

**Zeitschrift:** Judaica : Beiträge zum Verstehen des Judentums  
**Herausgeber:** Zürcher Institut für interreligiösen Dialog  
**Band:** 32 (1976)

**Artikel:** Rabbinic Judaism as a Socio-Ethical System in the period of the Talmud and Midrash  
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**DOI:** <https://doi.org/10.5169/seals-961414>

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# **RABBINIC JUDAISM AS A SOCIO-ETHICAL SYSTEM**

## **in the period of the Talmud and Midrash**

*By Stanley Cohen*

- A. A violent order is disorder; and
- B. A great disorder is an order. These  
Two things are one.

Wallace Stevens, *Connoisseur of Chaos, I*

Organized society is basically a very fragile creation. A huge, variegated complex of interlocking relationships, its workings elicit bafflement and wonder. The history of mankind has witnessed the entrance and exit of numerous peoples, each with its own peculiar polity. The survival of Judaism, therefore, is particularly anomalous. By "Judaism" what is meant is classical Judaism, rabbinic Judaism, and most noteworthy of all is the fact that the foundations of rabbinic Judaism functioned effectively for over two thousand years. What is more, it was specifically during the period of the dynamics of the Talmud and Midrash, during the era of the formation of classical Judaism, that the Mediterranean world was in a state of tremendous ferment. This was a time of great confusion and great flux. Intermittent economic and political upheavals, wars against Rome, the challenge of Hellenistic culture, the rise of Christianity and Gnosticism, the resurgence of Zoroastrianism, recurring *Weltschmerz* resulting in an upsurge of ascetic, monastic and mystical movements—such were the massive and penetrating influences which vigorously confronted the rabbis, and yet Judaism, as defined by the rabbis, emerged from this widespread disorder and confusion with its monotheism intact and man's will free.

### *Aims, Goals, Objectives of Rabbinic Judaism*

Rabbinic Judaism was all-encompassing as a way of life. It sought the sanctification of the whole of existence. Maintaining no dichotomy between sacred and secular, it apprehended every aspect of life as open to hallowing. Rabbinic "Judaism made religion in every sphere a personal relation between the individual man and God... not in isolation, but in the fellowship of the religious community, and, ideally, of the whole Jewish people..."<sup>1</sup> Thus, the rabbis sought to infuse the daily regimen of life with a constant sense of duty to God and of responsibility to others. Religious ideas, to be relevant, must issue forth in corresponding good deeds and it was to the implementation

of this task that the rabbis, as the authoritative leadership of the Jewish community, addressed themselves. In rabbinic Judaism, piety found concrete expression in an active life of obedience to precepts—obedience which, however, was inspirited with a thoroughgoing “joy of the commandment.” To be sure, every minutia of life cannot be legislated for in advance; nevertheless, one might say that there is no situation so totally unique that such wisdom as derived from knowledge of what proved best in similar circumstances in the past will be of no avail in resolving the issues of the present. It was to the laying out of adequate precedents for action in all such cases that the rabbis directed their efforts.

The rabbis were the recognized leaders of the Jewish community. As a class of lay scholars with expertise in the Oral Law, by virtue of their training and status, they determined what constituted Judaism in all its aspects. With Torah availing as the divine substratum of a system of moral and religious training, the rabbis formulated a prodigious body of interpretation—the Oral Law, which was codified in the Mishnah and amplified in the Gemara—that specified the requirements of Scripture (i.e., God’s Will) as they pertained to daily life. This binding legislation was known as *halacha*, a term which could be used to designate the entire corpus of Jewish law or one of the particulars thereof. The *halacha* was an all-inclusive code intended to furnish a spiritual norm for almost every phase of life. Simultaneously a criminal code, civil code, and ethical and religious code, the *halacha* regulated the life of the Jew vis-a-vis the society in which he lived, and as a practical legal system fostered and preserved a vigorous and dynamic Jewish communal existence.

### *Halacha*

The *halacha* was based upon the premise of Judaism as a revealed<sup>2</sup> religion and of God as not only Creator but also Law-Giver, whose Will for mankind was set forth in the Torah. All knowledge requisite for mankind was thus seen as necessarily having its source in Torah. Yet times and social circumstances change and practice must be guided by existing conditions. Law, to be relevant to life’s ongoing needs and changing situations, must necessarily undergo constant reform and critical alteration. Yet such modification must be true to the demands of the present and future which call it forth, while, at the same time, remaining an authentic (and loyal) historical link in the chain of tradition wherein is rooted the basis for its legitimacy. This quandary was resolved by tracing the Oral Law back to Sinai itself,

and in so doing, the Pharisees and their rabbinic successors made it possible—while affirming continuity—to remold and transform the Judaism of the Bible in accordance with the needs of the day. In this way the *halacha* was based on the (explicit) principle of continuity through change, as it came to serve as a hedge around the Torah.<sup>3</sup> A great deal of legislation was thus enacted indirectly through the exposition of Scripture—i.e., the method of “plenary exegesis”<sup>4</sup> known as *midrash*. Nevertheless, even given a basis of immutable divine legislation, the law “was not in heaven” and the legal process assumed an integrity of its own.<sup>5</sup> In rabbinic hands, tradition served as a continuous channel of revelation.

