⁵ and there is no need to add to this convincing literature. I do not argue in this volume that the Halakhah is inherently resistant to change; I contend only that its tools can no longer be employed with the speed and in the spirit that are essential in meeting the needs of the Jewish people in our era.

Let us remember that the Halakhah evolved principally in the Diaspora. Throughout the long age from the destruction of the Second Temple in 70 CE to the advent in the seventeenth and eighteenth centuries of the Emancipation and the Enlightenment, the Halakhah was the cement that held the Jewish people together and enabled it to fashion a unique, spiritually motivated and united trans-territorial society. It is vital for our understanding of Jewish history to remember that the Halakhah, during all this time, was a voluntary enterprise. The social pressure of the closely-knit Jewish community discouraged would-be deviants, but the overwhelming majority of our ancestors needed no prodding to remain loyal Jews. They were thoroughly convinced that the Halakhah was God's dictate and that the way of life it promoted was the most exalted of all possible cultural expressions. As Joseph Albo (d. 1444) declared, there is only one divine law, and that is in the sole possession of the Jewish people. Halakhah was not simply right for the Jews, with other peoples having equally valid traditions.

⁴ In the Introduction to his Commentary on the Mishnah, Maimonides offers one of the first major attempts to describe the evolution of the halakhic system. Skipping over more than a millennium of countless studies, one need only mention the outstanding scholarship of Levi Ginzberg, Jacob Katz, Menahem Elon, Saul Lieberman, Ephraim Urbach and others in order to indicate the utter shallowness of any assertions that the Halakhah was ever fossilized.

⁵ See the symposium in "Proper Parameters of Pluralism," *Sh'ma* 18:344 (25 Dec. 1987): 29-31. The subsequent quotations from Weinberger are from this source.

Judaism brought God's light to the world, and the Halakhah was the form and substance of that illumination. Any Jew who would deny this premise would automatically read himself or herself out of the Jewish community.

In the seventeenth century, Benedict (Baruch) Spinoza assumed that his heretical views would make it impossible for him, at one and the same time, to be true to his own conscience and function within the Jewish community. He conceived of Judaism as wedded entirely to the ideological bases of the halakhic view of life. Spinoza agreed with the view that abandoning ritual practices, casting doubt on the election of Israel and advancing a naturalistic theology meant, in essence, that he had ceased to be a Jew. In retrospect, we can assume today that even before his excommunication, Spinoza had drawn the conclusion that once he had undermined the theology on which the Halakhah rested, once he had challenged the Bible's integrity as a record of divine revelation and truth and once he had questioned the standards of traditional Jewish observance and the authority of the halakhic masters, his tie to the Jewish people had been irrevocably severed.

Spinoza's position was the precursor of a new era in which the tightness of halakhic Judaism has been gradually and steadily loosened for most Jews. In his own day, Spinoza was virtually a lone voice. He could expect no support from his fellow Jews for his opinions or his way of life. He never declared that he was no longer a Jew, but he and the heads of the community understood that he was beyond the pale. His excommunication left him formally a Jew. He could have recanted and been welcomed back into the ranks; but as long as he held to his convictions, his abandonment of halakhic Judaism was at the time tantamount to treason. There can be no more dramatic illustration of the revolution against the halakhic conception than the fact that some of Spinoza's ideas have found acceptance in Jewish intellectual circles. Were he alive today, Spinoza would undoubtedly be able to expound his philosophy without feeling estranged from his people and without being excommunicated (except, perhaps, by some fringe group of extremists). Furthermore, he would find companionship among a group of like-minded, Jewishly committed thinkers. His biblical criticism,

his ethically motivated naturalism and even his non-observance find their counterparts today among recognized leaders in Jewish life. This means, in effect, that *de facto*, Jewish identity is no longer necessarily associated with adherence to the Halakhah.

Halakhic loyalists, of course, look upon this development as a catastrophe. They are convinced that the spiritual heirs of Spinoza and other heretics are Jews only in a formal sense and that their only hope for salvation is to return to the halakhic fold. Indeed, many Jews, having wandered unhappily and without purpose in the wild fields of modernity, have sought and found peace of mind in halakhic discipline. Such “return” has been known throughout the centuries, but it is the *novum* in the present condition of world Jewry which calls for our attention.

In the past, the Spinozas in all their varieties left Judaism, whereas their contemporary counterparts now regard themselves as authentic bearers of the Jewish tradition and loyal members of the Jewish people. In departing from the norms of the past, they do so in order to guarantee their own Jewish identity and to insure that Judaism will be brought forth creatively into the future. They conceive their departures not as heresy but as essential adjustments in an ever-progressing heritage. How did all this come about?

