

METAPHYSICAL ISSUES IN HALAKIC PROCESS

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A thesis Submitted to the Dept. of Religious Studies
University of Cape Town, for the Degree
of Doctor of Philosophy

Cape Town 1985

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ACKNOWLEDGEMENTS

I would like to thank the following persons without whose assistance the completion of this work would not have been possible. My supervisors Rabbi Professor E.J. Duschinski, Ab Beth Din of Cape Town and Professor J.F. Cumpsty, Head of the Dept. of Religious Studies at the University of Cape Town, who spent many long hours discussing, reviewing, and guiding the direction of my thesis over the years. Their thoughts and insights are reflected in many parts of my work. I would also like to thank the many Rabbis and Rosh Yeshivas for sharing their views in discussing with me many of the details of my work, who are too numerous to mention individually.

I warmly thank my father in-law and Talmid Hakham, Colonel Sholom Pomrenze, for crowding into his well overworked schedule countless hours in typing and editing main sections in the first drafts of my work. My faithful congregant, scholar, and friend Mr. Nathan Stein for always making himself available for editing and proof-reading the manuscripts. Mrs. Shirley Meyer for her great effort and diligence in typing the final drafts of my thesis. I am indebted to the Wynberg Hebrew Congregation for sponsoring my tuition and all academic fees throughout the duration of my doctoral studies.

It is impossible for me to thank enough my parents Mordekhai and Simcha Flegg for always encouraging my every endeavor and never despairing on me. It is equally difficult for me to express gratitude to my uncle Simon and aunt Ethel Flegg for being like parents to me and for graciously providing emotional and material support for the production of my thesis.

And last but certainly not least, my darling wife Debby, for tolerating the great strains that my devotion to this work must invariably place on a marriage.

ABBREVIATIONS

NOTE: For explanation of abbreviations and of Talmudic and other terms cited in our text see Dr. I. Epstein (ed.), The Babylonian Talmud, (London: The Soncino Press, first published 1952), index volume compiled by Dr. Judah J. Slotki, as well as Encyclopaedia Judaica, (Jerusalem: Keter Publishing House Ltd., c. 1972), Vol. I, Introduction-Index, pp. 73-89. To the extent possible, English abbreviations and English spellings of scriptural references and rabbinical names and other terms used in these index volumes were followed.

Additional Abbreviations (not appearing in either of the above sources):

attr.	attributed
BHM	<u>Battei Midrashoth</u>
B.T.	<u>Babylonian Talmud</u>
hal.	Halaka
intro.	introduction
<u>Legends</u>	Ginzberg, <u>Legends of the Jews</u>
Maim.('s)	Maimonides('s)
MHG	<u>Midrash ha-Gaddol</u>
Nach.('s)	Nahmanides ('s)
Philos.	philosophic
pub.	published, publication, publisher
std.	standard
TD	<u>Terumat ha-Deshen</u>
T.E.	<u>Talmudic Encyclopedia</u>
TTA	<u>Toledoth Tannaim ve-Amoraim</u>

METAPHYSICAL ISSUES IN HALAKIC PROCESS

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This dissertation is a study of the method whereby the employment of variant philosophical, metaphysical, or theological data emanating from biblical or aggadic sources, yields variant practical halakic results. The extent to which the cogitative assimilation of these data directly affects one and influences one's actions in practice is the extent to which this process has been operationally effective in the concrete translation of thought into action.

This essay will endeavour to demonstrate the existence of midot sheha-Aggadot vaha-Midrashim nidrashot lema'aseh, i.e., a process in which Aggadot and Midrashim are expounded in practice, present in the mechanics of halakic decision making, as well as it demonstrates the influence and impact of this phenomenon on the halakic system in general.

The intention of our Introductory chapter is mainly to present our field of study as an integral constituent of Jewish Law by elucidating the historical development of this field from its inception— dating long before Sinai— until the present day. One of the principal subjects under investigation is the Elijah theme emanating from R. Isserlein's responsum in Terumat ha-Deshen concerning whether Elijah's wife requires a divorce in order to rewed.

This theme was selected as a paradigm model to illustrate metaphysical data operative in halakic process, for many reasons. Firstly as it clearly evinces that one can not determine the halakic status of Elijah's wife unless one a priori resolves the philosophical dilemma of ascertaining Elijah's existential identity and ontological nature. This dilemma embraces the entire gamut of philosophical complexities concurrent with the problems of the omnificence of G-d's Will versus the Aristotelean notion of a primordial world, the theory of generation and corruption as against the ability of G-d's Will to effectively suspend its operability, the problem of corporeality in heavens, as well as encompassing a host of theological motifs such as the distinction between transcendental man and the

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angels, the factors which cause or terminate commandment responsibility, and an effort to dissociate the ascension of Elijah from Jesus. All these considerations are discussed in great detail in Chapter III, and conclusively demonstrate that only once the Decisor has committed himself to a clear philosophic position regarding these issues, can he then proceed to render a cogent ruling concerning the halakic status of Elijah's wife. Indeed we shall also see that different philosophic positions produced varied halakic outcomes concerning divorce and a wide range of other matters pertaining to Jewish Law. Hence a necessary conclusion of this paper is that as man's epistemological perception of philosophy and metaphysics changes or becomes differently conceived, so too, the Halakot which are contingent upon these understandings must also undergo change.

Secondly Terumatha-Deshen's responsum demonstrates how a seemingly totally hypothetical discussion can have tremendous practical significance in resolving any issue dealing with existential change. It determines whether anyone who undergoes an existential change, in one form or another, whether surgical or otherwise, halakically retains his pre-transitional or assumes his post-transitional status.

Thirdly because it clarifies why researching the Respondent's biography will reveal the Respondent's motivation for considering metaphysical concepts. Since the question of whether Elijah's wife requires divorce is essentially a question of whether transcendental man continues to retain any functional attachment with the ordinary halakic life of humans and of society, an investigation into the like history of Terumat ha-Deshen, the socio-political-religious conditions and ideologies of his time, as elaborated in Chapter VI, proves most rewarding in ascertaining why the resolution of the Elijah issue was of such paramount importance to R. Isserlein.

And finally because of what we discover of the nature of the halakic system in its relation to man. R. Isserlein's responsum adduces that whenever man undergoes transcendental experiences he continues to identify with his original status, and consequently, is still very much bound to Halaka and the observance of commandments. This is because Halaka itself is not only concerned with the finite domain of ordinary man since ordinary man himself is not a totally finite and limited being. There are numerous instances and moments during

man's everyday life within the community when man steps over the threshold of his human limitations and enters the transcendental zone. He suddenly finds himself at various stages of life in an undefined inexact situation of neither life nor death but somewhere in the parameters ranging between the two. The Aguna, whose husband has suddenly disappeared and not known to be either alive or dead, has found herself having to relate to her husband as having entered the transcendental zone between life and death. Today scientists are busy developing test tube babies who are also situated in the transcendental zone somewhere between life and death. Ordinary man is thus capable of transcending himself by encountering in life many experiences of this nature. R. Isserlein's responsum establishes that because of the great proximity and overlap between transcendental man and ordinary man, we can clarify and define with much greater exactitude much of man's ordinary day to day halakic activities by investigating the metaphysical orbit of transcendental man.

In order to define this category of transcendental man more clearly we investigated many other twilight areas, apart from the Elijah theme, where ordinary man engages in metaphysical experiences which engender halakic consequences. These included laws pertaining to such areas as Mazalot (planetary influences), magic, miracles, metaphysical cures, demonology and man's contact with spirits, preservation of spiritual welfare, and trends of metaphysical changes to mention only a few. It is precisely because the dividing line between the physical and the metaphysical and the exact point at which the natural becomes supernatural is so unclear, that the halakic probing into these twilight areas is useful in pinpointing the exact precincts of each category. Our investigation into the halakic principles and rules governing man's preoccupation with various metaphysical phenomena as natural and legitimate pursuits, while proscribing other involvements as mythological is valuable in providing rules for converting abstract notions to more tangible forms of application.

The Jewish legalist is capable of extracting halakic principles concerning the perennial metathesis of universal man by discussing trends of parallel changes in the life of plants, metaphysical creatures, demons, constellations, and other spheres. The comparison between metaphysical phylogeny — the development of metaphysical

species, and ontogeny - the development of the individual, reveals a halakic relationship through which man is sufficiently enabled to ground himself whenever he enters the transcendental zone.

The disclosure of our research and findings is particularly relevant in an age when science is speedily bridging the gap between theory and fact. Scientific technology is busily transforming yesterday's dream into today's reality. And therefore, the distinction which once existed between theory and reality, between Aggada and Halaka, is becoming increasingly narrowed by science. The more sophisticated scientific technology becomes, the more each theoretical notion and speculative whim of the mind is likely to present itself as a nafke mina le-ma'aseh (a practical halakic consequence). Here, the rapid development of the scientific era is thrusting Halakists deeper and deeper into scientific and metaphysical research.

Thus the study of metaphysics and experimental science contribute to the halakic system in facilitating the processing of twilight developments, while a study of the halakic process contributes to the scientific disciplines by relating rules for converting abstract hypothetical notions in applied directions. Furthermore, the rules for determining the criteria for admitting or resisting change in Halaka, as seen in our final chapter Metaphysical Development, are important not only in dealing with evolutionary changes both in nature and in metaphysical trends, but more fundamentally in dealing with the development, evolution, and modification of Halaka itself.

It will soon become exceedingly apparent that contemporary Halakists will not be able to even begin to approach fundamental halakic issues pertaining to everyday life materialising as a result of science without being thoroughly educated in the disciplines of philosophy and metaphysics. The coming generation will not succeed in producing Halakists proficient in their own field unless these erstwhile considered secular disciplines are introduced within the educational curriculum of even the most right wing yeshivot, as part and parcel of Talmud Torah. Such a trend will undoubtedly become an important instrument in bridging the gap in Israeli society, and possibly world Jewry, between religious zealots on the right

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and secular Jews on the left. One can expect each camp to grow increasingly tolerant towards each other as the study of Metaphysical Issues in Halakic Process becomes all the more urgent.

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Although Hartman succeeded in portraying that preoccupation with Halaka may tolerate the simultaneous pursuit of the other disciplines and does not necessarily require that he exclude them, nay more, demand of him to pursue them. Nevertheless these other disciplines which are to be studied simultaneously with Halaka are still independent disciplines and thus the precincts which Halaka itself occupies, still remain very much unchanged.¹⁴

Secondly, it is important to point out that Hartman himself discusses an unexpected complication which his own exposition produced.

Hartman asks:

If philosophy alone can lead to pursuit of G-d, why then is Torah needed? This question is not raised, but we shall deal with the way Maimonides might address himself to such a question.²⁰

Hartman admits that Maimonides does not raise the question, but Hartman feels that he must deal with it in order to present his own exposition more correctly. However, Hartman perhaps did not realize that if he were correct in his presentation of Maimonides, this problem is so obvious that one can not imagine why Maimonides felt no need to discuss it.

Rather it is imperative to understand that Maimonides chose the second way of resolving the contradiction. Namely, that some form of Halaka must have already existed prior to Sinai. Here it is significant to recall how Maimonides carefully and tactfully formulated his question: Maimonides asked how it is possible to understand the aphorism's application during the time of Shem and Eber onwards. Even Hartman is surprised that Maimonides recalled Shem and Eber rather than the Patriarchs.²¹ What was so extraordinary about Shem and Eber that Maimonides selected them to highlight and magnify the problem contained in the aphorism?

We may obtain an inkling of insight into the matter from what Maimonides writes of Shem and Eber in his Guide to the Perplexed:

You will find likewise that the Sages say with reference to the prophets who lived before him [i.e., Moses] the court of justice of Eber, the court of justice of Methusaleh, the school of Methusaleh.^{*22}

In his Guide, Maimonides affirms what is corroborated by the Sages that the exceptional feature of Shem and Eber is that they headed a court of justice. Now, if Halaka was only introduced into the

*Since the classical Hebrew works were generally never italicized, we did not specify "emphasis added" except in reference to modern, non-classical quotations.

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in His world from Creation until Sinai? Therefore, the aphorism understood as a whole, contains an inherent historical contradiction between its opening and closing phrases.

There are two ways in which one would expect Maimonides to resolve the contradiction. One way is to accept the premise underlying the aphorism's closing clause at face value and concede that Halaka did not exist in His world prior to Sinai. In which case, one would have to discover a teleological "purpose" of Halaka and establish that this "purpose" existed prior to Sinai even without Halaka itself. The second way is to expand the conventional interpretation of the four cubits at Halaka and establish that some callow form of Halaka existed in His world already prior to Sinai. While Dr. Hartman adopts the former approach, ours concurs with the latter. A cursory analysis of the differences between these two approaches will soon reveal the inaccuracy of the first approach.

To begin with, Hartman reinterprets the aphorism to mean that Halaka is the only way to G-d.¹⁶ If so, Hartman puts the question in Maimonides' mouth: How was pre-Mosaic man able to approach G-d prior to the existence of Halaka? Therefore, Hartman deduces, that according to Maimonides, there must be an alternative route to approach G-d independent of Halaka. Namely, the way of philosophy. This exposition of Hartman necessitates a reinterpretation of the aphorism yet a third time to mean not that the only way to G-d is Halaka, but rather that the overall "purpose" of Halaka is to approach G-d. Since philosophy also aspires towards that same purpose and can be viewed "not only as a cognitive discipline, but as an important road to G-d", there is no contradiction between the discipline of philosophy and Halaka.¹⁷ In fact, the pursuit of this "independent" field of philosophy may enhance one towards reaching the end of one's halakic goal. Thus, Hartman claims, Halaka is not only compatible with philosophy, but demands that one have knowledge of philosophy.¹⁸

To understand the problem in Hartman's exposition of Maimonides it is important for us to bear in mind that the purpose of Maimonides' entire exercise is to prove that the precincts of the four cubits of Halaka are not as narrow as the aphorism seems to suggest when taken in its literal sense. According to Hartman, the four cubits of Halaka even after his dissertation, remain extremely narrow. For

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are merely symbiotically connected to Halaka or whether these disciplines constitute Halaka by themselves. Even if we were to concede to Twersky's and Hartman's assertion that Maimonides' philosophy formed the "basis" of his Legal Code, we would still be reluctant to concede that this basis was "non-halakic" in nature. As even the basis of a halakic system can be shown as being itself halakic much in the same way as R. Lichtenstein evinced that derekh erez (civil ethics,) ¹¹ which is the basis of Torah ¹² is itself halakic, actionable, and legally binding. ¹³

In his Introduction to the Commentary on the Mishna, Maimonides cites the talmudic aphorism with which this chapter commenced. Maimonides states that the aphorism cannot be understood in its simple sense:

For if you look at its simple meaning, you will find it very far from the truth. As if the four cubits of Halaka alone are the required features and the other disciplines and conceptual opinions are worthless. ¹⁴

Maimonides claims that if the aphorism were taken in its simple sense it would entrench the first world view discussed earlier. Namely, that a Jew's sole pre-occupation should be confined to the very narrow precincts of the four cubits of Halaka, to the exclusion of all other disciplines which are of no avail. For the discipline of Halaka alone is sufficient for man's perfection. Maimonides claims that this simplistic exposition is far from the truth and very superficial indeed. Maimonides justifies his opinion by posing an extremely important question:

And during the time of Shem and Eber and onwards, when there was no Halaka then, could we say that the Holy One, Blessed be He, had no part in the world at all?! ¹⁵

The History of Halaka

Maimonides' historical perspective of the world did not allow him to interpret the aphorism in a simplistic sense. For its opening words: "G-d has nothing in His world," suggest an exclusive interest which G-d has had in His world from the very beginning of its creation until the end of time. The aphorism's closing words state that this sole interest of G-d is none other than the four cubits of Halaka. Yet this sole interest only became introduced in the world from Sinai onwards! What interest then did G-d have

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They endeavoured to expose this shocking phenomenon by inaccurately ascribing Maimonides as an adherent of this school. Leo Strauss writes: "Jews of the philosophic competence of Halevi and Maimonides took it for granted that being a Jew and being a philosopher are mutually exclusive."⁸

Gershom Scholem in his work Major Trends in Jewish Mysticism also supports this notion:

The whole world of religious law remained outside the orbit of philosophical inquiry, which means of course too, that it was not subjected to philosophical criticism. It is not as if the philosopher denied or defied this world. He too, lived in it and bowed to it, but it never became a part and parcel of his work as a philosopher. It furnished no material for his thoughts. This fact which is indeed undeniable, is particularly glaring in the case of thinkers like Maimonides and Saadia in whom the converging streams meet. They fail entirely to establish a true synthesis of the two elements, Halaka and philosophy, a fact which has already been pointed out by Samuel David Luzzato. Maimonides, for instance, begins the Mishne Torah, his great codification of the Halaka, with a philosophic chapter which has no relation whatever to Halaka itself. The synthesis of the spheres remains sterile, and the genius of the man whose spirit moulded them into a semblance of union cannot obscure their intrinsic disparity.⁹

Although both Scholem and Strauss miscalculated in ascribing this view to Maimonides, they were nevertheless correct in surmising that there existed a significant school within rabbinic thinking which deemed philosophy and Halaka as mutually exclusive.

Professor Isadore Twersky and Dr. David Hartman successfully demonstrated that Maimonides was an adherent of the second world view which considered the other disciplines such as philosophy and metaphysics as important aspects which formed the delicate infrastructure of Halaka.¹⁰ However, they too would appear to have fallen short of realising the full profundity of the way Maimonides viewed the relationship between philosophy and Halaka. For in Maimonides' mind, philosophy is not merely an important setting in which Halaka is rooted, as they claimed, but exactly the reverse. As the aforementioned aphorism suggests that philosophy is a component of the four cubits of Halaka, philosophy is rooted in Halaka, not vice versa. Philosophy then, cannot be conceived as a "non-halakic" dimension of Halaka, but rather as Halaka itself.

This contention is not simply a semantic dabble. There is an important practical difference whether philosophy and metaphysics

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scholarship which one is required by law to learn.³ Other codifiers, whose halakic approaches concurred with the former world view, intentionally excluded Pardes from among the Laws of Torah study.⁴

One might view these two interpretations alternatively, as contesting the exact expanse encompassed by the four cubits precincts of Halaka. The former school would ostensibly adopt a minimalistic attitude defining the precincts of four cubits as the minimal area which constitute one's private domain.⁵ This would reflect quite a narrow-minded world view which regards all other disciplines as external and irrelevant to the diminutively marginal expanse of these four cubits to which the Halakist must confine himself. The latter school, on the other hand, would obviously adopt a maximalistic approach which would extend the four cubits precincts to encompass virtually the entire cosmos. This would reflect a very broad world view which considers no discipline as either exterior or irrelevant to Halaka.⁶

This being the case, if one were to endeavour to resolve the question "Does Jewish tradition recognize a Philosophy independent of Halaka?" in the same way as Rabbi A. Lichtenstein embarked upon answering the question in an article entitled: "Does Jewish tradition recognize an ethic independent of Halaka?"⁷ One would firstly have to identify oneself with a particular world view before proceeding to tackle the question. As clearly, if one espoused the second world view, the answer is an irrevocable No. Since ethics and philosophy are constituents of the general category of Halaka, they are essential components of the four cubits expanse. Whereas, if one adheres to the former view, one would have to establish whether a symbiotic relationship exists between philosophy, ethics, and Halaka in order to determine if they pertain or influence Halaka in such a way that they would also qualify as legitimate pursuits. If this relationship does not exist then they would be considered insignificant "independents" falling miserably outside the diminutive periphery of the four cubits.

Maimonides

There are, to be sure, many Jewish scholars who intuitively sensed the narrow parameters to which the former school confined the Halakist.

purposes is a waste of his energy and time.

The latter approach, on the other hand, would interpret the aphorism as establishing a fundamental principle describing a Divine truism, roughly as : "Although there appear to be a multitude of disjointed and unrelated disciplines in the world, there is no discipline in G-d's world which does not converge and have its origin in one archetype discipline from whence they channel; the four cubits of Halaka!" Accordingly, other disciplines such as philosophy and metaphysics are integral aspects of Halaka. For the teleological premise upon which this interpretation is based has as its primary objective, the understanding of the G-dhead Himself. Man can certainly not hope to comprehend the intricate workings of G-d without pursuing the complementary disciplines of philosophy, metaphysics, mysticism and the like, together with Halaka. Halaka seen in this regard then, is not merely a codex of law which is aimed at instructing the individual how to "perform" before his Maker, thereby obviating the need to indulge in other pursuits of enquiry. Rather, Halaka has an overall purpose of orientating man towards knowledge of G-d as well, and therefore considers other disciplines also aimed at this quintain as a vital aspect of the halakic system and hardly extraneous at all.

Macro-halakic View and Micro-halakic View

One can safely aver that it was precisely in these two variant interpretations that Jewish scholarship became characteristically split over the centuries. For according to the first view, secular knowledge is regarded largely extraneous to Halaka, at times opposed to it altogether. While the latter view regarded secular knowledge vital to Halaka. The famed controversy among Jewish theologians and Halakists through the ages over whether one should engage one's mental efforts in philosophical speculation, as discussed and argued extensively in the Responsa literature, is a direct result of these two world views.²

Consequently we find that Maimonides and R. Moses Isserles, who were scions of the school which adopted the second world view, as we shall soon see, incorporated the study of Pardes (the esoteric philosophy of physics and metaphysics) within the purview of Torah

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I. INTRODUCTION

The Four Cubits of Halaka

"The Holy One Blessed be He has nothing in His world except [the] four cubits of Halaka alone " [Berakoth 8a].

There are two ways in which the above talmudic aphorism can be understood. One is from the perspective of man, the other is from the perspective of G-d. The former approach is an adjunct of a teleological Weltanschauung which regards all biblical and rabbinic doctrine as aimed towards increasing man's awareness of how G-d envisions man. As such, it would expect to effect a change in man's behavior in light of such knowledge, rather than focusing on G-d per se which ultimately is beyond man's grasp.¹ The latter approach does not regard religious dogma as appealing exclusively to man's sense of awareness of how G-d envisions man, but is also directed at orientating man towards his Maker by enhancing man's apprehension of the G-dhead Himself. For man must react not only in a way which G-d expects of him, but man must model himself after his Maker as well. Man cannot achieve that end unless he has a proper understanding of the object of his emulation.

Consequently the former approach would interpret the above aphorism approximately as follows: "There are a multitude of disciplines to which man is exposed and may encounter throughout life. However, none of these are of any G-dly significance except for the four cubits of, i.e., the discipline of Halaka alone." According to this interpretation and the teleological disposition which produced it, other disciplines such as philosophy, metaphysics and the like are granted recognition. However, none of these disciplines, aside from Halaka, will enable man to achieve his end of realizing what G-d wants of man. They will not effect a corresponding change in man's behaviour in this direction, and therefore these disciplines are of no significance to man, as they are of no Divine practical avail to him. Hence they are regarded as extraneous to the system of Halaka. Man's pursuit of such disciplines for all intents and

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world from Sinai onwards, what sort of jurisdiction apart from ordinary civil law could have previously existed, over which they could have mastered sufficient proficiency to enable them alone to become heads of a unique court of justice. Obviously some form of Halaka must have existed even prior to Sinai to which pre-Mosaic man was already exposed beforehand. Therefore, not only does the aphorism's opening clause suggest that some form of Halaka already existed prior to Sinai (as Halaka is G-d's sole interest in this world and G-d certainly had an interest in His world prior to Sinai) but the courts of justice which antedated Sinai also indicate this point. Of necessity then, the precincts of the four cubits of Halaka must be expanded to include a great deal more than what was conventionally assumed to constitute Halaka from Sinai onwards. Therefore the conventional definition of Halaka and its four cubits' expanse must be broadened to include that form of Halaka which existed already prior to Sinai, and even before the creation of the world.²³

Pre-Sinaitic Law

Maimonides' sequelant task in his Introduction to the Commentary on the Mishna, following his citation of the aphorism and his empirical questioning of it, is to establish precisely what form of Halaka existed prior to Sinai and to determine in which manner this form of Halaka differed from Mosaic Law.

This, in fact, is the same task Maimonides undertakes in the chapter of his Guide where he refers to the court of justice of Shem and Eber. Maimonides queries: If Moses' uniqueness and greatness of prophecy which distinguished him apart and above every prophet who preceded or succeeded him, lay in the fact that Moses introduced G-d's Law into the world, did not the courts of justice of Shem and Eber also expound the Law before the populace?

Maimonides responds by submitting that although both Moses and the prophets preceding him expounded the Law before the populace, the difference between them lies in their difference in method of expounding and in their own legitimisation of their respective vocations. Moses was the only prophet who asserted the validity of his mission on the basis of his being a Divine prophet and that G-d had "commanded" him to promulgate His Law to the people. Shem and Eber

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and the Patriarchs, on the other hand, did not legitimize themselves on the basis of their prophecy. Rather, they communicated their beliefs by means of providing demonstrative proofs. They did not "command" their beliefs to others, they merely shared and communicated them. In the words of Maimonides:

All of them [i.e., Shem, Eber and the Patriarchs] were prophets who taught the people through being instructors, teachers, and guides, but did not say: The Lord said to me, speak to the sons of so and so.²⁴

Maimonides iterates this same thesis in an earlier section of the Guide, stating that prior to Moses there were those who claimed:

...like Abraham, that speculation and reason had come to him indicating that the world has a deity...Yet that an individual should make a claim to prophecy on the ground that G-d had spoken to him and sent him on a mission, was a thing never heard of prior to Moses, our Master.²⁵

At this point one could say that according to Maimonides, the difference between the Halaka which existed prior to Sinai to that which existed from Sinai onwards, is that pre-Sinaitic Halaka was arrived at by means of inductive philosophical reasoning and demonstrative proofs whereas post-Sinaitic Halaka became revealed publicly by means of a Divine command.²⁶ While pre-Mosaic man approached his G-d and practiced his beliefs on the basis of logical reasoning which he himself had arrived at or which had been "taught" to him by others, post-Mosaic man approached his G-d and practiced his beliefs on the basis of a Divine imperative. That is, because he was "commanded" to do so.²⁷

A careful reading of Maimonides' Introduction to the Commentary on the Mishna will reveal the same intention there as well. In the courts of justice of Shem and Eber, jurisdiction was discharged by means of employing a thorough investigation into the natural sciences and a full examination of their "purpose." Their authority was vested in their recognized acumen of having sufficiently mastered the natural sciences and having understood their purpose to be able to demonstrate and teach the laws which their study had revealed to them.

This exposition differs substantially from Hartman's who claims that Halaka did not exist prior to Sinai, even for the Patriarchs, who he claims pursued a road to G-d independent of Halaka, as he writes:

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Abraham, Maimonides' model of pre-Mosaic man, illustrates a relationship of man to G-d not grounded in Halaka. (Emphasis added.)²⁸

And reiterated again in a footnote:

For Maimonides, the patriarchs symbolize a way to G-d not grounded in legislative Halaka.²⁹

It is unacceptable to Hartman that Abraham, in Maimonides' view, could have practiced Halaka. For Hartman purports to eschew that according to Maimonides, Halaka did not exist prior to Sinai even for the Patriarchs, and that they pursued a road to G-d independent of Halaka. Hartman's hypothesis of the non-existence of Halaka prior to Sinai seems to be inconsistent with Maimonides' explicit words codified in Laws of Kings and their Wars:

First man was commanded about six matters: [The prohibitions of] idolatry, blasphemy, bloodshed, adultery, robbery and judicature. Although we received all these from Moses, our Master, and they are reasonable, it would appear, that of all the Torah, he was commanded concerning these things. To Noah was added [the prohibition of] flesh cut from a living animal, as it is written: 'Nevertheless, flesh with the soul thereof, and the blood thereof, shall ye not eat.'³⁰ There are found seven commandments. And so it was in all the world until Abraham. Abraham came and was commanded in addition to these concerning circumcision. He instituted Shaharit [the morning service]. Isaac separated a tithe and added another prayer towards [the end of] the day. Jacob added the sciatic nerve and prayed Arvit [the evening service]. In Egypt, Amram was instructed in additional commandments. Until the advent of Moses, our Master, and the Torah was completed by him.³¹

From this codification of Maimonides it is obvious that many commandments had been introduced prior to Sinai and that Moses merely completed the Torah by introducing additional laws which had not existed previously.

Post-Sinaitic Law and the Difference Between the Two Systems

In his commentary to the Mishna in Hullin, Maimonides explains Moses' purpose in reintroducing at Sinai those same commandments which had already been in existence beforehand:

And be attentive to the great principle which is included in the Mishna. And that is, what was proclaimed at Sinai became prohibited. Because you were shown to understand that everything that we abstain from or do today, we don't do except by the command of G-d through Moses, our Master. Not that the Holy One Blessed be He said this to the prophets before him, for example this [practice] that we do not eat the flesh cut from a living animal. This is not because He forbade it to

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Noah. Rather it is because Moses forbade the flesh of a living animal in that he commanded at Sinai to observe the prohibition of flesh from a living animal. And similarly, we do not circumcise because Abraham, our Patriarch, circumcised himself and the men of his household. But because the Holy One Blessed be He commanded us through Moses that we circumcise just as Abraham, our Patriarch, circumcised. And similarly the sciatic nerve, we do not follow the prohibition of Jacob, our Patriarch, but rather the commandment of Moses, our Master. Behold, did you not see what they said that : 'Six hundred and thirteen commandments were told to Moses on Sinai,'³² and all these are included in the commandments.³³

Maimonides very aptly explains that the reason it was necessary for Moses to reintroduce those same commandments which had already been communicated beforehand, is because prior to Sinai, these commandments had only been communicated to select individuals and were not binding on the people as a whole. Had Moses not reinstated those commandments once again at Sinai, it would not have been incumbent upon the Israelites to obey them. Therefore, Moses' purpose in reintroducing these commandments was not to reveal novel commandments which were not known to exist before, but rather to obligate the people towards their observance as a nation.

Clearly then, David Hartman's assertion that "Abraham, Maimonides' model of pre-Mosaic man, illustrates a relationship of man to G-d not grounded in Halaka," is quite curious. Hartman himself concedes that Maimonides knew of the talmudic tradition that: "We find that Abraham, our Patriarch observed the whole Torah before it was given, for it is written: 'Because Abraham obeyed My voice, kept My charge, My commandments, My statutes, and My laws.'"³⁴

The reason Maimonides in his Code, only ascribed circumcision to Abraham despite Abraham's observance of all the commandments, is not as Hartman avers that Maimonides rejected this tradition. That is not possible, for Genesis itself affirms that Abraham observed G-d's charge, commandments, statutes, and laws! Rather it is because the commandment of circumcision was directly communicated to Abraham, whereas his observance of the other commandments was a result of Abraham's own ratiocination.³⁵

Hartman's observation that : "Maimonides does not quote a biblical text to indicate Abrahams' missionary activity is a result of a divine command," does not evidence that Maimonides considered Abraham's activity non-halakic.³⁶ Rather, he industriously pursued

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halakic activity as a result of his own ratiocination, even without being "commanded" to do so.³⁷ This being the typical form of halakic activity characteristic of pre-Mosaic man. In another footnote Hartman remarks:

The Maimonidean Hasid who lives by Halaka has no difficulty understanding and accepting that the way to G-d of pre-Mosaic man was not based on Halaka. His knowledge of philosophy enables him to understand how individuals can build spiritual lives not grounded in Halaka.³⁸

It is obvious from what Maimonides writes in his Code and in commentary to the Mishna in Hullin, that according to Maimonides, a halakic system existed already prior to Sinai. The seven Noahide commandments certainly existed before Sinai. Hartman seems unaware that the mark of distinction which differentiated post-Mosaic man from pre-Mosaic man is that the former was obliged to adhere to Halaka as a result of his own philosophical understanding without being "imposed" upon him, whereas the latter was compelled to adhere to Halaka as a result of a divine imperative based on Sinaitic revelation. Thus pre-Mosaic man was definitely a "halakist" and not simply an "aggadist" as Hartman purports. The primary purpose of the covenant at Sinai was not so much the revelation of new laws per se, as it was to bind the people to their G-d in the mandatory adherence to these laws.³⁹

Thus the returning to our aphorism, we find that the term "Halaka" connotes commandment activity both prior and subsequent to Sinai. The giving of Torah at Sinai must therefore be regarded not as replacing, subverting, or altering the halakic system which existed beforehand, but rather as enhancing that system. Naturally then, many desirable elements of the old system were expected to carry over into the new system, the most important ones being the disciplines of metaphysics and philosophy, necessary for religious faith. This fact Maimonides discusses quite clearly in the continuation of his discussion of the aphorism, in his Introduction to the Commentary on the Mishna:

And if so, it has become clear from all that we have said that the intended purpose in the creation of everything that is in the world which exists and decomposes is none other than a complete person who consists of knowledge and action, as we have said. And when you will consider and study from their [the Sages] words, peace be upon them, these two matters,

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namely 'knowledge and action' from what they explained and alluded to - you will know what has been correctly said: that the Holy One, Blessed be He, has nothing in His world except the four cubits of Halaka.⁴⁰

Maimonides ends his exposition of the aphorism by affirming that the purpose of all creation is a man who is complete in that he is both a man of knowledge and a man of action. His completion rests in his ability to combine the vita contemplativa with the vita activa into a wholesome unity. Maimonides describes the integral interrelation between knowledge and action midway through his exposition:

And, therefor, you will find concerning every commandment of Torah, 'And you will study them' and afterwards 'that you may do them' [Deuteronomy 5:1], citing knowledge before action. For through knowledge the man will arrive at the deed, but he cannot acquire knowledge from the deed. And this is what they [the Sages] said, 'that study leads one to action.'⁴¹

Maimonides stresses how the Torah itself recognised that the halakic process which existed prior to Sinai, namely philosophic reasoning leading up to action, should continue after Sinai as well. For man must not contain himself to the deeds which were communicated to him at Sinai, as, "deeds do not lead to knowledge." Maimonides was extremely aware of the problem which Sinai posed in presenting the people with precepts to blindly follow without comprehending what they were doing:

And similarly, if there will be a man who also worships, and is a Nazirite, and abstains from pleasures - aside from what is necessary to preserve his body - and he walks in all the natural ways in the straight path, and he possesses all the pleasant qualities, but he possesses no knowledge, he is also deficient in [his] completeness.⁴³

Throughout many of his writings Maimonides repeatedly emphasized the deficiency of Halakists who zealously pursue the commandments without possessing knowledge of philosophy and the natural sciences. Probably the best known example is his famous parable in the Guide in which he denigrates the:

...ignoramuses who observe the commandments and jurists who believe true opinions on the basis of traditional authority, and study the law concerning the practices of divine service but do not engage in speculation concerning the fundamental principles of religion and make no inquiry regarding the ratification of belief,⁴⁴

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as being outside the Palace; Whereas the jurist who has also:

...plunged into speculation concerning the fundamental principles of religion and has comprehended divine matters to the extent that it is possible, everything that may be ascertained - has come to be with the ruler in the inner part of his habitation.⁴⁵

In his parable Maimonides draws a distinction between two types of Halakists - the one who has gained philosophic knowledge and the one who is deficient in such knowledge. He does not, however, distinguish between Halakists and philosophers as Shlomo Pines wants to suggest:

In the elaborate parable of the palace, the philosophers, i.e., men who know physics and metaphysics, and the prophets who by definition are also philosophers, enter the castle while the Halakhists are looking vailly for a way in.⁴⁶

Maimonides' son, Abraham, very adeptly describes the importance of man continuing the philosophic faculty with which he was equipped prior to the giving of Torah, after Sinai as well:

And no one can deny that Torah was not given to Israel until the Exodus from Egypt. And to each and every one of the seed of Israel their knowledge was given prior to Torah. Know that the child, because his knowledge is incomplete, was not required by G-d to observe the commandments. And when he begins to understand, he is instructed in the rabbinic ordinances until he grows in years, and his mind becomes completely developed he becomes obligated in Torah and the commandments of the Torah. And if he grows in years and he has no knowledge - he has no Torah. For the imbecile, even if he is old is exempted from the commandments.⁴⁷

According to R. Abraham b. Moses Maimonides, had the post-Sinai Halakist not continued the philosophic approach of the pre-Sinai Halakist, he would be no more than the imbecile who is exempted from Torah Law. Maimonides, therefore, effectively resolves his own dilemma of the inapplicability of the aphorism to the period of Shem and Eber by metamorphosizing the conventional precincts of the four cubits of Halaka to encompass the philosophically and metaphysically orientated system of Halaka which existed already prior to Sinai. It is vital to Maimonides that this trend in Halaka should continue after Sinai. For otherwise the Sinaitic experience would have incurred a countereffect of producing law abiding ignoramuses. Knowledge is fundamental for practice, as practice without reflection is as valueless as the pious imbecile who is exempted from adhering to commandments. Consequently, Maimonides included the speculative dimension of Halaka in his definition of a post Sinaitic Law.⁴⁸

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Neither is Maimonides faced with Hartman's problem of why Sinai was necessary altogether, considering that there had already existed an alternative route to G-d independent of Halaka beforehand. For according to Maimonides, the only road which led man to G-d prior to Sinai was a halakic one.

The Need for a New System and the Structure of Torah Law

All that remained for Maimonides to explain is, given the expediency of the pre-Sinaitic system of Halaka, what inadequacies were contained in that system which necessitated the introduction of a new system. And concurrently, what inadequacies would have resulted in the new system had it disregarded various elements from the earlier system? However, for this purpose, we must first investigate what convinced Maimonides to codify with such certainty that Moses merely completed the Torah but did not initiate it.⁴⁹

Maimonides viewed Sinai in terms of a progressive historical development because the Torah itself does not begin with the jurisdiction of Sinai. By beginning with the scientific Account of the Beginning rather than from Sinai, the Torah was legitimizing and emphasizing that the philosophical contemplation of Divine Science which began prior to Sinai should continue unrelentingly after Sinai. Thus, the Torah was legislating philosophical pursuit as an integral dimension of the halakic process. Therefore, the Torah, by its very structure and order, attested that Moses was merely consummating a halakic process which the Patriarchs discovered but he was not altering or initiating one.

Whereas legists generally have no patience for legal history, the vast majority of codifiers having isolated Sinai from the history of religion which preceeded it, based their codes purely on the Sinaitic commandments and their interpretation by the Oral Law. Maimonides was unique in that he regarded the history of religion which he codified in various places throughout his Code, hardly an exercise in antiquarianism, but rather as having profound halakic implications in realising the purpose and goal of Halaka. According to Maimonides, the historical development of laws and institutions have an intensely practical value within the system of Halaka.⁵⁰

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As if the Torah had not stressed the primacy of reflection upon Divine Science enough by beginning from the creation account rather than from Sinai, the Torah repeated its insistence upon the paramountcy of Divine Science once again by structuring the Sinaitic tablets so that they command Divine beliefs at the start, and the earthly commandments only secondarily. Having taken all this into account, Maimonides became absolutely convinced that the Torah not only acknowledged the philosophically oriented pre-Mosaic system of Halaka, but more fundamentally so, legislated that this system incorporate its same character, within the Sinaitic system of Halaka. Moses then, merely completed the halakic effort which the Patriarchs had begun before him.

It now becomes important to consider, according to Maimonides' rationale, that if the prophets were capable of arriving at Halaka through their own philosophical inquiry and were able in turn to demonstrate the truth of these laws to others, to the extent that Sinai not only accredited this system but legislated its continuance as well, what was lacking then, in this system, which made the Sinaitic system necessary?

Maimonides amplifies this matter, by describing the pre-Mosaic system of Halaka as a way to G-d which was accessible only to an elite who were intellectually capable of such sophisticated contemplation or who were capable of grasping the complicated proofs which were being demonstrated to them by others. But for the ordinary masses who lacked the intellectual genius to assimilate the knowledge which leads one to action, this pre-Mosaic system of Halaka was shut off to most men.

Moreover, even the philosophers themselves who possessed mental astuteness, had no guarantee of arriving at correct opinions or of reaching truthful conclusions. To be sure, Aristotle and others like him were recognizably brilliant philosophers and yet they managed to reach conclusions which were antithetic to the Torah view, and certainly did not lead to halakic activity. In the first few Laws of Idolatry, Maimonides documents how what initially began as a philosophical comprehension of G-d eventually became misconstrued as to embrace paganistic forms of idolatry - which nevertheless were engendered through reason, albeit distorted.⁵¹

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Consequently, the significance of Sinai became threefold. Firstly, in prescribing a way of life which advocated precepts that focus upon G-d and train the mind to aspire towards degrees of sublime intellection. Secondly, in explicitly stating certain theological axioms which would prevent philosophical quest in going astray and reaching erroneous conclusions. And thirdly, in binding man to G-d by converting Divine Science from a volitional philosophical exercise of a select elite to a mandatory exercise in practice for the whole community, each according to his own capability.

In fact all three purposes are magnificently formulated in the very first commandment. Firstly, it ratifies pre-Mosaic man by projecting G-d as the objective of all men, no matter what their degree of intellection. Secondly, it clearly defines a theological axiom which philosophic speculation must not controvert. And thirdly it binds man to G-d by postulating belief in G-d not as a voluntary intellectual exercise but as a mandatory commandment, with sanctions.

This portrayal is commensurate with the thesis of Maimonides, who contrary to some of his colleagues, identifies the first commandment as a mandatory imperative rather than a preamble for accepting commandments.⁵²

Thus the primary significance of the very first commandment is not in its revelation of G-d per se, whose existence was already known before, but rather in its transposal of the pre-Mosaic pursuit of G-d from a voluntary past-time of an intellectual elite to an enforced obligation in practice on the part of the community. Hence, the importance of Sinai was more in terms of the convenantal binding that it sought to achieve, rather than in the G-d it came to disclose. The purpose of the disclosure was merely to establish an axiological premise which would prevent counter conclusions from being reached during moments of intellection.

Theonomy: Maimonides' Codification of Theological Norms

Because Maimonides recognised that the primary objective of the first commandment was to convert the theorems of Divine Science from an intellectual sport to an obligatory exercise in practice, he modelled his Code accordingly by beginning the theological laws of his Code employing the format of actual norms. For according

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to Maimonides, Sinai not only recognised theology, Sinai legislated theology.

Thus the teleological motif underlying Torah and reflected in Maimonides' Code that "knowledge leads to practice" experienced a transition at Sinai. For this teleology went from a mere motif to become a legal canon. Both Torah and Maimonides' Code, by placing the laws of theology before laws concerning man's deeds, not only endorsed the teleology of "knowledge leads to practice" but in fact legislated it. Knowledge and practice together constitute post-Mosaic Halaka. Only if taken together do they form that indivisible unit which binds man in covenant to G-d.⁵³

David Hartman asserts that the theological chapters at the onset of Maimonides' Code were "presented as the content of norms even though they are demonstrative proofs."⁵⁴ Louis Jacobs as well opines that Maimonides formulated these theological chapters as if they were norms although in fact they are not.⁵⁵ Hartman continues:

By beginning the Mishne Torah [Code] in this way the halakic Jew is forced to perceive G-d's reality as extending beyond the structure of the laws.⁵⁶

It is our contention, however, that Maimonides did not present these theological views as if they were norms, but rather that he considered these to be in fact, actual norms. Maimonides did not simply write theology - he codified legislative Theology. For the purpose of Torah, after which Maimonides modeled his Code, was not merely to present theological opinions concerning G-d, but in fact to codify them as legislated axioms. These axioms were Torah centrepieces which philosophical speculation was forbidden to controvert. Sinai did not merely insist that the philosophical pursuit of pre-Mosaic man continue after Sinai as well. Sinai went further in stipulating the theological direction that this pursuit had to take. Any premise or conclusion which strayed from this course was forbidden. It was the legislation of predetermined axiomatic principles which made these laws normative rather than conceptual.

Maimonides did not enter his theological views at the onset of his Code in order to impress upon the halakic Jew that philosophy is important for Halaka and that "G-d's reality extends beyond the

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structure of the law," but more fundamentally that G-d's reality is built into the structure of law itself.

In a responsum by Radbaz — Rabbi David Ibn Abi Zimra, the respondent makes it amply clear that Maimonides was dealing with a real normative Halaka of "knowing G-d" right from the very first law of his Code and was not merely conceptualising. As a Halakist, Radbaz was compelled to answer the question why Maimonides did not begin the first law of his Code by stating the first commandment rather than devolving into a metaphysical description of Divine Science. Radbaz resolves that each detail of Maimonides' metaphysical description is potently halakic in that every detail is axiomatic in instructing and describing the Sinaitic commandment of "knowing God."⁵⁷

The First Commandment as a Mitzvah and a Halaka

At the same time Maimonides was very much aware of the limitations of prescribing a predetermined axiological direction. For the inevitable problem which would be difficult to prevent from developing, is a resultant of unquestioning acceptance of these principles on the basis of belief alone, rather than these principles functioning as "guidelines" for which to activate and direct philosophical pursuit of G-d. This purpose would become obscured when these principles rather than becoming demonstrated truths would become believed truths — without any inclination or understanding of the nature of these beliefs. A communicated belief is significant only insofar as it activates and breeds knowledge which in turn leads to action. "Any belief which does not foster knowledge is an empty belief."⁵⁸ This intention Maimonides makes clear by his meticulous distinction in wording between his Book of Commandments and his Book of Knowledge in dealing with the first commandment.

Maimonides opens his Book of Commandments as follows:

Commandment 1: is that wherein He has commanded us concerning belief in the Deity; that is, we are to believe that there is a Supreme Cause who is the Creator of everything in existence. This injunction finds expression in the words 'I am the Lord thy G-d.'⁵⁹

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whereas he opens his Book of Knowledge stating:

The basic principle of all principles and the pillar of all sciences is to know that there is a First Being who brought every existing thing into being. All existing things whether celestial, terrestrial, or belonging to an intermediate class, exist only through His true Existence.⁶⁰

When discussing the first commandment in his Book of Commandments as a "commandment," Maimonides employs the term to believe. In discussing the same commandment in his Code as a "Halaka," Maimonides employs the term to know. For, according to Maimonides, the purpose of G-d's commanding a belief is solely in order to activate and direct the halakic process of knowing G-d. This is why Maimonides began his Code with knowledge of G-d rather belief in G-d. For it is knowledge, rather than belief, which leads to the major concern of his Code, namely, action.

In his commentary on the Maimonidean Code, R. Obadiah Hediah explains that in describing the Sinaitic commandment Maimonides preferred the term to believe since this commandment was communicated to women and children in addition to many men whose mental faculties would neither enable them to "know" G-d nor demonstrate the truth of these beliefs to themselves. It would, therefore, have been pointless for G-d to command His people to "know" G-d, since this knowledge does not exist on any one level and many who were incapable of this knowledge altogether at any level may have possibly even denied G-d as a result of their inability to know G-d by way of reason. Therefore, the lowest common denominator which would minimalistically apply and bind all the people on all levels, had to be expressed as a belief, even if the truth of these beliefs could not be demonstrated in themselves:

And now the matter is self understood why the Sages mentioned these two fundamentals, belief and knowledge, in G-d's existence [i.e.,] to teach that if his intelligence did not succeed in comprehending these properties he will strengthen himself on the basis of his belief in the tradition.⁶¹

Likewise we find in Sefer ha-Hinnukh regarding his exposition of the first commandment:

And the matter of the belief [in G-d's existence] is that he set in his soul that the truth is so and that this cannot be denied in any way... And if he succeeds in rising in the levels of knowledge and his heart understands, and in his eyes he sees a convincing proof, that this belief which he believes is true and clear, and that nothing could be otherwise, then

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he will have fulfilled this affirmative commandment in the best way possible.⁶²

Accordingly, Maimonides understood that the "Halaka" of the first commandment, is to transform the "commandment" of belief in G-d, to knowledge of G-d, each person according to his own capability.⁶³ That is, to transform emotionally based identification into simple cognitive knowledge. This "Halaka" of the first commandment propelled man to pursue his pre-Mosaic halakic activity by activating reflection on knowledge of G-d, through the commandment of belief in G-d. The binding of Sinai was in its legislating the continuance of the pre-Mosaic philosophic demonstration of G-d's existence, His unity, etc., as a halakic activity which is legally binding. By now it should be amply clear that David Hartman's allegation that "philosophic quest" is important for Halaka but in essence is non-halakic, is quite curious.

The Contradiction of Non-halakic Halaka

Perhaps Hartman was misled by Professor Isadore Twersky's article entitled, "Some Non-Halakic Aspects of the Mishne Torah," upon which Hartman's work Maimonides: Torah and Philosophic Quest, is heavily based. It is in this article that Professor Twersky puts forward the strange notion that the theological laws in Maimonides' Mishne Torah are "non-halakic" rather than halakic in nature.⁶⁴

Oddly enough, although Twersky does provide ample documentation that Maimonides' basic philosophical ideas, are scattered and diffused throughout the Code, Twersky does not substantiate his ambitious presumption, that these Maimonidean motifs which he eruditely locates are "non halakic" in nature but merely assumes so. In fact, Twersky himself concedes that much of what he ascribes to Maimonides' non-halakic emphasis "appears in overtly halakic contexts."⁶⁵

The single instance which seems to corroborate Twersky's thesis is his notation of how R. Josef Caro in his commentary Kesef Mishne on the final chapters of Maimonides' Code, Laws of Kings and their Wars: "noted the essentially non-halakic character of these two chapters." (Emphasis added.)⁶⁶

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Twersky is referring here to what Kesef Mishne apparently meant in saying:

This chapter and the one following it, are good beliefs concerning the coming of our Messiah.⁶⁷

On the surface it would appear that this statement of Kesef Mishne greatly attests Twersky's thesis that certain sections are extant in the Maimonidean Code which are completely non-halakic in nature. As Kesef Mishne himself comments that these two final chapters of Maimonides' Code are not in fact Halakot which deal with prohibitions and commands but rather good beliefs and opinions concerning the Messiah. However, a closer investigation of Kesef Mishne's comment reveals that this assessment is far fetched and was certainly not the intention of Kesef Mishne.

To begin with, when one studies these two chapters of Maimonides' Code one discovers that these chapters are replete with Halakot concerning the laws of identifying the true Messiah and how to expose the pretentious impostor. Furthermore these laws are extremely practical considering that the true Messiah, and certainly a pretentious impostor could surface at any moment in time and we must of necessity have at our disposal halakic rules and regulations with which to determine whether the Messianic claimant should be proclaimed as authentic or restrained and silenced. In considering the abundantly significant halakic nature of these two chapters, one marvels how Kesef Mishne could have possibly classified these two chapters as "non-halakic" and that they are simply conveying good opinions and correct beliefs.

However, when one examines the same Kesef Mishne in its entirety one begins to discern his real intention:

This chapter and the one following it are good beliefs concerning the coming of our Messiah. There is nothing for me to explain except concerning what our Rabbi [i.e., Maimonides] wrote 'Do not think...', until, 'he was killed for his iniquities.'⁶⁸ And Rabad's words are true, and so it is in Chapter Helek.⁶⁸ But in Lamentations Rabbati, on the verse, 'The Lord hath swallowed up unsparingly'⁶⁹ it says that he [i.e., Bar Cokhba] was killed by the Gentiles. And our Rabbi opines that what they said in Chapter Helek does not accord with Shemuel who maintains that 'This world differs from the Messianic era only in respect of the servitude of the Diaspora.'⁷⁰ And our Rabbi concurs with Shemuel as is explained in the following chapter. And therefore he redacted the midrashic opinion.⁷¹

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Kesef Mishne comments that because these two chapters deal with good opinions, there is no need for him to explain any of them except the controversy between Maimonides and Rabad. Kesef Mishne explains that this controversy between Maimonides and Rabad over whether the Messianic King must be capable of working miracles and wonders [i.e., the phenomenon of judging by the scent] is based on variant sources. Maimonides who states that Messiah need not perform miracles, conforms with Shemuel's view who maintains that the Messianic era will not manifest itself with miracles, as "there is no difference between this world and the Messianic era, except in respect of the servitude of the diaspora." Therefore Maimonides relies on the midrashic source which conflicts with Chapter Helek of the Talmud, and he explains that Ben Koziba was killed in battle by Gentiles and was not killed by the Sages because of his inability to work the miracle of judging by the scent. Rabad's criticism is based on the talmudic source which attributes his death as a result of his inability to work miracles.⁷²

Thus we see that Maimonides and Rabad argue over an extremely important halakic issue concerning the laws of identifying the Messiah and exposing impostors. There is also a great practical difference between the two. As according to Rabad, if the Messianic claimant is incapable of working miracles, not only is he not proclaimed the Messiah, he is to be put to death. Whereas according to Maimonides, he may well be proclaimed the Messianic King despite his ordinary nature.

Considering the significant practical halakic difference between them, one wonders with even greater astonishment how Kesef Mishne could possibly have prefaced his remark that these two chapters deal only with good beliefs of our Messiah in the very same appendage in which he elaborates upon this important halakic difference!! For the laws of exposing pretentious impostors apply constantly! We shall see at the end of Chapter III.1 how consequential this halakic controversy was during the Bar Cokhba period.

However, the resolvment of Kesef Mishne is exceedingly simple. Kesef Mishne explains how Maimonides' Halaka that the Messiah need not perform miracles is based on Shemuel who maintains: "This world differs from the Messianic era only in respect of the servitude of

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the diaspora." Shemuel's view is nothing else but a "good belief concerning the coming of our Messiah." However, Shemuel's view is of great practical consequence. Since it is on this view that Maimonidean laws and criteria for identifying the Messiah and exposing impostors are dependent.

Kesef Mishne, then, describes the "correct opinions concerning the coming of our Messiah" in which he elaborates upon a greatly significant practical Halaka — not in order to note the "non-halakic" nature of these chapters, as Twersky contends — but exactly to the contrary. Namely, to explain precisely how these "good opinions and beliefs" function as fundamentally essential criteria for determining Halaka.

In fact, Twersky himself seems to have reversed and somewhat modified his appraisal in a later work, Introduction to the Code of Maimonides where he writes:

Maimonides' conception of law was organismic, oblivious to distinctions between practical laws and laws devoid of practical value, for these were anomalies that history would rectify. The very scope of the Mishne Torah, a comprehensive Corpus Juris Mosaici, discountenanced any such artificial separation and rendered it irrelevant. (Emphasis added.)⁷³

Twersky annotates Halakot taken from these two chapters of the Code in evidence of laws which were impractical only from the point of view of history and not from the point of view of their actualisation or being actionable Halakot. In other words, the laws concerning the Messianic era are not "essentially non-halakic" as Twersky claimed in his article. Rather they appear non-halakic only because the Messiah has not yet arrived. However, history would soon rectify this anomaly and expose the inherently practical halakic nature of these laws. Indeed historically, Halakot describing criteria of the true Messiah are co ipso criteria to disqualify false Messiahs which are constantly relevant.

R. Joseph Soloveichik stresses this point practically to exaggeration in writing in his Ish ha-Halaka:

The principle of all principles and the pillar of halakic thought is not the practical teachings, but rather the establishment of conceptual Halaka.⁷⁴

Rabbi Moses b. Joseph Trani (acronym ha-Mabit) in his Kiryat Sefer commentates on Maimonides' codification of Shemuel's view and concludes:

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And there are in these laws rabbinically ordained matters which rely upon Scriptural verses as, 'Thou shalt not turn aside,'⁷⁵ 'And you shall keep that which I have given over to you to guard.'⁷⁶ And we are obligated to fulfil them as they have said: The sayings of the beloved are more dear to me than the wine of Torah.⁷⁷

It is most obvious that R. Trani, who was one of the foremost experts of Maimonides' Code, would candidly have considered Twersky's classification of these two chapters as "non-halakic" as a misrepresentation of the truth.

Philosophic Halaka and Ritualistic Halaka: the Ways and the Deeds

It would appear that Professor Twersky equated the term Halaka with ritual and therefore, he divided Maimonides' Code into Halaka and philosophy,⁷⁸ rather than ritualistic-halaka and philosophic-halaka. Consequently, Twersky classifies every Halaka which was non-ritual as non-halakic.⁷⁹ Although in truth we find the Halaka defined both in its broad macro-halakic sense as comprising all of Oral Law including Midrash and Aggada, and in its narrow micro-halakic sense, as opposed to Midrash and Aggadah,⁸⁰ it is clear from Maimonides' discussion of the aphorism, "G-d has nothing in His World except the four cubits of Halaka alone," and his codification of theology in the form of legislated norms, that Maimonides employed the term "Halaka" in its macro-halakic sense and did not simply "graft philosophy on to the substance of Oral Law," as Twersky claims.⁸¹

It is, furthermore, evident from the Talmudic Encyclopedia's expounding of the meaning of the term "Halaka," that this term denotes far more than ritual and indeed involves an all-comprehensive way of life:

The term Halaka is derived from the root halak [to go] and it means a thing which comes and goes from beginning to end. That is, something which was accepted in Israel and goes from Sinai until the present. Or, that Israel goes with it. That is, the accepted way that Israel must go. As it is written: 'And you will make known to them the way in which they are to walk and the deeds that they are to do '
[Exodus 18:20]⁸²

Thus we see that Halaka by definition comprises both the ways in which they walk and the deeds that they are to do. The teleological purpose of Halaka [i.e., the ways] are themselves defined as Halaka in which ritual [i.e., the deeds] is only a partial

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component.

Every halakic activity is two dimensional as it involves both the activity of the deed (Din) and the activity of the aspiration (kavanah). We are charged to aspire as well as to perform. The performance of each activity must be coupled with the context of the activity. The legal as well as the supralegal. Halaka itself requires that we transcend the ritual corpus through aspiration. This enables the juridical rules to converge with the metajuridical ways. Aspiration therefore is not just a lofty ideal but a pressing obligation.⁸³

According to Maimonides, the demands and guidelines of Halaka are both so definitive and so comprehensive as to have developed a halakic philosophy which is apart from general theoretical philosophy. For the paramount purpose of Sinai was to develop a halakic philosophy which prescribed its own telos. In doing so, Sinai separated Torah philosophy from secular philosophy in that the former became axiological and halakic while the latter remained teleological and theoretic. Philosophic-halaka is thus actionable in that its axiology is legislated and its pursuit is obligatory.

Although ritualistic-Halaka and philosophic-Halaka are both actionable, philosophy does not necessarily relate to Halaka in the same way as ritual in the sense that every philosophical dilemma can be looked up and resolved by reference to Code or canon. For philosophic-Halaka is the qualitative dimension of each canonized ritual. This qualitative property is multiplanar and consequently includes much more than is explicitly required or permitted by specific rules. The ways of Torah denote purpose and direction rather than prescribed acts. Metajurisdiction, or supralegal laws, looks before and after jurisdiction and legal law in that the former concerns itself with results as much as with origins.

R. Joseph Soloveichik keenly observed the expressed style in which Maimonides thematically presented the "ways" together with the "rules" consistently throughout his Code in the relation between the titles of Maimonides' chapters to the contents of the chapters themselves:

The difference in nomenclature between the title and the law is not coincidental. It is a consistent method in Maimonides' system, that in every place where he deals with a commandment whose fulfilment is in the heart and its performance is in a

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deed, he divides it with precision; in the laws he discusses the deed of the commandment, whereas in the title, where the definition and the introduction to the law are given, he discusses the fulfilment of the commandment in its entire and full significance.⁸⁴

Thus R. Soloveichik expertly describes the ingenious way in which Maimonides combined the ways of Halaka with the rules of Halaka. Every codified commandment has a twofold purpose: The perfunctory performance of a specific deed, and the intellectual fulfilment of its goals.

The Educative Goal

It stands to reason, following this same structural pattern, that Maimonides viewed his Sefer Maddah — Book of Knowledge — as a general "title" for his entire Mishne Torah in which the former outlined the goals and the ways of his Code while the latter concentrated primarily on the specific rules, with each titled section relating the rules back to the ways. The Code itself ultimately culminates in a zenith of this pattern in the Maimonidean system where the rules of the entire Code relate back to the ways in the very last Halaka of the Code:

And in that [Messianic] era there will be no famine and no war. And no jealousy and no competition. For the good will be plentiful. And all of the pleasures will be found like the dust...And the concern of the world will not be except to know G-d alone. And therefore Israel will become great with men and knowledgeable in secret matters and they will attain knowledge of their creation as far as it is possible for man. As it is written: 'For the earth shall be full of knowledge of the Lord, as the waters cover the sea.'⁸⁵

Thus, one can almost detect a systematic step by step process which Maimonides ingeniously developed in a series of writings and works, which if followed correctly would enable man to attain ultimate perfection and communion with G-d.⁸⁶ The deeds, in this sense, serve the purpose of actualising one's beliefs in practice so that knowledge of G-d becomes an active way of life, rather than a philosophical repast of the mind. The practice of knowledge, in turn, creates a qualitative difference in the substance of knowledge itself. The substance of knowledge prior to and unaccompanied by the deed becomes enriched by the activity of the deed, in that concretizing one's knowledge through practice causes one to gravitate from a level of knowledge in which one not only knows G-d but more pro-

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foundly can commune with G-d. It is this sublime and superior level of knowledge which Maimonides in his last Halaka of the Code expounds at greater length in his final work the Guide.⁸⁷

This objective of the Guide is authenticated by Maimonides himself in the very first quote which he selects to induct his Guide:

'Cause me to know the way wherein I should walk,

For unto thee I have lifted my soul' [Psalms 143:8].

This progressional educative role as the designed intention behind Maimonides' works is evident from what Maimonides writes of the "Torah," which his Mishne Torah even by its very title, determinately strove to "duplicate":

If you consider that book which guides those who seek guidance toward what is correct, and is therefore called Torah...⁸⁸

Maimonides had a unique concept of a Legal Code. As Twersky correctly observes:

He aspired to produce a law code which instructs as well as commands, thereby providing an effective instrument of education and edification, for law itself is an educative force leading to ethical and intellectual perfection.⁸⁹

Hence the "Guide" sought to round out the educative halakic process, by continuing to progressively "guide man who seeks guidance toward what is correct" – the ultimate objective of Torah itself – as defined by Maimonides above. Thus we discern a dynamically organic intercourse between the "activity of the deed" and the "activity of the aspiration." The contextual aspiration of the ways is necessary for the practice of deeds, and the performance of deeds, in turn, is necessary for refining the quality and substance of knowledge through concretization and actualization. Juridics and Metajuridics are on a direct collision course, each one importantly influencing and invigorating the other. Metajurisdiction functions as a prerequisite and a basis for jurisdiction⁹⁰ while jurisdiction functions equally as a foundation for metajurisdiction.⁹¹ Both the philosophic ways coupled with the ritualistic deeds are integral aspects which together make up the complete fabric of Halaka. It is with the sameness of such a halakic Weltanschauung that we can understand R. Joseph Soloveichik's remark:

When the Torah expatiated on the creation of the world and related to us about the formation of heaven and earth and their whole host, it did not come to reveal cosmogonic secrets and metaphysical secrets of the world, but to instruct Halaka in

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practice [halaka lema'aseh]. The section on the Account of the Beginning is an established portion of Halaka for generations, that essentials [gufei] of Torah are included in it, just as the portion of Kedoshim or Mishpatim.⁹² If the Torah opened the scroll of creation before man, then one Halaka is definite from this feature, that he is obligated to preoccupy himself with creation and the novelty of the universe. (Emphasis added.)⁹³

Only an obsessively halakic world view which cogitated an utterly complete reciprocity and intercourse between the ways and the rituals, could possibly have described the Torah's Account of the Beginning as Halaka lema'aseh – Halaka in practice.

Other Codifiers

Not so, however, was the halakic orientation and methodological approach of R. Josef Caro, author of Shulchan Arukh, who conspicuously discriminated between creed and deed, treating each realm independently. Although R. Caro himself excelled both as a master of legal law and as an archmystic, he did not allow the ways to impinge and encroach upon the rules. Thus he concentrated his Codex of Law primarily upon ritual and legalistic matters. Unlike his predecessors, the medieval giants of Halaka, such as R. Jacob b. Asher (Ba'al ha-Turim) and Maimonides (Mishne Torah) who determinedly linked the two spheres and upon whom R. Caro based his Code. As Twersky remarks:

There is yet another area in which the austere functionality comes to the surface – in the virtually complete elimination of ideology, theology and teleology. The Shulchan Arukh, unlike the Mishne Torah or Sefer ha Rokeah, has no philosophical or kabbalistic prolegomenon or peroration. The Shulchan 'Aruk unlike the Mishne Torah or Turim, does not abound in extra-halakic comments, guiding tenets and ideological directives.⁹⁴

Not only did Shulchan Arukh deviate from the structure of codification of his halakic predecessors, the "restrictive almost styptic trait of the Shulchan Arukh was noticed – and criticized – by colleagues foremost among whom was R. Mordechai Jaffe."⁹⁵

R. Moses Isserles, who was responsible for compiling the foremost gloss on Shulchan Arukh entitled haggahot ha-Rema in which he included the customs of Ashkenazi scholars left uncodified by R. Caro, introduced as well many kabbalistic and theological motifs and explanations. ⁹⁶ His explicit purpose in doing so was

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in order to combine the rules together with the ways, which is readily evident from Rema's opening statement of his gloss:

'I have set the Lord always before me' [Psalms 16:8]. This is a cardinal principle of Torah and in the perfect ways of the righteous who walk before G-d.⁹⁷

We shall see shortly how Rema continues to cite Maimonides' Guide in illustrating how one's cognition of this psalmist verse necessarily must influence one's practice.⁹⁸ It has also been noted that Maimonides as well began the first part of his Code, the Book of Knowledge, by applying the same cardinal principle.⁹⁹ In fact R. Caro himself uncharacteristically began his Shulchan Arukh with an ethical instruction from Pirkei Avot:

A man should make himself strong and brave as a lion to rise in the morning for the service of his Creator so that he should 'awake the dawn.'¹⁰⁰

It is indeed possible that R. Caro omitted the "ways" from his Code not because he considered the ways "non-halakic," but rather because of the practically impossible task of preparing a Code in which every moral or philosophical dilemma could be resolved with the same measure of certainty and finality as legal and ritualistic law. Indeed, R. Caro's exclusion of Laws of Ethics and the Laws of Repentance (which many of the other codifiers included)¹⁰¹ could by no means be attributed to R. Caro's regarding these laws as either non-halakic or non-practical, but rather because of the great difficulty of codifying these spiritual co-ordinates of the Law with the same degree of exactitude and definiteness as the ritualistic laws.

In any event, Shulchan Arukh's unique methodology of splitting the indivisible in his formulation and codification of Halaka, represented an unconforming departure from the structure of standardized law followed by the majority of codifiers before him. And if it can at all be posited, as Twersky alleges that:

Actually there is no need for devotees of the Shulchan 'Aruk to indulge in meta-historical panegyrics, for supernatural phenomena carry no weight in halakic matters.¹⁰²

This appraisal can at most be attributed to R. Caro alone, if at all. But certainly not according to the majority of codifiers who made painstaking efforts to intentionally coalesce and unite the metajudicial ways together with the juridical rules, both

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of which constituted the essential fabric of Halaka.

Gershon Scholem appears largely insensitive to the intricate nature of reciprocity and complementarity between juridics and metajuridics - the temporal and the spiritual, the contingent and the eternal - in positing the following statement in his Major Trends in Jewish Mysticism:

It is a little paradoxical when Eleazar of Worms, at the outset of his Sefer Rokeah, in which he gives an outline of the religious law, makes an attempt to codify the Hasidic ideal in halakic terms. It is a remarkable fact that both Maimonides and his younger contemporary, Eleazar, preface their codifications of the law by attempts to extend the Halaka to matters which, strictly speaking, lie beyond its province: in the case of Maimonides, a philosophic and cosmologic preface in which the ideas of Aristotelian enlightenment are introduced as elements of the Halaka; in the case of Eleazar, a chapter devoted to the entirely unintellectual principles of Hasidut. The coincidence is hardly fortuitous and throws an interesting light on the significance of the various religious trends in Judaism; nor is it fortuitous that in both cases the attempts failed: The Halaka was never organically linked with the quasi-Halaka which preceded it. (Emphasis added)¹⁰³

In contrast to Scholem, according to Maimonides at least, the Torah itself organically linked itself with "quasi-Halaka" by beginning from the Account of Creation rather than from Sinai and by prescribing philosophic knowledge of G-d as its very first commandment. Moreover, the amoraic and savoraic redactors of the Talmud as well linked Halaka with "quasi-Halaka" by continuously shifting in a capricious and erratic manner between Halaka and Aggada, repeatedly inserting supernatural aggadic anecdotes in the middle of intensely halakic discussions. The talmudic aphorism "G-d has nothing in His world except the four cubits of Halaka alone," would seem to justify this systematically methodized erraticism. For if legal Halaka and Aggada are two faces of the same coin, then the superimposing of one upon the other becomes harmonious rather than chaotic.

Philosophy of Practice and Philosophy in Practice

Thus far we have reviewed the reciprocity between philosophic-Halaka and ritualistic-Halaka, the "activity of the aspiration" and the "activity of the deed," on two levels. On one level

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we have seen that the philosophic ways can function as a propaedeutic and prerequisite for ritualistic rules in that "knowledge leads to action," Maimonides' same reason for beginning his Code with the

Book of Knowledge. This level could be termed "philosophy in practice" or "practiced philosophy." On another level, we have seen that the ritualistic rules can function as a foundation for the philosophic ways in that the performance of deeds concretizes and actualizes abstract notions. Maimonides explicitly states that the purpose of the Laws of Mezuzah and Laws of Repentance is to communicate correct beliefs and to focus one's attention on G-d and His ways.¹⁰⁴ This second level could be termed the "philosophy of practice." This level assumes a purposefulness in which practice of ritual is designed to lead man to the ways.¹⁰⁵ The ta'amei ha-mitzvot - the reasons for and rationale behind the commandments - are included in this category. For ritualistic rationalism and intellectualism is purposive in that it seeks G-d through the commandments.¹⁰⁶

Although this second level of "philosophy of practice" whereby the performance of commandments propels the individual towards an active contemplative role, included in its general assumption of a rationale of Mitzvot, is generally well understood, the first level of "philosophy in practice" or "practiced philosophy" by contrast, is not so well understood. Little research has been attempted to date to uncover this extremely important former relationship of Halaka.¹⁰⁷ Even Twersky, who perhaps went furthest in realizing and articulating the phenomenon of the former influence of philosophy upon practice in the Maimonidean oeuvre, describes Maimonides' insertion of "extra-halakic" motifs as only "topical-conceptual, rather than utilitarian." And, in an earlier discussion on the same subject Twersky states:

The guiding principle is thus not simple practicability. The emphasis is on relevance, and this may be either practical or theoretical.¹⁰⁸

It is our contention, as indeed this essay endeavors to demonstrate that in the intercourse between philosophy, metaphysics, and law in the Maimonidean oeuvre, or in any system of law which incorporates the metajuridic component, that this former component is not merely "conceptual-topical" or at most "relevant," but far more fundamentally

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manifests itself as a trenchantly utilitarian feature of law. For when regarding the phenomenon of philosophy in practice or practiced philosophy whereby philosophic considerata directly affects practice, one becomes acutely aware how the "metahalakic" constituent functions in a dynamic and practical capacity. Our study reveals how the halakic process computes philosophical and metaphysical data on an operative level which in turn effects and yields practical outcomes.¹⁰⁹

The domain of the four cubits of Halakacan now expansively be defined as that derivative which results from : a) the study and application of R. Ishmael's hermeneutic principles,¹¹⁰ and b) the study and application of the philosophical and metaphysical principles subsisting in the baraita of R. Jose the Galilean's thirty-two hermeneutic rules of the Aggada¹¹¹ and in the subject matter styled Pardes. Therefore, an analysis and investigation of the scientific workings of metaphysics in halakic process, proves most rewarding and practically worthwhile in that it exposes this little known and erstwhile considered abstract branch of hypothetical subject matter, as a field of study which is fundamentally pragmatic and intensely utilitarian.

The basic premise of this field, whereby different states of cognition affect practical judgments and generate corresponding changes in man's actions, is readily apparent in Maimonides' description of this phenomenon, which as stated earlier, is significantly cited by Rema in his appendage to the very first law of Shulchan Arukh:

Man does not sit, move and occupy himself when he is alone in his house, as he sits, moves, and occupies himself when he is in the presence of a King: nor does he speak and rejoice while he is with his family and relatives, as he speaks in the King's Council ...

Know that when perfect man understands this [i.e., that G-d is constantly with us, examining us from on high, see thereon], they achieve such humility, such awe and fear of G-d, such reverence and such shame before Him, may He be exalted - and this in ways that perfection to true reality, not to imagination - that their secret conduct with their wives and in latrines is like their public conduct with other people ...¹¹²

Similarly, in an early discussion in the Guide, Maimonides explains how Adam's acquisition of knowledge of "good and evil" caused him

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to apprehend that he was naked and, subsequently, to cover himself up.¹¹³ In his explanation for having included the Laws of Repentance in his Book of Knowledge, Maimonides writes:

For an individual cannot but sin and err, either through ignorance – by protesting an opinion or a moral quality that is not preferable in truth – or else because he is overcome by desire or anger. If then the individual believed that this fracture can never be remedied, he would persist in his error and sometimes perhaps disobey even more, because of the fact that no stratagem remains at his disposal. If, however, he believes in repentance he can correct himself and return to a better and more perfect state than the one he was before he sinned.¹¹⁴

David Hartman has correctly noted how, according to Maimonides, "human choices are influenced by an understanding of the whole of being and of man's place within it."¹¹⁵ From these and other examples of Maimonides it is clear that man's practices are directly affected as he acquires cognitive skills and transposes himself from one state of cognition to another. This intellectual process is converted from a theoretical exercise to become pragmatically relevant on an operative level.

The Application of Theosophy in R. Nachman of Bratslav's Halakic System

In an article "Mysticism and Law," Yitzchak Englehard describes how R. Nachman of Bratslav (1722-1811) applied certain axiological principles in his compendium Jures (Likkutei Halakot). An example of such a principle applied by R. Nachman in Laws of Damages is :

All damages are caused as a result of defective knowledge and intelligence... and necessarily in the future, when the intelligence will be superior in the world, there will be no damages in the world... for the earth shall be full of the knowledge of the Lord.¹¹⁶

R. Nachman's mystical approach to Halaka bears an uncanny resemblance to Maimonides' rationalistic approach in a virtually identical discussion by Maimonides on the same subject.¹¹⁷ Concerning the Laws of Damages Englehard explains that :

Responsibility for causing damages is based on guilt in a mystical sense, the results of which are not felt solely in the reality of mankind, but leave a mark in the esoteric world as well. Therefore a man is responsible for damages while asleep. [And citing R. Nachman]: 'For although during the time of sleep he has no cognition, the inter-

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diction and the onus not to damage are incumbent upon him... therefore one who is a man and his knowledge is perfect and he has belief in perfection, then certainly he will not cause damage even when asleep or unintentionally [beshogeg], which is also a type of sleep – the absence of consciousness... for when the mind is fortified – he is saved from damage, for all damages are a result of deficiency of the mind...and when a man merits that his mind become perfect and his belief is perfect, then he will certainly be safeguarded from damage, even while asleep, for faith protects the conscious and enters it during sleep so that it won't become deficient, so that he will not come to damage, so that the damagers of the world will not thrive on it.

The four principal categories of damages (Avot Nezikim), according to R. Nachman, are also symbolically contingent upon deficiencies in belief. It is these deficiencies of belief which are responsible for damages in the real world, and man's responsibility is incumbent upon them.¹¹⁸

Halaka and Aggada

Superficially it would appear that the main contention of our research is substantially thwarted by the contradiction which exists between Halaka and Aggada expressed in the dictum "Halaka may not be derived from Aggadot nor from Midrashim."¹¹⁹ However, upon closer inspection it is evident that this very dictum itself compels Halaka to confront Aggada from a normative standpoint, in order to resolve the tension between them. An excellent example of the confrontation between Halaka and Aggada and its neutralization is reflected in the incident of "the Oven of Aknai" related in Baba Mezia where the Halaka was decided according to the majority view despite the occurrence of miracles and a Heavenly Voice in support of the sole opposing view. The very ruling of "We pay no attention to a heavenly voice" and "It is not in heaven" because "Thou hast long since written in the Torah of Mount Sinai, 'After the majority must one incline',"¹²⁰ impels the halakic edict of "after the majority" to confront the aggadic categories of "the heavenly voice" and other metaphysical phenomena which occurred in support of the opposing view. For it is imperative from a normative standpoint to investigate the reality of these categories, and to determine their degree of reliability and measure of truth. As Englehard writes:

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Because the Divine decree stands at the top of the ladder of religious norms, and from it the Sages themselves drew their authority. On the assumption that the Heavenly Voice is an expression of the Will of the Divine Lawgiver, the problem is, if the contradictory ruling of the Sages can stand before it from a normative position.¹²¹

In other words, it becomes imperative for Halaka to investigate Aggada in order to establish the authority and credibility of Halaka as a system. For if the purpose of observance of Halaka is to perform G-d's Will, and G-d's Will as expressed in the Heavenly Voice indicates the exact opposite of the Sages' ruling, unless the confrontation is neutralized, then Halaka fails its purpose as a system! We will see shortly how this important dilemma is resolved.

To such an extent was Aggada recognized as an integral fabric of Halaka that many respondents had great difficulty fathoming the above-mentioned dictum until they resolved that Halaka is not derived from Aggadot nor Midrashim only in the event that the Aggadot or Midrashim contradict the Babylonian or Palestinian Talmuds.

However, :

When the Aggadot or Midrashim do not contrapose our Talmud or the Palestinian Talmud, but to the contrary, add to them, we derive [Halaka] from them, and rely upon them, and many of our customs originate in them.¹²²

R. Zevi Hirsch Chajes went even further in explaining that often Aggadot were expounded popularly before the commonfolk not for the purpose of instructing Halakot, but rather to penetrate the hearts, at times even contravening the law, in order to stress the importance of certain virtues. However, R. Chajes writes:

Any matters which do not contrapose the sayings of the Sages of the Talmud, and were not spoken homiletically before the people, they are all established Halakot.¹²³

The variance between certain Aggadot and the talmudic rulings of the Sages, according to R. Chajes, is no more unusual than the contradictions between the Halakot of the Jerusalem Talmud and the Halakot of the Babylonian Talmud where the accepted ruling normally follows the position of the Babylonian Talmud. However, when no contradiction exists between the two Talmuds, then the Halaka follows the Jerusalem Talmud or the Midrashim and Aggadot which are equally, "halakic rulings by us" (halakot pesukot etzleinu).¹²⁴

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In a similar vein, Saul Liberman justifies his classification of the work Hilkot ha-Yerushalmi as a "book of Law alone" despite the inclusion of aggadic material, because the putative author, Maimonides, only included Aggadot which were necessary for establishing Halakot.¹²⁵ Twersky as well says of Maimonides' inclusion of Aggada in his Code: "Sometimes aggadic material is imperceptively transformed into and identifiable with Halaka."¹²⁶

In the same article mentioned above, R. Chajes lists several important Halakot which have their origin in and are derived entirely from Aggadot and Midrashim. Menachem Elon in his ha-Mishpat ha-Ivri adds several other instances where Halakot are derived from Aggadot.¹²⁷ We will also show an example of this, in Chapter III.4 how the Law of Conformity (lo titgodedu) is based upon and stem from Aggada. At times we find the term Halaka employed to introduce, authenticate and confirm the reality of aggadic statements. As for example:

It is a Halaka, that it is well known that Esau hates Jacob.¹²⁸
And as we find in the Mishna:

R. Joshua said: I have received a tradition from R. Johanan b. Zakkai, who heard it from his teacher, as a Halaka to Moses from Sinai, that Elijah will not come to pronounce impurity or purity, to put away or to bring near, but to put away those brought near by force and to bring near those put away by force.¹²⁹

The Codification Problem

Indeed, R. Hayyim Tchernowitz (pseudonym Rav Zair) in his Toledoth ha-Posekim, explains that the generic difference between Halaka and Aggada was not recognized by the Tannaim and Ammoraim, and that the distinction between them was only a much later development of the Geonim.¹³⁰ They were the first to separate these two categories and it was they who were responsible for coining the dictum "Halaka may not be derived from Midrashim and Aggadot".