If Biblical exegesis were unrestrained and uncontrolled, chaos would result. Thus, hermeneutic rules—diverse in number, depending upon which formulation is cited—came into being as a list of approved means of argument within a legal context.<sup>6</sup> These hermeneutic rules had a logic of their own, although in some respects it coincided with philosophical, and even Aristotelian, logic: for example, the *kal va-chomer* (*a minori ad maius*) argument. However, on the whole, rabbinic dialectics would seem totally inadequate when subjected to the rigors of any of the various truth tests of modern logic. When compared to, say, Aristotle’s Formal Logic of Categoricals, it appears horrendously absurd. Yet it must be remembered that strict schematization (of logic or anything else) is a trait characteristic of Graeco-Roman, rather than Semitic, culture. Given their hermeneutic structure, the rabbis were consistent in their employment of it; but what is more important is that they were “reasonable” in their usage of it: that is, realizing the absurdities it might lead into, they did not meticulously apply a particular method (*gezerah shavah*,<sup>7</sup> for example) indiscriminately throughout, but only as an instrumental technique pursuant of other over-riding criteria. When appraising the rabbis, it is what they are said to mean and what they meant to say, regardless of how they said it, which must be judged.<sup>8</sup>

In the hands of skillful exegetes, the Torah can be all things to all men—and the rabbis were well aware of this; accordingly, they rendered their legal decisions on the basis of the alternative proposals’ intrinsic merit. Majority vote determined the final verdict, yet both majority and minority opinions were recorded. The acceptance of certain established norms and procedures is essential for any legal system. Yet all too often these instrumentalities ossify into ends in themselves. The rabbis continually strove to combat this. For them the Law was a divinely ordained “legal means to an ethical and spiritual end.”<sup>9</sup> The purpose of the Law was *letzaref et ha-adam*



("to refine mankind")<sup>10</sup> and legal enactments were thus viewed as a means to human perfection, not ends in themselves. The rabbis took the Law seriously, not slavishly: the Law was made for man, not man for the Law.<sup>11</sup> As in Biblical, so in rabbinic Judaism: Law was not considered an inferior type of ethics, but, on the contrary, the only truly viable means to provide for the realization of ethico-spiritual ideals. The issue was not one of "spirit" vs. "letter"; it was one of how the interests of justice and mercy might best be served—through the inconstancy and vicissitude of pneumatic insight or the resolute durability of institutionalized forms and rules (i.e., due process).<sup>12</sup>

Sometimes, however, even with their insightful and sophisticated handling of Scripture for the sake of keeping the Law responsive to life's ever-changing problems and demands, the rabbis were unable to locate a basis in Torah for certain important traditions. Of these many were then asserted to go back to the patriarchs, the prophets, Moses, etc. or even were termed "*halacha leMoshe miSinai*." The Mishnah itself admits that for some *halachoth* the scriptural supports were flimsy.

The dissolution of vows floats in the air, and has no foundation in the Torah. The *halachoth* concerning the Sabbath, private festival offerings and the misappropriation of consecrated property are like mountains suspended by a hair; their scriptural basis is scant, and the *halachoth* are abundant.<sup>13</sup>

Such laws as those of lighting the Sabbath lamp, the '*erub*', recitation of the *Hallel* on holy days, kindling lights on Hanukah and reading the scroll of Esther on Purim were acknowledged by the rabbis as entirely their own (i.e., *mitzvoth de-rabbanan* as distinguished from *mitzvoth de-oraita*). They also recognized the binding force of custom (*minhag*) and gave weighty consideration to it.<sup>14</sup> When the situation demanded it, they even set aside explicit prescriptions of the Torah itself. Hillel, for example, promulgated the *Prosbul*, the reason for which was simply given as *mipnei tikkun ha'olam* (for the sake of the improvement of the world).<sup>15</sup> Property rights had to yield to moral convictions and human rights: thus the right of confiscation obtains (*hefker bet din hefker*), even if a Biblical law is nullified.<sup>16</sup> In such instances as these, the rabbis

attempted whenever possible, not to abolish [Biblical law], but to introduce some legal fiction whereby the authority of the law was upheld and yet at the same time rendered null and void for all practical purposes.<sup>17</sup>

The principle that the "law of the land was law" eliminated much potential strife and conflict of interest with non-Jewish law.<sup>18</sup> Although the *halacha* was characterized by social concern, this must not be taken

to minimize the worth of the individual in the hierarchy of rabbinic values. One particularly prominent motif in the *halacha* was a high regard for human life. "To him who saves a single life it is accounted as though he had saved the totality of mankind."<sup>19</sup> Inasmuch as all men were created in the image of God, the *halacha* regarded life as sacred. With the exception of the three cardinal sins of incest, murder, and idolatry, the *halacha* ruled that observance of the laws of the Torah were to be foregone if the life or health of a human being were at stake.<sup>20</sup>

On the other hand, it must not be forgotten that after the coming of the Romans, the jurisdictional authority of the rabbis was always determined by the non-Jewish political powers, and the rabbis' opinions on various points of law must be evaluated accordingly. For example, *diney mamonoth* (civil law) was highly developed and amazingly logical and systematic, since it was kept sharp by constant use; a different situation prevailed with regard to *diney nefashoth* (criminal offenses and capital crimes). According to the latest findings, Jewish courts preserved the right of execution up to 70 C.E.<sup>21</sup> After the end of the independent Jewish state, however, capital crimes were never punished by Jewish courts simply because these courts had no right of jurisdiction in such cases. It is difficult to keep from smiling to oneself in examining the conditions enumerated in the Talmud as requisite for capital punishment to be applicable, inasmuch as the elaborate safeguards which surrounded the accused were so impracticable and far-fetched as to render the death penalty virtually impossible to impose.<sup>22</sup> To be sure, the rabbis were deeply moral individuals; nevertheless, it is easiest to moralize against capital punishment when the authority and power to carry it out are non-existent. An Eleazar ben Azariah (second century C.E.) could facilely denounce as "murderous" a Sanhedrin which imposed capital punishment "even once in seventy years", for the simple reason that no Sanhedrin had (or could have) issued such a verdict in the seventy years previous.<sup>23</sup>

### *The Rabbis*

In any social system, the role of leadership is crucial. In the Jewish community, this role was assumed by the rabbis, who, although coming from every economic stratum, enjoyed their exalted status by virtue of their learning. The rabbinical ladder of academic advancement was a model meritocracy in Sassanian Persia and from 70 to 135 C.E. in Palestine.

