

HUMANISTIC ASPECTS OF JEWISH LAW

by *EPHRAIM E. URBACH*

Given the usual definition of the term “humanism,” the one appearing in most encyclopedias and commonly used by philosophers, sociologists, psychologists and legal scholars,¹ the reader may take a somewhat dubious view of the subject I have chosen to treat. Should he read the entry on “Religious Humanism” in the *Hebrew Encyclopedia*,² composed by Yeshayahu Leibowitz under the influence of the dialectical theology of the school of Karl Barth, his apprehensions will be even greater. That essay concludes in no uncertain terms that the two words of its title are mutually contradictory. Humanism views man as the “ultimate standard” by which all things in the world are to be evaluated, whereas the Jewish faith does not accept this anthropocentric conception, adopting in its stead the attitude expressed by the biblical verse, “I have set the Lord always before me.” Nevertheless, I would like to add some qualifications of my own to Leibowitz remarks.

To be sure, there are humanists who would say that “God is dead,” or that “we have no way of knowing that he exists, or even of knowing that this is a meaningful question.”³ Others, however, content themselves with proving that it

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1. Paul W. Kurtz, ed., *Moral Problems in Contemporary Society* (Buffalo, N.Y., 1969).
2. *ha-Enzyclopedia ha-Ivrit*, 32 v. (Jerusalem, Tel-Aviv, 1949–81), XIII: 797–799.
3. Paul Kurtz, “What is Humanism”, *op. cit.*, p. 4.

is possible to lead an ethical way of life in the absence of religious faith.⁴ As for the validity of the religious realm itself, they would accept the analogy provided by William James in his famous parable of the cat in the library. The cat knows all the cozy, warm places in the library; he knows every way to get in and out and all of its nooks and crannies. He may “think” that he knows all there is to know about the library, but in fact he has no concept of what people do there — taking out books, studying them and making notes. All this is beyond his grasp. The deluded scientist is like this cat. “Here is the universe,” he says to himself. “All of its phenomena are determined and defined by the laws of nature. There are no longer any mysteries or secrets; a few questions here and there may still remain unanswered, but ultimately we know what lies behind it all, because we know the fundamental laws of physics.” But not all humanistic scientists share this kind of attitude; there are those who view science as never-ending search, and who believe that the universe has a great many aspects of which we are still unaware, or at least have not yet been formulated scientifically.⁵ These thinkers are conscious of the fact that ethical principles are imperative, and that it is misleading to phrase them in a descriptive or declarative form. “As long as you merely state the facts about human nature, individually, psychologically, anthropologically, or socio-psychologically,” they say, “you will not get an imperative out of it that would be the expression of a commitment of how we ought to think or act.” They would like to achieve “the kind of clarity and intellectual responsibility in morality that we have achieved and continue to achieve in the sciences.” As for religion, the author of the preceding lines — formerly a member of the Viennese circle and later a professor of philosophy in Minnesota — has this to say:

Much as I appreciate the deep moral concern of truly religious persons, I think that institutional religions have often encouraged wars and cruelty of one kind or another. The flame and sword of Islam is one example, the Crusades another. Preachers who bless the arms of their country have their counterparts in the preachers who bless the arms of the other country. All are examples of hypocrisy and injustice. If I had any evidence that traditional religion, implemented by a conceptual theological framework, was effective along the lines that every humanist would like to have effected, I would cease and desist in my criticism spoken from a logical point of view.⁶

I could argue with the substance of what this writer has to say and indicate some weak points in his reasoning, but that is not my concern here. I only wish to illustrate that there are humanists who did not base themselves on Protagoras’ belief that “man is the ultimate standard by which all things are to be evaluated.” They take exception to the anthropocentric orientation from a scientific point of view as well, arguing that man is a unique and limited phenomenon in the history

4. Kai Nielsen, “Ethics Without Religion,” *ibid.*, p. 31.

5. Herbert Feigl, “Ethics, Religion and Scientific Humanism,” *op. cit.*, p. 52 ff.

6. *ibid.*, p. 63.

of the cosmos, which existed long before he arrived on the scene and will remain long after he has gone. They would rather speak of “humanistic ethics” than of humanistic philosophy, and therefore emphasize, not the centrality of man, but rather his value and dignity, or, as we would call it, “the dignity of all men” — *kevod ha-beri’ot*.