R. Zair remarks that in fact, the organizers of the Talmud purposely made every effort to mesh the two following in the exact style of the Midrash.¹³¹ For Scripture itself, the archbasis of Midrash, was identically structured, "narrating incidents, reproofs, ethics, commandments and statutes all in the same breath." Hence Scripture, and in its path Midrash, and following them in suit, the

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Talmud, all intentionally mixed Aggada and Halaka until the mixture was so thoroughly consolidated and coagulated that only the hairsplitting exactitude and precision of the Geonim was capable of distinguishing between the two. The reason for this deliberate synthesis is attributable to the conception that only Halaka and Aggada unified together as a cohesive unit could project the whole picture and teach the correct path of "walking in the ways of G-d."

Rav Zair questions the peculiarity that in view of the fact that Talmud, Midrash and the Bible itself made painstaking efforts to purposefully integrate the two, why then did the Geonim subvert this pattern and lacerate the viscid bond which existed between them previously. Rav Zair enumerates three reasons for the development of this phenomenon and the probable Geonic interest in doing so:

1) Firstly, Rav Zair explains that the Geonim were interested in fashioning a Code of Law which would present Halaka not from the perspective of which practices men ought to follow but rather from the vantage point of the enforcement of these practices by the Beth Din. Consequently many "aggadic" practices were excluded from this codification not because they weren't considered or defined as Halakot, but rather because of their being unenforceable by the judicial authorities. For example, the first of the seven thieves enumerated in Midrash, was the one who "steals the mind of another man."¹³² Therefore, the Geonic distinction between Halaka and Aggada was not practical versus theoretical, but rather between man's collective communal responsibility versus man's private individual responsibility. Any law which pertained to man's heart (mitzvot shebalev), though practical from the vantage point of man's private concern as an individual, was completely unenforceable by judicial authority.

2) Secondly, R. Zair explains that the meaning behind many aggadic sections was so profound that large segments of aggadic material remained remote and unfathomable even to the most skillfully trained mind. It was impossible then, to institute these teachings or enforce their adherence. In order to minimize confusion, the same attitude was adopted even towards those Aggadot whose meaning were commonly understood. Consequently, sanctions were not imposed upon the violation of "aggadic" laws.

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3) Lastly, R. Zair advances that many of these unfathomable and strange Aggadot were utilized by the feeble-minded heretics as a source of scoffing and ridicule. The Geonim, therefore, intentionally categorized Aggadah as different from Halaka in order to prevent this perverseness from transferring itself over to Halaka whose esteem stood in danger of being exposed to the same measure of scoff and ridicule.

Nevertheless, despite the concerted effort of the Geonim to segregate Halaka from Aggada they remained, to a large extent, unsuccessful with the result that a plethoric abundance of Halakot emerged in the Codes which were completely based, and immersed in aggadic vestment as in its original Torah form, even to the extent that aggadic practices nullified and cancelled halakic ones in certain cases!¹³³

Rationalism as a Criterion for admitting Aggadically Based Halakot

The most reliable criteria for determining which Aggadot would sift their way into the halakic process, as compared to the Aggadot which would remain distantly aloof from it, is the following telling dictum:

You are not to derive anything from it [i.e., Aggada] except that which is intellectually understood [ein lecha lilmod elah ma sheya'aleh al ha-da'at].¹³⁴

This dictum dictates that Halaka will not accept within its confines any conception which is not intelligently understood. This is so because the halakic process itself mandates that one actively transform communicated beliefs into demonstrative truths. As we explained regarding the difference between the "Mitzvah" and the "Halaka" of the first commandment. In the same manner, those abstract conceptual notions of Aggada which can be transposed into realistic intelligent demonstrative categories are accepted by Halaka, as Halaka itself is governed by and defined as that same process. Failing this scrutiny, it will be rejected by Halaka and remain Aggada.

For this reason the Sages in the "Oven of Aknai" incident rejected the singular position of R. Eleazar despite the occurrence of miracles and the heavenly voice phenomenon in support of his view, and ruled according to the majority rule. Not because the one

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position was true and the other position was false. Indeed both positions were correct as in, "The utterances of both are the words of the living G-d" (Elu v'elu divrei Elokim hayyim).¹³⁵ However, there is a marked difference between aggadic truth and halakic truth. Although the occurrence of miracles and the heavenly voice were most certainly aggadically true, the Sages on earth could only halakically accept those truths which accorded with "reason." Hence, the halakic truth was established according to the reason of the majority view and the aggadic truth of R. Eleazar was ultimately rejected.¹³⁶

In the same view but in an opposite context Maimonides avouches that he halakically accepted many of the mathematical and astrological axioms of the Greek scientists and philosophers in calculating the Laws of Intercalation despite their having been developed by Gentiles, because they could be proven by reason and were therefore demonstrated universal truths.¹³⁷ Since halakic truth is determined by reason it takes no notice if in the process of establishing a truth it accepts the demonstrated postulates advanced by Gentile scientists, philosophers and rejects the nondemonstrable aggadic postulates of Heaven.

Indeed, the much discussed question of whether the Posek (rabbinic Decisor) may rely upon a Heavenly voice, prophetic knowledge, or heavenly ruling seen in a dream, in order to decide Halaka all revolve around this issue. Namely, whether a Divine interjection may influence the halakic decision-making process. On the one hand these heavenly phenomena are not apprehended by reason and are communicated subsequent to Sinai, yet they are expressions of Divine Will. The majority of discussions confirm that although the halakic decision may not be rendered on the basis of these heavenly communicants, nonetheless, they may "assist" the Posek in reaching a decision which he can arrive at rationally by way of reason.¹³⁸

The categories of Aggada and Halaka may be regarded as pertaining either to the heart or to the brain. While Aggada engenders emotions, imagination, and surrealism often reaching the supernatural; Halaka is concerned with the actual and the real, carrying with it all the mental faculties that manifest themselves in arguing, comparing, investigating and developing hermeneutic principles.

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The 'halakification' of Aggada essentially involves applying oneself to purely abstract supramundane matters and translating these notions into concrete realistic terms by means of demonstrating their inherent correctness and truth according to reason. The method whereby the abstract imaginary whims of the heart become transformed to proven realistic categories of the mind, and the extent to which this process influences one's actions in practice, manifests the dynamic metaphysical process in Halaka which translates thought into reality and philosophy into practice.

The confrontation between Halaka and Aggadah as encountered in the "Oven of Aknai" incident exposes the essential need from a normative standpoint for Halaka to grapple with Aggada. The purpose of the halakic system is realized by resolving to accept the most logical expression of G-d's Will which is demonstrably correct according to reason. For the supreme expression of G-d's Will is manifest in the intellectual internalization and understanding of His ways. The decision to treat the oven as pure or impure is a further practical and concrete application resulting from resolving the above metaphysical dilemma.

Changeability within Halaka

Englehard remarks that although the mystical dimension imparts upon R. Nachman's halakic system tremendous cosmic significance, nevertheless:

He [the mystical exponent] does not establish an original judicial solution on the basis of his science. Consequently the role of this exegesis is very limited. In face of the true social needs of judicial solutions, there is little likelihood that mystics will utilize them to develop ritual of a new content.¹³⁹

Although Englehard is correct in appraising that theosophic exegesis does not create new ritual since it deals with a given text of law, he is mistaken in thinking that it is nothing more than a kabbalistic ta'amei ha-mitzvot (ratio praeceptorum), providing cosmic embellishment for a preconstituted code of law. He seems to overlook the fact that just as much of Torah Law is constant, yet, the situations, conditions, and circumstances for arriving at the law are constantly changing. And in the same way

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as the employment of variant legal factors effect different halakic outcomes without creating new Torah laws, so too the employment of variant theosophic data and metaphysical considerations can similarly lead to different halakic results, without creating a new Torah text. This is the very reason why we find that zoharitic conclusions differed from the rulings of the codifiers on so many issues. Precisely because the Zohar's employment of various theosophic principles and considerations led to different halakic outcomes without changing the original texts of the Law or creating a new Juris Mosaici. As R. Joseph Delmedigo of Candia (1591-1655) explains concerning the "Oven of Aknai" incident:

Even though the Din and the Halaka accord with the esoteric masters, we do not follow them except in the ways which were given to us at Sinai to expound the Torah and to illuminate its obscurities. And even if we are mistaken we are not punished for this. But one who has been 'favoured' by G-d and becomes superior to the other Sages until he knows the truth of things from another place, he is not to follow the simple way. And for this reason R. Eleazar was so adamant and unyielding in the conflict and would not concur with R. Joshua's ruling of following the majority rule.¹⁴⁰

Although the only halakic outcome was that the oven was either pure or impure, and no new halakic category was created nor was any new Torah law invented, nevertheless, the employment of diverse theological data produced contrary halakic results. R. Delmedigo cites this talmudic incident in explanation of certain codifiers, who followed the conclusions of R. Simeon b. Yohai in Zohar, many of which ran contrary to the accepted halakic rulings.

It is in this practical sense of arriving at variant halakic outcomes by employing different theosophical considerations and factors that one could hardly consider the role of mystical exegesis in Halaka as limited. In fact, the scope of its influence on Halaka was so vast that it became the excessive preoccupation of a great many halakic experts to investigate from a normative standpoint how the Sages of the Zohar arrived at diversified and contrary conclusions to that of the Codes - especially considering that both were dealing with the same original Torah text. To the extent that the zoharitic considerations could be rationally accepted according to logic by the majority of codifiers, its view became absorbed by the Halaka. That which remained unfathomable according to the reasoning of the majority of Sages, although "true" on its

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own right, could not be proven halakically true and therefore was not followed in practice. This being the same criteria employed earlier to decide that any aggadic matter whose veracity could be demonstrated logically according to majority reasoning, had sufficiently qualified itself for becoming accepted by the halakic authorities. Thus a great many practices whose source and origin were wholly embedded in Aggada and theosophy entered the Codes. The method whereby computation of aggadic and theosophic data influences and engenders practical actions, illustrates the metaphysical dimension operative in halakic process.

The Responsa Literature

The rabbinic compilations of aggadic material - whether they be essentially theological, metaphysical or philosophical - which function as bases and stimuli for engendering practical laws, developed side by side with the emergence of various Codes. They can be found deftly diffused throughout the Responsa literature in scores upon scores of seemingly peculiar cases where examples of such phenomena in halakic process abound. Even long after the appearance of the last major universally accredited Code of Jewish Law - the Shulchan Arukh - the phenomena of philosophy in practice continued unrelentingly to manifest itself in the Responsa literature to this date.

Two of the examples documented by Rav Zair in evidence of the many Halakot which emerged from and were based in Aggada, are taken from incidents where the prophet Elijah features. In the first instance, it is related in Talmud, Berakoth:

R. Jose says: I was once traveling on the road, and I entered into one of the ruins of Jerusalem in order to pray. Elijah appeared... Thus I then learned from him three things. One must not go into a ruin; one may say the prayer on the road; and if one does say one's prayer on the road one recites an abbreviated prayer...

In the second instance Rav Zair recalls how tractate Baba Mezia relates three separate laws stemming from Elijah.¹⁴¹ Likewise, we have elected to demonstrate the relationship of metaphysics operative in the derivation of Halaka extant in the Responsa literature, by devoting a large portion of this work to the theme of Elijah.

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There is a two-fold consideration for concentrating our documentation primarily on the Responsa literature, though our field of research also incorporates other halakic writings, discourses, the various Codes, as well as some purely theoretical works of Jewish thought. Both considerations ratify the uniqueness of responsa as compared with other writings. In an article examining research into Jewish Law, Menachem Elon writes:

In the responsum the reader finds himself in the midst of a living legal situation, facing the facts and listening to the claims of the opposing parties while accompanying one of the greatest authorities of Halaka in every stage of his thinking process. The student and research worker studying responsa find themselves in a workshop as partners in the experiment of creation, participating in profound and comprehensive legal analysis, listening to an incidental description of the current socio-economic background which is interwoven with the halakic decision. He may listen in to hidden or transparent indications of doubts and differences, and follow the halakic scholar in finding a solution and decision based on the past but nevertheless serving the diverse needs of his own time. (Emphasis added.)¹⁴²

Thus, the most fertile soil for observing the relationship between metaphysics and Halaka in operation in a dynamic and thoroughly comprehensive manner is without parallel, the Responsa literature. Secondly, the uniqueness of the responsa is described by R. Jacob Moellin of Mainz (Maharil) who rejoins in a responsum of his own:

As for your statement that one should not rely upon the responsa [for the actual decision] the very contrary is true. They are decisions concerning actual practice [i.e., not merely theoretical discussions] and we may therefore learn from them much more than from the words of the posekim [i.e., the Codifiers]¹⁴³

According to R. Moellin, the responsa are unique in comparison to the Talmud and Codes in that the responsa deal with living problems which have arisen in actual situations. Therefore, the responsa by their very nature are intensely practical as the respondents were called upon to resolve real existing problems which required authoritative rulings. Because of their inherent practical nature and the circumstances under which they were asked, they are more authoritative than the Codes or the Talmud.

It is precisely because of this inherent practical nature of responsa that one becomes amazed at discovering lengthy aggadic discussion peculiarly scattered diffusely throughout the literature.

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While it is true that many of these discussions seem to have no apparent practical significance, it certainly does not follow that they are categorically theoretical issues that were designed by respondents to entertain the reader because of the sheer pleasure they derived from flirtation with abstracts. On the contrary, due to the fact that the respondents were generally overburdened with communal responsibilities, who in addition, received an enormous volume of correspondence where responding to every enquiry was virtually an impossible task, not to mention their often state of ill health, the respondents tended to purposely desist from entering into aggadic discussions which did not accrue towards any obvious practical end. Time simply did not allow them that luxury. Many respondents in fact said so expressly when on numerous occasions they apologized for not addressing certain aggadic questions. Yet, nevertheless, the same respondents who voiced reluctance to devolve into aggadic discussions themselves abound in aggadic discourses throughout many cases of their own responsa! (As, for example, Rashba.)

Therefore, considering the inherent pragmatic nature of the responsa and the role in which the respondents saw themselves, we must perforce assume that these discussions were entertained only insofar as they functioned as integral elements in the halakic process of deriving practical consequences and were relevant in assisting the respondent to reach practical decisions. Their apparent non-practical nature is not conclusive evidence by itself for defining and classifying these responsa as non-halakic. A seemingly impertinent and apparently inapplicable responsum discussion does not absolve the student of the responsa from the scientific duty of continually seeking to unearth to what practical end the respondent entertained such notions. If a practical purpose cannot be ascertained the responsum must be left as considered "difficult," for its practical relevance is "difficult" to ascertain. But certainly the word "difficult" does not automatically imply "non-halakic."

Moreover, we have already shown in this Introduction that the very demonstration according to reason of various imaginative aggadic categories is itself an active halakic process, even if this ratiocination has no obvious practical consequence. As in the first commandment, the demonstration of the truth of G-d's existence

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is itself a halakic process. Therefore, the fact that respondents in certain instances saw fit to demonstrate rationally the truth of various aggadic perplexities to a bewildered enquirer, certainly does not lead to the conclusion that such discussions are "non-halakic." For according to Maimonides there exists an entire category of commandments, such as Love of G-d, the fulfillment of which is primarily achieved through intellectual apprehension. This salient fact is further born out in a responsum of Maimonides, which many redactors of his Code considered relevant to append to his Laws of Fundamental Principles of Torah.

[Question] Concerning that which they said: 'He who knows how to calculate the cycles and planetary course but does not, of him Scripture says, etc.' And what is the practical difference if it is Halaka or not?

[Answer] Indeed, that which you asked what benefit does he derive in knowing it? R. Meir already said: 'Look into His Acts, because from this you will know the One Who Said and the World Came to Be... and he will assist us in all His commandments and to imitate His Ways, and to understand His Unity, Amen.'¹⁴⁴

Nevertheless, as far as this study is concerned, we have only documented metaphysical issues in the Responsa literature where contemplative speculation leads to obvious practical results.

Other Studies

To the best of our knowledge no extensive study has previously been attempted into our field of research, although its existence might have been sensed by some scholars of philosophy and law. It's in this sense that our research purports to delve into an area of Jewish Law which for the most part has been greatly unexplored.

The one work which perhaps comes closest to our study, although it falls far short of its mark, is Theology in the Responsa by Louis Jacobs. On the existence of theological discussions in the Responsa literature Jacobs writes in his preface:

The fact that theological problems found their way into Responsa collections, generally put together either by the authors themselves or by their disciples, gives them a special significance. It is almost as if these questions were treated with the full precision, seriousness and weight demanded when the masters of the law gave their legal decisions. A theologian might see no great harm in an occasional flight

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of fancy, he might feel encouraged to embark on a purely speculative exercise, he might be inclined to present some of his conclusions only tentatively. But a Rabbi discussing theology in a responsum would try to be clear, unambiguous and decisive as when he was determining in a legal dispute whether A or B were in the right. (Emphasis added)!¹⁴⁵

In other words, according to Jacobs, the difference between the existence of theological discussions in the responsa as opposed to other theological works and hence their "special significance," is that because of the special style of exactitude and precision with which the respondents wrote, a theological issue would be discussed much more meticulously and accurately in a responsum than in another work. For, "it is almost as if these questions were treated with the full precision seriousness and weight demanded when the masters of the law gave their legal decisions." However, it is clear that according to Jacobs, the respondents never really considered the theological issues which they were treating to be in effect halakic.

Jacobs reiterates this contention in his summary even more distinctly:

Although it had long been recognized that the Talmud uses the term 'Halaka' only in the sense of a final decision of legal questions, the halakic methods of reasoning are employed even when theological questions are considered. One might almost speak of a Theological Halaka. (Emphasis added.)

However, it is clear, according to Jacobs, that one cannot really speak of a theological Halaka. He says this most explicitly and unmistakably:

Here it is true that theology did not become Halaka. Digests and summaries abound of the legal decisions of the great luminaries, but no one has ever thought of providing a kind of Shulchan Arukh, a final code of theological beliefs binding on all Jews. (Emphasis added).¹⁴⁶

Jacobs was clearly unaware of the existence of halakic procedures whereby theology definitely and unreservedly became Halaka. This phenomena can be characterized much better as theonomy (from the Greek theos - i.e., G-d, and nomos - i.e., law) than as theology.¹⁴⁷

R. Joseph Hayyim Sonnenfeld made this fact obvious in a responsum to R. Shlomo Sobol:

[Question] Concerning the matter which Tashbetz [Responsa of R. Simeon b. Zemah Duran] wrote in regards to 'a groom is similar to a king'¹⁴⁸ etc... However, this requires investigation in general, because he [Tashbetz] wrote this in matters of Derush [homiletics]. And perhaps it is relevant to apply:

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'We do not draw conclusions from the Midrash?'
[Answer] What is written in Tashbatz is according to Halaka, and it is not judged as a Midrash.¹⁴⁹

Thus R. Sonnenfeld makes it quite clear that derush features in the responsa as a hermeneutical device rather than a homiletical goal. As far as Jacob's observation that no one ever thought of providing a final code of theological beliefs binding on all Jews, it is clear that Maimonides intended this very objective in formulating his Laws of Fundamental Principles of Torah in the style of normative Halakot. Precisely because the demonstration of the inherent truth of these legislated axioms is a halakic activity binding on all Jews. The fact that no one has seriously attempted to repeat Maimonides' effort is attributable to many factors, to mention only a few:

- 1) Rav Zair's consideration that the majority of codifiers were primarily interested in compiling their codes from the perspective of their enforcement by the Beth Din rather than from the perspective of what man ought to do. Their separation of deed from creed was due to the logistics of enforcement and not a divorcement of creed from Halaka.
- 2) The great difficulty involved in codifying beliefs with the same degree of exactitude and precision as legal matters. Neat schemes were simply not available.¹⁵⁰
- 3) Even with regards to legal matters themselves, the Codes have fallen well short of exhaustively covering one's obligation to fulfil explicit halakic duties as defined by Din. One cannot help feeling painfully aware of the acute paucity of codification of legal resources. The emergence of thousands of responsa after the Shulchan Arukh which solely deal in legal questions itself demonstrates how many issues were omitted by Shulchan Arukh. Let alone the complete deficiency and absence of Laws of Ethics, for example, from Shulchan Arukh. As R. Aaron Lichtenstein correctly observed that : "Even the full discharge of one's whole formal duty defined by the Din often appears palpably insufficient."¹⁵¹ Nor has anyone attempted to assemble the thousands of collections of responsa dealing with contemporary legal matters since the Shulchan Arukh which have arisen as a result of changing conditions and thus provide a much needed updated authoritative Code of practical matters which is universally binding on all Jews.¹⁵² This

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unfortunate fact has given rise to much religious dissension and splitting into factions due to the sullen image of halakic inflexibility and rigidity which is an inevitable and unavoidable result of failure to revise the Codes.

Dr. Jacobs claims that his study is particularly valuable in that it is, he believes, the first time in any language that such a study has been made. If Jacobs is correct in assessing that his research is the first time a study has been made of the existence of theological discussions in the responsa, then a study which divulges the existence of the practical application of theological discussions, that is, theology in practice, or theonomy, is certainly valuable.

Methodology

The methodology of our study differs from Jacob's in that Jacobs examines the Responsa collection in the form of a jumbled anthology from century to century, chaotically redacting hundreds of unrelated responsa excerpts at random, in which any matter of theological concern is considered or discussed. Our research examines and analyses responsa thematically according to topics rather than epochs and reviews only those responsa which contribute towards an enhancement and illumination of the central themes under investigation.

Significance of Thesis

Jacobs professes his study to reveal that: "matters of belief occupied a prominent place in the writings even of those authors who won their reputation as distinguished academic lawyers rather than as metaphysicians."¹⁵³ Our study reveals that these distinguished academic lawyers were not only also metaphysicians, but more exceptionally, often Jewish lawyers had to be metaphysicians, for if they were deficient in metaphysical erudition and expertise they would not have been able to cogently decide the law in a great many cases. As for example, in a responsum which will be discussed in detail in Chapter VI.1 where the respondent R. Elizer Waldenberg incorporated Maimonides' dissertation on the unity of the cosmos as well Maimonides' discussion of the significance of biblical

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anthropomorphisms in order to arrive at a suitable definition of personhood so that he could render a cogent decision as to the halakic status of a heart transplant patient, or to confirm the halakic status of one who undergoes trans-sexual surgery. Or else, as will be seen in the same Chapter, both R. Waldenberg and R. Hirschler affirm how knowledge and proficiency in ontology and in the behavioural sciences are vital for determining the halakic status of test tube babies.

Thus, our investigation not only repudiates the view that Jewish theology is un-Jewish and that Halaka concentrates solely on deed ignoring belief, but more fundamentally and more profoundly, the "deeds" could often not be determined, in many a case, unless the beliefs upon which they were contingent underwent, ab initio, careful and thorough scrutiny. Thus, not only do respondents emerge both as Halakists and metaphysicians, but rather they had to be metaphysicians in order to be Halakists which was frequently a necessary precondition for becoming the latter.

Indeed, the noted and highly acclaimed historian, Professor Yitzhak Baer in his work Yisrael ba-Amim, demonstrates that the earliest halakic Sages were metaphysicians in nature whom he calls "spiritualists" or "pneumatologists"¹⁵⁴:

There are two sides to Halaka: On the one hand — the rationalistic approach, which in the end did not deduce the final conclusions, of the principles of logical thought. And on the other hand — the mythical [i.e., metaphysical] approach of Halaka and its hermeneutics. These two aspects together were the foundations which shaped the image of the Sage and the pious religionist in Israel, the general pattern of Jewish thought, and the social structure of our people for many generations.

We find Sages of the Hillel type, who was a master of positive Halaka, however, in his essential nature he was without doubt a mystic and to this fact do his popular religious-moral teachings attest. The Sages of the Mishna after the destruction of the Second Temple continually preserved the equilibrium between the master of positive Halaka — and the religious-pneumatologist-metaphysician.

Like Rav Zair, Baer maintains the utter inseparability of Aggada from Halaka:

It is clear that one can not separate Halaka from what is called 'Aggada,' because they both come together to attest the relationship between the heavenly world and the terrestrial world.

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Both civil law and ritual law were judged by one common method, without distinguishing between the rational and irrational spheres. And similarly regarding hermeneutics themselves: Even when our Sages formally followed the rational steps borrowed from the West, in the final result they return to the metaphysical system of thought from which they stemmed.¹⁵⁵

Baer documents numerous laws which were formulated in the Mishna which were completely meshed and stemmed from metaphysical concepts.¹⁵⁶

Not only does Baer purport that the philosophical orientation of the Sages influenced their halakic positions as well as moulded the ideological and social structure of the people, but in fact, he proves that it greatly influenced Christological and stoic philosophies as well.¹⁵⁷

One of the most significant results of this study is that if it can be proven that many practical Halakot are contingent upon and grounded in philosophy and metaphysical knowledge, it then follows that, as man's understanding of philosophy and metaphysics changes, the Halakot which are contingent upon this understanding, of necessity must also undergo change. This will become clear in the coming chapters as, for example, how the different philosophical perceptions of the after-effect of Elijah's ascension produced different halakic rulings regarding the marital status of his spouse. This point will become especially clear in our chapter on Metaphysical Development, where we will discuss how many Halakot which were contingent on the scientific understanding of various metaphysical phenomena which existed during the medieval period underwent considerable modification in practice as these phenomena evolved and became differently perceived in the modern era.

Here lies a most important difference between philosophy of practice, i.e., ta'amei mitzvot (ratio praeceptorum) and philosophy in practice. For in philosophy of practice, or the rationale of law, even when the initial rationale changes or ceases to apply, the law still remains unchanged. Hence, although philosophy of law certainly enhances one's observance and appreciation of the law, it does not materially affect the law itself. Philosophy in practice, on the other hand, of necessity must affect practice as the philosophy upon which such practices are derived themselves undergo change or become differently conceived.¹⁵⁸ Thus, in the same way as changing socio-political conditions presents problems for practice, so would changing conditions of thought and epistemological perceptions equally present

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problems for practice, to no less an extent.

Ultimately, the value of researching metaphysical issues in halakic process, could perhaps best be summed up in David Hartman's following remark: "Sinai is not a mere stage in man's spiritual development, but the ultimate place to which man constantly returns – even when he soars to the heights of metaphysical knowledge," and in Baer's statement: "Every Halaka and religious-moral teaching, that from its source and origin, is part of a common human reality, returns and manifests itself in the end as a mythical [i.e., metaphysical] experience, which stems from Mount Sinai and Heaven, and it is studied and expounded in the process of research, in ways which seem rational but in truth are metaphysical, mystical and pneumatic."¹⁵⁹

II. IS THE PROPHET ELIJAH DEAD OR ALIVE?

The Sources

There were nine who entered the Garden of Eden during their lifetimes, and they are: Enoch, the son of Yered; Elijah, the Messiah; Eliezer, the bondsman of Abraham; Hiram, King of Tyre; Ebed-Melech, the Cushite; Jabez, the son of Rabbi Judah the Prince; Bithia, the daughter of Pharaoh; and Serah, the daughter of Asher; and, according to others, also Rabbi Joshua ben Levi.

Derekh Erez Zuta¹

Rabbah bar Abbuha met Elijah standing in a non-Jewish cemetery. Said [Rabbah] to him: Are thou not a priest? Why then dost thou stand in a cemetery? He replied: Has the master not studied the laws of purity? For it has been taught: Rabbi Simeon b. Yohai said: The graves of Gentiles do not defile, for it is written, 'And ye my flock, the flock of my pastures are men,' only ye are designated 'men.'

Baba Mezia²

Our Rabbis taught: Twelve questions did the Alexandrians address to R. Joshua b. Hananiah. Three were of a scientific nature [hokhma], three were matters of Aggada, three were mere nonsense and three were matters of conduct. 'Three were mere nonsense': Does the wife of Lot convey impurity? He replied: A corpse conveys impurity, but no pillar of salt conveys impurity. Does the son of the Shunamite convey impurity? He replied: A corpse conveys impurity but no live person conveys impurity.

Niddah³

The minor tractate, Derekh Erez relates how nine eminent persons entered Paradise alive. A certain enquirer was eager to know whether two of them,⁴ Elijah and R. Yehoshua b. Levi, were required by Jewish Law to divorce their wives or whether the husbands were considered dead, in which case it would be permissible for their wives to rewed.

The enquirer observed from Elijah's response to Rabba b. Abbuha in the narrative of Baba Mezia that it is clear that Elijah continued to heed all the commandments. His appearance in the cemetery was justifiable because the graves of Gentiles do not effect defilement. Were Elijah considered dead, and thereby unbound by Torah Law, his appearance at the cemetery would have been sanctionable,

regardless of whether or not the graves of Gentiles would cause defilement. Since the effectuation of defilement is a Torah precept, it would not apply to Elijah, as the dead are absolved of commandments. Therefore, the enquirer deduced that Elijah and R. Yehoshua b. Levi must be considered alive, and their wives are betrothed women whose husbands are alive. Thus he posited to R. Israel b. Pethahia Isserlein, the foremost rabbi of Germany in the fifteenth century,⁵ that it should be forbidden for their wives to rewed.

R. Isserlein's Responsum

R. Isserlein included this responsum in his famous Termumat ha-Deshen which reads:

[Question] Were the spouses of Elijah the prophet of blessed memory or R. Yehoshua b. Levi permitted to rewed? There would also be a practical difference for future generations if one were to merit a similar fate as them. From the narrative of Elijah standing in the cemetery one may infer that it is forbidden [to remarry].

[Answer] I am greatly astonished that you bothered to pose such a query. Did you not know how it is stated that twelve questions the Alexandrians addressed to R. Yehoshua b. Hananiah, among which were three matters of nonsense:⁶ Does the wife of Lot convey impurity? Does the son of the Shunamite convey impurity? And he responded: A corpse conveys impurity but no pillar of salt conveys impurity; a corpse conveys impurity but no live person conveys impurity. Even though Lot's wife was certainly dead, except that she was transmuted to another form and likewise the son of the Shunamite was indeed dead and was thereupon restored to life, nonetheless he declared that the wife of his fellow man⁷ is prohibited and not the wives of angels who are completely spiritual and not corporeal.

With regard to what you advanced as proof from Elijah's appearance at the cemetery, it is an obvious fact that Elijah observed all of Torah Law as it is stated: He even complied with the rabbinic enactments concerning the Sabbath limits.⁸

A cursory view of the crisis of R. Isserlein's responsum would indicate that one need not search widely to attest Elijah's commitment to Mitzvot. Furthermore, he contends that just as R. Yehoshua b. Hananiah evinced that the transformation of being, liberates one of

edicts relating to his former status, similarly Elijah's becoming an angel freed him from edicts relating to his prior status of being "thy fellow man." Hence his wife was no longer confined to the status of "thy fellow man's wife," and consequently Elijah and R. Yehoshua b. Levi must be considered as deceased whose spouses would be permitted to rewed.

The Difficulties

Upon closer examination of R. Isserlein's ruling it becomes apparant that what is contained in this responsum is by no means simple. One of the most arduous tasks of the respondent is not only inventing the solution, but also being absolutely certain that his solution conforms with the entire talmudic opus. The respondent cannot dispute what has been saliently mitigated by the Talmud.⁹ His ruling attains its cogency only subsequent to such scrutiny. There are two talmudic passages which seem to glaringly contradict R. Isserlein's responsum. Being that he was a "Rishon" - one of the foremost halakic authorities of his time whose Responsa became the basis for the evolvement of an abundance of subsequent Halaka - he was undoubtedly aware of these two talmudic passages.¹⁰ In addition, there are many internal difficulties within the responsum.

Adapting R. Isserlein's ruling to the talmudic passages and the illumination of its internal difficulties became the plethoric occupation of numerous respondents, codifiers, and halakic commentators. To discuss all of the halakic literature dealing with the Terumat ha-Deshen passage would be too exhaustive and extremely laborious. Therefore, only a few selected portions which are pertinent to the subject of the work have been chosen. Only after careful analysis of R. Isserlein's ruling, and a proper understanding of its profundity may we proceed to deliberate its application and its consequences.

R. Falcon's Analysis

R. David Falcon, a great talmudist and halakic scholar in Constantinople during the mid-seventeenth century, was exceedingly confounded by R. Isserlein's ruling. He proffers in his Responsa Bnei David,¹¹ that the ruling seems to contradict the following talmudic passage

in Moed Katan:

Our Rabbis taught: And these are rends that are not [to be] sewed up. One who rends [his clothes] for his father or mother; or his master who taught him Wisdom;¹² for a Nasi, or Av Beth Din ...

'For his father or mother or for his master who taught him Wisdom.' Whence do we derive [these rulings]? - For what is it written! And Elisha saw it and he cried: My father, my father, the chariots of Israel and the horseman thereof.¹³ 'My father, my father,' that is, [to rend on the loss of] one's father or mother. 'The chariot of Israel and the horseman thereof,' that is [for] a Master who taught one Torah.

Said Resh Lakish to R. Johanan: Elijah [however] is alive!¹⁴ He, [R. Johanan] replied, Since it is written there 'And he saw him no more, he was as dead to him [to Elisha].'¹⁵

R. Falcon remarked that the Talmud provides proof for the rending of one's garment in the event of death from Elisha's own rending upon Elijah's heavenly ascension. Resh Lakish promptly objects. Since Elijah is still living how can this instance be the source for rending in the event of death. R. Johanan's riposte is that since Elijah was no longer visible to Elisha, it was as though Elijah was dead. R. Falcon inferred from here that according to the Talmud, Elijah is considered alive! Even in the rebuttal, R. Johanan maintained that in reality Elijah is considered alive except vis-a-vis Elisha. For Elisha, Elijah's departure represents his death by virtue of his becoming unperceivable.

In this connection R. Falcon asked: What did R. Isserlein clarify by replying to the enquirer that it is an obvious matter that Elijah observed all of Torah Law, even to the extent of heeding the rabbinical enactments of the Sabbath limits. Did not the enquirer advance as proof from the cemetery incident in Baba Mezia that Elijah's obligation to observe Torah Laws of impurity evinces that Elijah is alive! There is a contradiction in maintaining on the one hand, that Elijah observes Mitzvot and therefore is considered alive, and on the other hand that as an angel he is absolved of commandments and therefore is considered dead. The two positions are diametrically opposed.

In order to fathom these acute difficulties R. Falcon suggested a novel interpretation of the above-cited passage in Moed Katan. Resh Lakish was not asking how Elisha's rending could be the guiding instance for rending; rather, he was questioning why did Elisha rend

altogether. Surely, it would have been preferable to don white raiments and rejoice, since Elijah was being spared death and vouchsafed eternal life. This was not an occasion for mourning but one for supreme jubilation. R. Johanan's riposte was that rending was not for Elijah per se, but rather it was for the loss of a mentor whom Elisha could no longer behold. Indeed, Elijah was sublimated to an angel; however, for Elisha it meant his Master had died. No longer was there a pedagogue from whom Elisha could receive erudition or guidance. It is for the loss of one's master that the Talmud stipulates that one must rend. Thus, in the light of R. Falcon's novel interpretation, he claims to have resolved the passage in Moed Katan with respect to Elijah's status.

Regarding the internal contradiction contained within the Terumat ha-Deshen in maintaining both that Elijah heeds the commandments and is an angel, R. Falcon hesitantly suggests that Elijah is not obligated to observe Torah precepts but rather opts to be stringent on his own accord. Just as we find that adherence to Torah Law became obligatory from Sinai onwards,¹⁶ therefore Abraham's observance of Torah prior to Sinai¹⁷ could only have been voluntary. Similarly, Elijah— though not compelled to observe Mitzvot — nevertheless chooses to do so as a result of his own self imposed stringency, and not as a mandatory imperative.

However, R. Falcon cannot account why Elijah's wife should be permitted to remarry. It is entirely possible for Elijah to reappear! Certainly, Elisha's disciples, themselves prophets, believed that Elijah had never left, and was only cast upon one of the mountains.¹⁸ Chronicles relates of a letter which Elijah had written after his ascension.¹⁹ It is impossible for an angel to write letters. A letter can only be written by a living human.²⁰ Since it is clear that Elijah reappears in human form, he is still a married man and his wife is still categorically "your fellow man's wife." Since her husband is still alive, how then could she be permitted to rewed?

R. Attiah's Approach

R. Isaac b. Isaiah Attiah, the renowned eighteenth and early nineteenth century rabbinic luminary of Aleppo, in his Zera Yizchak

severely criticised R. Falcon's analysis of the Terumat ha-Deshen.²¹ R. Attiah's initial objection was to R. Falcon's contention that the passage in Moed Katan considers Elijah alive. R. Attiah demurred, on the contrary, it is precisely from this talmudic passage that one can lend support to R. Isserlein's ruling. Although the Talmud maintains that Elijah is in reality alive, as R. Falcon demonstrated, nevertheless inasmuch as he was no longer "beholdable," Elisha rent his garment as the law requires for one whose master died. Therefore, concerning the law of "rending," Elijah was afforded the same halakic status as a deceased and as one who passes from this world. In view of this fact, the same would be true for his spouse. Since Elijah is no longer beholdable and therefore, considered dead regarding the laws of rending, so too he is considered dead, vis-a-vis his wife. Thence, the wife has full liberty to remarry.

Furthermore, R. Attiah challenged that the Talmud's qualification that Elijah "were as dead to Elisha" is not intended to exclude other people for whom Elijah is not considered dead. For the same reasoning that one must employ in order to consider Elijah dead vis-a-vis Elisha applies equally to anyone else as well. Rather, the Talmud's intention is that since in the end result Elijah was alive in heaven and did not savour the taste of death, unlike the destiny of his counterparts, he is designated alive. However, concerning us, in view of that fact that Elijah is visible to no one he were as dead, as the Talmud stipulates regarding Elisha, and therefore, he is to be considered dead for all purposes. Certainly then this passage is an appropriate source that could be utilised in support of R. Isserlein's ruling, rather than being a problem for him!

R. Attiah was also perturbed as to what avail the new exposition was to R. Falcon. This reinterpretation only seems further to strengthen R. Falcon's original remonstrance. Namely, since Elisha was not obligated by Law to rend (according to the reinterpretation) it follows that Elijah is considered entirely and unequivocally alive; this being diametrically antipodal to R. Isserlein's ruling! How then did R. Falcon surmise that this reinterpretation would resolve R. Isserlein's ruling to the passage in question?

R. Attiah's final objection refers to the self contradiction that

IS THE PROPHET ELIJAH DEAD OR ALIVE?

R. Falcon observed within the Terumat ha-Deshen. R. Isserlein, in bringing a source stipulating Elijah's observance of Mitzvot which mitigates his being alive, contests his own thesis that Elijah is purported to be dead. R. Attiah denotes that R. Falcon himself agrees that his denouement in vindication of R. Isserlein, i.e., that Elijah is in actuality considered dead, and absolved of all Mitzvot, nevertheless, he voluntarily opts for stringency, is forced. Moreover, R. Attiah remarks, if this were the servile meaning of the Terumat ha-Deshen, certainly R. Isserlein should have stated clearly that Elijah was stringent of his own accord as this is the main thrust of his response to the enquirer.

Subsequent to considering all this, R. Attiah ingeniously determined that, according to R. Isserlein, Elijah is obligated by Law to observe the Mitzvot. Although he transcended to the level of the angels, nevertheless, he was never discharged of the sanctity contingent on his being a Priest. That is why Elijah was questioned for standing in a cemetery. Similarly, his obligation toward the other commandments never expired since Elijah in reality never died. The dictum, "'Among the dead I am free' - once a man dies he becomes free of Torah and Mitzvot," applies in the advent of death, not in such a case as ours.²² Accordingly, Elijah did not reply that he is absolved of Mitzvot and only voluntarily opts for self stringency. Rather he rejoined that graves of Gentiles do not defile. The inference being that, were they graves of Jews they would affect defilement. Thus, in regards to his relationship with G-d Elijah is considered alive and obliged in Mitzvot. However, with regard to us, in such cases concerning his spouse, rending and the like, he is considered to be dead. The one is not contingent on the other; each status (i.e., dead or alive) entails its own consequences. This explains why R. Isserlein rejected that which his enquirer advanced as proof, namely, the fact that Jewish graves effect defilement and would prevent Elijah from appearing in a cemetery. Since regarding his relationship to G-d he is alive, it does not contradict the fact that concerning us he is considered dead. On this basis R. Isserlein ruled that Elijah's spouse is permitted to rewed and not as his enquirer surmised that she would be forbidden to remarry.

Thus, R. Attiah proposed an illuminative axiom. Although Elijah's transcendence divests him of corporeal idiocracies, the sanctity contingent on his Priesthood never terminated. This enabled Elijah to continue a relationship with G-d corresponding to the living and hence obligated him in Mitzvot. However, concerning us he is equated with the identical halakic status that is vouchsafed the dead.

The Controversy

In order not to leave R. Falcon's erudition, uncontested by R. Attiah's polemic, one could argue the following in his defense. R. Attiah's major criticism was that according to R. Falcon's novel interpretation of the passage in Moed Katan, i.e., that since Elisha was not obligated by Law to rend for Elijah, it follows that Elijah is unequivocally alive. This conclusion is directly opposed to R. Isserlein's thesis, which further obscures his ruling rather than resolves it. Although in truth R. Falcon contends that Elisha was not obligated to rend for Elijah, he explicitly states that he was indeed obligated to rend for the loss of his Master. In other words, for Elijah's person Elisha was not obligated to rend; however, for Elijah's "relation" (yichus) of being Elisha's Master he was obligated to rend, since it was the relation that was terminated. Although Elijah was still Elijah, he was no longer the "Master" of Elisha. The novelty in R. Falcon's exposition of the passage is that the Talmud is establishing that when one rends for the loss of one's master he is in fact rending for the loss of the relation of being his master and not for the loss of human life for someone who happens to be his master. What concerns us here is not the dissipation of life but rather the severance of this master-pupil relationship. It was for the severance of this relationship that Elisha rent his garments on Elijah's ascension. This also explains why R. Falcon felt that this accounts for R. Isserlein's ruling that Elijah's spouse is also permitted to rewed. Since being the "husband" of his spouse is also a relation, according to Moed Katan, any relation emanating from Elijah ceased at the time of transcendence. Although Elijah is very much alive, Elijah's relation of being his wife's husband terminated. Although Elijah the angel

lives, Elijah the husband ceases to exist.

Even when R. Falcon challenged why R. Isserlein permitted Elijah's wife to rewed it was only because Elijah would reappear, as he was known to do, and at the time of appearance he would immediately become the husband of his wife and the master of Elisha. His previous relations in each case would be resumed. However, it is clear that during Elijah's disappearance he is neither husband nor master. That is why in answering why Elijah continues to perform Mitzvot, R. Falcon would not suggest as R. Attiah that Elijah's being a Priest obligates him in Mitzvot. Since the status of Priesthood is also a relation in the subdivision of the community of Israel, according to Moed Katan this is yet another relation emanating from Elijah which terminated upon his transcendence.

It was probably this line of logic that R. Attiah found difficult to accept. He thought it implausible to separate Elijah himself from relations emanating from him. The two are intricately intertwined. If Elijah lives, certainly his relations are not dead. Elijah's relations terminate only with the termination of Elijah himself. It seemed to R. Attiah too great a novelty to say that Moed Katan is suggesting an obligation to rend for the loss of one's relation and not for the loss of one's person.²³ It was, therefore, inconceivable to R. Attiah that Elijah's relation of being a Priest could possibly have terminated, since this is an intrinsic aspect of Elijah's relationship with G-d. Becoming defiled would render Elijah impure, an impediment solely significant in impairing his relationship with G-d. It is in regards to this relationship and laws pertaining thereof that the Talmud in Moed Katan assents that Elijah is alive. With regards to laws concerning mankind, however, the Talmud considers Elijah dead.

Ideological Categories of Divorce

To state the point of contention tersely: While R. Attiah differentiates between laws pertaining to Elijah's 'man-G-d' relationship and laws pertaining to Elijah's 'man-man' relationship, R. Falcon draws a distinction between Elijah himself and relations which emanate from him.

Thus far we have evinced that the specific halakic question of whether Elijah's spouse requires a divorce in order to rewed must be investigated in terms of much broader ideological categories of divorce. Namely, whether Elijah's person is divorced of all relations which emanate from him and whether commandments based on Elijah's relationship vis-a-vis G-d may be divorced from his relationship vis-a-vis his fellow man. For this purpose one must first ascertain by means of a thorough and assiduous analysis, the essence of Elijah's existential being.

III. THE NATURE OF ELIJAH'S ESSENCE

1. ELIJAH'S INGRESSION

In the preceding chapter we have discussed a controversy over the nature of Elijah's status subsequent to his disappearance. In this chapter we shall demonstrate that this controversy hinges on the fact that Elijah's disappearance itself was an utter mystery. What exactly transpired during Elijah's miraculous ascent when, "it came to pass, when the Lord would take up Elijah by a whirlwind into heaven,"¹ is a subject of discussion extant in the Responsa literature. Before proceeding to deal with the matter of Elijah's disappearance, which will be discussed in the next section, we will devote ourselves to a reconnaissance of the matter of Elijah's emergence and appearance. Interestingly enough, just as Elijah's disappearance into the whirlwind remains a mystery, so was his debut also a mystery. He is first mentioned in Kings I with almost no introduction: "And Elijah the Tishbite, who was one of the settlers of Gilead, said unto Ahab..."² What is the meaning of the word "Tishbite"? Is it the name of a place, or a people, or a family? How could Elijah be both a Tishbite and a Gileadite? Who were his parents? Certainly, little information concerning Elijah's origin can be obtained from this enigmatic introductory verse.

The Question of Ancestry

It is probably for this reason that as early as the Geonic period (6th-11th centuries) the Geonim were asked to clarify the matter of Elijah's origin, as this question appears in the Responsa of the Geonim. A Geon wrote³ that there existed an argument among our Sages concerning Elijah's origin found in Seder Eliyahu Rabbah. There were those who claimed that he was a descendent of the grandchildren of Rachel, and those who claimed that he was of the offspring of Leah. During the course of the argument Elijah appeared before the Sages exclaiming:

Rabbis, why are you so distressed over this matter.⁴
I am descended from none other than the offspring of Rachel.
Is it not written concerning the progeny of the tribe of Benjamin: 'And Jaareshiah, and Elijah, and Zichri were the sons of Jehoram.'⁵ They [the Sages] asked him: Are thou

not a Priest? Did not thou sayest to the widow: 'But make me thereof a little cake first [and bring it unto me, and after make for thee and thy son].'⁶ Said he unto them: 'That same infant was Messiah, the son of Joseph. And I intimated a hint to the world that first I will descend to Babylon and afterwards the Messiah will arrive.'⁷

This account of course, contradicts the passage in Baba Mezia, cited in Chapter II, which purports Elijah to be a Priest, a descendent of Levi, the son of Leah, and not a scion of Benjamin, the son of Rachel. The Tosafoth resolve this dilemma by positing that Elijah's exclamation to the Sages was merely a refutation, to which he did not personally subscribe.⁸ This was quite characteristic of Elijah, as Tosafoth point to various other instances where Elijah states a position to which he does not personally subscribe. There is no need to demonstrate the difficulty which this explanation suggests.⁹ Suffice it to say that there exist conflicting sources concerning the origin of Elijah and his ancestry.

Elijah's Priesthood

In the narrative of Baba Mezia which relates Rabbah bar Abbuba's questioning of how Elijah the priest could be so unconcerned and indifferent to contacting impurity by appearing at a cemetery, Rashi comments that this is in accordance with the opinion that Elijah and Phinehas (the son of Eleazer, the son of Aaron), the Priest, are identical.¹⁰ Precisely because of the ambiguity and confusion among the sources as to whether Elijah and Phinehas were in fact selfsame, or of at least a Priestly lineage, R. Ezekiel Zevi ben Avraham Hayyim Michaelson was asked to clarify the matter of Elijah's identity. R. Michaelson (1863-1942), known as the Rabbi of Plonsk, Poland, in his collection of Responsa, Tirosh ve-Yizhar, included a response to R. Pesach ha-Cohen Pinter, Dayan in Vilna, in which he bibliographs no less than fifteen sources which record and establish Phinehas and Elijah as having selfsame identity. Perhaps the most explicit source confirming Elijah's Priesthood, cited by R. Michaelson, is Elijah's own affirmation in Midrash Proverbs where he divulged: "I am a Priest."¹¹

Thus we have Elijah's testimony cited in the Responsa of the Geonim attesting his ancestry to Benjamin, the son of Rachel, conflicting with his own testimony in Midrash Mishle attesting to his claim to

Priesthood, thereby belonging to a class of direct descendents of Levi, the son of Leah.

The Resurrection Issue

This latter opinion, alleging Elijah's consanguinity to Phinehas, the Priest, mentioned by R. Michaelson, presents with it certain difficulties. The Tosafoth already asked that according to this opinion how can one explain Elijah's resurrection of the dead son of the woman of Zarephath, related in Kings?¹² Since Elijah was a Priest he was forbidden to defile himself by coming in contact with a dead corpse. How then could he be permitted to perform this act of resurrection?

R. David ben Solomon ibn Abi Zimra (1479-1573), known as the Radbaz was one of the most prolific writers of the Responsa literature. His collection of Responsa, Teshuvot ha-Radbaz, his most important work, consists of seven parts, containing well over two thousand responsa. Many more are still in manuscript. In one of those Responsa, Radbaz was asked the identical question voiced by the Tosafoth. The enquirer was either unaware that the question was asked of the Tosafoth or dissatisfied with the explanation given by them. Radbaz analyzed earlier explanations on the subject and offered a few original ones:

You requested that I clarify how Elijah could defile himself for the sake of resurrecting the son of the woman of Zarephath, according to the opinion that Elijah and Phinehas are selfsame?

Various explanations are extant concerning this matter. There are those who contend that the child did not actually de cease.¹³ This seems to be the plain meaning of Scripture. Jonathan ben Uziel's transcription seems to suggest that the lad, though moribund, had not yet expired. Likewise, one may infer from the Talmud's question in Niddah, 'Does the son of the Shunamite contact impurity?' It was not asked, 'Does the son of the Zarephite contact impurity?'¹⁴ This indicates that the child had not actually died, and therefore no question could be ventured from this incident.

Indeed this explanation is entirely fallacious. Scripture clearly recounts [the woman's reproach] 'to slay my son,' and [Elijah's response] 'see thy son liveth.' The transcription of Jonathan ben Uziel is inconclusive. The questioner in the tractate Niddah did not ask from this incident because of his uncertainty.¹⁶ However, narratives which epic Elijah's resurrection of the dead are recorded profusely throughout talmudic and midrashic literature.

I have already seen R. Bachya's theory that the woman of Zarephath was a non-Jewess. R. Bachya's theory is equally erroneous as our Sages have identified the child of the Zarephite, as Jonah, the son of Amittai.¹⁷ Could Jonah, the Divine Prophet, be of Gentile birth? Even if one were to conjecture Jonah's adoption of Jewish faith through conversion, one would still have to account for Scripture's relating Jonah to his non-Jewish progenitor, Amittai.¹⁸ Nor can one speculate that Jonah's father converted, as Scripture denominates the Zarephite a widow. Furthermore, how could Elijah become a resident at the home of a non-Jewess? Scripture also recounts the woman's oath, 'As the Lord the G-d liveth, I have not a cake, only a handful of meal...'¹⁹ Would a non-Jewess know how to utter such an oath? Moreover, would a Gentile be deservant of such a miracle? Undoubtedly, the woman was a Jewess, as Zarephath, in close proximity of Sidon, was under Israel's sovereignty.

The Tosafoth have asseverated that since Elijah was perfectly assured beyond all doubt that his undertaking would culminate in success, he was permitted to defile himself for the sake of saving a life.²⁰ This is a difficult explanation. Firstly, because of the injunction that one may not rely on miracles.²¹ Furthermore, if Elijah was truly convinced of the success of his endeavour, then this instance cannot be regarded as a case of saving a life.²²

An explanation has been conducted to the effect that Elijah did not in fact defile himself.²³ That which Scripture relates, 'And he stretched himself above the child,' does not mean to say directly above the child, but rather adjacently above him. Elijah assumed this position in order to muster greater devotion while entreating on the child's behalf. This explanation also entails some difficulties. If Elijah's intention was merely to muster greater devotion, it would have been sufficient to set his countenance upon the child and meditate thereon. What point was there in stretching himself over the child? Furthermore, Scripture recounts, and he [Elijah] carried him [the child] into the upper chamber where he abode.²⁴ Elijah was defiled through actual contact with the corpse, as the plain meaning of Scripture suggests that Elijah himself carried the child to the upper chamber.

One may espouse that Elijah adjudicated upon himself a special dispensation, not to be taken as a precedent for the purpose of sanctifying G-d's name, similar to the episode of Elijah's ordering the slaughtering of a consecrated offering outside the Temple for the same motive.²⁵ A special dispensation [temporarily deferring the laws of impurity] was additionally necessary to augment the preventing of an inevitable desecration of G-d's name, as Scripture relates how the Zarephite impeached Elijah, 'What have I to do with thee, O thou man of G-d? Art thou come unto me to bring my sin to remembrance and to slay my son?'... and people would claim that you literally came upon me which caused my son's death. Surely, there can be no greater desecration of G-d's name! Consequently, Elijah's action procured the sanctification of G-d's name, as Scripture records the woman's proclamation, 'Now I know that thou art a man of G-d, and the word of the Lord in thy mouth is truth.'²⁶

Lastly, one might postulate that the child was a meth mitzvah, that is, there arose a religious obligation to bury the dead child who was unattended, which overrides the laws of levitical defilement.²⁷ According to these two caudal explanations, Elijah came in actual contact with the corpse.

Both these explanations are of my own and it is on the first explanation, that Elijah issued a special dispensation, that I rely.

Radbaz concludes his responsum with a most interesting enucleation:

Alas, I have written down for you all that is known to me concerning this question and you are free to choose any explanation you please. However, according to those who are sagacious in esoteric knowledge, no question exists whatsoever. For those who ascribe that Phinehas and Elijah are selfsame, opine that the source of Phinehas's soul embodied Elijah. And when Elijah was confronted [by Rabbah bar Abbuha in the narrative of Baba Mezia] whether he was a Priest, Elijah did not wish to disclose this secret.²⁸

From this responsum emerges the notion that even the performance of a metaphysical act, which by its very nature defies universal law embarking upon the orbit of the supernatural, is only sanctionable once it conforms within the strict rubric of Halaka. The Halaka which encompasses transphysical science, was well capable of endorsing Elijah's feat. There is an added practical concern in that the responsum ratifies whether a person who temporarily ceases to function as alive conveys impurity upon revival. This question was considered useful to R. David Bleich in discussing whether to continue medical treatment to resuscitate a patient after being determined clinically dead.²⁹ It is noteworthy that in his discussion of the various explanations, Radbaz must provide a running commentary to the chapter dealing with the resurrection almost verse by verse. The exposition on which he relies is that Halaka was temporarily deferred in order to sanctify His name. That is not to suggest that an exception arose whereby Halaka was temporarily violated in order to allow for the sanctification of His name. But rather, that even if that end is achieved by the deferral of the details of that system, the deferral itself becomes Halaka.³⁰

(To illustrate this axiom allegorically: When the Law Enforcement Agency enacted the traffic regulation all vehicles must come to a halt at a red traffic light, they also legislated that any ambulance in the event of an emergency may continue to pass the red light. Furthermore, should the vehicles be congested at a standstill, such

that they impede or hinder the ambulance from advancing, they too may pass the red light, in order to allow the ambulance to proceed.

Let us reflect upon what transpired when the ambulance passed the red light. Did the ambulance violate a traffic regulation in order to save a human life? Certainly not. Rather, since the general purpose of the Law Enforcement Agency is to save and protect human lives — if the enforcement of its regulation will result in the loss of human life, then the regulation stipulates to pass the red light. Thus by waiving certain details of that system, the general purpose of those regulations is achieved. Furthermore, if other vehicles hinder the ambulance in any way from proceeding, they themselves may pass the red light, not in violation of a traffic regulation due to exceptional circumstances, but rather in strict adherence to the initial intent of the regulations legislated by the Law Enforcement Agency. Similarly, if the overall purpose of the halakic system is achieved by waiving certain details of that system then that deferral itself becomes a Halaka.)

R. Michaelson, in the same responsum in which he bibliographs all the relevant sources which identify Elijah with Phinehas, mentions the Tosafoth who questioned if Elijah was the selfsame Phinehas the Priest, how could he defile himself by coming into contact with the dead son of the Zarephite woman? Striving to find an adequate solution to the Tosafoth's problem, R. Michaelson immediately turns to Radbaz's treatment of the same issue. He supports Radbaz's dismissal of the theory that the child was not actually dead, but only on the brink of death, by citing eighteen separate sources which clearly indicate that the child was definitely dead. The advocates of the former theory, however, found support for their contention from the Alexandrian's question in tractate Niddah:

Does the son of the Shunamite woman contact impurity? It was not asked, "Does the son of the Zarephite woman contact impurity?" The latter unasked incident of the son of the Zarephite would have been a preferable question, as chronologically it preceded the incident of the Shunamite's son, yet the Alexandrians were absolutely silent on it. This indicated to them that the son of Zarephite woman had not actually expired and that no question could be ventured from that incident.

R. Michaelson discounts this support by employing Maharsha's exposition of the passage in Niddah and applying it in answer to the advocates of this theory:

The question of Radbaz from tractate Niddah can be resolved according to Maharsha who explained: 'They [the Alexandrians] mistakenly thought that the body [of the resurrected son of the Shunamite] was considered dead, and that 'life' which came to him by agency of Elisha's prayers was merely incidental, and that the body itself was still dead and would effect defilement.' In that case, one may say that this is only true of the son of the Shunamite in the case of Elisha who prayed [on her behalf] as is stated in Megilla.³¹ And for this [reason] they asked if he [the Shunamite's son] defiles, as explained by Maharsha, 'that by virtue of Elisha's prayer did he live but his body was [still] dead. However, in the [case of] the son of the Zarephite by Elijah, where one could say that he [Elijah] resurrected him by use of the Divine Name and the Book of Creation, they did not ask.³² As surely he would not defile, since in reality his body was also alive - and the Talmud's answer that the living do not defile was [already] known [to them]. And ponder this carefully because it is correct, with the help of Blessed G-d.³³

R. Michaelson also supports Radbaz's discounting of R. Bahya's theory that the son of the Zarephite woman was a Gentile, by citing many sources which identify the son of the Zarephite woman as Jonah the Prophet, or as Messiah the son of Joseph, who were certainly Jewish. R. Michaelson also mentions the original explanations offered by Radbaz himself.

R. Michaelson advances another explanation, not considered by Radbaz, which is found in Midrash Elijah, which postulates that the child was perfectly righteous. Since the righteous do not defile others, Elijah could not contract impurity by coming in contact with the child, and therefore his action is sanctionable.³⁴ Michaelson confirms that the child was perfectly righteous, as he already cited opinions which identified the child as Jonah the Prophet, or as Messiah the son of Joseph. R. Michaelson surveys that from all this material one can certainly deduce that Elijah was verily a Priest. R. Michaelson goes on to bibliograph no less than fifty-six books whose authors maintain the same position.

Although R. Michaelson contends with virtually the identical issue as Radbaz, they have different concerns. While Radbaz readily accepts the contention that Elijah is a Priest, his concern is, in view of this fact, to justify this metaphysical action of resurrection in accordance with the laws of defilement. Whereas R. Michaelson's concern is to establish the fact that Elijah is indeed a Priest by

dispelling any notion which might question his identity as a Priest, such as his resuscitating the Zarephite woman's son.

Various Resurrectional Forms and Their Consequences

An intriguing disclosure that emerges from R. Michaelson's responsum, which he himself verifies as the "correct" exposition, is the notion of two types of resurrection. The one kind, which is achieved through prayer, is a resurrection whereby the body is actually dead yet functions as though it were alive. Something like a chicken which continues to strut about after its head has been cut off. The state of the body is actually dead, as the life it is imbued with is only incidental.

The other kind, which is achieved by agency of the Divine Name or the Book of Creation, is a resurrection whereby the body is also restored to life-- the breath of life it possesses is not incidental but permanent. This state of existence was confirmed by Elijah on the dead son of the Zarephite woman and is obviously considered as alive. The former state of existence was bestowed by Elisha on the dead son of the Shunamite woman and is not an obvious case of being considered alive. The Talmud in tractate Niddah establishes, according to R. Michaelson, that even this less obvious form of existence, is considered "alive," and therefore the impurity laws do not take effect.

R. Michaelson dismisses the opposition ventured from the Talmud's silence in Niddah by disclosing that the Talmud's silence was not because of the Zarephite's child's non-death, but rather because of his more obvious revival. Whereas the revival in Elisha's case was not as complete, and therefore more problematic. It is halakically important for R. Michaelson to divulge such a unique metaphysical phenomenon of variant forms of resurrectional existence in order to prove that despite the impending death of the young child, Elijah was halakically justified in defiling himself.

R. Michaelson's distinction between a resurrection which is achieved through prayer to one which is achieved by agency of invoking the Divine Name or the Book of Creation is derived from a parallel distinction made by Hatam Sofer. R. Moses Sofer refers to R. Johanan in tractate Megilla who rules that a synagogue may not be converted

to a house of study since a synogogue is of a higher level of sanctity and can not be reduced to a lower level of sanctity.³⁵

R. Johanan derives his ruling from the verse in Kings which speaks of a "Great House." R. Johanan deduces that this great House refers to a synogogue because of the "Great Feat" (i.e., resurrection) which was accomplished through Elisha's prayer.³⁶ Whereas a house of study is not referred to as a Great House.

R. Sofer questions R. Johanan's assumption that the resurrection performed by Elisha was achieved through prayer. Perhaps it was achieved through some other means, such as invoking the Divine Name or by agency of the Book of Creation, such as are described in Talmud, the Responsa of Hakham Zevi and other prominent halakic works.³⁷ In which case the great House would not refer to a house of prayer and R. Johanan would no longer have any basis for his ruling that a synogogue may not be converted to a house of study.

The remainder of R. Sofer's responsum is devoted to proving that Elijah's resurrection was indeed performed through prayer and not by invoking the Divine Name or by agency of the Book of Creation, thereby vindicating R. Johanan's ruling. Thus the differentiation of two distinct resurrectional processes is halakically significant to R. Sofer as well, in determining whether a synogogue may be converted to a house of study.

Elijah's Metempsychosis as a Halakic Solution

Just as R. Michaelson found it necessary to disclose a unique phenomenon of variant forms of resurrectional existence in order to comprehend Elijah's halakic activity, Radbaz was not without philosophical innovations of his own. Toward the close of his responsum Radbaz entertains the intriguing notion espoused by the Kabbalists that contrary to the popular belief that Phinehas was granted longevity of life, in actual fact, Elijah was the reincarnation of Phinehas the Priest.

Before introducing the responsum of Radbaz we mentioned conflicting sources regarding Elijah's ancestry. The Responsa of the Geonim, which traced his lineage to Benjamin, son of Rachel, seemed to conflict with Midrash Mishle and Baba Mezia which attested Elijah's

Priesthood thereby descending from Levi, son of Leah. However, according to the reincarnation theory of the exponents of the Kabbala there is no contradiction whatever. When Elijah averred his kinship to Benjamin, he was merely referring to his biological parents, and to which tribe his body belonged. However, when he avouched his claim to Priesthood, he was referring to the origin of his soul and to which tribe his soul belonged.

This explanation of Elijah's metempsychosis, reveals a further difficulty contained in the Seder Elijah Rabbah, cited in the aforementioned Geonic responsum. During the midst of an ensuing argument among the Sages concerning Elijah's ancestry, Elijah himself appears and informs them that his ancestry is traceable to none other than Rachel. Thereupon, he was asked: Art thou not a Priest? Indeed this question is utterly unfathomable. None of the Sages on either side of the debate ever entertained the possibility that Elijah was a Priest. Those Sages that argued that Elijah was a descendant of Leah were clearly referring either to Gad, son of Zilpha, Leah's maidservant, or to Judah, son of Leah. Those Sages who debated that Elijah was a scion of Rachel were clearly referring to Benjamin, son of Rachel.³⁸ How then are we to interpret their sequelent question to Elijah: "Art thou a Priest? Did thou not say to the widow [of Zarephath], 'But make me thereof a little first and bring it unto me, after make for thee and thy son.'" If Elijah were a Priest, he would be a descendant of Levi, a position advocated by neither side. However, if we are to subscribe, as Radbaz, to the metempsychosis theory of the Kabbalists, we can easily interpret the sequelent question of the Sages. After Elijah confirmed the progenatorship of his body, the Sages were now interested in verifying the origin of his soul.³⁹

Even Elijah's rebuttal: "That same infant was Messiah, son of Joseph, and I intimated a hint to the world that I will descend to Babylon and afterwards the Messiah will arrive," was not a refutation of his being Priest. Elijah was merely explicating to the Sages that since he was only the embodiment of a Priest, he was not entitled to challah. Therefore, no proof of his Priesthood can be advanced from his baking instructions to the widow of Zarepath.

Radbaz's adducing of Elijah's metempsychosis elucidates yet a further difficulty contained in Elijah's riposte, related in Seder Eliyahu Rabbah-- that the child of the widow of Zarephath was Messiah, son of Joseph. We shall recall that one of the explanations of the resurrection considered by Radbaz was R. Bahya's theory that the child and his mother were non-Jewish. Radbaz protested that our Sages have already identified the child as Jonah, son of Amittai, and certainly Jonah, the Divine Prophet, could not have been of Gentile birth. If this same child was Jonah, son of Amittai, whose mother was a descendant of Asher, and whose father was a descendant of Zebulun,⁴⁰ how can Elijah purport him to be Messiah, son of Joseph of Jerusalem! However, by operating Radbaz's lucubration of metempsychosis to Jonah, we hit upon the solution. Although Jonah's biological parents were of Asher and Zebulun, Elijah was avouching that Jonah's soul originated in Joseph, and that Jonah was the embodiment of Messiah, son of Joseph.⁴¹

Perhaps, then, we have discovered the true secret concealed in the words of the Mishna of Rabbi Eliezer: "Jonah was vouchsafed great stature in that he was equated to Elijah."⁴² In which way was Jonah equal to Elijah?⁴³ Their equality results from the fact that both of them were the embodiments of the heralds of the messianic era.⁴⁴ Elijah who himself realized that he was the embodiment of Phinehas, although his biological parents were of other origin, was able to attest to the fact that Jonah, his equal, was the embodiment of Messiah, son of Joseph, even though Jonah's biological parents were of different origin. Thus Elijah was able to intimate a great hint to the world that he would descend to Exile before the advent of the Messiah.

By the same token, were it not for this decipherment, how could R. Eliezer's statement in Pirkei de-Rabbi Eliezer⁴⁵ cited in R. Michaelson's responsum in which he identifies Elijah as Phinehas, the Priest, a descendent of Levi, be reconciled with R. Eliezer's own seemingly contradictory statement in Yalkut,⁴⁶ (cited shortly) where he identifies Elijah as a descendent of Benjamin? Of necessity, one is compelled to concede that R. Eliezer maintained both viewpoints simultaneously in the aforesaid manner. Thus the theory of Elijah's metempsychosis is by no means a daft kabbalistic concoction, but rather integral in deciphering the plain and literal meaning

(peshat) in Seder Elijah Rabbah and in R. Eliezer himself.

R. Levi Ibn Habib (1483-1545) known as Maharalbach, devotes a responsum to expounding upon whether there is legitimacy in endorsing the doctrine of reincarnation:

With regard to the third question you asked me – whether belief in reincarnation is binding on all Jews and whether it is permitted to expound the doctrine in public – you should know that, for my sins, I have not as yet attained knowledge of this science [i.e., Kabbalah]. This is because permission has not been granted to any man to understand it or study it by his own efforts. As its name implies, the Kabbala is a doctrine one must learn from a master who had acquired it from a master. But in our land, nowadays, few are found to be wholly versed in this knowledge. However, in connection with this particular doctrine, I have seen the books and studied them and note that there are two groups among our Sages, who lived after the close of the Talmud.

The first group comprises the philosophers who investigate the basic principles of faith by the aid of reason alone and who, engage too, in the study of natural sciences. These find it hard to accept belief in reincarnation since, if reason alone is to be the guide, there are many difficulties in the doctrine which reason is powerless to resolve.

However, there is another group, enjoying great authority, comprising those Jews who rely on faith. All these write that the doctrine is true and is a basic principle of the Torah by means of which an answer is given to the problem of why the righteous suffer [i.e., because of their sins in a previous incarnation]. We are all obliged to hearken to the words of these latter Sages; to believe in the doctrine without any doubts or reservations. For all that, it seems to me very wrong to expound the doctrine in public. We are no better than our teachers, on whom be peace. I refer to those who wrote on the doctrine in the book they compiled. They never spoke of it except by hint and in riddles. And they wrote that it is a great mystery.⁴⁷

Maharalbach explains that a rationalist would find difficulty endorsing such a view as reincarnation. However, it is definitely legitimate to maintain this view, for although Maharalbach himself has a poor knowledge of it, those who are sagacious in it enjoy great authority and we are obliged to accept this belief unreservedly. Nevertheless, Maharalbach appeals that these views should not be expounded publicly. It is through Radbaz's responsum that we discover just how enlightning and useful this esoteric view can become in resolving complex halakic issues.

The Relevance of Establishing Elijah's Origin

Until now we have seen how various attempts were made by the respondents to unravel the logograph of Elijah's provenience. At this point one might venture to enquire of what halakic consequence was it to the Sages in Seder Elijah Rabbah that they should have argued so vehemently over the matter of Elijah's provenience.⁴⁸ One consequence, which we have already indicated, was that Elijah, being a Priest, should have been prohibited from ministering the resurrection and that the performance of a metaphysical act was sanctionable only upon its conformity to the norms of Halaka. However, this consequence is merely an extension of their argument. That is, once their argument has been located we can then apply the argumentation by extending it to cover the halakic problem of the resurrection as well. However, this does not seem to be the underlying pinning of contention inherent in their dispute. What then was the basic fundamental difference dividing the Sages, which could have moved them to argue so fervently over the matter of Elijah's provenience? For that matter, one might ask furthermore, of what halakic consequence was it to R. Michaelson that he was moved to devote an entire responsum to establish Elijah's provenience?

Although the disputation in Seder Elijah Rabbah has been transmitted anonymously, simply as, "On one occasion our Rabbis were debating...", without the slightest indication as to who these innominate Rabbis were, we may ascertain their identities by locating a similar disputation elsewhere. Our excerpt from Seder Elijah Rabbah appears verbatim in the midrashic anthologies of Genesis Rabbah and Yalkut Shimoni, along with the following prefatory dispute:

The Rabbis debated: To which tribe did Elijah belong?
R. Eliezer [R. Eleazar],⁴⁹ said: To Benjamin, for it is written: 'And Jaarshiah and Elijah and Zichri were sons of Jeroboam...All these were the sons of Benjamin.'

R. Nehorai said: To Gad for it says:⁵⁰ 'And Elijah and Tishbite, who was of the settlers of Gilead...'

Ostensibly R. Eliezer, (R. Eleazar), and R. Nehorai were debating the very issue concerning our Sages in Seder Elijah Rabbah. R. Eliezer is, of course, R. Eliezer b. Hyrcanus a teacher and a companion of R. Akiba.⁵¹ (The editions which read R. Eleazar, refer to R. Eleazar b. Shemoa, the Priest, a disciple of R. Akiba).

R. Nehorai was a disciple of R. Joshua and a colleague of R. Akiba, who was also a student of R. Joshua.⁵²

In order to answer conclusively to what halakic consequence Elijah's provenience was to R. Akiba's contemporaries, R. Eliezer and R. Nehorai,⁵³ it is important first to recollect briefly the historical conditions prevailing in Palestine during the epoch in which R. Akiba and his colleagues were living and the extent of the socio-political plight which their generation had encountered.

"The period of the Hasmonean era intensified the expectations of revival and redemption. This is attested to by the coins of the epoch, which carried the inscription. 'To the redemption of Zion.' The reference, however, was not the redemption of the 'time of end' but to redemption from national trouble.

"With the destruction of the Temple and all that it involved, the Messianic consciousness acquired greater strength and actuality. The destruction of the Temple was a shattering blow to the Jews of that generation. For the Temple service was one of three things upon which the world rested. When R. Johanan b. Zakkai saw that the Temple was destroyed, and the hekhal was burnt, he rose and rent his garments, and took off his phylacteries, and sat and wept. And his disciples wept with him. The immediate urge to attempt to rebuild a sanctuary and to proclaim that the Messiah would come did not cease. R. Johanan b. Zakkai, sensing the approach of his death, said: 'Clean the house on account of defilement, and set a throne for Hezekiah, King of Judah.' His disciple, R. Eliezer, said: 'I have set a throne for R. Johanan b. Zakkai.' R. Johanan b. Zakkai sees King Hezekiah, to whom a number of Isaiah's Messianic prophecies are applied at the time of his death, as coming to greet him; and it is only fitting to prepare a throne for such a Messianic king and welcome him."^{53*} The Talmud in Baba Bathra relates:

When the Temple was destroyed for the second time, large numbers in Israel became ascetics, vowing to eschew the consumption of meat and wine. R. Ishmael b. Elisha said: Since the day of the destruction of the Temple we should by rights bind ourselves not to eat meat nor drink wine...and from the day that a government [i.e., the Hadrianic persecutions] has come to power, which issues cruel decrees and forbids us the observance of the Torah and the precepts and does not allow us to enter into the 'week of the son' [the rite of circumcision], we

ought by rights to bind ourselves not to marry and beget children, and the seed of Abraham would come to an end of itself. However, let Israel go their way. It is better they should err in ignorance than presumptuously [since in any case they would go on marrying and begetting children.]⁵⁴

To imagine such an onerous and gruesome state of affairs, whereby the only deterrent forestalling the Sages from issuing a directive forbidding marriage and prescribing celibacy, thereby imposing the conscious extinction of the entire Jewish people, was the incapability of abiding that directive, is practically inconceivable.

"During the three years in the course of the ignominious downfall of Beitar, the Romans destroyed the last vestige of Jewish resistance. In fury they drenched the land with blood, slaughtering hundreds of thousands of people, selling tens of thousands into slavery, and forbidding the few remaining Jews to observe any of their ancestral customs. A decree of wholesale extermination could hardly have aroused them more than the Emperor's decision to establish his pagan sanctuary on Mount Moriah where Hadrian was to be worshipped as the personification of Jupiter and the statue of the Emperor was placed within it. The city of Jerusalem was called Aelia Capitolina and only Gentiles were permitted to live or even approach it. The province too was renamed. It was no longer called Judea; it was called Philistine Syria, or more briefly Palestine.

"The fanaticism that had been held in check for decades broke loose. A new Antiochus entered the world. Surely now G-d would awaken to the needs of His people and reveal Himself through them as He had done to the Maccabees three centuries earlier. The first few victories of Simeon Bar Cokhba aroused wild enthusiasm among the people, who saw in him not only a second Maccabee, but the Messiah. It was now possible to entertain hopes that the time had arrived for Israel to be redeemed.

"The criteria that R. Joshua [the disciple of R. Johanan b. Zakkai and teacher of R. Akiba] conjoined to the belief in the End, always made it possible after failure of attempts at redemption and of Messiah to appear, to put the blame on the fact that the generation was not yet worthy. It may be assumed that R. Akiba adopted his teacher's doctrine. He did not abandon the idea of the End, but he saw the possibility of hastening it in a generation that merited it.

R. Akiba held that a generation could be saved by virtue of its righteous men alone, and of the redemption of Egypt he declared that by the merit of pious women in that generation were the Israelites redeemed.⁵⁵ This approach made it easier for R. Akiba to adopt eventually a positive attitude to Bar Cokhba, as he saw the redemption of the nation and the land as an internal practical process in the world of history."⁵⁶

It is in the wake of this historico-political setting that we arrive at the crux of the dispute in Seder Elijah Rabbah.⁵⁷ Tractate Sanhedrin relates that R. Joshua b. Levi pointed a contradiction in the apocalyptic verse of Isaiah; "I, the Lord will hasten it, in its time." He asked: "It is written 'in its time [will the Messiah come],' whilst, it is also written: 'I [the Lord] will hasten it,' and then resolved 'If they are worthy, I will hasten it; if no [he will come] at the due time.'"⁵⁸ The Talmud refers to two possible eras for redemption. If they do not prove worthy, the Messiah will come in his due time. However, if they are worthy, the redemption will be hastened. R. Eliezer and R. Nehorai were in disaccord over which virtuous act, if adopted by the righteous, would prove them worthy enough to effect a hastening of Elijah's arrival, and concurrently the advent of the Messianic era. When the Patriarch, Jacob and the great Teacher, Moses, singled out each of the tribes in their blessings, this was because each blessing corresponded to a particular attribute of which each tribe was unique.⁵⁹ Indeed, the Matriarchs themselves were unique in virtuous attributes in which they excelled. The Sages then were at variance over which virtuous deed should be accentuated and embrace their behavioural patterns such that would be most effective in hastening the advent of the Messiah. Perhaps the virtue of benevolence and kindness imparted by the Matriarch Rachel would be more effective.⁶⁰ Or maybe courage and bravery, exemplified by Gad, could possibly be a consideration to join in the Bar Cokhba rebellion against Rome.⁶¹ Jeremiah's apocalyptic prophecy, "A voice is heard in Rama...Rachel shall be rewarded...And Thy children shall return to thy border,"⁶² seems to intimate that Rachel was the preferred Matriarch, and that the Messiah would be of her offspring. Consequently, the virtue of kindness should be adopted to hasten his arrival. Others, however, had a tradition that the Messiah would emerge from the House

of David, a descendant of Judah, the son of Leah; and, therefore, Leah would seem to them as the preferred Matriarch. Certainly it was Leah's prodigious virtue which merited her being the forebearer of the greatest number of tribes.⁶³

R. Akiba, however, overstepped his colleagues in falling credulous to the contagion of Messianism by declaring Bar Cokhba outright as the Messianic King. When R. Akiba applied to Bar Cokhba the verse, "There shall be a star out of Jacob, and a sceptre shall arise out of Israel," --a verse previously expounded and transcribed by Onkelos as a reference to the Messiah-- R. Johanan b. Torta reacted sharply and said: "Akiba, grass will grow out of your jaws and the son of David shall not have come."⁶⁴ The Tanna's position might have been shared by R. Eliezer, as R. Akiba surprisingly, did not connect the restoration of the Ten Tribes and their resettlement in the Land with this redemption, nor did he find a role for Elijah, or the realisation of the visions concerning the "day of the Lord" on "that day."⁶⁵ Perhaps R. Akiba sensed that his generation was pious and righteous enough to be in rapport with the teaching of R. Joshua b. Levi: "If they are worthy, I will hasten it" --even to the extent that Messiah's early arrival would supercede (that of) Elijah's and the restoration of the Ten Tribes.⁶⁶

A description of conditions in Palestine by R. Nathan, the Babylonian, a contemporary Sage, seemed to be supportive of R. Akiba's appraisal. R. Nathan said: "The phrase in the Decalogue, 'Those who love Me and observe my commandments' applies to the people of Palestine who give their lives for the Law. 'Why art thou being taken to execution?' 'Because I read the Torah.' 'Why art thou being taken to crucifixion?' 'Because I ate unleavened bread.' 'Why art thou being lashed?' 'Because I performed the ceremony of the lulav [palm branch and the other three species].' And it says: Those with which I was wounded in the house of my friends,': these wounds caused me to be beloved of my Father in heaven."⁶⁷

R. Akiba intuitively discerned that the piety and righteousness exemplified by his generation could procure an early advent of the Messiah even before the arrival of Elijah.⁶⁸ R. Eliezer, who agreed in principle with R. Akiba, held the reservation that were their generation meritorious in procuring a hastening of Messiah's arrival

they should have been equally worthy of revoking the catastrophic events concurrent with the Messianic era.⁶⁹ Hence, R. Eliezer appraised that historic era corresponding to the latter portion of R. Joshua b. Levi's teaching, "If they are not worthy, the Messiah will come in due time." Moreover, even if that period were in fact the period of "due time," Bar Cokhba could not be proclaimed as the Messiah prior to the advent of Elijah.⁷⁰ When the Messianic King appears in his "due time," his inauguration as the Messiah is contingent upon his following the natural sequence of events, that is, posthumous to Elijah.