As the idea was often expressed in *Pirkei Avot*, the study or teaching of God's law was not to be used to earn a livelihood. Therefore, every rabbi was faced with the necessity of supporting himself and his family by means of a full-time occupation. Various rabbis worked as farmers, potters, tailors, blacksmiths, artisans, business men. Only the members of the courts who did not have the time to earn their own livelihood drew a salary from the community. Thus, the rabbinic leadership was continually in touch with, and alive to, the needs of the community and therefore had no difficulty abiding by the principle that "no enactment may be imposed upon the people except when the majority can adhere to it." »<sup>24</sup>

In terms of analogy, the closest equivalent to the Talmud and the rabbinic system it reflects is the English Common Law, whose continuance also rests implicitly on established precedent and a commonly understood and assumed procedure with an internally coherent inner logic of its own. Both Common Law and the Talmud deal with specific issues rather than abstractions. Similar to the rabbis is the English aristocracy, some of whose members in their lifetimes frequently combined the career of the scholar, the practical man of affairs, the M.P. and the government official; the rabbis likewise incorporated various functions: they wore the hats of both lawyer (as *halachist*) and literary exegete (as *aggadist*) while earning their livelihoods in a variety of occupations.

For any society to function properly, belief in authority must be unequivocal—either it is accepted or the individual places himself outside of the community. Such was the case in rabbinic Judaism.<sup>25</sup> In the matter of *halacha*, majority rule prevailed. Intellectual anarchy (the free exchange of ideas) was encouraged—there was no right and wrong in regard to *belief*. An individual was free to disagree with the *halacha*—and to seek to alter it by appropriate means—but not to disobey it. Excommunication was invoked only for overt and flagrant violation of the *halacha*, which constituted the governing foundation of the community.<sup>26</sup> The feeling of the Jewish people that they were all of one family was paramount in instilling a readiness for the utmost cooperation without the necessity of having recourse to extreme methods of coercion.<sup>27</sup> Given the striking flexibility of *halachic* procedure, the fact that it functioned effectively at all might appear extraordinary. But in the final analysis, its success as the bond uniting all Jews rested simply on the trust of the Jewish masses in the ability of the learned and pious and wise among them to discern what was true and good, i.e., God's Will.<sup>28</sup> (Without pressing the similarity

too far, a Hillel can institute a *Prosbul* for the same reason an Abraham Lincoln can suspend *habeas corpus*.)

Judaism, due to its collective thrust and self-regard as the Chosen People, is quite sociologically-oriented. Since man is *homo socius* and a product of society, his actions are not exclusively his own, seeing that they necessarily affect his fellows. As far as the rabbis were concerned, all the relevant problems of life were problems of *conduct*, and such matters fall into the province of the moralist; hence the didactic emphasis of the rabbis, who viewed the words “teacher” and “preacher” as virtually synonymous. The rabbis were concerned with genius of character and only indirectly with genius of intellect, insofar as the latter was propaedeutic to the former; they were interested in knowledge for its own sake only because their further—tacit—assumption was that moral excellence and wisdom were the derivatives and natural concomitants of exposure to Torah. “An ignorant man could not be pious”; in this sense (amending Socrates) knowledge is *both* virtue and piety.<sup>29</sup> In regard to the relationship between study (theory) and action (practice), study was greater since it led to practice;<sup>30</sup> yet the pursuit of knowledge, if not directed toward a virtuous life, was totally without value. One rabbi even asserted that for a scholar whose goal was mere knowledge of the Torah and not the performance of its commandments, it were better that he had died in his mother’s womb.<sup>31</sup> What is primary was conduct, not theorizing.<sup>32</sup>

Rabbinic Judaism sought to inculcate proper conduct toward God and men through *habituation*: certainly “all commandments are to be obeyed in the spirit of piety”,<sup>33</sup> nevertheless “ever let a man be occupied with Torah and precepts, even though it not be for its own sake; for while he is doing it not for its own sake, he comes to do it for its own sake.”<sup>34</sup> The rabbis were certainly not unaware of the pedagogic importance of learning by doing: “Everyone whose deeds are more than his wisdom, his wisdom endures. And everyone whose wisdom is more than his deeds, his wisdom does not endure”;<sup>35</sup> “precept leads to precept.”<sup>36</sup> The Torah was to become a fixed duty.<sup>37</sup> Again and again the rabbis emphasized that man can control and master his evil inclinations: he is master of himself. The so-called *Yetzer ha-ra’* (“evil inclination”), for example, is not evil in itself, for without it a “man would not build a house, or take a wife, or beget a child, or engage in business”;<sup>38</sup> it is to be regulated, not extirpated: it derives its value from the use (or misuse) man makes of it.

Hebrew Scriptures had a unique understanding of man and society in which neither was polarized; so too, rabbinic Judaism. Eschewing

any notion of an antithesis between the individual and society,<sup>39</sup> rabbinic Judaism aspired to instill a responsibility for moral conduct in every individual. As shown by the tenor of his statements in *Pirkei Avot*, Hillel—described by Judah Goldin as a prime “example of scholarship and saintliness directed to public service”—was particularly concerned with the matter of how to integrate acute awareness of social responsibility with reasonable considerations of healthy self-respect.<sup>40</sup> In one midrash, the meaning of Torah is given as “pedagogue”;<sup>41</sup> that is, “Torah”, usually translated as “teaching” or “instruction” or “Law”, is to be properly regarded as a personal pedagogic enchiridion to be followed in helping the individual to become a good, holy, saintly (nowadays we would say “mature”) person living in peace with his fellows. The entire tractate *Avot* treats of ethics—and particularly the ethics binding upon Torah scholars—while also (especially in chapter five) offering various general observations of a psychological nature in regard to character and temperament. To the rabbinic mind, if an individual were a genuine Torah scholar, *ipso facto* it was assumed that he was a gentleman. Sound learning and upright character went hand in hand.<sup>42</sup>

Being practical teachers, the rabbis were cognizant of the dangers inherent in mystical and metaphysical speculation,<sup>43</sup> and specifically of the disastrous results such activity would have—as regards the observance of the commandments—in facilitating the speculative individual’s withdrawal and isolation from the community. The rabbis were interested in the here and now, and since nothing worthwhile could come out of metaphysical speculation with regard to the proper living of life, they could not see how such matters could profitably occupy man’s time. To them metaphysics was mere speculation which could prove nothing and lead only to apostasy and confusion.