I

It is with this kind of humanistic attitude in mind that we shall approach our subject. Let me emphasize immediately that we wish to discuss humanistic aspects of the halakhah, and not ideas and beliefs appearing in the aggadah. Surprising as it may seem, these aspects — while not precluding the existence of other attitudes — are actually clearer in the realm of halakhah. We said above that it is only if we define humanism as absolutely anthropocentric that we must reject any possibility of its reconciliation with religion; similarly, only if we define Judaism as absolutely theocentric must we deny any possibility of its reconciliation with humanism. Such a definition, however, is inconsistent with the halakhah. True, the halakhah is founded entirely upon the revealed nature of the Torah and its commands, and the scene of that supernatural revelation may not be transferred to the heart of man and framed in secular categories, such as “the spirit of the people.” But what goes on in man’s heart is nevertheless of primary importance to the halakhah, for the thinking and ideas of the man who studies it, analyzes it and makes legal rulings on its basis are central to its realization.

The verse, “I have set the Lord always before me” (Ps. 16:8), in its original sense and even more clearly in the interpretations of Bahya ibn Paquda (in *The Duties of the Heart*, beginning of the chapter on the Unity of God) and Maimonides (in *The Guide to the Perplexed*, III:51), certainly expresses man’s continual devotion of his thoughts to God, but this is not understood as a halakhic obligation. It represents the very highest degree of piety, which man can only reach through observing the commandments.

In the halakhah itself, the verse is used as supporting evidence in two cases which are thought to realize its content. The duty of the king to “write him a copy of this law in a book...., and it shall be with him, and he shall read therein all the days of his life....” (Deut. 17:18–19) is interpreted by the Tosefta as follows: “‘He shall write him a copy of this book’.... when he goes out to war, it will go with him; when he comes in, it will come with him; when he goes to the court, he will take it with him; when he goes to the bathhouse, it will await him by the door, as David said, ‘I have set the Lord always before me.’” (Tosefta Sanhedrin 4:7, p. 421) In a *baraita* quoted in the Babylonian Talmud (Sanhedrin 21b), the expression “a copy of this law” (*mishneh ha-torah ha-zot*) is interpreted as meaning that the king must keep two books of the law, “the one to go out and come in with him, and the other to be stored with his documents. The one that is to go out and come in with him he makes into a kind of charm to be hung upon his forearm, following

the verse, 'I have set the Lord always before me.'" Rashi in his commentaries on the verse in Psalms and on this *baraita*, adds: "King David said this in reference to the book of the law which was upon his arm."

The Jerusalem Talmud (Berakhot 2:1; 4c) uses the verse in a similar fashion: "Meshah, the grandson of Rabbi Yehoshua ben Levi, said: 'He who would do the proper thing will make a pocket for them [i.e., his *tefillin*], one *tefaḥ* in size, and place them upon his heart. What is the reason for this? [To fulfill the verse,] 'I have set the Lord always before me.'" The verse is used here to justify a legal ruling applicable to a specific situation encountered by people who wear their *tefillin* at all times.

Rabbi Shimon Hasida learned from this same verse that "One who prays must view himself as though the Presence of God were before him" (BT Sanhedrin it is likewise related in the name of Rav that "any blessing which does not mention the name of God is no blessing, as it says in the verse, 'I have set the Lord always before me'" (*Midrash Tehillim* 16:8, ed., S. Buber, p. 122). In all of these cases, then, the verse is understood not as a general injunction, but rather as referring to certain specific matters.

The Mishna teaches that "Workmen may recite [the *Shema*' at the top of a tree or at the top of a layer of wall, though they may not do so with Prayer [i.e., the Eighteen Benedictions or *Amidah*]" (Berakhot 2:7). The obligation to concentrate fully upon the recitation of *Shema*' only applies to the first verse, so that the rabbis were therefore not concerned that the workmen's fear of falling would interfere with his attentiveness during the remainder of the recitation. In the case of the *Amidah*, however, total attentiveness is demanded throughout, so that the artisan must descend. One might well say that from a theocentric point of view it should have been the *Shema*' that required one's full concentration, as it is in this context that we recite the verses: "And thou shalt love the Lord thy God with all thine heart, and with all thy soul, and with all thy might. And these words which I command you this day shall be upon thine heart...." In the *Amidah*, on the other hand, most of the petitions are concerned with things beneficial to man. However, with all due respect, let us leave aside the terms "anthropocentric" and "theocentric," as neither one in itself expresses all the various aspects of the above halakhah.