It is a well-known kabbalistic dictum that while the Matriarch Rachel is the paradigm of the revealed world pertaining to the natural sphere, the Matriarch Leah is the paradigm of the concealed world appertaining to the sphere of the supernatural.⁷¹ By prefacing this simple kabbalistic premise we may presently proceed with our analysis of the tannaitic dispute of Seder Elijah Rabbah. R. Eliezer and R. Nehorai were not debating exclusively which method would be most instructive in effecting the advent of the Messianic Era. But, more fundamentally, they were confronted with a real halakic issue of paramount importance --whether or not to recognize a Messiah who had already been proclaimed the Messianic King by their close colleague, R. Akiba! R. Eliezer opined that Elijah would emerge from the Matriarch Rachel, who was paradigmatic of the natural order of the world. Hence, Bar Cokhba could not be proclaimed the Messianic King prior to Elijah's arrival and the restoration of the Ten Tribes, as this was contrary to the natural pattern and sequence concurrent with the Messianic Era. R. Nehorai, however, argued that Elijah would emerge from Leah, who was paradigmatic of the supernatural order of the world. A miraculous hastening of the Messiah would procure a supernatural feat, transcending the natural order of the world, thereby enabling the Messianic King to supersede Elijah's arrival. Thus R. Nehorai vouched for his colleague, R. Akiba, to proclaim Bar Cokhba the Messianic King despite Elijah's absence.⁷²

This presentation of the debate is synchronous with another dispute related by the Talmud concerning which month the Israelites are destined to be redeemed: "R. Eliezer said, 'In Nisan they were

redeemed [from Egypt] and in Tishri they will be redeemed in the time to come.' R. Joshua said, 'In Nisan they will be redeemed in the time to come.'⁷³ R. Joshua likens the last redemption to the first, even from the aspect of time. Just as the redemption from Egypt in Nisan was characterized by the occurrence of one miracle after another (plagues, parting of the Red Sea, etc.), likewise the future redemption will be phenomenal of miraculous events. According to R. Eliezer, however, the future redemption will occur in Tishri, the same month that G-d created the universe and patented nature with a set course of activity.⁷⁴

R. Eliezer, who mentioned that the future redemption will occur in Tishri, the month during which G-d bestowed upon His world its natural course, is congruent with his opinion in Seder Elijah Rabbah that the Messianic Era will necessarily evolve according to a set historical pattern by following the natural course.⁷⁵ Under these circumstances restoration of the Ten Tribes and Elijah's appearance must necessarily precede the Messiah. On the other hand, R. Joshua, the mentor of R. Nehorai, maintained that just as the first redemption was wrought by miracles pertaining to a supernatural order, the evolvment of the final redemption will also be characterised by a supernatural order.⁷⁶ Under such circumstances the Messiah may supersede Elijah's arrival despite the evolving of this sequence, contrary to the natural order.

Possibly still, R. Eliezer concurred with R. Akiba's discernment that the righteousness and piety of their generation had proven them meritorious of an early redemption. Nevertheless, R. Eliezer opined that Elijah will emerge from Rachel; and it is that natural order for which she is paradigmatic which dictates that even the procuring of Messiah's early arrival must be preceded by Elijah.⁷⁷ Therefore, although the time was conducive for a premature redemption, Bar Cokhba could not be proclaimed the Messiah, as his advent did not follow the natural sequence of appearing posterior to Elijah.⁷⁸ R. Nehorai, as mentioned was of the opinion that Elijah would emerge from Leah - the paradigm of the supernatural sphere. Consequently, Bar Cokhba could be proclaimed the hastened Messiah despite Elijah's absence.⁷⁹

Lastly, even excepting the aforementioned kabbalistic dictum, it is entirely plausible that R. Akiba himself appraised that historic era commensurate to the "due time" in R. Joshua b. Levi's maxim. Close consideration of the prevailing conditions in Palestine depicted above impelled R. Akiba to the credulity that the calculated end had at long last arrived.⁸⁰ R. Akiba was of the persuasion that Bar Cokhba, was none other than the much awaited Messiah, the son of Joseph.⁸¹ R. Eliezer contended that since Elijah would emerge from Joseph's mother, Rachel, he will of necessity herald Messiah, the son of Joseph. Bar Cokhba could, therefore, not be proclaimed Messiah, (son of Joseph) prior to Elijah's arrival. R. Nehorai challenged that Elijah would emerge from Leah, the mother of Judah, the primogenitor of the House of David. Hence, Elijah will solely herald Messiah, son of David, and not his predecessor, Messiah, son of Joseph.⁸² Therefore, R. Nehorai accorded with R. Akiba's conception in proclaiming Bar Cokhba as Messiah (son of Joseph) despite Elijah's absence.

To recapitulate our analysis of the dispute in Seder Elijah Rabbah, we considered four possibilities of interpretation in view of the prevailing historico-political conditions in Palestine. At first, we considered their dispute over which virtue, if adopted, would prove most effective in eliciting the impendence of Messiah. From there we proceeded to identify their dispute as the famed controversy concerning the affirmation of Bar Cokhba as the Messianic King, revolving on the maxim of R. Joshua b. Levi. R. Nehorai envisioned that historic period as the realisation of the hastening of Messiah's advent, whereas R. Eliezer appraised that era commensurate with the calculated "due time." Thirdly, we considered the possibility that both R. Eliezer and R. Nehorai were in consonance that their generation was meritorious in precipitating Messiah's advent; however, they were dissonant whether even the hastened Messiah could be proclaimed in the absence of Elijah. Finally, we considered that both Tannaim agreed that their generation was witness to a rectification of the long awaited calculated end. However, they disagreed on whether Bar Cokhba could be proclaimed as Messiah, son of Joseph, in absenteeism of Elijah.

In view of the tremendous halakic significance of establishing

Elijah's progenitorship, in order to determine the appointment of the Messiah, it is our contention that for this reason the author of our Geonic Responsum, Tosafoth, Radbaz, and R. Michaelson, all undertook so assiduously to clarify the question of Elijah's ancestry. This was undoubtedly the intention of the Geonic Responsum who quoted Seder Elijah Rabbah verbatim --the issue of which we have now explained. We suspect that this is subtly discernable in Radbaz and R. Michaelson, as they both cite opinions that the dead child of the Zarephite woman whom Elijah resurrected was none other than Messiah, son of Joseph.

Finally, in view of the unforeseen substantial evidence argued by R. Akiba's opponents against the plausibility of Bar Cokhba's propinquity with the Messiah, the question arises how could R. Akiba -- the greatest Tanna of his generation, whose erudition surpassed even that of his masters -- and so many of his colleagues have been so mistaken in proclaiming Bar Cokhba as the Messiah?⁸³

Messianic Qualifications

R. Moses Sofer, also known as the Hatam Sofer (1762-1839), was an undisputed leader of Orthodox Jewry and an outstanding halakic authority, in fact, one of the most authoritative respondents of all time. Among his voluminous writings he wrote seven books of responsa. In one of these responsa R. Sofer deals with the manifestation of Messiah:

And lo! in the matter concerning the son of David, I am obliged to make one suggestion and that is -- just as Moses, our Master, peace be on him, who was the First Redeemer, aged for eighty years without knowing or intuitively sensing that he would become the Redeemer of Israel; even when G-d charged him imploring, 'Go for I am sending you unto Pharaoh,' nonetheless he refused, unwilling to undertake [such a mission].⁸⁴ So too will it be, please G-d, with the Last Redeemer. For immediately following the day of the destruction of the Temple someone was born whose piety would deem him worthy of becoming the Redeemer, and when the [appropriate] time will arrive, G-d will reveal Himself unto him and will send him out. Then will the spirit of the Messiah which is hidden on high and preserved for his coming, flow unto him. Just as we find by Saul, that consequent to his annointment the spirit of rulership and Divine inspiration descended upon him, which hitherto was undistinguishable to Saul.⁸⁵ As it was true of the First Redeemer so will be it be with the Last Redeemer. For it is a matter of ignorance even to this pious one [the

prospective Messiah] himself. But because of our iniquities, which are numerous, many of them [prospective Messiahs] have already perished, since we did not merit that the Messianic spirit should flow unto them. For although they were worthy of it, their generation was not. However, eventually, when he does arrive, please G-d, G-d will reveal Himself unto him as He did unto Moses at the bush and will send him either to Israel alone, or to a King such as Pharaoh saying, 'Send out my people!'⁸⁶

Hatam Sofer's depiction of Messiah's manifestation is clear, requiring little elaboration. Just as prior to his accession Saul was oblivious of his destiny and only subsequent to his accession "G-d gave him another heart,"⁸⁷ so too will the potential Messiah remain incognito even to himself until such time when Israel proves itself worthy of meriting the manifestation of Messiah. Whereupon G-d, through divine inspiration, will then commission Messiah to redeem Israel.

The Talmud affirms that Bar Cokhba reigned as King of Israel for a duration of two and half years.⁸⁸ What was it that led to the downfall of this tragic hero?

In the same place where the Jerusalem Talmud relates that R. Akiba applied the verse, "There shall come forth a star out of Jacob", to Bar Cokhba, exclaiming: "This is King Messiah," the Jerusalem Talmud continues to narrate the chronological events immediately prior to Bar Cokhba's death.⁸⁹ It is related (there) that an enraged Bar Cokhba killed the Tanna, R. Eleazar of Modiim whom he suspected of wishing to surrender the city of Bethar to Hadrian. Thereupon, there issued forth a Divine Voice (bat kol) saying: "Woe to the worthless shepherd that looseth his flock: the sword shall be upon his arm and his right eye utterly darkened."⁹⁰ Thou hast slain R. Eleazar of Modiim, the arm of all Israel and their right eye. Therefore the arm of his murderer shall be clean dried up and his right eye utterly darkened." Immediately Bethar was taken and Bar Cokhba was slain. His head was taken to Hadrian who enquired, "Who killed him?" A Quthean said, "I killed him." "Bring his body to me," he ordered. When the body was found encircled by a snake, Hadrian exclaimed: "If his G-d had not slain him, no one could have done so."⁹¹

We recall Hatam Sofer's referral to Saul as the prototype of whom we learn that G-d may inspire the redeemer at a given moment as "G-d gave Saul another heart." Perhaps by extending Hatam Sofer's thesis one step further we may adduce that just as G-d may suddenly inspire the redeemer, equally so he may abruptly rescind and terminate that inspiration as well. Indeed we find of the same Saul, that as a result of his bitter jealousy towards David, upon David's glorious victory over Goliath, and the Philistine Army, and his having captured the hearts of Israel, "it came to pass on the morrow, that an evil spirit came mightily upon Saul and he raved in the midst of his house."⁹² Thus not only did G-d rescind his inspiration, but he inspired Saul with madness. Saul, therefore, is not only the prototype of the emergence of the redeemer, but through his sin he is the prototype of G-d's termination of the redeemer as well.

By application of this principle learned from Hatam Sofer to Bar Cokhba, an illumination of the entire enigmatic affair is obtained. Bar Cokhba's Messianic reign was abruptly terminated by G-d upon his murder of the Tanna, R. Eleazar of Modiim. This is conclusive of the bat kol's pronouncement of Bar Cokhba's death in retribution for committing his fatal sin, the immediate fall of Bethar resulting in Bar Cokhba's death, and confirmed by Hadrian's averment, "If his G-d has not slain him, no one could have done so." If Bar Cokhba were not the Messianic King, why could only G-d have slain him? R. Akiba was not mistaken in proclaiming Bar Cokhba the Messianic King. This was no phantasmal vision or hallucinatory illusion. Indeed Bar Cokhba was the Messianic King whose reign terminated solely when he committed his fatal error.⁹³ This seems to be intimated implicitly in the words of Maimonides meticulously codified in the Laws of Kings:

For R. Akiba was a great Sage, one of the Sages of the Mishna. And he carried the armour of Bar Cokhba, the King, and declared him the Messianic King. And he [R. Akiba] and all the Sages of his generation opined that he [Bar Cokhba] was the Messianic King until he was killed in his iniquity--

only subsequent to his death did Bar Cokhba cease from being the Messianic King.⁹⁴

This exposition of the appraisal of R. Akiba and the Sages of his generation regarding the Messiah raises a very perplexing question which requires serious investigation, and verily is beyond the confinements of this work. Specifically— is it possible for the Messiah, whoever he might be, to be capable of committing sin? Will the Divine overflow, mentioned by Hatam Sofer, once conferred upon him, preclude his propensity to sin? It seems not.⁹⁵ As both Moses and Saul were cited by Hatam Sofer as examples of Redeemers who were bestowed with Divine overflow, yet nonetheless they were abject to sin.⁹⁶

Perhaps this is the simple meaning of R. Hillel's extremely difficult statement, recorded in tractate Sanhedrin: "There is no Messiah for Israel"— to the extent that many accused Hillel of heresy, indicative in R. Joseph's retort: "May G-d forgive him for saying so."⁹⁷ Rashi thereon comments that Hillel was not denying or enouncing his belief in a Messiah for Israel, but rather espoused that the Almighty Himself will redeem Israel and reign over them.⁹⁸

What can explain Hillel's demurral and aversion towards a human Messiah? Perhaps his objection was precisely because of the vexing problem we raised. Hillel's conception of the Messiah could not tolerate a human being. The notion of a human being was a blatant sophism to his conception of the Messiah as the ultimate being. Were he to be human his inclination to sin would subject him to human misgivings. Hillel conceived the ultimate redeemer as a perfect being who possesses no propensity to sin. Needless to say, such a person does not exist in human form. Consequently, Hillel espoused, the Messianic role could only be assumed by G-d himself.

III. THE NATURE OF ELIJAH'S ESSENCE

2. ELIJAH'S EGRESSION

R. Sofer's Analysis

In the same responsum that R. Moses Sofer discusses the manifestation of Messiah, he also deals with the entire phenomenon of Elijah's mysterious transcendence. The Talmud in Erubin, seeks to determine whether the prohibition of traversing the Sabbath limits apply above a level of ten handbreadths, assuming that should this law apply, Elijah would thereby be prevented from appearing on the Sabbath.⁹⁹ From this assumption, it is obvious that Elijah adheres to the commandments. This being so, Hatam Sofer poses the following question. If the laws of Sabbath limits prevent Elijah from appearing on the Sabbath, why then do we summon Elijah to be present at every circumcision, even when the circumcision rite falls on the Sabbath. Isn't his appearance on the Sabbath forbidden? R. Sofer dissertates:

It is the Jewish custom to proclaim during the circumcision rite, 'This is the seat of Elijah, may he be remembered for good.'¹⁰⁰ Even the circumcisor implores, 'Elijah, angel of the Covenant, here is yours before you, stand at my right and uphold me.' These invocations are beseeched even on the occasion of a circumcision which falls on the Sabbath. However, according to the Talmud in Erubin, it is impossible for Elijah to visit us on the Sabbath, perchance there exist Sabbath limits above ten handbreadths. Moreover, it is this reason for which the Tur and Shulchan Arukh explain the custom of chanting hymns invoking Elijah on the outgoing of the Sabbath: that is, Elijah could neither come on the Sabbath eve nor on the Sabbath day on account of the Sabbath limits.¹⁰¹ How can this be reconciled in the light of our circumcision practice on the Sabbath and Festivals?

Howbeit the Truth manifest itself as although Elijah never ascended beyond ten handbreadths [beneath the uppermost heavens] in his physical body, at this point, however, his soul separated from his body enabling his soul to continue its ascent and assume its place among the Ministering Angels. His body, on the other hand undergoes rarefaction and respites in the lower Garden of Eden of this world. And soon, in our time on the Day of the Tidings [announcing the redemption], Elijah's soul will enclothe itself in this sacred body and become as anyone of Israel's Sages and Prophets. In addition, he is ordained by his master, Ahiyah the Shilonite, or by Moses, our Master, if he is Phinehas, and he will ordain the Sages of Israel, and will share the same law as all of Israel.¹⁰² In this way, each time Elijah reveals himself, and makes himself seen in this world, he is enclothed

by his sacred body. However, when he reveals himself in spirit alone, such as on the day of circumcision, he is not obligated in Mitzvot, as it is written, "Among the dead I am free" [i.e., once a man dies, he becomes free of Torah and Mitzvot].¹⁰³ Furthermore, when Elijah descends, the Sabbath limits do not apply to him.¹⁰⁴ When he appears in this [spirit] form he is an angel, and although he lucubrates Torah and reveals laws, it is forbidden to establish laws according to his teachings,¹⁰⁵ for it were only as a dream or a prophetic trance to which we enjoined¹⁰⁶ to pay no attention to the authority of a Heavenly Voice.¹⁰⁷ However, when he reveals himself encloded by his body, he is one of the great wise men of Israel of whom it is said, "The Tishbite will resolve quandries and mysteries" and unto whom we are entreated to hearken.¹⁰⁸ For which teacher is there who can be likened unto him.¹⁰⁹

And when Rabba b. Abbuha met Elijah in a Gentile cemetery and asked him whether he were not a priest, Elijah had then appeared encloded by his body, for one can hardly ask a soul devoid of body, "Art though a Priest." If those seven traditional rulings were delivered by Elijah, of necessity he iterated them encloded by his body, as is his custom in clarifying and elucidating the Halaka.¹¹⁰

Precisely at the point where Scripture abruptly stops short, relating nothing more than a cryptic account of an appearance of a fiery chariot with horses of fire, and that Elijah was taken up by a whirlwind bound to the heavens, Hatam Sofer continues to expound, vividly describing exactly what transpired beyond the whirlwind.¹¹¹

At a place of a distance of ten handbreadths beneath the uppermost heavens (in accordance with the Talmud in Sukkah) a schism occurred, whereby Elijah's body detached itself from his soul freeing Elijah's soul to continue its ascent to the uppermost heaven and commune among the Ministering Angels. His body descended to Paradise, where it is preserved. That same place where the schism transpired was in effect the place of Elijah's death, as at that moment Elijah's soul departed from his body, thereby signifying death.

From that time onwards Elijah reveals himself to mankind in two ways: either in "man" form, encloded in his body, or in the form of "spirit" alone. When Elijah appears in spirit form he is unbound by Torah Law, both because the dead are exempted from commandments, and also in his newly acquired status of Angel, for the Torah was not given to the Ministering Angels.¹¹² This explains why we summon him to be present at the event of a circumcision rite which falls on the Sabbath. Since he attends the circumcision as an angel, in spirit form alone, the laws of Sabbath limits do not prevent his appearing.

As an angel he is unbound by Torah Law. When Elijah appears in "man" form, enclothed in body, he adheres to Torah Law as all men. This explains his apprehension of contacting impurity in the Baba Mezia narrative, as he appeared to Rabba bar Abbuha in "man" form, and was thereby bound by the commandments.

R. Kluger's Approach

R. Solomon Kluger (1785-1869), known as Maharshak after the initials of his name (Morenu ha-Rav Shlomo Kluger), and as maggid of Brody in Galicia was a contemporary of Hatam Sofer. He was a prolific writer and wrote hundreds of responsa. He is said to have written 375 books, the numerical equivalent of his name. In one of his many books of responsa, entitled Tuv Tam ve-Da'at, R. Kluger descants the almost identical issue as Hatam Sofer. However, neither R. Kluger nor R. Sofer seem to take any notice of the fact that each dealt with the same issues and arrived at very similar conclusions. Perhaps their similarity of views is attributable to R. Isserlein's earlier treatment of this subject, which was probably well known to them.¹¹³

If a corpse lies in the women's gallery, should the circumcision rite be performed irregardless, or perhaps one should be pre-cautious of what was said of Elijah, 'Art thou not a Priest?'¹¹⁴

While delving into the matter, I pondered of what significance was the question, 'Art thou a Priest?' Doesn't the Talmud in Niddah affirm that once a person has deceased he is free of Torah and its commandments?¹¹⁵ Do not answer that Elijah's case is different since Elijah never deceased. Were that so, Elijah's wife would be forbidden to rewed [without a prior divorce]. However, R. Isserlein¹¹⁶ has already put in writing that the spouses of Elijah and R. Joshua b. Levi are permitted, since they are not betrothed to men but to angels who are not commanded to observe Torah.¹¹⁷

Regarding the question, "Art thou a Priest?" it seems a distinction can be drawn that Elijah's case is different. Since he appeared enclothed in body, it was incumbent upon him to adhere to Torah, as he appeared in this world in the likeness of one who were alive, he is obligated to adhere to Torah as all men. And it follows conversely, when he does not resemble one who is really alive, he is not obligated as all men, since the "dead are free of Torah."¹¹⁸ Therefore, it follows that the circumcision may be performed, since in our case Elijah arrives without his bodily vestment, as an angel only, for whom adherence to Mitzvot is inapposite.

Moreover, it seems, and in my opinion this is in the main, the certain intention is that granted he is exempted, [nevertheless]

it behoves him to undertake the commandments out of zeal, as one who is not enjoined yet fulfills willfully. For although he is not termed 'ish' [person], nonetheless, since he is also not termed 'dead,' it behoves him to fulfill the commandments out of zeal, as one who is not enjoined, yet fulfills willfully. However, for one who is in reality dead there is no [practice of] zeal, not even willfully without being enjoined.

In any event, according to this, Elijah must be precautious of defilement merely as one who is not entreated, yet fulfills the commandments willfully. And if this is so, we have a principle that he who is engaged in one religious duty is free from any other. [Elijah's duty at being present at the circumcision rite frees him from the prohibition of defilement].¹¹⁹ Therefore, the circumcision may be performed without any apprehension or hesitation, and the harbinger will come soon in our time and the horn of the pious shall be exalted.¹²⁰

The similarity between R. Kluger's initial analysis of the problem and R. Sofer's responsum is readily apparent. Like R. Sofer, R. Kluger differentiates between Elijah's dual form of existence. When Elijah appears in "man" form, enclothed in body, he follows the laws of all men and is obligated in observing the commandments. And, conversely, when he appears in angel form alone, as at the circumcision, since he does not resemble man, he is not bound by the laws of man, and is, therefore, exempted from Torah obligations.

However, R. Kluger prefers to explain that although Elijah is exempted from Torah obligations, which is why his spouse is permitted to rewed without prior divorce, it nevertheless behoves him to observe volitionally out of zeal, as those who are not entreated, yet fulfill the commandments willfully. The presence of the corpse should theoretically prevent Elijah from attending the circumcision, since Elijah must volitionally be precautious of defilement, but because of the principle that engagement in one religious duty frees one from another, Elijah may forego the prohibition of defilement to attend the circumcision.

The main difference between this exposition to R. Kluger's initial analysis is that in the "preferred explanation," Elijah volitionally fulfills the commandments even when he appears in spirit form alone. This represents a departure from R. Sofer's dichotomy, whereby he propounds that when Elijah assumes his spirit form he fulfills no commandments whatsoever, not even volitionally, as Torah obligations are entirely irrelevant to angels. However, when Elijah assumes his "human" form, Elijah does not merely fulfill commandments volitionally,

but rather because he is obligated in effect, and it is incumbent upon him to observe Torah as a Divine imperative.

The Main Positions Reviewed

The debate is reminiscent of the R. Falcon - R. Attiah controversy of Chapter II, in which R. Falcon, like R. Kluger, purports that Elijah volitionally undertakes the commandments out of zeal. R. Falcon was sharply criticized by R. Attiah, who like R. Sofer, posits a dichotomy whereby Elijah is either enjoined to observe the commandments in effect, or not at all. The R. Attiah - R. Sofer viewpoints are similar, to the extent that they agree in areas where Elijah is obligated to observe the commandments, he is enjoined to fulfill them as a Divine imperative and not volitionally out of zeal. In areas where Elijah is not enjoined in effect he does not fulfill them at all. However, they disagree on where these areas of obligations and absolvment from obligations exist. According to R. Attiah, Elijah's area of obligation is only insofar as his 'man-G-d' relationship is concerned. As far as his 'man-man' relationship is concerned he is completely absolved of all obligations. According to R. Sofer, however, Elijah's area of obligation is dependent on his mode of appearance. When Elijah appears in his "man" form he is obligated in commandments concerning both his 'man-man' and his 'man-G-d' relationships. However, when he appears in his "spirit" form he is not obligated either in commandments concerning his 'man-man' nor his 'man-G-d' relationship. More specifically, although R. Sofer and R. Attiah agree that there is an 'obligating factor,' i.e., something which produces an obligation in effect to observe commandments (in the absence of which no obligation exists at all), they disagree over what the obligating factor is. For R. Attiah, the obligating element is the particular relationship Elijah pursues. For R. Sofer, the obligating element is not Elijah's respective relationship, but rather his form of appearance.

The R. Kluger, - R. Falcon positions are remarkably similar, in that they agree that Elijah is not enjoined in effect to observe the commandments, and merely does so volitionally out of zeal. However, they disagree on why this absence of obligation exists. According to R. Falcon, since all of Elijah's relations have become severed

upon his transcendence, Elijah assumes no relation for which there can be a corresponding commandment. According to R. Kluger, however, this absence is due to his existence as an angel and not as an ordinary man. More specifically, for R. Falcon the absence of an obligating element is due to the severance of Elijah's relations, whereas for R. Kluger it is due to Elijah's unique form of existence.

The Obligating Factor in Commandment Observance

If we were to align these four positions, not from the point of view of whether Elijah's performance of commandments is volitional or obligatory, but rather from the point of view of why an obligation to perform commandments or absence of one exists altogether. Or, stated differently, what produces an obligation to fulfill commandments, we would find R. Kluger's position much more closely aligned with R. Sofer than with R. Falcon, and that R. Attiah's position is much more closely aligned with R. Falcon than with R. Kluger.

For what produces an obligation or an absence of one for R. Kluger and R. Sofer depends on Elijah's form of existence and mode of appearance. Whether or not such obligation exists according to R. Sofer depends on whether Elijah chooses to reveal himself in "spirit" form, devoid of human vestment, or in his "man" form, enclothed in his bodily garment. For R. Kluger, Elijah's mere status of being an "angel" divests him of any obligation, since "obligation" itself is a term applicable only to men. For R. Falcon and R. Attiah, however, that which produces an obligation to observe does not depend on Elijah's form of existence or mode of appearance but rather is contingent on his relations and relationships vis-a-vis G-d and his fellowmen.

This new representation of the controversy leads us to a most intriguing question, which will be discussed in a later chapter: What is it that produces an obligation to adhere to Torah Law? Is it man's mere existence and status of being a Jew, or is it his relations or relationships with G-d and his fellowmen?

What will concern us throughout the coming sections is to analyze how these four bastions of Halaka arrived at such diversified conclusions. As we have stated at the onset of this section, it is our

contention that these differences of opinion regarding Elijah's status and the nature of his obligation in Mitzvot, have emerged due to the fact that what exactly transpired to Elijah after his being taken up in a whirlwind is an utter mystery. The resolution of this enigmatic event produced diversified opinions in halaka.

III. THE NATURE OF ELIJAH'S ESSENCE

3. BEYOND THE ASCENSION

Bible Exegetes

The most conceivable locale to find a deciphering of the after-effect of Elijah's ascension would be to consult the opinions of the classical Bible exegetes who dealt specifically with the verses on the ascension.

Gersonides, the scientist-philosopher (1288-1344), in his commentary to Kings writes:

In addition we find that he [Elijah] did not die at the time he was taken up from above Elisha's head, and this [is so] because after [his ascent] Elijah's letter came to Jehoram, as is mentioned in Chronicles..., and this [letter] proves that Elijah was alive afterwards.¹²¹

The appearance of Elijah's epistle to Jehoram subsequent to his ascension was sufficient proof for Gersonides that Elijah remained alive after ascending the whirlwind.¹²² Nahmanides, a talmudist - philosopher-Kabbalist-physician (1194-1270), in his commentary to Leviticus states unmistakably:

But those who abandon altogether the concerns of this world and pay no attention to it, acting as if they themselves were not creatures of physical being, and all their thoughts and intentions are directed only to their Creator, just as the case with Elijah, [these people] on account of their soul cleaving to the Glorious Name will live forever in body and their soul, as is evidenced in Scripture concerning Elijah, and is known in tradition.¹²³

Even more resolutely, Nahmanides writes in his Gate of Reward:

In his [Elijah's] living ascent to [heaven] he did not cast off his [physical] body and was not separated from soul.¹²⁴

It is self-evident from Nahmanides and the clear intention of Gersonides that no schism of body and soul ever transpired at any point during Elijah's ascent. The after effect of Elijah's ascension left him unchanged, exactly as he was prior to his ascension.

Entirely different is the approach of the rationalist, R. David Kimchi, Radak (1160-1235), in his commentary to Kings:

[Upon his ascent] his clothing became devoured by fire, save his mantle, and his flesh and himself were consumed, while his spirit returned to the Almighty who had given it to him.

And he continued in a subsequent verse:

Elijah became spiritual and his body became consumed in heavenly fire and each element returned to its origin.

Again, in his commentary to Malachi, Radak expounds:

Behold I will send you Elijah, the prophet..., meaning [the Almighty] will return Elijah's soul which ascended to heaven, to a created body like that of the first body, since his first body returned to earth during the ascent, as each element returned to its origin. And then, when the Almighty will bring him back to life in body, He will send him to Israel.¹²⁵

Radak delineates clearly that Elijah's ascent did not merely 'represent' Elijah's death, but in actual fact was his death; that his body became consumed in fire. And before Elijah will be sent to herald the Day of Judgement,¹²⁶ he will have to be brought back to life. In his rationalistic approach Radak substantiates his opinion by endorsing the theory of generation and corruption. This theory postulates that all matter at some stage will eventually decompose and revert to its prime origin. This thought is expressed unequivocally in the phrase, "and each element returns to its origin."

Radak is not alone in his view and his opinion is shared by several other rationalists. Most notably is the opinion of the great fourteenth century halakist and liturgical commentator, David ben Josphe Abudarham, who writes categorically: "And there his [Elijah's] body perished, and each element returned to its origin, and his spirit returned to Him that gave it."¹²⁷ Abudarham's explication seems virtually a transcription from Radak.

Although from a rationalist standpoint Radak's view seems well taken, it is difficult for Gersonides to accept this view for a simple reason, to which he calls attention: the surprising appearance of an epistle written by Elijah to Jehoram seven years after his ascension, implicitly recorded in the Bible.¹²⁸ This is absolutely unaccountable, unless one posits, as Gersonides, that Elijah never died and his body remained intact and unscathed by the heavenly fire during the ascent. Radak was quite aware of this difficulty and in his commentary to Chronicles he defends his earlier view:

'And a letter came from Elijah': This occurred after the ascent, this matter is [to be understood] that Elijah revealed himself in prophesy to one of the prophets and placed in his mouth the content of the letter. He [Elijah] instructed him to write it down in a letter and tell him [Jehoram] that this letter is sent by Elijah, in order that Jehoram should think this letter came to him from heaven, so that he would surrender his heart and realise the abomination he had committed.¹²⁹

Explaining the appearance of the epistle from Elijah in this way, Radak is able to maintain his earlier view that Elijah in fact died, since the epistle was only inspired by Elijah, but not actually written by him.¹³⁰

Thus, the classical exegetes were divided over the after effect of Elijah's ascension. Gersonides and Nahmanides oppose any notion of a schism between body and soul; while, according to Radak, something more drastic than a schism occurred - an actual death, whereby Elijah's body was completely consumed by fire and devoured in flame. Whether or not Elijah actually perished during his ascent, as espoused by Radak and R. Abudarham, or was simply relocated to another abode, as advocated by Nahmanides et al., is traceable to a dissonance which emerged much earlier, from the sources of the talmudic period.

Earlier Sources

The first source to throw light upon the discussion is a source we are already familiar, from our treatment of R. Isserlein's responsum in Chapter II. Derekh Erez Zuta, states that nine eminent persons entered Paradise during their lifetimes, Elijah among them. R. Isserlein was asked what obligation these persons have regarding the performance of Mitzvot. The fact, however, that these persons are in reality alive and existing was never questioned. It is explicitly stated in the minor tractate itself.

R. Isaac Arama, the philosopher-exegete, a follower of Maimonidean philosophy, in his commentary to Deuteronomy writes:

We have already found men of distinction who were saved from it [death] because of their great merit as was exemplified by Elijah when he was taken up in a whirlwind, and hinted by Enoch in what was said, 'And he was not, for G-d took him.' And our Sages maintained this and attributed to him existence as Serah b. Asher and R. Joshua b. Levi and the others who

merited to enter, in body and soul, the life of the next world.¹³¹
R. Arama clearly understood Derekh Erez Zuta as referring to the continual existence in body and soul of Elijah and his counterparts who merited Paradise in their lifetime. It would therefore appear that the minor tractate is substantially supportive of the espousals of Gersonides and Nahmanides. We are also aware of a similar source of wider repute from the tractate Sukkah, which R. Sofer cites in his responsum dealing with Elijah:

R. Jose stated: Neither did the Divine presence ever descend to earth nor did Moses or Elijah ever ascend to heaven, as it is written: 'The heavens are the heavens of the Lord, but the earth was given to the sons of men...'¹³²

Aside from the hagiographic support for R. Jose's position, his opposition to Elijah's ascension to heaven is consistent with his opinion in Seder Olam Rabbah, to which R. Jose is ascribed putative authorship: "And Elijah is [alive] and existing."¹³³ R. Jose posited that Elijah could only continue to subsist as "alive and existing" so long as he did not ascend heaven, since "the heavens are the heavens of the Lord, and the earth was given to the sons of men." The heavens are the exclusive domain of the Almighty and His Holy Retinue. Man's subsistence in the form of "alive and existing" is confined and restricted to the periphery of earth. These additional sources seem to bolster further the opinions of Gersonides and Nahmanides.

On the other hand, we have already seen Hatam Sofer's treatment of the said passage in tractate Sukkah. Albeit, R. Sofer concedes, Elijah never ascended heaven in bodily form, however, he did indeed ascend in his soul form. In fact, R. Jose himself seems to allude to this view in a further chapter of Seder Olam Rabbah, where he states: "In the second year of Ahaziah's reign, Elijah was ensconced [nignaz] and is not to be seen [again] until the advent of the Messiah..."¹³⁴

Meir Friedmann correctly evinces that the term nignaz is only applied when referring to the respite of souls and not of bodies. This observation leads Friedmann to conclude that, in R. Jose's opinion, it was only Elijah's soul which was ensconced in heaven, since Elijah's body must return to dust, the state that it was originally.¹³⁵
Friedmann's conclusion is plainly reminiscent of Radak's rationalis-

tic interpretation.

Other sources which seem to contest R. Jose's thesis in Sukkah that Moses and Elijah never ascended heaven are: R. Joshua b. Levi's statement in Shabbat:

When Moses ascended on high, the ministering angels spoke before the Holy One, blessed be He, 'Sovereign of the Universe! What business has one born of woman amongst us?

And Tanhum b. Hanilai's statement in Baba Mezia:

One should never break away from custom. For behold, Moses ascended on high and ate no bread..."¹³⁶

However, these sources can be resolved to both renditions of R. Jose. According to the literalist view that R. Jose maintained that neither Elijah nor Moses ever ascended the heavens in any form, these two sources are to be understood as referring to a distance of ten handbreadths below heavens--an elevation to which even R. Jose concedes to have transpired.¹³⁷ According to the latter view, that R. Jose's statement in Sukkah was only said in reference to the bodies of Moses and Elijah, these other sources can be understood as referring to Moses' soul.¹³⁸

Thus we have located the controversy over the aftermath of Elijah's ascension to antedate long before the period of the classical Bible exegetes, and, in fact, dates back to as early as the talmudic sources themselves. The minor tractate, Derekh Erez Zuta, seems to bear out overwhelmingly in evidence of the Gersonides-Nahmanides position, which points out that Elijah remained unchanged by his ascension and continued a uniform existence of body and soul in his new habitat, "Paradise." Radak, himself, concedes that Derekh Erez Zuta stands in opposition to his own views.¹³⁹ R. Jose's opinion, on the other hand, as stated in Sukkah, Seder Olam Rabbah, and Baba Bathra, seems to be a matter of interpretation and can be regarded as supportive of either Gersonides-Nahmanides or supportive of the Radak-Abudarham views.¹⁴⁰

Although we have traced the origin of the controversy over the after-effect of Elijah's ascension to the talmudic sources, there is no mention in those sources of any sort of reasoning underlying the controversy, which might have led each source to its respective position. The emergence of an explicit and clearly stated rationale only appears in the later writings of the classical Bible exegetes.

Philosophical Debates

Although we cannot be sure that this same rationale lay in the foreground as the basis of the respective talmudic positions, we can be quite certain that it was this ratiocination which led the latter respondents to their respective conclusions. We have already quoted Radak's clearly stated reasoning as to why he believes Elijah's body necessarily perished before his soul could continue its upward ascent to heaven. "Elijah became spiritual and his body became consumed in heavenly fire and each element returned to its origin."¹⁴¹ Radak's alluding to and endorsement of the theory of generation and corruption as the embodying rationale for his depiction of the after-effect of Elijah's ascension, is indicative of pure philosophical consideration guiding Radak's thinking and exegesis.

We noted that Gersonides contests Radak's view for the simple reason that Chronicles implicitly records the appearance of an epistle to Jehoram written by Elijah quite some time after his ascension. Even if one were to endorse philosophically the theory of generation and corruption in general, from the appearance of the epistle it would seem that Elijah was immune to its rules. Gersonides' objection to Radak is not in principle, but rather to a specific incident in the case of Elijah. Nahmanides, however, disputes Radak on grounds of pure philosophical differences in reasoning.

Nahmanides refutes the Aristotelean allegation that the operability of the theory of generation and corruption may necessarily preclude the outcome of the world's matter. Since G-d's Will is always operative, and is in perpetual interaction with nature, G-d's Will may easily circumvent the outcome of all matter which might have been determined otherwise by nature. Therefore, by virtue of the theory of generation and corruption alone, there is no reason to presume that Elijah's body returned to dust, since G-d's Will could easily have altered that outcome. In fact, it is essential to Nahmanides that Elijah's body did not disjoin itself from the soul, in order to subvert and dismiss the contention of the philosophers whose views run contrarwise to Torah.¹⁴²

The Aristotelean philosophers rejected the entire notion of G-d's Will, claiming that, although G-d is the Cause of the world, the world was not created in His Will and nothing can change as far as its nature is concerned. Rather the world is primordial and eternal. Just as the candle is the cause of its shadow, neither one preceding the other, nor is the shadow cast by the "will" of the candle, but rather every place the candle moves, the shadow follows it in time and in space - so it is with the Cause(i.e., G-d) and the effect (i.e., the world).¹⁴³ They further developed this axiom by endorsing the theory of generation and corruption. They postulated that the composition of matter is not renewed, but rather automatically renews itself as a natural process.

Nahmanides counters this view by bringing a Midrash. The Midrash, although being a much earlier source, in Nahmanides' view is confronted with the same issue. The Midrash instructs:

If one were to say to you, is it possible that had Adam not sinned he would have lived on forever? Answer him, is there not Elijah who has not sinned and he is living and in existence forever!¹⁴⁴

The Midrash contemplates a question posed by the Aristotelian philosophers. Namely, how was Adam punishable by death, since he was subject to corruption and decomposition even before his sin? The Midrash exemplifies Elijah in evidence of the ludicrousness of such a contention. For, were it true, that all men were subject to generation and corruption, irregardless of whether men sin or not, how could one explain Elijah's continued existence? Shouldn't Elijah himself be subject to corruption and decomposition. Rather, one must conclude that it is G-d's Will which allows for man's continued existence, and circumvents the operability of generation and corruption.

Hence it is vital to Nahmanides that Elijah continues to live aggregately in body and soul, since Elijah's continued existence is absolute proof of G-d's Will in creation, and that the world has not proceeded from creation by virtue of necessity. Had Elijah's body disjoined itself from his soul, then Elijah would have become subject to generation and corruption, and there would be no proof of G-d's Will being able to suspend the operability of the theory of generation and corruption, and hence no proof of G-d's Will in

Creation.

It is quite obvious that the problem of whether Elijah exists in form of body or soul is hardly trite, and for Nahmanides the issue is of paramount significance. For it is Elijah's continual aggregate existence of body and soul which dispels the Aristotelean doctrine of an eternal world independent of G-d's Will. Elijah is living proof that G-d's Will alone maintains creation.¹⁴⁵

The issue was of such major import to Nahmanides that his philosophic position quite uncharacteristically influenced him to dispute the opinion of the Zohar. Nahmanides had a foremost reputation of being a keen Kabbalist. In fact, his kabbalistic approach generally guided his philosophic thinking. Yet, in a surprising deviation, Nahmanides' philosophic stand concerning Elijah's existential status caused him to disagree with the Zohar -- which even more surprisingly seems to be supportive of the rationalistic approach of Radak.

The Zohar is not concerned with Elijah's body returning to earth as dictated by the theory of generation and corruption, but rather the flip side of the issue. Namely, the problem of corporeality in heavens. Elijah's body, being that it is corporeal, has no place in heavens -- not because it must return to dust, but rather because in a corporeal state, it can have no existence in heavens.

The Zohar states:

'Who hath ascended up unto heaven?' Behold, we have established that this refers to Moses, as it is written: 'And to Moses He said, Come up unto the Eternal.' Another interpolation, 'Who hath ascended up unto heaven?' This refers to Elijah, as it is written: 'And Elijah went up by a whirlwind into heaven.' And how could Elijah have ascended unto heaven? Behold, all the heavens could not tolerate even the size of a mustard seed of the substance of this world, and you say, 'And Elijah went up by a whirlwind unto heaven!'

Rather, as you say, 'And the Eternal descended upon Mt. Sinai,' and it is written: 'And Moses came into the midst of the cloud, and went up into the mountain.' And was not the Holy One, Blessed be He, on the mountain, and it is written, 'And the sight of the glory of the Eternal was like devouring fire on top of the mountain.' How could Moses go up unto Him? Rather, by Moses it is written, 'And Moses came into the midst of the cloud as one dresses oneself in clothing. Here too he clothed himself in the cloud and entered into it. And in the cloud he approached the fire, and he could draw near to it. So too with Elijah it is written: 'And he went up by a whirlwind into heaven.' He entered that whirlwind and he clothed himself in that whirlwind and ascended upwards.¹⁴⁶

It is clear to the Zohar, from its remark, "the heavens could not tolerate even the size of a mustard seed of the substance of this world," that Elijah's terrestrial body could not have entered heavens. This leads the Zohar to conclude that Elijah necessarily entered heaven in a different form, and only after he was suitably garbed in special celestial clothing was he enabled to continue his heavenly ascent.¹⁴⁷

The Zohar's problem of corporeality in heavens is reminiscent of R. Jose's statement in Sukkah that Elijah and Moses never ascended heavens. However, the difference between these two lies in the resolution of those verses which seem to imply that Moses and Elijah did indeed ascend the heavens. R. Jose resolves these verses proposing that Moses and Elijah ascended until a point below heavens, whereas the Zohar resolves these verses by submitting that Elijah and Moses ascended heaven in a different form. The format of the Zohar's resolution is virtually identical to that of Hatam Sofer. They both agree that Elijah's ascent was made possible because of his ascending in a new form. The difference being that R. Sofer suggests that this was in the form of soul, whereas the Zohar submits that this was in the form of a new garb of celestial clothing.¹⁴⁸

However, for Nahmanides, from a philosophical standpoint, the necessary vitalness of Elijah's continued aggregate existence in body and soul, as proof of G-d's Will being abound in creation, caused him to uncharacteristically controvert the opinion of the Zohar.¹⁴⁹

One might postulate, by extending Nahmanides' principle a step further, that just as the omnificence of G-d's Will will render Elijah's aggregate existence of body and soul immune to the rubric of generation and corruption, similarly the omnificence of His Will may enable Elijah's body to enter heaven without necessitating a prior change of form. This reasoning, however, is inconclusive. For Nahmanides explicitly states that G-d's Will maintains His created objects in eternal existence, immune to the effect of generation and corruption, provided this was G-d's original intent at the time of their inception.¹⁵⁰ Since G-d's original intent at the time of the inception of man's soul was that the soul should give eternal sustenance to man's body, G-d's mere willing the

preservation of his created objects would have rendered Adam immune to generation and corruption had he not sinned, as in the case of Elijah. However, since we are unaware of an original intent that man's soul should give eternal sustenance to man's body even in heavens, there is no reason to assume that G-d's Will should be so. Consequently, there is no reason that any created being, including Elijah, should be able to ascend heaven in form of body, since we have no knowledge of such an original intent. Therefore, it is possible that Nahmanides might have endorsed the opinion of the Zohar, provided that Elijah's changed form in celestial clothing in heavens would not affect his ability to resort to his prior form in terrestrial clothing on earth. This is plausible, considering that Moses' **changed form**, donned in celestial garments, during his ascension did not seem to impair his ability to resort to his prior form during his descent.

In much the same way we find that there are two distinct traditions concerning the astral body in Neoplatonism,¹⁵¹ the one representing it as permanently attached to the soul; ¹⁵² the other, as acquired in the course of the soul's descent and discarded in the reascent.¹⁵³ Similarly, we can't be certain if according to Nahmanides, Elijah's terrestrial body remained permanently attached to his soul even during ascent, or is only acquired during the course of his descent.

It is not overly surprising in this instance to find the opinion of the Zohar more closely in semblance to Radak than Nahmanides.

For R. Simeon unequivocally stated in the following zoharitic passage:

From here R. Simeon said: A decree was issued upon Adam beforehand that he should die, since he was taken from [the dust of the] earth. This may be inferred from Scripture : 'For in the day that thou eatest thereof [thou shalt surely die.]' This teaches, that had he not sinned he would have lived a long life. But, as he sinned, this was his punishment— his life would become shortened and he would die on the same day. Upon his repentance, he was given a day of G-d, which is a thousand years.

And this is evidence that the decree [of death] was [decreed] prior to his [punishment of] death. For were it not so, upon his repentance the decree would have been repealed. Rather, R. Simeon said: he repented and annulled the decree that was decreed upon him: 'For in the day that thou eatest thereof [thou shalt surely die]' and [G-d] prolonged his days, giving him [Adam] His day.¹⁵⁴

R. Simeon's view is ostensibly antithetic to Nahmanides. R. Simeon unquestionably reflects Radak's reasoning that the law of generation and corruption was operative even prior to Adam's sin. Nonetheless, one may not divorce Nahmanides from the Zohar on this matter, as R. Simeon's opinion is a contentious issue in the Zohar itself. The Zohar in another place states:

Behold, had Adam not sinned, he would not have savoured the taste of death in this world...¹⁵⁵

This excerpt is remarkably similar to the Midrash that Nahmanides quotes in support of his thesis, that it is G-d's Will which allows for man's continued existence, and may easily circumvent the operability of the law of generation and corruption.

One might have surmised that Zohar's proposal of celestial clothing (in solution to the problem of corporeality in heaven) is contingent upon R. Simeon's rationalistic statement that death was decreed on Adam even prior to his sin. Only if man's body must return to dust, is it faced with a problem of its being corporeal upon its ascent. It then follows that once Nahmanides dismisses R. Simeon, he would automatically dismiss the notion of celestial clothing regarding Elijah as well. However, we have already evinced that even if Adam had merited eternal life, he might only have done so in this world alone.¹⁵⁶ Consequently, there is no reason to assume a contingency between R. Simeon and the notion of celestial clothing in Elijah's case. Therefore, although Nahmanides unequivocally disputes the zoharitic opinion of R. Simeon, he did not necessarily ignore the Zohar's dilemma of Elijah's corporeality in heavens. The resolution of this dilemma could just as easily be commensurate with the other zoharitic view which accords with Nahmanides, as with R. Simeon whom he disputes.

At this point it should be ostensibly clear that the decisive factor in determining the aftermath of Elijah's ascension and confirming the existential status of Elijah, lies at the heart in the resolution of such fundamental philosophic issues, such as the eternality of the world versus the omnificence of G-d's Will, the theory of generation and corruption as against the notion of G-d's Will, and the problem of corporeality in heavens. One cannot confirm any form of existence upon Elijah without firstly resolving

or committing oneself to a philosophic position.

We remarked earlier that despite the fact that we have effectively located the controversy over Elijah's destiny to antedate as early as the talmudic period – long before Aristotelean metaphysics became predominant – we have no evidence that it was these philosophic issues which account for divergence in the sources. Although this is true, nevertheless from Nahmanides' usage of the early midrashic source of Leviticus Rabbah¹⁵⁷ dating back to the classical Amoraic Midrashim of the early period (400-500 CE), and which cites Elijah as evidence that had Adam not sinned he would not have been subject to decomposition, and from what emerges as the clear problem in Zohar, it is seemingly apparent that the resolution of these philosophic issues were basic for the determining of Elijah's destiny even in the earliest period.

However, after these opinions were propounded prominently by Nahmanides, Radak and others, and found expression even in Zohar, their opinions and positions devolved and became well known to the respondents. There can be no doubt that confirming of Elijah's halakic status by the respondents necessitated their prior contending with the same philosophic issues which were well known to them.

Indeed, we find these opinions expressly mentioned in another responsum of Radbaz, who explicitly emphasizes how well known the view of the Rishonim (i.e., Nahmanides, Radak, et al.,) were to the respondents and all who took interest in this issue.¹⁵⁸

The fact that the respondents were confronted with the philosophic premise of generation and corruption, and dealt with it, is also evident from the same responsum. Radbaz was asked to explain Adam's ethical behaviour. How such a venerable person could disobey a simple commandment of G-d:

You have enquired of me, my friend of my soul, that I impart knowledge to you concerning the sin of First Man according to the simple meaning [peshat], since you have no dealings in esoterics. For you questioned; the creation of His hands, and after all the glory that he [Adam] had, as our Sages have mentioned, how could he be seduced by the advice of his wife and transgress a simple commandment that his Blessed Creator commanded him?

It is true that in the book of Zohar and in Tikkunim, profound and tremendous things were related concerning this matter of

which we are not entitled to speak. And you as well, my friend, did not ask of it. And, therefore, I saw fit to set down to you my opinion so that it rests well with the heart and with the simple meaning of Scripture.

Know that it is an intelligible thing that all existing things undergo corruption and in the final result all things return to their prime origin from whence they were taken. All the more so, man, who is composed of the four elements. And this thing was known to Adam beyond all doubt. And that which the Lord said to him: 'For in the day that thou eatest thereof thou shalt surely die,' [this refers to] incidental death, because from the natural death there is no escaping. And the Rishonim have already spoken about this, so I will not expatiate on it. And even according to those who say that he [Adam] could have attained eternal existence by way of a miracle, nevertheless, First Man did not know this. Rather, he estimated in his mind that the heavenly creatures have eternal existence, and that which is composed of matter is subject to death. Would that he were to live a thousand years. If so, it was clear to him that he would not exist in perpetuity as a man.

Nevertheless, First Man had a good intention. He yearned to become like on of His angels who stand before Him always. And certainly Adam did not know his fate and he thought his days would be short.¹⁵⁹

Radbaz devoted an entire responsum to discussion of an issue pertinent to ethics. Since moral and ethical behaviour is an integral constituent of Torah Law, which exacts moral fidelity, any discussion of moral conduct is a lawful concern and of inherent halakic relevance.¹⁶⁰ The philosophic premise of the theory of generation and corruption is axiomatic to Radbaz for an accounting of Adam's moralistic behaviour. Radbaz notes Zohar's contention with the same issue and clearly emphasizes that the entire philosophical debate concerning the theory of generation and corruption was already discussed by the Rishonim. In fact, he considered their deliberation on the matter so well known, and presumably readily available, that he felt no need to discuss the issue further.

By the Rishonim he undoubtedly is referring to Radak and other rationalists who maintained that the theory of generation and corruption is unrelated to Adam's sin. Radbaz' mentioning "even according to those who say that Adam could have attained eternal existence by way of a miracle," is an obvious allusion to Nahmanides, who maintained that G-d's Will could have suspended the effect of generation and corruption. From Radbaz's observation that the philosophic concept of generation and corruption was so well known

that he found it unnecessary to discuss the matter any further, we can easily assume that the other respondents were not only equally familiar with the existing opinions, but in fact utilised these opinions in their halakic discourse, as Radbaz did himself.

Application of Philosophy as Basis for Main Halakic Positions

We recall aligning the respective positions of the respondents from the point of view of the factor which produces an obligation for Elijah to fulfill the commandments. And we observed that according to the R. Sofer-R.Kluger school, this factor depends on Elijah's form of existence or mode of appearance. According to the R. Falcon-R.Attiah school, this obligation is produced by his relations and relationships vis-a-vis G-d and his fellowmen.

On the surface it would seem that the representation of R. Sofer and R. Kluger is far simpler than that of R. Attiah and R. Falcon. It is much simpler to posit a schism theory whereby Elijah assumes various modes of appearance, than to complicate matters by involving oneself in an arduous diagnosis and analysis of Elijah's relations and relationships vis-a-vis man and G-d.

Ostensibly, R. Attiah and R. Falcon rejected the simpler notion, because they viewed disparagingly on the whole concept of a schism. They obviously sided with the philosophic position of Nahmanides, based on the Midrash in Leviticus Rabbah, R. Jose in Seder Olam Rabbah and Sukkah, and Derekh Erez Zuta, all of which attest the fact that Elijah continued to live an aggregate existence in body and soul. On the contrary, it is R. Kluger and R. Sofer who re-interpret those sources and complicate them by removing them from their plain meaning by construing them to refer only to Elijah's body.¹⁶¹ R. Sofer's motivation for reinterpreting the sources was undoubtedly promoted by the same philosophic considerations expressed by Radak and the Zohar.

Therefore, it would seem correct to interject at this stage that R. Attiah-R. Falcon school sought to define the extent of Elijah's involvement in commandments from the vantage point of his relations and relationships vis-a-vis man and G-d, rather than in terms of Elijah's dualistic existence, because they were opposed to a solution

of a schism. We have evinced the philosophic rationale which persuaded Nahmanides to maintain that Elijah continues his aggregate existence in body and soul. These very considerations influenced this school to reject the solution of Elijah's dualistic form of existence. According to this view, although Elijah attained the status of "angel," in reality he continued to exist in the form of man.¹⁶²

On the other hand, the R. Sofer-R. Kluger school had no difficulty in defining Elijah's involvement in commandments in terms of Elijah's dualistic existence. They saw no contradiction in maintaining that G-d's Will is operable within creation simultaneous with the philosophic notion of generation and corruption even prior to Adam's sin, whereby Elijah himself is subject to its laws. Indeed we find this view extant in Radak, Zohar, and Radbaz and none seem to be troubled by the reservation of Nahmanides. According to this view, Elijah exists in reality in the form of spirit, yet he may reappear occasionally in form of man.¹⁶³

The Synthesis of Avnei Nezer

Having demonstrated the respondents' rendering of certain halakic decisions based upon extensive philosophic deliberation, it is important to divulge a third philosophic position, extant in the Responsa literature, concerning the discussion of Elijah's existential status subsequent to his ascension. R. Avraham ben Ze'ev Nahum Bornstein of Sochaczew (1839-1910), head of the Beth Din of Sochaczew, was one of the greatest halakic authorities of his generation. R. Bornstein's most notable halakic work was Avnei Nezer, a remarkable collection of responsa on the four parts of Shulchan Arukh after which he himself became known. In one of these responsa, Avnei Nezer relates to a contention of Maharal that the righteous, do not possess impurity upon death by virtue of their pertaining to the Upper World:

These things can be explained further. It is written in the holy Zohar in Shelach that if not for the sin of First Man the body would have ascended with the soul to the Upper World.¹⁶⁴ And because of the sin, the body remains in this world. And here! The sin is incidental and in essence the body is worthy to ascend the Upper World at the time of death.

Necessarily, it [the body] pertains to the Upper World and one who touches it becomes impure. And here! Maharal would not dispute the holy Zohar that there is impurity to the dead itself, as the externals cling to the holy garment.

And here! When he [Elijah] was burying R. Akiba and Elijah was asked 'Art thou not a Priest?'¹⁶⁵ According to the reason of Maharal, no prohibition or impurity exists for Elijah as Elijah himself is from the Upper World, he ascended above and descended below! And what place is there to say to Elijah that touching something from the Upper World [i.e., R. Akiba's corpse] should bring impurity upon him? This is only pertinent to men of this world, not to Elijah who himself belongs to the Upper World! Except however, according to the reason of Zohar and Nahmanides, that impurity is intrinsic to the dead itself.

And do not ask, is it not known that Elijah at the time of ascension was stripped of his body and placed it on the planet Sun? And if so, his body did not ascend to the Upper World and it was well said that Elijah's body which enclothes him in this world should not touch that which pertains to the Upper World. This is not so, for I have already written, that which a dead body pertains to the Upper World is because if not for the sin, the body would have also ascended. And Ohr ha-Hayyim [in his commentary] to Hukkat on the verse 'And from Bamoth to Gay,' wrote: 'If not for the sin, at the time of death man's body and soul would ascend. And man would place his body on the planet sun as Elijah.'¹⁶⁶

From this we may conclude that the dead body, even if not for the 'sin' does not pertain to the Upper World any more than Elijah's body that enclothes him in this World. And it is impossible that Elijah should become impure upon touching a corpse according to the reason of Maharal.¹⁶⁷

Avnei Nezer maintains that even if First Man had not sinned, his body would not have ascended further than Elijah's body which is stationed on planet sun. As the sin is merely incidental, the body of every man is worthy of pertaining to the Upper World. Avnei Nezer utilizes this premise to disprove Maharal's contention that the righteous do not have intrinsic impurity of their own by virtue of their pertaining to the Upper World, as every man has this inherent quality of pertaining to the Upper World, yet nevertheless has intrinsic impurity of his own.

Avnei Nezer, similar to Radaz, maintains that even without sin First Man would never have attained bodily existence in the Upper World beyond the planet sun. It is interesting to note that in contrast to Nahmanides who cites Elijah as absolute evidence that had First Man not sinned he would have obtained eternal aggregate existence of body and soul, Avnei Nezer cites Elijah as proof of

exactly the reverse. Just as Elijah never attained eternal aggregate existence of body and soul neither would First Man have attained such an existence, even prior to committing the "sin."

Once again we see how it was crucial for a halakic giant as Avnei Nezer to contend with the entire gamut of philosophical considerations cited in our discussion in order to render a halakic decision. That decision being that all men, even the righteous must have intrinsic impurity of themselves if they are to cause impurity to others.

Avnei Nezer seems to suggest a new philosophical position, somewhere midway between Radaz and Nahmanides. While Radbaz considers all men to be permanently subject to decomposition and Adam's punishment of death merely incidental, Avnei Nezer considers all men to be permanently eternal and Adam's sin and consequent death merely incidental. However, Avnei Nezer qualifies his position stating that the highest state of man's permanent level of eternality of body cannot extend further than the planet sun. Although Avnei Nezer concurs with the R. Sofer-R. Kluger school in maintaining that Elijah's body severed itself from soul at planet sun, this severance does not represent the death of Elijah's body as expressed by the R. Sofer-R. Kluger school. It rather represents the highest level of eternality that Elijah's body could possibly attain. In this sense Avnei Nezer is similar to Nahmanides and the R. Falcon-R. Attiah school who maintain that the aggregate existential status of Elijah's body and soul is one of being eternally alive.

Impurity Upon Revival as a Consequence for Surgery

There are significant practical halakic consequences emanating from Avnei Nezer's responsum concerning whether the dead corpse possesses intrinsic impurity. One example of this can be found in a responsum by R. Waldenberg in Tzitz Eliezer to Dr. Abraham-Sofer Abraham where he discusses whether a priest is permitted to have a finger which was accidentally torn asunder rejoined in place through plastic surgery.¹⁶⁸ Dr. Abraham reasoned that since the torn finger conveys impurity to the priest, possibly the priest would not be permitted to undergo surgery. R. Waldenberg considers the possibility that since the finger is restored to life in the same place that it was imbued with life originally, perhaps the finger would not convey impurity.

However, R. Waldenberg recalls the talmudic discussion in Niddah which clearly delineates that even if a person's whole being was restored to life, although he no longer conveys impurity whilst he is alive, he certainly conveyed impurity while he was dead. R. Waldenberg bolsters his contention that the finger continues to convey impurity despite its becoming restored to life, by quoting a responsum of Hatam Sofer in which R. Sofer explains that the son of the Shunamite woman certainly required ritual sprinkling subsequent to his resurrection as he came in contact with himself during his resurrection and consequently he conveyed his intrinsic impurity to himself.¹⁶⁹

According to Maharal however, who espouses that a corpse does not convey intrinsic impurity to itself,¹⁷⁰ R. Waldenberg would no longer find support for his contention from the Talmud in Niddah, and consequently the priest might well be permitted to undergo the surgery.¹⁷¹ The application of the Talmud's discussion in Niddah is another instance where resurrection discussions bear practical consequences for ordinary surgical procedure.

III. THE NATURE OF ELIJAH'S ESSENCE

4. DESCENSION

We have discussed two main schools which described the aftereffect of Elijah's ascension and have shown that each school derived its views based on the most profound philosophical considerations. While one school maintained that the aftereffect of Elijah's ascension resulted in Elijah's continued existence in the form of man whose evasion of death attained his angel status, the second school maintained that Elijah transcended in reality to an angel who reappears occasionally in the form of man.

Exactly how one is to define an angel would involve us in a rather tedious and complicated study of Angeology. Suffice it to say that according to all opinions, an angel is an entity somewhere in between the sphere of man and the sphere of G-d. Whether angels more closely resemble men or G-d is a study for angeologists. Notwithstanding, it would seem that R. Falcon and R. Attiah regarded angels, or at least the angel Elijah, as more closely resembling the sphere of man. Whereas R. Sofer and R. Kluger seem to have related the angel Elijah more closely to the sphere of G-d.

Did Elijah Originate as a Man or an Angel?

It is most intriguing to note that this distinction of whether Elijah is in reality a man who attained the status of angel, or in reality an actual angel, is a dilemma which has bearing on Elijah already prior to his ascension. A controversy emerged in the rabbinic literature already at the onset of Elijah's ingress: Was Elijah originally in reality an angel, even before he began his earthly career, who subsequently descended in the form of man to take up his career, and upon ascension he resumed his angel reality? Or, did he originate as a man to take up his career as related in Kings, and only upon his ascension did he rise to the level of angel? Indeed we find this very topic raised by R. Michaelson in the same responsum where he clarifies the matter of Elijah's identity. Toward the conclusion of his responsum, R. Michaelson divulges a

most remarkable opinion, which he discovered:

I found in the name of R. Moses de Leon: 'I saw a most marvelous secret. You will not find [of Elijah] in all of Torah a father and a mother. And it was not written of him [Elijah, that he was] the son of so and so except for Elijah the Tishbite. And it is said that beforehand he descended from heaven, and his name is known [to those savant] in esoteric wisdom.' He [R. de Leon] is recorded in the book Zikkukin de-Nura [commentary] to Seder Elijah Zuta. See thereon the marvels of his holy words.¹⁷²

R. Michaelson imparts the opinion of R. Moses de Leon who made a most remarkable observation. Nowhere does Scripture allude to Elijah's parents or even identify him as the son of so and so, as is customary of Scripture whenever introducing its characters. This obvious omission leads to the conclusion that Elijah in fact had no natural parents and that in reality Elijah originated as an angel before he began his earthly career. Subsequently he descended in the form of man to take up his career, and he is recorded in Kings simply as Elijah.

R. Michaelson quotes Zohar, Ruth, as a source for his opinion. However, this source rather than deriving Elijah's origination as an angel from Scripture's omission of Elijah's parentage, derives this from Elijah's apparent celibacy. The fact that Scripture neglected to record Elijah's children is an equally curious omission as well:

R. Nathan asked R. Jose b. R. Hanina one day. He said to him: 'Did Elijah have a son or not?' He answered: 'He had another thing.' [i.e., He is unlike other people.] And it is written: 'Touch not my appointed ones and do my prophets no harm.' What is: 'Do no harm [al tareiu]?' Do not make loved ones [reim] and friends to my prophets. For the Holy One, Blessed be He, chose them and separated them from Israel for His service and brought them into His Palace. It is a fortiori for someone who is an angel in heaven [i.e., Elijah]. Need you ask of him?

R. Johanan said he belonged to the tribe of Gad. R. Nehorai said Elijah had another thing. And it is written: 'Who ascended up into heaven and descended?' 'Who ascended up into heaven.' R. Eleazer said in, the name of R. Simeon. This refers to Elijah. 'And descended.' Beforehand.¹⁷³

The Zohar explicitly interpreted the proverbial verse: "Who ascended up into heaven and descended" as referring to Elijah the angel who descended beforehand, that is, before he "ascended up into heaven."

The Zohar is not the only source for this opinion. R. Hayyim Joseph David Azulai (1724-1806, known as the Hida), the halakist-kabalist, who combined a religious and mystical ardour with an insatiable intellectual curiosity, recounted in his compendium, Midbar Kedemoth the following :

Elijah, may he be remembered for good, was originally an angel. And at the time when G-d desired to create the world, He said to Elijah and the other angels, 'Let us make man.' He [Elijah] answered: 'If it is good before You, before me, is it not all the more so? If it be pleasing in Thine eyes, I will descend on earth and make myself serviceable to him.' [Then G-d changed his angel name.] And later [under Ahab] he descended and converted the world to the belief that 'The Lord is G-d.' A few days after he converted the world to this belief, G-d took him again into heaven and said to him: 'Be thou the guardian spirit of my children forever [and spread the belief in Me abroad in the whole world].'¹⁷⁴

And in Midrash Talpiyyot:

Elijah was at the beginning of creation from the sect of angels who brought indictment against creation of the world. And the Holy One Blessed be He cast him down to earth from his residing place. As it is written: 'And truth was cast down to the ground.' This refers to Elijah.¹⁷⁵

It is quite obvious from the above citations that it can clearly be established that there is a definite opinion within rabbinic literature that the prophet Elijah was originally an angel who existed already during the time of creation. He was commissioned by G-d to descend and he appeared in the form of man. When Elijah's mission was completed he ascended, returning to his original angel state.

In fact, his angel name is known to be Sandalphon,¹⁷⁶ whereas Elijah is his terrestrial name. Sandalphon is the angel name that Hida relates was changed by G-d to Elijah and is the same name that R. Michaelson refers to in his responsum, in which he quotes R. Moses de Leon: "And they said that beforehand he descended from heaven and his name is known to the savant in esoteric wisdom."

Nevertheless, despite the evidence, there exists strong opposition to this view. Among the most distinguished of the opposers to this view is Rashi in his talmudic commentary. The Talmud in Kiddushin relates that every marriage is recorded in writing by Elijah and G-d fixes his seal to the marriage record. He who marries a wife who is not fit for him, will be bound in stocks on the pole by Elijah

and flogged by G-d.¹⁷⁷ Rashi, in commenting thereon, explains:

This Elijah [i.e., the one who is related in Kiddushin] is not the same Elijah who is written in Scripture. For if so, before he arrived, who did the binding. Rather this [Elijah] is the name of an angel who is a scribe above.

Rashi claims that the Elijah related in Kiddushin who inscribes all marriages and binds those who take wives unfit for them cannot be the selfsame Elijah recorded in Scripture. For were this the same Elijah of Scripture, who then was responsible for the inscription of marriages and flogging of husbands who took unfit women for wives prior to Elijah's ingress? Rather, the Elijah related to in Kiddushin is a different Elijah who is an angel and a scribe in the heavens above.

It is more than apparent that Rashi did not espouse the view divulged by R. Michaelson. Were Rashi to espouse this view, there would be no question as to who was responsible for inscribing and flogging prior to Elijah's arrival. It would obviously be the same Elijah. Rashi's rejection of this simple solution is a clear indication that he is opposed to the notion that the Elijah of Scripture originated long before as an angel during the time of creation.

The view of R. Moses de Leon, imparted by R. Michaelson, is quoted from a book entitled Pardes, whose author is R. Moses Cordevero. R. Cordevero, in fact, cites R. de Leon in order to dispute him thereafter, saying:

This opinion [R. de Leon's] nullifies itself before the words of R. Simeon b. Yohai, who opined that Elijah was a human being, and so is the opinion of all the Sages. For they [the Sages] only disagreed upon which tribe he belonged. But to say that he was an angel who materialised [in person], there is not a one who would agree.¹⁷⁸

R. Cordevero's assertion that none of the Sages would agree with R. de Leon's opinion is dubious. We have shown that R. de Leon's opinion is amply reflected in the sources.¹⁷⁹ Although it is true that R. de Leon's conception is not explicitly stated in the older sources, many of the old sources were interpreted according to his conception.¹⁸⁰ A clear instance is the Talmud in Berakoth quoted by R. de Leon himself:

A Tanna taught: Michael [reaches his goal] in one [flight], Gabriel in two, Elijah in four, and the Angel of Death in eight.¹⁸¹

The Tanna compares the angel Elijah to the archangels Michael and Gabriel, who has less power than them, but more than the Angel of Death.¹⁸² The Tanna must have presumed that Elijah both originated and is an angel in essence. Otherwise Elijah could not be compared to the archangels Michael and Gabriel and the Angel of Death who are angels in essence and originated as such.

Moreover, Hida himself seems to personally endorse the view that Elijah originated as an angel which he quoted in Midbar Kedemoth. This is evident in another work, Petah Einayim, where Hida writes:

Recently, I found an introduction in the books of the Kabbalists that Elijah, may he be remembered for good, was from the class of Heavenly Angels. He spoke out concerning man's creation and G-d decreed upon him to descend below and abide among the sons of men. And later he ascended in a whirlwind to heaven.

And, thereon [in regarding the above], I said that with this [opinion] it is solved; for the Elijah who binds, [who is] related in Talmud, is forever the same Elijah the Prophet, may he be remembered for good, recorded in Scripture. And until he came to this world he himself would bind when he was an angel. And similarly, [he continued to so] after his advent and after he ascended heaven.¹⁸³

Not only does Hida endorse the opinion of R. de Leon, Hida believes that the Talmud in Kiddushin could only be resolved in the light of this opinion. It would, therefore, seem that R. Cordevero's assessment that none of the Sages would agree with R. de Leon is doubtful. The Talmud, both in Kiddushin and in Berakoth are supportive of R. de Leon.

Rashi's solution in Kiddushin of two different Elijahs is certainly difficult. Indeed, Hida's solution is far simpler. The only explanation possible for Rashi's discounting Hida's solution is that Rashi strongly opposed the notion of Elijah's origination as an angel prior to his descending to take on his earthly career.

In fact, this is precisely the point of contention with which Zikkukin de-Nura explains the disputation of the Rabbis in Seder Elijah Rabbah over Elijah's genealogy. We are already familiar with the argument which was discussed in detail at the onset of this chapter. R. Michaelson lauds Zikkukin de Nura in his responsum for his marvelous

exposition of the disputation. Zikkukin de-Nura writes:

...This was the disputation in the academy among our Sages recorded in Seder Elijah Rabbah. For there are those who said that Elijah was not a human but an angel. Since we do not find that he was born unto father or mother. And there are those who said that Elijah was a human, only we have not found to whom he was born. Therefore, they argued from whom was Elijah.¹⁸⁴

Again, it would seem that R. Cordovero's allegation that R. de Leon's opinion is absent from the sources is groundless. As according to Zikkukin de-Nura, the contention of R. de Leon is exactly the subject of dispute among the Sages of Seder Elijah Rabbah. This is endorsed by R. Michaelson who bibliographs him authoritatively.

In the Responsa of the Geonim, the question was raised that in view of the talmudic injunction: "One should never petition his needs in Aramaic; and R. Johanan said, when one petitions for one's needs in Aramaic, the ministering angels do not heed one, for they do not understand Aramaic."¹⁸⁵ Why then is so much of our liturgy in Aramaic? In response, a distinction is drawn between areas where angels have jurisdiction to act on their own, and areas where they require approval from a higher authority. In areas where angels have jurisdiction to act on their own, supplication can be made in Aramaic, as angels understand Aramaic. An example is cited from the Selihot, (penitential) liturgy, where supplication is made to Elijah in Aramaic: "I beg of you, light runner who traverses the world in four strides." (A reference to Talmud in Berakoth, cited earlier.) This proves that angels understand Aramaic.

Albert Harkavy, in his notes on the Geonic Responsa queries what sort of proof did the Geon produce from Elijah that angels understand Aramaic. Elijah is different for he is a man who became an angel, and, therefore, needs to be petitioned in Aramaic. Rather, Harkavy concludes, the proof is not from Elijah, but from other angels who are mentioned in the same Selihot.¹⁸⁶

Obviously, Harkavy did not consider the possibility that Elijah originated as an angel who only assumed the appearance of a man. Otherwise, his question would be unwarranted and he would not need to conclude that the Geon was referring to other angels, excluding Elijah. The Geon explicitly cites a petition to Elijah, who is stipulated in Berakoth as the one who traverses the world in four

strides. If the Geon was referring to other angels, excluding Elijah, he would not have cited a petition to Elijah. Rather, the Geon maintained, as R. Michaelson, R. de Leon, Hida, and Zikkukin de-Nura, that Elijah was an angel from his inception, and continues to retain that reality. Therefore, he could cite Elijah as proof that angels understand Aramaic. It is significant to note that the Geonic Responsa understood the talmudic source in Berakoth as asserting Elijah's reality of angel in the same way as R. Moses de Leon.

In view of the stated controversy, let us now turn to reflect on why Rashi, and in R. Cordovero's estimation, all of the Sages of the Talmud, discounted the notion of Elijah's origination as an angel. We recall our earlier discussion dealing with the after-effect of Elijah's ascension, how we related R. Falcon and R. Attiah to Nahmanides, who maintain that Elijah continues to exist aggregately, in the form of man. Ostensibly, it would seem that if Elijah in reality continues to exist as a human, attaining only the status of angel, but not the reality of one, it would be difficult to embrace Elijah's origination as an angel. As clearly, only if one maintains that Elijah transcended to the reality of angel, is there room to entertain the thought of his origination as an angel. Since the simple meaning of the Talmud in Sukkah is that Moses and Elijah never attained the reality of angel,¹⁸⁷ it is most probable that Rashi, and in R. Cordovero's opinion, all the Sages followed this literal interpretation and therefore, maintained that Elijah continued his human existence -- which precludes the possibility of his origination as an angel. Moreover, the Talmud compares the ascension of Elijah to that of Moses, stating that neither ascended the uppermost heavens. By the same token, one must assume that just as Moses did not originate as an angel (his genealogy being well known), neither did Elijah. Otherwise the Talmud could not compare the two ascensions, as Elijah would have resumed his original angel state, while Moses remained a human.¹⁸⁸

Moses' Assumption and the Law of Conformity

The striking resemblance between Moses' mission and existential nature to Elijah is particularly accentuated in Pesikta Rabbati and

Yalkut Shimoni:

You find that Moses and Elijah are identical in every respect. Moses was a prophet and Elijah was a prophet. Moses was called Ish Elokim [Man of G-d], and Elijah was called Ish Elokim. Moses went up to heaven and Elijah went up to heaven as it is written, 'And it came to pass when the Lord took Elijah up into heaven.' ...Moses: 'And the cloud covered him six days' [and on the seventh He called unto Moses out of the midst of the cloud.] Elijah went up in a whirlwind: 'And it came to pass, when the Lord would take Elijah by a whirlwind.' ... Moses spent forty days and forty nights during which he did not eat nor drink; so too, Elijah went on the strength of that meal forty days.' Etc.¹⁸⁹

Their being alike in every respect precludes Elijah's origination as an angel - as Moses originated as a human, so must have Elijah. Moreover, Peskita Rabbati compares Moses to Elijah in that they both miraculously lasted without food for forty days. Were Elijah originally an angel who merely disguised himself as a human, his fasting forty days would have been most natural for one who in reality is an angel. In fact, were Elijah in reality an angel even before his ascension, his abstinence from food would be permanent and not only forty days. If so, Elijah's fasting for forty days would be an incorrect comparison to Moses', as their abstinence from food was not alike.

Indeed, the very issue of Moses' abstinence from food for forty days is a subject which crept its way into the Responsa literature. R. Jacob b. Joseph Reischer, also known as R. Jacob Backofen (1670-1733), was appointed Av Beth Din of Ansbach, Worms, and Metz. He was accepted by contemporary Rabbis as a final halakic authority, and queries were addressed to him from the whole of the Diaspora. The following question is the third of three questions addressed to him by R. Ben Zion Wengoff, in the name of his father, R. Moses Wengoff, which R. Reisher included in his responsa:

[Question] There is found in Midrash Yalkut, [on the verse]: 'And Moses was there on the mountain forty days and forty nights,' as follows: And is it possible for a one born unto a woman to remain forty days without eating or drinking! Rather, [the saying goes], 'When one goes to a town, behave as its inhabitants do.'

And this needs be affixed by a young carpenter [i.e., this requires explanation]. For how was the question, 'is it possible, etc.' answered? Since it [i.e., the abstinence from food] is impossible! For do we deduce the impossible from

the possible? As certainly, whenever it is possible one must behave as the inhabitants do, but not so, in a place where it is impossible!

[Answer] According to its plain sense it would seem that this is the meaning of the Midrash: 'Is it possible for one born of a woman to remain forty days and nights without eating or drinking? And one cannot say that this transpired by way of a miracle for naught? Since he [Moses] could have taken along food and drink with him. Or he could have eaten 'bread from heaven.' To this comes the answer: 'When one goes to a town, behave as its inhabitants do.' And it is simple to understand.