### *Salvation*

Although a disinterested love of God free from all selfish considerations was the ideal rationale for the observance of the commandments, it is self-evident that such a lofty motivation would have limited appeal for the common, ordinary Jew. For a society to endure, it must somehow link up the desiderata for its own perpetuation with the aspirations of the individuals who constitute it. In rabbinic Judaism this was achieved via the *mitzvah* system of salvation (to use Ellis Rivkin’s phrase). This worked as follows: an individual warranted admission to Heaven (*Gan Eden*) by the performance of specific good deeds (*mitzvot*) as articulated in the *halacha*: i.e., (1) each



individual had to work out his own salvation; (2) every act of the individual was involved in this pursuit; and (3) the *halacha* determined the (religious) status of each act. In this way the *mitzvot* simultaneously encompassed personal salvation and social responsibility.

In the Bible there was no clear reference to an afterlife. Death was a very nebulous concept—*sheol* boded no good for anyone, whether righteous or wicked. However, in consequence of the Exile and the calling into question of the Deuteronomic Ethic, the notion of a future life in another world (*'olam ha-ba*) was introduced<sup>44</sup> and interpreted to offer a possible solution to the problem of reward and punishment: the concept of a future life was adopted out of the necessity to preserve the notions of divine justice and individual retribution, and in so doing uphold a basic moral structure for the universe. A linear view of history with an eschatology—and therefore basic teleological goal—was evolved. It must be noted that although the rabbis had no real sense of history according to modern standards, they were aware of change and the movement of history toward culmination in a Messianic Age.

In the rabbinic regimen, God was concerned with each individual and everyone would ultimately appear before Him for judgment in *'olam ha-ba*; if worthy, the individual would receive his reward in *Gan Eden*, and if unworthy, his punishment in *Gehenna* (hell). The good deeds as well as transgressions of each were recorded for eternity in what was metaphorically referred to as the “book of life”, which was balanced on the Day of Judgment.<sup>45</sup> Rabbinic Judaism, following its Pharisaic forbearers, believed in *personal* bodily resurrection, and in this way fostered the notion of the preservation of the integrity of the individual even in regard to the world to come, in addition to its constant emphasis upon the superlative worth of each human being as reflected in the *halacha*. Under the *mitzvah* system, “man is judged at any moment according to his moral standing at that moment », <sup>46</sup> and “is judged according to the dominant character of his intentions and deeds.” <sup>47</sup> Ideally the *mitzvot* were to be performed for their own sake, i.e., for the sake of Him Who commanded them: “say not, I will study the Torah with the purpose of being called sage or rabbi, or to acquire fortune, or to be rewarded for it in the world to come; but do it for the sake of your love for God, though the glory will come in the end.” <sup>48</sup>

The rabbinic premise was that man was a responsible being and is called to account for sins both of commission and of omission. Yet for moral decisions to be valid, freedom of choice is necessary—and how is this to be reconciled with the notion of an omniscient Deity?



No matter to the rabbis; or as Akiva expressed it: "All is foreseen and free will is given."<sup>49</sup> (To achieve a comparable effect, Immanuel Kant had to resort to an a-priori synthetic idea of the noumenal world as a practical postulate.)

### *Aggadah*

Just as *halacha* constituted the source of Jewish practice, so *aggadah* was the source of Jewish thought. *Halacha* governed communal action and was a "committee" effort; *aggadah* was the creative expression and the product of the imagination of the individual rabbis. H.G. Enelow sums up the aims of the *aggadah* as "the spiritual enlightenment, the ethical education, and the moral fortification of the people."<sup>50</sup> The *halacha* legislated; the *aggadah* commiserated. The rabbis were the arbiters of an ongoing society with a distinctive historical tradition of its own. Therefore their handling of scriptural material had a twofold purpose: justification of the tradition's essential validity and exposition of its contemporary relevance (as a legal source).<sup>51</sup> The former was the province of *aggadic* polemics—vis-a-vis pagan, Christian, Christian heretical (Marcionite, Gnostic) and other claims—and the latter was in the domain of *halacha*. The Torah and the principle of revelation at Sinai were the ultimate source of rabbinic authority and as these two basic concepts were developed, the entire Bible (Pentateuch, Prophets and Writings) was interpreted as one progressive revelation, as the inexhaustible fount of discoverable truth. In this way, the Bible came to be regarded as one unified book and thus, given its divine origin, perforce had to be true, complete, consistent and final; and being complete, it had to include within it provision for all exigencies. Accordingly, the rabbis, of necessity, had to couch their statements in the framework of Torah (i.e., Torah in its extended meaning of the whole of Scripture), for surely, if an idea were to be correct and true, it had to be contained within that body of material which was absolute truth. Truth, after all, is discovered, not invented. On this account, the rabbis, as it were, had to locate a scriptural verse to legitimize their "truth". To be sure, the adducing of the verse for "justification" was only incidental in both *halacha* and *aggadah*; one might say that an individual rabbi found in the Bible what he needed to support his view. Yet no trickery or deceit was intended—it was simply the need of having to make provision for continuity by means of continual reference back to the original source. As it was (and the *aggadah* demonstrates), the rabbis selected only those sections of Scripture which reflected their own highest concep-

tions of God, and those passages which did not present God in such glowing terms were often simply ignored.