II

Let us now turn our attention to how Judaism's recognition of the worth of man is reflected in the halakhah, that is, to the subject of "the dignity of men" (*Kevod*

7. In a parallel passage in BT Berakhot 23a, the person is instructed to "hold them in his right hand, against his heart," but the verse is not cited.

ha-ber'ot). What is the meaning of this expression? The Mishna contains the following statement: "Who has dignity? He who pays honor to all men" (Avot 4:1). If we look closely at what the author of this statement, Ben Zoma, has to say, we will see that all of the definitions he gives in this mishnah seem to contradict commonly accepted notions. A wise man is not someone who is qualified and acknowledged as a teacher, but "he who learns from all men"; a man of valor is not someone who is strong and mighty, whose strength and power are obvious to all, but rather "he who overcomes his evil impulse"; a rich man is not someone who has amassed great wealth and property, but "he who is content with what he has"; and he who has dignity is not someone who has achieved an honorable status, someone to whom others pay honor, but rather one who honors others, "who pays honor to all men." If we read the mishnah from back to front, we will find that it is he who learns from all men who is truly wise and he who overcomes his evil impulse who is truly valorous; that only he who is content with his lot is truly rich, and that a person may be considered honorable only if he pays honor to all men. The evidence for this last statement is drawn from the biblical verse, "them that honor Me I will honor, and they that despise Me shall be lightly esteemed" (I Sam. 2:30). The Holy One, Blessed be He, honors those who honor Him, even though He has no need of their honor; how much more, then, ought men — however wise, valorous or rich they may be — to pay honor to their fellow men, even if their fellows do not share these same distinctions.

Just what do we mean by "the dignity of all men"? Is it to be understood in the same way with respect to all men, or are there various degrees and levels of dignity? Does the word "dignity" itself always mean the same thing? Let us turn, again, to the halakhic texts for some answers to these questions. The Mishna lays down certain rules regarding those needs which a husband is obliged to provide for his wife, and concludes with the following statement: "To what do these [rules] refer? To the poor man. For an honorable (*mekhubad*) person, however, they are determined in accordance with his status (*kevodo*)" (Kétubot 2:9). This "honorable person" must thus be a man of property, who has the means to give his wife more than the set minimum. No one, to be sure, would disagree with this. In another Mishna, however, we learn that:

One who has hit his fellow with his fist must give him a *sela'*. Rabbi Judah, in the name of Rabbi Yossi HaGalili, said: a *maneh*. If he slapped him, he must give him two hundred *zuz*.... One who has uncovered a woman's head in the marketplace must give four hundred *zuz*. The general rule is that all [these sums] are determined in accordance with the person's status. Rabbi Akiva said: Even poor people are regarded as though they were men of distinction who had become impoverished, for they are descendants of Abraham, Isaac and Jacob. Once there was a case of a man who had uncovered a woman's head in the marketplace. The case was brought before Rabbi Akiva, and he decided that the man must pay her four hundred *zuz*. "Rabbi," the man said to him, "give me some time," and he gave him some time. The man went to the entrance to her courtyard, waited until she came out and smashed a jug containing about an *issar's* worth of oil in front of her. She uncovered her head and used her hand to sop up some of the oil and put it on her hair. He brought

witnesses to see what she was doing and came before Rabbi Akiva. “Rabbi,” he said, “to such a person I must give four hundred zuz?” He said to him: “You have said nothing. One who injures himself, even though he is not permitted to do so, is not fined; but if others injure him, they must compensate him.” (Bava Kama 8:6).

The Talmud to this mishnah concludes, further on, that the first *tanna*’s statement that “the general rule is that all [these sums] are determined in accordance with the person’s status,” is to be interpreted leniently. According to Maimonides’ *Commentary on the Mishnah*, this means that “All of the aforementioned standards represent the amounts that must be paid to a very distinguished person; if [the injured party] is less worthy, however, the amount is lowered, and [the offender] need compensate him only in accordance with his actual status.” Rabbi Akiva differed with this view, and said that “all Jews are equal with respect to these laws.” Maimonides’ specifically states there that “the law is not according to Rabbi Akiva, who held that all are to be considered equal.” In the *Mishneh Torah*, however, he elaborated further upon this view: “It is to the distinguished person that these rules refer; but a base person, who has no concern for this sort of thing, receives no more than he deserves, or what the judges believe he deserves to receive. For there are coarse men who have no care for their own dignity and continually debase themselves in every sort of way, whether it be for the sake of diversion and levity or to win a penny from one of the buffoons with whom they share their revelry” (*Hilkhot Hovel u-Mazik*, 3:11). This lengthy description is by no means superfluous. What Rabbi Akiva had said was: “even poor people are regarded as though they were men of distinction who had become impoverished.” But did the first *tanna* mean to say that the poor cannot maintain their dignity as carefully as the rich? Following Maimonides’ interpretation, we say that the first *tanna* thought that they could indeed, and that by saying “all [these sums] are determined in accordance with the person’s status,” it was the “base person,” the “coarse men” who are willing to debase themselves “to win a penny” whom he intended to exclude from compensation at the higher rates. These individuals, who are “poor” in self-respect, are not necessarily to be identified with those who are poor in a material sense.