And in a witty way, it can be said that this is the intention of the Midrash: 'Is it possible for one born unto woman to be without food or drink? Rather, one must say, that Moses truly attained the level of angel in reality who is called 'Ish Elokim', as it is written. And so it is difficult [to understand] why he did eat below [i.e., subsequent to his descent from the mountain]? To this the Midrash nicely answers that for this reason he ate below, because 'when one goes to a town behave as its inhabitants do.' So it seems to me.¹⁹⁰

In answer to how Moses could be expected to behave as angels by abstaining from food even when it is impossible for him to do so, R. Reischer offers two explanations. The first explanation, which he considers literally, can be understood in line with Rashi's reasoning, that both Moses and Elijah were inherently men. R. Reischer responds that this is not a case of deducing the impossible from the possible, as Moses' abstinence from food for forty days was not impossible. He could have brought food along with him, or eaten food from heaven. There was, therefore, no reason for G-d to work a miracle, whereby man could exist without food for forty days. Rather, the Midrash submits, the reason it was necessary for G-d to work such a miracle was so that Moses could conform to the practice of angels.¹⁹¹

R. Reischer's second explanation can be understood in line with Hida et al. who viewed Elijah inherently as an angel. In that case how was Moses likened to Elijah in every respect? To this R. Reischer says in a witty way that Moses himself became an angel.¹⁹² The question of the Midrash is: in view of the fact that Moses in reality became an angel, why did he continue to eat upon his return from the mountain? To this the Midrash answers that since Moses returned to the place of humans, he must conform to the practice of humans.

R. Reischer's responsum significantly contributes to our discussion

in that the statement "Moses and Elijah were alike in every respect" can now be understood both according to the conception that Elijah was inherently a man and according to the conception that Elijah was inherently an angel, since R. Reischer describes Moses' ascension in accordance with each view. Moses' ascension can no longer serve to disprove Elijah's transcendence to angel, as according to R. Reischer's second explanation Moses himself transcended to an angel.

Louis Jacobs in his book, Theology in the Repsonsa, introduces R. Reischer's responsum as an aggadic question of a non-legal nature.¹⁹³ Although R. Reischer himself prefaces his responsum, saying that he was asked a number of aggadic questions, he did not intend to say that these questions were "non-legal." In fact, R. Reischer begins his responsum saying: "I was asked three things of Aggada and hokhma," paraphrasing the Talmud in Niddah: "Twelve questions did the Alexandrians address to R. Joshua b. Hananiah. Three were matters of hokhma. three were matters of Aggada, etc."¹⁹⁴

Rashi in his commentary to Niddah explains that the word hokhma denotes Halaka. Rashi clearly saw the "three questions of hokhma" as halakic and of a legal nature. There is no reason to doubt that R. Reischer used the word hokhma in this same legalistic sense as there is every indication to substantiate that R. Reischer paraphrased the above passage in classifying the nature of the questions he was asked: Firstly, by the fact that in each instance groups of exactly three questions were asked. Secondly, the identical terminology of hokhma and Aggada were used in each case to classify the nature of the questions asked. And thirdly, the content of the questions which R. Reischer was asked bears an uncanny resemblance and similarity to the content of the questions asked by the Alexandrians. Moreover, it is clear that the canon "When one goes to a town, one must behave as its inhabitants do" is an ethical principle which is legally binding.¹⁹⁵

R. Joseph ben Ephraim Caro (1488-1575) codified this principle in his legal digest, Shulchan Arukh, as a legal canon, in relation to the performance of work on the eve of Passover.¹⁹⁶ Our Midrash is dealing with exactly the same type of legal premise as is prescribed by Shulchan Arukh concerning the Passover laws, namely the

Law of Conformity, i.e., conforming to local custom.¹⁹⁷

Let us see how our Midrash served as a halakic basis in demonstrating the Law of Conformity. On the surface it would seem that the Law of Conformity as codified in the Shulchan Arukh is a simple law - one must conform in order to prevent quarrels. As R. Caro writes: "One must never break away [from the local custom] on account of quarrels."¹⁹⁸

This is in accordance with the Torah concept "Lo tithgodedu - you shall not form separate sects."¹⁹⁹ Why then was it necessary and for what halakic significance did the Midrash demonstrate the Law of Conformity by citing the incidents of Moses' ascension as well as the descension of the angels to Abraham? In other words, what legal precept emerges from the Midrash that is not already encompassed by the Pentateuchal injunction "thou shalt not form separate sects?"

In response, one could simply differentiate between the negative aspect and the positive aspect of the law. That is to say, that were one to observe the injunction merely from its negative aspect, namely, to conform in order to prevent quarrels, then it follows that upon entering a town one must behave as its inhabitants do publicly. However, in private, when no quarrel would ensue, one would be permitted to exercise one's own custom, even if it did not conform with the local custom. Whereas, were one to observe the injunction from its positive aspect, there would then be an inherent positive value in conforming to the local custom in itself. Namely, the value of training the stranger to become a part of the local society. Consequently, even in private one would not dissociate from local custom, since one's private behaviour is an important element in one's training. From the Torah injunction one merely derives the negative aspect of the Law of Conformity, i.e., the prevention of quarrels. The Midrash accentuates the positive aspect of the law, i.e., the inherent value of conformity. R. Jacob Hayyim Sofer stipulates in his halakic commentary to the Shulchan Arukh, Kaf ha-Hayyim, the positive value of conformity as a legal principle:

'One must never break away,' etc; And it is so regarding all other actions [i.e., not only concerning the performance of work on Passover eve], one should conduct oneself in accordance

with the ways of the land and one should not deviate from this custom. And even if no one should see him, in order that one accustom oneself to all the ways of the land.²⁰⁰

R. Sofer brings other reknown halakic authorities, such as R. Mordecai Jaffe's Levush, in support of his ruling.²⁰¹ Our Midrash becomes vitally important not only in serving as a source for teaching the positive side of the Law of Conformity, but also in its illustration of the inherent value of conformity. That illustration can be understood as follows: Assuming that Moses observed the Law of Conformity to its ultimate end, he would have had to associate so completely with the angels, until Moses himself would have learned the ways of the angels and become like them. Consequently, he no longer would require food. Once his association was complete, his abstention from food would be as natural as the angels. Similarly, one could say the same of the angels' partaking in Abraham's repast. Since the angels were sent as "men,"²⁰² in order for them to fulfill their mission of appearing as men, they would have had to associate so completely with men that they themselves would require food. Only by observing the Law of Conformity to its fullest extent could they fulfill their mission completely. Thus the Midrash augments an added dimension to Halaka, which an ordinary talmudic dictum is incapable of achieving. Rather than just postulating the dictum, by the very nature of its being a Midrash, it is also able to illustrate the inherent value of the Halaka it is describing.

By the same token one could further say that the halakic significance of the Midrash concerning the Law of Conformity is also to instruct the extent that this law can be fulfilled. Namely, that there is an inherent value in accustoming oneself so thoroughly with the practice of the new society even to the extent of negating one's own essence to achieve that end. In order for Moses to conform successfully to the practice of angels he had to forego his own essence of being human by abstaining from food, to achieve the ultimate end of conformity in becoming angel-like and thus independent of food. Similarly, if the angels had to achieve the ultimate end of their mission in successfully conforming to human society and becoming man-like, they had to forego their own essence of being angels who are independent of food.²⁰³

R. Reischer's responsum and discussion of Moses, the man, in his conforming to the practice of angels upon ascension on the one hand, and Moses the angel in conforming to the practice of men upon his subsequent descension on the other hand, has enormous practical value in tackling the principal question of our study. Namely, whether Elijah, upon his transcendence to angel became absolved or continued to be obligated in Mitzvot, both when communing among angels and whenever he reappeared among men.

Even if one could theoretically prove that Elijah continued to be obligated in commandments upon his transcendence to angel, according to the Law of Conformity, Elijah would be constrained not to break away or deviate from the practice of angels who are absolved of commandments.²⁰⁴ Consequently, he would be constrained not to adhere to the commandments in order to conform to the angels, even though theoretically he could in fact be obligated. And conversely, even if one could theoretically prove that Elijah became absolved of commandments upon transcendence to angel, even when subsequently appearing among men, according to the Law of Conformity, Elijah would be admonished not to break away from the practice of men who are obligated in Mitzvot, whenever he reappeared amongst them. Consequently, he would be admonished to adhere to the commandments in order to conform to the practice of men, even though theoretically he could in fact be absolved of commandments. Unless, of course, one argues that were Elijah absolved of commandments he would also be absolved of adhering to the Law of Conformity itself, in which case he would not be constrained to observe the commandments in conformity with man. However this rebuttal is most unlikely as Moses the angel, as well as the angels who visited Abraham, although absolved of commandments, nevertheless conformed to the practice of man, while abiding among them.

Thus it would appear that R. Reischer's responsum is of immense practical value, in that it exposes the Law of Conformity as a super-commandment, as it obligates those who are absolved of commandments (i.e., angels) to abide its precepts, as well as absolving those who are obligated to adhere to commandments (i.e., men). The tremendous ethical value of the Law of Conformity is furthermore manifest in its complete absolvment of commandments, even where an obligation to adhere to them theoretically exists, in order to

preserve the "ethic" of not deviating from the behaviour and customs of the new society. Thus we find an instance where the halakic ethic of conformity even overrides the basic Halaka of adhering to commandments in general.²⁰⁵ In view of the many halakic implications and ramifications of R. Reischer's responsum discussed here, it would certainly seem that Jacob's assertion that R. Reischer's responsum is of a non-legal nature is entirely baseless.

In any event, from R. Reischer's responsum emerges the notion that Elijah's similarity to Moses in every respect does not preclude Elijah's origination as an angel. Moses himself, by observing the Law of Conformity to its ultimate end, attained the level of angel. Indeed, it would be unerudite to overlook the sufficiently ample sources which relate the opinion that Moses never died.²⁰⁶ Whether, in this opinion, Moses attained eternal aggregate existence of body and soul, or merely of soul, would depend to no small extent on the resolution of the philosophic differences revolving on ascertaining Elijah's existential status subsequent to his ascension. Especially considering the aforementioned Pesikta Rabbati, where Elijah resembled Moses in every respect.

R. Reischer himself, in his commentary to tractate Sotah, which records the opinion, "Moses never died," deals with the obvious difficulty which arises from this opinion. Doesn't the Torah explicitly state "And Moses died there," and "And He buried him [Moses]?" R. Reischer answers that the Torah stated that Moses died and was buried in order to prevent people from discrediting the earlier righteous men who did not merit the same fate of eternal life.²⁰⁷

Philosophical Motif

Thus far we have endeavoured to show that there are two clearly established views concerning whether Elijah was in reality originally an angel who descended in the form of man, or whether he was originally a man who attained the status of angel only upon ascension. In view of the striking similarity between the nature of these two views to the two views concerning the aftereffect of Elijah's ascension, it is our contention that the identical philosophical considerations led each school to derive their respective positions. As

clearly, the philosophical considerations which led the R. Falcon-R. Attiah school to deduce that the aftereffect of Elijah's ascension resulted in his continued existence in the form of man, could not possibly have allowed them to entertain the notion of Elijah's origination as an angel. Consequently, they maintained that Elijah originated as a man, born unto human parents, and upon ascension continued to exist aggregately in body and in spirit in the form of man, attaining angel status by virtue of being immortal, but never attaining the reality of angel. Similarly, the school which maintained Elijah's origination as an angel, temporarily descending to earth in the form of man, could not possibly entertain the notion that the aftereffect of Elijah's ascension resulted in his continued existence in the form of man, as he would invariably have returned to his original angel state. Consequently, the same philosophic considerations which caused the R. Sofer-R. Kluger school to oppose the notion of Elijah's continued aggregate existence subsequent to ascension enabled this school to endorse the view that Elijah originated as an angel and upon ascension attained the reality of angel he initially was, leaving behind his body in the whirlwind.

Theological Debate Concerning Melchizedekites and Jesus

Aside from the philosophical considerations over which the schools were divided, one could attribute their respective positions to a further theological motif over which the schools were at variance. We have seen that one of the main reasons for espousing that Elijah originated as an angel was the fact that we have found no mention of his parents. It was this same consideration which induced some of the Church Fathers such as Ambrosius to believe that Melchizedek was an angel. In the Epistle To the Hebrews Melchizedek is described as eternal, "having neither beginning of days nor end of life," because "he is without father, without mother, without genealogy." Melchizedek is also assigned eschatological and soteriological functions in the Qumram scrolls and is, in all likelihood, to be identified with the Angel of Light, who figures in the dualistic doctrine of the Qumram sect.²⁰⁸

The Church Father, Epiphanius, who opposed this view, deemed it necessary to prove, in opposition to the Melchizedekites, that

Elijah was not an angel sent from heaven.²⁰⁹ Ambrosius assigned a Jewish origin to the doctrine of the Melchizedekites. It is possible that the doctrine of Melchizedekites was extant among Jewish circles and therefore it was thought theologically vital to disprove the doctrine of the Melchizedekites by establishing that Elijah, despite the omission of his parentage, was and originated as a human.

In fact, Louis Ginzburg attributes the talmudic statement in Nedarim that Melchizedek was deposed by G-d from his priestly dignity which was passed to Abraham's descendants, in punishment for blessing Abraham first and then G-d, as directed against the Christians who took Melchizedek to be a type of Jesus, the everlasting priest.²¹⁰ The absence of Melchizedek's genealogy was resolved in many Jewish sources, which identify Melchizedek with Shem, the son of Noah. Epiphanius, who opposed the doctrine of the Melchizedekites, also identified him with Shem.²¹¹

The second school, which espoused that Elijah was in reality an angel and not human, did not find it necessary to project Elijah as a human in order to counteract the doctrine of the Melchizedekites, as indeed the Talmud itself in Sukkah includes Melchizedek among the eschatological and soteriological Messiahs allegorically implied by the "four craftsmen" in Zechariah: "'And the Lord showed me four craftsmen,' Who are these four craftsmen? R. Hanina b. Bizna, citing R. Simeon Hasida, replied: The Messiah, son of David; the Messiah, son of Joseph; Elijah; and Melchizedek."²¹²

The philosophical considerations and theological motifs which divided the schools over ascertaining Elijah's essence were so crucial in vindicating the fundamental credo of Judaism in its defiance of other philosophies and other religious dogma, that we find these same schools consistently divided over at least two more of the most important biblical characters.

Enoch

The following encounter between R. Abbahu and the "heretics" is related in Genesis Rabbah:

The heretics asked R. Abbahu, they told him: We do not find death with regard to Enoch. He asked them: Why so? They

told him: Scripture says 'taking' here [regarding Enoch], and Scripture states further on 'today the Lord will take thy master from above thy head.' He said to them: If it is taking that you interpret, Scripture states 'taking' here and Scripture states further on [regarding Ezekial's wife]: 'Behold I take from thee the desire of thine eyes with a stroke.' R. Tanhuma said: R. Abbahu answered them well.²¹³

The heretics sought to affirm that Enoch evaded death, interpreting G-d's taking of Enoch in the same way as Elijah. R. Abbahu disclaimed them, showing "taking" to connote an untimely death caused by a sudden stroke, as in the case of Ezekiel's wife. The Lord's taking of Enoch, therefore, does not refer to his evasion of death, as claimed by the heretics, but rather to his premature death due to a sudden stroke.

The source of the rabbinic views ascribing Enoch's fate of death is to be found in the Onkelos transcription of Genesis, "And he [Enoch] was no more, for the Lord slew him."²¹⁴ Not only do we find the rabbinic view which negated the "heretical" allegation that Enoch evaded death,²¹⁵ but in fact the Rabbis attributed his premature death as a result of his evil character, or at least possessing an intense latent capacity for becoming evil:

R. Hama b. Hoshaya said: He [Enoch] is not inscribed in the ledger of the righteous, but rather in the ledger of the wicked. R. Aibo said: Enoch was a hypocrite, at times he was righteous and at times wicked. The Lord said, while he is still righteous I will take him away.²¹⁶

From the fact that no mention is made of Enoch in the entire tannaitic literature and in both Talmuds,²¹⁷ as well as the rabbinic view here cited which affirms Enoch's death and, moreover, associated him with an evil character, there can be no doubt that the talmudic view of Enoch is that he was a mortal who died a mortal death. That the term "taken" is employed by Scripture in lieu of the usual "and he died," is attributable to Enoch's premature death.

On the other hand there exists a very definite positive attitude taken towards Enoch within the mainstream of the rabbinic view, notwithstanding the largely negative attitude taken towards him generally. Midrash ha-Godol relates:

A Tanna taught: three ascended and served in heaven. And these are they: Enoch, Moses and Elijah. Enoch, for it is written: 'for the Lord took him.' Moses, as it is written:

'And Moses went up from the plains of Moab.' Elijah, as it is written: 'And Elijah went up in a whirlwind towards heaven.'²¹⁸

We are familiar with our quotation from Derech Erez Zuta, cited at the commencement of Chapter II, where Enoch is enumerated among the nine prominent persons who merited entering Paradise during their lifetime. Among the oldest sources for the view which lauds Enoch are the translations of Jonathan b. Uziel and the Jerusalem Transcription to Genesis. Jonathan b. Uziel's translation reads:

And Enoch served in truth before the Lord and he was not among the dwellers on earth because he was carried away and taken to heaven before the Lord, and He called his name Metatron, the Great Scribe.²¹⁹

Not only did this view attribute Enoch's premature departure from earth due to his righteousness, in fact he transcended to an angel and is identified as Metatron, the highest ranking angel of the heavenly host.²²⁰ This controversy of contrary rabbinic viewpoints concerning Enoch was discussed by many of the talmudic commentators.²²¹ In fact, in Midrash Aggada, the two viewpoints appear together in the same citation.²²²

The most obvious objection to the view which purports that Enoch merited eternal life is pointed out by Maimonides who remarks that Genesis records the exact number of years that Enoch lived.²²³ This objection was reconciled by modifying the ascension of Enoch as referring to the ascension of his soul subsequent to his death; only subsequent to his death did Enoch transcend to an angel.²²⁴

However, just as we find it axiomatic that certain philosophical principles render the reconciliation of a schism, whereby the body dies releasing the soul to ascend, unacceptable in the case of Elijah, the same objection applies concerning Enoch. Inevitably, the opinion that Enoch attained eternal life in body and in soul emerged as well.²²⁵ The latter view based itself largely on a literal interpretation of Derech Erez Zuta, which identifies Enoch as one of the nine who entered Paradise during their lifetime. Taken literally, entering alive, precludes the possibility of death of any sort, body or soul.

The opposition to this view was so vehement that R. Solomon Judah Rapoport, in Iggeroth Shir identifies Derech Erez Zuta as an "externa!"

Baraita which was altogether not accepted by the Rabbis.²²⁶ That the rabbinic view which opposed ascension, regarded the view which upheld Enoch's ascension, as a major departure from Jewish belief, is evident from the fact that Genesis Rabbah denominates the espousers of Enoch's ascension as "heretics." These heretics are identified by Louis Ginzberg as Christians, or Jewish-Christians.²²⁷ Even pre-Christian authors not only denied Enoch's transcendence, but even reported that Enoch was originally a sinner.²²⁸ However, we have already evinced that Enoch's ascension was not only maintained by Christians and Jewish-Christians, but was in fact the belief of many prominent Rabbis as well.²²⁹

Not only do we find the rabbinic view which maintains that Enoch transcended to an angel, who subsequently became Metatron, but in fact there is a rabbinic view which asserts that Enoch originated in Metatron. This view contends that Enoch existed already as an angel before taking up his earthly career, when he descended in the form of man, and upon ascension, he returned to his original angel state. Much in the same way as we find an identical opinion concerning Elijah. This latter view was arrived at in light of a particular difficulty raised by the Tosafists. They questioned how Enoch could be identified with Metatron.²³⁰ Doesn't the Talmud in Hullin relate that Metatron existed already at the time of Creation, whilst Enoch only figures many generations subsequent to Creation? This difficulty gave rise to the solution that Enoch originated initially in Metatron, who subsequently figures in the human form of Enoch.²³¹

In addition, R. Kasher submits, the "heretics" intended evil in attempting to confirm Enoch's ascension.²³² Consequently the Sages maintained that Enoch died a mortal death. Moreover, R. Kasher claims, for this reason the Sages expressed Enoch's derogatory behaviour in that he vacillated between piety and evil, specifically in order to refute the opinion of the heretics. This is reminiscent of the same kind of theological motif which downgraded the ascensions of Melchizedek and Elijah.

However, even the school which maintained that Elijah originated as an angel might have been reluctant to maintain the same regarding Enoch. As one of the main factors which served to evidence Elijah's

origination as an angel is untenable in Enoch's case. Namely, Scripture's glaring omission of Elijah's parentage and children. Enoch's parents, lifespan, and children are all explicitly recounted in Genesis.²³³

Nevertheless, the view that Enoch originated as an angel emerged still the same. We have seen that Elijah's angel name is Sandalphon. The meaning of Sandalphon is explained as a compound of σὺν- "with" and ἀδελφός- "brother." Elijah is the brother of Enoch-Metatron, both of whom in their transcended states are angels.²³⁴

Exactly in the same way as Avnei Nezer merged the school which advocated the death of Elijah's body with the school which maintained Elijah's aggregate existential status of body and soul as being eternally alive, by expressing Elijah's death in terms of the highest level of eternality that his body could have possibly attained. We find the identical middle viewpoint expressed by R. Isaac b. Judah Abrabanel (1437-1508), who merged the two views concerning Enoch long before Avnei Ezer wrote his responsum on Elijah. In his commentary to Genesis, R. Abrabanel writes:

Since Enoch's death was a result of his cleavage to G-d ... therefore, Scripture writes of him, 'And he was not.' That is to say, his soul cleaved to the 'supreme ones' and separated from the body ... Therefore, Scripture does not write of him 'And he died,' as it is stated of his predecessors. Namely, in order to make known that the separation of his soul from body was not death, but rather eternal life.²³⁵

Although Avnei Nezer did not quote R. Abrabanel, he was undoubtedly familiar with the commentary, which quite possibly might have induced Avnei Nezer to arrive at a virtually identical conclusion regarding Elijah.

This dilemma of whether Elijah and Enoch are in reality men who have angel status, or whether in fact they are actually angels who may have originated as such is apposite to a third personality among the nine enumerated in Derekh Erez Zuta. Namely, the Messiah,

Messiah

Who is this mysterious Messiah who is reported to have entered Paradise during his lifetime? The Talmud in Sanhedrin recounts an interview between R. Joshua b. Levi and the Messiah, whom the former found

among the crowd of the afflicted poor gathered near the city gates of Rome, bandaging his sores.²³⁶ No further mention is made in either Talmuds as to the correct identity of this Messiah. However, in Midrash Bereshit Rabbati we find a list of thirteen who "never tasted the taste of death," and a corresponding reason is given for each one. Of Messiah, who is enumerated among the thirteen, it is said:

Messiah, why [did he not taste death]? Because he lived among a generation of wicked men. And he saw his forefathers, the kings of the House of David, worshipping idols. And he detested them and chose the Holy One, Blessed Be He, and entreated for His compassion for Israel, fasting and praying for them. As it is written: 'Because he was wounded because of our transgressions, he was crushed because of our iniquities. The chastisement of our welfare was upon him, and with his stripes we were healed.' Therefore, he was esconsed, in order to redeem Israel in the gathering of exiles and to rejoice in them during the resurrection of the dead.²³⁷

The description of the Messiah related in Midrash Bereshit Rabbati closely resembles the Messiah whom R. Joshua b. Levi encountered in Sanhedrin and for want of any other existing talmudic or midrashic source we must assume it is the same Messiah who is reported in Derekh Erez Zuta as having entered Paradise during his lifetime and is being preserved for the future redemption.²³⁸ The following mention of Messiah in Paradise is found in Zohar:

In that time [of redemption] the King Messiah will be awakened to go out from Paradise...and he will appear in the Land of Galilee.²³⁹

R. Hayyim Vital (1542-1620) in his commentary to Zohar asked:

Behold, it is a great astonishment if we were to say that there will be [such] a change that Messiah will not be born of man and woman, but that in that time he will go out from Paradise! Behold, we find in Scripture: 'This day I have begotten thee.'²⁴⁰

R. Vital questioned the zoharitic notion of a pre-existing Messiah who abides in Paradise, in view of the scriptural references which indicate that Messiah will be born unto human parents. After considering a few explanations, R. Vital resolves:

It is possible that just as there are nine who entered Paradise during their lifetime, so was the Messiah born on the ninth day of Ab, as mentioned in Midrash Lamentations, and he was taken up by a whirlwind which brought him to Paradise, as it happened to Elijah. And from there he will go out in the future. This [explanation] seems true.²⁴¹

R. Vital reconciled the notion of a pre-existing Messiah suggested in Zohar by identifying Messiah as one born of human parents on the ninth day of Ab, who met a similar fate as Elijah. He was taken up by a whirlwind to Paradise and there he awaits the redemption, when he will be sent out from his abode in Paradise. This evidence of a pre-existing Messiah who already abides in Paradise greatly conflicts with the thesis of Hatam Sofer, where he depicts the manifestation of Messiah in a responsum discussed earlier in this Chapter. We recall R. Sofer's thesis:

Immediately following the Day of the Destruction, there was born a one whose piety would deem him worthy of becoming the Redeemer. And when the [appropriate] time will arrive, G-d will reveal Himself unto him and send him forth... But because of our iniquities, which are numerous, many of them [prospective Messiahs] have already perished, since we did not merit the Messianic spirit should flow unto them.

Although R. Sofer makes mention of a prospective Messiah born on the ninth of Ab, this Messiah never materialised as his generation did not merit him. Consequently, this Messiah perished, and it is not this Messiah who will be sent out during the Redemption. Messiah will be born during the time of the redemption, and he will receive the "Spirit of the Messiah" when the people of his generation merit it. Even if R. Sofer saw Messiah mentioned in Derekh Erez Zuta among the nine who entered Paradise during their lifetimes, it would seem that he disagreed with Midrash Bereshit Rabbati and R. Hayyim Vital that this same Messiah will be the redeemer.²⁴²

However, when one bears in mind R. Vital's procurement that Messiah met the same fate as Elijah, and recalling that according to R. Sofer the aftereffect of Elijah's ascension resulted in a schism, whereby Elijah's body severed itself from soul, it is entirely possible that Hatam Sofer maintained the same aftereffect regarding Messiah. That is, upon Messiah's ascension, his body severed itself from soul, and it is Messiah's spirit which resides in Paradise. And it is this Messianic spirit which G-d will cause to descend upon the eventual redeemer who will be born during the time of the Redemption.²⁴³

We have now hit upon one of the most practical differences of whether Enoch, Elijah, and Messiah attained eternal aggregate existence and reside in Paradise in body and soul. Or whether it is their souls alone which attained eternal existence that reside in Paradise. For

if one maintains as R. Sofer, that their souls severed from body, then although Messiah's soul resides in Paradise, Messiah himself is still unborn and will not eventuate until Redemption. If, on the other hand, Elijah, Enoch, and Messiah attained aggregate eternal existence of body and soul then Messiah clearly exists, and it is this pre-existing Messiah who will be sent out of Paradise to the Day of Redemption.

Furthermore, the reality of Messiah's manifestation and his existential status upon his eventuation depends on this controversy. If Messiah attained eternal aggregate existence of body and soul then Messiah in reality is a human person of angel status. Whereas, if his body is severed from soul, the Messiah is in reality an angel who will appear in human form.

We have clearly shown in our earlier discussion on Bar Cokhba that rigid halakic principles must be employed in order to enable one to assess the credibility of Messiah, or whether he is just a pretentious impostor. Whether Messiah is in reality a human being endowed with "Messianic spirit," or whether he is in reality an angel in human form would have great halakic bearing on the process of determining and proclaiming the "true" Messiah and his being identified, recognized, and accepted by the people.²⁴⁴

Finally, one must consider the school which maintained that Elijah originally existed as an angel before commencing his earthly career. This was derived from the fact that we find no mention of Elijah's parents in any of the sources. The sources which describe Messiah's earthly career are all silent of his parentage.²⁴⁵

From this obvious omission there is room to espouse that Messiah was not a human who transcended to an angel, but rather he originated as an angel before descending to assume his earthly career. Even theverse, "This day I have begotten thee," which served as indication to R. Vital that Messiah must originate as a human being born to human parents, and consequently caused R. Vital to oppose the zoharitic notion of a pre-existing Messiah is an inconclusive reference. Most of the classical Bible exegetes interpreted this verse figuratively. Quite possibly these schools found support for each contention in the description of Messiah's advent related in Sanhedrin:

R. Alexandri said: R. Joshua reconciled two opposing verses. It is written: 'And behold, one like the son of man came with the clouds of heaven,' whilst elsewhere it is written, ['Behold, thy King cometh unto thee...] lowly, and riding upon an ass.' If they are meritorious, [Messiah will come] with²⁴⁶ the clouds of heaven, if not, lowly and riding upon an ass.

Although the talmudic commentators understood "the clouds of heaven" to symbolize swiftness, and "lowly and riding upon an ass" to be symbolic of slowness, it is possible that the symbols themselves might have indicated a certain nature about the Messiah.²⁴⁷ His advent from "clouds of heaven" might have represented his angel type nature, as indeed Messiah is identified elsewhere as the "one from the clouds."²⁴⁸ Whereas his being "lowly and riding upon an ass," might have suggested Messiah's being of a more lowly nature than angel and that he will appear as a human.²⁴⁹

Ultimately, however, what induced each school to maintain whether Messiah was in fact an angel in human form or in reality a man of angel status, depends on the resolution of theological and philosophic axioms, which enabled each school to maintain their respective positions concerning the existential realities of Elijah, Enoch, and Messiah.²⁵⁰ In view of the extraordinary similarity of the nature of existential being between Elijah and the Messiah, as contended by the various schools, it is not surprising then to find the emergence of a view which identified Elijah himself as the promised Messiah.²⁵¹

We have already emphasized in our discussion on Bar Cokhba the dire halakic difficulties which present themselves in the process of proclaiming the Messiah in the absence of Elijah. We considered various circumstances where one might be halakically justified in proclaiming the Messiah despite Elijah's absence. If, however, according to this opinion, Elijah is in fact the selfsame Messiah, then ostensibly Messiah could not be proclaimed in the absence of Elijah under any circumstances.

Derekh Erez Zuta

The principal source for the school which derived their position that Elijah, Enoch and Messiah attained eternal aggregate existence in form of men, is our very first citation in this work, Derekh

Erez Zuta, which enumerates "nine who entered Paradise during their lifetimes." This source appears verbatim in Yalkut Shimoni.²⁵²

We have already mentioned R. Issac Arama and others who maintained that the literal meaning of "during their lifetimes" is that they entered Paradise while they were still very much alive in every respect, both in body and in soul.²⁵³ In fact, in Alphabet of Ben Sira there exists a parallel rendition which reads:

Eleven people of the sons of men [i.e., of the human race] entered Paradise during their lifetimes. He asked him, 'Who are they?' He replied: 'Enoch, Elijah, Messiah, Serah, the daughter of Asher, Bitia, the daughter of Pharoah, Hiram, the King of Tyre, Eliezer, Abraham's servant, Ebedmelech, the Cushite, R. Judah ha-Nasi's slave, R. Joshua b. Levi, etc.'²⁵⁴

Although this expanded list of immortals concurs with the immortals listed in Derekh Erez Zuta, the expression "people of the sons of men," suggests that these immortals retained their existential nature as men and abode in Paradise in the form of men. However, many of the editions omitted the names of Elijah and Messiah. This omission is probably attributable either to an objection of classifying Elijah and Messiah as "people of the sons of men," as in reality they are angels,²⁵⁶ or to the opposite extreme, opposition was directed against the notion of Elijah's and Messiah's ascension in general, as they are mortals who died a mortal death.

Indeed, we have already seen R. Rapoport's objection to the entire passage in Derekh Erez Zuta, who claims that this source was never accredited by the Rabbis. In fact, many editions of Derekh Erez Zuta itself read: "Seven entered Paradise during their lifetimes," omitting the names of Enoch, Messiah, and Elijah.²⁵⁷ Again we may attribute the omission of these three either to an intentional dissociation of the aftereffect of the three from the other seven, as they were of a different nature, or because of the theological objection to ascension. R. Kasher attributes Enoch's absence from the list of immortals in Pirkei Rabbenu ha-Kadosh, as concurring with the opinion of R. Abbahu in Genesis Rabbah, who rebuked the "heretics" for espousing Enoch's ascension.²⁵⁸

However, even if we are to attribute the omission of these three from the various sources to an intentional dissociation of those who exist in reality as angels from the other immortals who exist in reality as men, we must not forget that the same philosophical

considerations which caused this school to maintain their position pertain to all immortals listed in Derekh Erez Zuta equally. A resolution for any one of them would hold true for the others. Therefore, no distinction can be drawn between the existential reality of these three to the existential realities of the other seven.

Perhaps then we can now comprehend the existence of yet a third parallel rendition to Derekh Erez Zuta which reads: "Thirteen never tasted the taste of death. They are Enoch, Eliezer, ... Elijah, and Messiah."²⁵⁹ Although this expanded list of immortals includes all the immortals enumerated in Derekh Erez Zuta, who are reported to have entered Paradise during their lifetimes, the expression "never tasted the taste of death," seems to suggest another meaning. The expression is not merely stating that these immortals are alive in negative phraseology. A careful exacting of the closest literal interpretation of this expression would suggest that these persons in fact died; however, while they were dying, they never tasted the taste of death.

What exactly this phenomenon of "the taste of death" is, and how one dies without tasting death, can best be understood by the following descriptions of the aftereffect of those persons; Of Elijah, R. Abraham Hirsch of Zloczow (Zolochev) writes: "And he ascended in a whirlwind to heaven and did not die by the angel of death. He simply separated from body without pain."²⁶⁰

The escaping of death by the hands of the angel of death is explicitly mentioned in Alphabet of Ben Sira.²⁶¹ That the escaping of death by the hand of the angel implies a painless death is also evident from R. Kimchi's description of Enoch's end. "And he was no more: [i.e.,]As he had no sickness or pain while he died."²⁶² Thus it would seem that "not tasting the taste of death" simply means a painless separation of soul from body at the time of death.

A further illumination on the phrase is found in R. Judah Leib Krinsky's commentary to Ibn Ezra in discussing the "taking" of Enoch: "G-d will not 'take' the soul of the wicked but rather it goes down to Sheol."²⁶³ In other words, not tasting death doesn't necessarily refer only to painless death, but may also refer to the evasion of punishment of the soul after death. The souls of the

righteous immediately ascend Paradise without prior judgement and without undergoing punishment.²⁶⁴

Thus, it would appear that the first school, which for various philosophical reasons was unable to envision the ascension of the immortals in body and soul, preferred the expression "never tasted the taste of death," as this expression signifies an actual death, whereby the soul is released to Paradise. Consequently, we find this terminology extant in the sources. In fact, certain immortals who are absent from the list of those who merited Paradise during their lifetimes, appear mentioned among the list of those who "never tasted the taste of death," probably for this very reason.

We recall aligning Abrabanel with Avnei Nezer's synthesis of the schools, which claimed that while the body dies during its separation from soul, this phenomenon could not be classified as 'death,' since it represents the highest level of eternal 'life' which is possible for man to attain. Avnei Nezer might well have derived this notion from the expression "never tasted the taste of death."

One might even venture to say that the difference between these schools may account for two slightly variant renditions of Derek Erez Zuta itself. One rendition reads: "Nine entered Paradise during their lifetimes" (be-hayyeihem), while the variant rendition reads: "Nine entered Paradise alive " (be-hayyim).²⁶⁵

The first rendition, which states that they entered during their lifetimes, seems to imply that they entered Paradise exactly as they were during their lifetime, i.e., in body and in soul.

Whereas, the second rendition simply relates that they were "alive," but does not specify in which way they were "alive." Being alive might merely refer to the soul alone, i.e., that their souls were alive. Or, alternatively, one could say exactly the reverse. The first rendition of entering Paradise during their lifetimes describes the time as to when they entered Paradise, but does not relate which way or in which form they entered and continued to exist in Paradise. They might exist there merely in the form of soul. While the second rendition does not relate to the time element of when they entered Paradise, but rather emphasizes that they remained "alive," in body and soul throughout their duration in Paradise.

In any event, it is quite evident that the major schools, which were divided over the aftereffect of the immortals, were able to find ample support in the various renditions of Derekh Erez Zuta and its parallel equivalents, which were the very sources of these schools.²⁶⁶ It is our contention that the major philosophical positions, which divided the schools over the aftereffect of the ascension of Elijah and his colleagues, and their different ascertainments of their existential realities, were prevalent and existed already as early as Derekh Erez Zuta itself.²⁶⁷ And, in fact, it is these considerations which are responsible for the various renditions of Derekh Erez Zuta and its parallel equivalents.

The various philosophic views which emerged from the respondents are only an echo of the same views which were already prevalent and intricately concealed and contained in the exactness of wording of the same sources on which the Halakists based their views. The contribution of the respondents, aside from illuminating intricacies which were embedded at the root of these sources, is that they examined these otherwise recondite metaphysical passages and placed them in a halakic framework, which gave the passages added dimension and infinite value.

In explaining the phenomenon of the emergence of the major schools concerning the fate of the immortals, we focused on the philosophic axioms over which these schools were divided, as well as the background of theological-political overtones of those who attempted either to deny or ignore any relation between the ascension of the immortals and Jesus.

Metaphysical Motif

Finally, it would seem that still a third consideration would warrant close examination in explaining the polarization between the two schools. It is quite clear that the Rabbis of all schools wished to attribute these pious persons the greatest possible level of spiritual attainment that one could merit. Whether it be by the way of their becoming transformed to angels or by way of attaining eternal life as men. The question which presents itself following this consideration, is which form of being represents a higher level of spiritual attainment: Eternal life as men, or transformation to angel.

Professor Ephraim Urbach, in his work, The Sages, remarks that: "the question whether the angels were higher than men was a matter of dispute."²⁶⁸ The Midrashim speak of how at the time of man's creation, G-d refuted the arguments of the angels who opposed the creation of man by alleging that man would possess more wisdom than the angels themselves. Man displayed this greater wisdom in his capacity to name all of G-d's creatures.²⁶⁹ Furthermore, Louis Ginzberg relates, although man is a terrestrial being inferior to angels, he surpasses them by overcoming the evil inclination which the angels do not possess. The superiority of man to angels is in his free will. If man follows good, he is superior to an angel.²⁷⁰ For this reason we find the Talmud in Sanhedrin expresses the motif: "The righteous are greater than the angels." Maharsha in explaining this motif comments:

Furthermore, we find the wise men are called 'Elokim,' as it is written: 'The word of both shall come before Elokim' [i.e., the judges] whereas the angel is called the 'son of Elokim,' since he [the angel] is less important than the righteous who are called Elokim.²⁷¹

The author of Epistle to the Hebrews also made use of the motif, "the righteous are greater than angels," with regards to Jesus, especially of what was said of Moses, in a Christological direction.²⁷²

Nevertheless, because of man's corporeal nature, and his similarity to the animals in this respect, by virtue of being terrestrial, man was also regarded as somewhat inferior to angels. However, were man to attain eternal life, this similarity to animals would automatically dissipate, as man would attain a new reality of his own. Considering this new reality, whereby man surges exceedingly close to G-d and drifts far apart from the animals, no longer resembling them at all, the question which arises is: Does this new reality represent a higher form of spiritual attainment than even the angels?

Those who espoused that "the pious are greater than angels," maintained that the immortals merited eternal life, as this new found reality of man dissociated him completely from the terrestrials, and allowed the immortals to draw far nearer to the proximity of G-d than angels. To become transformed to angels would have been a regression, for these pious individuals were already greater than the angels prior to their ascension. Others argued that man's

existence in form of man still connected him with the terrestrials who are inferior to angels, and they therefore maintained that the immortals became completely transformed to angels, thereby transcending man.

It is indeed possible that the R. Falcon-R. Attiah school depicted Elijah as more closely resembling man because they considered "the pious superior to angels." Therefore, the highest level of spiritual attainment that could be assigned to Elijah would be to consider him still a man, since becoming an angel would be a regressive development. R. Sofer and R. Kluger, on the other hand, depicted Elijah as an angel because they possibly sided with all the other facets in which angels display a superiority over men. Therefore, they felt that only if Elijah were defined as an angel would he be ascribed the highest possible level of spiritual attainment.

The question of whether angels are superior to man has further significant bearing on R. Isserlein's responsum and in determining Elijah's obligation in commandments. This is evident from R. Israel Jonah b. Joseph Landau, Ab Beth Din of Lubomil, and after of Kemper (d. 1824), who discusses this concept in illuminating the biblical verse when G-d appeared to Abimelech, King of Gerar, in a dream, charging him to return Abraham's wife, whom Abimelech had taken to himself:

I will preface my interpretation of the verse, 'restore the man [Abraham] his wife, for he is a prophet.' Both according to its plain meaning and its homiletical interpretation, it [the verse] is bewildering. And it appears to me, [that the verse is to be understood] in accordance with what the Rishonim wrote in Tur, Eben ha-Ezer, No. 17, by way of a question: 'Are the spouses of Elijah and R. Joshua b. Levi permitted to [rewed] others, being that their husbands did not die.' And they [the Rishonim] wrote that they are permitted, as the Torah forbade the wife of one's fellow man and not the wife of an angel. And so did Beit Yosef write on this, and it is brought down in Beit Shemuel. Now no source is known to evidence their contention. See thereon that no source is quoted.

And in our opinion one can say, that there is explicit evidence for the contention in the Pentateuch. And following Hovot ha-Levavoth, who writes that the angel surpasses the prophet, because the prophet is only an Ish Elokim [man of G-d]. And for this [reason] Joshua, who was chief of all prophets, with the exception of Moses, when Joshua beheld the angel he fell upon his face. See thereon [Hovot ha-Levavoth] in full. And accordingly, according to the meager comprehension of that

generation they called Abraham our Patriarch, Nesi Elokim [Prince of G-d], that is, they considered him an angel. As is related in Midrash. And in truth he could only be defined as a prophet. And the root of the matter is that man does not relinquish his definition of ish [man] to become classified as a 'standing angel' until after he disappears, as it is written: 'And I give thee access among those that stand by.'

And so it is of Enoch, Elijah, and R. Joshua b. Levi, after they were taken from the world they became transformed to angels. However, all the while they existed during their lifetimes in the world they were called anshei nevi'im [men of prophecy]. And understand this. Now the verse is to be understood [as follows]: 'Restore the man [ish] his wife'; simply from 'for he is a prophet' -- and not an angel. And he is still defined as an ish [man] and his wife is the wife of an Ish [another man's wife] who is forbidden [to rewed]. And it can be implied that the wife of an angel is permitted, that is only after his disappearance from the world -- even if he is alive and transformed to a standing angel, his wife is permitted.

And this is a support to their [the Rishomim and later codifiers] holy words. And it is explained, in any case, according to the words of Hovot ha-Levavoth, that an angel is far greater than a prophet.²⁷³

R. Landau's keen halakic expertise drew his attention to the responsum of R. Isserlein concerning the matter of Elijah's wife. R. Landau notes that R. Isserlein's ruling was widely accepted among the major codifiers, who incorporated this responsum in their own codices of law. He remarks that although the ruling that only a fellowman's wife is forbidden to remarry and not the wife of an angel, is readily accepted by the codifiers, none of them bring any evidence to support this contention.

R. Landau believes that scriptural support for this view may be found in the verse, "restore the man's wife, for he is a prophet."

R. Landau interprets "for he is a prophet" as if to say, "for he is only a prophet," and not greater than a prophet, which is the reason for "restore the man's wife." Since he is only a prophet and no more, his wife is still considered "the man's wife," who is forbidden to others. Were he greater than a prophet, i.e., had he transcended to becoming an angel, then his wife would no longer be the man's wife (wife of an ish), and she would be permitted to Abimelech, who need not restore her to Abraham. Abimelech, and the men of his generation, according to R. Landau had erred in assuming that Abraham had actually attained the level of angels whose wife should be permitted, not realising that this state is only attainable after the pious depart from this world.

Implication for Halaka

R. Landau's entire approach is based upon the premise of Hovot ha-Levavoth that angels are superior to the prophets. Although Hovot ha-Levavoth gives good reason for maintaining this gradation, we have already seen that the question of whether angels are in fact superior to man is a matter of dispute. Various facets were mentioned in which man is considered far superior to angels.²⁷⁴

If the pious are regarded superior to the angels, one could then interpret the very verse that R. Landau saw as supportive to R. Isserlein, not only not supportive but in fact resists R. Isserlein. The verse, "for he is a prophet," would now be understood to mean "for he is even a prophet" (rather than only a prophet) who exceeds even the angels. Nevertheless, Abimelech must still "restore the man's wife," who is forbidden to remarry. In other words, according to R. Landau, R. Isserlein's ruling is valid only so long as angels are to be considered superior to man. However, were man to surpass the angels, R. Isserlein's entire responsum and ruling would be effectively invalid, as Scripture would then state that even the wives of angels are forbidden to rewed.

In view of the implications concerning the dispute over the question of superiority of man over angel, specifically with regards to determining the halakic status of the immortals one can well understand the evolution of two schools among the halakic authorities. As the issue of whether Elijah is in fact man or angel was especially pertinent to them.

The devious question which presents itself to the school that maintained that Elijah and other immortals were transformed to angels is that if "the pious are superior to angels," then Elijah's transformation to angel would represent a regressive change in level rather than a higher spiritual attainment. R. Reuben Margaliot, in an interesting approach, divulges that the motif, "the pious are superior to angels," refers only the low categories of angels. However, there are higher categories of angels which are superior to man.²⁷⁵ This approach would enable that school to resolve the difficulty by establishing that immortals belong to the higher category of angels, whereas the pious surpass only those angels belonging to the lower category. However, this complicates matters more than

facilitating them, as one would have to identify positively which category of angels all the immortals enumerated in Derekh Erez Zuta belonged, a most laborious undertaking. Nevertheless, in Elijah's case this would be quite a simple task.

The Talmud in Berakoth, as observed earlier by R. de Leon, associates Elijah with Michael and Gabriel, among the highest ranking angels.²⁷⁶ Elijah was completely unlike the other pious mentioned in Derekh Erez Zuta in that he attained a level of angel which allowed him to appear to certain eclectic individuals who merited his appearance, a quality which none of the other pious persons possessed.²⁷⁷

Although it is clear that Elijah ranked among the higher category of angels, it is quite possible that the other immortals belonged to the lower category of angels, given Elijah's known superiority over them. Consequently, the motif, "the pious are superior to angels," would not represent a regression in Elijah's case, as he verily belonged to the higher category of angels. However, it might well represent a regression in the case of Elijah's colleagues.

Furthermore, according to R. Landau, only if angels are superior to man are the wives of angels permitted to rewed. If as R. Margaliot claims, only certain categories of angels are superior to man, then only the wives of angels belonging to this category are permitted to rewed. Consequently, were R. Joshua b. Levi to belong to the lower category of angels inferior to man, his wife would not be permitted to rewed, whereas Elijah's wife would be permitted to rewed as Elijah belongs to the category of angels superior to man.

The distinction of R. Margaliot, seen in this context, now becomes imminently significant from a halakic standpoint. Although R. Isserlein used the same ruling concerning the wives of both Elijah and R. Joshua b. Levi, according to this distinction it would be inappropriate to render one ruling which concerns the wives of all angels, as R. Isserlein did, since one would first have to establish to which category of angels the immortals belonged. The halakic implication of R. Landau's approach, according to the distinction of R. Margaliot, is that eligibility for remarriage of wives of angels would depend upon which rank of angels their angel-(ex-)husbands attained.

R. Moses Cordovero discusses the dilemma that Elijah's and Enoch's

transformation to angels represents a regression given the motif that the pious are superior to angels.²⁷⁸ R. Cordovero divulges that the Paradise which the pious entered during their lifetimes refers merely to the Paradise of the Lower World. The pious are constrained in that only their souls can ascend Paradise of the Upper World. Elijah and Enoch, by becoming transformed to angels, were able to ascend Paradise of the Upper World in form of body as well, as they received special celestial clothing, which enabled their bodies to enter Paradise of the Upper World, clothed in special attire. In this sense, by becoming transformed to angels, Elijah and Enoch were in fact superior to the pious.

The entire dilemma is effectively sidestepped by the school which maintained that the pious individuals attained eternal life in form of man, thereby being considered angels only in status and not in reality. By retaining their inherent characteristic of men, their angel status would not represent a regression in any manner, as they are still pious "men," who are greater than those who in reality are angels. Consequently, this school sought to attribute to immortals the highest level of spiritual attainment possible, ascribed to the position that Elijah and his colleagues enumerated in Derekh Erez Zuta attained eternal life as men who abode Paradise forever as men. This fate, being uncommon to the fate of all men who "return to the dust from whence they came," earned them recognition as men of angel status. This existential state of being represented to this school a far greater level of spiritual attainment than were they to have become transformed in reality to angels.

Thus, the consideration of which existential state of being represents a higher state of spiritual attainment is certainly significant in view of its direct bearing on the responsum of Terumat ha-Deshen. We concluded Chapter II by submitting that in order to render a halakic ruling concerning Elijah and his wife, we must first ascertain his existential reality. According to this last consideration, aside from determining his existential reality, we must also arrange the various existential forms into a systematic hierarchy, in order to establish whether Elijah is of sufficient stature to exempt him from adhering to the precepts of Torah Law.

IV. PARAMETERS OF LIFE AND DEATH

A Comparative Analysis of Methods of Computing Metaphysical Data in Halakic Process

The modus operandi of practically all of the respondents who endeavoured to verify whether Elijah is obligated to adhere to Torah Law subsequent to his ascension is virtually the same. All are in agreement that the method of resolving this enigma entails a three step process: Firstly, one must ascertain the true nature of Elijah's existential being. Secondly, one must classify this existential nature as either alive or dead. And thirdly, once this is determined one may proceed to verify his obligation in commandments by implementing the talmudic dictum, "'Among the dead I am free' [Psalms 88:6]; once a man dies he becomes free of Torah and Mitzvot."¹ The respondents differed widely, however, as to how the dictum is to be implemented in Elijah's case. By comparing the way in which the various respondents applied the said dictum to Elijah, one begins to perceive a working definition of life and death itself, which the respondents assumed in their treatment of the issue. Moreover, one discovers by means of this comparison, what exactly it is that causes one to become obligated in the commandments in general.

The respondents all faced the same dilemma. Whichever way one applies the dictum to Elijah one encounters difficulties. If Elijah is considered dead and therefore "free of Torah and Mitzvot," how does one explain the numerous talmudic references, cited by Terumat ha-Deshen himself, which confirm that Elijah adheres to the commandments? If, on the other hand, Elijah is alive and therefore not "free of Torah and Mitzvot," why doesn't his wife require a divorce. Let us review how R. Sofer employed the dictum in his responsum where he discusses whether Elijah may attend a circumcision which falls on the Sabbath:

In this way, each time Elijah reveals himself and makes himself seen in this world, he is enclothed in his sacred body. However, when he reveals himself in spirit alone, such as on the day of the circumcision, he is not obligated in Mitzvot as it is written, 'Among the dead I am free' [once a man dies he becomes free of Torah and Mitzvot]... When he appears in

spirit form he is an angel.²

R. Sofer resolved the dilemma by applying the dictum to Elijah's spirit form. When Elijah appears in spirit (i.e., at circumcision) he is devoid of body and consequently considered as the dead who are "free of Torah and Mitzvot." Only "when Elijah appears in this [spirit] form he is an angel"; however, when he appears enclothed in body he is an ordinary human who is obligated in Torah and Mitzvot as all men.

In R. Kluger's responsum, where he discusses whether Elijah could attend a circumcision which is performed in the same room as a corpse, R. Kluger challenges that when one considers the dictum -- it is difficult to understand why anyone (i.e., Rabbah b. Abbuha) should be concerned about Elijah's contacting impurity:

What significance is the question, 'Art thou a Priest?' Doesn't the Talmud affirm that once a person is deceased he is free of Torah and Mitzvot? Do not answer that Elijah's case is different since Elijah never deceased. Were that so, Elijah's wife would be forbidden to rewed.³

In his initial explanation, R. Kluger adduces the identical solution as R. Sofer; a dualistic existence whereby the dictum is applicable only to his spirit form, but not to his human form. However, in his preferred explanation, R. Kluger expands the dictum slightly, and applies it even to Elijah's human state.

Elijah's case is different, being that he did not die. For although he is not termed 'ish' [person], nonetheless, since he is also not termed 'dead' it behoves him to fulfill the commandments out of zeal, as one who is not enjoined yet fulfills willfully.⁴

R. Kluger expanded the dictum to encompass a third category. The dictum obligates living persons and frees the dead. Those who are living but are not persons are not obligated. Yet, since they are not dead, they are not entirely freed. In this way, comprised within the dictum is an interim state of those who are both not obligated and not freed. Namely, those who observe voluntarily despite their not being obligated.

Although R. Falcon obtained the same result as R. Kluger, he differed in his considerations. He does not explicitly refer to the dictum. Nonetheless, he considers Elijah dead, since his

relations have all terminated. However, as Elijah himself did not die, he continues to observe commandments willfully.⁵ Most outstanding among the halakists is R. Attiah in his treatment of the dictum regarding Elijah:

For although he [Elijah] did rise up in stature until he became like one of the angels, nevertheless, he was not discharged of the sanctity contingent upon his being a priest. Hence, he [Rabbah b. Abbuha] questioned him as to why he was standing in a cemetery. And likewise, he was also not discharged of his obligation to adhere to the rest of the commandments since ultimately he did not die an actual death of this world. And it was not said except for 'once a man dies, he is free of Torah and Mitzvot.' And not in such a case as ours.⁶

While R. Sofer applied the dictum to Elijah's spirit form and R. Kluger in his preferred explanation extended the dictum to incorporate a medium state, R. Attiah is outstanding in that he explicitly denounces any application of the dictum to Elijah whatsoever, emphasizing that the dictum refers only to "men" who have "died" and not to angels who are living. R. Attiah did not consider the prospect of relating the dictum even to Elijah's spirit form because he opposed the schism theory and maintained that Elijah continues to exist aggregately in body and soul, as seen in the previous chapter. As an individual he is still very much alive. Regarding his relationships however, whilst Elijah continues to pursue intensely his 'man-G-d' relationship, his 'man-man' relationship terminated upon ascension. Elijah is not required to divorce his wife, not because he is considered dead, but rather because his 'husband-wife' relationship has terminated.

It is indeed remarkable to note that although the modus operandi of all the Halakists is virtually identical, in that they all agreed that the dictum must be related to Elijah, in order to resolve his 'partial' observance of the commandments, R. Isserlein himself, from whom the entire problem originates, doesn't mention a word of the dictum, neither explicitly nor implicitly! Neither does R. Isserlein mention the schism theory, espoused by R. Sofer and R. Kluger.

The diverse positions regarding the implementation of the dictum is due primarily to the outcome of step two. Namely, the definition of Elijah's existential status as alive or dead. R. Isserlein, who considered Elijah alive and a devout adherent of commandments

(with the exception of divorce) saw no connection between Elijah and the dictum which absolves the dead of Torah and Mitzvot. Hence his silence. On the other hand, R. Kluger initially and R. Sofer applied the dictum to Elijah's spirit form since they considered him then an angel, who like the dead are "free of Torah and Mitzvot."

It would appear that the principal obstacle preventing R. Kluger initially and R. Sofer from concurring with R. Isserlein is the obvious contradiction contained in the latter's thesis. It is senseless to maintain that Elijah is obligated in all commandments, with the exception of divorce. The two go hand in hand. If Elijah is obligated in commandments because he is considered alive, then his wife also requires divorce. If his wife does not require divorce because he is considered dead, then his is absolved of all other commandments as well. Elijah cannot be simultaneously alive and dead. One must decide one way or another. Consequently, R. Sofer and initially R. Kluger conceived of a schism whereby Elijah qualifies separately for each category. In spirit form he is an angel who is considered as the dead who are free of Torah and Mitzvot, whilst wherever he assumes his human form he is considered alive and hence obligated in commandments.

R. Isserlein, as mentioned, does not seem to have considered anything of the kind, as he makes not even the slightest reference to a schism. What probably prevented R. Isserlein from endorsing the schism theory, aside from the philosophic perplexities concurrent with the theory, is a fundamental problem regarding the dictum itself. That is, once one applies the dictum to Elijah, he is immediately free of Torah and Mitzvot, and there is no reason for that obligation to return. Once his transcendence to angel discharges him of obligation in commandments, that obligation is forever forfeited and irretrievable. The fact that Elijah also assumes a human appearance makes no difference as far as his obligation in commandments is concerned. Even in human form, Elijah is still an "angel" who is absolved of commandments. His human 'attire' is no reason for a resumption of obligation.

To obviate this difficulty R. Isserlein maintained that Elijah was never discharged of obligation and that the dictum does not apply to Elijah in any form.⁷ R. Sofer and initially R. Kluger were not perturbed by R. Isserlein's difficulty because they believed Elijah's

transcendence to angel was neither total nor complete. He continually vascillates between angelhood and manhood. When Elijah appears in human form he is not an angel in human guise as purported by R. Isserlein. Rather, he is entirely human, with human obligations regarding commandments and not an angel at all. As a human he does not resume a defunct obligation, but continues an obligation he never relinquished. R. Isserlein, however, believed Elijah's transformation to angel was a complete one. Therefore when he appears in human form he is nothing more than an angel in human guise, who once considered dead relinquishes an irrevocable obligation.

Essentially we have reversed the original question of this entire study. Initially we posed the query which state of life may be conferred upon a man who ascends to become an angel? Now we must enquire which state of life may be conferred upon an angel who descends to become a man?⁸

For R. Isserlein, the two questions are utterly intertwined. The state of life which is to be conferred upon Elijah the man who became an angel utterly depends on which state of life would be conferred upon him were he subsequently to reappear as a man. If one were to confer upon him a state of death, freeing him of Torah and Mitzvot, it would be forever irrevocable. Therefore, R. Isserlein conferred upon Elijah the angel a general state of life, since he continues to adhere to the commandments.

For R. Sofer, however, the two questions are completely unrelated. Since Elijah's transcendence to an angel was incomplete, continually vascillating between angelhood and manhood, the state of life that may be conferred upon Elijah when he ascended to become an angel is in no way influenced by the state conferred upon him were he to appear subsequently as a man. Elijah may well be conferred a state of the dead when appearing in spirit, as well as a state of the living when appearing in human form. In person, he does not revitalize a bygone obligation, but simply reverts to an original obligation which he never relinquished.

The obvious drawback of R. Sofer's and R. Kluger's initial positions is that were Elijah to reappear as a human he would then be defined as a man who is obligated in commandments and his wife would promptly

require divorce in order to remarry. According to R. Isserlein, however, even if Elijah were to appear in human form he would still be defined as an angel whose wife does not require divorce.

It is probably for this reason that R. Kluger reneged his initial explanation in favour of his preferred explanation. Consequently, R. Kluger explained Elijah's commandment adherence in terms of a purely voluntary nature.

R. Kluger's second explanation is similar to R. Falcon's approach. It is clear that R. Falcon considered Elijah dead. The fact that Elijah himself is in reality alive is immaterial and of no consequence. Since Elijah's obligation in commandments is contingent upon the relations which he commands and not upon his form of existence, and since Elijah's relations have all terminated (possibly even his relation of being a Jew?) his being alive in reality is absolutely irrelevant. Therefore, his adherence to commandments may be attributed only to a self-imposed stringency of a voluntary nature.

R. Attiah, in contrast to R. Sofer, R. Kluger, and R. Falcon, categorically establishes that Elijah could definitely not be equated the same status vouchsafed the dead since his 'man-G-d' relationship continued as impassioned, after ascension as before. R. Attiah's position seems to be consistent with the approach of R. Isserlein since the former position unmitigatedly opposed any relation of the dictum to Elijah as Elijah is very much alive and vigorously pursues his 'man-G-d' relationship, which he never relinquished.

Criteria for Defining Parameters of Life and Death

Our comparative analysis of the diverse treatments of the operation of the dictum in halakic process by the various respondents confirms that in order to apply the dictum one needs establish a priori halakic criteria for defining life and death, as well as defining the parameters of each state. Our comparison reveals two major differences for consideration in establishing criteria which outline the precincts of life and death.

For R. Sofer and R. Kluger initially, the criteria for establishing life and death is determined by the existential form which one assumes. One who exists in human form is automatically considered halakically

alive. One who exists in spirit form is considered halakically dead. For R. Falcon and R. Attiah, however, it matters not which existential form a person assumes. The determining factor is their prospective relations and relationships vis-a-vis G-d and their fellow man. As long as those relations and relationships continue to persist unhindered, one is considered halakically alive. Once these relations or relationships are impaired and desist, one is considered halakically dead.

We have already demonstrated in the previous chapter that it was the differences in philosophic reasoning regarding the aftereffect of Elijah's ascension among the various schools which was chiefly responsible for the diversified conclusions in applying their definitions of the parameters of life and death to the case of Elijah. Because R. Falcon and R. Attiah rejected the notion of Elijah's dualistic existence on philosophical grounds, they could not possibly consider applying any criteria of life and death based on existential form. Hence they submitted that the existential condition one assumes is entirely irrelevant. Rather, the relevant criteria for establishing life and death is determined by the relations and relationships one pursues and not by existential form.

Parenthetically speaking, the criteria for defining life and death maintained by R. Falcon and R. Attiah, may well explain the talmudic edict, "The righteous in their death are called living and the wicked in their lifetime are called dead."⁹ If life and death are to be determined not by form of existence, but rather by relations and relationships one pursues, then clearly, if during one's lifetime, one does not maintain those Divinely ordained relations and relationships (i.e., as the wicked), then one is to be classified as dead despite that in reality one might well be alive. Whereas, if one continues to pursue those relations and relationships even after death, then clearly one is to be classified as alive.

It is, therefore, essential at the onset to establish precise and definite halakic parameters for life and death before proceeding to discern under which category Elijah is subsumed. Ultimately then, the determining factor in deciphering whether R. Isserlein employed the dictum necessarily depends on procuring a foreknowledge of the criteria for establishing the parameters of life and death which

R. Isserlein operated upon.

Value of R. Isserlein's Responsum

Great indeed, is the utilitarian value which emerges from R. Isserlein's responsum which, aside from the specific question that R. Isserlein deals with, it serves as a basis for exacting an accurate halakic procurement of the very confines and parameters of life and death itself. The way in which these parameters were practically utilized and applied by other Halakists in resolving various other halakic issues shall be discussed in further chapters.

We have already determined in Chapter II that Elijah's obligation in commandments is entirely dependant on whether Elijah is considered alive or dead. Bearing in mind that these criteria are themselves subject to various considerations, it follows then that whatever the considerations for establishing the criteria for life and death may be, they directly affect one's obligation or absolvment of commandments. Thus, the identical considerations for determining the parameters of life and death will ultimately determine one's general obligation or absolvment in commandments.

Parameters of Commandment Activity

The question of Elijah's obligation in commandments can now be posed in a slightly more philosophical perspective. Namely, what is it that "frees" or binds man to Torah Law? Is obligation produced or absolved by the mere existential form which man assumes: i.e., if man exists as a person and assumes a human existential form then he is defined as "alive" and hence obligated in Mitzvot. And conversely, if man assumes an existential form of spirit then he is defined as "dead" and hence absolved of Mitzvot. Or, is it man's respective relations and relationships with G-d and his fellow man which produce an obligation: i.e., as long as man's relations and relationships persist man is defined as "alive" and hence obligated in commandments, and once these relations and relationships cease man is defined as dead and hence absolved of commandments.

Whereas R. Sofer and intially R. Kluger adopted the former consideration, R. Attiah and R. Falcon embraced the latter. R. Isserlein, as we have seen, can be explained either way, depending on the criteria

he employed in defining life and death. We shall now see that various other factors were considered by the respondents in developing a formula for determining what produces commandment obligation, as well as their consequences.

V. THE RELATIONSHIP BETWEEN THE FUTURE

WORLDS AND THIS WORLD

The Question of Commandments in Paradise

A vast quantity of rabbinic literature has been apportioned to the depiction of life in Paradise. This literature has conventionally been regarded as eschatological speculation of a purely theoretical nature. To the Halakist, however, even such a seemingly remote eschatological discussion as 'Life in Paradise' can often have significant halakic relevance to life in this world. To this effect, such discussion is by no means theoretical. For the respondent, R. Solomon Zevi Goldbaum it was essential to know, for instance, whether the commandments are observed in Paradise, in order to determine whether Elijah's wife requires divorce. Thus Elijah's observance of commandments in Paradise directly affects the status of his wife in this world. R. Goldbaum saw immeasurable value in R. Isserlein's responsum in determining this question:

I wondered about those who entered Paradise during their lifetimes, such as Enoch and Elijah and others of their rank who are enumerated in tractate Derekh Erez Zuta. If they still stand commanded to observe the Mitzvot, specifically the positive commandments such as donning the phylacteries and the fringed garment and the like. Since the negative commandments are certainly irrelevant there [Paradise], only positive commandments [are relevant]. Do we say that death alone causes absolution of obligation in commandments, that the obligation of the activity of Mitzvot is not continued or necessitated, except for when he is a man? That is, when joined in body and soul, but when they are separated [body and soul] from one another, he is not a man. And the verse stipulates [concerning commandments] 'which if a man do he shall live in them.' For the reason that he is a man who is alive, it is his life which caused his [relation to] commandments. And, therefore, once he dies he is free of Torah and Mitzvot. And if so, those who entered Paradise during their lifetimes are enjoined there as well to keep and to observe G-d's commandments since their bodies are alive. Or perhaps, if it is the place which causes it [relation to Mitzvot]. Only this world is a place which is suited for observing G-d's commandments, ordinances, and laws, and not Paradise. And if so, even those who entered Paradise during their lifetime are absolved from observing commandments.

After some research I deliberated upon it and resolved it from that which I saw in [the work] of one of the earlier scholars,

the ordained genius, Maharai [R. Isserlein], author of Terumat ha-Deshen, who wrote in his Rulings [Pesakim], number 102, that the wife of Elijah, the prophet, and the wife of R. Joshua b. Levi are permitted since [only] a fellowman's wife is forbidden [to others] and not the wife of an angel who is completely spiritual and not corporeal. And the practical difference would apply in case a man were to merit a similar fate as they. And his words [Maharai's] are recorded in Darkhei Moshe and in Beit Shemu'el, and in other works of the Acharonim [the latter commentators].

And according to this we can resolve our question. As certainly those who entered Paradise during their lifetimes are absolved of fulfilling the commandments. For were we to say that they are obligated to fulfill them, and that Paradise is a suitable place for observing commandments, then they would be bound to the ordinances of matrimony and divorce and their wives would be prohibited unless given a bill of divorce. Rather, of necessity, Paradise is not a place which is suited for performing Mitzvot, even for those who entered alive. If so, they are excluded in general from commandments and are considered dead. And they do not cause their wives to be forbidden [to others] because the ordinances of matrimony and divorce are irrelevant to them. And therefore, it is well proven from here that those who entered Paradise during their lifetime are absolved of observing commandments. So it seems one could say, as I was writing with haste.¹

R. Goldbaum's methodology and rationale are fairly simple and straightforward. Since Elijah did not die, death never absolved him from observing the commandments. If he, nonetheless, is not required to divorce his wife to enable her to rewed, this is only accountable if one concludes that the commandments are not relevant in Paradise. R. Goldbaum believes that he has proven that it is not "life" which causes obligation, nor does "death" cause its absolvment, but rather the "place" where man abides. R. Goldbaum cites R. Isserlein's responsum as proof that the commandments are pertinent only to men in this world, but do not apply to men living in Paradise.

In view of the various schools which we are familiar from our prior discussion, it is clear that R. Goldbaum's rationale is subject to severe criticism. R. Goldbaum's entire proof hinges on the fact that death does not absolve Elijah of obligation in commandments since he never died, and hence only if Paradise itself absolves one of obligation can Elijah's absolvment from commandments be explained. According to the R. Sofer-R. Kluger school, which maintains that the death of Elijah's body caused his absolvment from commandments, R. Goldbaum's entire proof crumbles. Similarly, according to the R. Attiah-R. Falcon school, which maintains that Elijah's 'man-man' relationship terminated upon his ascension, one cannot adduce proof

from Elijah's exemption of divorce that there are no commandments in Paradise. Elijah's exemption from divorce is merely one aspect of his 'man-man' relationship, which automatically terminated upon ascension. However, Elijah may well pursue the commandments pertaining to his 'man-G-d' relationship in Paradise. Certainly, R. Goldbaum does not prove the contrary.

R. Hayyim Hezekiah b. Raphael Elijah Medini (1832-1904), a most brilliant scholar and master of Halaka, in his halakic encyclopedia, Sedei Hemed, explicitly states that no proof of absolvment of commandments in Paradise may be advanced from R. Isserlein's responsum.² R. Medini draws an analogy between Elijah's exemption from divorce to those who live in the diaspora and are exempted from those commandments which may be performed only in the land of Israel. Since the laws of matrimony and divorce are contingent to this world, as they concern the relationships of those who abide this world. An "angel" of Paradise may be compared to one who lives in the diaspora and is exempted from those laws which only concern Israel. However, in Paradise there are many other laws which are not contingent on the world of men and they may well be performed there.

R. Medini's criticism is very similar to the R.Falcon-R. Attiah school. Elijah's exemption from divorce is contingent upon the automatic termination of his 'man-man' relationship. However, many other commandments which are not contingent on this relationship may well apply in Paradise also. R. Medini, in fact, goes on to dispute the contention that commandments are irrelevant in Paradise, proving that Paradise is indeed a suitable place for performing commandments. This he adduces from Sefer Hasidim which relates:

And our holy Rabbi would appear [enrobed] in precious garments which he wore on the Sabbath, and not in shrouds, to impart that he retained his vigour and [could] exempt others in their obligation of reciting kiddush and [that he was] unlike the dead who are freed of commandments. But rather like the living in clothes as he wore during his lifetime. And the righteous are called living even after death, and he could exempt his household in kiddush.³

Sedei Hemed records the view of Hida, who in his commentary to Sefer Hasidim cites this passage as proof that the righteous continue to perform commandments even after their death. They interpret the talmudic dictum, "once a man dies he is free of Torah and Mitzvot,"

as applying only to man. However, the righteous, who are not ordinary men, continue to perform the commandments even after death.⁴

Sedei Hemed points out that the implication is tremendous, for it indicates that not only the righteous who entered Paradise during their lifetimes practice the commandments, but even the righteous who have died also observe the commandments, since they are not ordinary men and death only exempts ordinary men and not the righteous.⁵

Not only are the righteous obligated, they can even exempt live men from obligation, as Rabbi exempted his family from their obligation to recite kiddush. This shows that the righteous who are dead assume the same obligation as men, as unless they are of equal obligation, the one could not exempt the other.⁶

R. Joseph Hayyim b. Elijah al-Hakham of Baghdad (1835-1909), in a responsum which we will address shortly, also documents Sefer Hasidim and Hida's commentary thereon as evidence that the dictum, "once a man dies he becomes free of Torah and Mitzvot," is inapplicable to the righteous since they are considered "alive" after death. The position of Sedei Hemed and R. Joseph Hayyim is not only contrary to the school of the respondents mentioned in Chapter IV, who declared Elijah in reality alive yet nevertheless applied the said dictum to him. According to Sedei Hemed and R. Joseph Hayyim, even if Elijah and all other righteous men are to encounter death, being that they are not ordinary men the dictum is entirely irrelevant to them.

R. Medini's proof of the observance of commandments in Paradise, as well as his support from other schools, has far reaching consequences concerning R. Goldbaum's responsum. If it can be proven, as indeed Sedei Hemed does prove that the commandments are observed in Paradise, then according to R. Goldbaum's rationale Elijah's wife would not be permitted to rewed unless she received a prior bill of divorce. The same would be true for the wives of any of the immortals listed in Derekh Erez Zuta, or anyone else who would merit a similar fate.

Furthermore, Sedei Hemed contends that all pious persons pursue the commandments, not only those who entered Paradise alive. According to R. Goldbaum's rationale, the wives of any pious Jew should be forbidden to remarry unless they received prior divorce! Sedei Hemed himself, as well as the other schools, who do not accept R. Goldbaum's rationale, would obviously dismiss this conclusion. Yet

the fact remains that were one able to prove that commandments are observed in Paradise, not only by the righteous who entered alive, but even by the righteous who died, according to R. Goldbaum their wives require divorce, and were they to marry without divorce their children would be branded as Mamzerim (bastards), and they themselves as well as their new mates would be liable to capital punishment!⁷

The question of whether the commandments are observed in Paradise is therefore by no means a remote exchatological question for theoretical speculation, as its resolution has grave consequences concerning life in this world. Even for those who opposed R. Goldbaum's rationale, the question of commandments in Paradise has important consequences as well. For if Elijah continues to pursue the commandments, even if the specific law of divorce does not apply to him, be it because of the termination of his man-wife relationship or for any other reason, as soon as Elijah were to return and reappear on earth he would revert to his original marital status and his wife would still be forbidden. However, if the place of Paradise itself exempts him completely from commandments, then even if he were to reappear, he would be considered dead. He would not revert to his original marital status and his wife would still be considered a widow who is permitted to rewed others. This might represent a specific problem for Elijah should he reappear and subsequently wish to remarry his wife. Since if he bears the rank of High Priest, he is forbidden to marry his own widow.⁸

Furthermore, if as R. Goldbaum and others contend⁹ that it is not death which absolves men from commandments, but rather the place which he abides — then if he were to transfer his habitat from earth to the moon or some other planetary place, would he be obligated to adhere the commandments in those places?¹⁰ Are the planets and other places more closely related to Paradise or to earth? Were the commandments given solely for the purpose of man on earth and do not pertain in other places? If man living on a planet other than earth is equally obligated as man on earth, in which way does the place of Paradise differ such that it alone should absolve man from commandments?¹¹

The resolution of all these questions revolves around one central theological question. That is, are the commandments a function of man's existence in this world alone? According to R. Goldbaum,

the commandments are solely a function of man's existence as a human on earth and are temporal in nature, terminating upon death.

According to Sedei Hemed and others, the commandments are an eternal function of man's relationship with G-d, which transcends time and place, as well as the particular existential form which man assumes.¹²

There even seems to be a medium position. We recall that R. Kluger proved that ordinary men do not observe commandments after death even willfully out of zeal. In this sense R. Kluger conforms with R. Goldbaum who maintains that the commandments are temporal and solely a function of man's human existence upon earth. However, R. Kluger also posits that Elijah and his colleagues in Derekh Erez Zuta are different. Having escaped death, they continue to observe the commandments willfully out of zeal. For them the commandments are a function of their relationship with G-d which transcends time, place and existential form. Yet to a lesser degree than advocated by Sedei Hemed. As according to Sedei Hemed they are enjoined by law to obey commandments in Paradise, whereas according to R. Kluger they are not enjoined by law, nevertheless they choose to observe them willfully out of zeal.¹³

In fact, we are given a glimpse to this issue by R. Goldbaum himself, who alludes to it by questioning whether commandments are observed in Paradise solely in terms of the positive commandments of donning phylacteries, the fringed garments, and the like. In his words: "the negative commandments are certainly irrelevant there." In this subtle distinction of R. Goldbaum we perceive that even among the commandments themselves there are vast differences. Some are clearly a function of this world alone, i.e., the negative commandments, whilst others, i.e., the positive ones, can be regarded as serving a greater purpose and thereby having relevance in Paradise as well. R. Goldbaum concludes, however, that even the more sublime commandments are a function of this world alone.

In fact, R. Rahamim Isaac Palache (Palaggi), in his novellae to Shulchan Arukh deliberates this very point. He cites the Zohar which states that in Paradise, Adam—First Man, was given both positive and negative commandments, such as the injunction not to eat from the Tree of Knowledge. Based on this, R. Palache contends that the negative commandments are relevant in Paradise. Sedei Hemed, however,

contests R. Palache, claiming that the pre-Sinaitic injunction not to eat from the Tree of Knowledge was a separate injunction having nothing to do with the 613 commandments given at Sinai.¹⁴ Therefore, the negative commandments of Sinai may not be relevant in Paradise. Nevertheless, Sedei Hemed posits that there are still many negative commandments which concern man's reflective capacity which could well apply in Paradise, even if the conditions for perpetrating an actual violation of Torah in Paradise are remote.

Thus, the question of whether the commandments are observed in Paradise is fundamental to the understanding of the nature and significance of commandments in general and the nature of man's involvement with them. If there is a distinction among the commandments, then those commandments which apply only to this world may be regarded as temporal agents whose primary purpose is to refine corporeal man. In Paradise, where man is already refined, they are no longer necessary. Nevertheless, those commandments which have a more sublime purpose and greater worth are continuously pursued with an even greater vigour and intensity in Paradise.

Time as a Factor Responsible for Commandment Observance

Apart from the considerations of man's existential form, his relationships vis-a-vis G-d and his fellowman, and the place where man abides, there is a fourth element which must be considered in determining what causes man's involvement and absolvment from commandments. And that is, the element of time.

The simplest understanding of the opinion accorded in tractate Niddah (which incidently and significantly is the accepted opinion in Halaka) "the commandments will be abolished in the time to come,"¹⁵ is that "the time to come" itself is the factor which is directly responsible for the future abolishment of commandments. That is to say, that according to this opinion one can envision a future period, i.e., the Time to Come, in which the commandments are no longer applicable to that particular period, as they will automatically become obsolete and hence abolished. Therefore, time itself is an important element which must be taken into consideration in determining the causes of absolvment from commandments.

R. Elhanan Bunim Wasserman (1875-1941) in Kovetz Shiurim, denounced the opinion which held the time element responsible for the future abolishment of commandments. Rather, R. Wasserman claims:

It is a fiat which is scripturally ordained: 'Among the dead I am free' [Psalms 88:6]; Once a man dies he becomes free of Torah and Mitzvot - forever, even after he is resurrected. And this law applies even in the present time. For if a miracle were to occur [today], such as the dead whom Ezekiel restored to life, they would be exempted from all the commandments. And in the time to come there will not be any novelty in the Laws of the Torah. And those people who will remain alive during that era, who will not live as a result of resurrection, they will verily be obligated to observe all the commandments.¹⁶

R. Wasserman objected to the contention that it is the element of time which is responsible for the future absolvment of commandments, for were this so, it would show that the Laws of the Torah are subject to change and that they change in accordance with existing conditions in time. R. Wasserman considers this opinion heretical, as one of the fundamental principles of faith is that the Torah will never be subject to change at any time.¹⁷ He, therefore, explains that the future absolvment of commandments is due to a fiat ordained by Scripture itself. This does not indicate that the Torah is subject to change, since Scripture has decreed this change from the onset. It is, therefore, the result of a scriptural decree, rather than their becoming automatically obsolete due to prevailing conditions in time.

R. Wasserman proves his contention that Scripture decreed that death should absolve man from commandments rather than time, by demonstrating that man can become absolved of commandments upon death at all times and not only in the future. For if man were to be miraculously restored to life at any time he would immediately be absolved of commandments and would not wait until the future.