One of the basic tenets which rabbinic Judaism strongly upheld was a teleological view of existence. The Bible itself presented a positive attitude toward life and the rabbis—no doubt spurred on by Christian and particularly Marcionite polemics—even more emphatically maintained that man was basically good, although their optimism was tempered by a realistic recognition of the human propensity to evil. Unequivocally, the world was created by a good and purposeful God.<sup>52</sup> Consequently, since there is a purpose to the world, man has a function to fulfil in it; there is a plan for creation, and this plan of creation was entrusted to man in the form of Torah. Under the influence of the Platonic view of the eternity of Forms, in time the Torah acquired an eternal aspect and became a cosmic principle which was then regarded as the divine blueprint whereby God created the universe.<sup>53</sup>

*Aggadah* was the fanciful *genre* of the rabbinic stream of consciousness. In terms of “theology”—or anything else—there was a total lack of system. All that is presented is an anthology of insights, each the opinion of one man, and (unlike *halacha*) not at all binding. In rabbinic Judaism, God’s existence, unity and incorporeality were regarded as axiomatic and just plain “common sense.” The rabbis were moral teachers, not philosophers; their approach was practical, not systematic. Although in substance there was a general consensus of thought on various topics, the idea of imposing such a thing as “orthodox” belief on the community was totally alien to the rabbinic ethos. Whether *aggadah* kept belief fluid and the rabbis were satisfied with this, or the rabbis were unwilling to formalize belief and so the form of *aggadah* was adopted—which came first we do not know; what we do know, however, is that the rabbis did not establish dogma à la the Church. Furthermore, it was the larger framework of the *halacha* which allowed for the elasticity of the *aggadah*: the institutionalization of the *halachic* precepts as the approved norms of patterned behavior gave Jewish communal life that stability which made possible the freedom of opinion and interplay of thought which is preserved in the *aggadah*.

The theology of the rabbis was practical; it was totally *ad hoc*, unsystematic, and largely indifferent to logical consistency, except when it suited the purpose at hand: in rabbinic thought, theological notions were functional, not academic. The rabbis were pragmatic without being utilitarian. The problem of reconciling God’s Immanence and Transcendence has yet to be adequately resolved, but for the rabbis the whole issue was only pertinent insofar as it related to

God's ubiquity and Divine Providence—His knowledge of every man's actions (*hashgaha*) was essential to the *mitzvah* system.

Despite the fact that God was one and incorporeal, *aggadah* abounded in anthropomorphisms—which, however, were never regarded as anything but figures of speech. As Solomon Schechter has noted, the rabbis did much concerning “the humanizing of the Deity and endowing Him with all the qualities and attributes which tend toward making God accessible to man.”<sup>54</sup> In this regard, God is variously depicted as wearing phylacteries, praying, suffering, and arranging marriages.<sup>55</sup> In Judaism *imitatio dei* has been a major principle. What the rabbis did, in effect, by picturing God as performing various human actions, was empathetically to convey to the common, ordinary, unsophisticated Jew the warmth of a personal God, while at the same time delineating the Ideal to be emulated. God was the apogee of moral perfection; man should behave accordingly. In addition, by presenting man as a *shutaf*, a partner and co-worker with God, the rabbis, through the *aggadah*, were further able to instill a deep sense of pride and responsibility in even the simplest Jew, by attributing, as it were, cosmic and even divine significance to all his actions.<sup>56</sup> For example, “If My people”, God says to the angels, “decline to proclaim Me as king upon earth, My kingdom also ceases in heaven.”<sup>57</sup> By a slight change in vowels, the rabbis made the verse, “I have brought you forth from Egypt”, read instead “I (God) was brought forth with thee from Egypt.”<sup>58</sup> Man can add to God's power: “Rabbi Azariah in the name of Rabbi Judah ben Simon said: When the Israelites do God's will, they add to the power of God. When the Israelites do not do God's will, they, as it were, weaken the great power of God on high.”<sup>59</sup> By raising the humdrum activities of daily life to cosmic stature, thereby touching life's mortal joys and sorrows with something of the divine splendor and effervescence, rabbinic Judaism sought to make of human life a sacred responsibility that it was a joy and pleasure to discharge.

To a large extent, *aggadah* and rabbinic theology may be seen as the icing on the cake of *halacha*—albeit icing with a highly seasoned didactic flavor to it.<sup>60</sup> This is not to suggest that in times of distress (pogroms, etc.) the rabbis were oblivious to such problems as that of unmerited suffering,<sup>61</sup> and of the very real need to provide some sort of rationale for the problem of why the Jews—supposedly the Chosen People of God, His righteous ones—underwent the torment and agonies befitting the wicked; nevertheless, the fact remains that, on the whole, once the crisis had subsided, the rabbis never went so far as to make a virtue out of the Jews' previous misfortune—as, for example, to

regard affliction as necessarily a divine test of the mettle of an individual's or people's righteousness, and therefore as something to be highly prized and greatly desired.

### *A Social Theory of Rabbinic Judaism*

If a consideration of Talmudic legal principles is most amenable to a Kantian framework,<sup>62</sup> then perhaps the most compatible formal perspective in which to place a treatment of the sociology of rabbinic Judaism would be the approach of the renowned French sociologist, Emile Durkheim,<sup>63</sup> who was himself of Jewish extraction.

In his series of lectures collected under the title *L'Education Morale*, Durkheim accentuates the pre-eminent role of morality in the maintenance of society and the development of personality. Whileas the individual who lives alone in seclusion and is an island unto himself needs no ethics, inasmuch as he makes his own rules which affect only himself, the domain of the social is the domain of the moral. The social and the moral are indissolubly intermingled. Man is the product of society and norms must be established which determine what the proper interpersonal relationships are to which people must conform. Social relationships consist of patterns of human interaction and prescriptions of the course of action should follow in a given situation. Cultural norms, therefore, include both cultural goals and the approved means for reaching those goals. (Such norms in rabbinic Judaism were the *mitzvot*.)