Even a base person, moreover, will receive his due. In the case that came before Rabbi Akiva, the woman in question — and we have no idea whether or not she was poor — debased herself for the sake of a little oil. Rabbi Akiva ruled that the case was analogous to that of a person who has injured himself. He has committed a forbidden act, but while he pays no fine for it, this does not mean that others are free to do to him what he has done to himself. If he is injured by another, he must be compensated in the same way as anyone else who has been injured by his fellow. Similarly, though a person who debases himself is acting in a prohibited manner, one who mocks him is judged in the same way as anyone else who has committed the same offense. Even though the dignity of a disreputable person is protected, however, he is suspected of having an inclination

to discredit others, and those who have no care for their own dignity are in act disqualified by the halakhah from serving as witnesses (Maimonides, *Hilkhot Eduṭ*, 11:5, based on BT Kiddushin 40b).

Scathing criticism was reserved for “one who takes honor from the disgrace of his fellow.” Such a person had no part in the world to come (JT Hagiga 2:1, 77c; and Maimonides, *Hilkhot Teshuvah*, 3:14). The rabbis were particularly severe with regard to such conduct because they saw it happening often even among sages. For this reason they inserted the words, “Let me not stumble in matters of law, so that my fellows rejoice over me,” into the prayer to be recited upon entering the *Beit Midrash*, to which Rashi added: “If my fellows rejoice over my failures, two evil things shall have come about on my account.”⁸ Maimonides lists this among the five kinds of behavior which a person, once he has done them, is likely to repeat again in the future. “A person who takes honor from the disgrace of his fellow says to himself that he is not really doing anything wrong, for the other is not present and so has not been embarrassed. He has not humiliated him; he has merely juxtaposed his own wisdom or good deeds to those of the other, so that he will appear honorable and the other unworthy” (*MT, Hilkhot Teshuvah*, 4:4). Such a person is not really deserving of the honor he seeks, and that is why he attempts to achieve it by showing off his own worth at his fellow’s expense.

III

As we said above, the term “the dignity of all men” does not refer to external marks of honor such as power and greatness, which man is enjoined to flee, or at least not to pursue.⁹ Rabbi Eleazar HaKappar said: “Jealousy, lust and honor remove man from the world” (*Avot* 4:2). “Honor” of this kind, then, is certainly not included within the kind of honor one is expected to pay all men.

“One must pay his fellow the honor he deserves,” or, as Rabbi Eliezer said, “Let the honor of your fellow be as dear to you as your own” (*Avot* 2:10). “How is this to be done?” asks the *Avot de-Rabbi Nathan* (ed., S. Schechter, Ch. 14, p. 60). “This teaches us that just as one sees his honor, so ought he to see the honor of his fellow; and just as one wishes not to see his own honor disgraced, so ought he to wish not to disgrace the honor of his fellow.” The following statement by Maimonides is guided by the same idea: “One must love the person of each and every other Jew, as Scripture enjoins us: ‘Thou shalt love thy fellow as thyself.’ One must therefore praise his fellow and care for his property, just as he cares for his own property and desires honor for himself” (*MT, Hilkhot De’ot* 6:3). We said above, however, that one must *not* seek honor for himself. How is it, then,

8. Cf. Rashi’s comment to BT Bava Kama 98b, vid. “*lo teima.*”

9. BT *Eruvin* 13b: “If one seeks greatness, greatness will elude him.” Tanhuma Leviticus 3: “If one pursues power, power will elude him.”

that he is to seek the honor of his fellow? The answer to this question lies in the immediately preceding injunction, that is, that one must care for the property of his fellow just as he cares for his own. When one is asked to give charity or do a good deed, one may not be concerned about his own property. Nevertheless, the inclination to do so is deeply ingrained in one, so that the performance of a good deed demands, in a sense, the subjugation of one's own nature. The same is true of honor. Man has a natural inclination to seek honor, which he is obliged to subdue. With regard to others, however, he has a duty to praise and honor them as he might wish for himself.