R. Wasserman's thesis certainly does not accord with Sedei Hemed and Hida, who claim that death does not exempt the righteous from commandments.¹⁸ Furthermore, R. Wasserman's contention that were a man miraculously restored to life at any time he would be immediately absolved of commandments, is also suspect. For Hida in his gloss to Shulchan Arukh, entitled Birkei Yosef, deals with this very situation in an altogether different manner:

It is stated in Aggada of first chapter in Megillah, ['Rabbah and R. Zeira joined together in a Purim feast. They became mellow] and Rabbah arose and cut R. Zeira's throat. On the next day he prayed on his behalf and revived him.' And there is to deliberate [on] the wife of R. Zeira, once her husband was slaughtered and died, certainly her marriage [to him] became dissolved and she is permitted to anyone in marriage. And when R. Zeira came to life on the morrow he was required to betroth his wife anew for she is a spinster. And this may be compared to returning one's own divorcee which requires a new betrothal as the former marriage has fallen away and a new person has appeared. And similarly, this one whose husband died, behold his death permits [her] and even dissolves his marriage, and once he comes back to life this is a new thing. Or perhaps, a woman acquires her independence upon the death of her husband only when he dies and remains dead. However, when he is not buried and is restored to life by a prophet or a Hasid, it becomes apparent that his death is dissimilar to the death of all men and that the first marriage was never dissolved. And hence she is a married woman whose marriage to another man would not take effect. And her husband, once he returns to life is immediately permitted to her as he was prior to his death.¹⁹

Hida proceeds to cite proof from the Jerusalem Talmud that if a person was miraculously restored to life he would remain attached to his wife and would not be required to remarry her anew. Thus Hida demonstrates that even once a person has actually died, since his death is dissimilar to the death of all men in that he is soon revived after death, he is not considered halakically dead regarding his wife, and consequently he is permitted to remain with his wife as if nothing had occurred.

From Hida's discussion it is quite evident that he contends that were a man presently to be restored to life he would immediately be obligated in commandments and the laws of marriage are at once binding upon him. Otherwise there will be no room for his entire discussion.²⁰ Furthermore, both Ritba (R. Yom Tov b. Avraham Ishbili) and Rashba (R. Solomon b. Abraham Ibn Adret) have remarked that the Talmud implies that the dead who were resurrected by Ezekiel immediately resumed their obligation in commandments.²¹

Thus R. Wasserman's contention that were a dead person restored to life at any time he would immediately be absolved of Mitzvot is altogether inconclusive. His thesis that absolvment of commandments is not a function of time remains unproven. This is a significant observation, as it gives rise to the conviction that there

will conceivably be a time during which the commandments will become outmoded because they are not applicable to that period.²²

Marital Status upon Resurrection

R. Joseph Hayyim b. Elijah al-Hakham of Baghdad was renowned as a great halakic authority to whom questions were addressed by Sephardic communities throughout the world. At the end of each section of his collection of responsa, Rav Pe'alim, he devoted a separate section to a discussion of questions concerning theological and kabbalistic issues, entitled Sod Yesharim.

In one of these responsa R. Joseph Hayyim discusses Hida's ruling as well as the abolishment of commandments in the time to come.

R. Joseph Hayyim found it necessary to devolve into this discussion in order to answer another intriguing question to which he addressed. That is the fascinating question of whether a widow who subsequently remarries will be reunited with her first husband during the time of the resurrection or whether she will return to her second husband. According to the laws of Torah, once a woman has remarried she may not return to her former husband.²³ R. Joseph Hayyim also points out a corollary question. If a man married the sister of his deceased wife by levirate marriage how will he retain both sisters as wives during the resurrection (as the Torah forbids the marriage of two sisters to the same husband).

R. Joseph Hayyim then proceeds to resolve these questions by stipulating that marriage is a physical bond created in the union of two bodies and dissolves upon the death of these bodies. Furthermore, the body in which one is restored to life during the resurrection is a new body of changed configuration and looks. For all that remains of the original body is bones, and especially when even the bones have returned to dust and all that remains of the original body is a tiny bone called niskoi.²⁴ Thus, even according to the opinion that the commandments will not be absolved in the time to come, a widow may be reunited with her first husband since the original body of her first husband is dead forever and the new body in which he is restored is not related to his former body. And likewise, a man may retain two sisters whom he acquired through levirate marriage

since these sisters will be resurrected in new bodies. They will, therefore, become unrelated and considered as two strangers.

Nonetheless, the spiritual bond which was created between the souls in marriage is not severed by death, and hence these souls will return to their original partners during the resurrection. And there is no lawful impediment against this reunion since the bodies to which these souls are to be released will be newly-created bodies which were never previously united in marriage.

Degrees of Death

R. Joseph Hayyim regarded Hida's ruling concerning R. Zeira's wife as a challenge to his own thesis. For Hida ruled that subsequent to R. Zeira's resurrection by Rabbah he was not required to rewed his former wife as the marriage bond is automatically resumed once a deceased is restored to life. This seems to contradict blatantly R. Joseph Hayyim's thesis who rules that the physical marriage bond dissolves forever with death. He resolves this apparent contradiction by distinguishing between two types of death. One is in which the original body does not undergo any change after death and comes to life in exactly the same state as before death. The other, whereby the original body is reduced to dust and a new body is fashioned for it to which it comes to life. In the first instance the physical marriage bond does not dissolve with death. This was the case of R. Zeira, who did not undergo any physical change after death, and consequently his original marriage bond resumed immediately upon being restored to life. The latter instance is the case of R. Joseph Hayyim, which deals with resurrection in the time to come when the bodies of all men will undergo complete change, becoming reduced to dust. Consequently, their marriage bond dissipates with death and will not resume upon resurrection. Rather, a fresh bond will be created.²⁵

R. Joseph Hayyim's distinction in two kinds of death is similar to Hida, who, we recall, also distinguished between two kinds of death. The first is the "death of all men," in which the deceased remains dead. In this case, the marriage bond dissipates permanently. The second is the death of R. Zeira, where the deceased is restored to life soon after death, even before burial. In this case, the marriage

bond remains intact as he is regarded as if he had never died, being that his death was dissimilar to the death of all men.

Thus, in considering the parameters of life and death in Chapter IV, we have to deal with two more determinants. According to Hida death is not only defined as the cessation of life, but also in remaining in a continual state of death, as similar to death of all men. This is a valuable principle regarding the much discussed field of medical ethics. For according to this criterion death would not necessarily be pronounced upon cessation of life.²⁶

According to R. Joseph Hayyim even after the deceased has remained dead for some time he is still not technically defined as dead until his return to dust. Therefore, were he restored prior to returning to dust he would be obligated in commandments, being that he is not technically defined as the "dead who are freed of Mitzvot."²⁷

Although Hida differentiates between the "time span" of death, that is, the duration of time that the deceased has remained dead, R. Joseph Hayyim differentiates in the biological nature of death, that is, the degree of organic decomposition the deceased has undergone.²⁸ When G-d proclaimed to Adam, "for dust thou art and unto dust thou shalt return," He was conveying to man a definition of death short of which he is not technically considered as dead.²⁹

According to Hida, who is not so much concerned with the biological state of death as much as with the permanency of death, should a man comply with the biological definition of death and then become returned to life soon afterwards, he would not be defined as dead, since his return to life is not analogous to the death of all men.³⁰ Consequently, he would still be obligated in commandments. Hence, in the view of Hida it is the time element of remaining dead over a prolonged period of time which is a vital factor in determining death and its concurrent exemption from Mitzvot. We recall R. Wasserman's protestation that it is not "time" which absolved man of commandments but rather it is death. According to Hida, however, "time" is the more vital of the two elements since time itself is the essential criterion in defining death.

Future Marital Status as a Consequence for Current Marriage Laws

The renown respondent, R. Hayyim Eliezer Waks was greatly perturbed by Hida's proof that were a person miraculously restored to life he would automatically revert to the same marital status prior to his death. R. Waks challenges that were this so, every widow in the world would be forbidden to remarry, perchance her husband would miraculously be restored to life!³¹

While, Hida in Birkei Yosef claimed that if the deceased did not remain dead he is retroactively considered alive from the time of restoration, R. Waks denies this, stating that he is pronounced dead immediately upon death, regardless of whether or not he might later on be restored to life. Should he later return to life, his wife would only become forbidden from that moment onwards. R. Waks claims that for this reason we are not worried in the case of every widow, perchance her dead husband will come to life. Since until that time he is considered dead, and we do not suspect that perchance he may live.³²

R. Waks' responsum is of no little halakic significance. For he reveals that the seemingly recondite problem of whether one reverts to one's former marriage status once miraculously restored to life, as discussed by Birkei Yosef, has practical bearing on every widow in the world! R. Waks' responsum is also extremely valuable in challenging Birkei Yosef's definition of death. For Birkei Yosef maintained that death is not confirmed upon cessation of life but rather only once the deceased has remained dead over a prolonged period of time. R. Waks challenges that were this so every widow would be forbidden to remarry, since immediately upon death, the husbands might theoretically still be considered alive. Since he has not remained dead for any length of time, she is consequently still attached to him. R. Waks re-establishes that death is completely confirmed upon cessation of life. If, by some miracle, her husband were restored to life, only then would she revert to her original married status. In the meanwhile, they are entirely unattached to one another, as the marriage bond dissolves with the cessation of life. Consequently, every widow is free to remarry.

R. Abraham Bornstein of Sochaczew, in an earlier responsum in Avnei Nezer takes issue with R. Waks. Avnei Nezer attacks R. Waks' thesis

that the marriage bond would immediately become restored upon the husband's revival, even though that bond was completely severed upon his death. Avnei Nezer recalls the principle, "keivan shepaska paska," once (life has) terminated, it remains terminated.³³ This principle would not pose a difficulty to Hida's thesis in Birkei Yosef as according to him the marriage bond never terminated. Since the husband's revival is retrospective proof that he never died, the marriage bond remains intact throughout. R. Avraham Teomim in Responsa Hased Avraham, challenges the principle that once the deceased is restored to life the marriage bond is immediately resumed. R. Teomim demurs that in the time to come all the dead will become restored to life. Were the bond automatically resumed upon restoration of the marriage partner every widow in the world should be forbidden to remarry. Although R. Waks originally posed this same question in contesting Birkei Yosef, the identical question can still be posed to R. Waks. For although R. Waks pronounces the deceased partner dead upon cessation of life, he nevertheless concedes that upon his revival the marriage bond is resumed. R. Teomim challenges this point, since it would have bearing upon every widow. Thus according to R. Teomim the question of whether marriage partners will be restored to their original spouses in the time to come is halakically significant in understanding why widows are permitted to remarry today.

R. Joseph Hayyim's specification of biological death would resolve R. Teomim's demurral. No objection could be raised from the future resurrection, since by that time all the dead would have returned to dust, and their marriage bonds would have been long disbanded. However, we shall see that not all the Halakists support R. Joseph Hayyim's theory that the dissolution of the marriage bond depends on the thoroughness of one's death and it seems that R. Teomim would be amongst them.

Relation to Terumat ha-Deshen

R. Hayyim b. Israel Benveniste (1603-1673), was renown as one of the greatest Jewish codifiers. His principal work, Keneset ha-Gedolah, was accepted by both Ashkenazic and Sephardic Rabbis as an authoritative work of great practical value.³⁵ There, he discusses the

same question addressed by Birkei Yosef, R. Hayyim, R. Waks, and R. Teomim; and, in fact, views this problem as directly related to the original query in our discussion from Terumat ha-Deshen:

Is the wife of Elijah or R. Joshua b. Levi permitted to rewed etc., Pesakim and Ketavim, no.102. The compiler said: The Rabbi [Isserlein] already wrote that the practical difference [of this query] is, if someone were to merit [a similar fate] as them. And I say that there is a further practical difference when the dead will be resurrected. When the wife of Elijah or R. Joshua b. Levi will become resurrected, will she be permitted to remarry? For as long as her husband is living she may not [rewed], [or], since she has died her tie to her husband has become severed. And I am of the opinion that if a woman died an absolute death while under her husband and was again restored to life by a prophet, such as in the case of Elijah to the Zarephite's son, or Elisha to the Shunamite's son, that the attachment of her husband has not severed from her, and she is not permitted to marry another man.³⁶

R. Benveniste claims that R. Isserlein's responsum has halakic significance not only in terms of the status of Elijah's wife in this world, but in the world to come as well. R. Benveniste rules that the marriage bond is not severed forever upon the death of one partner. And, therefore, as long as one of the partners remains alive, when the second partner is restored to life, the original marriage bond is automatically resumed again. Consequently, the restored partner is not permitted to rewed. However, this would not be so in the case of Elijah. Since R. Isserlein ruled that Elijah's transformation to angel severed the marriage bond, thereby permitting his wife to remarry despite Elijah's still being alive, then in the world to come as well, once his wife is restored to life she is permitted to remarry. As Elijah's being in reality alive neither affects the status of his wife in this world nor in the world to come.³⁷

We recall R. Joseph Hayyim's responsum, in which he ruled that the physical marriage bond is completely severed upon death and will not resume in the world to come, but rather will begin afresh. In the same responsum, R. Joseph Hayyim dispels any contradiction to his ruling which might stem from R. Benveniste. For R. Joseph Hayyim claims that even R. Benvensite concedes that once both partners have died, the marriage bond is forever released, thus concurring with R. Joseph Hayyim. It is only if one of the partners remains alive that R. Benveniste insists that the original marriage bond is

resumed upon restoration of the dead partner. It is the latter point of R. Benveniste which causes R. Joseph Hayyim considerable consternation:

After deep forgiveness, I fail to see any reason or logic [in R. Benveniste's ruling]. Since the woman's body is obliterated and its identity undergoes complete change, what sort of attachment and relation does there remain for the husband to this body after it is resurrected. Isn't this woman's body, which comes to life after total death, a new countenance which has arrived hither? And how does the husband's body, which still lives, enhance or detract from the attachment which he had with that body?³⁸

It would appear that R. Benveniste took no notice of R. Joseph Hayyim's criticism because he did not accept the premise upon which R. Joseph Hayyim's criticism is based. That is, he did not distinguish between a biological death in which the corpse decomposes and returns to dust, to a death in which the corpse remains intact. Nor does R. Benveniste distinguish, as Hida, in the duration of time the deceased remains dead. For there is no difference to R. Benveniste whether the deceased was resurrected shortly after death or at the resurrection of all men in the time to come.³⁹

It would appear that R. Benveniste did not consider 'death' per se as the major factor responsible for severing the marriage bond, neither in thoroughness of biological disintegration of the deceased, nor in the time span which elapses after death. Rather, it is the relationship between the two which, for as long as one of the partners is alive, continues even after the death of the deceased partner. The death of one partner only serves temporarily to 'freeze' the active manifestation of the relationship. However, upon restoration, the relationship automatically resumes.⁴⁰

It is possible that R. Benveniste derived this perspective from the same Terumat ha-Deshen with which he deals. For R. Isserlein, in Terumat ha-Deshen, ruled that Elijah's marital relationship terminated upon his transcendence to an angel despite the fact Elijah never tasted death. From R. Isserlein's responsum, R. Benveniste learned that it is not 'death' per se which is fundamental to the severance of the marriage bond, but rather the 'relationship' which is ultimately terminated only upon the death of both partners.

The very query to which R. Benveniste addresses himself, namely, which

factor is primarily responsible for the dissolution of the marriage bond, the death of the deceased partner or the discontinued relationship of the live partner with the deceased, is identical to the original problem we posed at the onset of this work. Namely, what is it that ultimately liberates man from the obligation to adhere to the commandments in general, and of the obligation to divorce one's wife to allow her to remarry in particular? Is it man's death, or the discontinuation of man's relationship with G-d and his fellow-men which incur upon death? We have seen all through the work that the respondents were widely divided over this matter and that this question has abundant ramifications regarding a host of physical and metaphysical issues.

We noted that R. Teomim, as well, was not concerned to what extent of biological decomposition the deceased undergoes. Probably R. Teomim accords with R. Benveniste who maintains that it is the discontinued relationship which incurs upon death which terminates the marriage bond rather than death per se. However, R. Teomim rejects R. Benveniste's claim that the marriage relationship automatically resumes upon the restoration of the deceased partner.⁴¹

The Darkhei Noam Principle

R. Teomim is not alone in expressing reservation on R. Benveniste's ruling. R. Isaac Zevi Lebovic in his halakic opus, Shulchan ha-Ezer, quotes R. Nathan Landau, who poses a number of halakic complications which arise from R. Benveniste's ruling. For example, suppose a man marries the sister of his deceased wife, and subsequently his deceased wife is resurrected, either miraculously by a prophet or in the time of resurrection. Would he still be permitted to the sister? Or, for instance, there is a Torah penalty that a man who rapes a virgin must remain married to her all the years of his life and he can never divorce her. Suppose this woman, whom he raped and married, had died and was subsequently restored to life. Would he still be required to remain married to her all the years of his life?⁴² Because of these complexities and the more common complication of the live partner having remarried subsequent to the other partner's death and being faced with two marriage partners upon the former's revival, R. Teomim ruled that the Torah ethic of Darkei

Noam implores us to avoid these halakic complexities and unpleasantnesses which are concurrent with them. Therefore, we must regard the deceased spouse as permanently dead even in the event of a subsequent revival.

However, it is uncertain whether the Torah ethic of Darkei Noam will be operative during the time of the resurrection. For the principle of Darkei Noam in this context is only applied to avoid unpleasantnesses in the present arising from unforeseen circumstances in the future.⁴³ However, in the time to come, when the circumstances concurrent with the resurrection become normative rather than hypothetical, we will have no choice but to reckon with the massive onslaught of halakic complexities and entanglements, unpleasant as they may seem, which will inevitably ensue.

In this sense it is certainly significant to contend with halakic issues that will arise in the time to come. For if that time is a period real to life, which will become faced with real halakic issues similar to our own, nay more, is a period which, as a fundamental principle of faith we daily strive towards, and in fact what we have to look forward to at the same time is a period engulfed in an endless chain of convoluted halakic enmeshments and befuddlements of the highest order — this calls for serious introspection.⁴⁴

Furthermore, if Halaka is the flawless eternal system it claims to be, these questions must be reconciled, if for no other reason than to withstand the test of its own integrity and infallibility. Perhaps these problems were some of the factors which motivated many of the Rabbis to conclude that "the Mitzvot will become abolished in the time to come."

Eschatology as a Halakic Basis for Resolving Present Issues

Whereas R. Benveniste regarded his discussion as a further outcome of R. Isserlein's responsum, R. Judah b. Israel Aszod (1794-1896) regarded this issue as fundamental in understanding the whole basis of R. Isserlein's responsum. Among the collection of responsa, Teshuvot Maharei (morenu ha-Rav Judah Aszod), also called Yehudah Ya'aleh, is a responsum which deals in its entirety with Terumat ha-Deshen. R. Aszod begins his responsum by questioning the source upon which R. Isserlein

based his ruling that Elijah's wife is permitted to remarry. For the Mishna in Kiddushin lists only two ways in which a woman acquires her freedom from her husband: either through death or by divorce. Whereas in Elijah's case neither occurred. To this difficulty R. Aszod responds:

And it seems to me that the wife of R. Joshua b. Levi is included among the women who acquire their freedom through the death of a husband, for she has acquired her freedom from the heavens. And the philology of death connotes vanishment from this world. And to the contrary, it seems to me there is proof to his [R. Isserlein's] ruling from the initial position of Kiddushin which maintains that one need not derive from Scripture that a woman acquires her freedom through her husband's death, for it is logical — 'he [the husband] bound her, hence he frees her.' [i.e.,] since he is not in the world and will not return again until the Resurrection. If so, for this reason the wife of R. Joshua b. Levi is certainly free as well, for it makes no difference whether his body ascended to be buried in the heavens or to be buried in the ground. And this [the case of R. Joshua b. Levi's wife] is also preferable to it [the standard case in Kiddushin]. For even during the resurrection when the dwellers of dust will awake and sing, it is written, 'when I have opened your graves and caused you to come out of your graves.' But certainly Enoch and Elijah and R. Joshua b. Levi, then too during the time of the Resurrection, will not return to the corporeal states they were originally. But rather, their bodies will remain spiritual, because [of the rule], 'we may rise only to a higher level of sanctity, but may not degrade to a lower level.' And it is more logical to free his [R. Joshua b. Levi's] wife, since 'he bound her, hence he frees her.'⁴⁵

R. Aszod explains that R. Isserlein based his ruling on the premise that just as a woman acquires her freedom through the death of her husband, so did the wives of R. Joshua b. Levi and Elijah acquire their freedom upon the death of their husbands. For death connotes disappearance from this world and it makes no difference whether their bodies are buried in heaven or on earth. And since the Gemara assumes that it is logical that a woman should be freed upon her husband's death, even though her husband will return to life during the resurrection, then it is even more logical that the wives of R. Joshua b. Levi and Elijah should acquire their freedom upon their husbands' disappearance, for they are gone forever and will not return in bodily form during the resurrection. Since Elijah and R. Joshua b. Levi attained a high level of sanctity by becoming spiritual, they will not be reduced to a lower level of sanctity by returning to their corporeal status during resurrection.

R. Aszod continues that all this is well according to the initial position of Kiddushin. However, according to the conclusion of the Gemara, it is not sufficient to deduce through logic that a woman acquires her freedom upon her husband's death. Rather, this must be derived by means of applying the hermeneutic principle of Hekesh (juxtaposition). R. Aszod questions that since the Gemara in its conclusion requires a Hekesh, of necessity the wife of an angel is still forbidden to remarry. In a final attempt to rectify Terumat ha-Dehsen, R. Aszod writes:

And one must answer that only the wife of an angel is excluded from the [prohibition of taking the] wife of one's fellowman, because he will no longer return to his corporeal state. That is not so in the case of death, for she is still designated the wife of one's fellowman, both because of the past, in that she already was his wife, and because of the future during the resurrection when the bodies will return to life. And one who is due to come to life is likened to the living, and she will become the wife of one's fellowman. And, therefore, it is necessary to learn that she is permitted. So it seems to me.

R. Aszod explains that because in the time to come the bodies are due to become restored to life, one would regard the deceased husband as if he were still living and his widow would still be considered the wife of one's fellowman, which she was beforehand and still indeed becomes once more. Therefore, the Hekesh is necessary to teach that she is no longer considered the wife of one's fellowman subsequent to her husband's death and hence she is permitted to re-marry. However, since R. Joshua b. Levi and Elijah are not due to become resurrected, there is no reason to continue regarding their wives as married women and, therefore, one does not need the Hekesh to teach that they are permitted.

From R. Aszod's responsum one sees clearly that eschatological notions such as the resurrection in the time to come are not only outcomes of R. Isserlein's responsum, but are fundamental as a halakic basis for deriving the validity of his ruling. For according to R. Aszod it is only because Elijah and R. Joshua b. Levi will not be resurrected in the future that their spouses are permitted to rewed in the present. Were they subject to resurrection their wives would not be permitted to remarry since they would not be included under the Hekesh, and, there would be no other source or basis for R. Isserlein's ruling.⁴⁶

R. Aszod is unique in his espousing that Elijah and R. Joshua b. Levi

will not become resurrected or return in a corporeal form. Although the respondents debated whether or not Elijah's body 'died' upon his ascension, none seem to doubt that he will eventually return during the resurrection in bodily form, either his own or another. Nor do any seem to relate the dictum, "we may only be elevated in levels of sanctity and may not be degraded in levels," to Elijah's returning in corporeal form, as indeed they speak of such a return quite resolutely.

Had R. Aszod imagined that these angels would return during the resurrection in corporeal form, he would have considered R. Isserlein's ruling without basis, if not erroneous. Once again we evince an instance where serious contemplation of the reality and the events which are to transpire in the world to come, are important components of halakic decision-making, which directly affect laws related specifically to this world.⁴⁷

This very question which medieval Jewish philosophers debated extensively, whether the Resurrection in the time to come will be one of souls alone or both soul and body has practical bearing upon R. Isserlein's responsum.⁴⁸ For according to R. Aszod, R. Isserlein's ruling is only valid if Elijah and R. Joshua b. Levi will be resurrected in soul alone. Otherwise, there is no source which permits their spouses to rewed men in this world without prior divorce. According to the other respondents Elijah and R. Joshua b. Levi will be resurrected in body as well. Nevertheless, R. Isserlein's ruling was accepted by these respondents as being halakically bona fide.

VI. THE RELEVANCE OF TERUMAT HA-DESHEN'S RESPONSUM

1. CONTEMPORARY CONSEQUENCES

Thus far we have devoted our discussion primarily to an in-depth analysis of the existential reality of transcendental man. We have endeavoured to delineate how the determining of his existential reality and his affiliation with the extraterrestrial worlds insofar as they clarify his position in this world, are necessary in order to fathom the many intricate difficulties contained within and contingent upon the ruling of Terumat ha-Deshen. In this chapter we shall focus our attention upon what practical halakic value R. Isserlein's ruling was able to contribute in resolving various halakic issues, while this section will concentrate on contemporary issues in particular.

We have already seen in the previous chapter that R. Benveniste considered the question of whether Elijah will be reunited with his spouse in the hereafter, a practical outcome of R. Isserlein's ruling. Although we discussed how this outcome is beneficial in understanding the logical basis of R. Isserlein's ruling, there are a considerable number of much more direct practical consequences of far-reaching benefit for which R. Isserlein's responsum served to contribute immense halakic import.

Test Tube Babies

R. Moshe Hirschler, in his contemporary work, Halaka and Medicine, found R. Isserlein's ruling eruditely instructive in resolving the issue on test tube babies.¹ R. Hirschler points out that although medical science has leaped forward great strides in enabling barren women to realize motherhood by successfully developing test tube fertilization and its subsequent implantation in the mother's womb, medical science has not yet achieved its ultimate aspiration of bringing a fetus to full development in a laboratory outside the mother's womb. Nevertheless, the day is soon approaching when such test tube creations will be promenading the face of the earth and Halakists will soon have to prepare themselves to contend with the numerous halakic ramifications concerning these test tube babies.

R. Hirschler begins his halakic analysis by discussing the existential reality of a test tube baby. He questions whether this entity which possesses human characteristics and idiosyncrasies, yet was produced by genetic science without fertilization, without a womb, and without childbirth— if this entity is considered a 'man,' like all men. In which case, 'he' would incur all of the responsibilities contingent with society and family life. R. Hirschler considers the ramifications concerning the obligations associated with the laws of society which govern human life, morality, and jurisdiction. He states that without a doubt one would initially require the assistance of psychological and neurological research and all other fields of scientific research concerning human behaviour, in order to obtain an existential identity for mankind in all matters concerning intelligence, cognitive skills, emotion, and perception. We should accurately ascertain man's existential reality: Is it an utterly humanistic phenomenon to include test tube creations who by definition would be deemed worthy of belonging to the human race despite the genetic constituent? Are his personality, his nature, his character, and his mannerisms all expressed in the definition of his status as a man? On the other hand, R. Hirschler continues, one might regard this phenomenon from another angle. That is, to regard test tube creations as mere semblances of men, in the sense of lifelike automations, or highly intelligent and developed 'plants,' or perhaps the shadows of 'angels' who are not born unto women. That despite all their humanistic qualities and characteristics, nevertheless they stand apart from the existential laws which pertain to those born unto women and they therefore do not belong to the human race.

R. Hirschler goes even one step further, claiming that it might be possible to obtain a definition whereby one could exclude them completely from human society to the extent that it might even be permissible to destroy them without equating such an abhorrent act with murder. Such a problem would arise during the initial stages of experimentation. If, for some reason, scientists envision unexpected complications to arise from a particular test tube experiment. Would they be permitted to throw these creations to waste? Would this constitute murder? All these considerations, though they seem incredible, are nevertheless legitimate and they require further halakic verification.

Golem (Homunculus)

R. Hirschler reveals that, although there do not exist, to his knowledge, any halakic sources which deal directly with this problem, there are two discussions which deal with very similar issues to the one at hand. The first discussion deals with the unnatural creation and is found among the Responsa of R. Zevi Hirsch ben Jacob Ashkenazi (1660-1718), known as Hakham Zevi. Hakham Zevi was asked whether a golem (automated homunculus), which was produced by agency of the Book of Creation, such as the one reported to have been produced by his grandfather, R. Elijah of Chelm, could be counted for a minyan (a religious quorum). R. Ashkenazi responded that R. Zeira would not have ordered the golem automation conjured up by Rabbah to return to dust, as is related in the Talmud, if Rabbah's automation was of sufficient worth to count for a minyan. In addition, there exists no question of manslaughter, for the verse stipulates: "Who so sheddeth the blood of a man in [by] a man, his blood shall be shed," implying, only for a man who is formed "within a man." That is, only for a fetus who developed in his mother's womb can one be culpable for manslaughter, but not for destroying Rabbah's automation, which had not originated within the womb of a woman.²

R. Hirschler suggests that perhaps one can derive a general definition of 'man' from R. Ashkenazi's responsum. Namely, that one who is not formed "within a man" is not considered to belong to the human race for all matters, including murder. However, on closer scrutiny, R. Hirschler suggests that the two cases are dissimilar. For Hakham Zevi's case deals with one who was produced by agency of the Book of Creation as a supernatural creation which has no relevance to the natural order of the world. Of such a creation it is proper to ask whether it belongs to the human race. However, a test tube creation is a natural phenomenon, produced through sperm-egg fertilization with its own placenta, and develops according to natural laws.

On the other hand, R. Hirschler points out that R. Ashkenazi ruled that one is not culpable for shedding the blood of one who was not formed within a woman's womb. Consequently, even if one were to determine that a test tube creation belongs to the human race, one might still be permitted to 'wash out' the contents of an undesirable test tube, and possibly it would be forbidden to violate Jewish laws,

such as the Sabbath, in order to save the life of a test tube creation. If that were the case, R. Hirschler provocatively surmises, that had First Man been murdered, the murderer might not have been culpable for the crime. For although Adam belonged to the human race, he did not develop within a woman's womb, but rather was formed by the 'hands' of G-d Himself.

The second case which R. Hirschler believes pertinent to the discussion is our responsum of Terumat ha-Deshen. R. Hirschler notes how R. Isserlein resolved the question of Elijah's halakic status by drawing an analogy from the Talmud in Niddah. R. Hirschler explains the analogy saying that just as the Shunamite's son was "dead," in every sense of the word, yet because of his transformation to life he could no longer be considered dead. Similarly Elijah, despite the fact that he is alive in every respect, because of his transformation to an angel, can no longer be regarded as a fellow man. He has completely eclipsed the normal framework of creation, which has clearly defined parameters regarding mankind and creation. Likewise, R. Hirschler claims, it is possible to regard a test tube creation as either a non-person or dead, despite its being imbued with life. Since it does not fall within the natural framework of creation nor does it correspond to the conventional definitions of man.³

R. Hirschler remarks that R. Isserlein's responsum seems very removed from reality. Yet, nevertheless, Halakists deal with this very issue. R. Hirschler musefully suggests that perhaps these Halakists envisioned a future epoch which would witness living and thinking creatures and people who belong to another plane, yet they propagate themselves in the incubators and hotbeds of mankind.

According to R. Hirschler, R. Isserlein's responsum is of enormous practical halakic value in that it establishes the existential reality of a person belonging to another plane, which is vital in order to determine the existential reality of the world's future test tube babies. It is intriguing to note as well, that Hakham Zevi's responsum concerning the existential status of a golem, a responsum which was conventionally considered purely theoretical, according to R. Hirschler is of immeasurable practical significance. It is constructive in determining the existential reality of test tube babies. We have already seen in Chapter III.2 how R. Sofer employed Hakham

Zevi's responsum in determining whether a synagogue may be converted to a house of study.

Most fascinating is R. Hirschler's comment that R. Isserlein and other halakic colleagues who dealt with R. Isserlein's responsum possibly envisioned a future period of test tube creations not yet conceived by men living in their generation. If R. Hirschler's theory is correct, this shows that discussions in Responsa literature which appear to our limited knowledge as purely theoretical and speculative, having no practical relevance to reality whatsoever, could well have been written with such prophetic foresight by the authors of these ancient responsa, that they envisioned periods of ulterior forms of existence, which are unknown even to the most imaginative and ingenuitive minds found among modern scientists.⁴

Ovarian and Embryonic Transplants

Indeed Maimonides attested to that fact that the prophets themselves depicted various phenomena which we will not comprehend their meaning until they occur. Today, for example, we know that the prophetic verse, "Sing, O barren woman who could not give birth... for many shall be the children of the desolate," could well have been intended to include barren mothers who are now able to conceive as a result of test tube fertilization.⁵ This verse, which was a complete enigma in former times and could only be understood metaphorically, or if intended literally, as sheer miracle, can now be understood simply in terms of ordinary scientific technique. It is in this novel field of fertilization aided by ovarian and embryonic surgery that once again we find precedent in the rabbinic literature of old.

Rabbi Dr. Jonathan Sacks, in an article on test tube babies, discusses the question of determining maternity where an ovum was taken from one woman and after fertilization was implanted in another. Whose child is it? The genetic mother's, or the host mother's? R. Sacks remarks that although this question arose earlier in the century regarding ovarian transplants, it is generally agreed that a transplanted organ takes on the identity of the recipient. The question, however, remains whether the same is true for an embryo. In resolving this issue R. Sacks writes:

Strangely enough, it is here, in relation to a startling new development in medical techniques, that we find a precise precedent in ancient rabbinic literature. A tradition is recorded about Leah, wife of Jacob. She had six sons--and Jacob's two handmaids had two sons each. When she became pregnant for the seventh time she had known by prophetic foresight that Jacob would have twelve sons. Thus had she given birth to a boy, that would have left only one son to be born of Rachel. And her sister would then have had the humiliation to have given birth to fewer sons than the handmaids do. The child in Leah's womb was in fact a boy. She prayed for it to be a girl. And so, by a miracle, the fetus was transferred to Rachel, who eventually gave birth to it and called him Joseph. Joseph, in other words, had Leah as his genetic mother and Rachel as his host mother. And he was of course, Rachel's son.⁶

Although R. Sacks concedes that this proof is not conclusive, as there are several legal passages in the Talmud that have bearing upon whether a child's relationship to its mother is determined by the moment of conception or of birth. Nevertheless, R. Sacks has demonstrated a clear instance where even the most advanced scientific technique can find its parallel equivalent in ancient rabbinic literature.

Scientists are presently referring to parenthood by resorting to formulas because biology is now creating concepts of parenthood faster than society can define them. The reproductive possibilities remain so novel that terms are lacking to describe the relationships they create. These new techniques have raised all sorts of politically explosive moral questions. Professor A. Capron, professor of law at Georgetown University explains that there are no federal laws in the United States to guard against the dangers of exploitation and manipulation. The state and local laws "have sprouted into thickets of illogicality and contradiction." Dr. Freed, the head of American Bar Association's family law section committee on research opines, "It's going to take years of debate, legislation, trial and error to figure out how to deal with these problems." While S. Gorovitz, professor of philosophy at the University of Maryland at a House subcommittee chaired by Congressman A. Gore Jr. described: "We have a patchwork of laws and gaps, stigmas and deprivations, confusions and fears."⁷

It is comforting to note that while legalists are groping in the dark to unravel these perplexities which science has now produced, Jewish tradition long ago equipped contemporary Halakists with precedents in the ancient rabbinic writings with which to effectively resolve

these novel issues.⁸

Like R. Hirschler, R. Sacks states that the possibility of a fetus being brought to full development without having matured in the womb, and moreover the cloning technique, will call for reconsideration of our definitions of personhood as well as parenthood. In the same manner as R. Hirschler, R. Sacks recalls the responsum of Hakham Zevi, who discussed the status of artificially created life, over three hundred years ago. R. Sacks takes note of the responsum's obiter dictum that taking a life applies only to "something formed as a foetus in a mother's womb." Accordingly, R. Sacks questions whether a foetus brought to full maturity in a laboratory would thus be no more than a mere golem?

We have already discussed R. Hirschler's differentiation between Hakham Zevi's responsum and test tube creations. Nonetheless, both from R. Hirschler and R. Sacks we can readily discern how responsa, which superficially seem highly remote and theoretical, can be immeasurably valuable in resolving halakic issues which pertain even to the most advanced techniques of scientific experimentation. Just because science and technology had not yet sufficiently advanced to the level of those questions dealt with in the Responsa literature, does not mean that in the minds of the respondents these were not practical questions. Whether the extraterrestrial creation is engendered via prayer, the Book of Creation, or sheer scientific technique is highly irrelevant. In each case the desired result is the same and must be halakically defined and reckoned with.

Heart Transplants

The question of establishing maternity in the case of an ovary transplant, mentioned by R. Sacks, is taken up by R. Eliezer Waldenberg (b. 1917), a Jerusalem Rabbi of note, in his responsa collection, Tzitz Eliezer.⁹ He arrives at this question in discussing a related issue of establishing the identity of the recipient of a heart transplant. R. Waldenberg remarks that the heart is the "ruling king" of all the organs, and the living being lives entirely according to the movements of his heart.¹⁰ The heart transmits strength to the two main organs, which are the brain and the liver.¹¹ As a result, all the forces of life which vitalize this heart recipient are now

derived from the strength of another man from whom his heart was taken. Whether he (the donor) be male or female, Jew or Gentile, fit or unfit (i.e., bastard, etc.), the essence of the one person is now channeled through the body of another man.

The question facing R. Waldenberg was how to determine the identity and kinship relations of the recipient from now on. Whether new laws would pertain to him concerning unfit family relations, etc., since the essence of his life, which is the heart, originates from another man. As it states in Proverbs 4:23, "Above all that thou guardest keep thy heart, for out of it are the issues of life."

R. Waldenberg writes that he himself has read and is aware of existentialist writings concerning the psychological and spiritual effects upon heart transplant patients. He submits that the recipient does not in any manner relate or take on the identity of the donor for a number of reasons. Just as one could not call an artificial (mechanical) heart implanted by mortal man in the body of another, "the king of organs," for about such a heart was it said, "and of it are the issues of life," similarly, the same would be true in our case. Rather, one must say that transplants enable life already stored up within the recipient's body to flow freely throughout the body. As similar to those living creations which have no hearts, such as snakes and scorpions.¹² Consequently, this heart becomes completely subservient to the body of the recipient.

R. Waldenberg reinforces his thesis by citing the Zohar, which states that G-d stored man's vitality and strength in the centre of man's body.¹³ It is only because the heart is situated in that same area that it became the core of the body's strength. However, this relationship between the heart and the centre force of the body, which Zohar describes, only exists when it is specifically designed as such by the Creator of man from the beginning of his creation. Only then does there exist a natural symbiotic relation between the centre of the body and the heart. The command over strength and rulership over life is transferred to the heart as a natural process. However, this is not the case when the heart is severed from its natural source of life in one body and is then artificially attached to the centre of another man's body. Consequently, R. Waldenberg defines the recipient as a trcifa, the same status accorded to those who are living corpses,

where death is imminent.

R. Waldenberg further bolsters his argument by questioning whether the "heart and lung machine" from which the patient lives and breathes during the course of the operation, could this contraption be considered the "king of all organs?" Furthermore, what status should be given to plastic hearts and the like, which are now being designed? We would digress to an absurd situation of those "Who say to a stick, 'Thou art my father,' and to a stone, 'thou hast brought us forth.'"¹⁴

Moreover, R. Waldenberg explains, the moment the heart is extracted from the donor there is at once a brief instant of a heart without a body. At that moment all identification and association with the donor's body is severed from it. For a heart without a body cannot even be called a heart at all, as at that moment it is comparable to a dangling limb or a random piece of flesh. Consequently, when it is replanted and adjoined to another body it is considered a new organ and can only now be called a heart again, because of the new body to which it has been attached. Therefore, all of the new heart's associations are only with regards to the new body to which it becomes adjoined. R. Waldenberg proves his contention that a heart which is severed from a body cannot be considered a heart, by citing Maimonides' Guide, in his discussion of the unity of the cosmos, which Maimonides compares to the anatomy of a man:

For just as it is impossible that the limbs of a man should exist separately; while being truly the part of a man, I mean to say that the liver should exist separately or the heart should exist separately or the flesh should exist separately, so it is impossible that the parts of the world should exist in this permanent existence without one another in such a way that light should exist without the earth or the earth without heaven or the heaven without earth.¹⁵

R. Waldenberg utilizes this Maimonidean premise to resolve the issue of determining maternity in the case of an ovary transplant as mentioned by R. Sacks, and discussed by a number of respondents.¹⁶ R. Waldenberg asserts that according to Maimonides it is clear that once the ovaries are extrapulated from the female donor, the entire association between the ovaries and the donor's body is completely severed as the ovaries are considered dead flesh. Once these ovaries are implanted in another living body, they become new organs, and all their future relations and associations are to this living body alone.

Finally, R. Waldenberg explains, that man's existential identity and relations are not determined independently by the various parts of the body, no matter how important the organ is. Rather, it is determined by his spirit and soul, which comprise his essence. As R. Sofer correctly writes in his biblical commentary that a body is not a man but rather a sheath made of dust.¹⁷ In this material sheath lies man who is the "inner intellect," whose knowledge and reasoning is his principal character. R. Waldenberg continues:

It is the force which governs man that is man's essence, and all the limbs without exception, which are governed by this force are servile to this essence. And so did Maimonides write in his Guide: 'In this human individual there is a force that connects the parts of his body with the other, that governs them, provides every part of the body with what is needed for the safeguard of its well being, and wards off from it that which harms, namely, the force of which the physicians have clearly spoken and which they have designated as the force governing the body of living beings.' And furthermore, we have found in Maimonides' Guide, written that the term 'heart' is an 'equivocal term,' which designates thought, advice, will, and intellect.

And because this is so, it is clear that the heart as well submits before the identity and relation of the independent force within the organic body which governs it [the heart] as well, and through it [the force], it [the heart] receives its form according to the degree of its activity within him.¹⁸

In conclusion, R. Waldenberg recounts a midrashic disputation between the Sages, R. Eliezer and R. Joshua over which place in the body does wisdom reside.¹⁹ R. Eliezer maintains that wisdom resides in the head, while R. Joshua maintains that wisdom resides in the heart. It is stated there that King David agreed with R. Eliezer and King Solomon with R. Joshua. R. Waldenberg infers that all are in agreement that the residing place of the soul is in the mind. He cites R. Hayyim Volozhiner in his Nefesh ha-Hayyim who writes:

The residing place of the spirit is the heart..., however, the rational faculty is on the level of the soul, which teaches men knowledge and understanding of the holy Torah. Its principal residing place is in the mind, the vessel of thought. It is highest level among them.²⁰

Therefore, R. Waldenberg explains, even if we wish to associate man's existential reality with the "King" which governs him, we must associate this King more with the mind. As for the mind, there is verily no possibility of transplanting a mind to another body, as is the

consensus of many physicians.

R. Waldenberg's responsum is invaluable to our discussion for a number of reasons. Firstly, because he deals with a real and practical problem of establishing the identity of the recipient of a heart transplant. This is an important halakic question, as it has tremendous ramifications in determining his religious denomination as Jew or Gentile, the family and ethnic group to which he belongs, his classification within the community of Israel as Priest, Levite, or Israelite, fit or unfit, the people to which he is eligible for marriage, establishing paternity and maternity in the case of offspring, and a host of other classifications and categories upon which a plethora of permissible and forbidden halakic activity is contingent. Secondly, because R. Waldenberg clearly shows that in order to resolve this issue, one must involve oneself a priori in one of the most complex and potent philosophical puzzles in the history of mankind. That is, the problem of how to arrive at an ontological definition which accurately describes man's existential reality. What is it ultimately which defines man as 'man'? Only a keen philosopher with keen expertise and knowledge in the field of ontology could be competent enough to tackle the issue cogently. Thirdly, he bases his ruling upon Maimonides' Guide, which is a philosophical treatise. Yet, R. Waldenberg utilizes and incorporates these philosophical data as halakic source material for resolving issues of determining identities of persons, establishing maternity, etc. It is most fascinating indeed to note how a brilliant Halakist of R. Waldenberg's calibre incorporates Maimonides' discussion on the unity of the cosmos and his expounding of anthropomorphisms, as source material for which to render a halakic decision.

Trans-Sexual Surgery

In this same responsum, R. Waldenberg discusses another cognate issue and once again brings Terumat ha-Deshen to the fore:

It is a great endeavour, however, to research the phenomenon of a qualitative organic change in a man's body, such as the transformation of one's sex from male to female or vice versa. And according to what I have heard and has been published in various articles, operations of this sort are performed even today under special circumstances. In a qualitative change such as this, many problems verily develop concerning determining the identity and existential distinctiveness of such a person.

The entire halakic discussion of ascertaining the identity of a heart transplant patient is pertinent to resolving a very related halakic issue. Namely, to establish the identity of one who has undergone a complete hormonal transition from male to female.

R. Waldenberg cites the work of another respondent, R. Hayyim Abraham b. Samuel Miranda, who saw in the writings of a saintly Jerusalem sage, an illustration of similar occurrences of male-female transmutations.²¹ He also describes the matter how we do not find any differences between the characteristics of the male organs and female organs, except that the one's organs are internal and the other's organs are external ("for the female has internally a foreskin and testicles, although they are unlike the testicles of a male, etc.") Because this is so, the author questions whether this woman is obligated to undergo circumcision or not.

R. Waldenberg writes that he saw a similar question in the work of R. Joseph Palache concerning the divorce proceedings in such a case.²² He discusses the case of a man who married a virgin daughter of Israel and lived with her as husband and wife. After a few years it happened that she became completely transformed to a man. What is the law concerning this female, the wife of one's fellow man who became a male? Is her husband required to divorce her with a bill of divorce since his wife was "the wife of one's fellow man" (eshet ish), or perhaps it is not necessary, since she is no longer a woman but a man? In this regard R. Palache also discusses whether a woman who undergoes such a change can recite the daily morning prayer designated for a man: "Blessed art Thou, Oh Lord our G-d, King of the Universe, who has not made me a woman."²³

R. Waldenberg poses this question of whether a woman who becomes transformed to a man requires a bill of divorce is equally valid in the reverse case as well. When a man becomes transformed to a woman does his wife require a bill of divorce from him? And what if he becomes transformed to a man once again? R. Waldenberg divulges that R. Isserlein's responsum is eminently useful in resolving this issue. Drawing an analogy to R. Isserlein's responsum, R. Waldenberg explains that, just as R. Isserlein ruled only the "wife of one's fellowman" is forbidden to rewed, but not the wife of an "angel," similarly, only the "wife of one's fellowman" is forbidden

and not the wife of a "woman" (i.e., a man who became transformed to a woman).

R. Waldenberg further, bolsters his analogy the Terumat ha-Deshen by quoting R. Joseph Babad's Minhat Hinukh, where he explains R. Isserlein's ruling by saying that because matrimony could never take effect between a woman and an angel to begin with, therefore even an already existing matrimony would immediately become abrogated upon the man's transformation to angel.²⁴ Similarly, R. Waldenberg claims, just as matrimony would never take effect between two women to begin with, so is an already existing matrimony immediately dissolved upon the husband's transformation to woman.

R. Waldenberg's responsum clearly confirms that Terumat ha-Deshen is of no small practical halakic significance. Indeed, the ruling of Terumat ha-Deshen is a fundamental basis for resolving any issue in which a person undergoes transformation of any kind. For R. Isserlein establishes that once a person undergoes transformation, he no longer relates to his prior person whatsoever. Indeed all those respondents whom we have quoted in this work, who maintained that R. Isserlein's responsum only concerns Elijah's wife and does not pertain to other relations or relationships which Elijah pursues, would have to investigate thoroughly the identity of a heart transplant recipient, the identity of a person who undergoes a complete sex change, the identity of test tube babies, and the identity of all people who undergo various transformation of sorts, in accordance with their interpretation of Terumat ha-Deshen.

Similarly, we find many respondents who disagreed with R. Babad's interpretation of Terumat ha-Deshen upon which R. Waldenberg's ruling is based, as we shall see in the following section and understood Terumat ha-Deshen as saying exactly the reverse. Namely, that Elijah relates to his original status for all matters, which explains his observance of commandments. However, certain adjustments must be incorporated to include his new reality which explains, for example, why he is no longer required to divorce his wife. Thus, based on this interpretation, we find the exact opposite ruling of R. Waldenberg in Practical Medical Halaka stating:

If, in violation of Torah law, such a sex change operation was performed, the individual maintains his pre-surgical sex

with all its halakic ramifications.²⁵

The value of the respondents' discussion of the future marital status upon resurrection, reviewed in the last chapter, is similar to the value of what is learned from Terumat ha-Deshen. For in that question the respondents examine whether one's newly transformed existential state (i.e., life after death) reverts to the original marital status, or whether one is regarded as an entirely new entity from the moment of resurrection onward. Indeed, the very question and value of determining whether one who undergoes existential change relates to one's original or newly acquired status, originates in the Talmud. The same talmudic passage which R. Isserlein ingeniously cites in support of his ruling. Namely, the questions of "nonsense" which the Alexandrians addressed to R. Joshua b. Hananiah in tractate Niddah: "Does the wife of Lot convey impurity? Does the son of the Shunamite convey impurity?" According to R. Isserlein, the question of "nonsense" which the Talmud is essentially asking is: Does a person who undergoes transformation of being relate to his original existential status, or is he regarded as a new existential entity? It is here that we see that even questions which the Talmud classifies as "nonsense," contain vital halakic material. Possibly a more appropriate term for nonsense would be "metaphysical," or "transcendental" in nature.

The term "nonsense" was merely employed to describe a situation which is out of the ordinary ambit and natural course of events. This is clear, as the Talmud is not in the habit of entertaining nonsensical discussions upon its own admission. Rather, it is significantly beneficial for the Talmud and the respondents to pursue metaphysical discussions, as they are of practical halakic value in resolving transcendental issues, such as the many issues which involve a transformation of being from one state to another.²⁶

Definition of Widowhood

R. Joseph Bordjel (spelled also Burgel, 1791-1857), in his work, Va-Yikken Yosef, discusses a further practical consequence of Terumat ha-Deshen. R. Bordjel begins his discussion by questioning whether the wives of Elijah and R. Joshua b. Levi may be classified as "widows." More specifically, is a woman defined as a widow only in the event

of her husband's death? However, if her husband does not die but rather continues to live on another plane of existence, perhaps such a woman would not be classified as a widow? Or is a widow not only defined as a woman whose husband has actually died but also a woman whose husband no longer exists in this world?

The resolution of this question has many consequences. For example, a High Priest is forbidden to marry a widow. Would the High Priest be forbidden to marry such a woman as well? Another example, the widow of a king is forbidden to remarry. Were a king to merit the same fate as Elijah and R. Joshua b. Levi, would his wife also be forbidden to remarry?²⁷ In another example, if a man uttered a vow not to derive benefit from widows, would he be forbidden to derive benefit from these quasi-widows as well?

R. Bordjel resolves this dilemma by employing Terumat ha-Deshen and various talmudic passages to prove that a woman is no longer considered the "wife of another man" upon her husband's transcendence. Therefore, at the point in time of transcendence, not only does she not require divorce, she is not considered a widow either since there is no "matrimony" for her to become widowed from. Consequently R. Bordjel concludes these women are not widows and therefore, a High Priest may marry such a woman. However, regarding a king, the prohibition on marrying a widow or taking a king's widow is because this woman is "a vessel which was used by another man," and, therefore, it makes no difference whether the man who "used" her died or met some other fate. With regards to one who vowed not to derive benefit from a widow, the vow would only apply to a woman whose husband died and not to these women.

R. Bordjel's treatment of Terumat ha-Deshen raises an extremely important consideration concerning our work. If R. Bordjel is correct in concluding that a widow is not defined as a woman whose husband disappeared from earth and continues to live on another plane, but only as a woman whose husband died. Then, if she isn't a widow, why isn't such a woman whose husband disappeared from earth considered an Aguna (an abandoned wife, whose husband disappeared without divorcing her), who may not remarry any man, let alone a High Priest! Until now, most of the discussion, which we have seen concerning the difficulties contained in Terumat ha-Deshen revolved around one main

problem. Namely, that the Talmud only specifies two methods in which a marriage can become terminated, either by divorce, or through the death of either spouse.²⁸ So on what basis did R. Isserlein rule that man's transcendence to angel terminates the marriage, thereby introducing a third factor which is nowhere considered? To which most of the respondents seem to concur that Elijah's transcendence was equivalent to death, as his wife was affected by his transcendence as she would have been by his death. However, were that so, his wife should clearly be considered of equal status to a widow. Yet, according to R. Bordjel, none of the laws of widowhood applies to her! Therefore, the question remains, that if R. Bordjel doesn't consider Elijah's wife a widow, then her marriage did not become terminated by one of the two specified ways. Then why is she not considered an Aguna as any woman whose husband did not die but only disappeared who is forbidden to remarry any man?

It would seem that R. Bordjel understood that there is a third way in which a marriage can become terminated. And that is along the lines of R. Joseph Babad in Minhat Hinukh and cited in R. Waldenberg's responsum, who purports that once a marriage partner becomes transformed to an entity to which marriage to such an entity could not take effect, that marriage is automatically annulled and retroactively considered as if no marriage had ever taken place. Therefore, neither divorce, nor death, are necessary to terminate the marriage, as the marriage is regarded as if it never existed from the start. Possibly, R. Bordjel concurred with this view. However, there are many respondents who disagreed with Minchat Hinnukh's exposition, as we shall see in the next section. In which case we return to our problem that if a woman, whose husband disappeared from off the earth is not considered a "widow," then why isn't she automatically defined as an Aguna?

It seems that R. Aszod, in his responsum, in which he endeavours to find a source to justify R. Isserlein's ruling, was very much aware of this problem. For he shows that the talmudic source in Kiddushin, which permits a woman whose husband died to remarry, includes the case of a woman whose husband becomes an angel as well.²⁹ He does so by drawing a parallel between two types of widows: a widow whose husband died a natural death, and one whose husband became an angel. He

explains: "For the name 'widow' means solitary without husband." And, as we recall in the previous chapter, R. Aszod remarked earlier in the same responsum: "For it is the same whether his [Elijah's] body ascends and is concealed in the heavens, as when it is concealed in the ground."

In fact, R. Aszod's son, in his notes to his father's responsum thereon, researches and locates the source from where it is derived, that a widow of an angel is included in the general category of widows. Apparently, both R. Aszod and his son extended the denomination of "widow" to include a woman who is husbandless, even in the event that her husband did not die a mortal death, because otherwise she would certainly be defined as an Aguna woman. For an Aguna, is also a husbandless woman, who would certainly suit the description of being "solitary without husband."³⁰

In view of the fact that R. Aszod disagrees with R. Bordjel and extends the denomination of widows to include women who are husbandless though their husbands have not died, he would undoubtedly disagree with most of R. Bordjel's conclusions. Indeed, R. Aszod explicitly forbade a High Priest to marry even such a woman, in blatant contradistinction to R. Bordjel. The question which remains obscure is, although a certain parallelism exists between a woman whose husband died and a woman whose husband transcended to become an angel, an even greater parallel seems to exist between an Aguna, whose husband deserted her going off to a distant country beyond the sea, to a woman whose husband abandoned her, in transcending to live in Eden. Certainly each woman equally suits the description of being solitary without husband?

Scientific Location of Paradise

Possibly for this reason we find that R. Teomim in the same responsum cited in the previous chapter, states that a married woman is prohibited to other men only as long as her husband resides in this world. That is to say, that even if her husband disappears, she is only defined as an Aguna if her husband resides somewhere in this world. However, if her husband resides in another world, despite the disappearance, his wife is not defined as an Aguna. This exegesis, however would obviously find difficulty with the theological school

which maintains that Paradise is located somewhere in this world.³¹ For if it is so, the wives of all these prominent persons enumerated in Derekh Erez Zuta, who merited Paradise during their lifetimes, should be prohibited in marriage to any man as they are all defined as Agunot. Possibly, herein lies still a further consideration which might have induced one of the major Elijah schools to maintain that the bodies of Elijah and his colleagues actually died and it was only their souls which merited Paradise. As otherwise their wives would be classified as Agunot rather than as widows.

The uncertainty of the exact location and fate of those meriting Paradise should itself place these women in the category of Agunot since an Aguna is by definition a woman whose husband's latter end is uncertain. For this reason alone it becomes halakically imperative to resolve the theosophical notion of Paradise, to ascertain its exact location and determine the mode of life pursued by its inhabitants, as it throws light on the whole question of who is defined as an Aguna woman.

The question of verifying the exact location of Paradise is especially significant today where science has sufficiently progressed to have enabled man to reach and map every spot on earth, each place with its own distinct line of latitude and longitude. In the process man has discovered and scientifically verified that there is no place on earth corresponding to Paradise. This discovery presented a severe challenge to the rabbinic tradition, which maintained that Paradise occupies a place in this world. In light of this discovery R. Joseph Hayyim was asked to impart his views on the matter. In a most brilliant responsum he describes the limitations of "scientific certainty" and outlines the differences between scientific and rabbinic truth, explaining how Paradise may well exist on this earth despite scientific evidence to the contrary.³²

In summary, we have demonstrated in this section how the Elijah issue has enormous practical ramifications in resolving a good number of real halakic problems. In spite of this, most of the cases which we have seen pertain to a highly sophisticated scientific age, where because of the advancement of science, questions which deal with changing existential status, such as the recipients of heart transplants, test tube babies, transsexual surgery and the like are today

practical and relevant. However, during the time of the Shulchan Arukh (16th century) these questions were far from practical, as it is doubtful whether such a specialised period of scientific advancement was even conceived of. Yet, strangely enough, we find that this responsum of Terumat ha-Deshen appears in the Shulchan Arukh and its appended glosses, even though the Shulchan Arukh discusses only those issues which he felt were practical and relevant. As we have shown in Chapter I, the Shulchan Arukh was not in the habit of entertaining theoretical abstract notions, since this was not his purpose in compiling a much needed synthesis of practical Jewish Law.

VI. THE RELEVANCE OF TERUMAT HA-DESHEH'S RESPONSUM

2. TERUMAT HA-DESHEH AND THE SHULCHAN ARUKH

The Aguna Problem

In seeking to resolve the question of what practical value was Terumat ha-Deshen's responsum to the Shulchan Arukh and his colleagues, we can possibly gather a clue by paying close attention to the section of the Shulchan Arukh where the responsum is redacted. We find that it is cited several times in the section which deals with the laws of the Aguna woman.³³ The first instance where the responsum is mentioned is in Darkhei Moshe, the glosses prepared by R. Moses Isserles to Tur/Beit Yosef, the text upon which R. Joseph Caro based his Shulchan Arukh. R. Jacob b. Asher writes in his Tur:

A woman whose husband went off to a province of the sea and testimony was given that he died, even if by one witness, even if the witness is a slaveman, or a slavewoman, or a relative, she is permitted to rewed.³⁴

In an appendage to the words, "province of the sea," R. Isserles glosses in Darkhei Moshe:

Mahari [R. Isserlein], wrote in his Rulings, number 102, 'The spouse of Elijah, the prophet, or R. Joshua b. Levi is permitted, for she is not called eshet ish [the wife of one's fellowman] but rather the wife of an angel. And she is permitted to rewed. And the difference is, if a man were to merit [a similar fate] as them.' Until here are his words.³⁵

The mere fact that R. Isserles redacted R. Isserlein's responsum in juxtaposition to the words "province of the sea" indicates that R. Isserles saw some connection between the case of Elijah's wife to the case of a woman whose husband went off to a province of the sea and was reported to have died. Feasibly, one could say, that R. Isserles is perturbed by why the Halaka is so lenient in establishing the husband's death, in the event of his disappearance that it accepts even poor evidence of a single witness, such as a slave or a relative? R. Isserles alleviates this dilemma by resolving that Elijah's disappearance to Paradise is similar to a disappearance to an unknown province of the sea. Not only has Elijah's death not been established, but there is even evidence that he continues to live, and yet, R. Isserlein permitted his wife to rewed. Certainly then, where there are grounds

to establish his death, albeit poor as the evidence may seem - i.e., the testimony of a relative or a slave - surely there is room to be lenient in establishing the husband's death. Had R. Isserlein considered Elijah's wife an Aguna we possibly would have been more stringent in establishing the husband's death in the event of his disappearance.

This seems to be the approach of R. Samuel ben Uri Shraga Phoebus, (second half of the 17th century) in the second instance where Teruamt ha-Deshen is cited. Quoting Tur verbatim, R. Caro codifies in Shulchan Arukh:

A woman whose husband went off to a province of the sea and testimony was given that he died, even if by one witness, even if a slaveman or a slavewoman, even if a witness [heard his testimony] from another witness...³⁶

R. Samuel ben Uri Shraga Phoebus enters in his gloss, Beit Shemu'el to Shulchan Arukh, beginning with the words "even if a witness from another witness...":

And so it is in the strict sense, a witness can bring testimony from another witness to establish that he is alive. So it is written in the Responsa of Maharashdam [R. Samuel ben Moses de Medina, 1506-1589], number 49. The wife of Elijah, the prophet, or the wife of R. Joshua b. Levi is permitted, for she is not called an eshet ish [the wife of a fellowman], but rather the wife of an angel. And the difference is, if a man would merit [a similar fate] as him. Maharai. And this is redacted in Darkhei Moshe.³⁷

At first glance there seems to be no connection between the two respondents, Maharashdam and Maharai, whom Beit Shemu'el cites under the same subscript. One wonders why Beit Shemu'el cites Maharai at all in this context. But at closer inspection one discerns an important principle which emerges from Maharashdam's responsum, namely, while the Halaka is uncommonly lenient in establishing the husband's death by relying even upon the poor evidence of a witness who heard his testimony from another witness, at the same time the Halaka is also quite strict in establishing that the husband is still alive by relying upon the same kind of poor evidence! In that case, Beit Shemu'el wondered, if there is even the slightest evidence, be it poor as it may seem, that the husband is still alive, i.e., the mere possibility that he may have merited a similar fate as Elijah, his wife should be forbidden to remarry. And this minimum level of

evidence always exists whenever a husband disappears, as Maharai himself writes, that the difference that his ruling makes is if another man were to merit a similar fate. Perhaps then the existence of this very possibility is reason enough to be strict and establish that the husband is alive, unless we can positively confirm the contrary. Therefore, Beit Shemu'el rejoins by citing Terumat ha-Deshen who rules that even were the husband to merit such a fate, his wife would still be permitted to remarry.

It is in this vein that Beit Shemu'el and Darkhei Moshe seem to have the same interest in redacting Terumat ha-Deshen. They both regarded Terumat ha-Deshen as extremely useful in understanding the permissive nature of the Halaka in the case of an Aguna woman whose husband suddenly disappeared. In fact it is entirely possible that Scripture itself already intimated that Elisha and the sons of the prophets had argued over this very issue; As it is related in II Kings 16:

And they [the sons of the prophets] said unto him [Elisha]: 'Behold now, there are with thy servants fifty strong men; let them go we pray thee, and seek thy master [Elijah]; lest peradventure the spirit of the Lord has taken him up, and cast him upon some high mountain, or unto some valley.' And he [Elisha] said, 'Ye shall not send.'

The sons of the prophets claimed that before relating to Elijah as if he were no more, and before dismissing Elijah's wife from being considered a possible Aguna, maybe a greater degree of evidence is required in order to establish positively that Elijah is nowhere to be found - "lest peradventure etc." Elisha responds that the laws of evidence concerning the Aguna are not so stringent to warrant such a degree of positive identification and testimony. Therefore, "You shall not send."³⁸ Hence the codifiers find R. Isserlein's responsum useful in assessing the type of evidence necessary to confirm that a woman has changed her status from an Aguna to an Almana.

Doubtful Marriages

The next instance where we find Terumat ha-Deshen redacted by a number of codifiers is in connection with the first law with which Shulchan Arukh begins this section of jurisdiction. Namely, when married women in general are permitted to remarry:

A married woman is included with women who are forbidden on account of consanguinity and no [other] marriage is valid with her. When is this said? Concerning a woman who is certainly married. However, when she is doubtfully married or doubtfully divorced, then [another] marriage is valid with her because of a doubt and she requires a bill of divorcement from both of them [i.e., both husbands.]³⁹

Shulchan Arukh establishes that when a woman is certainly married, no other marriage is valid with her. However, when a woman is doubtfully married or doubtfully divorced, another marriage can become valid because of the dubious nature of her first marriage. In other words, one of the ways of permitting a married woman to remarry is to prove the dubious nature of her first marriage. This is an important criterion for dealing with the problem of an Aguna, who would like to remarry in the absence of her husband. For if we can attack the very foundation of the first marriage and dispute whether in fact she had contracted a valid marriage from the first, then there is already grounds to possibly permit another marriage.

It is in this context that the codifiers see R. Isserlein's responsum of value to Shulchan Arukh's law. For R. Isserlein establishes the type of doubt on which basis we can attack the validity of the first marriage. That is, a doubt which arises from the contracting of the marriage (ishut), or the granting of the divorce. However, a doubt which emanates from the personhood (enoshut) of either partner of the marriage, does not constitute the type of uncertainty that would define the marriage or divorce as a doubtful one. For when the personhood is in doubt to the extent that the marriage partner is no longer considered a 'man,' the entire gamut of the legal aspects of matrimony are no longer applicable, since the matrimonial laws are binding solely between a man and a woman. Thus R. Isserlein proves from Elijah that in order to permit a woman to remarry on the grounds of the dubious nature of her first marriage, we would first have to establish that the uncertainty lies in the contracting of her marriage rather than in the personhood of her spouse.

Changes in Marital Status

Another reason why the codifiers redact R. Isserlein's ruling in connection with this first law of Shulchan Arukh is because of an important principle which emerges from here: Namely, that where a

woman's marriage to another party does not take effect, the other party is not required to grant a bill of divorce. This principle is operable in R. Isserlein's responsum. For one way to determine whether a person is required to divorce his wife is to establish a priori whether a marriage to that person is valid from the first. Just as Shulchan Arukh's principle establishes that there is no need for divorce if the marriage itself is invalid. Similarly, in Elijah's case, since marriage to an angel is invalid, therefore, there is no need for divorce. Thus, R. Isserlein's responsum is an illustration of Shulchan Arukh's principle, using a different model. Thus R. Isserlein's responsum illustrates that in determining any question regarding whether a woman requires a divorce, it is useful to employ Shulchan Arukh's principle to establish whether a marriage can become effective in the first place.

When one considers the homology between Terumat ha-Deshen and Shulchan Arukh's law more deeply, one sees even a greater connection.

Shulchan Arukh boldly affirms that where a valid marriage was contracted between Mr. and Mrs. X, should Mr. Y come along and propose marriage to Mrs X, the new marriage would be invalid and Mr. Y would not be required to divorce Mrs. X/Y. However, Shulchan Arukh does not establish what the Halaka would be in the event that Mr. X himself experienced an existential transition so that he became Mr. Y, i.e., a person with whom a valid marriage could not be entered into, had he been Mr. Y from the start. Would Mr. X/Y now be required to grant his wife a divorce? The resolution of this issue is the very ruling of Terumat ha-Deshen. For R. Isserlein establishes that once Mr. X becomes transformed to Mr. Y (i.e., "a person with whom etc."), the marriage is retroactively invalidated and considered as if no marriage was ever contracted between Mrs. X and Mr. X/Y. R. Isserlein's responsum is, therefore imminently relevant to the Shulchan Arukh in that it accepts Shulchan Arukh's principle and extends it one step further. R. Isserlein's responsum concerning Elijah's wife is, in this regard, paradigmatic for resolving any issue concerning a change in marital status, where marriage to the same party can no longer take effect even in the event where marriage had been effectuated beforehand.

Apostasy

R. Joseph b. Moses Babad (1800-74) in his Minhat Hinnukh illustrates many relevant instances where changes in marital status are likely to occur and how R. Isserlein's responsum is instructive in resolving them. In one instance R. Babad recounts the opinion of the rabbinic authorities who maintain that an apostate is not eligible for marriage.⁴⁰

R. Babad avers that according to this opinion, if a man became an apostate he would not be required to divorce his wife. For, although their marriage was originally valid before the apostasy, since marriage to an apostate cannot take effect, the marriage is immediately dissolved upon his apostasy.

R. Babad's averment is confirmed by R. Meshullam b. Samson Igra (1752-1802), in his Responsa, Igra Rama. Moreover, R. Igra claims, a man who apostatizes subsequent to his marriage would not even be permitted to act as an agent for contracting a marriage under such circumstances, since a person can only act as an agent for marriage so long as he himself is eligible for marriage.⁴¹

Sotah

R. Babad claims that the correctness of R. Isserlein's ruling is corroborated by Rashi, who utilizes the same principle to explain a similar instance in tractate Yebamoth concerning the Sotah woman (a faithless wife).⁴² Rashi proves that the Sotah's betrothal is valid from the fact that her betrothal did not become automatically annulled upon her becoming a Sotah. Rashi establishes that the only reason a Sotah's marriage is valid is because the Torah requires her husband to grant a divorce in order to terminate the marriage. Had the Torah not stipulated that a Sotah requires a divorce her marriage would have terminated automatically upon her becoming a Sotah. Hence, Rashi corroborates R. Isserlein's thesis.

Consanguineous Relatives

R. Aryeh Leib b. Joseph ha-Kohen Heller of Stry, in his halakic commentary to Shulchan Arukh entitled Avnei Millu'im applies Rashi's principle concerning the Sotah, to all women who initially had valid marriages, and during the course of their marriage became prohibited

to their husbands on account of a negative precept (isur lav).⁴³

R. Akiba considers all women who are subject to the penalty of negative precepts on a par with those who are subject to the penalty of karet.⁴⁴ Accordingly, their marriages would automatically terminate upon the woman becoming prohibited to her husband by a negative precept, despite the prior validity of such a marriage. Avnei Milluim utilizes this principle to explain a question advanced by the Tosafoth as to why, in R. Akiba's view, women who are considered consanguineous relatives on account of a negative precept are not eligible for halizah and levirate marriage.⁴⁵

R. Babad himself applies R. Isserlein's thesis to explain another important aspect of Jewish Law concerning consanguineous relatives. Shulchan Arukh codifies in Eben ha-Ezer:

The daughter of a man's wife, and her [i.e., the wife's] daughter's daughter and her son's daughter, are forbidden to him from the Torah. And [this law concerns] only the daughter of his wife. However, the daughter of a woman whom he raped is permitted to him after her death.⁴⁶

R. Babad discusses the conditions under which the prohibition as well as the Torah penalty of burning may be incurred.⁴⁷ R. Babad utilizes R. Isserlein's principle to demonstrate that in certain instances, if marriage to one of these women would not take effect while marriage to the other could, then even if the valid marriage becomes automatically invalidated, the man could not incur the prohibition of having intercourse with a woman and her daughter. For, according to R. Isserlein, a marriage can become invalidated despite its earlier validity. Therefore, the same principle applies here.

Eligibility for Marriage

Thus the halakic relevance of Terumat ha-Deshen to Shulchan Arukh, according to R. Babad, is twofold: Firstly in establishing that Shulchan Arukh's law, which absolves one from penalty where a valid marriage was not contracted, also applies in the case where a valid marriage becomes automatically invalidated. Secondly, since Shulchan Arukh establishes, that in the event that the former marriage is invalid these other relatives would be eligible to the same man in marriage. Then, according to Terumat ha-Deshen, the relatives of that woman whose marriage automatically terminated, would now become

eligible to her former husband in marriage. Therefore, R. Isserlein's responsum is considerably valuable in establishing which women are eligible for marriage as well as which relations are to be considered illicit.

Thus, it is evident, that R. Isserlein's principle, that a marriage which was previously valid can become automatically invalidated, has far-reaching consequences in Jewish Law. For this principle concerns the Sotah, the apostate, exemption from levirate marriages and halizah, consanguineous relatives, and eligibility for marriage. However, it is important to emphasize that R. Isserlein does not formulate such a principle in his responsum and this principle is solely R. Babad's interpretation of R. Isserlein's responsum.

According to R. Babad's interpretation of R. Isserlein, we regard any marriage during which one of the partners reached a stage to which a new marriage to that party cannot be effective, as if the existing marriage were being entered into at that moment. Therefore, the existing marriage becomes invalid just as a new marriage would be.

Other Opinions

However, many of the respondents differ with R. Babad's interpretation of R. Isserlein's responsum. In fact, R. Babad's own grandfather, R. Joshua Heschel b. Isaac Babad seems to have differed with his grandson in his compendium of responsa entitled Sefer Yehoshua. In one of these responsa, R. Joshua Heschel Babad writes:

And the wife of an angel is different, for there is no marriage altogether. For if an angel betrothed a woman, certainly we do not regard the marriage [valid] at all. Which is not the case of Elijah who married when he was a man, and there is no death to permit her. Who permitted her?⁴⁸

R. Joshua Heschel Babad clearly establishes, in opposition to his grandson, that there is a vast difference between an angel about to enter a marriage for the first time, to a man who had already contracted a valid marriage, and subsequently became an angel. For, in the first case, there is no marriage at all. But in the second case there is an existing marriage. Consequently, according to R. Joshua Heschel Babad, one cannot regard an existing marriage as if it were being entered into at that point.

It is probably because of the reservation that R. Joshua Heschel Babad expresses that many of the respondents did not interpret R. Isserlein's ruling along the lines of Minchat Hinnukh. Thus it stands to reason that all the respondents who disagree with R. Joseph Babad's interpretation of Terumat ha-Deshen would disagree with all the halakic consequences contingent on the application of this principle. Since a marriage which was previously valid would, accordingly, not become automatically terminated in the event of a change in marital status, then, all the halakic conclusions which were based on the former principle would be reversed.⁴⁹

As we recall in the previous section, R. Waldenberg ruled that if one of the marriage partners underwent trans-sexual surgery, no divorce is required since the marriage is regarded as if it were being entered into at the time of the change, when it cannot be effected. This ruling was completely based upon R. Babad's interpretation of Terumat ha-Deshen. According to the opposers of this view, however, R. Waldenberg's ruling would be incorrect. As according to their opinion we do not regard the marriage from the moment of change in marital status, but rather we consider the marriage from the time of its inception. Consequently this view would also regard any change in existential status not according to the new status but rather according to the original one. This position obviously affects all the other halakic consequences discussed in that section. For this reason we find, as mentioned earlier, the following ruling which appears in Practical Medical Halaka:

If, in violation of Torah Law, such a sex operation was performed, the individual maintains his pre-surgical sex, with all its halakic implications.⁵⁰

This ruling is in blatant contradistinction to all the respondents who, based on R. Joseph Babad's interpretation of Terumat ha-Deshen, ruled that any person who had undergone any existential change could be regarded according to his new existential status and not according to his pre-transitional status. R. Tendler's ruling in Practical Medical Halaka was obviously based upon R. Joseph Babad's grandfather, R. Joshua Heschel Babad, and all other respondents who disagreed with

with Minchat Hinnukh's interpretation of Terumat ha-Deshen.⁵¹

At this point it should be quite obvious that R. Isserlein's responsum concerning Elijah's wife and the proper understanding of this ruling was immensely significant in determining a wide range of practical halakic problems from the medieval days of Shulchan Arukh until the most advanced days of an ultra-supersonic era which will bring to effect existential changes which even today have not yet been concerned

The Katlanit Woman

Before concluding this section, it is worthwhile mentioning yet another law in Shulchan Arukh in which Terumat ha-Deshen is of substantial significance and which has a direct bearing upon the main subject of this work. Shulchan Arukh codifies in Eben ha-Ezer:

A woman who was married to two [successive] men who [both] died, may not remarry a third time. For she has already established herself as a woman whose husbands die.⁵²

R. Isaac Zevi Lebovic in his work Shulchan ha-Ezer discusses this law in regards to Terumat ha-Deshen:

And in the matter of a Katlanit [a woman whose husbands died] she [i.e., Elijah's wife] is not considered a Katlanit in this case. Since it is explained in Eben ha-Ezer that even in death itself, [it is] only if they died by natural causes. But if [they died] by some other means, the law is lenient. Especially here in our case being that he did not die altogether.⁵³

R. Lebovic discusses the law concerning a woman whose first husband died and whose second husband transcended to become an angel. Is such a woman accorded the status of a Katlanit who is not permitted to marry a third time, or is this case different? On the one hand, according to R. Isserlein's responsum Elijah's transcendence is halakically considered as if he had died and his wife is considered a widow. For this reason such a woman should be accorded the status of Katlanit. On the other hand, as we have seen among the various analyses of the respondents in dealing with R. Isserlein's responsum, there exist many laws for which Elijah is still considered halakically alive. Especially in our case where the Halaka affords a special leniency for women whose husbands died other than by natural means, such a woman would certainly be permitted to remarry a third time.

When considering Shulchan Arukh's law in light of Terumat ha-Deshen

we find that Terumat ha-Deshen is important in verifying the general status of the Katlanit woman. Since as a result of Terumat ha-Deshen we must now verify whether a Katlanit is a woman who has established herself as the cause of her husbands' deaths or whether she is a woman who has established herself as the cause of an unprecedented termination of the marriage relationship. If a Katlanit is a woman who has established herself as the cause of the death of her husbands then certainly a woman whose second husband transcended to an angel would not be considered a Katlanit. However, if a Katlanit is a woman who has established herself as the cause of a premature termination of the marital relationship, then a woman whose second husband became an angel would also be considered a Katlanit and she would be forbidden to remarry a third time. This problem is very similar to the central problem of our thesis. In particular, whether a widow is considered a woman whose husband died or whether she is a woman whose marriage relationship terminated through her husbands' departure from this world. And in general, whether the commandments are a function of one's existential state, i.e., of either being alive or dead, or whether they are a function of one's relationships vis-a-vis G-d and his fellowman.

In the case of the Katlanit woman, R. Lebowic divulges that Shulchan Arukh has determined that a Katlanit is only defined as a woman who was responsible for her husband's death through natural causes. In no other instance is she considered a Katlanit. Certainly not in the case of her husband's transcendence, whereby he continues to live. Thus the Halaka has determined that a Katlanit is defined as such solely in the event of the death of her husbands, and not when the marital relationships become terminated prematurely.

The application of Terumat ha-Deshen in the case of a Katlanit is of considerable utility in verifying our earlier problem of whether an Almana (widow) is a woman whose marital relationship became abruptly terminated through her husband's departure, or whether she is necessarily defined as a woman whose husband died. For if a Katlanit is to be defined as a woman whose husbands died, it stands to reason that the same would be true of a widow. For every Katlanit is at least a widow.

Possibly then, Terumat ha-Deshen could additionally be extended to

verify our general question and resolve that obligation in Mitzvot is contingent upon one's existential status and not upon the relationships which one pursues. On the other hand, it is possible that the Katlanit may well be regarded as an isolated instance which has no bearing whatsoever upon the general problem of our thesis and in particular to the case of a widow. For a Katlanit is not simply a woman who was widowed twice. As a widow might verily be defined as one whose marriage relationship became abruptly terminated. However, a Katlanit is a much more specific classification and is only appropriate for a woman who lost her husbands specifically through natural death.

Thus R. Isserlein's responsum is of great practical significance not only in verifying the exact status of the Katlanit woman as codified in Shulchan Arukh, but also in illuminating the general question of whether the commandments are contingent upon man's existential reality or upon the various relationships which man pursues, wherever the resolution of this question has consequences in Jewish Law.

VI. THE RELEVANCE OF TERUMAT HA-DESHEN'S RESPONSUM

3. DECODIFYING TERUMAT HA-DESHEN

Elijah's Wife: A theoretical or Practical Problem?