For Durkheim, "education is... a social means to a social end—the means by which a society guarantees its own survival."<sup>64</sup> Thus, the teacher's task is "to create a social, moral being."<sup>65</sup> (Cf. Abaye's statement that "the purpose of the entire Torah is the promotion of peace", i.e., the welfare of society.<sup>66</sup>) Morality keynotes Durkheim's views. Its first element is discipline, compounded of regularity of conduct and authority.<sup>67</sup> Such regularity emancipates the individual from the need to contrive his reaction to each situation *de novo*. Furthermore, in denying an antithesis between the individual and society, Durkheim asserts that discipline "responds to the individual's need for restraint, enabling him to reach, successively, determinate goals", specific and attainable in nature; "without such limits, he would suffer the inevitable frustration and disillusionment entailed by limitless aspiration."<sup>68</sup> For Durkheim, it is clearly the case that "the notions of emancipation through rulelessness are apologies for a diseased state of affairs, for real freedom is the fruit of regulation."<sup>69</sup>

La plupart des moralistes... présentent la morale comme si elle tenait tout entière dans une formule unique et très générale... Tout le reste de la morale ne serait qu'application de ce principe fondamental... Les règles de détail... n'auraient donc pas par elles-mêmes de réalité propre ; elles ne seraient que des prolongements, des corollaires de la première, le produit de sa réfraction à travers les faits de l'expérience. Appliquez la loi générale de la morale aux différentes relations domestiques, et vous aurez la morale familiale, aux différentes relations politiques, et vous aurez la morale civique, etc...

Mais une telle conception intervertirait les véritables rapports des choses. Si nous observons la morale telle qu'elle existe, nous voyons qu'elle consiste en une infinité de règles spéciales, précises et définies, qui fixent la conduite des hommes pour les différentes situations qui se présentent le plus fréquemment. Les unes déterminent ce que doivent être les rapports des époux entre eux ; les autres, la manière dont les parents doivent se conduire avec les personnes... ces maximes... ne laissent pas d'avoir une existence propre et une vie propre. La preuve, c'est que certaines d'entre elles peuvent se trouver dans un état morbide, alors que les autres, au contraire, sont en état normal.

Il y a donc là des faits non seulement réels, mais encore relativement autonomes, puisqu'ils peuvent être atteints différemment par les événements qui se passent dans les sociétés. Tant il s'en faut que l'on soit en droit d'y voir de simples aspects d'un seul et même précepte, qui serait toute leur substance et toute leur réalité. Tout au contraire, c'est ce précepte général, de quelque façon qu'on l'ait conçu ou qu'on le conçoive, qui ne constitue pas un fait réel, mais une simple abstraction. Jamais aucun code, jamais aucune conscience sociale n'a reconnu ni sanctionné ni l'impératif moral de Kant, ni la loi de l'utile, telle que l'ont formulée Bentham, Mill ou Spencer. Ce sont là généralités de philosophes et hypothèses de théoriciens... les hypothèses des philosophes... sont... l'ordre de la science, non de l'ordre de la vie.

... dans la pratique, ce n'est pas d'après ces vues théoriques, d'après ces formules générales que nous nous dirigeons, mais *d'après les règles particulières qui visent uniquement la situation spéciale qu'elles régissent.*<sup>70</sup>

Three elements comprise morality, according to Durkheim: (1) discipline; (2) attachment to, and identification with, a group; and (3) autonomy, which is the ultimate goal towards which the other two elements lead. Autonomy is the internalization of societal norms and conscious realization of the purpose behind them and need for them.<sup>71</sup> Originally, however,

... la morale se présente à nous sous un double aspect : ici comme une législation impérative et qui réclame de nous une entière obéissance, là, comme un magnifique idéal auquel la sensibilité aspire spontanément.<sup>72</sup>

In regard to this "magnifique idéal", which is ultimately actualized in complete autonomy, a rabbinic gloss to Lev. 23:3 is particularly noteworthy.<sup>73</sup> Commenting on the passage, "And my commandments you shall keep, and you shall do them", said Rabbi Chamma: "If you keep the Torah, behold I will account it to you as if you made the



commandments.” And as if the assurance that God’s “heteronomous” law can, by its observers, be converted into self-legislated, “autonomous” law were not enough, the exegesis goes on further that “said Rabbi Chanina: ‘God said to them: “If you keep the Torah, behold I will account it to you as if you had made yourselves and as if you had made the commandments.”’ What Rabbi Chanina and Rabbi Chamma are asserting is that in the course of observing God’s law, the law itself becomes so inbred that it seems no longer to be decreed from without, but seems rather to be the expression of what the individual himself would want to do in any case.”<sup>74</sup>

A rabbinic gloss to Jer. 16:11 is also most apropos in this regard.<sup>75</sup> It presents God as saying, “Would that they had forsaken me, provided that they had only kept my Torah.” Man’s realization of his own potential—achieved through the self-discipline of obedience to Torah—and his acknowledgement of social responsibility—achieved through study of the Torah—is the ultimate Will of God for man; and in rabbinic Judaism, *halacha*—applied Torah, the Way in which one was to walk—served as not only the basis of communal cohesion but also as the principal agency for the inculcation of moral discipline and the dissemination of knowledge of *precisely* what it means “to do justice, love mercy and walk humbly with thy God” (Mic. 6:8). To the rabbis, the query “what does God require of me?” was not an academic exercise, but a challenge with meaning in terms of practical life, and the major purpose of *explication de texte* in regard to the Bible was the full realization in everyday practice of Hebrew Scriptures’ intent.

## NOTES

<sup>1</sup> G.F. Moore, *Judaism in the First Centuries of the Christian Era* (Cambridge Mass., 1927)), vol. 1, p. 121.

<sup>2</sup> It must not be thought that revelation of Scripture as signifying the literal eternal truth of every word contained therein was the absolute rabbinic tenet it is usually recounted as being: the notion of *Torah min ha-shamayim* (revelation) was never meticulously defined and as a result of this, was open to diversity of opinion and interpretation. Consider, for example, the following radical—but never anathematized as heretical—statement by Rabbi Yose: “The Divinity has never descended upon the earth, and Moses and Elijah never ascended into heaven (*shamayim*).” Suk. 5a.