Maimonides derived this from the scriptural verse, "thou shalt love thy fellow as thyself" (Lev. 19:18). This derivation, however, was not undisputed. According to *Genesis Rabbah* 27:30, "'Thou shalt love thy fellow as thyself' is one of the greatest principles in the Torah. But Ben Azzai says: 'This is the book of the generations of Adam' (Gen. 5:1) is an even greater one, for it is on the basis of this that one may not say: 'since I have been disgraced, let me disgrace my fellow as well.'" According to this passage, we do not derive the rule that one may not shame a person who conducts himself disgracefully from the verse, "thou shalt love thy fellow as thyself," but from the latter verse quoted by Ben Azzai. As Rabbi Tanhuma says, "Know that if you have done this, it is the image of God who made him that you have disgraced." But Maimonides, whose knowledge of human nature taught him that man naturally seeks honor for himself, found it preferable to formulate the commandment to honor one's fellow Jew positively, and his version is closer to the truth. Rabbi Akiva, who took the view that "'thou shalt love thy fellow as thyself' is one of the greatest principles in the Torah," had no quarrel with Ben Azzai's statement that "one may not say: 'since I have been disgraced, let me disgrace my fellow as well.'" We have already seen that in his view one may not shame even a person who has debased himself; how much more so that "one may not say: 'since I have been disgraced, let me disgrace my fellow as well.'" Moreover, the issue of honoring one's fellow gains a humanistic dimension when it is derived from the verse "thou shalt love thy fellow as thyself" rather than from that quoted by Ben Azzai.

The statement that "respect for the dignity of all men is a great principle indeed, for it overrides negative commandments in the Torah" is repeated several times in the Babylonian Talmud. Thus, for example, "an elderly man, beneath whose dignity it would be," is excused from the obligations to return lost objects and to assist people in need of help with loading or unloading (*Bava Metzia* 30a). The same principle applies not only in civil matters, but also in the realm of ritual prohibitions; and is true not only of rabbinic prohibitions, but even of ritual matters stated in the Torah itself, so long as refraining from a required action, rather than the active commission of some prohibited deed, is involved. But where the requirement to bury a dead person who has no one else to attend to him

(which is considered a matter of the highest respect) is concerned, even the active commission of a prohibited deed may be allowed. Thus, “If he is on his way to slaughter his Passover sacrifice or circumcise his son [deeds which must be performed in a state of ritual purity — ed.] ...let him defile himself for the sake of a dead person who has no one else to attend to him, and let us not say, ‘There is no wisdom nor understanding nor counsel against the Lord’ (Prov. 21:30).” In this case, the express demands of Scripture have been abrogated in order to maintain the dignity of the dead (Berakhot 19b, and Rashi, s.v., *shev ve-al ta’aseh*). According to the Jerusalem Talmud, respect for the dignity of all men overrides negative commandments in the Torah even where this requires an active deed.

The obligation to show respect for the dignity of all men was especially incumbent upon the people’s leaders and judges. After enumerating the powers of the courts and the modes of punishment entrusted to them, Maimonides adds the following:

[The judge] must act in all matters for the sake of Heaven, and he must show respect for the dignity of others; this latter is no small matter, for it overrides rabbinic prohibitions. All the more so must he show respect for the descendants of Abraham, Isaac and Jacob, who are in possession of the true Torah. Let him take care not to ruin their dignity; he must act only to increase the honor of God. For one who brings disgrace upon the Torah is himself debased in the eyes of others, while one who honors the Torah is himself distinguished in the eyes of others. (*Hilkhot Sanhedrin* 24:9)

This last sentence draws upon a statement by Rabbi Yossi in the Mishna (Avot 4:6). In his *Commentary on the Mishnah*, Maimonides had interpreted the obligation to “honor the Torah” as signifying that one must “honor its commandments by displaying an effort to do them well, and honor the sages who bear it and the books that have been composed upon it.” In the above passage, however, he adds that the honor of the Torah depends upon the degree to which the sages themselves respect the dignity of others. Moreover, we may infer from the wording of the sentence, “All the more so must he show respect for the descendants of Abraham, Isaac and Jacob, who are in possession of the true Torah,” that the injunction in the previous sentence demands respect for the dignity of non-Jews as well. The following passage from the Midrash is evidence for the existence of such a rule: “Why did the Torah demand that places [that had been used for idol worship] be cut down? Because they call to mind the debasement of man. If God showed such concern for the wicked, then, all the more so is He concerned for the honor of the righteous” (*Sifra, Kedoshim* 10:6).

IV

The value of man is absolute, and applies even to a person who debases himself by his own behavior. This norm is decisive in a certain matter of law that has attracted the concern of humanistic legal scholars as well, namely, that of a

person's right to injure himself, or to invite injury to himself by another. The Mishna states that "If a person says [to another], 'blind my eye, [or] 'cut off my hand,' [or] 'break my leg,' [the other] is liable [for doing so]; [if he adds,] 'on condition that you be excused,' [the other] is [nevertheless] liable; [if the person says,] 'tear my garment,' or 'break my jug,' [the other is] liable; [if he adds,] 'on condition that you be excused,' he is excused" (Bava Kama 8:7). In both the Babylonian and the Palestinian Talmuds, the sages seek an explanation for the difference between the first and the second case. One suggestion is that the man, by having his limb cut off, tarnishes his family's reputation, or as the text of the Talmud puts it, "his relatives are shamed."¹⁰ It would seem, then, that a man has an obligation to uphold the honor of his family, which imposes a restriction upon his liberty and his power to do with his own body as he likes. In Rava's opinion, on the other hand, the reason is that "a man would not willingly forego compensation for the loss of a limb."