We have seen how the responsum of Terumat ha-Deshen was of immense practical relevance on various levels. However, these levels of relevance are essentially outgrowths of the responsum. In other words, these are areas where the application of Terumat ha-Deshen's ruling can be useful in resolving various halakic problems. However, we have not as yet seen whether Terumat ha-Deshen himself was confronted with a real practical issue or whether he was merely entertaining theoretical speculations.

On the one hand, the very fact that Terumat ha-Deshen considers this problem in the second part of his work, which consists of actual cases as compared to the first portion of his work, in which queries were posed by the author himself, would seem to indicate that R. Isserlein is dealing with a real practical issue.⁵⁴ Yet, the issue itself concerning Elijah's and R. Joshua b. Levi's marital status subsequent to their transcendence seems to lend itself to pure abstraction.

Perhaps one way of ascertaining whether Terumat ha-Deshen is dealing with a practical or theoretical problem is to investigate whether or not Elijah in fact had a wife at all. If it can be proven that Elijah remained unmarried then we can reasonably conclude that although this question has practical halakic consequences, the question itself is hypothetical. The questions which would then require investigation would be why Terumat ha-Deshen concerns himself with theoretics and why does he enter this question in the practical section of his work.

Was Elijah Celibate?

On the one hand, it would seem logical to assume that the reason that there is absolutely no mention of Elijah's family in the Bible is because Elijah never married. Certainly, if Elijah had no wife, then he would have no family. Indeed, this is the opinion of Louis Ginzberg who concludes that Elijah was celibate.⁵⁵ On the other hand,

the absence of biblical reference to Elijah's family is not in itself sufficient proof to establish his celibacy. As we recalled in the earlier chapters of this work, there are many respondents who endeavoured to identify positively Elijah's genealogy despite the fact that there is no biblical reference to Elijah's parentage. The lack of reference to human parentage is not enough evidence for these respondents to conclude that Elijah originated as an angel. The Bible only records details which are significant. If certain details are not recorded it is because these details are not important to the biblical narrative, and not necessarily because the details do not exist.

As we called upon the Geonic Responsa in Chapter III.1 to establish Elijah's genealogy in the absence of biblical evidence, so must we call upon the Geonic Responsa either to confirm Elijah's marriage or verify his celibacy. In a responsum of R. Yehudai Geon we find the following exposition:

'And who is their father?' [I Samuel 10:11]; What is [the meaning of] who is their father? He said to them, And is there a father for words of Torah? Is it not already written: 'What is his name, and what is his son's name, if thou knowest?' [Prov. 30:4] - Hence, Torah is not an inheritance. That is what he said: See how great Moses was that he ascended to heaven; Aaron, that he gathered the wind; Elijah, that he found the waters; Messiah, that he established all the ends of the earth. Did they have children who were as great as them, that could do the same? 'What is his name and what is his son's name if thou knowest?' Know here that Torah is not an inheritance.⁵⁶

From R. Yehudai's interpretation of the proverbial verse it is clear that Elijah was not celibate, as according to the Geon, the verse establishes that prophecy is not inheritable by recording that among others, Elijah's children as well never reached the same spiritual greatness as their father. Clearly, if Elijah had no children, no proof could be mounted from Elijah to support that prophecy is not transmittable from father to son. On the other hand, we find the following passage in Zohar:

R. Nathan enquired of R. Jose b. R. Hananiah one day: He said to him: Did Elijah have offspring or not? He said to him: He [Elijah] had another thing. And it is written, 'Touch not my anointed ones, And to my prophets do no harm [al tareiyu]. What is [the meaning of] al tareiyu? Do not make yourselves loved ones [reiyim] and friends to my prophets. For the Holy One blessed be He, has chosen them and has separated them from

Israel to serve Him and He brought them into His palace. A minori ad majus for someone who is an angel in heaven, do you ask of him?⁵⁷

Zohar explains that because of the nature of the special relationship which exists between the prophets and G-d, the people must separate themselves from the prophets.⁵⁸ All the more so is this true of Elijah who is not only a prophet, but also an angel. Thus Zohar establishes that Elijah was most certainly celibate because of the very special relationship which he enjoyed with G-d contingent on his being an angel. In fact, R. Joseph Bordjel, whereupon being asked to verify whether the wives of Elijah and R. Joshua b. Levi are considered widows, begins his discussion by quoting this very passage from Zohar. R. Bordjel questions why the enquirer sought to verify whether Elijah's wife is considered a widow in view of the fact that Zohar clearly establishes that Elijah had no wife and was indeed celibate!⁵⁹

Notwithstanding the above, certain Halakists seem to side with R. Yehudai Geon and consider it conceivable that Elijah could have taken a wife and begat children. R. Isaac Lebovic writes in his halakic codex Shulchan ha-Ezer that one of the consequences of R. Isserlein's ruling is that Elijah's wife would be obligated to wait the threemonth period that women must tarry before marrying to ascertain paternity of any offspring. R. Leibovic states that all the reasons which the Talmud specifies for a woman waiting the three month period before remarriage, apply equally to Elijah's wife.⁶⁰

Similarly, the controversy between R. Joseph Babad and his grandfather R. Joshua Heschel Babad, earlier reviewed, who argue whether there exists any difference between an angel who wished to enter a marriage with a human for the first time and a person who already contracted a valid marriage and subsequently became an angel. In either case, the very fact that both R. Joseph and R. Joshua Heschel Babad discuss the matter of marriage between transcended humans to ordinary humans seems to suggest that each considers at least the possibility of such a marriage as conceivable.

Thus we have uncovered two schools, one which considers the possibility of Elijah having a wife and children entirely conceivable and another school which authenticates that angels are celibate and therefore it is impossible to maintain that Elijah had a family. It would seem

that this difference of opinion over whether it is possible for angels or transcended man to have a wife or children depends upon the resolution of a more general question. Namely, does an angel or a man who transcended to become an angel require a wife to fulfill his needs and to be partner to him?

The following encounter is related in Talmud:

R. Jose met Elijah and asked him: It is written, 'I will make a helpmeet for him.' How does a woman help a man? He [Elijah] responded: If a man brings wheat, does he chew the wheat? If flax, does he put on the flax? Does she not bring light into his eyes, and put him on his feet?⁶¹

R. Hanokh Zundel b. Joseph (d. 1867), in his midrashic commentary Anaf Yosef was greatly disturbed, about the simplicity of Elijah's reply.⁶² Why were none of the Sages in the academy capable of offering such a simple reply? Was it necessary to engage Elijah? Therefore, Anaf Yosef explains that R. Jose was inquiring as to whether a woman is a helpmeet in heavenly matters as well as in earthly matters. Elijah responded that a woman is only a helpmeet in earthly matters, i.e., converting his wheat into bread and spinning his flax into clothing, but not in heavenly matters.

According to Anaf Yosef we can well understand why none of the Sages were capable of responding to R. Jose's question and why Elijah alone was able to reply. For only Elijah was in a position to evaluate whether a woman could be of any help to a heavenly entity and to assist him in heavenly matters. From Elijah's response it would seem that as an angel he remained secluded from his wife as she could be of no help to him in attending to his heavenly affairs. For the woman was only created as a helpmeet for man to assist him in earthly matters, for which Elijah is no longer needful.

We recall how Zohar proved that angels are celibate from the fact that even the prophets were separated from Israel for G-d's service. Indeed the question of whether heavenly figures are in need of a wife concerns the prophets as well. For we find a fervent debate launched by Miriam and Aaron against Moses over this matter, recounted by the Tosafoth. Miriam and Aaron rebuked Moses for separating from his wife. As they claimed that they too were prophets and nevertheless had no need to separate themselves from their spouses. Yet the Talmud

clearly affirms that Moses was perfectly justified in separating himself from his wife, since the separation was necessary for Moses to maintain his level of prophecy.⁶³ When one considers that both Miriam and Aaron actively continued their marital relationships while simultaneously pursuing prophetic careers, the question which then arises is, when does a prophet reach a level of prophecy that he no longer requires a helpmeet and must separate himself from her? Or conversely, what is it about a woman which does not enable her to function as a helpmeet once her husband has attained such a level of prophecy? And more, what is it about a wife which seems to hinder her husband from maintaining or attaining higher levels of prophecy? Especially when considering that Miriam herself was a prophetess?

Yalkut Reuveni states that if it was necessary for Moses to separate from his wife so that Moses could unite himself with Shekinah that 'she' may descend upon the earth for his sake. On the other hand, we find that Yalkut Reuveni speaks disparagingly of Moses' separation from his wife, faulting Moses for failing to fulfill his conjugal duties. Yalkut Reuveni claims that Moses was "almost perfect" and that he would have been "entirely perfect" had he fulfilled his conjugal duties.⁶⁴

It is in this matter of the prophet performing conjugal duties that we find a difference of opinion concerning Elijah himself. Yalkut Shimoni interprets the verse, "And she said to Elijah: What have I to do with thee, O thou man of G-d? Art thou come unto me to bring my sin to remembrance, and to slay my son?" to mean that the Zarephite woman had rebuked Elijah, claiming that her son had died as punishment for Elijah's coitus with her.⁶⁵ Most of the midrashic commentaries dismiss her accusation as preposterous, explaining that the woman was ranting and raving irrationally because she was overcome by the grief of her son's death. However, R. Abraham Abele b. Hayyim ha-Levi Gombiner, author of Magen Avraham (gloss to Shulchan Arukh), writes in his midrashic commentary Zayit Ra'anan that the Talmud records an archaic practice that, when Rabbis would travel to deliver their discourses in strange towns — women were set aside for them to meet in private, because of the injunction that a man may not reside alone without a wife. These women would have to wait a seven-day period in case their excitement would cause them to

menstruate.⁶⁶ R. Gombiner suggests that possibly the Zarephite woman was set aside for Elijah to wait seven days. Therefore, she uttered her accusation. Ostensibly, if there was need for a prophet such as Elijah to separate himself from women, there would be no place for R. Gombiner's explanation. For Elijah would have distanced himself from the wife of his native town, much less would there have been any need to set aside another woman for him in a strange town. Apparently, R. Gombiner did not regard woman companionship as a deterrant to Elijah's prophetic career. On the other hand, the other commentators considered the very thought of Elijah's cohabitation with any woman as totally ludicrous. Perhaps it is in regards to Elijah's ambivalent relationship with women in addition to Elijah's other similarities to Moses, that he is designated "the disciple of Moses" as well.⁶⁷

Although, as we mentioned earlier, the absence of any biblical reference to Elijah's wife and children is not sufficient evidence of Elijah's celibacy, Elijah figures as a symbol of celibacy and chastity in the apostolic pseudepigraphie. Thus we find in the Pseudo-Titus Epistle:

Why takest thou, O man, a woman as a servant? Consider the conduct of [our] holy ancestors. Thus Elias, a noble man who lives in body, took a young man as a servant, to whom also he left his mantle as a holy keepsake when he was taken up into Paradise in a chariot of fire.⁶⁸

The epistle considers even the keeping of connections with women servants as sin.⁶⁹ The epistle continues with an allusion to Genesis which states: "And the sons of Elokim saw the daughters of men that they were fair and they took them wives of all whom they chose," claiming that the sons of Elokim abandoned their heavenly abode, enticed by lust in pursuit of the daughters of men, which caused them to forfeit their angelic character.⁷⁰

It seems almost too paradoxical to observe how Elijah, whose own marriage seems to be a source of contentions deliberation, should be charged with the sacred task of recording every marriage in the heavenly marriage register.⁷¹

Once again we must reiterate that the real question pertinent to resolving the issue of Elijah's celibacy or non-celibacy, is whether

or not heavenly figures such as angels and high ranking prophets have any need whatsoever for a wife or female companionship. In Genesis we are told of the rationale behind G-d's creating woman and the manner in which she is valuable to man:

And the Eternal G-d said, It is not good that the man should be alone, I will make a helpmeet for him.⁷²

Rashi, in his commentary to the Pentateuch, expounds the verse as follows:

It is not good, etc. In order that people may not say there are two Deities, the Holy One Blessed be He, among the heavenly beings [who is] alone and without a mate, and this one [Adam] among the terrestrial beings without a mate.⁷³

Although Rashi renders the above exposition within the literal interpretation of the verse, he is in fact referring to a midrashic view which is found in Pirkei de-Rabbi Eliezer with a slight variation:

The Holy One Blessed be He said: 'I am alone in my world, and this one [Adam] is alone in his world. I am without reproduction before Me and he is without reproduction before him.'⁷⁴ Later on creatures would say: 'That one [Adam], created us.'

Both Rashi and Pirkei de-Rabbi Eliezer explain the problem ("it is not good") of Adam's lonesomeness in that he would have been mistaken for a deity. However, Rashi attributes Adam's lonesomeness to the fact that he was without a mate, while Pirkei de-Rabbi Eliezer emphasizes Adam's lonesomeness more as a result of his being without reproduction. Verily the two are interrelated, as without a mate there can be no reproduction. The reason that being without a mate and without the ability to reproduce is considered an attribute of deity is explained in Genesis Rabbah, on the verse, "These are the generations of heaven and earth when they were created":

It has been taught, everyone who has generations [offspring] dies and withers, and is created and does not create. And everyone who is without offspring does not die, does not wither, creates and is not created. R. Azaria in the name of Rabbi said: Concerning the Above, this matter was said.⁷⁵

The Midrash asserts that deities do not propagate. For that which propagates is subject to death and decay. Not so G-d, who is eternal and not subject to death and decay. Furthermore, everything which propagates must have itself been created. G-d is different — He creates and is not created. The midrashic commentators explain that this

Midrash was stated in opposition to the philosophic school which maintained that the world is eternal and was not created by G-d but rather generated (toldah) from Him.⁷⁶ Since that which generates must itself have been created, G-d Himself must also have been created. Therefore, the Midrash counters, the world did not generate from G-d, as G-d does not have generations. Rather, the world has generated from heaven and earth ("These are the generations of heaven and earth..."). Heaven and earth however, were created (not generated) by G-d ("...when they were created!").

Genesis Rabbah clearly establishes that G-d does not propagate. Otherwise, He would not be Eternal since that which propagates is itself subject to death and decomposition. Although this is most certainly true concerning G-d, the question exists whether the same is true concerning angels. Some of the midrashic commentators claim that the above is true only of G-d Himself, whereas angels are often ephemeral, perishing immediately after their mission is completed.⁷⁷ On the other hand, we must remember that there are angels who are eternal, such as the angel Elijah who lives forever, and who certainly do not propagate. Since, as the Midrash explains, that which propagates is itself subject to death. Moreover, the general concept of angels begetting offspring is completely foreign both to Jewish and Christian sources and is extant only in pagan writings.⁷⁸

What's more, we do not find sex differentiation among angels that enable them to propagate with one another. Although angels are classified according to attributes or functions which they are responsible for, and they can also be divided into groups of higher or lower ranks. Nevertheless, in all the classifications and categorizations of angels and their duties, there never appears a distinction among angels according to sex. For even a union between angels and earthly women would require that angels lose their transcendental qualities which are invested in sublunary bodies, so that a union with the daughters of men could be possible.⁷⁹

To understand this phenomenon - why we do not find sex differentiation among angels, or why a male angel should not possess a female partner - we must return to Rashi's interpretation of the verse, "It is not good for man to be alone, I shall make a helpmeet for him." According to Rashi, were man to have remained alone he would have been mistaken

for a deity. For only the Deity is capable of being alone, self sufficient, without requiring the assistance of any counterpart to "help" Him. In this sense the creation of Eve as a helpmeet for Adam represents a deficiency or shortcoming in man as he cannot exist without co-existence, and he cannot attain his own wholeness without Eve. The fact that there does not exist sex differentiation among angels would seem to indicate that angels are self contained units and do not require the "help" of counterparts for their own completion. Nevertheless, one must bear in mind, that even angels themselves are only "subunits," as they altogether comprise the general category of Unity – an attribute of G-d alone.

The various philosophical schools which we reviewed earlier concerning whether Elijah is in reality a human with angel status, or in reality an angel; whether Elijah's body actually died or whether he continues to exist aggregately in body and soul; whether Elijah originated as an angel or only later transcended to become one – all these questions have tremendous bearing upon the resolution of whether Elijah was celibate or not.

For if Elijah originated as an angel, certainly there is no room to espouse that it was necessary for him to take a wife. As being essentially an angel, he would have no need for a counterpart. If, on the other hand, Elijah originated as a human whose body actually died upon his ascension, he could even have begotten children, as there is no problem if his propagating subjected Elijah to decomposition and death. However, if Elijah is eternal then he cannot have children as according to Genesis Rabbah, his ability to propagate would subject him to decomposition and death.

An interesting halakic corollary to this last opinion is manifest in the controversy concerning whether Elijah's spouse requires Levi-rate marriage (yibum). According to this opinion, even if one were to maintain that she requires yibum, in this case Elijah's wife would be exempted. Since reproduction is completely irrelevant to Elijah, there would be no obligation for Elijah's brother to replace Elijah in this capacity.

Based on this premise, some of the midrashic commentators surmised that the Midrash was specifically stated in refutation of the theo-

logical school which propounded the belief that Jesus was the "son" of G-d.⁸⁰ For according to this Midrash, it is philosophically impossible to maintain that G-d has a "son." For were this true, by incurring generation, G-d would Himself be subject to death and decomposition and would forfeit His quality of being Eternal. Furthermore, since G-d is Unity, G-d does not reproduce Himself. Neither does He have any need for a partner for his completion.

In fact, in a responsum addressed to R. Joseph Hayyim of Baghdad, the enquirer related an incident of an atheist who taunted the Jews saying: "You Jews say G-d has a wife called Shekinah." The enquirer asked R. Joseph Hayyim how to counter this challenge. In Sod Yesharim, R. Joseph Hayyim writes that he is astonished that they did not retort that it is sheer canard to claim that Jews believe that G-d has a wife. Any Jew who believes such a perverse theory is a complete unbeliever, no better than an idolater. R. Joseph Hayyim continues to explain the kabbalistic notion of Shekinah and then concludes reiterating that the atheist should have appreciated that a Jew who believes that G-d has a wife is a gross unbeliever, his sin too great to bear. The truth, as everyone knows, is that no people is more staunchly committed to a pure monotheism than the Jews.⁸¹

Transcendentalism and Halaka

Whether it is possible that Elijah had a wife, and if he did whether she needs to be divorced in order to remarry, can now be understood both according to the philosophic school which maintained that Elijah was in actuality a human who attained angel status, and according to the second school which purported that Elijah attained the reality of an angel. According to the former view which espoused that Elijah was actually a human of angel status, Terumat ha-Desheh's question can be understood as follows: How close did Elijah come to attaining G-dliness, and how much of his human characteristics did he still retain? Was he like G-d in that he was now an independent unit no longer requiring the assistance of a female helpmeet? If so, he would not need a divorce, since he no longer has a functional attachment to a human wife, which no longer requires severing. Or does he still partly retain some of his human characteristics that disassociate him from G-d and still cause him to be in need of a

helpmeet? If so, the only way to terminate such a relationship would be through divorce.

According to the latter view which maintains that Elijah became in reality an angel we can understand Terumat ha-Deshen in the identical manner which we explained R. Waldenberg's responsum in which he discusses whether a person who undergoes trans-sexual surgery relates to his former or latter gender. For exactly the same problem exists here. As Elijah underwent a total transmutation that changed him from a male to an entity for which there is no distinction in sex whatsoever. What's more, he progressed from the level of a human who is in need of a female counterpart for attaining completeness, to a self-contained, self-sufficient unit. And exactly the same question advanced by R. Waldenberg applies here. To which status does Elijah halakically correspond? His former human status, much in need of a helpmeet and, therefore, would require a divorce, or according to his latter angel status, for whom there is no female counterpart, and therefore, would not need divorce? It is precisely because the issues were identical in nature that R. Waldenberg (and other respondents who dealt in transmutation of one's existential state) relied so heavily upon Terumat ha-Deshen for their rulings.

Thus, the real issue with which Terumat ha-Deshen was dealing is whether a human who transcends to become an angel, completely abandons his human characteristics, or whether he still retains some of his human features. The consideration of Elijah's (relationship with his) wife serves as an excellent method in gauging the state towards which he was most closely polarized.⁸²

We now arrive at the crux of the matter. Specifically, was Terumat ha-Deshen dealing with a real practical halakic issue? Did he consider the question of whether transcendental man is halakically regarded according to his former human status or subsequent angel status, a real issue or not. If not, why then did Terumat ha-Deshen bother to deal with it and include this responsum in the practical section of this work?

In order to solve this extremely vexing and challenging dilemma accurately, it is crucial to consider the social and political conditions which prevailed upon German Jewry during the end of the fourteenth until the middle of the fifteenth centuries - the period and place in which

Terumat ha-Deshen lived; the ideas and religious philosophies which were currently upheld and exchanged during that period to which the enquirer and Terumat ha-Deshen were undoubtedly exposed; and the personage of R. Isserlein himself.⁸³

"The devastating effects of the Black Death epidemic on European Jewry were still felt strongly in the aftermath of that plague in the late fourteenth century. The much believed libel that the Jews were the cause for the spread of the epidemic by poisoning the wells in an outrageous plot against Christianity and that the Jews were to be blamed for all evils, was still high in the consciousness of the Gentile world. An article was entered into the new German Constitution known as the Golden Bull, which allowed cities to 'retain' Jews for the purpose of raising revenue. As long as a Jew possessed money, he was tolerated, but when he lost his money even his right to live was no longer recognized.

"In the year 1390, the same year when R. Isserlein was born, King Wenceslau, the successor of Charles IV, decreed in wide areas of Germany that all debts owing to the Jews were null and void. Instead they were payable to the states and cities, upon the condition that one-fourth went into the King's own pocket. Expulsions were indeed the mark of the fifteenth century as burnings had been in the fourteenth. During the disorders under the reign of Wenceslaus, the guilds in some cities overthrew the patrician rulers and shed much Jewish blood in many German cities.

"A time of turmoil set in once again in Germany during the early years of R. Isserlein's manhood under King Sigismund (1411-1437), whose reign witnessed conflict with the Reform movement led by John Huss and accompanied by the Hussite Wars which dragged on for decades. This movement paved the way for the eventual emergence of Protestant Reformation in their fight against the Church. Again the Jews were deemed responsible for contributing to the political and religious insubordination of the heretical Hussite leaders.

"When the armies of King Sigismund marched through the Rhine provinces in their 'holy war' to squash the Hussite revolt, they assaulted Jews everywhere. As perturbed communities were preparing themselves for new persecutions, R. Jacob Moellin [Maharil], then Rabbi of Mayence, sent messengers to the communities to engage in three-day fast for the

repeal of the decree. When in 1450, Pope Nicholaus V held a jubilee in Rome, the Jews were fearful that the pilgrims on their way might commit excesses against the Jews by anti-Hussite crusaders, R. Isserlein as well ordered a fast day.

"During the years of the clerical reaction following the Hussite movement, Franciscan and Dominican monks made their rounds to Germany pouring fire and brimstone on the Jews in their sermons. The fanatic monk, John Capistrano, a Franciscan, already held the post of Inquisitor in Italy. In 1450 the Pope delegated him to Germany with the mission of consolidating the Roman Catholic faith which the Hussites had undermined. He threatened with G-d's wrath those rulers who protected Jews and earned himself the title, 'whip of the Jews,' in his effort to incite the ignorant masses against Jews by staging ritual murder trials and inquisitorial scenes. Capistrano claimed to have performed many miracles. When he came to Neustadt, R. Isserlein offered to follow him to the burning stake and let G-d decide between them. Capistrano naturally declined the offer."

According to the Jewish historian, Simon Dubnov, what sustained the German Jews during that appalling epoch when the entire surrounding world conspired to annihilate them, and what enabled them to withstand against fire and sword and persecution of rights, was the continuation of intensive spiritual activity.⁸⁴ This appraisal is supported by Margolis and Marx who write:

"It is remarkable that in those evil times, when the Jews of Germany were harrassed by malicious persecutions, Jewish studies continued to thrive. Erfurt, Nurenburg, Ratisbon, Prague and other cities maintained colleges for Jewish studies. One of the outstanding figures of this period was the Rabbi of Neustadt near Vienna, Israel Isserlein, whose mother had been one of the Vienna martyrs of 1421. His responsa reflect throughout the uncertain position of the Jews in his day."

The imminent feelings of Messianism and expectation of Elijah current with the Messianic period which had prevailed among Jews during the earlier period of Sefer Hksidim and Hksidci Ashkenaz, in desperate hope for deliverance from their troubled predicament, undoubtedly permeated the minds and hearts of German Jews once again during the early fifteenth century which witnessed similar turbulence and cer-

tainly evoked the same sentiments.⁸⁵

R. Isserlein himself was greatly influenced by the tradition of Hasidei Ashkenaz. Hasidei Ashkenaz stressed the value of hasidut (piety) as a way of bringing men nearer to "devekut" ("communion" with G-d). Extremism in ethical and religious behaviour, which in the sayings and literature of the Rabbis characterized the term "hasid" (pious) as against "zaddik" (righteous), was the central norm of these teachings. R. Isserlein's renowned ascetic and pious lifestyle was certainly commensurate with these teachings. In addition, the influence of Sefer Hasidim is recognizable in many of the rulings of Terumat ha-Deshen.

Aside from the moralistic ethical aspect, Hasidei Ashkenaz developed another plane of equal importance - the esoteric theosophical aspect. Many Hasidim attained the highest spiritual levels and were considered to be the masters of the holy spirit, or even prophets. The theory of Merkavah remained the main object of inquiry, and even a practical guide toward the "ascent to heaven" became interwoven with number mysticism and speculations based on it.

In addition to the ecstatic or visionary "ascent to heaven" there developed a tendency toward deep meditation, prayer and the deep mysteries which were communicated orally. The phenomenon of "ascent to heaven" and communion with G-d experienced by Hasidei Ashkenaz was quite similar to the concept of "a revelation of Elijah" experienced by the Spanish Kabbalists during that time. This was a mystical experience of spiritual awakening through which something novel was revealed.⁸⁷ The mystical experience of "revelation of Elijah" of the Kabbalists corresponded to the "ascent to heaven" experience of Hasidei Ashkenaz in that each "state" represented a transcendental experience of communion with G-d, the supreme objective of both Hasidei Ashkenaz and the Spanish Kabbalists.⁸⁸

It was against this kind of social-political-religious background that the enquirer put forward his question to Terumat ha-Deshen concerning the halakic status of a man who transcended to become an angel such as transpired with Elijah. In the words of the enquirer: "There would also be a practical difference for future generations if one were to merit a similar fate." When viewed in the context of this historical framework one begins to realise that what was

irking the enquirer was by no means a wildly odd notion posed merely for the purpose of entertaining one's speculative faculty!

This was a period steeped in Messianic expectations, where Elijah's advent was considered imminent both by Jews and Gentiles alike.⁸⁹

Just as Hasidei Ashkenaz had long before expected Messiah's arrival, this tradition grew even stronger as conditions in Germany worsened and as the Church became increasingly disunited.⁹⁰ Moreover, the spiritual activity which succeeded in sustaining Jewish survival was the moralistic and esoteric-theosophic techniques of the Hasidei Ashkenaz traditions along with penetrating kabbalistic elements. Both the hasidic and the kabbalistic trends propounded transcendental exercises such as devulging practical guides to attain "ascent to heaven," merkavah mysticism, visitation of Elijah, which were considered the supreme ideals that would lead one to the ultimate hasidic ideal of "communion with G-d".

It is in this context that the likelihood of "if one were to merit a similar fate," i.e., encountering a transcendental experience of ascending heaven or being visited by Elijah, was considered imminently possible and rather vital for one to successfully withstand the hostile environment while methodically aspiring towards the true ideals of the Hasid. Indeed, the question would not have been treated were it not a practical one. For, the German Rabbis of that period were preoccupied chiefly with professional Rabbinism, compiling questions and customs (minhagim) pertaining to practical daily living.⁹¹ Even Sefer Hasidim itself is an example of pragmatic and realistic ethical teachings in Jewish ethical culture.⁹²

One of the principal objectives of the Hasidei Ashkenaz tradition, despite the paradox inherent in the situation, was to try as far and as much as possible to integrate the Hasid, ostensibly an unnatural phenomenon, into the Jewish community, and to make him responsible in practice to the community.⁹³ It is in light of this paradoxical situation, i.e., the Hasid immersed in transcendentalist ideals pursuing an active and practical Jewish way of life fully integrated and involved in the Jewish community, that we can now comprehend the full profundity of the enquirer's challenge.

For it was exactly this paradox which confounded the enquirer. The

enquirer asked R. Isserlein how the hasidic tradition could require that one pursue transcendentalist ideals while at the same time expect of one to fully and actively integrate himself within the mainstream of religious life. There is an intensely inherent contradiction between the two, as is explained so punctiliously by R. Joseph Ber Soloveichik in Ish Halaka. R. Soloveichik explains that transcendental aspirations are generally pursued through a process of negation. The negation of life, the negation of this world, abrogation of the existing and of reality. One attains transcendental states by following ascetic ideologies of Naziritism and seclusion. Whereas the realist, on the other hand, is a man of this world who meets his creator not far away in the distant horizons of a utopian, and secretive holy enchantment of transcendentalism, but rather in the very heart and centre of man's universe. The ideal of the realist is not to redeem his world through a higher world, but rather through himself - by encountering reality as an ideally halakic phenomenon.⁹⁴

Although esoteric theosophies give emphasis to G-d's "hiding his face" from this world and that the world has no existence before G-d (since the world came into existence as a result of His self-contraction), the Halakist accentuates G-d's revealing Himself in this world and G-d's affirming of the existing. Halaka itself is proof of this activity. For G-d's very "commanding" of man, affirms man's existence. How then is it possible for a Hasid immersed in sublunary worlds and pursuing an ascetic life of abnegation of self to integrate himself in the real world of his fellow man? The closer the Hasid comes to attaining higher transcendental states the further he removes himself from a real halakic society. The two goals of transcendentalism and integrated halakic living are diametrically antipodal to one another.⁹⁵

Furthermore, Halaka in general looks pejoratively upon death and after-life; the dead are free of commandments, and all forms of death are labeled as defilement and unholiness. An Aggada in tractate Shabbat relates how Moses succeeded in obtaining the Torah despite the objection of the angels. Moses refuted the angels by proving that the laws of Torah appertain to humans only and have no relevance to angels or transcended sublunary entities. Indeed, even the righteous, living in a noncorporeal world to come, discuss those laws which pertain to corporeal life of a lowly world. Indeed, even G-d

Himself and his entire Holy Retinue all deal with halakic problems which are relevant to a tangible and real world – the red heifer, the beheaded heifer, leprosy, etc. They do not deal in transcendentalism, in questions which are above time and place, but rather with questions of earthly life in all their minute details.⁹⁶

The Halakist recognizes transcendentalism; he does not ascend towards it but rather brings it down to him. Although the transcendentalist submerges reality in order to rise up to G-d, the Halakist brings G-d down into reality. In a most succinct aphorism, R. Soloveichik coins the phrase in Aboth: "Know what there is above thee," as "Know, what there is above – is from thee!" Verily, upon G-d's own adjudication, "It is not in heaven." Therefore, the prophetic transcendentalist cannot overrule the Sages and cannot determine the Halaka even if he employs the powers vested in him to uproot trees and move streams, as in the famous incident of the "Oven of Aknai" recounted in Baba Mezia. For the Halaka affirms a real and existing world and has meaning only therein. Consequently, it was given over to the possession of man, as Halaka has no relevance in the heavens, nor does it pertain to states of transcendental euphoria.⁹⁷

This contradiction becomes all the more intensified when one considers that the German Rabbis were preoccupied mainly with compiling only those laws and customs which were pertinent to daily Jewish living and that even the moral-ethical teachings of Sefer Hasidim were characteristically pragmatic. Any milieu or movement which so highly stressed the pragmatic aspects of Jewish Law and which was so firmly grounded in normative life could not possibly have simultaneously perpetuated transcendental ideals which are antithetic to it.

This was precisely the enquirer's challenge. Suppose a person were to merit a successful transcendental experience and thus were to realize the greatest hasidic ideal of all – the transformation of self to become an angel. At that moment he would cease to be a man – his halakic status would then become extremely ambiguous. It would be difficult to determine whether Halaka would pertain to him altogether. In which case the ideal of transcendental man stands in utter contradiction to the ideal of pursuing an integrated halakic lifestyle. The former ideal removes man totally from the practical

realm of halakic life and from the mainstream of normative Jewish living!

Many works had been written in criticism of the hasidic movements such as the works of Moses Taku in the early thirteenth century, who saw in the new tendencies of the hasidic movements "a new religion" smacking of heresy. They also attacked the attention Hasidim paid to the mysteries of prayer and particularly the dissemination of these mysteries in their books. It is most logical to suspect that the enquirer was reflecting or discreetly re-echoing these criticisms towards R. Isserlein for reply. These criticisms form the basis for many of the same condemnations which were rehashed much later by the Mitnaggedim (Hasidic opposers) such as R. Hayyim of Volozhin in his Nefesh ha-Hayyim and later on following in his path R. Joseph Ber Soloveichik in his aforementioned Ish Halaka. They in their polemics against the modern hasidic movements, developed a cognitive teleology which defined Torah lishma as study for the sake of understanding rather than an ecstasy or mystical theurgy. For they believed that true ecstasy could be experienced through maintaining a correct cognitive-normative approach to Halaka rather than by entertaining mystical notions which are alien to Halaka. "Communion" with G-d, they believed, can be attained only once one has acquired a true understanding of G-d, which is obtained through intensive study and through familiarisation with the entire corpus of Halaka. Cognizance of G-d's law is a precondition for attaining the amor dei intellectualis concurrent with communion.⁹⁸

R. Isserlein ostensibly was the optimal choice for directing this dilemma. For R. Isserlein was an outstanding halakic expert who was eruditely proficient in all aspects of Jewish Law and whose authority was widely acclaimed. As the leader of the Jewish community of Austria-Germany, R. Isserlein was extremely involved in communal affairs. This is evident in his endeavours to establish harmonious relations with the Christians, the public fast which he instituted, his challenging the notorious monk, John Capistrano, his stand against the institution of a Chief Rabbinate, as well as being engrossed in private study while heading a large Yeshiva. He was obviously the epitome of a fully integrated communal leader responsible in practice to the community as well as a halakic giant. At the same

time R. Isserlein was a Hasid. Greatly influenced by Sefer Hasidim, this pious ascetic was steeped in the teachings of a movement which inculcated abnegation and encouraged introverted transcendental aspirations. R. Isserlein, in short, was both the communal Ish Halaka and the seclusively aloof Ish Hasid; the pragmatic Halakist and the abstruse mystic.

In R. Soloveichik's view, the Ish Hasid and the Ish Halaka are two radically and diametrically opposed entities. The one is an extra-terrestrial metaphysical domain concerning angels which is utterly divorced from reality, while the other involves the daily normative life of men. The enquirer thus challend R. Isserlein - himself the quintessence and embodiment of both - to reconcile the two. It was precisely because R. Isserlein had so perfectly meshed the two spheres until they completely dovetailed that he found difficulty in even understanding the enquirer's problem. This is indicative in the opening remark of R. Isserlein's responsum: "I am greatly astonished as to why you bothered to pose such a query."

In R. Isserlein's mind there is no contradiction whatsoever between transcendental man and the Ish Halaka. The two complement each other rather than stand in opposition to one another. For even when one reaches a transcendental state, one still retains the innate characteristics which one dare not relinquish. Indeed Elijah, R. Isserlein explains, although transcended - still continues to perform the commandments. This, in fact, is consistent with the teachings of Sefer Hasidim - which inspired R. Isserlein so greatly - and which states that the pious continue to observe Mitzvot even after death. (For only ordinary men are exempted from Mitzvot upon their death, unlike the pious, who observe Mitzvot even posthumously).⁹⁹

Certainly, Elijah who never died but merely transcended, continues to adhere to the commandments. His transcended state only serves to enhance and add dimension to his previous state. Elijah's transcendence to angel, for example, does not complicate his social-halactic life but only heightens it. Being self contained entities, complete in their own unity, angels are not in need of wives, as explained earlier. The Torah requires laws of matrimony only between man and woman because of the nature of their relationship and their interdependence upon one another - but not between angels and women.

But that is not to say that once man transcended to angel he no longer relates to his original manhood. For although the enquirer might well be correct in assuming that angels are separate entities of a metaphysical domain who are divorced from everyday life of man, this is true only of angels who originate as such. However, the man who transcends to angel still possesses much of his "manhood." Except that he is now an elevated form of man, a type of "superman" but nevertheless, still very much a man. His new status does not contradict his former earthly position, it only adds dimension to it. Consequently he is still very much bound to Halaka.

Thus when the Ish Halaka, the pragmatic man of law who pursues an active normative communal existence - transcends to become Ish Hasid, in pursuit of the highest hasidic ideals of communion with G-d - he does not relinquish his normative halakic activities. To the contrary, his halakic activities become greatly enriched as they now take on an added dimension which only serves to augment his appreciation for Halaka.¹⁰⁰

In actual fact, in most mystical texts, inner perception and the way to "communion" are deeply connected with the preservation of the traditional framework, the value of which is increased seven-fold. The mystical viewpoint strengthens the tradition and becomes a conscious conservative factor.¹⁰¹ To wit, an important subject of discussion in Sefer Hasidim is the question of the esoteric purpose of the commandments. The profundity of the laws of the creation are delved upon there as well.¹⁰² It is important to bear in mind that the main intention of the various theosophical doctrines was to invigorate and reinstill religious enthusiasm and to fortify strict adherence to laws. Were it not for the theosophical embellishment there would have been a witnessing of alienation from Jewish Law and religious life would have deteriorated greatly. Given their severe hardships and the dry intellectual climate of talmudic pilpul (casuistry) and straightforward Halaka, people who were thirsty for an emotional charge would have invariably become estranged from religion.

The Mitnaggedim assert that man can attain ecstasy and communion by pursuing a correct cognitive approach to Halaka and through properly understanding the dynamics of the halakic system. Though this ideal is indeed both noble and grand, the conception itself is intangible

for most men and obviously falls short of the needs of the people who are incapable of attaining such a high form of intellectualism owing to its lack of emotional appeal. Therefore, the esoteric discussions, by invoking strong emotional reactions through their colourful overtones and embellishments of the Torah and its laws, have succeeded in securing a strict compliance to Jewish Law. Indeed in one theosophical work the author's main object was to prove the "Halaka" itself has no literal meaning and that its meaning is mystical.¹⁰³ Verily, R. Solomon Adret, in his Responsa of Rashba, relates that the entire realm of Halaka and every one of its details have a corresponding esoteric value which belongs to a parallel theosophical system.¹⁰⁴ Undoubtedly the mystical value of Halaka intensifies the appreciation of Halaka generally.

Indeed it would have been counterproductive were it true, as the Mitnaggedim claimed, that transcendentalism removes man from the domain of Halaka and causes him to remain aloof from the practical realm of halakic life. For the whole purpose of these teachings is to allure man and bring him infinitely closer to a zealous pursuit of Halaka because of his added appreciation and reverence for it. This then reconciles the seeming "paradox" between the active involvement of the Ish Halaka on the one hand the mystical quality of the Ish Hasid on the other.

Thus R. Isserlein's responsum is infinitely "practical" as the responsum extols the virtues of the halakic system in that it evinces that Halaka has relevance both in the real physical world as well as the transcendental, because the two are intricately interwoven. Although we have shown earlier that R. Isserlein's responsum is of "practical" value as it serves as a basis for determining whether a person who undergoes existential transitions of sorts, retains his pre-transitional status, or assumes his post-transitional status. However, this practical significance, as we noted earlier, is only an outgrowth of R. Isserlein's responsum. Now we are able to positively establish that the responsum itself is immeasurably practical. As it confirms that even when one has attained a transcendental peak and has undergone an existential change of becoming transformed to an angel, as Elijah, the halakic system still very much pertains to one's new reality.

Thus, R. Isserlein's responsum resolves the utilitarian value of the hasidic tradition which conclusively demonstrates the fantastic magnitude and scope of Halaka. It pertains not only to the mundane terrestrial sphere but encompasses the metaphysical plane as well. This is in glaring contradistinction to R. Soloveichik, echoed in the confused question of the enquirer, who writes resolutely:

"The Halaka does not deal with metaphysical mysteries."¹⁰⁵

R. Isserlein meets this challenge by disclosing with equal resolve in Terumat ha-Deshen the transcendental and pneumatic nature of Jewish Law. As Professor Baer writes:

"The pneumatic resource which accompanies the Jewish Sage is not a matter of Aggada alone. This resource claims its merit in the realm of the Halaka itself."¹⁰⁶

VII. ASTROLOGY : SCIENCE OR MYTHICAL LORE?

Thus far, our work has endeavoured to uncover a certain twilight zone somewhere between the natural-human sphere of man and the supernatural-celestial sphere of G-d and His angels. We demonstrated that Halaka is compelled to identify this undefined twilight area in order to resolve an entire gamut of issues pertaining to extra-terrestrial existence such as the Elijah issue, the status of a golem, test tube babies, life in the next world, changes in existential states, definitions of life and death, etc. In the coming chapters we shall see that there are many other issues in Jewish Law which emanate in this confusing twilight area, bordering between the natural and the supernatural, with which Halaka must of necessity contend in order to legitimize its purpose of guiding man in every walk of life which he encounters.

Providence and Prognostics

To begin with, we find that the religion not only developed the concept of G-d's providential care over man as an ideological principle but actually legislated this belief as a full positive commandment.

Deuteronomic Law ordains:

"Thou shalt be whole-hearted [tamim] with the Lord your G-d "
[18:13].

The Sifri interprets the verse that if man shall be whole-hearted with G-d, he can be certain of gaining G-d's providence.¹ Sifri in another place explains the meaning of whole-heartedness as follows:

How do we know that one must not enquire of the future [Goralot]?
Because it is said: Thou shalt be whole-hearted with the Lord
your G-d.²

A similar explanation is found in Talmud:

How do we know that one must not consult the Chaldeans [astrologers³]? Because it is said etc.⁴

Based on the Sifri's and talmudic expositions of the scripural text, the biblical commentators interpreted the verse as a providential commandment ordaining that man is obligated to place his destiny in the hands of G-d and trust in Him whole-heartedly, rather than to contemplate the future by consulting astrologers and diviners.⁵

Notwithstanding the above, R. Elijah b. Solomon Zalman (Vilna Gaon) records many instances where the talmudic Sages involved themselves in prognostics and heeded Chaldean predictions often taking precautionary measures against them.⁶ Thus it would appear that the Sages did not consider all forms of prognostication forbidden. In order to identify the areas of prognostication which Halaka either sanctions or prohibits, it is significant to verify how exactly one's involvement with prognostics constitutes a contravention or a challenge to the notion of G-d's providence. In a responsum on the subject Nahmanides writes:

It is certainly clear that astrology [itztagninut], is not included in proscribed divination. Moreover, R. Hananiah maintained that the planetary influence [mazal] gives wealth and Israel stands under planetary influences. Although the Halaka does not accord with him, nevertheless, it appears that this is not considered divination. Those that divine through stars do not include astrology.⁷

Nahmanides continues to cite numerous instances from the Talmud to prove that one is permitted to listen and believe in astrology.

However, Nahmanides adds:

Except that sometimes G-d works miracles for those who fear Him to cancel the decree of the stars... Therefore, one should not ask of them, and should rather go in whole-heartedness, as it is written 'Thou shalt be whole-hearted with the Lord your G-d.' And if he saw in them [stars] something undesirable, he should perform Mitzvot, and intensify his prayers. But if he saw in the horoscope a day which is not fit to work, he should take precaution and not rely on the miracle. For I maintain that one is not permitted to oppose planetary influences [mazalot] and rely on miracles.

Nahmanides establishes a distinction between astrology (itztagninut) and divination. The Torah proscribed the enquiry of diviners. However, to believe in their predictions without enquiry, or to take precautionary measures to escape the outcome of one's horoscope, such practice we find even in the Talmud. Nevertheless, since G-d's providence can miraculously circumvent the forecast of the stars, one should not enquire of them but rather trust in G-d's providential care whole-heartedly. If one did see an inauspicious horoscope, one should not rely on miracles to circumvent it.

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man relies on the stars rather than on G-d. However, the knowledge of one's destiny as predicted by the stars does not contradict G-d's providence. In fact man must take precautionary measures should this knowledge come to his attention. However, he must not actively set out to gain such knowledge. Thus, Nahmanides considers astrology a genuine source of knowledge despite man's having no recourse to actively consult it. A similar view is propounded by R. Joseph Habiba in Nimmukei Yosef:

That which is stated, 'Ye shall not divine nor observe times, this refers to those who divine by means of weasles, birds, and stars,' is similar to what is mentioned in the [Talmud] above. Namely, 'so and so's bread has fallen out of his hand, his staff has fallen out of his hand.' These things contain no wisdom but are complete folly. However, one who understands the chirpings of birds, this is not divination. For it is a disciplined knowledge of those who understand it, and is permitted, as we find of Rav Illish.⁸

Nimmukei Yosef confirms with even greater resolution than Nahmanides that prognostication based on astrological knowledge rather than on folly, even if it be in the form of deciphering birds is absolutely legitimate to those who are erudite in this science.⁹ Divination constitutes a contradiction to G-d's providence only insofar as its basis is rooted in nonsense. However, knowledge which is based on perception of reality is a legitimate form of pursuit.

Quite an opposite view is taken by Maimonides who writes:

Who is a diviner [me'onen]? Forecasters who predict by astrology and say this day is propitious this day portentous... Whoever does an action because of astrology and plans his work or his goings to coincide with a time determined by astrologers, is liable for lashing because of divination [lo te'onennu].

And these practices [i.e., magic and astrology] are all false and deceptive with which the early star worshippers led the nations astray to follow in their ways... Anyone who believes in these things or their likeness and thinks in his heart that they are true and matters of wisdom except that the Torah forbade them, are fools and deficient in understanding... But sensible people, who possess sound mental faculties, know by clear cut proofs that all these practices which the Torah forbade, have no scientific basis but are chimerical and inane... And because of this the Torah said when warning against all these follies, 'thou shalt be whole-hearted with the Lord your G-d.'¹⁰

Maimonides clearly rejects that magic and astrology have any claim to being true sciences. They are not even forbidden sciences since

they are not sciences at all but rather a concoction of fabricated lies and deceits construed by idolators to lead people astray. By quoting the same aforementioned providential verse, Maimonides clearly indicates that the problem which astrology poses in this regard is that belief in any supreme powers governing fate, outside of G-d, constitutes a form of idolatory.

The Vilna Gaon cites numerous instances in the Talmud which indicate that both astrology and various types of magic are real sciences.

In a lashing criticism of Maimonides' view he writes:

Philosophy led him astray in his overpreoccupation with it to explain away the talmudic references metaphorically by uprooting them from their plain meaning. And G-d forbid I do not believe in them nor in all their kind. Rather all the sayings are understood as their plain meaning. Except that they have an inner meaning which is not the innerness of philosophers who are outsiders, but rather of those who know the truth.¹¹

One might well wonder whether the Vilna Gaon gave any thought to the possibility that it was Maimonides' halakic Weltanschauung which guided his philosophic thinking rather than vice versa. Let us recapitulate Maimonides' halakic objection to the claim to science which he codified in Laws of Idolatry:

But men who have acquired wisdom and are of perfect knowledge know by clear cut proofs that all these things which the Torah forbade, are not matters of wisdom, but rather emptiness and vanity.

We recall from our discussion in Chapter I that according to Maimonides, 'Halaka' differs from 'Mitzvah' in that Halaka integrates the Mitzvah by transforming it from a level of emotional based belief to internalised cognitive knowledge based on demonstrative proofs. This rational motif of Halaka will reject any human invention of the mind which cannot be verified through demonstrative proofs. Indeed, from the 'Oven of Aknai' incident we saw that even a Divine interjection will be rejected by Halaka if it does not conform with the rational understanding of the majority view. Thus, this very same rational integrity of Halaka, rather than philosophy, which caused Maimonides to reject the esoteric teachings of Kabbalah, also caused him to reject astrology and all forms of magic. Since any science which "sensible men who possess sound mental faculties" could not demonstrate by "clear cut proofs" does not exist and must of necessity be brandished as a concoction of lies and deceit.

The "inner meaning" of which the Vilna Gaon speaks, and possibly Nimmukei Yosef and Nahmanides had in mind, which is known only to "those who know truth" is a type of "truth" which is rooted in the same realm of kabbalistic knowledge which can not be rationally demonstrated according to reason and consequently perforce be rejected by Maimonides.

Thus we have embarked upon another twilight area of Jewish Law. Namely, can Halaka admit an intangible body of knowledge the existence of which can not be rationally proven? According to Maimonides, such speculation must be rejected outright as pure mythology. According to Nimmukei Yosef and Nahmanides, in the same way as Halaka endorses Kabbalah, astrology is yet another branch of metaphysical knowledge which Halaka may endorse without automatically rejecting is as divination.

In Maimonides' view, prognostics contradicts providence since it involves nothing more than imaginary beliefs in mythical powers which necessarily constitutes idolatry. According to Nahmanides and Nimmukei Yosef, prognostication does not challenge providence if its facts are scientifically based, even if it be a mystical science. However, if these facts are of a non-scientific nature, then they must likewise be discounted as divination based on myths which oppose the providential injunction.

It would be expedient to investigate, according to the authorities who consider astrology a veritable science, the exact way in which astrology differs scientifically from divination such that the one is regarded as a legitimate metaphysical science whereas the other is dismissed as prohibited mythology. We will analyze various forms of magic in the next chapter in a similar way.

In order to facilitate an understanding of the scientific distinction between the two, as well as its application in Jewish Law, we will first state our conclusion at the outset before proceeding to prove it. It is our contention that although these codifiers regard astrology as an acceptable metaphysical science - this metaphysical science itself can be divided into two distinct areas. The one is a natural manifestation of metaphysics and the other is a supernatural form of metaphysics. It is the former which constitutes a pseudo-science which we will call Astral Science whereas the latter is mytho-

logical and thus constitutes divination which we will call Astral Mythology. Astral Science interprets metaphysical events which occur regularly, and are believed to be generated by a Divine source, and the likelihood of which appear sensible to the human mind. In this sense Astral Science is a natural science as its events occur naturally and can almost be regarded as factual. Astral Mythology, on the other hand, is erratic, its events occur supernaturally, and are not connected specifically to any Divine source. Whether its events actually occur or are only delusive legerdemain is immaterial since its preoccupation does not constitute a science and is therefore regarded as pure mythology.

Signs

We have already seen Nimmukei Yosef's objection to considering the second category a science because its information is based on nonsense rather than wisdom. Nahmanides considers the events of Astral Science realistic and can not accept Maimonides' contention that this category also constitutes myth. Man is obviously affected by these events in a real way and he must safeguard himself against them as man "is not permitted to rely on miracles by contravening the constellations."

In Nahmanides' opinion it is as hazardous for man to ignore an ominous astrological signal which beckons him as it is to ignore a speeding bus which moves towards him. Unless he takes precautionary steps, he will be affected in a real way by each calamity, the one situation occurring just as naturally as the other. Therefore, Nahmanides rules that for this reason one is permitted to heed astrological warnings and delay the beginning of court proceedings or postpone the commencement of work projects.¹² Since it would take a supernatural feat, or miracle, to prevent its materialisation, and one may not rely on miracles. One would no more venture into a wild jungle than one would embark upon a journey or a project during portentous conditions. One must suspect the outcome of each as naturally as the other. Whereas according to Maimonides, since one can not rationally explain these astral signs, one would incur the penalty of me'onen even for postponing a journey.¹³

Referring to the talmudic incident which narrates how Abishai b.

Zeruah deciphered the flapping of the wings of a dove as an omen that King David lay in trouble, Nimmukei Yosef writes:

That was not augury [nahash] as he [Abishai] did not rely on it completely but it was only a sign that he considered. In this manner it is permitted as it is customary to wed when the moon is full as a good sign. And so it is concerning the stars, it is only forbidden to establish them as signs for himself and to practice augury through them. However, whatever a man understands concerning the galaxies of the stars and their orbits, such as the astrologers, this is not augury but a great science which G-d decreed from the six days of creation to govern the world. In this way, therefore, every pious man should pray to cancel the planetary decree, for everything which transpires is from the Lord, and it is in His power to alter everything in accordance with His will.¹⁴

In this succinct paragraph, R. Habiba itemizes a number of essential points which characterise Astral Science and significantly distinguishes it apart from Astral Mythology. Probably the most significant of all his points is the remark that astrology is a "great science which G-d decreed from the six days of creation to govern the world thuswise." From this one remark alone we may derive three important principles:

1. Astrology is definitely a science.
2. G-d established this science as a "decree from the six days of creation." It is therefore a natural science.
3. G-d established the astral system in order to "govern the world" through it. In other words, the constellations are real powers which actively 'assist' G-d in implementing the government of his World.

The fact that men who understand the galaxies of stars and their orbits are involved in a great science is no small consideration. By acclaiming this field of science so highly R. Habiba discreetly promotes its study.¹⁵ Man does not necessarily have to be an astrologer by profession in order to benefit from acquiring astrological knowledge. An important purpose of Halaka 'guiding' man towards his Maker is fulfilled when man considers it a main task to discover the present by recognising and reading the signs which nature spreads before his eyes. We have already demonstrated in "The Relationship of the Future Worlds to This World," that the more man seeks to learn what will be, the more man comes to know what is. This undeniable fact is no less true of astrology. Furthermore, astrological knowledge which is necessary for deciding a number of important Halakot, not the least of which

is the intercalation of the calendar months, is greatly enhanced through study of astrology. That R. Isserlein was proficient in this science there can be no doubt as his biographer, Leket Yosher, records how R. Isserlein once mounted a tower which stood in the street of the Jews and examined a comet at close range. He then portentously announced, "It's tail points towards Venice." "In the same year," his bibliographer continues,

The King of Vienna [Ladislaus VI Posthumous] whose father had initiated anti-Jewish persecutions, was poisoned in Prague [by George of Podiebrad], and the Hungarian King [Ladislaus Corvinus] was murdered in his capital.¹⁶

The fact that astrology was established as a "decree from the six days of creation" legitimates the study of cosmology as natural a pursuit as cosmogony - a subject which is dealt major treatment in Genesis. The natural astrological feature of the "decree of creation" leads to the credulity that the moon promotes decay and death. The fact that G-d established the astrological system "to govern the world" further served to strengthen this belief which eventually gave rise to the custom of planning "to wed when the moon is full as a good sign."

Another important point mentioned by R. Habiba is that Abisha's interpreting the flapping wings of a dove did not constitute augury because "he did not rely on it completely, but was only a sign which he considered." In other words, it is the complete reliance on the knowledge rather than the knowledge itself which constitutes augury. However, to merely consider the possibility of the knowledge as a sign and to act upon it in case it is accurate (rather than relying on it implicitly) is certainly a sensible course of action to take. It is in this context that the planning a marriage when the moon is full is cited as a good sign.

This brings us to R. Habiba's last essential point that "everything which transpires is from the Lord and it is in His power to alter everything in accordance with His will." In other words, relying on astrological knowledge poses a double problem. Firstly it reflects the identical challenge between religion and modern science today. Namely the secularist tendency to believe implicitly in the science and all that transpires is from the science rather than from G-d, the originator of the science. As Yehezkel Kaufman correctly points out,

what differentiated the Israelite religion apart from pagan mythology was not the Bible's denial of the scientific basis of divination skills but rather : "What offends the Bible is the heathen reliance on human wisdom."¹⁷

Secondly, that Astral Science is actual only as long as G-d has not willed to alter its facts. Hence, it is hardly a final science since its facts are in effect, nothing more than mere hypothetical possibilities. Thus, astrology breeds the inherent danger of dissociating Astral Science from a Divine source as well as the danger of becoming oblivious to the fact that G-d's providence can transform at any moment the factual data of Astral Science into the fictional elements of mythology. Nevertheless, one may consider astrological signs since they are definite possibilities. In the words of the Talmud:

"Although there is no divination, there are signs."¹⁸

Not all "signs" however, were accepted for consideration as many signs were associated with divination proper. We shall see that the same criteria, mentioned above, which dissociated astrology from divination were employed in the differentiation between legitimate signs and divining omens. Signs which belonged to Astral Science were sanctioned whereas signs which were features of Astral Mythology were proscribed. The Talmud records Rav's view who postulates:

An omen which is not after the form pronounced by Eliezer, Abraham's servant, or by Jonathan the son of Saul, is not considered a divination.¹⁹

Although this talmudic dictum seems straightforward, a controversy arose among the codifiers whether planning an action on the basis of signs similar to Eliezer and Jonathan constitutes augury or not.²⁰

Among the reasons cited in justification of Eliezer's and Jonathan's deeds, we find the following arguments: R. Nissim b. Reuben Gerondi in his commentary known as Ran writes:

Nevertheless, the matter requires reconciliation as it is impossible that these pious ones [i.e., Eliezer and Jonathan] were augurers. And this would appear to be the explanation of the matter. The Torah forbade augury whereby one bases an action on a sign which is senseless and does not cause benefit, or harm to the matter. Such as bread which fell from one's hand or a deer which crossed one's path, and similar things which are Ammorite folkways. But one who utilizes signs which logically cause benefit or harm, this is not augury. For all dealings of the world are thuswise. Behold, one who says: 'If it rains I

will not go on a journey and if not I will go,' is not augury, but rather the way of the world.²¹

Ran goes on to explain the logic implicit in the signs of Eliezer and Jonathan. Thus Ran mentions the first of the essential characteristics which qualify Astral Science. Namely, that the sign must be scientific in that it is rational and has a natural causal effect on its circumstances. It is logical to postpone a journey because of the natural difficulties caused by rain as it is to plan an action on any other cosmic sign which naturally affects one's circumstances. Were these signs irrational, they would appeal to the category of Astral or Cosmic Mythology. An identical explanation is rendered by R. Eliezer of Metz who writes in his Sefer Yereim:

However, Jonathan's action was not augury, for were it augury Jonathan would not have done it. And the reason is that augury is only that which is illogical, and Jonathan gave a reason for the matter.²²

Radak, in reconciling Jonathan's action, in his commentary to Samuel imparts an interesting psychological value to signs:

However, if a man desires to execute an activity and makes something a sign for that action in order to strengthen his heart and waken his heart to the matter, it is permitted.²³

R. Isserles cites Radak's view as a halakic principle in Darkei Moshe.²⁴

R. Joel Sirkes in his commentary to Tur, known as Bach, explains the legitimacy of the signs by connecting them to a Divine source, another essential trait for constituting a science. Men of G-d are endowed with minor prophecies which enable them to discern the expression of G-d's will implicit in certain signs as opposed to signs which are ad hoc and incidental. These latter signs are perceived by ordinary men who have no access to Divine knowledge.

Another essential mentioned by virtually all codifiers is the partial rather than complete reliance on signs. One accepts the providential hand of G-d affecting the astral or cosmic decree, by interpreting the decree as an indication of potential rather than an absolute fact. Similar views are propounded to explain the coadunate talmudic dictum:

Although a house or a child or a marriage must not be used for divination, they may be taken as a sign.²⁵

The Ammora, R. Eleazar, was the first to qualify this dictum by immediately adding, "Provided it was established three times." The

apparent necessity of the sign occurring three times was that the sign had asserted itself as a perfectly natural phenomenon and proved its reliability once it recurred thrice. No longer could it be considered mysterious or coincidental. Rabad probably had this explanation in mind when specifying that these signs were reliable because of their threefold recurrence whereas other signs were not to be relied upon.²⁶ In fact, R. Joshua b. Alexander ha-Kohen Falk, in Perisha explains Tur's interpretation of "or a child" as child-bibliomancy rather than childbirth (as Rashi) because childbirth is a perfect natural phenomenon and could not possibly constitute a divining omen.²⁷

Many of the codifiers approved bibliomancy despite their proscribing other signs because most of man's actions are directed by the Bible as well as the Bible being immediately connected with Divinity.²⁸ A similar thesis is maintained by Yehezkel Kaufman in distinguishing Urim ve-Tumim from other forms of divination. This will be further treated in our discussion concerning lots. Other authorities considered child-bibliomancy as a form of minor prophesy with which children are endowed.

These essential features of scientific signs are instructive in analysing the connection between the sign and the portended event. The authorities who understood sign interpretation on the basis of prophesy need not assume any natural, inherent connection between the omen and the portended event. G-d merely reveals His intention through various signs which are interpreted by means of prophesy. Only the prophets can ascertain the will of G-d as revealed to them in signs. The interpretation of these signs by ordinary men necessarily constitutes Astral Mythology, as there exists no rational connection between the omen and the event.

Other authorities such as Ran, assumed a strong natural and causal nexus between the sign and the portended event. These signs are termed by Kaufman as "causal signs." Or, that coming events cast their shadows before — a sort of inverted causality in which the posterior cause creates a prior effect. Such portents are a product of the natural mysterious connection between the present and the future. Kaufman terms these signs as "preminatory signs."²⁹

We are now in a position to analyse the halakic premises for validating the practice of many customs which were based on signs. We have

already mentioned R. Habiba's position who condones the custom of entering a marriage when the moon is full as a good sign. This view is codified approvingly by R. Caro in Shulchan Arukh.³⁰

A number of essential factors justify this practice. A natural causal relationship was assumed between the waxing/waning moon and its influence upon terrestrial phenomena. This is a natural astrological feature which G-d established "to govern the world from six days of creation." Secondly, it is clear from the ritual of blessing the new moon that the fluctuating moon reflects the Shekinah, and is thus connected to a Divine source.³¹ And thirdly, because it is only considered an indication and not relied on completely.

Sedei Hemed, investigates certain intricate details relating to this custom: For example, he investigates whether one should solemnise or delay a wedding in order to merit an auspicious day. The real question is whether spiritual considerations factor in delaying weddings in the same way as would a dispute which developed over material items. Many authorities argued that the Mitzvah of contracting a marriage would cancel the harmful effect of a waning moon. Other questions considered by Sedei Hemed are whether the sign concerns the entire first portion of the month when the moon is waxing, or only the middle of the month when the moon is full; if the engagement is performed before the marriage whether the engagement also requires an auspicious sign; whether a second marriage also requires an favourable omen. In an interesting disclosure Sedei Hemed writes that even should scientists discover that the moon exerts harmful influences upon terrestrial phenomena, G-d's providential care would work to nullify such an effect on the merit of entering a marriage on a day which the Sages considered auspicious. Perhaps we have a principle of natural metaphysics: Even if the natural physical conditions undergo change, G-d influences the metaphysical conditions to naturally adjust themselves to suit those who follow His will. Another illustration of this can be seen in the case when Beth Din proclaims the new month, the universe's metaphysical conditions will automatically exert a natural effect on man's circumstances to correspond with the first day of the month. A menstruant whose cycle commences on the first day of the month must suspect a menstrual flow on the day proclaimed by Beth Din. Sedei Hemed discusses whether a marriage planned on the first day of a two day Rosh Hodesh (beginning

of the month) corresponds to the last day of the waning moon or the first day of the waxing moon. He rules that because the Beth Din included the first day in their proclamation, its effects will prove auspicious. Finally Sedei Hemed decides that in the months of Elul and Adar a couple may marry under waning moon conditions since these auspicious months would cancel the negative lunar effects. These months are additionally favourable because students gather during these months to study Torah, known as yerach kalah, which is a play on words also meaning "bridal moon."³²

In his Responsa Yehudah Ya'aleh, R. Aszod discusses the custom which he views disparagingly. He recounts the providential principle of shomer mitzvah lo yeidah davar ra—he who performs a Mitzvah (i.e., marriage) will encounter no harm. Moreover he cites the talmudic (aggadic) statement:

As soon as one attains twenty and has not married, G-d exclaims: 'Blasted be his bones.'³³

R. Aszod remarks that G-d's curse is certain whereas the sign is only a possibility and certainty always takes precedence to that which is doubtful. It is significant to note how R. Aszod employs an aggadic statement to buttress his halakic verdict.

The author of the work Ori ve-Yishi disagrees with R. Aszod's view arguing that since this custom is codified in Shulchan Arukh, the providential safeguard only accompanies the Mitzvah when the Mitzvah is performed in its proper halakic time. Regarding the "curse," he states that any delay for the purpose of improving the marriage does not fall under G-d's curse.³⁴

These opposing views are reflected in a famous case incident that occurred in which R. Abraham b. Hiyya clashed with his contemporary R. Judah b. Barzillai. The former persisted in postponing a wedding because the day was not propitious while his contemporary wished to proceed with the ceremony as he held an astrological belief to be a custom of the Chaldeans.

The consideration of not exposing oneself to a situation in which one tampers with planetary influences (mazalot) bears heavily on the question of inducing labour. R. Moses Feinstein is attributed with the ruling that one is not permitted to unnecessarily induce labour for the sake of convenience since each day (and hour) that the child

is born carries a different planetary influence on its life.³⁵

An illustration of another powerful omen which was considered to exert a powerful influence upon human life is the law which appears in Shulchan Arukh that a menstruant who has immersed herself at the end of her period in a Mikvah (ritual bath) must take care upon leaving the Mikvah not to encounter an impure (non-kosher) animal such as a dog, ass, pig or horse. If she falls pregnant the child will be naturally affected by this experience. A G-d fearing woman must repeat the immersion should such an encounter occur. The Talmud records how the great Sage R. Johanan:

Was accustomed to go and sit at the gates of Mikvah. He said:
'When the daughters of Israel come up from bathing they look at me and have children as handsome as I am.'³⁶

Other omens that forebode or influenced portended events and are recorded in Shulchan Arukh are: the emission of seminal pollution on Yom Kippur, the cast of one's shadow on the night of Hoshana Rabbah.³⁷ A man's shadow does not merely reflect his outer presence but more profoundly reveals a connection with his inner being. Till this day the bulk of Jewry are accustomed to partake in an assortment of food-stuffs listed in Shulchan Arukh which are regarded as tokens of good fortune. The 'apple and honey' have practically become canonized as sacred ritual.³⁸ The response to sneezing of "Asuta" (health) or "G-d Bless You" developed as a result of regarding sneezes as portentous. An Aggada records that before Jacob's time people would suddenly meet their death by sneezing. The sneeze was thus an omen of death which could be averted by invoking the traditional response.³⁹ The Mishna as well was not inhibited to state:

If a man makes a mistake in his prayer, it is a bad sign for him. And if he is the reader of the congregation, it is a bad sign for those who have commissioned him, because a man's agent is equivalent to himself.⁴⁰

Sortilege

The same scientific criteria which were employed to distinguish acceptable signs from mystical ones can be applied in the differentiation between permissible and prohibited sortilege by means of lots.

The aforementioned providential verse, "You shall be whole-hearted with the Lord your G-d" is taken by Sifri as a source for the prohi-

bition of inquiring of lots.⁴¹ A common form of proscribed lots, well known to Jews was the use of a piece of wood from which the bark had been peeled on one side. The rough side was designated as "man" while the smooth side was designated "woman." It was then tossed into the air twice. If the "man" fell first, followed by the "woman" this was a good portent; the reverse betokened bad luck, and two of a kind was considered non-consequential.⁴²

Yet despite this we find that the Divine Will is ascertained through lots. Examples abound which show that the ascertainment of Divine Will through lots played an important role in public affairs. The distribution of the Land by means of lots, the selection of the scape-goat on the Day of Atonement, Moses' election of the elders, the surplus of 273 firstborn over Levites who were redeemed by lots, Achan's death, Jonathan — had he not been ransomed by the people, priesthood shifts, the election of Saul etc.⁴³ A proverbial verse advises:

"The lot causeth strife to cease and parteth asunder contentions."

An even more telling verse two chapters earlier states:

"The lot is cast into the lap and the whole disposing thereof is from the Lord."⁴⁴

R. Yair Bachrach rules in his Responsa Havot Yair that lots are reliable and a sign of Divine providence.⁴⁵ In the Responsa of the Geonim we find the following assertion:

"One who opposes [the outcome of] lots is as if one transgresses the ten commandments."

There is not one source in all the ancient rabbinic literature which states anything to the effect that one who opposes lots is comparable to transgressing the ten commandments.⁴⁶ Especially in light of Sifri's understanding of Scripture "You shall be whole-hearted etc.," as a negative commandment proscribing inquiry by lots.

Ostensibly, one may distinguish between "inquiring of lots" and "making a lottery." The former constitutes divination in that the inquirer believes wholeheartedly in the predictions of the diviner who foretells his destiny by throwing lots. This method of procuring knowledge is without sense and mythological. In the second case one is not interested in procuring knowledge. One is merely undecided about choosing between various alternatives. One consciously allows one's indecision

to be resolved arbitrarily by casting lots. Or in the event that two or more parties are undecided as to how to divide up portions, by means of mutual agreement they engage in a lottery and accept its outcome. The lottery does not produce any knowledge through a special technique. Nor do they rely on the lot itself. They merely rely on their decision to divide up portions arbitrarily. This form of deciding fate is sensible not mythical. It is a scientific method which man devises in order to allocate resources or duties. Havot Yair simply adds that even the outcome of a lottery only appears arbitrary; there is a Divine hand in all that befalls man. Therefore, one may not oppose it.

This leads us to a second criterion in distinguishing between permissible and forbidden sortilege. If the outcome of the lot reflects a Divine hand of providence which governs it, as in the distribution of the Land with the aid of Urim ve-Tumim and the other biblical examples mentioned above, then it is permissible. If this Divine mark is missing and instead is ad hoc, it then becomes undistinguishable from pagan divination. This distinction is maintained by Yehezkel Kaufman who writes:

It is no accident that the religion of YHWH preferred lot oracles to all other manner of augury. They are the simplest, most unsophisticated method of decision making. They address G-d rather than nature and express complete reliance on His decision rather than on an [esoteric] science of omens... The priest needed no esoteric knowledge to use the Urim; even as employed by him they remained the ideal vehicle for expressing dependence exclusively on the decree of G-d... The application of divinatory techniques to learn the decisions of YHWH is neither banned nor condemned.⁴⁷

What concerned the Bible in proscribing divination was not its validity or accuracy as a technique, but more so its utter divorce-ment from the realm of Divinity.

Other Divinatory Techniques

Other forms of divination which were equally validated or disqualified by the same scientific distinction are:

- oneiromancy - the art of interpreting dreams, the first form of fortune telling;
- anthroscopy - divining by the features;

- chiromancy - divining by the hand;
- metoposcopy - the art of interpreting the lines which appear in the soles and palms and on the forehead;
- onychomancy - finger nail divination;
- geomancy - divining through sand and stones;
- hydromancy - divining through sounds made by drops of oil or wax against the sides of a water goblet;
- botanomancy - divining through plants;
- onomancy - deciphering a man's fate by his name, and the matrix of his character and personality;
- bilbiomancy - use of Scripture in divining. Either by asking children to recite verses they were studying in school, or opening the Bible at random and taking the first word or sentence as an omen.

Among these techniques there were some which were not relied upon completely, yet, they were taken as signs connected with a Divine factor. Their method of interpretation was rational – the portent relating to the omen in a natural and logical manner, or even allowing for the possibility of prophecy by a recognised man of G-d. Such techniques could be sanctioned up to a point, beyond which they were disqualified as mythical and prohibited divination.

Oneiromancy for example could have significant halakic implications, such as necessitating a fast day, engaging in ritual liturgy for neutralising ominous dreams, release from a vow or decree of excommunication pronounced in dreams, or even rendering a ruling on the basis of a responsum from Heaven communicated in a dream. On the other hand we find such statements as "Dreams have no importance for good or ill," and, "a man is shown in a dream only what is suggested by his own thoughts." Only through the employment of sensible scientific criteria can Halaka distinguish a consequential dream from myth or folly.⁴⁸

In another case we find the practice of examining the finger nails by the light of a candle during the Habdalah rite, related to the science of metoscopy.⁴⁹ In the case of bibliomancy we find that although Maimonides considered all forms of divination mythical and proscribed, he nevertheless accepted certain forms of bibliomancy.⁵⁰

Planetary Influences

The fact that planetary influences (Mazalot) affect man's terrestrial circumstances and behavioural patterns is of substantial halakic consequence and a factor which must be reckoned with in Jewish Law. A case in point is the Katlanit woman, already treated in part, in a previous chapter. We recall that a Katlanit is a woman who became widowed twice. The Talmud, in seeking to determine which women fall under this category, investigates the cause of death of a Katlanit's husbands:

Thus said Abimi from Hagronia in the name of R. Huna, 'The source [a malignant disease in the womb] is the cause.'
But R. Ashi stated, [the woman's] Mazal is the cause.' What is the practical difference between them is the case where the man only betrothed her and died [before consummating the marriage] or also when he fell off a tree and died.⁵¹

According to Abimi, who opines that the source is the cause, if a husband died before consummating the marriage or fell off a tree and died, the woman is not defined as a Katlanit since it was not "the source" which caused her husbands' deaths. According to R. Ashi, however, who stated that Mazal is the cause, even if the husband died of natural causes other than disease of the womb, the woman is nevertheless defined as a Katlanit. Her Mazal caused these natural circumstances. Hence she is not permitted to rewed.

In a responsum on the subject R. Asher b. Yehiel, known as Rosh, discusses the nature of the metaphysical influence which the Mazal exerts on the Katlanit's life:

The explanation of 'Mazal causes' appears to me that the woman's Mazal is bad since her husbands die. The matter is subject to Mazal because peoples' lives and their livelihood depend on Mazal; [i.e.,] if one is born in an hour that one will become wealthy or poor. The woman is imprisoned at home and can not sustain herself without her husbands' support and it was decreed on this woman that her husbands should die in order that she live in poverty without anyone to support her.⁵²

A corollary emanating from Rosh's explanation is his ruling that if a man became twice a widower, he would not fall under the male category of Katlan and hence he may rewed. This is because the Mazal decreed that the woman's husbands should die in order that no-one should support her. This does not apply to men since they support themselves. R. Shelomo Luriah offers another reason for the distinction:

The Talmud teaches that a husband is responsible for his wife's sins. Therefore, a woman who became twice widowed is a Katlanit and they died because of her sins. However, a man, even if a number of his wives died, each one died as a result of her own sin and therefore he can marry a third woman.⁵³

Another practical halakic consequence resulting from Rosh's explanation is a ruling of R. Landau in his responsa Nodah Be-Yehudah:

A woman who has proven herself to be a woman of valour and is successful in business even after her husband's death is permitted, according to the opinion that Mazal causes. Behold, her Mazal does not cause poverty!⁵⁴

R. Landau's reasoning disturbed Hatam Sofer who challenges in a responsum:

Is it sustenance alone that causes? Rather her Mazal causes that she will not live complacently under her husband and that her husband's name will not be attached to her. And certainly when he dies after marriage one must explain that her Mazal caused her to suffer personal grief deprived of the conjugal rights which are obligated by Torah.⁵⁵

Many of the authorities however, did not agree to R. Sofer's objection and the R. Landau-R. Sofer conflict became a widespread controversy among codifiers.⁵⁶ There were important practical halakic differences according to the authorities who maintained R. Landau's position apart from the consequence which R. Landau himself mentioned: If upon contracting a marriage a condition stipulates that the woman will provide her own sustenance, she would not be considered a Katlanit if her husbands died. Or, if she had already become classified a Katlanit, she would be permitted to marry a third time if she contracted her new marriage on the above basis. Since she is not dependent on her husband for sustenance he will be unaffected by her Mazal.⁵⁷

There were halakic consequences even according to those who maintained R. Sofer's view. If the woman had lived complacently under both husbands for many years before their death, then her Mazal did not cause her to suffer the anguish described by R. Sofer. Or, if she had separated herself from her husband and moved into another home by herself before his death, her actions demonstrate that she is not grieved by his demise. In these cases one would not be able to determine resolutely that Mazal played any part.⁵⁸

An interesting question entertained by the authorities is if a Gentile woman became twice widowed and subsequently had undergone conversion. Do we say that her Mazal also undergoes some form of metaphysical transition? Does the woman acquire a different Mazal? The resolution of these questions are essential in order to decide halakically whether she is permitted to rewed.⁵⁹

Another explanation of the nature of the cause of the husbands' deaths is divulged by R. Shelomo Luriah in his commentary to Semag - the Sefer Mitzvot Gedolot of R. Moses of Coucy:

There are those who explain the reason is because she is decreed above [by the constellations, be-ma'arachah] to another man. Consequently whoever marries her will die until she marries the one who was decreed by the Heavenly Family. This does not apply to men however, since they can take additional wives to their own.

[R. Luriah comments:] This reason is faulty. Because either way, if she was decreed to another man, how did the Sages forbid her to rewed? If it is decreed she will perforce rewed! And if we say that G-d doesn't cancel the decree of the Sages but rather nullifies His own decrees, certainly the man who she married will not die. For He cancels His decrees!⁶⁰

Other natural or metaphysical factors which affect the Katlanit's predicament but were not caused by her Mazal are also discussed by the authorities. A distinction had to be drawn between Mazal influences and other factors since it was only the former which designated her the Katlanit status and its concurrent consequences.

Therefore, we find in a ruling by Terumat ha-Deshen:

If the husband died through pestilence or in a similar manner, any plague which affects the entire country, even the one who opines Mazal causes will not inculcate the Mazal in this instance.⁶¹

The authorities were divided on whether one could apply R. Isserlein's principle in the case that the second husband died from old age.