There is really no mystery about the course of events. The subject has been analyzed many times, with historians more or less repeating one another. When Jews began to be accepted as free and equal citizens within the states of Europe, their cocoon-like *kehillah* or community could no longer exert the pressure for conformity that it had once possessed. Jews were dazzled by the radiance of freedom and the opportunity to enter new arenas of vocation and self-expression. Many found the new environment so alluring that when they stepped beyond the confines of the Jewish community, they were quickly assimilated. However, a larger number of Jews travelled in a different direction. The Emancipation was for them a challenge to their ingenuity and their ability to build a new kind of Jewish community and culture that would stress the uniqueness of their Jewish identity but would also open the door to their full participation in the affairs of the common, general society.

The corrosive effects of the Emancipation on the halakhic community could not have been as devastating as they were and are, were it not for the simultaneous impact of the Enlightenment. Emancipation and enlightenment are two sides of the same coin – the transformation from a world of revealed religion to one based on the expanding knowledge of physical and human nature achieved by scientific research and disciplined thought. The Enlightenment introduced the theoretical assumptions that undercut all previous systems of social organization that had derived their authority from traditions of historical revelation. The Emancipation shattered the social structures, thereby opening the way for the unbridled expansion of thought. Against these onslaughts, the Halakhah has steadily given ground, so that today only a minority of the Jewish people thinks halakhically or lives within its confines.

I do not believe that the validity of views concerning truth or goodness can be determined by majority rule. The fact that only a minority of Jews today abide by halakhic standards is no proof of the latter's falsity or moral or spiritual inferiority. *Vox populi* is often mistaken. Nonetheless, the revolution that has led to the abandonment of the Halakhah by an overwhelming majority of the Jewish people is not simply a matter of numbers. Nor can this numerical upheaval be understood without recourse to its roots. While it is true that no one can prove or disprove absolutely the existence of a supernatural God, the advance of knowledge and the new visions of reality have cast serious doubts upon the validity of classical religious traditions. This is still no proof of the truth or goodness of the new faith systems, but the widespread rejection of the halakhic system is not an arbitrary phenomenon. When the State of Israel was established as a democracy rather than as an halakhic polity, this was one major step in the ideological transformation of the Jewish mind. Again, the choice of the democratic system of government over that inherent in an halakhic view of national polity might not disprove the worth of the latter, but it was most certainly based on logical, social and moral considerations.

However, my purpose is not to drive another nail into the coffin of the Halakhah. I do not associate myself with the cultural vandalism

of those who deem the halakhic heritage to be unworthy of study or lacking in relevance for a modern Jewish society. After having served our people brilliantly for two millennia, the Halakhah must not be dismissed cavalierly. It is too rich in moral, spiritual and psychological insight and too laden with profound and esthetically attractive content to be ignored in the reconstruction of the Jewish people and its culture. Instead, I propose what I believe to be the proper way of questioning the role of the Halakhah in contemporary Jewish life. Instead of asking, as halakhic loyalists often do, "How can we strengthen the Halakhah and convince wayward Jews to return to its observance?" we ought to be pondering, "What in the Halakhah can and should be applied to a Judaism based on a democratic method of decision-making and to a philosophy of life that is open to varied approaches to the pursuit of truth?" Or, to put the matter succinctly, I need only quote my teacher Mordecai M. Kaplan, who suggested that the Halakhah deserves a vote but not a veto.

My assertion concerning the steady and inevitable weakening of the Halakhah over the past two centuries and more is challenged by the success with which the efforts of Orthodoxy and Fundamentalism have been crowned in recent years. There is evidence that some Jews throughout the Jewish world are finding the halakhic style attractive. Thousands of Jews in Israel and the Diaspora have become *hozrim bitshuvah* (penitents), and many of them have adopted the most extreme forms of thought and practice. Young men grow beards and earlocks, and women shed Western-style clothing in favor of the distinctive, late medieval costume of East European Jewesses. They wear *sheitels* (wigs) and/or head coverings to conceal their hair. Both sexes eschew universities and study at *yeshivot*. They observe every jot and tittle of halakhic ritual and sex mores and separate themselves from non-halakhic Jews, frequently including their parents and other relatives.

More significant is the fact that large numbers of Jews have found it possible to strike a balance between halakhic practice and full participation in the milieux of open societies and in the universe of discourse dominated by scientific thought. For instance, recently, in Israel, academic institutions have been established in which Orthodox