<sup>3</sup> Pirke Avot 1:1.

<sup>4</sup> This extended definition is that of Samuel T. Lachs and is intended to suggest the very thoroughgoing way in which the rabbinic mind perused Scripture, a nicety not commonly conveyed by the common translation of *midrash* as simply “exegesis”.

<sup>5</sup> Bab. M. 59b.



- <sup>6</sup> The enumerations of hermeneutic rules were those of Hillel, Rabbi Ishmael and later, for non-legal materials of Rabbi Eliezer ben Yose the Galilean.
- <sup>7</sup> Alexander Guttman, in his article "Foundations of Rabbinic Judaism," *Hebrew Union College Annual*, 1950-1, part 1, notes how the rabbis realized the "danger" in that "practically everything could be inferred by employing a *gezerah shavah*" and therefore decided to require "a tradition for its use, thus altogether banning its further use," i.e., as a source for legislation in and of itself (p. 470). Similarly, the rabbis did not "object to *heqqesh* and *kal va-chomer* per se; only to their applicability" to the matter in hand: in other words, the means did not justify the ends; what was logical was not necessarily true or salutary or just and equitable.
- <sup>8</sup> Guttman (ibid., p. 470) asserts that "throughout the Talmudic period, most instances of interpretation employed no hermeneutic rules... Various factors [e.g., political, economic, social needs] determined the extent to which methods other than interpretation were used."
- <sup>9</sup> Morris Adler, *World of the Talmud* (Washington, 1959), p. 83.
- <sup>10</sup> Tanh. B. 15b; Gen. R. 44:1; Lev. R. 13:3.
- <sup>11</sup> E.g., "The Sabbath is made for man, not man for the Sabbath." Mek. Ki Tissa', Shab. 81; Yoma 85b; Mark 2:27.
- <sup>12</sup> Morris Adler (*World*, p. 66) stresses that "proper procedure is in a society of law the best safeguard of the rights of man." Of a certainty the Talmud is comprised mostly of juristic and forensic contents; but what else would one expect to find in the proceedings of a legal academy as recorded in its archives?
- <sup>13</sup> Hag. 10a.
- <sup>14</sup> When the rabbis were in doubt concerning a practice or law, common usage often availed as a guide (Ber. 45a; Pes. 66a). There was even one view that custom nullifies a *halacha* (Yer. B.M. 7a; Yeb. 13b; Nid. 66a; Ta'an. 26b).
- <sup>15</sup> Git. 34b, 36a, b.
- <sup>16</sup> Git. 36b.
- <sup>17</sup> S. Zucrow, *Adjustment of Law to Life in Rabbinic Literature* (Boston, 1928), p. 4.
- <sup>18</sup> Bab. K. 113a.
- <sup>19</sup> Sanh. 37a.
- <sup>20</sup> Yoma 82a.
- <sup>21</sup> Sanh. 41a to the contrary, notwithstanding.
- <sup>22</sup> Sanh. 40b, 72b.
- <sup>23</sup> Mak. 1:10.
- <sup>24</sup> A.Z. 36a; Bab. B. 60b.
- <sup>25</sup> Pirke Avot 3:15.
- <sup>26</sup> Cf. Louis Finkelstein, *The Pharisees* (Phila., 1938), p. 78 ff. for details on the actual instances of rabbinic excommunication and other disciplinary measures taken.
- <sup>27</sup> Cf. Eric Hoffer, *The True Believer* (New York, 1951), p. 46: "The communal compactness of the Jews, both in Palestine and in the Diaspora, was probably one of the reasons that Christianity made so little headway among them."
- <sup>28</sup> Cf. *ibid.*, p. 126:  
Christianity made little headway against Judaism because the Jewish religion had the ardent allegiance of the Jewish men of words. The rabbis and their disciples enjoyed an exalted status in Jewish life of that day, where the school and the book supplanted the temple and the fatherland. In any social order where the reign of the men of words is so supreme, no opposition can develop within and no foreign mass movement can gain a foothold.

- <sup>29</sup> Pirke Avot 2:6.
- <sup>30</sup> Kid. 40b; "one learns (in order) to do," Sifra 110c.
- <sup>31</sup> Lev. R. 37:7.
- <sup>32</sup> Pirke Avot 1:17: "not study is the chief thing but action."
- <sup>33</sup> Pes. 114b; Ber. 13a.
- <sup>34</sup> Pes. 50b.
- <sup>35</sup> Pirke Avot 3:12.
- <sup>36</sup> *Ibid.*, 4:2.
- <sup>37</sup> *Ibid.*, 1:15.
- <sup>38</sup> Gen. R. 9:7.
- <sup>39</sup> Extrapolating into modern terms what seems to me to be an underlying pre-supposition of rabbinic thinking and sensibilities, it was society which was thought by the rabbis to render man—the raw product of crude biological drives—fully human, i.e., it was society which instilled in man his sensitivities and sympathy for others. The rabbis would have regarded the Freudian analysis of man (particularly as sketched in *Civilization and Its Discontents*) not as the universal human condition but rather as *pereh adam* (*homo ferus*, *Un-Mensch*), a creature totally animalistic and inhuman because it is pre-human and sub-human—that is, as yet unexposed to the civilizing influences of society. The rabbis would have known of no civilization with its discontents, only that the undisciplined individual acting solely on impulse and the pleasure principle was no better than an animal, and that it was the fellowship of society which "civilized" man, made him truly human—i.e., *humane*.
- <sup>40</sup> Pirke Avot 1:12-14, 2:6-8, in which Hillel's concerns range from humility, the proper degree of egotism and human nature, to retribution, peace, and the attitude of the individual toward the community.
- <sup>41</sup> Gen. R. 1:1.
- <sup>42</sup> Cf. Der. Er. Z. 5:2,3,4; 6:1; 7:2,3. Thus the rabbinic ideal, summed up by Solomon Schechter in the phrase *scholar-saint*.
- <sup>43</sup> Hag. 14b-15b and parallels: "There were four who entered *pardes* [esoteric study of some sort]: Ben Azzai, Ben Zoma, Elisha ben Abuya and Rabbi Akiva. Ben Azzai died prematurely; Ben Zoma became insane; Elisha ben Abuya trampled upon the plants; only Akiva entered in peace and went out in peace." Thus, Ben Azzai's early death, Ben Zoma's later insanity and Elisha ben Abuya's apostasy were all attributed to *pardes*. By relating this incident of the four who embarked upon metaphysical speculation and mystical lore, only one of whom suffered no ill consequences because of it, the Talmud warned of the dangers inherent in prying into what has not been given man to know. Cf. Ben Sira's counsel (*Sirach* 3:21): "Seek not what is too difficult for you, nor investigate what is beyond your power," which is often quoted in rabbinic literature (Gen. R. 8:2 and parallels) with approval. *Hochmah*, true wisdom, was ethically-oriented, not philosophically-oriented.
- <sup>44</sup> The sources for the notion of a future life are manifold and unclear. Whether it is of Persian provenance or a "purely" indigenous development remains an open question.
- <sup>45</sup> Pirke Avot 3:20.
- <sup>46</sup> Gen. R. to Gen. 21:17 and parallels.
- <sup>47</sup> Kid. 40b.
- <sup>48</sup> Sifre 84a commenting on Deut. 11:13.
- <sup>49</sup> Pirke Avot 3:19; cf. Ber. 33b and the saying of Rabbi Hanina: "Everything is within the power of heaven except the fear of heaven"—free will is resolutely upheld.