Some maintained that: "there is no greater plague which affects all countries like old age." While others contended that plagues are different since by remaining in the country one exposes oneself to the plague and thus endangered one's life which is not the case regarding old age.⁶²

Concerning other factors which may be responsible R. Isserlein writes:

From Sefer Hasidim it seems that it is the place [where one resides] which causes [death].⁶³

Rashba also seems to concur with this opinion. In a responsum he explains the talmudic advice that a man who is ill-fated in one town should move to another town where his fortune may change for the better. One of the reasons why such a step can prove effective, Rashba writes, is that his bad luck is due to the influence of the stars in that particular place.⁶⁴

Another interesting factor other than Mazal which is considered is the talmudic instruction that the marriage of the daughter of a priest to a non-priest will not fare well. It is noteworthy that the statement which is normally aggadic, is halakically employed to determine that the marriage was affected by the couples' incompatibility rather than by Mazal.⁶⁵

Regarding whether her Mazal alone is responsible R. Kluger writes in Hochmat Shelomo:

According to the one who opines Mazal causes, one may distinguish a woman who married her husband by herself to a case where his father married them whilst she was a youngster. Then we must say that the Mazal of his father causes and not her Mazal. And if she grew up later and married herself she has no law of Katlanit.⁶⁶

The problem of Mazal being vested with certain powers which seems to oppose the providential notion also presented specific halakic problems for the Katlanit. For example, the question whether the Katlanit must undergo a Levirate marriage. Many of the authorities were of the opinion that the merit of performing the Mitzvah of entering a Levirate marriage would counteract the influence of Mazal. Other authorities opined that the Mitzvah provides no protection where danger is certain. Hatam Sofer counters by positing that Mazal influences are taken only as a sign to be suspected, and can not be considered an instance where danger is certain. Therefore one can rely on the providential protection which accompanies Mitzvot.⁶⁷

R. Kluger considers the marriage of a scholar who studies Torah while being supported by his wife. Does the Mitzvah of studying Torah provide adequate providential protection to circumvent the powers of Mazal? R. Kluger rules positively. Avnei Nezer challenges that if Mitzvot are capable of engendering sufficient strength to ward off Mazal, why is it that the Mitzvah of procreation does not entitle every Katlanit to reward. Amazingly, Avnei Nezer distinguishes between

varying degrees of protection engendered by different Mitzvot. Certain unique Mitzvot are of such immense strength that they can act as defense mechanisms against Mazal while others hopelessly succumb before her.⁶⁸

A marvelous example of application of Aggada to Halaka in this regard, is the question of whether a Katlanit who immigrates from the diaspora to Israel is permitted to rewed. The talmudic commentators distinguish Israel from the diaspora in that the diaspora is governed via the medium of Mazalot which are subservient to G-d. Israel, however, is under the direct guidance of G-d without the mediation of Mazalot. Therefore, some respondents ruled that since Mazal plays a role only in the diaspora, a Katlanit woman would be permitted to rewed in Israel. Others held that the mere Mitzvah of settling in Israel itself would provide the necessary protection against Mazal.⁶⁹

Determinism versus Free Choice

While explaining the nature of the metaphysical influence which Mazal exerts on Katlanit's life the authorities were extremely cautious to address the sensitive philosophic dilemma which predestination (by Mazal) presents to the principle of Free Will. In his responsum explaining how "Mazal causes," Rosh was careful to add:

But one must not explain that the woman was born in the same Mazal that her husbands would die, as we don't find this in the Talmud to be dependent on Mazal except wealth or poverty or longevity of life and related matters. However, other things are not dependent on Mazal.⁷⁰

Rosh cautiously alludes to the fact that Mazal can not affect the Katlanit or her husbands in a manner which will interfere with their freedom of choice. It is only in matters such as sustenance, children, length of life, and related matters which have no connection with man's efforts to exercise free will. However, other matters such as man's moral attributes and deeds, whether he be righteous or wicked, good or evil, are directly determined by man's free will. These can not be influenced by Mazal and therefore, can not be included in an explanation of "Mazal causes."

Radbaz similarly explains in a responsum, a verse in Jeremiah which

seems to entirely contradict the concept of free choice: "O Lord, I know that man's way is not his own; it is not in man to direct his steps as he walks." Radbaz replies that the verse does not refer to man's ethical and religious life, which he is free to choose, but to such matters as sustenance. This does not depend on G-d's decree, but on man's efforts.⁷¹

The reason which explains the Katlanit's predicament because of her having been decreed to another man, as discussed by R. Luriah, is also related to the issue of free choice. The reasoning is based on an aggadic passage in the Talmud which states:

Forty days before a child is formed a Bat Kol issues forth and proclaims the daughter of A is for B.⁷²

Marriage is preordained before birth and therefore, not dependent upon man's conduct. Maimonides was disturbed by the obvious problem of determinism implied in the passage. In a responsum Maimonides explains the meaning of the passage, that if a man and a woman are worthy, G-d will match them so that their marriage will be happy. If they are unworthy, He will arrange for them to contract an unhappy marriage. The supposition that marriages are made in Heaven does not mean to suggest that a man can not take steps of his own when acquiring a wife. He can freely decide to live a virtuous life and G-d will arrange for him to marry a virtuous wife.⁷³

R. Hayyim Halberstam (1793-1896) discusses the Katlanit woman in his Responsa Divrei Hayyim. He explains that G-d ordered His world in such a way that the stars can have some effect as to ward off death and the like. Ultimately, it is G-d who governs the world. The meaning of "Mazal causes" is that her Mazal prevents any suspension of death due to husbands.⁷⁴

In this brief explanation, R. Halberstam tackles a number of complex philosophic problems: Firstly, he reconciles the confrontation between G-d's providence and an astral system with its own invested powers by positing only limited powers to the constellations. Their power is not independent but is derived from G-d who ultimately governs them by exercising His providence. Nor is this astral system mythical. These are real natural powers through which G-d governs His world. In the words of R. Halberstam: "Like an axe in the hands of a wood-cutter." Finally, he states that there is no contradiction between

predestination and free choice because Mazal does not challenge man's free will.

Another example illustrating how Mazal could not be held responsible where man's free choice is concerned is a case when one of the husbands committed suicide. Since the husband took his life in his own hands as a result of his own free will, the consideration of the wife's Mazal must be dismissed. Hence the woman is not classified as a Katlanit.⁷⁵

Perhaps, we may now venture another halakic criterion in differentiating between Astral Science and Astral Mythology. Namely, if the astral system will affect man's lot in life in a manner which interferes with his free will then these "lots" belong to the category of sortilege which constitutes divination. Halakically speaking these "lots" are mythical as no causal relationship exists between the Astral System and man's fate wherever free choice is concerned.

A number of explanations were devised in answer to the more general problem of how the Halaka could acknowledge any existence of Mazal powers affecting Jewish life in view of the talmudic verdict: "The Mazal has no effect on the people of Israel." Rashba simply resolves in a responsum that only virtuous Jews are immune from Mazal. However, by sinning G-d removes His providence and hence they become subject to Mazal's influence. Rashbash (R. Solomon b. Simeon Duran), follows a similar line in his responsum and points out that Jews are not automatically immune. But they can shake off the influence of Mazal by pursuing virtue. Man has to take every step to avoid harm, just as his trust in G-d does not permit him to walk through a fire hoping not to be burned.⁷⁶

Thus we see that according to Rashbash, Mazal exerts a very real and natural influence over man's life. To walk forward and ignore Mazal without taking any preliminary course of action can prove as hazardous as walking through an open fire. R. Halberstam, like Nimmukei Yosef, ascribes to Mazal natural powers which were vested in it by G-d during Creation. It is imperative for Halaka to scientifically analyse the metaphysical workings of Mazal as well as resolve the complex philosophic issues raised by it, in order to render cogent halakic decisions whenever situations in Jewish life arise when Mazal is encountered.

Ammorite Folkways

A final factor which must be included in our discussion of "Astrology: Science or Mythical Lore?", is the consideration of Darkhei Emori, or Ammorite Folkways. We endeavoured to show how astrological information of a non-empirical nature and which did not reflect a Divine hand, is discounted as astral mythology. Prognostic data which are determined by nonsensible, illogical techniques depicting essentially unnatural metaphysical phenomena also shared many of the elements and beliefs prevalent among pagan cults; thus constituting even further grounds for being banned as mythological. In addition, many pagan divining techniques comprised idolatry. The gods were often called upon for assistance in these techniques and pagan belief was that the gods could be influenced through their various manipulations. These were the mythical folk practices and beliefs of the Ammorites which the Torah expressively forbade.⁷⁷

In view of the fact that astrology itself played such a large and important role in Ammorite folk tradition the question arises how could some of the authorities sanction Jewish interest in this field even if it constituted a logical pseudo-science? Indeed, most of the authorities who censured astrology, immediately associated it with Ammorite folkways. The "Ammorite Folkways" refer to the prognostic arts as practiced by Ammorites which constitute a partial category of the more general prohibition of following the "Laws of Gentiles" (hukkot akum).⁷⁸

One must understand the Torah never intended to forbid every facet of life which Jews shared in common with Gentile nations and in particular Ammorite society. It was only those practices which were specifically recognised as "their statutes" (hukkoteihem) which were proscribed. Therefore, a distinction had to be drawn between those practices which were particular to the nations and those which were universally common to all peoples. Generally, the Halaka considered all practices which had their origins in specific cultic traditions which were known only to the doctrinaires and promulgators of cultic beliefs but were nonsensible in themselves as "their statutes." In the language of the halakic authorities:

Those matters which are not determined through natural logic, and have no precedent in the natural order of the world, but

rather are void actions which are of no use. These are strange and astonishing things and therefore, are called hukkot, like a huk [statute] which is without reason. All of them cleave to idolatry since they lead to witchcraft relating to the stars. The matter evolves until the stars are raised aloft, worshipped and praised.⁷⁹

It is now apparent why many of the codifiers did not associate astrology with "their laws." Since its metaphysical components had a natural basis, occurring regularly in ways which were scientifically explainable according to reason, and did not exclude G-d's overall governing and control over them, they could be sanctioned as belonging to the category of universal values which Israel shared in common with all nations.

Thus the "strange and astonishing" supernatural elements of metaphysics were recognised as specific pagan mythological features which characterised "their ways." However, the natural metaphysical events which were empirically verified by all nations constituted a legitimate body of Astral Science which had to be reckoned with halakically as any other real branch of the natural sciences.

VIII. MAGIC

The mythological character of pagan cults engaged in actual magical practices was strikingly more pronounced than in prognostics. The Jew who practiced actual magic far more resembled his Ammorite counterpart than his Jewish friend who had an interest in astrology. Nevertheless, not every magical activity would automatically qualify as Ammorite Folkways. The Halaka employed very definite criteria to distinguish between actual magic and what only appeared to be magic. In some instances actual magical practices were permitted.

Jewish and Non-Jewish Magic

In differentiating medieval Jewish magic from magic as practiced by Gentiles, Joshua Trachtenberg deftly writes:

Jews were ab initio excluded from the medieval fraternity of sorcerers and witches because they were commonly branded as members of anti-Christian sects. The witch cults employed various blasphemous burlesques of Church rites in their own ritual blasphemies to which sorcerers were also addicted with magical potency.

These could have no meaning for Jews. Furthermore, medieval witchcraft and sorcery were based upon a perverted workshop of Satan, and individual warlocks were supposed consciously to accept the suzerainty of the Power of Evil and to operate through an appeal to his aid. Jewish magic to the contrary, functioned within the framework of the Jewish Religion, which naturally excluded any such association with the arch opponent of G-d.

The primary principle of Jewish magic was an implicit reliance upon the Powers of Good which were invoked by calling upon their names, the holy Names of G-d and His Angels. This simple dependence upon names for every variety of effect obviated resort to all the other magical arts with which the non-Jewish tradition has familiarised us. The magician who could produce wonders by the mere utterance of a few words had no need of the devious 'business' of his non-Jewish colleague.

It was this principle too, which kept Jewish magic securely within the bounds of religion and prevented it from assuming the role of anti-religion as its Christian counterpart did. Magic was proscribed by the Church not because it was magic, but because it made a mockery of the Christian faith and became a powerful anti-Christian force. Jewish magic during this period never strayed from the fold so that the magician remained a pious and G-d fearing Jew.

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Nor was Jewish magic the exclusive skill of the 'magician.' One may define the Jewish magician as a scholar by vocation, a practitioner of the mystical-magical arts by avocation.¹

Perhaps a pertinent example of one of Trachtenberg's points is the following Halaka in Shulchan Aruk:

Whosoever does not leave over bread on his table will never see a sign of blessing. However, one must not bring a whole loaf of bread and place it on the table. For if one does, it resembles idolatry, as it is written: 'those who prepare a table for Gad.'²

One must take precaution to ensure that the same loaf of bread (which is required by law!) to leave on the table in order to elicit a sign of blessing from G-d, should not be regarded as a meal offering to Gad — the Mazal of Fortune.³ The magical mystical method of employing foodstuffs such as bread as a mechanism for appealing to the Powers of Good — be it Gad or G-d — seem virtually identical.⁴ The difference is merely whether the object of appeal is Gad or G-d. An appeal to G-d to elicit blessing falls within the rubric of religion and is in fact dictated by it. Appealing to Gad for the same purpose, is anti-religious since it constitutes a denial of the suzerainty of G-d as the ultimate source of all fortune. Therefore, the method had to be modified in order that it should not be misconstrued as idolatrous. Similarly we find a related Halaka where Rema rules:

There are places where it is customary to prepare a table and place on it various foodstuffs on the night before circumcising a child. This is forbidden because of 'those who prepare a table for Gad.'⁵

In his commentary, Shakh explains that Rema forbade the custom only when food was specifically placed on the table to remain there. However, he who partakes of the food, is permitted to participate in the widely accepted custom of Wachtnacht in which a meal was prepared on the night preceding the circumcision.⁶ Again we are witness to the legitimisation of magical-mystical techniques, once correct measures were taken to ensure that they were not confused with idolatry. If the technique was self-evident that it was engaging the Deity, then no modification was necessary. Therefore, Shulchan Arukh rules:

It is forbidden to create an illusion. But it is permitted [to do so] by using the Book of Creation.⁷

The Book of Creation

The employment of magical mystical Names of G-d, as prescribed by the Book of Creation, to effect various metaphysical conditions, was a recognisably legitimate technique. Since it directly evoked the Deity — the obvious source from whence it derived its power — it could not be mistaken for Gentile magic because it was of an unequivocal Jewish nature. Therefore, it could be endorsed by Halaka as a legitimate magical method. This contention is substantiated by Darkhei Moshe who writes:

And from Asheri it would appear that it [the employment of the Book of Creation] is a type of magic [kishuf] which is permitted.⁸

It is important to bear in mind the distinction between Jewish magic — i.e., magic sanctioned by Jewish Law — and magic that is performed by Jews but is prohibited because it imitates Gentile magic. An example which illustrates this distinction quite clearly is the question of whether food produced by magic is Kosher for consumption. In a responsum on the subject R. Aryeh Yehudah Leib Fraenkel-Teomim writes that if the food was produced by a Jew it is not permitted for consumption since Jews are forbidden to engage in magic. If the food was produced by a Gentile, however, since the Torah does not forbid Gentiles to engage in magic, the food must be rendered Kosher for consumption. Yet in another incident we find that the Talmud relates how R. Haninah and R. Oshaia created a one third grown calf by means of the Book of Creation and ate it. The unmistakable conclusion is that food which is created by Jewish magic is permitted whereas food which is created by Jews who employ Gentile techniques is prohibited.⁹

The Talmud in fact defines the Hebrew term of sorcerers (Keshafim) etymologically, as an abbreviation for Kahash Famalia shel Ma'alah — contradicts the heavenly household. From here one might infer that he who practices magic in a manner that does not oppose the heavenly household would not be defined as a sorcerer.

In his Responsa Shemen ha-Mor, R. Abraham Anakawa discusses the question whether it is permitted to create a man by the Book of Creation on the Sabbath since it results in the creation of a physical entity. R. Anakawa rules that it is permitted since creating through the Book of Creation is automatic and therefore does not constitute

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a desecration of the Sabbath. Furthermore, R. Anakawa continues, we believe that whenever the Torah is studied new heavens are created and yet it is a religious obligation to study Torah on the Sabbath. It is illogical to draw a distinction between heavenly halls which are purely spiritual, and physical things created through the Book of Creation, since the latter is also a legitimate subject of study. It is interesting to note that R. Anakawa, like many of the respondents who treated the Elijah issue, confers a spiritual status upon a physical entity after carefully considering the logical reality of such a being. The Laws of Sabbath only proscribe the physical creation of physical entities but do not apply to the spiritual creation of metaphysical bodies. Equally of interest is how he bolsters his ruling by setting a practical application of an aggadic account describing the creative powers of Torah study.¹⁰

In a similar manner as we saw in astrology, magical practices which could be explained away rationally and naturally were not regarded as magic proper and did not constitute a serious infraction of the Law. R. Joseph b. Solomon Colon (Maharik) postulates this supposition in resolving a difficulty which arises in Maimonides' Code. In one place Maimonides rules that one who creates illusions is liable for lashes and in another law writes that although it is forbidden, one is not liable for lashes. In reconciling this apparent contradiction Maharik suggests:

There are two kinds of people who create illusions. One who appears to perform a strange and wondrous act which is beyond the realm of the natural world, in which case he receives lashes. But one who creates an illusion and shows something which is within the natural order of the world, for example, that he plants gourds and similar things which are natural, he is not liable for lashes.¹¹

Wondrous acts which are characteristic of supernatural metaphysics constitute magic proper and are proscribed by Torah. Ordinary illusory acts belonging to natural metaphysics are not regarded as magic, according to the Torah and hence were not outlawed by it. The Rabbis imposed a restriction only on account of its resemblance to magic.

It would appear that the rabbinic attitude of spurning any magical practice which remotely resembled Gentile magic and sanctioning only magic which bore a distinctive Jewish nature, went far deeper than

a mere suspicion of idolatry. If one closely studies the laws concerning Ammorite Folkways, where most of the magic laws appear, one can almost detect a latent rabbinic motif to intentionally disassociate Jewish culture in general from Gentile culture. This motif is indicative in the enactment of such laws which forbid Jews to dress in the same garb as Gentiles, to trim their hair in the same style as Gentiles, to erect buildings in the same design as Gentile architecture, etc.¹² This reveals a conscious attempt to utterly divorce not only Jewish theology from Gentile theology but more practically Jewish lifestyle from Gentile lifestyle. Although this is due largely to the fact that a nation's culture is but a physical expression of its theological and philosophical beliefs, it also seems that the Rabbis considered an inherent value in maintaining a separate Jewish culture by itself.

We have already mentioned in our previous discussion of astrology that it was not their intention to forbid every facet of life which Jews shared in common with Gentile nations, nor would it have been possible, but rather only those practices which were specifically recognised as "their statutes" (hukkoteihem).

It was in attempting to procure an accurate distinction between Jewish culture and "their" culture that magic played a key role. It is an accepted fact that cultures tend to differ from one another in private traditions rooted in supernatural lore and tend to correlate with each other in communally agreed traditions based on natural order. The very word hok implies that which is unnatural, non-empirical, and irrational. In differentiating between ma'aseh (deed) and hok (statute), R. Samson Raphael Hirsch writes:

The former are regulated by state-laws, the latter less by legislation but rather by rules which become sanctified by custom and convention. The former, the social condition of life of the country, show the attitude of a nation towards justice and civic life. The motives which prompt them and principles behind them are transparent and can be recognised by the conditions of life which they effect and the purposes they are to accomplish. The traits of private and family life and also the personal national traits, i.e., those which are characteristic of a nation, are usually influenced by more or less obscure ideas of the relation of the supernatural to individuals and nations.¹³

Laws which regulate civic life and social order are logical, transparent and generally universal to all cultures. The rules that govern

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private life and characterise personal national traits are obscure and based upon supernatural ideas. It is here that cultures differ greatly. The very obscurity of magic and its intense involvement with the supernatural obviously designated it as a prime example of "their statutes." Nonetheless, ordinary magical practices evincing natural occurrences which could be explained simply, were universally practiced by all nations and were considered essentially natural phenomena. This latter form of magic could be condoned as it did not depend on "their" specific cultic traditions.

Consequently Rema rules that only the senseless and the morbid practices of Gentiles are condemned as Ammorite Folkways. However, those practices which have a utilitarian end, such as the incineration of the deceased kings' belongings and the special "cape" worn by doctors, are not specifically Ammorite and are therefore permissible.¹⁴

In a similar fashion R. Margaliot explains the talmudic dictum that a tree which casts its fruit may be painted with red paint and laden with stones. The Talmud states that it may be laden with stones so that its strength is weakened but queries why it may be painted with red paint. R. Margaliot explains that the Talmud is prepared to accept the practice of laying stones about the tree since it is a natural and logical strategy. The tree's excessive fertility was no doubt the cause for it casting its fruits. The stones therefore, weaken its productive strength in a natural manner. However, since no logical explanation can be conceived for painting the tree red, the Talmud enquires that this should be prohibited as Ammorite practices.¹⁵

Magical practices which are distinctively Jewish in character and explicitly mentioned in the Torah are permitted despite their resemblance to Ammorite culture. This point is made quite clearly by the Talmud which, in a similar circumstance, permits decapitation by the sword even though it was "their" (Roman) method of execution since: "Scripture decreed the sword, we do not imitate them."¹⁶ Hence there are no problems with the trial by water ordeal of the Sotah, the healing of the copper serpent (nechushtan), Urim ve-Tumim, the crimson thread on the goat dispatched to Azazel on the Day of Atonement, etc., since these practices were scripturally ordained.¹⁷

Miracles

More fundamentally however, there was a basic and salient difference between pagan magic and Jewish magic mentioned in the bible. Probably the most famous ancient encounter between Jewish and pagan magic recorded in the Bible is the challenge of the Egyptian sorcerers to the miracles of Moses. It is here that we observe the essential difference. The wonders of the Egyptian sorcerers emanate from familiarisation of the magical arts which influence supradivine forces. Moses' miracles are the "finger of G-d" which stem directly from His will. The Egyptian world did not recognise a G-d who transcended the existential system that controlled everything and whose power is absolute. The magical power was conceived as something impersonal which was found in people and in substances. It was a visible and material power. Moses demonstrates that the power emanates from an invisible G-d who is immaterial.¹⁸ The contest between Jewish and Egyptian magic is between Divine and human wisdom. The reliance upon heathen wisdom seduces man into arrogant self-sufficiency. The Egyptian wizards rely on their magic. Only when they fail, do they acknowledge the finger of G-d. The Jewish miracle worker does not rely on human wisdom. He is a man of G-d, a faithful "servant" whose acts flow from and indicate towards Divine grace. This is the essential difference between Jewish miracles and pagan magic. Miracles establish the finger of G-d, magic ignores G-d.

The trial by water ordeal of the Sotah, the copper serpent, the goat dispatched to Azazel, Urim ve-Tumim etc., need not be conceived as legalised magic, scripturally ordained, but rather as miracles reflecting G-d's omnipotence. Similarly, the Book of Creation is not a book of magic but rather a book of miracles. The employment of Divine Names to produce metaphysical results demonstrates the omnipotence of G-d revealed by those names.

The famous talmudic miracle worker, Honi Ha-Me'agel (circle drawer), acquired his title by employing the ancient universal magical symbol of drawing circles. He wrought a great miracle by standing in a circle while uttering a decree which G-d fulfilled by bringing rain when it was needed. Honi was vouchsafed miracles because he was beseeching G-d as the object of his practice. Even R. Simeon b. Shetach who was opposed to the practice of magic could not censure Honi because Honi's character was one of a man who obviously emulated G-d in his every action.¹⁹

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Likewise the setting aside of a loaf of bread for Grace after Meals and the partaking of a repast on the night before circumcision is not misidentified with magic because it is quite clear that G-d is the direct object of these rituals and not some mysterious material force found in substances. Consequently these practices do not constitute "their ways."

Miracles further distinguished themselves from magic, in that they represented manifestations which fell within the natural metaphysical order of the world. Whereas magic was opposed to the natural metaphysical order of the world. All natural metaphysical phenomena were considered legitimate miracles; while supernatural metaphysical acts were banned as illegitimate magic. This seems to be the clear intention of the Mishna in Aboth which describes how:

Ten [miraculous] things were created on the eve of Sabbath at twilight.²⁰

The purpose of this statement was no doubt to naturalise these ten metaphysical occurrences by including them within the final moments of the creation process, when the natural order of the world was established. However, because these events constitute a metaphysical dimension of nature, they had to be created during "twilight" — which is the halakic zone which deals with metaphysics. Similarly, the Egyptian wonders (ten plagues) and all other miracles require natural substances in order to materialise.²¹ Miracles are illegitimate unless they are incorporated within the "natural" rubric of the cosmos.

Although a miracle is characterised by falling within the natural metaphysical framework of creation, it will not be defined as such unless it also manifests the finger of G-d and has an obvious Divine purpose. A mere intervention in the order of the universe is not automatically a miracle. A talmudic incident records how a man grew breasts to suckle his infant son upon the death of his wife.

Abbaye refused to recognise this intervention in the natural order a miracle since it did not expressly indicate a Divine purpose.²² Similarly a prophet who employs miracles to attest his prophecy is distinguished from an ordinary magician in his ability to prove that his miracle is the work of G-d Himself. Since no man can duplicate the miracle, the prophet proves that G-d has a definite interest in

in his mission.²³ In addition the prophet's character must exemplify that he is a man of G-d who is worthy of having miracles performed through his agency. As the Talmud in Berakoth affirms:

How is it that for the former generations miracles were performed and for us miracles are not performed? The former generations used to be ready to sacrifice their lives for the sanctity of G-d's name; we do not sacrifice our lives for the sanctity of G-d's name.²⁴

Therefore, the entire reason for the miracle is negated if there is no willingness to sanctify G-d's name on the part of those who perform miracles or wait for them.²⁵

Scripture states:

And Moses built an altar and called it Adonai-nissi.²⁶

Adonai-nissi can be translated either as the Lord is my banner or as the Lord is my miracle. The two translations are inter-related. If the miracle points to G-d, then G-d is an upheld banner. If the miracle ignores G-d then it is simply mythology.

Miracles were not limited to the sphere of metaphysics alone. The Rabbis considered the physical order of nature to bear even greater testimony to G-d's miraculous deeds than the metaphysical wonders which intervened in the order of creation. All of creation, its natural order and the normal occurrences of existence were equally regarded as miracles. Precisely because miracles are such common events which occur innumerable times during the course of a normal day, an exact definition of "uncommon" miracles had to be obtained in order to fit the halakic requirements for marking miracles. Such as the blessing which is recited at the place where a miracle took place or the commemorating of a "Personal Festival" on the date that a miracle was vouchsafed.²⁷ If every common wondrous occurrence were defined as a miracle then one would reach a reductio ad absurdum that every woman who has experienced childbirth should recite the blessing: "Who has performed miracles on my behalf" upon visiting the site at which her child was delivered and that a similar blessing should be recited by her progeny throughout subsequent generations.²⁸ It is here that one requires great perception to be able to detect the thin dividing line which differentiates ordinary physical miracles from uncommon metaphysical miracles. Both of them are natural. Yet only the latter is a divine intervention which somehow transcends

the natural order.

In his commentary, Maharaz Hayes, R. Chajes explains that the reason the Talmud narrates the miracle of the cruse of oil in answer to the query "What is Chanuka?" and completely omits the military victory of the Hasmoneans over the Greek forces, is because the military victory, amazing as it was, was achieved entirely in accordance with physical laws of nature and did not in any way transcend the order of creation. In contrast the miracle of the cruse of oil clearly transcended the natural order.²⁹

On the other hand R. Moshe Zevi Neriah argues that the events recorded in the Book of Esther, while undoubtedly reflecting divine providence, did not transcend nor suspend natural law. Yet on Purim the blessing: "He who has performed miracles for our father" is recited.³⁰

For this reason we find a controversy in Shulchan Arukh regarding the salient characteristics of a miracle. The first opinion brought by Shulchan Arukh is Abudraham who opines that one only recites the benediction regarding unusual miracles which transcend the natural order. The second opinion brought by Shulchan Arukh is Rivash (R. Isaac b. Sheshet Perfet) who in a responsum rules that one must recite the benediction even upon returning to the place where commonplace miracles occurred, such as the safe delivery from a dangerous journey for which one ordinarily recites Birkat ha-Gomel (blessing of thanksgiving upon redemption) afterwards.³¹

This is basically the issue concerning whether the rebirth of Zionism and in its wake the attainment of Israeli independence constitutes a miracle over which Hallel liturgy must be recited and for which a day of national festivity proclaimed. Obviously this is a miracle. But a keen halakic perception must be cultivated in order to determine whether the Zionist miracle is an ordinary one pertaining to the natural physical order of the cosmos or whether it is an uncommon metaphysical miracle which reflects G-d's intervention transcending the natural order. Such questions regarding whether soldiers of a secularist Jewish state can possibly be agents of divine providence and whether Zionism is an authentic messianic movement which has germinated as a result of a special intervention by G-d, all require sharp halakic expertise to correctly interpret the quality of miracles

observed. The same considerations would apply to the Entebbe Rescue Operation and similar events which recur throughout history. In his work, Contemporary Halakic Problems, R. David Bleich considers such halakic questions as: How is the term miracle defined? In the event that any of the rescued hostages (or their descendents) should ever return to the Entebbe airport where the rescue occurred, is that person obligated to pronounce the benediction: "Blessed is He who performed a miracle on my behalf [or, on behalf of my father] in this place." It is in this twilight area where nature transcends itself that Halaka must exact precise definitions.³²

Although G-d's method of working miracles is always within the natural parameters of existence, His decision to work a miracle must be regarded as an intervention within the course of nature for the immediate purpose it serves. Because such an intervention is certainly uncommon "one may not rely on miracles" and depend on them in the same way as one would rely on other natural occurrences. Furthermore, since miracles are only vouchsafed for righteous men of G-d, no man may assume that he is righteous enough to expect a miracle to be performed on his behalf. This fact is a guiding principle in astrology where events occur with far more regularity than miracles. In the previous chapter we saw how Nahmanides rules that one is permitted to heed astrological warnings because of the principle that "one may not rely on miracles." In other words, it would take a miracle for G-d to intervene upon the natural astrological order, and one may not assume that one is righteous enough to elicit an intervention with the astrological system on one's behalf.

In Chapter III.1 we saw how the Tosafoth explained that Elijah the priest was permitted to defile himself in the process of performing the resurrection because he knew for certain that he would be successful in saving the child's life. We recall how Radbaz queried this in a responsum since "one does not rely on miracles." Furthermore, if Elijah was truly convinced of the success of his endeavour, then this instance can not be regarded as a case of saving a life.

In his responsa collection Hayyim Sheal, Hida answers both Radbaz's queries stating that only ordinary men may not rely on miracles. However, righteous persons who are confirmed men of G-d are permitted to rely on miracles. Certainly Elijah belonged to this category.

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Secondly Elijah knew for certain that the child's life would be saved only through his own intervention. Therefore, he was permitted to defile himself.³³

Even after Hayyim Sheal's answer it is clear from both Radbaz and Hida that an ordinary person is not permitted to rely on miracles even for the sake of saving a life. And the obvious question which requires reconciliation is that with the exception of three cardinal commandments, all of Torah may be violated even if there is a doubtful possibility that one might be successful in saving a life — how much more so in Elijah's case where he was certain of success.

One must perforce explain that both Radbaz and Hida did not consider the reliance upon miracles to constitute even a doubtful possibility. The possibility of miracles is so remote that one must regard them as if they can not happen entirely. Therefore, because Elijah did not even have a doubtful possibility of being successful, then the only way he could revive the child is if he knew for certain that he would succeed. Elijah could only know this for certain through prophecy. This no longer constitutes a case of saving a life.³⁴ The fact that these respondents concur that one may not rely on miracles even for the sake of saving a life has great consequences regarding the violation of Sabbath in a case where there is danger to life as we shall see shortly.

It is significant to mention that Halaka only deals with miracles in so far as Halaka recognises that man encounters numerous metaphysical conditions during his ordinary course of life. The Halaka must interpret these events for him by placing them in realistic categories since these events affect man in a real way. However, the Halaka does not require miracles to certify itself as a system. In fact, we saw in our discussion of the "Oven of Aknai" incident in Chapter I, that Halaka will ignore miracles if the miracle contradicts the Halaka assertions. This is because Halaka is a humanistic system in the sense that it was endowed by G-d to man at Sinai, and after handing it over to the jurisdiction of man, G-d does not impose Himself upon the system by intervening in it through miracles. The purpose of the miracle then is merely to establish G-d's presence, but not to establish halakic truth. If the miracle however, does not indicate G-d's omnipresence then it is nothing more than a magical myth of Ammorite folkways.

Jewish Culture

As mentioned, despite the fact that the universal cultural elements which Jews share in common with every society were not technically defined as "their ways," nevertheless, this distinction was not approved by many of the Rabbis who apparently sought to drive a wedge between Jewish and Gentile culture by developing a separate Jewish culture of their own. This tendency may be particularly observed in clothes where some Jews went to great lengths to clad themselves in garments that were only worn by Jews and which Gentiles often frowned upon. Possibly the special Jewish garb of tzitzit (tassels) originated the basis of this idea. Even Joseph Caro in explaining Maimonides' law which states: "Jews must separate from 'them' and be recognised by their clothing," explains:

Since these garments have become associated with them on account of their Jewishness, when a Jew wears them he appears like them and will follow them.³⁵

R. David b. Samuel ha-Levi seems to indicate a similar attitude in his commentary Taz regarding Shulchan Arukh's prohibition of growing long hair like Gentiles. Taz comments that the interdict does not refer to any particular hair cut since it is a habit of Gentile soldiers to wear long hair generally. And even if it did refer to a particular hair style Taz continues:

The rule is that Israel must separate from them, what does it matter if it be in this way or that, for countries differ in fashions concerning it [hairstyle].³⁶

Likewise R. Moses of Coucy writes in Semag regarding the negative commandment, "And you shall not walk in their ways":

It is all one matter; Israel is warned to be separate from Gentiles in clothing, in custom, and in language. And so it is written, 'I shall separate you from among nations.'³⁷

This position is reflected in numerous Midrashim which indicate that what preserved Israel from virtually a complete assimilation among Egyptian culture and eventually caused them to merit redemption was their remaining separate in clothing, names, and language.³⁸

Nevertheless, highly placed Jews, close to the monarchy who had to adopt elements of foreign culture in order to be influential in repealing anti-semitic decrees were permitted to do so in the interests of greater Jewry.³⁹ One may well wonder if the total separation

of Jewish lifestyle from Gentile culture in every respect had proven itself to be a major cause promoting antisemitism, whether by applying the above principle by extention, certain aspects of foreign culture could be integrated by Jewry in order to reduce antisemitism.⁴⁰

Naturally this could not be decided arbitrarily and only a competent Rabbinate would be in a position to asses such a situation.

An interesting corollary of the controversy whether Jews must intentionally separate themselves by creating their own distinct culture or whether they must merely desist from adopting only those features which are specifically recognised as "theirs," is the question concerning Gentile customs which disappear during the course of time.

Many of the Rabbis felt that Ammorite customs which fell into disuse could no longer be classified as Ammorite Folkways whereas other Rabbis were of the opinion that once a particular custom had become recognised as "theirs" it would eternally be considered as such in each generation, even if it fell into disuse. Similarly we find Rabbis who considered only those practices which are described by the Talmud as Ammorite Folkways, however; those practices which developed later were exempt from the interdict. Other Rabbis, on the other hand, forbade any practice which develops in each generation, that is specifically recognised as "theirs" as included under the ban.

Therefore, we find that Minchat Hinmukh, who develops Taz's thesis,

states that the laws of "their ways" are determined by each generation and in each country. Whatever clothing becomes "their" fashion at any time or place in history, Jews must automatically desist from such fasions and develop their own style of dress.

Other Rabbis only forbade those conventions which were mentioned in the Talmud. It seems clear that the Rabbis who insisted on applying the restriction of Ammorite Folkways according to the conventions of society which become vogue in every generation were bent not only on protecting Jewish culture against idolatry but intended to maintain Jewish culture against infiltrations of Gentile society.⁴¹

The heated debate regarding whether it is permissible for Rabbis to don black clothing resembling Christian clergymen was probably a direct ougrowth of this controversy. For the same reason, would it be permitted for a Jewish child to take a Gentile name in addition to its Jewish name? Those Rabbis who absolutely forbade the donning

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of canonicals or the appellation by Gentile names energetically strove to separate Jewish culture from Gentile culture in every respect. The Rabbis who permitted these and other items did not consider them a threat leading to idolatry and therefore, saw no danger in Jews adopting such practices.⁴²

Ironically enough, the more that some of the Rabbis strove to keep magic apart from Jewish vocation by intentionally separating the two cultures, the more magic became associated with Jewish culture. For it was the very 'strangeness' of the complete Jewish separation from other cultures which itself aroused suspicion and consequently led Gentiles to conceive of Jews as mysterious sorcerers. As a result many aspects of Jewish Law which gave the impression that Jews engaged in magic were suspended in order to rectify this misconception which obviously could only have endangered Jewish life.

Jews, therefore, were not required to include in their search for leaven substances on Passover, the tiny cracks and holes in the walls which separated Jewish from Gentile quarters, for fear this may be misconstrued for magic. Similarly the popular mourning rites of turning over the bed; binding one's head, etc., became discontinued for this very reason. R. Moses b. Yehiel had to persuade a king of the harmless character of throwing a clod of earth behind one's shoulder after a funeral, and in Provence the ritual cleansing of the public oven in preparation for Passover baking was neglected "because of the Gentiles' suspicion of sorcery." It therefore, became doubly important for Jews to suspend these practices in order to impress upon the Gentiles that one of the main elements which separate Jews from other cultures is the fact that Jews do not engage in magic nor are they sorcerers by vocation.⁴³

Magical Cures

One of the most contentious areas where Jewish culture seemed to bear a great resemblance to Amorite folkways was the field of medications administered in the form of magical potions and amulets. Maimonides writes:

All that is said to be useful, but is not necessarily proven by logical speculation concerning nature, and takes its course in accordance with special [segullah] properties, this is the meaning of the dictum: 'And you shall not walk in the ways of the nation'

and these are what they [the Sages] called 'Ammorite folkways.' They say explicitly: 'All that pertains to medicine does not pertain to Ammorite Folkways.' They mean by this all that is necessitated by logical speculation concerning nature is permitted whereas other [illogical] practices are forbidden.

You must consider as a difficulty certain things which they have permitted, as for instance, the nail of one who is crucified and a fox's tooth. For in those times these things were considered to derive from experience and accordingly pertained to medicine. They entered into the same class as the suspension of a peony on an epileptic and the giving of a dog's excrements in cases of swelling of the throat and fumigation with vinegar and marcasite in cases of hard swellings of the tendons. For it is allowed to use all remedies similar to these that experience have shown to be valid even if reasoning does not require them.⁴⁴

In a responsum of Rashba, R. Adret points out a glaring contradiction in the words of Maimonides. First Maimonides forbids all practices which are not necessarily proven by logical speculation concerning nature such as those practices which take their course in accordance with special segullah properties and forces. These illogical segullah practices Maimonides defines as Ammorite Folkways. Immediately afterwards Maimonides permits the illogical Segullah remedies of the nail of one who is crucified and a fox's tooth! Rashba queries, how are we to decide which Segullah remedies are forbidden because they resemble Ammorite Folkways and which illogical practices are permitted because they resemble the nail of a crucifix or a fox's tooth? In addition Rashba cites numerous Segullah remedies which are permitted by Talmud although none of them are necessarily proven by logical speculation concerning nature. Furthermore Rashba queries:

What matter does the Rabbi [Maimonides] consider necessarily proven by logical speculation concerning nature? Is it what is logically deduced by the speculation of the wise men who composed works on the nature of drugs and foodstuffs which are useful according to their speculation? And all matters that their speculations can not comprehend are forbidden because of Ammorite Folkways. Since the speculations of these wise men who considered the science of nature include every possible activity within the nature of every existing thing.

And it is in accordance with the speculation of these wise men, that the possibilities of true speculations concerning nature will be determined and that which is unacceptable according to reason. Because verily those matters which function by special properties [segullah] do not function in wonders but according to special natural properties. What I mean to say, is a natural manner which the wise men can not comprehend according to their logical speculations.

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Perhaps even the wisest of men [can't comprehend] because the properties concerning the nature of these matters are unknown to the human race who are [only] men. Such as the special forces of the stone which draws, whereby the iron jumps over it [i.e., the magnet] and it is even more commonly practiced by sailors at sea who insert a pin into a block of wood which floats upon the water until it faces towards the anvil and rests there [i.e., the compass]. And the logic of the nature of these properties can not be comprehended by the wisest of the wise men. And similarly all substances that have special properties [ba'alei segullah] that are found in nature function like drugs and foodstuffs and are not prohibited because of Ammorite Folkways.

Furthermore, I question the words of the Rabbi [Maimonides] that which Abbaye and Rabbah said: 'All that pertains to medicine does not pertain to Ammorite Folkways,' did they say all that pertains to medicine regarding the logical speculations of these wise men who composed works about nature alone, and everything else that their speculations can not comprehend are prohibited? If so, what did Abbaye and Rabbah innovate? It is a full verse which Scripture stated: 'And to heal he shall heal,' [is the source] whence it is derived that authorisation was granted by G-d to the medicine man to heal. And why did the Gemara bring Abbaye and Rabbah's words in the same context when speaking of practices which constitute Ammorite Folkways.⁴⁵

Rashba challenges the medical utility of even the natural cures which are determined by the general discretion of human wisdom. Since the greatest human mind is limited and the conclusions of one man may well differ from another, who will determine what is a logical cure? Moreover, Rashba charges, there are many natural cures that function in special ways that human logic can not understand. These are the special properties found in magnets, compasses and the like. These properties are not "wondrous" since they function in a fixed natural manner despite the fact that they can't be comprehended according to the logical principles of natural science. Rashba is undoubtedly referring to the science which we classified earlier as natural metaphysics as opposed to the mythical elements of supernatural metaphysics. Although the special remedies in the Talmud, such as the fox's tooth and nail from a crucifix, are unexplainable according to natural science their properties fall within the natural parameters of the former category. It is only those remedies which are characterised by the latter category which constitute Ammorite Folkways. Finally Rashba adds, that if Abbaye and Rabbah referred to ordinary natural medications, their dictum is superfluous. Scripture already permitted ordinary medical treatment. Rather, Abbaye and Rabbah were speaking of unusual medicines which nevertheless did not constitute

Amorite Folkways. Rashba further explains the permissibility of administering special and ordinary medications as well as the nature of their function:

And I say, that it was an act of Divine grace at the beginning of Creation to bring into existence in His world substances that maintain the health of His creatures. That if sicknesses and other reasons occur which cause the creatures to depart from their perfect natural states, these substances are readily available to cure them and to maintain their health. And He placed these properties within the essence of existing things in nature that are comprehended by logical speculation such as drugs and foodstuffs which are known to the wise doctors, or in a special nature [teva musgal] that is not comprehended by a speculation. And this is the very thing regarding other existing matter, that each one contains something useful, either in a comprehended nature or a special nature such as the nail of one who is crucified, the tooth of a fox, and the stone of preservation [against miscarriage]. And it is not prevented nor is there a prohibition even regarding words such as in amulets and the like. And regarding this did Abbaye and Rabbah state 'All things that pertain to medicine do not pertain to Amorite folkways.'

And one who became ill may not rely on miracles by not seeking doctors and becoming occupied in useful matters be it natural or special. And this is what [Scripture] states: 'And to heal he shall heal' — from here it is derived that authorisation was granted by G-d to doctors to heal. And in this category are included all medical practices even those things which are useful by virtue of special properties whether by themselves or by words. This is the manner of amulets both the written and the verbal kind. Moreover, one is not permitted to endanger oneself by relying on miracles. And they say, 'Whoever relies on miracles will not be vouchsafed a miracle.'⁴⁶

Rashba explains that G-d specifically included in His creation substances containing intrinsic medical properties capable of restoring defective and diseased organisms to their perfect and prime form — whether these properties be special or ordinary. The effect of the special properties are so natural that an ill person who does not have recourse to them is considered to rely on miracles to overcome his illness without them. The natural metaphysical effect of special properties as opposed to supernatural mythical ones is made even more clear by Ran who developed Rashba's distinction even further:

All things function in two ways, either natural actions or special actions. The special action is also a natural action. Except that the natural action can be logically proven by the intellect [whereas] the special action is accepted by the intellect as a possibility, but its necessity can not be proven.⁴⁷

Ran then proceeds to describe the metaphysical effect that special actions have upon restoring the balance to unbalanced organisms in a natural or logical manner. Finally Ran concludes that man only understands 'what' natural actions do but man does not understand their essence or 'why' natural actions do what they do. The mystery of their essence and the 'why' regarding natural actions is just as inexplicable as special actions. Ran explains that since special forces operate just as naturally as ordinary forces, the only metaphysical actions which the Talmud prohibited because of Ammorite Folkways were those practices which were believed to be useful because they anticipated the will of heavenly bodies.⁴⁸ Thus we see that according to Rashba and Ran, the Sages permitted special Segullot remedies because they functioned in a natural metaphysical manner – even if they were in the form of words such as amulets.

Despite Rashba's questioning of Maimonides, Maimonides' intention of permitting such cures as the nail of the crucifix and the fox's tooth is clear, regardless of their illogical effect. Any form of cure which has experimentally proven its utility three times over is empirically reliable. Despite its unexplainable mechanism, the fact that it has thrice repeated itself makes it a natural reality proven by experience.

Rashba's and Ran's objection to Maimonides' distinction was probably because many of the mysterious cures which were outlawed as Ammorite Folkways may well have succeeded in curing illnesses repeatedly through experience and yet remained prohibited. Therefore according to Rashba and Ran inexperience itself does not factor as a criterion for classifying Ammorite Folkways.

We find an example of this disagreement regarding amulets. Darkhei Moshe rules that according to Rashba and Ran all amulets are permitted with the exception of those which have proven to be ineffective. According to R. Yonah and Mordekhai only amulets which have proven their efficacy are permitted, all others are prohibited as Ammorite Folkways.⁴⁹

Similarly we find the latter view substantiated by the Talmud which permits amulets to be worn on Shabbat if they have successfully been employed by three different persons. Such amulets have become "expert"

or "approved" via experience. Therefore, one who wears an expert amulet is not considered carrying on the Sabbath. However, amulets which have not yet proven their efficacy may not be worn on the Sabbath. R. Joshua Isaiah Noibert provides a practical application of the "expert amulet" in discussing the permissibility of wearing eyeglasses and hearing aid on the Sabbath.⁵⁰ While Maimonides and many of the codifiers required that the "approved" amulet successfully repeat itself on three different people, Rashba and Rashi considered the amulet expert even if it cured the same person on three different occasions.⁵¹ This is probably because Rashba considered the amulet, quite apart from its proven experience, a natural metaphysical cure.

A similar problem is investigated by Hida in Birkei Yosef. It once happened that a young Jewish girl drank a poisonous drug on the Sabbath and she became mortally ill. A certain man knew of a special formula to inscribe in an amulet which would cure this very illness. This prescription he found in a medieval book written by a famous authority. In that book it was recorded that this amulet had worked successfully several times. The man, relying on this work, proceeded to write the formula in an amulet on the Sabbath for the young girl. Upon wearing the amulet she instantly regurgitated and became completely restored to normal health. Once the incident became known the man was severely criticised by the town residents for having desecrated the Sabbath. The man argued in his defence, that one is permitted to violate the Sabbath to save a life, but they were reluctant to accept his argument. Hida investigates whether the man acted correctly in Birkei Yosef:

At first glance it would seem that the man acted incorrectly. Although it is a well known Halaka that one may violate the Sabbath to heal one who is dangerously ill, nevertheless this is only by natural means but not through special [segullah] means.⁵²

Birkei Yosef bases his contention on the Talmud in Yoma which prohibits a man who was bitten by a mad dog on Yom Kippur to be fed from the lobe of its liver.⁵³ Maimonides explains that the Sages did not permit the violation of a law (breaking the fast) except for administering natural treatments.⁵⁴ Hida adds that Maimonides states this even though the Segullah remedy had proven itself by experience. Moreover, Hida states that although one is permitted to wear proven amulets and a hargol's (locust) egg, the Sages only permitted these

because they involve Rabbinic restrictions. However, since writing an amulet on the Sabbath involves a Pentateuchal interdict, this was not permitted even for the sake of saving a life.

However, upon closer inspection, Hida writes that he discovered in Responsa Admat Kodesh of R. Moshe Mizrachi, a discussion concerning whether one is permitted to feed someone a chicken cadaver (neveilah) which was not ritually slaughtered since it is a segullah (special remedy) for madness. R. Mizrachi proves from Nahmanides and Rashba who argue with Maimonides and contend that there is no difference between medicine which is administered by special means or by natural means. R. Mizrachi states that the Halaka is in accordance with the view of Nahmanides and Rashba and therefore rules that one is permitted to employ the cadaver remedy.⁵⁵

Hida writes that he is aware of several other authorities who agree with R. Mizrachi. Consequently, Hida states that in our case the Halaka would also accord with this view and therefore he rules that it is permissible to write an amulet on the Sabbath in order to save life, even though it functions in a special manner.

Moreover Hida adds that even Maimonides who forbids the transgression of a Torah interdict for Segullah remedies would agree that he is not guilty of sin in this case. Since the man's intention was clearly to perform a Mitzvah and he was certain of success, there was not even a Rabbinical infraction of the law. Hida concludes that retroactively the man performed a great Mitzvah.

The unmistakable conclusion of Hida is that according to Rashba and Nahmanides, since there is no difference between the efficacy and reliability of natural cures to Segullah remedies, one is permitted to violate the Sabbath, administer non-Kosher prescriptions, or transgress any other Pentateuchal law in order to save a life through either method. The distinction between administering Segullah cures as compared to natural remedies with regards to violating Torah laws in order to save a life is also treated extensively by R. Isaac Elhaman Spector in Responsa Be'er Yitzchak. His analysis is very similar to Birkei Yosef.⁵⁶

We recall in our earlier discussion in this chapter that Radbaz and Hida were in disagreement over whether one is permitted to rely on

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miracles in order to save a life. Possibly their argument is contingent on this issue. Hida rules that to save a life there is no difference between administering special remedies or natural cures. This accords with his view that Elijah was permitted to rely on miracles in order to perform the resurrection. Radbaz who states that Elijah was not permitted to rely on miracles to perform the resurrection probably concurs with Maimonides' view that one is only permitted to save a life by administering perfectly natural cures.

However, it is probable that even the authorities who permit the violation of Torah laws in order to save a life by administering special Segullah remedies, would not permit ordinary men to rely on miracles. Although special properties and miracles are both metaphysical phenomena the former occur much more naturally and with far more regularity than miracles. The question only exists with regards to Elijah. Since Elijah's reliance on miracles is the same as performing any other Segullah remedy, is he permitted to defile himself in order to save a life by administering metaphysical techniques as one is by natural methods?

Often logical explanations were given to describe the natural effects of metaphysical cures. The diseased condition was considered to have developed as a result of a natural physical deterioration caused by neglect of health or some other human element, or as a result of an action on the part of a spiritual and metaphysical agent. The medication had to combat each cause. If the disease was afflicted upon the person by spirits, or by being possessed by spirits, disgusting medicines were often prescribed. The logic being that if nauseous drugs disgust humans, they are likely to have the same effect on spirits and demons. Therefore, the more obnoxious the dose the more likely it is to expel the spirit of its human habitat. Therefore, we find medications in such instances that prescribe such disgusting antidotes as menses, excrement, sweat, hair, nails, animal blood, etc.

In truth there is no real difference between believing that the body is occupied by spirits and the modern medical notion which scientifically ascertains that the body is inhabited by viruses. Viruses are living microscopic organisms for which no natural medication has yet been developed. It is not surprising then that an effort was pursued to combat the metaphysical agent which brought on the malady,

where no natural cure was known. Similarly we find that fertility spirits were indigenous to all peoples. Psychologically it seemed obvious that female spirits such as Lilit who desire men for themselves would be jealous of the women who displace them and so they will seek to harm them by causing infertility. Therefore, amulets were prescribed to ward off these spirits and induce fertility. If the metaphysical agent causing illness was an angel dispatched by G-d to punish the human, prayers were considered therapeutically effective in nullifying that decree.

Incantations and Prayer

The use of incantations in spiritually combatting various disorders was also subject to the same considerations. Namely, was this simply another magical form of Ammorite folk myth which led to idolatry, or was there a natural metaphysical pattern discernable among them, similar to Segullah remedies which could be resorted to in the case of illness.

Maimonides severly denounces the use of incantations to cure diseases:

One who utters an incantation over a wound and recites a verse from the Torah and likewise someone who recites [a verse] over a child that he should not be afraid and one who places a Torah scroll or phylacteries on a minor to induce sleep. Not only are they included among augurers and enchanters but they are also included among the deniers of Torah. For they make the words of Torah medicine for the body, while they are medicine for the soul as it says, 'and they will be life for your soul.'

When one is bitten by a scorpion or a snake, it is permissible to utter an incantation over the place of the bite and even on Sabbath in order to relax one's mind and strengthen one's heart. And even though the thing [i.e., incantation] is of no use whatsoever, since one's health is endangered, the incantation is permitted in order that one should not lose one's sanity.⁵⁷

Maimonides considers one who recites scriptural verses in the form of incantations a denier of Torah since he employs spiritual medication for physical hygiene. An interesting question would present itself that if the disease was diagnosed to have been caused by a spiritual agent — would Maimonides then permit biblical incantations?

This question will be treated in a further chapter. In the case of a dangerous physical disease however, Maimonides concedes that one is permitted to utter incantations. Even though incantations are

absolutely mythical and are of no use whatsoever, since they bring psychological relief they are permitted.

The question of whether incantations should be permitted or prohibited when life is not endangered is raised by the Talmud:

R. Joshua b. Levi recited verses when retiring to sleep. How could he do so? Did not R. Joshua b. Levi say it is prohibited to heal oneself with words of Torah? To protect oneself is different.⁵⁸

The Talmud distinguishes between curative and preventative health. Where one is already wounded, one's intention in reciting verses is curative and therefore one's employment of Scripture is interpreted as incantation. However, if one's intention is to shield oneself from possible affliction, his employment of Scripture is interpreted merely as prayer rather than incantation. Prayer itself is only efficacious in the preventative sense of the future and not in the curative sense regarding the present or past. The Mishna in Berakoth states:

If a man cries out to G-d over what is past, his prayer is in vain. Thus if his wife was pregnant with child and he said: 'May it be Your will that my wife shall bear a male child', this prayer is in vain. If he was returning from a journey and heard cries of distress in the city and said, 'May it be Your will that they [which make lamentation] be not in my house,' this prayer is in vain.⁵⁹

This means that prayer has no effect against the laws of nature. That is why if a man prays against the laws of nature, it is an incantation and he commits a sin since it is a blasphemous and unuseful act. R. Dr. Chaim Zimmerman explains that, man can not break the laws of nature since he is part of nature, and similarly prayer can not help to contravene the laws of nature. It is only in the preventative sense regarding the future where there is probability of one occurrence and a possibility of another, that the possibility remains in G-d's hands, and prayer can be efficacious. Where the natural course has already taken effect, man's prayer can not alter this fact. However, where the natural course has not yet taken hold and exists only as a strong probability, man's prayer can be effective in appealing to G-d to allow for the natural possibility of the opposite.⁶⁰

Maimonides himself codified this distinction between preventative and curative health:

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However a healthy person who recites verses and psalms in order that the merit of reciting them should protect him, and that he should be saved from trouble and harm, this is permitted.⁶¹

This view is corroborated by Sefer Hinnukh who writes that R. Joshua b. Levi's practice of reciting psalms before retiring is not considered enchantment because:

These psalms contain matters that will uplift the soul of one who understands them to rely on G-d and to place all one's trust in Him, and to set in one's heart fear of Him and to rely on His grace and goodness. And by awakening oneself to this — one will undoubtedly be protected from all harm.⁶²

There is an essential difference between relying on G-d and relying on incantations. Prayers are not incantations since they are a means to arouse one's soul to trust in G-d. In this sense they are spiritual medication which Maimonides allows. Just as we saw that a miracle differs from magic in that the former focuses upon G-d whereas the latter ignores G-d, prayers differ from incantations in the same respect. Furthermore, several authorities who permitted Segullah remedies which could be explained in a sensible manner maintained the same views regarding incantations.⁶³

In a responsum by R. Jacob Weil the respondent relates how he recited the anti-demonic psalm before sleeping in the afternoon since, "all sleep is dangerous because of demons." Since the soul guards the body against spirits it was believed that when the soul leaves the body in sleep, the body is susceptible to attack and therefore the psalm provides protection.⁶⁴

Hypnotism

R. Jacob Ettlinger was asked whether a sick person is permitted to undergo magnetism, which is a form of hypnosis, in order to become cured from disease. It seems that spiritual powers beyond nature take hold of the patient and one must worry that, G-d forbid, impure powers are involved. In his Responsa Binyan Zion, R. Ettlinger answers:

I asked the wise men of the nations their opinion on magnetism if there is any substance in this change in nature as people say or not, and I found conflicting opinions.

There are those that say it is all vanity and deceit and there is no change whatsoever. Except that the patient's imagination envisions that it sees wondrous things. And there are those who say that in truth wondrous visions have occurred which

certainly have a source and a natural manner. However, all these things are hidden and very little of it can be understood rationally how nature can have a course among these visions. And therefore, it appears to me that even if it is not so, that one can not find any explanation according to nature how such a great change can be induced in any of these matters through magnetism, nevertheless we do not need to desist [from it] and worry that it occurs through impure powers.

For behold it is clear from the authorities that one is permitted to become healed through incantations uttered by idolators when it is uncertain whether the name of an idol will be uttered in the incantation. And behold incantations have no precedent in nature to heal the sick and nonetheless we do not suspect perchance he is healed through impure powers. Rather we rely [on the fact] that there are many natural phenomena which are hidden from us. And why should we suspect magnetism any more, since anyhow those that practice it believe that it works naturally and not spiritually... And anything which pertains to medicine does not pertain to Ammorite Folkways even if they are things which have no natural precedent — certainly [then] to become cured through magnetism. Those who practice it say that it works naturally even if they haven't come to the root of understanding the matter perfectly. And don't wonder about this, for in other matters as well, after all the research which is investigated, they do not grasp the greatness of nature's work as a drop in the ocean.⁶⁵

R. Ettlinger approaches the problem scientifically, consulting with experts in the field to verify whether hypnotism is a natural phenomenon or not. There are those that feel it is entirely mythical, nothing more than a figment of one's imagination, while others opine that the state induced by hypnosis is a real and natural one.

R. Ettlinger replies that even according to the former view hypnosis is no worse than incantations, which is considered a natural phenomenon even though its mechanics are unknown to us. In the same way that incantations are not governed by impure powers neither is hypnosis.

R. Ettlinger concludes with an observation similar to Rashba and Ran. That even after the scientific research and analysis into nature, man still doesn't understand the intricate workings of even a drop in the ocean. In this sense the unknown variables of natural metaphysics are no more mysterious than the marvels of natural physics. In his most recent volume of responsa, R. Moses Feinstein, a contemporary respondent, considers hypnotism for medicinal purposes and writes:

And we do not see that there should be any prohibition in this matter for there is no magic in this. Since it is a natural matter that some people are able to influence others who have weak nerves and the like, not to be aware of what happens to them.⁶⁶

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In summary it seems that it is the natural character of metaphysical phenomena such as Segullas, incantations, hypnotism, which motivated R. Ettlenger, R. Feinstein, and others to endorse these practices as legitimate cures. Those cures, however, which employ the powers of impurity, defy G-d, and reflect supernatural metaphysical phenomena were outlawed as Ammorite Folkways.

It is noteworthy to mention that most magical practices which were forbidden as Ammorite Folkways were set aside in the case where there is serious danger to human life. From here we can see that although Ammorite Folkways were outlawed because they lead to idolatry they were not considered idolatry of themselves. Since idolatry is one of the three cardinal Mitzvot which one must suffer death rather than transgress, the waiving of the Ammorite Folkways' restriction clearly identifies the latter in a different halakic category than idolatry.⁶⁷ Therefore, we find that R. Menahem of Speyer, quoted in Mordekhai, went so far as to permit a Jew whose life was in danger to be treated by non-Jewish magician doctors despite their uttering words on behalf of Jesus and saints in their incantations :

The sounds effect the cure and not the words of the incantation; therefore, a heretic [i.e., a Christian] may heal a Jew even if he invokes the name of the hanged one [i.e., Jesus] and the saints in his spell.⁶⁸

Needless to say, this view was not accredited by many of the Rabbis. R. Ettlenger, following Rashba, stresses that only incantations which do not invoke the names of gods are permitted to be used to save a life. Indeed we find Latin and Greek names of gods, idols, and angels of foreign religions which found their way into the Hebrew and Aramaic texts of amulets worn by Jews. Some of the Rabbis opposed this practice so vehemently that they objected even to prayers which beseeched Jewish angels and excluded them from the liturgy. Hence we find that the custom of reciting Shalom Aleichem to welcome the Sabbath angels upon returning from the synagogue on Sabbath night was omitted by various communities for fear that such practice may lead to idolatry.⁶⁹

Names

Names were a mighty force in the hands of the magician. The magician could exercise power over another man and dominate even a supernatural

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being, given the knowledge of its name. Sefer Hasidim relates that Jacob attempted to force the angel with whom he struggled to reveal its name so that Jacob could overpower him by uttering an incantation against the angel through the knowledge of its name. The angel therefore, refused to reveal its name. A man's name was considered the essence of his being and his person. The Talmud states:

How do we know that the name [of a person] has an effect [upon its life?] R. Eleazar said, Scripture says: 'Come behold the works of the Lord who hath made desolations in the earth.' Read not shammot [desolations] but sheimot [names].⁷⁰

Thus an entire halakic literature surfaced dealing exclusively with the subject of names. Questions ranged from naming a child after existing relatives or after people who suffered misfortune in life and contemplating a marriage in which a prospective spouse bore the name of one of the in-laws, to changing one's name in order to save oneself from ill health. The change of one's name was considered a clever deceptive maneuver in the strategem of averting dangers associated with one's name. Sedei Hemed records actual incidents of ruined marriages in which spouses possessed like names to their in-laws.

In the Hollekreisch ceremony in Germany, the baby's cradle (Kreisch) was tossed three times in the air to ward off the spirits Holle-Hulda who attack infants, for fear that bestowing a secular name upon the infant would engender an adverse affect.⁷¹ The effect of a name upon one's destiny was considered so real that often the halakic principle of "we do not rely on miracles" was cited in warning of the hazards of one who thought to ignore them. So natural was their mystical effect that it would necessitate a miracle to overcome them.

As seen earlier in this section the many names of G-d were permitted to be employed in the performance of Jewish magic or miracles. A rational explanation of the efficacy of G-d's names in working miracles is simply provided. Since the name of an entity is the essence of its being, and G-d's essence is His power, then the name of G-d is His power. As Professor Urbach writes in his Sages:

"The Name was endowed with power, the Name and the Power were synonymous."⁷²

Consequently we find constant references to the synonymy of G-d's name and His essence throughout the liturgy, as in: "G-d is One and

His Name is One" and "Blessed be He and Blessed be His Name," etc.

Few Jews, however, were privileged enough to come to know the special names of G-d to enable them to work miracles through them. For there was a rabbinic tradition that knowledge of these names could only be transmitted to scholars who were sufficiently erudite and G-d fearing. The study of G-d's name was a bona fide science. Since these names described the essence of G-d, the more one involved oneself in the study of His names the more one came to learn and discover His essence. Thus the science of His names was a natural extension of Talmud Torah and a coveted ambition of any erudite scholar.⁷³

Other Practices

It is interesting to note that while Rashba and Nahmanides perhaps went furthest in seeking to devise rational explanations for the efficacy of natural metaphysical cures, they were not keen to do so in situations absent of pending disease. Thus we find that Rashba in another responsum and Nahmanides both opposed the practice of the expiatory sacrifice (kapparot) on the eve of Yom Kippur on the grounds of augury and Ammorite Folkways. Nevertheless it is found in the Responsa of the Geonim that Rav Hai Gaon endorsed the custom of Kapparot. Mordekhai discounts the problem of augury by explaining the symbolic significance of this rite.⁷⁴ R. Moses Sofer in his Responsa Hatam Sofer discusses a testament in the name of R. Judah Hasid that it is dangerous to build a house of stone or a house on a site upon which a house had never been built before. People say that it is effective to place a cockerel and a hen in the house and slaughter them there to dispell the danger. The question is whether this practice constitutes Ammorite Folkways. Hatam Sofer provides a rationale legitimising the custom based on what he considers an identical enactment of the Kapparot rite on Yom Kippur eve. The logic implicit in this rite removes it from the restriction of Ammorite Folkways. However, R. Sofer concludes that it is best to ignore the entire matter since it is not mentioned in the Talmud or in the Codes, and R. Judah Hasid's signature does not appear on the testament. Darkhei Teshuva in examining Hatam Sofer's analysis of the issue derives a halakic principle that "whatever can be explained according to insinuation or reason, does not constitute Ammorite Folkways."⁷⁵

Biblical Rites

Finally, it seems clear to assert that whether one maintains, as James Frazer in the Golden Bough and others who followed him, that Jewish magic is entirely mythological, the Bible being loaded with paganistic ritual which Jews absorbed from their environment. Or whether one maintains as Yehezkel Kaufman that Jewish magic is radically divorced from pagan mythical beliefs and that magical practices recorded in the Bible had an entire character of their own, each rite reflecting the finger of G-d. Or whether one attempts to find, as many of the authorities did, a rational explanation that demonstrates the logic of a metaphysical phenomenon in a manner which separates it from the supernatural metaphysics of Ammorite folk mythology, one thing is certain. There was a constant friction between these two opposing forces. Jewish magic ran a direct collision course with non-Jewish magic whichever way one attempts to define either form of magic. The prohibition of Nahash and the legitimacy of Ephod and Urim can not be an accident. The question which requires serious deliberation is in view of the fact that the two types of magic bore such a remarkable resemblance to each other and could so easily become confused for one another, why did the Bible introduce ritual altogether that would require the hairsplitting precision of experts to demythologize biblical magic from "their ways"?

Perhaps a perfect example of this confrontation as well as its abatement is contained in the following midrashic account:

A certain Gentile questioned R. Johanan b. Zakkai saying to him, 'These things that you do, seem like magical practices. A heifer is brought and slaughtered and burnt and poued and its ashes are collected, and when one of you is defiled by the dead, two or three drops are sprinkled upon him and you say to him, You are clean.' He [R. Johanan b. Zakkai] answered him, 'Has the spirit of Tezazit [demon of madness or epilepsy] never entered you?' He replied, 'No.' The Sage then said to him, 'Have you not seen anyone else into whom the spirit of Tzezit has entered?' He replied, 'Yes!' Thereupon [R. Johanan b. Zakkai] said to him: 'And what do you do?' He replied, 'We bring roots and fumigate under him and spray water upon it [the demon spirit], and it flees.' Said [the Rabbi] to him, 'Do not your ears hear what your mouth speaks! Such too — is the spirit — it is the spirit of impurity, as it is said, 'And also the prophets and the impure spirit etc.'

When [the Gentile] had left, [R. Johanan b. Zakkai's] disciples said to him, 'O, Master, him you have dismissed with a straw, but what explanation will you offer us?' Said he to them, 'By

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your life! neither the dead person defiles nor does the water purify; only this is the decree of the Holy One Blessed be He. The Holy One Blessed be He hath said: 'I have ordained a statute I have issued an edict, and thou hast no right to transgress my edict.'⁷⁶

The narrative is instructive from many aspects. R. Johanan is challenged by the Gentile's observation that Israel's Torah seems to contain magical practices like those of the ancient world around them. R. Johanan responds providing a rational explanation of the red heifer ritual based on the exorcism of the evil spirit, which was considered a universally established fact beyond doubt rather than a magical belief. To his own disciples, however, R. Johanan explains that the red heifer ritual is a precept by virtue of Divine decree and one has no right to transgress His edict. Thus we discern all the elements of our observation:

1. A striking similarity between Jewish and pagan magic.
2. A rational explanation which separates Jewish magic from pagan mythology by identifying the natural metaphysical process at work (in this case exorcism— a scientific fact accepted by the Gentile).⁷⁷
3. A Divine Will which ordains obedience of the ritual over and above the context in which it is given.

We may regard these three elements as three steps of a process in the development of a relationship between the G-d of Israel and His people. It would have been highly improbable to expect the people of Israel to develop an unswerving devotion to their G-d unless the people were presented with a religion which was palatable. Its ritual had to incorporate various elements from the religions around them with which they were already familiar, yet to remould them into a unique Jewish character reflecting a particular approach of their G-d toward them.

The religion was considered reasonable in that it dealt with realistic concepts which were considered factual simply because they were accepted as such by the ancient world around them. In other words, Israel's whole concept of reality as far as religion is concerned and what could be considered a realistic demand, were those items which transposed the religious credo of their time to a system which revealed the unique approach of their G-d.

Maimonides advances an identical thesis regarding sacrifices:

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The Egyptians used to worship the sign of Aries and they therefore forbade the slaughter of sheep and abominated shepherds... Similarly certain sects of the Sabians worshipped the jinn and they assumed the outward form of goats and therefore, called the jinn goats... Hence these sects used to prohibit the eating of goats. As for the slaughter of oxen, nearly the majority of idolators abominated it, as all of them held this species in very great esteem. Hence you will find that up to our time the Indians do not slaughter oxen. Thus it was in order to efface the traces of these incorrect opinions that we have been ordered by the Law to offer in sacrifices only in these three species of quadrupeds. In this way an action considered by them as an extreme act of disobedience was the one through which one came nearer to G-d and sought forgiveness for one's sins.⁷⁸

Maimonides clearly emphasizes the purpose of sacrificial ritual was for Israel to involve herself in a practice which all the nations around her had already developed their own beliefs and to transform those universal religious credo into one which was uniquely Jewish. It was the contravention and redirection of universal dogma within the dogma's own parameters "through which one came near to G-d."⁷⁹

Maimonides' theory follows the three step process evident in the R. Johanan b. Zakkai narrative: Firstly one detects the similarity between Jewish sacrificial ritual and paganistic offerings. Thus the religion presents a palatable concept which is already universally entrenched and hence realistic. In the second phase a distinction is advanced which exemplifies a unique Jewish approach towards the ritual based on reason rather than on fictitious mythology. Thirdly, the Israelites are prepared to demonstrate unswerving devotion over and above the context in which it is given and even when the original rationale no longer applies, such as after the disappearance of pagan sacrificial ritual.

It seems that Maimonides' same thesis regarding sacrifices can be applied in the field of magic. The same three step process is discernable: Firstly one observes a clear parallel between wondrous precepts and phenomena in the Bible such as the red heifer, copper serpent, Urim ve-Tumim, Sotah waters, the Scapegoat on the Day of Atonement, etc. Thus Israel is presented with a code of values which are already universal. In phase two, various distinctions demarcate a particular Divine element which contrasts reasonable Jewish practice from pagan magical mythology. These two steps are necessary preliminaries to reach the ultimate level of observance.

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Namely unswerving devotion to G-d's precepts over and above the context in which they are given. Indeed the application of Maimonides' theory regarding sacrificial rites to magic is far from remote. All ceremonial regulations have a magical cast. The animal for sacrifice had to be a proper age, sex, colour, etc. The construction of altars and temples had to conform to certain specifications as well, etc.⁸⁰

Even Nahmanides' objection to Maimonides' explanation of sacrificial rites can be distilled upon considering the transition from step two to step three. Nahmanides criticizes Maimonides' theory stating:

Heaven forbid, that they [sacrifices] should have no positive value and desire except to eradicate idolatry from the mind of fools.⁸¹

Maimonides would undoubtedly agree that at level three a definite positive value exists and is known to the Creator who commanded it. Even if His reason for willing it eludes them, Israel must observe with unswerving devotion nevertheless. However, in order to reach that level it is necessary to progress from stage two. Namely, to firstly discover the particular Jewish flavour which refutes similar Ammorite practices.

Professor Urbach notes a similar development in describing the Talmud's question of a later Jewish practice to remedy a tree which casts its fruit by painting it with red paint. This seems to resemble Ammorite Folkways. The answer given is so that people may see it and pray for it. As the leper makes his grief known to the public so that they make supplication for him. Whereupon Urbach remarks:

Obviously the original reason for the red paint derives from a popular belief in the power of red. This is an example of the extrusion of magical aspects from the widely current customs and their replacement by religio - ethical explanations.⁸²

According to this theory we encounter an interesting paradox. Namely, it was important for the Israelite religion to have been given in a similar context to Ammorite Folkways in order to pave the way for the religion to develop its own cultural characteristics that would distinguish it from their Ammorite neighbours.

The very defiance of their ways brought the Israelite closer to G-d. Without the Jewish peculiarity within a universal value system the Jew

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would have no basis for comparison to bring him closer to his G-d. As a result, we shall see in our chapter on Metaphysical Development, that as the Ammorite folk tradition became extinct the frequency of miracles and Jewish magical ritual diminished.

IX. PNEUMATOLOGY AND HALAKA

Demonology

The ancient world regarded itself inundated by myriads of spirits which populated the earth. In the previous chapter we saw how R. Johanan b. Zakkai discounted the Gentile's challenge that the Jewish red heifer ritual involved magic by describing its analogy to spirit exorcism— an undisputed fact in the ancient world. The Mishna in Aboth, which enumerates all the metaphysical phenomena which G-d incorporated into nature during the twilight hour, includes spirits among them. Not only was belief in the existence of spirits not considered mythological, in many respects it was considered a much more natural and real form of scientific inquiry than magic. The Talmud explains the difference between legitimate demonology and illegitimate magic in the following manner:

R. Aibu b. Nagri said in the name of R. Hiyya b. Abba: 'Belatehem, [Exodus 7:22] refers to magic through the agency of demons; 'belahatehem,' to sorcery [without outside help]. And thus it is also said, and the flame [lahat] of the sword which turns of itself [Genesis 3:24].¹

In his biblical commentary Torah Temima, R. Barukh Epstein explains the enigmatic talmudic passage as follows: Demonology is not able to effect illusory visions before the viewer. Rather, the demonologist possesses the ability to gather near, in reality, items which lie at a great distance. Magic, however, is able to create illusions, causing the viewer to see items which do not exist in reality. The verse in Genesis is cited as an indication of the magical property. Just as the sword turned by itself, so is magic "turned" i.e., creates overturned illusory images; and "by itself", i.e., without any intermediary, and independent of substance— purely mythical. Demonology, on the other hand, deals with real substances and always depends on the agency of demons.²

The Responsa of Rashba cites Responsa of Nahmanides as an authoritative source for legitimizing demonology and invalidating magic:

And I am of the opinion that demonic acts are one thing while magical practices are another. As they [the Sages] said 'Belatehem,

refers to demonic acts; belahateihem, refers to magic.' And Rashi explained that magical acts are performed via the agency of angels of destruction [mal'achei habala] and it is this which the Torah forbade. However, acts performed through the agency of demons are permitted.³

Nahmanides cites Rashi's explanation in justification of the Hasidim of Allemaigne who, "dealt with demons, adjured them, sent them around, and employed them in different matters."⁴ R. Epstein's explanation in Torah Temimah clarifies the distinction between demonology and magic.

Similarly we find the opinion of Rosh who states that R. Hiyya b. Abbah and Abbaye in the Talmud took the trouble of precisely clarifying and distinguishing demonic acts from magical acts so that we shall know what sort of acts are permitted and which are forbidden. Were they both forbidden, then what difference would it make for us to know how magic differs from demonology? However, in his conclusion, Rosh remarks, that since new actions are not produced through the agency of demons but they only gather near things which already exist in distant places, Rosh wonders whether one is permitted to perform actual actions through demons. Rosh's son Tur writes that his father tended to permit actions as well. Beit Yosef suggests that Tur probably heard so from his father.⁵

However, many of the authorities distinguished between inquiring of and adjuring demons to performing actual actions through them. Thus we find the opinion of R. Eliezer of Metz:

It seems to me that demonic acts are permitted such as the adjuring of demons to perform one's intentions, for what is the difference between adjuring demons or angels? It is similar to those who employed the Book of Creation. It is only considered magic if one uses something to perform an act, or via bread without adjuring. However, to adjure demons is permitted ab initio as we find in Talmud.⁶

R. Eliezer clearly saw no difference between adjuring demons to imploring angels. The same natural metaphysical factors which are at force to legitimate the latter, equally validate the former. In addition, the adjuring of demons and the employment of the Book of Creation do not constitute actions, as we saw in the previous chapter regarding the creation of a physical entity via the Book of Creation on the Sabbath. It is only the performance of an action through the agency of a physical object (i.e., a wizard's wand), which constitutes magic.

Finally we find the third opinion of Ramah (R. Meir b. Todros Abulafia) who equates demonology with sorcery in every respect, forbidding its practice in all forms.⁷ Precisely because there existed so many different opinions regarding the employment of demons Radbaz was asked to adjudicate. In a responsum, Radbaz rejects all of the proofs advanced by Rosh legitimizing demonic acts and he only permits the adjuring of demons by uttering the Holy Names in a way which would not bring about an action nor cause danger to the user. In conclusion he writes:

It is appropriate for one who fears Heaven to distance oneself from them and not to inquire of them, because they are connected with idolatry which recognizes the power of another god, G-d forbid.⁸

In our discussion of Astrology and Magic we saw a controversy among the Rabbis whether planetary influences and other metaphysical phenomena constituted a real science or a danger of being associated with idolatry. In demonology we find the identical problem.

On the one hand we find that according to Job and other sources Satan is a real and undeniable force in the world which must be reckoned with as much as any other natural metaphysical factor in the world — no less than angels. On the other hand there existed the inherent danger that Satan would be worshipped as an independent force in itself as the Dualists who saw Satan as a separate power who is the arch-rival of G-d. Rashba and Nahmanides consistently follow their view in Astrology and Magic and therefore, consider demonology a natural metaphysical science — permitting even the performance of actions via the agency of demons.

Incubus and Succubus

Intriguingly Isaiah Tishbi writes that demons which are born as a result of intercourse between spirits and men and germinate from human nocturnal pollutions bear many human characteristics. With the exception of the mother demons, all demons are mortal, and there are some which even resemble animals. All this may suggest that demons are natural metaphysical beings rather than supernatural in their origin.⁹

To be sure, there were halakic consequences regarding the fecundity of human-spirit relationships. At the end of the seventeenth century a

lawsuit occurred in Posen between the inhabitants of a house and the demonic offspring of a former owner. R. Joel Baal Shem of Zamosz presided over the court and the lawsuit was argued by the contestants in a strictly legal manner.

The demonic offspring argued that the former owner of the house had illicit relations with a female demon, who had borne him children. Before his death the demon prevailed upon him to bequeath to her and her offspring the cellar of his house. Now that the man's human heirs are all dead, the spirit children claimed the house as sole heirs. The inhabitants of the house argued that they purchased the house at full value from its owner and the spirits are "outsiders" and are not called the "seed of men." R. Joel decided against the outsiders, since their proper habitat is in waste places and deserts and not among men, they can have no share in that house.¹⁰

This incident might be regarded as an effort to verify just how closely demons resemble humans, and is also valuable in determining the existential status of yet another transcendental being, which, as we saw from our discussion of the Elijah issue, is purposive in pinpointing man's halakic status whenever he enters the transcendental zone. Possibly these incidents served the moral purpose as well of impressing upon man how exposure to outside evil can itself breed further evils.

The phenomena of man's intercourse with outside demons on the one hand, and the act of exorcising from within him possession by internal demons on the other hand, is no doubt a reflection of the theological debate of whether the "evil inclination" is an external factor outside of man which exposes him to evil or whether it is an internal power inherent within man's spiritual metabolism which incessantly drives him towards evil.

Another halakic ramification of man's union with spirits is discussed at length in the thirteenth century by R. Isaac b. Moses of Vienna. Was a man or woman who had been seduced by a demon to be regarded as an adulterer? And if so, was such a woman forbidden to her husband? The same questions were considered again three centuries later by Maharam (R. Meir b. Gedaliah) of Lublin in his Responsa.¹¹ One can only guess about the practical halakic relevance that these issues were of interest to the codifiers. Perhaps their eagerness to establish

just how natural and real these spirits were and how man's ordinary life was affected, halakically, when he encounters transcendental experiences. Or perhaps there arose a need to verify whether it is the physical indulgence of intercourse or the forbidden partner with whom one engages in intercourse which constitutes adultery. If it is the physical action which is the main factor, then even if that action transpires with a metaphysical being the consequences of adultery should be the same. However, if it is the non lawful human partner which is the principal concern, then it is another matter. Possibly still, the doctrine of Immaculate Conception intrigued the codifiers who were interested in verifying the halakic status of the offspring of a human-spirit union as well as the marital status of the mother subsequent to such a union.