The same range of approaches comes to expression within the context of the philosophical-legal controversy initiated by John Stuart Mill¹¹ concerning the right of society to impose ethical restrictions upon the individual, and the conditions and scope of that right. In a case of physical injury to another person, the criminal law does not permit the offender to defend himself with the argument that he committed the act with his victim's consent. In such a case, however, all that has really happened is that a person has made an agreement of his own free will that someone else should beat or kill him. Why, then, should the latter be punished merely for carrying out his part of the agreement? (This question is of contemporary relevance in relation to the issue of euthanasia.) Some say that it is because society recognizes the existence of certain ethical principles and demands their preservation. Offense against them thus harms not only the individual involved, but society as a whole.¹² We might, perhaps, relate this to Mill's definition of the sense of dignity as "an unwillingness to sink to a base level of existence"; that is, society as a whole accepts a code of ethics which it upholds by means of the law.

Some opponents of this view, loyal to Mill's principle that punishment ought to be imposed only for causing harm to others, nevertheless justify the punishment of an offender who acted with his victim's consent by invoking the concept of legal paternalism, according to which the law may be used to protect a person against himself.¹³ Others, however, find such an approach unacceptable; the adoption of

10. JT Bava Kama 8:6c, and see *Netivot Yerushalayim* there; BT Bava Kama 93a.

11. J.S. Mill, *Utilitarianism, Liberty and Representative Government* (New York, 1950), p. 73.

12. Patrick Devlin, *The Enforcement of Morals* (London, 1965), pp. 6-7.

13. H.L.A. Hart, *Law, Liberty and Morality* (London, 1963), p. 31.

paternalism as a legislative principle, they argue, removes the possibility of fixing a dividing line between those forms of behavior that are the sole concern of the individual and those which are the legitimate concern of society.¹⁴

The issue thus concerns the extent of the individual's liberty and that of his authority over his own body, matters central to humanistic thought. As we have seen, it is debated in a very similar way in the realm of halakhah. The matter of "tarnishing the reputation of one's family" parallels the issue of the admissibility of a legal code of ethics; while Rava's opinion and Maimonides' formulation of the explanation for this same rule in *Hilkhot Hovel u-Mazik* 5:11 — "For it is well-known that no one would desire such a thing" — resemble the approach of legal paternalism. In order to define this similarity, however, we must first gain a clearer understanding of the halakhic attitude towards the value of human life.

According to the Halakhah, the fact that a person has killed by mutual consent does not excuse him of guilt. From the verse "surely your blood of your lives will I require," it is deduced that even a suicide is guilty of a wrongful act; he can of course no longer be punished by any earthly court, but "his sentence is left to Heaven."¹⁵ A person does not own his own body, and has no right to let it be killed. The injunction to preserve life overrides all the commandments in the Torah, while bloodshed is one of the three sins (the others are idolatry and forbidden sexual relations) so terrible that the rabbis say of them, "if one is told, 'do this or you will be killed'.... he should let himself to be killed [rather than commit them]" (BT Sanhedrin 74a). Clearly, then, the fact that the killer has acted with the consent of his victim cannot free him from responsibility for his deed. A related issue debated in the Talmud is that of whether a person who appoints an agent to kill someone is guilty of murder. There is no evidence to suggest that even the elder Shammai, who said in the name of the prophet Haggai that the person who had appointed the agent does bear responsibility for the crime, would release the agent who actually committed it from punishment (Kiddushin 43a).

The humanistic dimension of that realm of the halakhah which deals with physical injury is reflected in yet another relevant ruling. According to Jewish law, a person who has afflicted serious bodily harm upon another must compensate him for permanent damage, pain, medical expenses, inability to work for a specified period and humiliation. The Mishna adds, however, that "even if he has given him all this, he is not forgiven [for his sin] until he has asked [the forgiveness] of the other.... but if the other does not forgive him, he is cruel"

14. Ernest Nagel, "The Enforcement of Morals, Moral Problems," *op. cit.* (note 1), p. 155 ff.

15. Bava Kama 91b; Maimonides, *Hilkhot Rozeah* 10:3; and see Bereshit Rabbah, Ch. 34, Theodor-Albeck edition, p. 324, note 8.