- <sup>50</sup> H. G. Enelow, "The Significance of the *Agada*," CCAR Yearbook, 1914, pp. 272-3.
- <sup>51</sup> For an indication that the rabbis had a sense of the historical development of the *halacha*, cf. the *aggadah* in Men. 29b where Moses is depicted as listening to Rabbi Akiva lecturing to students, but not understanding anything of what is being said. (A similar situation would doubtless arise were John Marshall or James Madison to sit in today on a session of the United States Supreme Court and hear the Court hand down its verdicts based on present constitutional interpretation.)
- <sup>12</sup> In rabbinic literature the figure of the Messiah came to stand for the ultimate fulfillment of the purpose of creation.
- <sup>53</sup> Gen. R. 1:1.
- <sup>54</sup> Solomon Schechter, *Some Aspects of Rabbinic Theology* (New York, 1909), pp. 36-7.
- <sup>55</sup> Sanh. 46a; Ber. 7a; Gen. R. 68; Lev. R. 29; God even learns from His own Torah (A.Z. 3b).
- <sup>56</sup> Under these conditions, it was impossible for even the simplest and most lowly Jew to feel "alienated" or condemned to a "petty and meaningless existence"—how could he, since, in his own meager way, by observing the commandments to the best of his ability, he was helping to further the purposes of his Father in heaven in consummating His kingdom on earth?
- <sup>57</sup> Esther R. 23:1.
- <sup>58</sup> Yer. Suc. 4:3.
- <sup>59</sup> Lam. R. 1:33.
- <sup>60</sup> In his essay, "On the Study of the Talmud" in *Studies in Judaism* (third series, Phila., 1924), Solomon Schechter comments (p. 154) that
- What might be called the "operative part" of the Talmud—the legal discussions and ordinances which compose the Halakah—was always approached by the rabbis with *deliberation and care*.
- But all the vague imaginings on metaphysical and theological questions which incidentally occur in the course of discussion are little more than the outcome of the individual fancy and natural bent of the several teachers... They were the mere *obiter dicta* of individual rabbis, *momentary inspirations*, *products of imagination* rather than of *reason*.
- <sup>61</sup> On suffering, cf. the Mechilta on Ex. 20:3 and 20:23; Midr. Ps. on 73:1. For a highly interpretive—albeit greatly overstated—philosophical elaboration of the rabbinic notion of *yesurin shel ahavah* (visitations of divine love), see Henry Slominsky, "The Philosophy Implicit in the Midrash," HUCA, 1956, p. 235 ff.
- <sup>62</sup> Such is the outlook of Samuel Atlas in his articles on Jewish law.
- <sup>63</sup> Only those aspects of Durkheim's thought which are pertinent to rabbinic Judaism will be considered here, and in no way is it my intention to commit rabbinic Judaism to a complete Durkheimian view.
- <sup>64</sup> Emile Durkheim, *Moral Education* (Eng. Tr. by E.K. Wilson and H. Schnurer: Glencoe, Ill., 1956), editor's introduction, p. xiii.
- <sup>65</sup> *Ibid.*
- <sup>66</sup> Gen. R. 44:1.
- <sup>67</sup> Durkheim, p. xi.
- <sup>68</sup> *Ibid.*
- <sup>69</sup> *Ibid.*, p. xxi.
- <sup>70</sup> Emile Durkheim, *L'Education Morale* (Paris, 1934), pp. 27-9.

<sup>71</sup> Particular attention must be paid to the latter part of this sentence, for it is with reference to the realization of the need and purpose of rules that the transition is made from a mere description of how character is built to a consideration of the nature of moral decision.

<sup>72</sup> Durkheim, *L'Education*, p. 110.

<sup>73</sup> Midr. R. to *Be-chukotai*, Lev. 23:3.

<sup>74</sup> A further comment is, perhaps, in order here. Law and self are by no means antithetical or at cross purposes; on the contrary, the heteronomy of acknowledged responsibility is the "self-transcendence" that is overtly manifested in the dignity and freedom of autonomy. The corollary of freedom (Exodus) is obligatory (Sinaitic covenant) moral responsibility (Decalogue). Human beings become responsible only within a context of obligations and duty, and responsibility is meaningful only in a circumstance of freedom.

<sup>75</sup> Yer. Hag. 1:7.