(Bava Kama 8:6). The use of the word “forgiven” might appear to introduce a religious element into the affair, for it is God who forgives sins. In fact, however, it is the person he has injured, rather than God, of whom the offender must first ask forgiveness; and if his request is sincere, the other is obliged to fulfill it. This explanation fits in with another statement in the Mishna: “Yom Kippur will not atone for a sin committed by a man against his fellow unless the offender has first regained the favor of the other person [against whom he sinned]” (Yoma 8:9). Only by the direct, mutual action of both of the people involved can a balance be restored on both the human and the religious levels.

V

The Sages did not all share humanistic attitudes to the same extent, as can be demonstrated from a rather “anti-humanistic” realm of the halakhah — that having to do with the status of slaves. As I have observed elsewhere,¹⁶ the Jewish sources, like classical Greek literature, early Christian texts, and other ancient works show no inkling of the idea of abandoning the institution of slavery. However, the slave was regarded as being absolutely equal to the free man in at least one respect — that of the legal protection of his life. The attitudes that “all men are created in the image of God” and “whosoever sheds the blood of another does so at the risk of his own life” were deeply ingrained, and their influence here is evident. Moreover, the sages had different views regarding the status of slaves, some of which reflected humanistic attitudes. An example of this is to be found in the following *Baraita*:

Rabbi Eliezer’s maidservant died, and his pupils came to console him. When he saw them, he went up the stairs, and they followed him up. He entered the doorway, and they followed him; he entered the main room of his house, and they followed him. He said to them: I thought you would be scalded with tepid water [i.e., that you would understand a slight hint, having seen me turn away from you to go into the door — Rashi], but you are not scalded even by hot water! Have I not taught you thus: When a slave or a maidservant dies, [the custom of] standing in line [to comfort the mourners] is not performed; and neither the mourners’ blessing nor consolations are said on their account. What is said on their account? Just as one says to a man whose ox or ass has died, “May God compensate you for your loss,” so does one say to him on account of his slave or his maidservant, “May God compensate you for your loss.” (Berakhot 16b)

We learn in another *Baraita*, “‘Slaves and maidservants may not be eulogized.’ Rabbi Yossi said, ‘If he was a worthy slave, one says of him: “Woe for a good and faithful man, who enjoyed the fruits of his labors!”’ They said to him, ‘if that is the case, what have you left to the worthy?’” (*Ibid.*) Rabbi Eliezer saw the slave merely as an item of property, so that his death signified only a material loss. Rabbi Yossi felt differently, and so, apparently, did the students of Rabbi Eliezer who came to console him. The controversy is even more explicit in

16. In my article, “*Halakhot* Regarding Slavery as a Source for the Social History of the Second Temple and the Talmudic Period” (Heb.), *Zion* 25 (1950), pp. 141–189.

Tractate Semahot: "One may not involve oneself with [rites for] gentiles or slaves. But one may recite together with them, 'Woe for a lion, woe for a valorous man!' Rabbi Yehuda said, '[one may say,] Woe for a faithful witness, may he enjoy the fruits of his labors.' They said to him, 'if that is the case, what have you left to the worthy?' He said to them, 'If he was worthy, why should one not recite this on his account?'"¹⁷ In the opinion of Rabbi Yehuda and Rabbi Yossi, a gentile or a slave, too, can be called "a good and faithful man, who enjoyed the fruits of his labors." These two sages, belonged, it is true, to the relatively late generation of Usha; even in the time of Rabbi Eliezer, however, Rabban Gamaliel had accepted consolation for the death of his slave Tabi. When told that "One does not accept consolation on account of slaves," he replied, "My slave Tabi was not like other slaves; he was a worthy man."¹⁸

The humanistic dimension is invoked in cases where the halakhah does not arrive at a definitive ruling. For example, it was related in the name of Rabbi Yossi the son of Rabbi Hanina that the sages at Usha had ordained that a man must support his sons and daughters while they are minors. When a question arose, however, as to whether this was really the law, the following evidence was adduced to show that there had been no such ruling: in a case of a man who had refused to support his children, Rav Yehuda had said to him, "Only a crocodile would father children and leave them to be supported by the people of the town!" In a similar case, Rav Hisda said: "Even a raven desires his own offspring, but that man does not want his." (The raven is thought to be cruel to its offsprings — Ketubot 48b; cf. Rashi to Erubin 22a, s.v., *ba-'orev*). A parallel passage in the Jerusalem Talmud (Ketubot 4:8): "Ukba came to Rabbi Yohanan and said to him, 'Master, where is it said that one must support his children?' [Rabbi Yohanan] said to him, 'Wicked Ukba, support your children!'" In the absence of a specific law to govern these cases, then, the Halakhah appeals to man's conscience.

Thus far, we have discussed a number of laws with humanistic aspects. We shall suffice with one more example. The Mishnah relates that witnesses must be impressed with the gravity of their role by means of dire warnings of what may happen to them should they testify falsely. The Talmud discusses the content of these warnings. According to Rav Yehuda, it consists of a verse from Proverbs (25:14): "As vapors and wind without rain, so is he that boasteth himself of a false gift," which is interpreted to mean that false testimony will lead to drought. Rava argues, however, that the witnesses could well respond to this with a folk saying: "The famine lasted seven years, but it didn't stop in at the craftsman's

17. *The Tractate Mourning (Semahot)*, 1:9, ed., D. Zlotnick (New Haven, London, 1966), p. 99.

18. See Saul Lieberman, *Greek in Jewish Palestine* (New York, 1942), p. 76.

doorway.” He therefore proposes a different verse from Proverbs (25:18), “As a maul, and a sword, and a sharp arrow, so is a man that beareth false witness against his neighbor,” which is interpreted to mean that a person who bears false witness will suffer an untimely death. Rav Ashi responds with another folk saying that might be used by the witnesses in reply, “The plague lasted seven years, but no-one died before his time.” His proposal, the final one in the passage, was to appeal to the personal honor of the witnesses, that is, to their sense of morality: “False witnesses are considered despicable by those who hire them” (Sanhedrin 29a).

VI

There is a humanistic dimension to the development of the Halakhah as well, especially in relation to the role of the individual and the degree of freedom allotted him in determining the law. An outstanding example of this is the astonishing story of Achnai’s oven, in which the rabbis disagreed on a point having to do with the ritual purity of vessels. Rabbi Eliezer ben Hyrcanus, convinced that he was right even though the other rabbis disagreed with him, called forth a heavenly voice to affirm the validity of his opinion. Even the evidence of the heavenly voice, however, was confounded by Rabbi Yehoshua’s citation of a verse from Deuteronomy — “It is not in the heavens!” The law is not in the heavens; although the Torah is divine in origin, it has been entrusted to man. As Rabbi Hanina put it, once the Torah had been given, it was left to the majority decision of the sages, following the rabbinic interpretation of Exodus 23:2, to determine its application; Heavenly powers were no longer entitled to intervene. The opinion of Rabbi Eliezer ben Hyrcanus was thus overruled in favor of that of the majority (JT Mo’ed Katan 3:1, BT Bava Metzia 59b). Nevertheless, individual opinions, even if not accepted, are carefully preserved. “Why are individual opinions cited together with those of the majority, considering that the rule is determined by the majority? Because another court, seeing the individual opinion [which had previously been rejected], may decide to follow it” (Eduyot 1:5). All of these instances reflect the status of man and the degree of independence he is allowed in formulating the halakhah.

The value attached by the halakhic system to the opinion of the individual also determines the attitude of Jewish scholarship towards the outstanding scholars of the past. Maimonides wrote his great Code in the hope that it would comprise “a compilation of the whole Oral Torah,” so that if one read it after having first read the written Torah, “he would have no need of any other book in between.” He therefore did not cite any other scholars or texts or give sources for his opinions, recording only his own summary of the law. His hope, however, was not fulfilled. Later scholarship favored the view of Maimonides’ principal opponent, Rabbi Abraham ben David: “For he [Maimonides] has abandoned the way of all previous authors, who brought evidence for their statements.... [and since he has

not done this,] I have no way of knowing why I should reject the opinion and evidence [of another] for that recorded by this author in his work....” Menahem ben Solomon Meiri, another outstanding medieval scholar, responded in a similar vein: “in relation to any matter of instruction or negotiation, one ought not to instruct according to any radically new opinion [recorded by Maimonides], whether it be lenient or strict in its interpretation, in opposition to what has been written by any other scholar, author or commentator, unless there is evidence for it.”

Judaism’s legal scholars are entrusted with the authority to make rulings according to their own judgement and reasoning. The famous Spanish talmudist Nissim ben Reuben of Gerondi said in one of his sermons that “The words of the blessing, ‘Who has given us the true Torah,’ mean that He has given the Torah [for us to interpret it] in accordance with our own intellect.” This sense that man is entitled to interpret the Torah according to his own lights is reflected in the works of every generation, and has enjoyed radical expression even in relatively recent times. For example, Rabbi David Berish Ashkenazi, who was rabbi of the city of Lublin in Poland, wrote in his book *Noda’ Ba-She’arim* that whenever he was brought a question he would first evaluate the matter in his own mind, to see *how it would appear to the human intellect*. Only after considering whether the thing appeared true in light of his human intellect would he study the issue in relation to the laws and judgement of the holy Torah. This conception of the process by which the halakhah is determined reflects the central status of man within the halakhic system, and the freedom he enjoys in exercising his moral and religious judgement.

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