Specific Spirits and Defensive Strategem

Sefer Hasidim describes a baby born with teeth and a tail. The Rabbi of the community advised that these be cut so that when he grows up he won't eat people. This seems to testify to a case where a child was considered born a werewolf and could be cured naturally. A responsum from Teshuva me-Ahava is cited by Pitchei Teshuva in his gloss to Shulchan Arukh regarding a woman who conceives to a werewolf whether, it is permissible to kill it.¹² In another instance Sefer Hasidim records a community where women ate children. The story is told as a clinical fact and there seems to be no supernatural connotation or implication.

The acceptance of the existence of spirits and demons played an important role in motivating the Halaka to enforce numerous laws aimed at minimizing man's exposure to them. Ketev Meriri is the biblical name of an active demon during the period of mourning between 17 Tamuz and 9 Av, between fourth and ninth hours of the day. As late as the thirteenth century, R. Zedekiah b. Anav reports in Shibbolei ha-Leket that in Rome pupils were not punished during these days because of Ketev Meriri which held sway on them. Shulchan Arukh and his fellow codifiers warn against walking alone or in between the sun and a shadow during these hours for fear of Ketev Meriri.¹³

Shibbeta is the name of a spirit which rests upon foods and strangles people and children who ate food touched by unwashed hands. The

spirit can only be dispelled by washing the hands prior to the handling of food. Another demon Bat Melekh is the name of an impure spirit (ruach ra'ah) which rests upon the hands during the night. It is necessary to wash each hand three times in succession in order to dislodge the spirit. Otherwise:

If the hand be put to the eye [without prior washing] let it be cut off, the hand to the nose let it be cut off, the hand to the ear let it be cut off, the hand to the vein [for blood letting] let it be cut off, the hand to the membrum let it be cut off, the hand to the anus let it be cut off, the hand to the vat let it be cut off, because the unwashed hand leads to blindness the hand leads to deafness, the hand causes a polypus.¹⁴

Even on the Day of Atonement when all ablutions are forbidden the interdict was lifted in the case of washing the hands in the morning because of the dangers of Bat Melekh Shulchan Arukh codifies the custom of spilling out all the water that was gathered in basins and stood overnight in the neighbourhood of the deceased because of the death pellets which the angel of death dropped in the waters. Tashbetz (R. Simeon b. Zemah Duran), records an incident of man who drank from such waters and died. Certainly one is not permitted to kiss the corpse itself.¹⁵

I have heard of a medical survey which has recently discovered that the body emits a certain toxin into the saliva upon death, and if one were to taste this saliva, by kissing the corpse one would severely endanger one's life.

In another law we find that Mordekhai writes:

It appears to me that one should be careful not to eat on the Sabbath between Mincha and Ma'ariv as it says in Midrash: 'Whoever drinks water during twilight on Sabbath is as if one steals from the deceased relatives.' Because they [the deceased] drink when they return to judgement. And R. Meir the father of Rabbeinu Tam reported that in Lotir the people ate between Mincha and Ma'ariv and it became dangerous until they stopped. And that which was said 'Whoever drinks etc.,' is only in regards to one's relatives for which one mourns but not for others. And R. Yehiel says that one only needs to be careful for [the first] twelve months when the soul ascends and descends in the body but not longer. And the world practices caution even after twelve months. Rabbeinu Meshullam began the practice in his city Melun of eating after Mincha on Shabbat, and Rabbeinu Tam inquired of him why he did so. He answered that he found an edition in his Midrash, 'Whoever eats on the eve of Sabbath after Mincha,' the reason being that they are tired from the judgement which they suffered all week long and so they drink.¹⁶

Remah codifies Mordekhai's law in his gloss to Shulchan Arukh both regarding the prohibition of drinking water during twilight on Sabbath eve and on Sabbath night.¹⁷ Whether the reason for the interdict of drinking waters is because water cools down the souls suffering from the intensity of the heat upon exiting the fires of hell that subside on the eve of Sabbath or whether it is because water cools down the souls from the severity of heat upon re-entry into the first of hell which start up once again on Sabbath night, it is clear from the Midrash that Sabbath is not just a day of rest decreed arbitrarily by the Almighty for man to observe. Indeed Sabbath is a metaphysical reality in the world which affects all of creation. Even the fires of hell rest on Sabbath, the souls of the deceased rest from their judgement on the Sabbath, and man who drinks from the waters which cool these fires endangers his health. Possibly when the souls of the deceased lap these same waters they contaminate them in the same way as the pellets of the angel of death contaminated the waters in the neighbourhood of the deceased.

So powerful were the metaphysical forces of evil that they were able to generate laws which applied to man even after death. For example a child who died before reaching the age of circumcision must be circumcised and named after death in order to be saved from the evil forces of hell.¹⁸

In certain communities, special prayers were instituted in the Friday night service for the Hazan to recite to detain the congregation so that no man be left behind in the synagogue alone to go home unaccompanied, since Friday night was particularly dangerous as hordes of devastating spirits were let loose upon the world.¹⁹

Many other halakic practices and customs were instituted for the purpose of warding off the spirits. Some examples of these are: the introduction of the acrostic Kera Satan (destroying Satan) in the High Holiday liturgy prior to the sounding of the Shofar. The Shofar itself was considered an instrument highly capable of confounding Satan; the custom of the bride wearing a white gown and encircling the bridegroom with candles under the canopy; the vigil on the night before circumcision; halaqua—cutting the infants hair at three years old.

Symbolic offerings of substitutes were made to the supernatural powers

to save oneself from heavenly punishment such as: kapparot, the propitiatory rite on the eve before the Day of Atonement; the bread given over to spirits at Tashlich; hibbut arava, the beating of the willow branches on Hoshana Rabbah; libidation of spilling the Habdalah wine on the ground. In the Laws of Mourning we find that it is forbidden to remove a feather from a dying corpse. Although the feather of the fowl substitutes man in the fowl-demon relationship thereby causing prolonged death agony, nevertheless, because it is necessary to touch the body, one is directly responsible for hastening death. On the other hand, it is permissible to discontinue the chopping of wood. Although the noise prolongs the death agony by preventing the soul from leaving the body, nevertheless, the discontinued noise does not directly hasten death but only overcomes the factor causing its delay. In another instance R. Meir of Rothenberg wrote how the Mezuzah has an antidemonic effect and how a demon stopped visiting him once he attached a Mezuzah on the door of his house of study. The Talmud in Baba Kama establishes a legal principle that one who occupies his neighbour's premises without any agreement is under no legal obligation to pay him rent since he causes his neighbour to benefit from the eviction of She'iyah the demon who haunts and damages uninhabited places.²⁰

A demon called Sh.D.—acrostic for shomer dappin (guardian of pages)—causes forgetfulness to those who leave open books unattended. The Shakh in his commentary to Shulcahn Arukh cites this demon in caution to one who leaves his studies unattended.²¹

Spirits as an Educative Edifice

Because evil spirits were everywhere, impatiently awaiting the unguarded moment when they might seize one, they served the constructive purpose of causing man to be eternally vigilant—constantly on guard for himself. Not a moment could pass when man would not be actively conscious of his every deed, lest he be caught unalert. One of the main aims of Halaka was to serve this function. Its myriads of minute details were specifically designed for this purpose, whether it be the laws concerning what thoughts to think in the toilet or the laws regarding which shoelace to tie first. Namely, to thoroughly engross the Jew to intensely focus on his every action no matter how trite or

seemingly insignificant. The Jew must always be conscious of himself and thoroughly alert. The slightest heedlessness and distraction instantly became a wide open invitation for demons and spirits to take hold of man and lead him astray. The seizure by the demon of forgetfulness of one who unmindfully leaves his studies momentarily unattended seems to indicate this concept. The preoccupation with demons served a further educational purpose similar to the science of G-d's Names. The more man studied about the spirit world the more man came to understand its essential nature as well as how it affects man in his relationship with it.

Although demons are of superior strength to man they are of inferior intelligence. Therefore, man is capable of utilising his genius to outwit and deceive demons once he has gained sufficient knowledge to master their affairs. In an educative sense the warding off demons may be regarded as maximizing man's awareness of his actions, not leaving himself unguarded or oblivious for even a moment. The nullification (bitul) of the "powers of impurity" may be regarded in the same sense. Namely, the maximization of purity. As Trachtenberg writes:

Since all creation is engaged in the quest for perfection, all things striving to attain the next higher degree of being, the demons too, are perpetually seeking to acquire the body of man, their greatest desire being for that of the scholar, the highest type of human. This is why scholars in particular must be careful not to be alone at night.²²

Since the scholar represents the highest degree of spiritual purity, he is a natural feasting ground for the spirits of impurity. The scholar's quest to surge to higher levels of spirituality will automatically involve him in the process of nullifying the spirits of impurity—since it is these very spirits which are the obstacles he must overcome to attain higher levels. The more the scholar studies and the more he discovers, the greater his level of purity. His ascent from one level of purity to another is the inverse of nullifying the impurity which exists at each level prior to his attaining the next level of purity. The incessant struggle between the scholar and the spirits of impurity represents the ability of man to overcome all obstacles and master himself through constant study and application. The magnetic attraction of demons to scholars manifests the great admiration and esteem in which scholars are held and therefore furthers the educative goal of illustrating the paramountcy of scholars who are

thoroughly familiar with halakic knowledge.

Evil Eye

The phenomenon of the "Evil Eye" was the result of belief in demons and spirits. The Evil Eye was believed to manifest itself in one of two ways. Either the angry or jealous glance of a man's eye calls into being an evil spirit who takes vengeance on the cause of wrath. Or, the eye itself contains a natural potency of fire which spreads rays of destruction with every baneful glance.²³ This question of whether the Evil Eye is an external phenomenon whereby some external demon is summoned by man's glance, or whether it is an internal phenomenon where man possesses an inherent power of casting the evil eye, seems to reflect the original issue of whether the evil inclination is essentially an external or internal force.

Many Halakot were introduced to avert the Evil Eye which indicates that Halaka regarded the Evil Eye as a real and active force. Thus we find such laws which prohibit the solemnization of two weddings together, the calling to the Torah of two immediate relatives of the same family successively, and the inclusion of two circumcisions together in the same blessing.²⁴ Similarly the custom arose not to name the person called to the Torah for the portions dealing with curses (tocheicha) as well as to read these portions in an undertone. In addition we find the universal Jewish practice of qualifying each statement which may potentially arouse jealousy with the words keyn oyin hore (may there be no evil eye). By veiling one's beauty, not exhibiting riches, and giving a child an ugly name, the happy event will pass by unnoticed and the Evil Eye remains passive. The idea that "blessing only comes upon those things which are hidden from the eye" is probably connected to the Evil Eye concept.²⁵

The magical power of the Evil Eye, especially according to the opinion that it is a natural internal force inherent in the eye itself, would seem to indicate that if a person concentrates on a baneful thought hard enough until he can almost visualise his thought before his eye in a tangible form, that thought will then be sufficiently concretized to generate itself into a physical reality. The Evil Eye then, is an expression of actively realizing one's palpable fascinations. The transmission of a concrete thought to the visible eye stage actually

causes the very thought to materialize. The same concept may apply in the realisation of one's dream. Since the dream is a state in which 'one sees one's thoughts' the very tangibility and concretisation of the thought being seen in a visible form causes the imagined events to materialise. The halakic discussions whether hirhorei aveira (thoughts of sin) or mahshavot mitzvah (thoughts of Mitzvah) are considered as acts of sin or Mitzvah may well depend on this question of the level of reality which is generated and actualised by thought.

Along similar lines one might say that the purpose of Halaka acknowledging a metaphysical reality in which one's thought or eyes produce actual effects, was to check man's moral and ethical behaviour. If a man knows that another man's evil eye can destroy, he will take painstaking care to perform the kind of actions which do not arouse the jealousy and envy of his fellow man. And he himself will dismiss from his mind any evil thoughts which may lead to the destruction of his fellow man's possessions or welfare. The very dismissal of such thoughts and the attempt to prevent his fellow man to entertain such thoughts about him will act as a safeguard to ensure that both he and his fellow man will not involve themselves in any of the sort of evil activity which one is imagining. Even the qualification of the prophylactic phrases keyn oyin hore, or holilah (G-d forbid) serve the important purpose of making man consciously aware of the consequence of one's statement. By preventing oneself from saying something one prevents oneself from doing it. Thus man's ethical and moralistic activities are enhanced by Halaka's recognition of the Evil Eye phenomenon and other such concepts.

Necromancy

In view of the various media in which the metaphysical world of spirits communicate with the mundane terrestrial world of man it became important for Halaka to consider the phenomenon of Necromancy. Scripture ordains:

There shall not be found among you any one that..., or one that consulteth a ghost or a familiar spirit (Ob) or a wizard (Yidoni) or a necromancer.²⁶

Despite Scripture's proscribing necromancy the Talmud abounds with

incidents describing consultations which were held between illustrious Sages and the spirits of the dead. Therefore it became important for the codifiers to investigate and clarify precisely what kind of phenomena were included under the biblical prohibition of necromancy, or in Hebrew, doresh el ha-metim.

Thus the Talmud specifies:

'Or that is doresh el ha-metim,' this means one who starves himself and spends the night in a cemetery so that an impure spirit may rest upon him.²⁷

Following the talmudic definition Maimonides codifies:

Who is a doresh el ha-metim? One who starves himself and spends the night in the cemetery in order that the dead shall come to him in a dream and predict for him whatever he asks. And there are others that dress in known clothes and utter words and offer up a known incense and sleep alone in order that someone dead will speak to him in a dream. The rule is that whoever causes the dead to come and predict is liable to lashes as Scripture states. 'There shall not be found among you... or one who consulted the dead.'²⁸

On the other hand, R. Eliezer of Metz who wrote in justification of the practice of adjuring spirits, as we saw in our discussion on Demonology, similarly writes regarding necromancy:

One who adjures a sick person to return to him after death in order that he may inform him whatever he asks, this is not inquiring of the dead, since he is not inquiring from the body of the dead but rather from the spirit of the dead, and the spirit is not considered dead.²⁹

R. Eliezer was very exacting on the biblical terminology of "consulting the dead" which enabled him to distinguish between consulting the corpse which is dead and therefore forbidden and consulting the immortal spirit which is eternally alive and therefore not banned under the category of consulting the dead. It is well worth noting that R. Eliezer's classification of the spirit as alive is a halakic definition which legally exempts one who inquires of the dead man's spirit from the Torah penalty of necromancy. R. Eliezer further states that his principle was operative by the talmudic Sages who employed the same distinction in justification for consulting the spirits of the dead.³⁰ Therefore, R. Eliezer permits the adjuring of a sick person to return after death since it is the spirit of the person which one adjures rather than the body.

The major codifiers Shulchan Arukh and Rema, were at variance over whether or not to accept R. Eliezer's distinction.³¹ Alternative explanations were advanced in justification of the Sages' conduct. Perisha writes:

It seems to me that they meant to forbid specifically one who sleeps in a cemetery in order that a spirit of impurity may rest upon him. This was not the case of that pious Sage whose intention was not that an impure spirit should rest upon him but rather to hear what the spirits of the souls were saying to one another.³²

Thus, Perisha distinguishes between causing a impure spirit to rest upon one which is supernatural and therefore, illegitimate, and listening in to authentic spirits in conversation which is a natural metaphysical phenomenon. It would seem that Perisha arrived at his distinction from Rashi's explanation of "spirit of impurity" in Sanhedrin, the source which describes the necromancer as one who "starves himself and spends the night in a cemetery so that an impure spirit may rest upon him." Rashi explains the impure spirit as:

The demon of the cemetery will become fond of him and assist him in his witchcraft.³³

Thus it would appear that Rashi, as Perisha, does not censure consulting the dead but rather the method of consultation. If the dead are consulted through the agency of demons and magic, as Saul did through the witch of Endor this method is mythical and hence constitutes illegitimate necromancy.³⁴ However, if the dead are consulted directly without the assistance of any artificial means, this is an authentic metaphysical phenomenon which is sanctioned. R. Caro offers an alternative explanation distinguishing between one who performs an action which causes the dead to appear which is prohibited, and one who consults with the dead without involving oneself in an action which is permitted. Shulchan Arukh, however, agrees with R. Eliezer that one is permitted to adjure a sick person to return after death since the person is alive at the time of adjuration and therefore, is not considered inquiry of the dead.

The talmudic injunction against lying in the cemetery and conversing with the dead seemed to run contrary to the universal Jewish practice of prostrating oneself over the graves of one's ancestors and pouring out one's sorrows to them on the eve of Rosh Hashana (New Year) in similar fashion to Caleb, who the Talmud reports:

Went and prostrated himself upon the graves of the Patriarchs saying to them, 'My fathers, pray on my behalf that I may be delivered from the plan of the spies.'³⁵

While some authorities thought to prohibit the latter practice, relating it to necromancy, most of the authorities resolved the apparent contradiction by distinguishing between inquiring of the dead and prayer to the dead. In the latter instance one was not concentrating one's attention on the dead who lie there but rather directed one's prayer to G-d Himself, who is more receptive to one's prayer on account of the merits and the pleadings of the righteous who intercede and act on one's behalf.³⁶ In the same way as we saw in our discussion of Astrology and Magic, if a Divine factor can be identified as the object of one's curious actions, one can still be regarded within the realm of being "wholehearted with the Lord your G-d" rather than within the realm of one of the idolatrous branches of mythology. Moreover, the ascertainment of a Divine element earmarks the practice within the confines of natural metaphysics rather than supernatural mythology.

Thus it may be concluded that, as far as the Halaka is concerned, if the medium through which the terrestrial and spiritual world communicate with one another is a natural metaphysical one, it is permitted, for this an authentic reality. If the medium is an artificial supernatural one then it is proscribed as necromancy, which is none other than one of the many magical branches of mythology. Regarding our discussion on "The Relationship between the Future Worlds and This World," we have here another instance of such a relationship. By contacting the spirits of one's righteous ancestors, through following the correct procedures which are halakically endorsed, these spirits are able to intercede on one's behalf and ensure that one's prayers are answered in this world. Thus man in this world benefits himself by contacting spiritual bodies which occupy a transcended sphere of existence.

Saving a Spiritual Life

Another instance in which the spirit was dealt by Halaka with the same degree of exactitude and tactility as the physical was with regards to the laws of saving a life on the Sabbath. One is permitted to violate the Sabbath in order to save one whose physical life is in

danger. The question arises whether one is permitted to violate the Sabbath to save one whose spiritual life is endangered. The Hebrew term, Pikuach Nefesh which translated literally means, saving the spirit, seems to indicate that the main concern in preserving a life, is in fact to preserve the spirit. In a fascinating article Rabbi Shaul Yisraeli discusses the issue stating that the question would apply in any situation where a Jew was becoming infidelic and might lapse into committing transgressions, whose spiritual life was therefore in danger. If there was an opportunity to save this person by violating the Sabbath, would it be permitted?³⁷

R. Yisraeli records that the question was originally treated by Rashba who was asked in a responsum whether a father, who was informed on the Sabbath that his daughter was forced out of his house by Jewish apostates to make her abandon Judaism, if the father is permitted to journey on the Sabbath in order to try and prevent it. Rashba rules that the Sabbath is not violated in order to save another from committing transgressions. As the Talmud declares: "One is not permitted to sin in order that one's neighbour may gain thereby."³⁸

The Tosafoth however, disagree, stating that the talmudic dictum was only stated where one's neighbour had already committed a transgression and not otherwise. Furthermore, the dictum would not apply in the case of a great Mitzvah. Beit Yosef deduces that since the girl had not sinned and it is a great Mitzvah to save her from apostasy the Tosafoth would permit the violation of the Sabbath while although a severe act, in comparison to apostasy is a minor transgression.³⁹ It would appear that Rashba did not consider the committing of transgressions on the same dimension nor as serious as saving a life, whereas Tosafoth considered it at least as serious.

Shulchan Arukh codifies the case in accordance with the position of Tosafoth. Magen Avraham explains that compared to apostatising and committing transgressions all her life, the violation of Sabbath is a minor offense. Taz comments that saving this girl is better (adif) than saving a life!⁴⁰ R. Yisraeli questions the reasoning that a major transgression should outweigh or cancel a minor transgression. This concept only applies when the same person is confronted with the two possibilities. Then the one over-rides the other. In our case however, the person about to commit a minor transgression is not at

all confronted by a major one, only his friend, is. The action of the first one remains a sin and is not cancelled by any corresponding action on his part. By what right then is a person permitted to commit an offense on behalf of someone else? R. Yisraeli resolves that this is the principle of Pikuach Nefesh which the Talmud derives from the verse:

'And the children of Israel shall keep the Sabbath.' The Torah said, profane for his sake one Sabbath so that he may keep many Sabbaths.⁴¹

R. Yisraeli adds that the entire source and basis for the law of saving a life is a spiritual saving - in order that one may observe many Sabbaths. This is what Taz meant that saving one from apostasy is better than saving a life. The reason for violating the Sabbath to save a life is based on the spiritual gain that the person who is saved will be enabled to observe many more Sabbaths. Therefore, included in the law of saving a life is the axiom that one is permitted to commit a minor offense in order that another person should merit a spiritual gain - or be saved from a spiritual loss.

The question remains, however, by what criterion is one to differentiate the level of severity of each transgression. In other words, it is clear that one may violate the Sabbath to save one from apostasy and violation of all laws. But what about violating the Sabbath in order to prevent one from violating other transgressions. How is one to assess the net spiritual loss or gain? R. Yisraeli states that this would depend on whether one derives the law of Pikuach Nefesh from: "'He shall live by them' - but he shall not die by them,"⁴² or from: "'And the children'...Profane for his sake one Sabbath so that he may keep many Sabbaths." If it is derived from the former source then one is permitted to violate the Sabbath only for the sake of preserving human life but not in order to prevent one from committing transgressions. If it is derived from the latter source, then one is always permitted to commit a minor offense in order to save one from committing a major one. This is essentially the controversy between Rashba and Tosafoth. Rashba concurs with the former position while Tosafoth maintains the latter.

R. Yisraeli concludes, however, that with regards to apostasy and abandoning one's religion, this constitutes loss of life in this world and the next world and therefore, according to all authorities conforms

to all the laws of saving a life.

Thus we see from R. Yisraeli's article that one is permitted to violate the Sabbath in order to preserve spiritual life. An interesting application of this ruling would exist if a person was dying on the Sabbath and it was discovered that he had entered in his will to be cremated after death. Since one who willfully undergoes cremation denies himself spiritual life in the next world,⁴³ if the patient can be influenced to change his mind, is it permitted to write a new will on the Sabbath? This is the reverse case of the question earlier discussed if it is permitted to write a spiritual cure in an amulet to save physical life. Or another example, is it permitted to violate the Sabbath in order to say confession with a patient about to die on the Sabbath and who is not able to do so himself. Since by confessing and reciting prayers before death one greatly enhances one's spiritual position in the next world. This question was asked by Rabbi Alexander Carlebach who personally encountered this very situation while serving as Rabbi in Belfast, to Rabbi Isaac Jacob Weiss who was then Ab Beth Din of England and is discussed in the latter's work, Responsa Minchat Yitzchak.⁴⁴

Other applications of this ruling would exist in every situation where one has an opportunity of saving a Jew from committing an offense by violating the Sabbath. Since the committing of sin weakens one's spiritual welfare, one would then have to weigh the severity of the offense as compared to the loss of violating the Sabbath.

In any event once it is established that Pikuach Nefesh is literal, that is, it pertains to the nefesh— the soul—equally if not more, than to the body, then it might be inferred that this may apply to each area in Jewish Law which deals specifically with the nefesh. Such as Okhel Nefesh, i.e., whether it is permitted to violate Yom Tov to provide spiritual consumption in the same way as one is permitted to violate Yom Tov for physical consumption; or Geneivat Nefesh, i.e., would one incur the penalty for spiritual kidnapping as one would for physical kidnapping, etc.⁴⁵ Earlier we discussed Maimonides who forbade the use of scriptural incantations to cure diseases, and considered those who do so deniers of Torah because: "they make the words of Torah medicine for the body, while they are medicine for the

soul."⁴⁶

The question now arises, if a person contacted a spiritual ailment where his soul was afflicted, whether it would be permitted to utter a scriptural incantation to preserve his spiritual welfare, in light of the above discussion. Would this case meet Maimonides' requirement of employing spiritual medication (Torah) for spiritual hygiene? Certainly it seems clear from R. Yisraeli that where his spiritual life is endangered, there would be no question. The question is only regarding ordinary medical procedure where one's condition was not serious. Would one be permitted to recite a scriptural incantation to remedy a minor spiritual ailment in the same way as one could take an aspirin to relieve a headache?

It is clear that the application of actual Halaka in the preservation of spiritual welfare opens a Pandora's box revealing the vast degree of halakic concern for transcendental man. This is not surprising since the main aim of Halaka is to guide man towards spiritual perfection.

Determinism and Man's Spirit

We recall in our discussion of Astrology that the planetary influences of Mazalot over man's terrestrial circumstances posed a great theological problem of Predestination versus Reward and Punishment. How can man be punished or rewarded for actions which Mazal caused him to do? Why should Halaka hold man accountable for situations over which he has no control? Ran unravels this dilemma based on the reality of man's spiritual existence:

The reason is that Mazal functions within physical bodies until it influences them. But it does not function within the soul which is higher than it. And this necessitates that everything which is related to natural matters is determined by Mazal. But the performance of Mitzvot and sins which is not a natural action is determined by the guidance of the soul.

For this reason they [Sages] stated, the name of the angel who is in charge of conception is 'Night' and he takes a drop and places it in the presence of the Holy One Blessed be He saying, 'Sovereign of the universe what shall be the fate of this drop? Shall it produce a strong man or a weak man, a wise man or a fool, a rich man or a poor man?' Whereas 'wicked man' or 'righteous one' he does not mention, in agreement with the view of R. Haninah. For R. Haninah said, 'Everything is in the hands of heaven except Fear of G-d.'⁴⁷

Ran explains that Mazal only influences man's physical characteristics such as strong or weak, wise or fool, rich or poor, but not his spiritual make up such as righteous or evil. Halaka may well hold man culpable for his actions because they are guided by the spirit and Mazal bears no influence over spiritual qualities.

Planetary Spirits

Ran's remark that the Mazalot have no influence upon the soul does not imply that the heavenly bodies themselves are devoid of spirit. Even Maimonides, who denies the influence of Mazalot even over man's physical conditions, concedes that the heavenly bodies are spiritual entities possessing soul, knowledge and intellect.⁴⁸ In a gripping and fascinating book, Man on the Moon— in the light of Torah and Faith, R. Menahem Kasher discusses whether man's landing on the moon and excavating thereof disproves Maimonides' position, who quoted from Bible and the Sages to corroborate Aristotle's theory that the heavenly bodies are alive and endowed with mind, soul and intellect.⁴⁹

R. Kasher begins by recording the opinion of many of the great earlier Sages who disputed Maimonides' and Aristotle's theory long before man landed on the moon such as R. Saadia Gaon, R. Yehudah ha-Levi, R. Hisdai Crescas, Abrabanel, Yavetz, and Maharal. Nevertheless R. Kasher writes that Maimonides' position itself does not become invalidated by man's presence on the moon. For R. Kasher proves that we are aware of various matter which exist in the world that appear to be inanimate yet nevertheless are imbued with organic life. Similarly with regards to all heavenly spheres, the moon, and even our earth, even though they appear inanimate, it is possible that they have an inner spirit of life. Not necessarily life in our sense, but life of their own and intellect of their own. Man's reaching the moon does not establish it one way or the other.

Spiritualism

We have already demonstrated in this section that Halaka attached such importance to man's spiritual existence that the Halaka generated laws which applied to man even after his death to improve his spiritual welfare, such as in the case of circumcising and naming a child who died before reaching the age of circumcision. Another example can

can be found in the case of Hibbut ha-Kever — or, 'beating in the grave.' According to this kabbalistic belief the deceased is punished for his sins by being struck by a fiery chain immediately after burial by the angel Duma. Only those who die in Erez Israel or, if outside, are buried on Friday afternoon before sunset, are exempted from this punishment. Pitchei Teshuva records a responsum of Radbaz in which he discusses whether it is permitted to delay the funeral of someone who died on Thursday until Friday afternoon during sunset in order to escape the punishment of Hibbut ha-Kever. Another form of torment suffered by the dead is Gilgul Mehilot, the underground rolling of the dead to their eventual Resurrection in Israel. Despite the prohibition of exhuming the grave, the Halaka permitted the transfer of the corpse to be buried in Israel in order to save it both from Hibbut ha-Kever and Gilgul Mehilot.⁵⁰

Is the Priesthood an Indellible Property?

Thus far we have seen that a great many Halakot deal specifically with man's spirit and are greatly concerned with the metaphysical dimension of human existence. We will conclude this section by investigating the ordinary halakic category of the priesthood and explore whether the priesthood is a physical or spiritual property. Because a sizeable amount of halakic literature has been apportioned to this question in treating the Elijah issue with which we are already familiar, our examination will take us back to review some of the material discussed in the first part of this work.

In Chapter II we discerned two conceptions on the effect of Elijah's ascension upon his degree of involvement in the commandments. R. Attiah differentiated between the continuation of Elijah's 'man-G-d' relationship, and the termination of his 'man-man' relationships, while R. Falcon distinguished between Elijah's continued existence and the terminated relations which emanated from him. We recall evincing that a manifestation of the practical difference between these two positions reflects directly upon Elijah's priestly status. According to R. Attiah, since Elijah's priesthood was an intrinsic aspect of his 'man-G-d' relationship, Elijah's status of Priest was entirely unaffected by ascension. According to R. Falcon, however, as Elijah's priestly status was a relation (no less of a relation

than being his wife's 'husband,' or Elisha's 'master'), just as all Elijah's relations terminated upon ascension, so did his relation of priesthood. Thus the practical difference between the two positions is that according to R. Falcon, Elijah relinquished his priesthood upon ascension, whereas according to R. Attiah, Elijah retained his priestly status.

In Chapter III.1 we divulged that respondents R. Sofer and R. Kluger, demonstrated different areas of involvement in the commandments than R. Falcon or R. Attiah. This difference was attributed largely as a result of their viewing the entire incident of ascension differently. They conceived of a schism, whereby Elijah's soul was liberated from body thus evoking a dual form of existence: one in the form of spirit, devoid of body, and one in the form of man — an aggregate existence of body and spirit. When Elijah assumes human form he is automatically obligated in the commandments, whereas whenever he reverts to spirit form his obligation is absolved.

By applying this dichotomy to Elijah's priesthood, we discover that his priesthood has relevance upon his human form only. The impurity laws concern Elijah the 'priest' only when he is bound to observe the commandments, that is, when he assumes human form. For this reason R. Kluger permitted performing a circumcision in the same room where a corpse lay. Since Elijah attends circumcisions in spirit form, the impurity of the corpse would not prevent Elijah's presence. His priesthood is utterly inconsequential to his spirit form, and, therefore, is relevant to his human form alone.

In R. Attiah's view, however, Elijah's priesthood is an intrinsic aspect of his 'man-G-d' relationship which exists in every form — both human and spirit. Therefore, R. Attiah accords with the R. Sofer-R. Kluger view insofar as Elijah's priesthood is relevant to his human form. On the other hand, R. Attiah discords with R. Sofer-R. Kluger concerning Elijah's spiritual form. According to R. Sofer-R. Kluger, Elijah's priesthood is irrelevant to his spirit form, whereas in R. Attiah's view, Elijah's priesthood is a crucial aspect of Elijah's 'man-G-d' relationship, which exists in the form of spirit as well.

Conversely, in R. Falcon's view, since Elijah's priesthood is a

relation which terminated upon ascension, this relation is neither pertinent to his human form not to his spiritual form. Therefore, R. Falcon is in accord with R. Sofer-R. Kluger insofar as Elijah's priesthood is irrelevant to his spirit form. However, R. Falcon disaccords with R. Sofer-R. Kluger concerning Elijah's human form.

The practical difference between these four positions is immediately apparent in the aforementioned case of performing a circumcision in the same room where a corpse lay. According to R. Falcon, one could perform the circumcision even if Elijah were to appear in person, since in his view, the priesthood is a relation which Elijah relinquished upon ascension. Therefore, even if Elijah the person were to attend, Elijah the priest no longer exists.

According to R. Kluger-R. Sofer, the presence of the corpse would prevent Elijah's appearing in person. However, since Elijah can still appear in form of spirit, the circumcision may be performed. According to R. Attiah, however, since Elijah's priesthood is an intrinsic aspect of his 'man-G-d' relationship which exists in every form, whether human or spirit, the circumcision may not be performed, since the impurity of the corpse would prevent Elijah's presence even in the form of spirit.

Whether in fact, R. Attiah, held this view with regards to every possible form of existence, spiritual inclusive, depends on the resolution of the important halakic-pneumatological question of whether the priesthood is a spiritual or a physical property. For, seemingly, only if the priesthood were proven to be a spiritual property is there room for R. Attiah to maintain that Elijah must shun impurity even when assuming his form of spirit.

It would appear that R. Kluger opines that priesthood is not a spiritual property, since he permitted the circumcision on the basis that Elijah only appears in spirit form. Were the priesthood a property appertaining to the spirit, Elijah should be prevented from attending the circumcision even in the form of spirit. Radbaz, likewise, indicates that the priesthood is a non-spiritual property. We recall that Radbaz dealt with the question how Elijah could perform a resurrection since he is forbidden to come in contact with a corpse. In his final explanation Radbaz proposes the theory of Elijah's re-incarnation. That is, although Elijah's spirit originated in Phinehas

the priest, his biological parents were not of priestly descent. Therefore, Elijah could come in contact with the corpse, since his body was not of priestly origin. Were the priesthood, however, a property of the spirit, being that Elijah's spirit was of priestly origin, he should have been forbidden to perform the resurrection lest his spirit become defiled. Hence, it seems that had Radbaz regarded the priesthood as a spiritual property, he would not have vindicated Elijah's performing the resurrection by advancing the theory of Elijah's metempsychosis.

Seeing that R. Michaelson cites the theory of metempsychosis advanced by Radbaz without the slightest reservation, we may adduce that R. Michaelson can be added to the list of respondents who presumably maintain that the priesthood is a physical property and does not pertain to the spirit.

However, this view can be contested. Indeed we find that Scripture itself relates the priesthood to the spiritual sphere. In Malachi we read:

For the priest's lips should keep knowledge,
And they should seek the law at his mouth
For he [i.e., the priest] is an angel of the Lord of hosts.⁵¹

Many of the Bible exegetes were troubled by Scripture's identification of priests with angels. They, therefore, suggested a non-literal interpretation, rendering the final section of the verse, "for he is like an angel," rather than, "he is an angel." Which means to say: The priest, who is an intermediary between G-d and Israel, is like the ministering angels who are G-d's messengers. Or alternatively, the priest, who in the course of ministering the Temple service is permitted entrance even into G-d's domain — the Holy of Holies, is like the ministering angels who enter within G-d's domain.⁵²

However, many of the sources preferred to expound the verse in the literal sense, rather than interpreting the verse allegorically. Hence, our verse was considered a source for the views which designated both priests as angels and angels as priests.⁵³

Midrash Rabbah questions the verse, "And there shall be no man in the appointed tent when he [i.e., the High Priest] would go in to make an expiation in that holy place," asking: "Was the High Priest not a man?" Thereupon, R. Abbahu answers that the High Priest

became transformed into an angel upon entering the Holy of Holies. He entered there not as a man but as an angel. Otherwise he would have been forbidden entry as a man, and could not have survived the experience. R. Abbahu cites the verse in Malachi, "for the priest is an angel," in support of his contention that the High Priest actually became transformed to an angel when he entered the Holy of Holies on the Day of Atonement.⁵⁴

It is probably for this reason that towards the end of the Second Temple period, when the office of the High Priest was purchased by wealthy priestly families, the High Priest perished each year on the Day of Atonement upon entering the Holy of Holies, and had to be replaced annually. Namely, because they were unworthy of becoming transformed to angels. They, therefore, remained "men," who are forbidden entry and never survived the experience of leaving the Holy of Holies alive from one year to the next.⁵⁵

It seems that Midrash Rabbah considers the priesthood a property of the spirit, as well as a physical property. Although the physical priest is forbidden to enter the Holy of Holies, the spiritual priest (as an angel) is permitted entry. Even as an angel he remains a priest, since Scripture stipulates that the Temple service can only be administered by a Priest.

In another instance Midrash Rabbah relates that because "the priest is an angel of the Lord," Phinehas' priesthood endowed him with angelic powers, such as the ability to disappear and reappear. Therefore, although Caleb and Phinehas were both suspected of spying, only Caleb needed to be hidden by Rahab. Since Phinehas was a Priest, he could make himself invisible as an angel.⁵⁶ The Zohar expounds the verse in Malachi literally as well. Not only are priests angels, but angels can also be priests.

'For the priest's lips should keep knowledge and they should seek the law of his mouth, for he is the angel of the Lord of Hosts.' Where did the priest merit to be called, 'angel of the Lord of Hosts?' Said R. Judah: As the angel of the Lord is a priest on high, so is the priest below an angel of the Lord of Hosts. The angel of the Lord of Hosts on High is Michael who issues from the celestial Grace [Hesed] and is the celestial High Priest. So the High Priest on earth is called, 'angel of the Lord of Hosts,' by reason that he belongs to the side of Grace.⁵⁷

The Zohar proves that the priest on earth is considered an angel because Michael, the parallel of the earthly priest in heaven, is an angel. The Zohar can more easily conceive of an angel who is a priest than a priest who is an angel. The former is stated unequivocally, the latter must be proven. Michael, the great prince, is also a celestial priest because he performs the identical function as the High Priest, in that he evokes G-d's grace by sacrificing the souls of the righteous. Just as Michael the angel is a priest on high, so is the High Priest an angel on earth, as both are elicitors of G-d's mercy.⁵⁸

R. Jacob b. Judah Weil (died 1456), in his collection of responsa, also writes of the relation of the High Priest above to the High Priest below with regards to the Temple service on the Day of Atonement. R. Weil's rulings attained great importance and were considered binding by the subsequent codifiers, such as R. Moses Isserles. Apart from their halakic import, R. Weil's responsa are a valuable source of the social and religious history of German Jewry.⁵⁹ In Responsa number 192, R. Weil writes:

And the Temple service can only be performed by the High Priest. On this day [of Atonement] Michael is appointed over him and he is the High Priest on above and he is the Angel of Grace. And for this reason only the High Priest can perform the service of the Day of Atonement.⁶⁰

Not only does R. Weil affirm the zoharitic notion that Archangel Michael is a High Priest, but moreover R. Weil attaches great halakic significance to Michael's priesthood. As it is for reason of Michael's being High Priest that no other priest below can perform the Temple service on the Day of Atonement. In addition, R. Weil's responsum verifies that the priesthood is a property pertaining to the spirit, as Archangel Michael is a High Priest, even though he is a metaphysical entity. Michael's priesthood is of halakic consequence as it affects the physical priests below.

The notion of a High Priest existing in the spiritual world is not surprising, as it is a well-known doctrine that the entire physical world is just a reflection of an identical world which exists above. Every existing thing in the lower world has a parallel equivalent in the upper world. This parallelism is discussed in detail by the philosopher exegete, R. Isaac Arama, in his biblical commentary,

Akedat Yizchak. On the relation between the activity of the High Priest above to the High Priest on earth on the Day of Atonement R. Arama writes:

Just as the Holy One above enters the Temple on high to saturate Himself with mercy in order to pardon his holy ones, so to the holy one on earth enters the Temple below, which is directly beneath it [the Upper Temple] to join His Holiness through his sacrifices and his order of service.

And on the relation between angels and priests:

See that the Sages placed priests and angels in one common context until there is nearly no distinction between them, except for them being as two people from different families.⁶¹

It is not surprising then to find that Elijah the priest is also assigned a priestly function of a spiritual nature. In one Midrash we read:

But the highest reward [given] to Phinehas was that G-d granted him an everlasting priesthood. For Phinehas is none other than the prophet Elijah. His task is to make atonement for Israel. And without tasting death, he constantly discharges the duties of his everlasting priesthood until the resurrection of the dead, offering up daily two sacrifices for the children of Israel. And upon the skins of these animals he records the events of each day.⁶²

The Targum to Ecclesiastes also describes Elijah a priest, at the same time an angel.⁶³ From these sources, it is clear that Elijah did not relinquish the priesthood as they speak of Elijah's priestly activities subsequent to his ascension. It also appears evident that Elijah pursues these priestly functions, such as offering the daily sacrifices, even in the form of spirit and need not assume his human form to perform these duties. Much in the same way as the Archangel Michael carries out his priestly duties of sacrificing daily offerings despite his being a nonphysical entity.

At this point it would seem reasonable to suppose that those respondents who permitted Elijah the priest to contact impurity of a corpse when appearing in spirit form, understood the 'Priest-Angel' identity as purely allegorical, by virtue of the fact that they perform similar functions. In reality, however, the angel is not a priest, and is permitted to contact impurity, since the priesthood is not a property which belongs to the spirit. On the other hand, the school which maintains that the priesthood is an intrinsic aspect of Elijah's 'man-G-d' relationship, presumably understood the 'Priest-Angel'

identity according to its literal sense. Since the priest is literally an angel, he must avoid impurity in every form that the relationship manifests itself – even in spirit.

Nevertheless, we shall see that this supposition may be contested, as indeed we find the question of whether the spiritual priest must shun impurity concerning G-d Himself. The Talmud in Sanhedrin relates:

A certain heretic said to R. Abbahu: Your G-d is a priest, since it is written, 'That they take for Me Terumah.' [i.e., a wave offering given to priests.] Now when He buried Moses wherein did He immerse Himself [after contact with the corpse?] Should you reply, In water, is it not written, 'Who hath measured the waters of His hand?' [i.e., all the world's water could not contain Him]. He immersed Himself in fire, he answered, for it is written, 'Behold the Lord will come in fire.' Is then purification by fire effective? On the contrary, he replied, immersing oneself [for purposes of purification] should essentially be in fire, for it is written, 'And all that abideth not the fire ye shall make go through the water.'⁶⁴

The talmudic commentaries discuss the peculiar phenomenon of G-d's contacting impurity, which this passage seems to be suggesting. None of these commentators are troubled by the identification of G-d as a priest.⁶⁵ This identity they seem to accept readily. The only peculiarity as far as they are concerned is – given that G-d is a priest how is it possible for G-d to be defiled by impurity?

Why did R. Abbahu answer the heretic saying that G-d purified Himself by immersing in fire, rather than answering that impurity is irrelevant to G-d?

From the fact that the commentators were not in the slightest perturbed by the identification of G-d as a priest, which seems to be supported by the fact that G-d is identified in various other rabbinic sources as a priest, we must adduce that the priesthood is a property of the spirit as well.⁶⁶ Being that G-d is a non-corporeal, non-physical entity, one can not speak of G-d as a priest unless referring to a spiritual property. Were the priesthood restricted to the physical only, G-d's identity as a priest would be meaningless. Moreover, G-d's priesthood cannot be understood as an anthropomorphism as there would be no question of G-d's contacting impurity were His priesthood merely allegorical. Rather, it appears that the identity of G-d as a priest is intended to be understood quite literally.

Nevertheless, the commentators were puzzled that accepting the contention that G-d is a priest, how is it possible to suggest that G-d Himself may become defiled and that He requires purification! In other words, even after the priesthood is established as a spiritual property, one must still verify whether the spiritual priest must shun impurity.

Many of the talmudic commentators maintain that it is impossible for anything spiritual to contact impurity.⁶⁷ Only the physical can become defiled. R. Abbahu never intended to suggest anything to the contrary. He merely answered the heretic according to the heretic's own erroneous assumption. Even if it were true that G-d could become defiled, the heretic's quip could still be silenced by rejoining that G-d purifies Himself by immersing in fire.⁶⁸ Many of the commentators explained that the reason G-d cannot become defiled is because G-d is a consuming fire.⁶⁹ Since fire purifies from impurity, it certainly cannot become defiled.⁷⁰

Perhaps one may infer from these latter commentators that a spiritual entity which is not a consuming fire may well possess the capacity to become defiled. Were this the case, spiritual priests of such an order might indeed find it necessary to shun impurity.⁷¹ Consequently, while G-d's burying of Moses might be condoned, this may not be so were the same act performed by a spiritual priest of a lesser order.

R. Joseph Bordjel (Burgel), in his explanation of this curious passage, also seems to understand that impurity is relevant to spiritual priesthood. R. Bordjel explains that R. Abbahu could have retorted that since Moses' body will be intact when he is eventually restored to life, there is no impurity in such a case. Or, alternatively, that the righteous (i.e., Moses) do not defile others. In either case, G-d need not be concerned about impurity. R. Abbahu, however, did not reply thus, because the heretic would have denounced the eventual resurrection of the dead in any event.⁷²

As R. Bordjel offers alternative rebuttals with which to silence the heretic, and does not simply say that impurity is irrelevant to G-d, it stands to reason that R. Bordjel did in fact consider the notion of defilement of the spiritual priest quite seriously.

In view of the above it would now seem clear that according to the first opinion, which maintains that anything which is spiritual cannot be defiled, even if respondents R. Kluger and Radbaz conformed with the literalist view that the priest is an angel and that the priesthood is a spiritual property, it would still be possible for Elijah to perform the resurrection and to attend the circumcision in spiritual form, as according to this view impurity is entirely irrelevant to the spirit.

However, according to the latter opinion, which appears to maintain that impurity is relevant to the spiritual priest, respondents Radbaz and R. Kluger could not have conformed to the literalist view. For Elijah could neither have performed the resurrection nor attended the circumcision, as he must shun impurity even in spirit.⁷³

We recall surmising earlier that according to R. Attiah, who maintained that the priesthood is an integral aspect of Elijah's 'man-G-d' relationship, Elijah would be prevented from contacting impurity even in the form of spirit. In view of the above, this supposition is inconclusive.

Once again we are witness that prior to determining Elijah's halakic status vis-a-vis the commandments, a thorough investigation is required to ascertain whether the priesthood is a spiritual or physical property, and whether impurity is relevant to the spirit altogether.

By now it should be quite apparent that the application of Jewish Law to the spiritual dimension of human existence occupies no small role in halakic process. There seems to be ample evidence to support Professor Baer's thesis that pneumatics constituted an integral aspect of the Sages' halakic Weltanschauung.

X. METAPHYSICAL DEVELOPMENT

Eschatology

Possibly the greatest metaphysical development in the world, which is a fundamental axiom of Jewish Faith, is the global process of evolving closer each day towards the Messianic Era and the final Redemption. These eschatological notions are fundamental metaphysical realities which are built into the progression of the universe. The world's history unfolds over cycles of time and man, since time immemorial, has applied his understanding and interpretation of metaphysical events to calculate the advent of the Great and Awesome Day. No matter which system of calculation was employed, they all shared one element in common — the unswerving belief that the world was moving in a direction which would eventually witness an exact portion of a certain cycle when the evolvement of metaphysical movements in the universe would become complete and culminate with the advent of the Messiah. There was however, one basic dilemma over which the eschatological advocates disagreed: whether these metaphysical events unfold via the process of philosophical naturalism or through supernatural traditionalism. The former view maintained that the Messianic Era would be a perfectly natural process and evolvement in the history of the world and that the Messianic period will not be vastly different from ours, in accordance with Shemuel's dictum:

There is no difference between this world and the days of the Messiah except [that in the latter there will be no] bondage of foreign Powers.¹

The latter approach espoused that these events would unfold in a supernatural manner, superimposed over the progress of history, and radically different from it. As we saw in our discussion in Chapter III.1 regarding the Bar Cokhba period, where we elaborated upon these two positions, there are great halakic consequences depending on which eschatological position one espouses. These questions range from how to identify the proper Messiah and expose the pretentious impostor to whether Zionism is an authentic Messianic movement, the consequences of which were discussed in Chapter VIII. Throughout Jewish history events occurred where Jews repeatedly had to delve into

eschatological Halakot in order to establish and verify whether their period bore the correct symptoms which manifest the long awaited End.

The notion of redemption carried halakic implications with regard to prayers such as whether one recites Hallel on Israeli Independence Day, or the laws regarding the adjoining of the geula (redemption) to tefillah (silent prayer). The fact that there is no redemption at night is a halakic principle which causes Tur to rule that uva lezion goel (and the redeemer will come unto Zion) is not said on the night of the 9th of Av.²

The notion of resurrection of the dead as an evolutionary metaphysical process of mankind was also subject to the controversy of whether this process would occur according to philosophic naturalism or supernatural traditionalism. An argument against cremation was forwarded by the advocates of the former approach that like the biological cycle, which is based on the decomposition of the original plant's prime organic matter into the soil to generate and evolve further plant life, resurrection would follow the same pattern in a natural and evolutionary manner. It required the decomposition of man's essential nutrients to become sewn back into the soil to enable the sprouting of new human life. No further life of any kind can be obtained from ash. Therefore, one who willfully has himself reduced to ash prevents himself from participating in a natural process which enables and generates future life.³ The advocates of the second approach maintain that resurrection is an utterly, supernatural phenomenon which is not related to the biological cycle of nature. For this reason the incinerated victims of the Nazi holocaust have nothing to fear of the future since the omnipotent G-d can produce life from ash as well as from dust. Nevertheless, one who deliberately allows himself to be cremated will not vouchsafe G-d's performance of a supernatural feat to resurrect him in the future. According to the advocates of the former theory it is necessary to bury the limbs which are accidentally or surgically removed from the body in order to become fully resurrected to one's former self. According to those who espouse the latter theory, it is not necessary in order to realise complete resurrection. Nevertheless they might still maintain that the limbs must be buried because of sanctity of parts of the body.⁴

Apart from the world's direction of metaphysical development towards the future, the Kabbalists maintained that G-d brought the world into existence through a system of metaphysical evolutions known as Sefirot, or emanations descending from the highest form to the lowest form.

This process called Tzimzum, whereby G-d contracted Himself so to speak to allow for the various emanations, occurred in the reverse process to Darwinian evolution, where the world evolved from the lowest form of existence to the highest. The purpose of the world being created in this way, according to the Kabbalists, is to enable the world to reascend again, through the course of time, to its highest form. Emanation combines with Eschatology which envisions reversion of the soul to its ultimate source. Then the entire process of metaphysical development will have become complete.

Even R.H. Charles who, in his work Eschatology: The Doctrine of a Future Life in Israel, Judaism and Christianity, postulates that the doctrine of Eschatology underwent various theological stages throughout the Bible, recognised that it was the Divine hand which was responsible for guiding these evolutionary stages from one to another:

And herein, as throughout this evolution of religion, we can trace the finger of G-d. For it was no accident that His servants were unable to anticipate any future blessedness save such as they shared in common with their brethren and nation. (Emphasis added.)⁵

Exploring the relationship between eschatology and cosmology is mutually beneficial for much of the Afterlife can be learned from the cosmological description of creation. While at the same time, many matters concerning the physical universe can be more clearly evaluated and explained through gaining an understanding of the future.

Transmigration of Souls

The concept of Gilgul – transmigration, or literally, evolution of souls, was a natural sequence of this system. Since everything in the world is constantly changing form, descending to the lowest form and ascending again to the highest, the particular form of the transmigration of the soul is replaced by its changed form. This version of the doctrine of gilgul, was upheld in response to the

philosophical criticism of gilgul by R. Saadiah Gaon, R. Joseph Albo and others who based on the Aristotelean definition of the soul as the "form" of the body, rejected the doctrine of gilgul, since the particular form can not become the form of another body.

Transmigration was seen as a harsh punishment for the soul which undergoes it, yet, it is also an expression of mercy of the Creator who provides an opportunity for restitution. The belief in gilgul served as a rationale for the apparent absence of justice in the world. The suffering of the righteous is explained as punishment for his sins in a previous gilgul.

The halakic basis which the Kabbalists posited as the source for the gilgul concept is the commandment of Halizah, the levirate marriage.⁶ Through Halizah the brother of the childless deceased replaces the deceased husband so that he may merit children in his second gilgul. Later on other Mitzvot were interpreted on the basis of transmigration.

Accordingly, the Zohar established the Halaka that the corpse must be buried immediately upon death or as soon as possible, in order to enable the souls to transmigrate. The Kabbalists also maintained that the souls of the deceased do not depart from this world until one year after death.

This gave rise to the conviction that the demonic spirits, which we discussed in the previous chapter, are in fact the souls of evil men who have died but have not yet departed this world. Thus all the Halakot contingent on demonology are related to the idea of transmigration of souls.⁷

The notion of Dybbuk, or possession by spirits, is also related to the gilgul concept. Dybbuk is an ibbur (impregnation) whereby a foreign soul enters a human during his life and dwells in him for a limited period of time. The ibbur is the impregnation of the soul of a wicked man in another man. Ibbur is an actualised situation in which an evil inclination takes possession of a person who has to struggle with all his might to overcome, subdue, and expel this evil spirit. The Shulchan Arukh in laws of menstruation, discusses whether a woman who has become possessed (ibbur) with a spirit (ruach) must observe the laws of menstruation once the spirit exits, as all women who conceive.⁸ The widespread belief in Dybbuk as an actual

reality no doubt influenced Tur and Shulchan Arukh to deal with this question from a practical rather than theoretical perspective. In another instance Terumat ha-Deshen considers the question of whether one is permitted halakically to bury a person before death to shake off the spirits that are causing one's misfortune, as simulated burial was considered an effective therapeutic device.⁹

Another phenomenon related to the gilgul concept and the notion of ibbur is the Neshama Yeterah, the additional and benevolent soul which enters the body on eve of Shabbat and exits at the end of the Sabbath. The source for this belief is found in the Talmud:

Resh Lakish said, 'On the eve of the Sabbath G-d gives man an additional soul and at the close of the Sabbath He withdraws it from him for it says: 'He ceased from work and rested,' i.e., va-yinnafesh, once it [Sabbath] ceased, woe! the [additional] soul is gone [vay avdah nefesh].¹⁰

The phenomenon of Neshama Yeterah gave rise to the Halaka of using spices during the Habdalah ritual at the end of Sabbath in order to fortify the faint remaining soul at the departure of the Neshama Yeterah.¹¹ Spices are not used during the Habdalah ritual at the conclusion of Yom Tov (festivals) because according to the Talmud the Neshama Yeterah only enters the person on Sabbaths and not on Yomim Tovim. Therefore, the remaining soul is not faint at the end of Yom Tov and doesn't require spices to strengthen it.¹²

The reality of the existence of Neshama Yeterah is a halakic principle which establishes the difference between the Habdalah ceremony on Shabbat and Yom Tov. R. Ephraim Margoliot in Match Ephraim, cites the Neshama Yeterah phenomenon as the basis for the custom of passing around smelling salts on the Sabbath itself because the Neshama Yeterah delights in its fragrance.¹³ In Chapter III.1 we saw how Radbaz employed the gilgul concept as a halakic principle in justifying Elijah's performance of the resurrection. We also saw how the notion of Elijah's metempsychosis clarifies many of the difficulties surrounding the Elijah issue.

The expansion of the notion of transmigration into a general principle contributed to the rise of the belief in transmigration of souls into animals and even into plants and inorganic matter. In his work Metzudat David, Radbaz discusses the transmigration of souls in animals. The Shulchan Arukh of R. Isaac Luria (the Ari) gives the reason for

the prohibition of eating the heart of an animal or a chicken was because of the spirit of the reincarnated animal will affect the consumer. R. Jacob Zemah in his work explaining Jewish customs and their origins explains the biblical prohibition of grafting trees (kilayim) as related to the problem of mixing, i.e., accommodating, reincarnated souls. R. Ovadiah Yosef in a responsum discussing the birkat ha-ilanot, the special blessings for trees blossoming in spring, relates this practice to the tikkun (restitution) of the reincarnated souls in trees. R. Jacob Sofer in his commentary to Shulchan Arukh, Kaf ha-Hayyim, writes that one should intensely concentrate while reciting this blessing in order to make restitution for the transmigrated souls in the trees and one should ask mercy on their behalf.¹⁴

In Chapter III.1 we recorded the responsum of R. Levi Ibn Habib (Maharalbach) who discusses whether it is halakically legitimate to believe in reincarnation. Maharalbach writes that although the rationalists denied the theory of gilgul since it could not be empirically proven according to reason, nevertheless because many great Rabbis who enjoyed wide acclaim and authority, "believed in the doctrine as a true and basic principle of Torah we are obliged to accept their words without doubt or reservations." If Metaphysical Development can be established as a fundamental reality of universal evolution, then transmigration of souls is nothing but a branch of this process and therefore, "a true and basic principle of Torah."¹⁵ It is not surprising that so many Halakot developed as a result of man's encounter with this metaphysical process.

Metaphysical Forces

One of the most puzzling aspects of the Talmud is its description and acceptance as fact, of numerous phenomena in nature, many of them which carried halakic consequences, that are not known to exist today. This enigma baffled talmudic scholars to such an extent that many of its critics seriously doubted whether these phenomena ever really existed and caused its detractors to mock talmudic literature in its entirety. The Jerusalem Talmud's declaration that G-d Himself "changes His world once every seven years," would seem to suggest the concept of metaphysical development.¹⁶ That is, that natural or metaphysical phenomena which may indeed have existed at one time were caused by G-d to disappear through changing form and mutation during

the course of time. Our task is to research the halakic sources to investigate whether there is any evidence to substantiate this theory.

The Talmud records the phenomenon of Zuggot or pairs. The talmudic belief is that even numbers, "pairs," are unlucky and even dangerous as they invite the malevolent activities of demons. A special dispensation was made for Passover night to allow the drinking of four cups of wine at the Seder, despite the danger inherent in drinking in pairs since Passover is a night of protection from demons:

And they should give him not less than four cups. How could our Rabbis enact something whereby one is led to danger? Surely it was taught, a man must not eat in pairs, drink in pairs, not cleanse [himself] twice, not perform his requirements twice? Said R. Nahman, Scripture says 'it is a night of protection unto the Lord,' i.e., it is a night that is guarded all the time from harmful spirits.¹⁷

The Talmud provides a detailed list of precautions which the Rabbis took to avoid committing actions in pairs lest they involve hazards, which are not known to be dangerous today.

The Tosafoth remark that the reason the world is not careful about contacting Shibbeta, which is a demon which rests upon food and will choke those who eat without washing their hands, is because: "this evil spirit is not known to exist in our countries, just as we are no longer careful about gilui [drinking from uncovered containers] and Zuggot." Tosafoth indicate that just as the phenomenon of Zuggot seems to have disappeared the danger of Shibbeta is no longer known to exist. Therefore, the halakic measures against these phenomena no longer apply.¹⁸

Likewise, R. Nathan b. Yehiel in his Arukh, cites Rav Hai Gaon who confirms that the superstition of Zuggot lost its hold in post talmudic times "for they [i.e., Zuggot dangers] are no longer as frequent as they once were."¹⁹ The Talmud itself concedes that, "In the West [i.e., Israel] they were not particular about 'pairs'." This is possibly because of the different spiritual and psychological conditions which permeate in Israel as compared to the diaspora, the phenomenon of Zuggot was not as common in Israel as it was in the diaspora.²⁰ Even with regards to the diaspora the Talmud states:

This is the position in general: when one is particular they [the demons] are particular about him, while when one is not

particular, they are not particular about him.²¹

Although the Talmud is replete with laws concerning situations in which the danger of Zuggot apply, the major codifiers, Maimonides, Tur, and Shulchan Arukh, are all silent about these laws. R. Yehiel Michel Epstein, a later authority (d. 1908) writes in his Codex of Law, Arukh ha-Shulchan:

"In our time we have not heard that people are particular about Zuggot."²²

From the above it is clear that while the codifiers unquestionably accepted the talmudic belief that the dangers of Zuggot most definitely existed at one time, various changes evolved over the course of time that caused the reality of Zuggot to become debilitated, so that the Halaka is no longer concerned with the metaphysical dangers they pose for man.²³

Not only do we find that the malevolent activities of demons in Zuggot, and certain demons themselves such as Shibbeta which seem to have been rendered impotent by the course of time, the entire field of magic was largely devitalised by the same process. Despite Shulchan Arukh's severe stricture against inquiring of sorcerers, R. Judah Ashkenazi in his commentary to Shulchan Arukh, Ba'er Heitev writes that ordinary people are permitted to inquire various matters of sorcerers today, since the Torah only prohibited ancient magic of the earliest times, "however, today there is no [more] magic in the world, and it is all vanity."²⁴ Ba'er Heitev's statement is extremely significant halakically as it establishes a principle that magical activities are only forbidden if magic is a reality. However, if magic is only fictional then there is no harm in it. This position would most likely be untenable by the codifiers who maintained that the prohibition of magic was against believing in magic irregardless of whether magic is reality or myth. The problem magic poses for belief would certainly exist today. Nevertheless, from Ba'er Heitev it is clear that in his opinion although magic was undoubtedly a reality in ancient times, its potency diminished in the course of time. At the end of Chapter VIII we applied Maimonides' theory on sacrifices to magic and remarked that the Bible only introduced magical notions such as Copper Serpeant, Sotah Waters, Urim veTumim, miracles, scapegoat of Atonement etc., because the ancient world in which they lived accepted magic as a reality of life.

It is only natural then that as man witnessed the gradual evanescence of magic as a real force in the world, the biblical proscriptions no longer constituted an essential aspect of normative Jewish Life.

In his book Ez ha-Hayyim, R. Jacob Hagiz advances a remarkable theory why the magical and demonic forces have lost their power with the passing of time. He explains that as we approach the End of Days the light of G-d spreads to every person, and everyone will see that there is none other but Him. As this light brightens all impurity vanishes into nothingness. For G-d has already rebuked Satan and the powers of impurity have become nullified. All those people who have previously practiced magic now realise the ineffectiveness of this art. The only people who believe in these things today are fools and children.²⁵

R. Hagiz's theory on the eventual disappearance of magic is related to the world process of metaphysical development discussed at the onset of this chapter. While the world moves progressively closer towards the end of time, the near physical reality of G-d, expressed by His light, becomes increasingly manifest. As this process evolves the powers of impurity devolve at a proportionate rate. The greater the manifestation of G-d's presence the more squandered Satan and the powers of evil become. R. Hagiz's thesis establishes a halakic principle that the Laws concerning Magic and Demonology no longer apply today because of evolution. It is the eschatological process of metaphysical evolution which caused the reality of magic to devolve into myth in the course of time. It is not surprising then to find the halakic principle which emerged repeatedly throughout the last few chapters of this work, that the more any questionable activity could be associated with G-d the less likely it was to pose a problem for magic. For R. Hagiz clarifies how the reality of one is automatically negated by the other.

Amorite Folkways

In Chapter VIII we saw a halakic controversy whether Jews are allowed to practice various actions which the Amorites have long since abandoned. One might regard this controversy as whether the laws concerning Amorite Folkways are affected by the process of Metaphysical Development. Does the prohibition of "following their ways" become

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irrelevant once the very beliefs and practices which once characterised Ammorite Folkways themselves undergo change over the course of time? Or is the prohibition considered an independent law for all times regardless of whether the metaphysical concepts and practices of the various nations undergo change? The former view regards Halaka as binding so long as the metaphysical realities which it describes are still in existence. The latter opinion disassociates Halaka completely from the metaphysical circumstances in which it was given and considers Halaka eternally binding. One may regard the controversy over whether there are Mitzvot in the next world or not. The former view regards the Torah as being specifically given for man in this world and that Mitzvot specifically relate to man's conditions in this world. Once man's metaphysical circumstances change, those Mitzvot become no longer relevant to his new reality, since the context in which they were originally given has undergone change. According to the latter opinion the Mitzvot of the Torah remain eternal irrespective of man's immediate circumstances and therefore, apply in the next world as much as in this world.

Metaphysical Cures and Dangers

One of the greatest criticisms leveled against talmudic literature was the exotic description of seemingly primitive medical prescriptions coupled with the employment of outlandish words designed to cure a vast array of diseases which have no apparent logical basis and are not known to be efficacious today.

Although we saw in Chapter VIII that the paramountcy of safeguarding health gave rise to the injunction that, "Whatever pertains to healing does not pertain to Ammorite Folkways," one can not ignore the great similarity which existed between these strange talmudic cures and Ammorite Folk practices. If we understand that the talmudic Sages considered the metaphysical factors which contribute towards or cause disease and that their prescriptions were designed to overcome these metaphysical factors, then we can understand why they prescribed treatments based on their metaphysical efficacy rather than "neutral" cures. Furthermore, we can also understand that once the world's metaphysical conditions undergo stages of evolutionary change, the medicaments which were originally designed to counteract man's medieval metaphysical circumstances can no longer be effective today.

The Tosafoth, in commenting on the talmudic statement that, "fish is at its best when it is about to turn putrid," states that, "nowadays it is dangerous to eat when it is about to turn putrid." In explaining why man encountered a different reality during Tosafoth's time than in talmudic times Tosafoth writes:

Perhaps things have changed such as the talmudic medicines which no longer heal in our days.²⁶

The Tosafoth unequivocally confirm that because of the process of change the medications which were once effective during talmudic times are no longer therapeutic today. The Kesef Mishne in his commentary to Maimonides' Code explains that the reason Maimonides advises in Laws of Deiot (moral-intellectual qualities) against the practice of phlebotomy in contradistinction to the talmudic practices of phlebotomy, is because not all places are alike and the Talmud only instructed practices which were effective in Babylon. Sedei Hemed remarks that:

From here we derive that talmudic medical practices and the like were not stated for all places nor for all times.²⁷

Sedei Hemed continues to discuss whether it is permitted to practice talmudic treatments today to see whether they are of any use. Sedei Hemed records the opinion of Hida who writes that nowadays talmudic medicaments are ineffective in the same way as Zuggot which were once dangerous are now harmless. From Hida it is uncertain whether one may experiment with those practices today. However, Sedei Hemed cites the opinion of others who record that there existed an ancient ban not to rely on talmudic medications in order to prevent slander against the early Sages. This would indicate that it is actually forbidden to conduct such experimentation today. In conclusion Sedei Hemed states that since the reason for the prohibition and the ban is only to prevent slander of Sages, then those talmudic treatments which are known to be still effective today may be practiced. For, perchance, if they were to prove ineffective one could always say that the procedure of treatment was not followed correctly.²⁸

The halakic implication of Sedei Hemed's discussion is that it is permitted to administer talmudic medical treatments in places and times which have not been affected by metaphysical development. Furthermore, Sedei Hemed's inclusion and association of the disappearance

of Zugot and other Ruchot (evil spirits) indicates that he considered all these phenomena to have been affected by the same metaphysical process.

In a responsum by R. Abraham Samuel Benjamin Sofer in his work Hashav Sofer, R. Sofer was asked whether it is permitted to use plant oils which contain a mixture of fish oil in emergency situations such as World War II in Nazi governed Europe when other oils are extremely expensive, or unobtainable.²⁹ R. Sofer writes that there are two principal factors of concern:

- 1) the prohibition of impure (non-Kosher) fish, and
- 2) the (talmudic) danger of mixing (Kosher) fish with meat comestibles.

Regarding the second consideration, R. Sofer discusses whether food items which are dangerous can become nullified in mixtures containing sixty parts more than the problematic food. The halakic principle that "regulations concerning danger to life are more stringent than ritual prohibitions [harmirah sacanta me-isura]," would not apply in our case, since Magen Avraham has already ruled that nature has changed (nishtanu ha-tevaim) and that mixing fish with meat is no longer dangerous.³⁰ R. Sofer also records the opinion of his father's great-grandfather, R. Moses Sofer who in a similar responsum states that because nature has changed Maimonides did not codify the talmudic ban on mixing fish with meat, as Maimonides no longer considered it dangerous.³¹ In view of the above R. Abraham Sofer rules that in emergency situations one can certainly be lenient.

The danger which R. Sofer addresses is found in Pesahim:

A fish was roasted together with meat. Rabba of Perzika forbade it to be eaten with kutah [a preserve of relish made of bread-crusts and sour milk]. Mar b. R. Ashi said: Even with salt too it is forbidden, because it is harmful to one's smell and in respect of 'something else' [viz. leprosy].³²

Since there is no record of non-Jews desisting from mixing fish and meat comestibles it would appear that this danger was a metaphysical one. In the same way as leprosy was considered a moral retribution for speaking slander and libel, shedding of blood, taking oaths in vain, incest, arrogance, robbery, and envy, as well as benefitting from sacred objects.³³ Nevertheless as far as Jews are concerned this metaphysical danger is just as pernicious as any other natural danger. However, since this danger is not known to exist today,

despite the talmudic dictum that the mixing of fish with meat causes leprosy and is therefore forbidden, R. Abraham Sofer applies the principle of evolution in nature as a halakic basis for permitting fish oil mixtures in emergency situations today.

Evolution as a Halakic Principle

In discussing the question of evolution in nature as a halakic principle in general, Sedei Hemed records that Remah in his gloss to Shulchan Arukh accepts the principle as applicable to Laws of Levirate Marriage in contravening the talmudic dictum that "a woman who bears at nine months does not give birth before the full number of months has been completed."³⁴

In his discussion Sedei Hemed cites a responsum of Maharam Shick (Moses b. Joseph Schick) who formulates two rules regarding where the principle of natural evolution is applicable:

1. One can not say times [or nature] have changed [shinui itim] with regards to a Halaka le-Moshe mi-Sinai [a law transmitted by tradition to Moses at Sinai]. For G-d's statements exist forever. If so, since they were transmitted by G-d for all times and for all places and G-d knows that there will be a future in which times [or nature] will change, how could He transmit such statements to Moses at Sinai to forbid them forever? Of necessity [one must say] that either they do not change, or even if they change it nevertheless remains forbidden. Such as the eight types of treifot [animals which suffer from serious organic defects] which were forbidden to Moses at Sinai, can not change. Even if we see a change that it lives and our Sages said that a treifa can not live, it is proven that the [laws of] treifot are not dependant on life. Even if it lives, since it has a defect and an anatomical doubt, it is a treifa. And the proof is that there are some Sages who opine: 'a treifa can live' [treifa haya].
2. The laws of Torah follow the rule of hazaka [presumptive continuance of an actual condition until evidence of a change is produced]. All its laws are based on the majority [rubah] and hazaka. Therefore, since we know that it was this way at the time that it was given to us by tradition, the law remains as it was on the basis of hazaka and on the hazaka that it has not changed, unless clear proof of a change is produced. And we have already explained that something which is empirically verified by experience and investigation is only considered evidence on the basis of a majority [rov]. Therefore, this only pertains to a case where a majority is sufficient and is not a Halaka to Moses from Sinai. In that case, since experience has proven that in the majority of cases a change has occurred and it is not a Halaka to Moses from Sinai, then we may well say 'It has changed.'³⁵

On the basis of these two rules Maharam Shick disagrees with Magen Avraham who was not wary about the mixing of fish with meat because nature has changed. Maharam Shick argues that since it was forbidden because of danger to life, and in Pikuah Nefesh we do not follow the majority, and on the minority doctors can not testify, then how do we know it has changed? On the contrary, we must follow the hazaka, and the hazaka is that it has not changed!

Maharam Shick's responsum divulges an extremely important rule regarding the relationship between Halaka and Metaphysics and the cosmos in general. And that is, insofar as hermeneutics are concerned, whatever laws are Halaka to Moses from Sinai or are derived from the thirteen hermeneutic principles of R. Ishmael, no cosmic change whether natural or metaphysical can affect the Halakic system and produce a change in law. For G-d would not have communicated laws which are temporal and not relevant to all times and all places. However, as far as 'metahermeneutics' are concerned, i.e., laws which were not transmitted to Moses at Sinai or derived from R. Ishmael's hermeneutic principles, Halaka may well recognize evolution and changing conditions and thereby acquiesce to modification within the Halakic system provided that the specific case follows the majority. Maharam Shick applies this latter rule to the aforementioned case of Rema regarding the Laws of Levirate marriage. Since the talmudic dictum, "a woman who bears at nine months does not give birth before the full number of months has been completed," is not a Halaka to Moses from Sinai; therefore, Rema exempts a woman, who bears a child during the ninth month before its full completion, from undergoing Levirate marriage. For experience has proven that today women conceive normally before the full completion of the ninth month. Hence nowadays such offspring are perfectly healthy and of identical status as full nine month siblings, to qualify the mother for exemption.

Maharam Shick additionally applies his principle to the case of Tosafoth. The Mishna in Bekoroth states that a person who buys an animal from a heathen not knowing whether it had ever given birth previously, so that it can not be ascertained whether its young is a first born which belongs to the priest, R. Ishmael says: that in the case of a cow three years old, its calf certainly belongs to the priest. The Talmud in Avoda Zara deduces a principle from

this Mishna that a cow does not bear under three years of age. Otherwise its offspring would not automatically belong to the priest. The Tosafoth state that nowadays it is a normal occurrence for a cow to bear at two years of age. Therefore it may be concluded that since our times have changed, it is doubtful whether the calf of a three year old cow is a firstling. Consequently the animal grazes until it is blemished and is then eaten by the owners, and does not automatically belong to the priest.³⁶

Similarly R. Akiba states in Bekoroth that, "milk exempts from the law of firstlings since the majority of animals do not milk unless they have already given birth." Rema in his gloss to Shulchan Arukh rules that according to many of the codifiers nowadays milk is no longer considered a sign that the animal has already given birth.³⁷ Maharam Shick concludes that since the talmudic dicta that: "a cow does not bear under three years of age," and, "the majority of cows do not milk unless they have already given birth," are not Halakot to Moses from Sinai, one may well apply the principle of evolution in time to modify the Halaka in these cases.

It is significant to note that Maharam Shick applied his metahermeneutic rule in a case where he sides with Tosafoth. Because we recall that Tosafoth postulated the principle of evolution in nature both with regards to natural changes such as birth period in cows, as well as regarding metaphysical changes such as the disappearance of Shibbeta and Zuggot today. Therefore there is little doubt, that in the same way that Maharam Shick sided with Tosafoth, applying his metahermeneutic principle regarding natural changes, he would apply it equally regarding metaphysical development.

To be sure, the parallelism which exists between metaphysical and natural changes is so strong that in fact they are often interdependent. In a responsum of Hatam Sofer, R. Sofer describes how natural changes are subservient to the metaphysical realities of Torah: A menstruant whose cycle commences on the first day of the month must suspect a menstrual flow on the day proclaimed by Beth Din. A girl whose hymen was penetrated before the age of three, will find it restored by the first day of the third year proclaimed by Beth Din. This miraculous change will occur even if the girl became three years of age and then Beth Din subsequently decided to add a leap month!³⁸ These and other cases demonstrating this interdependence

were discussed in greater detail in Chapter VII.

Metaphysical Creatures

We will conclude this chapter with one of the most puzzling and peculiar phenomena recorded in the Talmud which caused a great degree of scepticism regarding the apparent primitiveness of scientific thinking of the Sages.

"The belief in spontaneous generation was firmly rooted among Jews. Mice, worms, insects are often born of dust, mud and filth; gnats and flies are fathered by the atmosphere; man's sweat and body-heat produce some types of lice and worms. According to the Rabbis there exists a kind of mouse which is generated from the earth itself."

Thus we find the Mishna in Hullin:

With regards to a mouse which is half flesh and half earth, if a man touched the flesh he becomes impure but if he touched the earth he remains pure. R. Judah says, even if he touched the earth, which is over against the flesh he becomes impure.³⁹

The source for impurity of the mouse is the biblical verse:

And these are they which are impure to you among the creeping things that creep upon the earth: the weasel, and the mouse, and the toad after its kind.⁴⁰

The Talmud explains the necessity of Scripture's including the expression "among the creeping things" despite that it is self evident from the text, as follows: Since Scripture mentions the mouse together with the weasel one might think that just as the weasel breeds so the mouse includes all species that breed. And so one might have excluded the mouse which is half flesh and half earth from causing impurity — since it does not breed. Therefore, the text states: "among creeping things" to teach that even the mouse which is half flesh and half earth is included.⁴¹

A similar halakic discussion appears in tractate Sabbath:

R. Eliezer taught: He who kills vermin on the Sabbath is as though he killed a camel on the Sabbath. The Rabbis disagree with R. Eliezer only in respect to vermin which does not multiply and increase, but as for other abominations and creeping things which multiply and increase, they do not differ. And both learn it from none but the rams. R. Eliezer holds, It is as the rams: just as there was the taking of life in the case of the rams, so whatever constitutes the taking of life constitutes [a culpable offence]. While the Rabbis argue, It is as the rams, just as the rams multiply and increase so

all which multiply and increase.⁴²

In conjunction with the above Maimonides codifies:

Insects, that increase and multiply from male and female or that generate from the earth such as the flea, one who kills them is like one who kills a domestic or wild animal. However, insects which generate from dung or from rotten fruit and the like, such as worms of the fleas and worms inside lentils, one who kills them is exempted.⁴³

Likewise R. Caro codifies in Shulchan Arukh:

"It is permissible to kill vermin [on Shabbath]."⁴⁴

R. Israel Meir Ha-Kohen in his commentary to Shulchan Arukh, Bi'ur Halaka, explains that according to Maimonides it is forbidden to kill a flea which generates from the ground because although it does not generate from a male or female it nevertheless possesses the ability to increase and multiply. Therefore, it is only those insects which do not generate from male and female and do not possess the ability to increase and multiply, such as insects which generate from dung, rotten fruit, sweat etc., which one is permitted to kill. Bi'ur Halaka further explains that Nahmanides disagrees with Maimonides and maintains that whatever does not generate from male and female, according to the laws of nature can not possibly increase and multiply.⁴⁵

R. Menahem Kasher discusses the question that in view of the fact that contemporary scientists have established the impossibility of spontaneous generation, whether it would be forbidden to kill vermin on the Sabbath nowadays. R. Kasher suggests that this may well be one of the many cases where one may apply the halakic principle of natural evolution which recognizes that nature has produced quite a different reality today than was known during talmudic times. The current scientific evidence does not prove the non-existence of such creatures nor the primitive nature of the Sages' thinking, nor the mythological character of Talmud, but simply reveals the different evolutionary stages which nature has undergone since earlier times. R. Kasher concedes that if Halaka accepts the current scientific evidence as fact then according to the principle of natural evolution one may well be forbidden by Torah Law to kill vermin on the Sabbath.⁴⁶

R. Kasher clearly regarded the existence of insects, vermin which generate from earth, sweat, rotten fruit, dung, as well as the mouse which is half earth and half flesh as perfectly natural creatures which because of various evolutionary stages no longer exist. There seems to be ample evidence of this. Nahmanides' dispute with Maimonides over future reproductive possibilities after spontaneous generation is on purely scientific grounds.⁴⁷ Maimonides himself claims:

The formation of this mouse is specifically from the earth until it becomes part flesh and part clay and it moves in its entirety. It is a very well known occurrence, and the many people who told me that they saw it are uncountable.⁴⁸

R. Kasher cites from the works of renown gentile scientists who were greatly familiar with this phenomenon and testified to its existence. They located its habitat and denominated its scientific name.⁴⁹ Notwithstanding the natural evidence of the existence of these creatures and their having undergone natural evolution, even if one were to reject the above, it is possible to maintain that the existence of these creatures were of a metaphysical nature and that they might possibly have undergone metaphysical evolution. Indeed the Talmud in Sanhedrin relates:

A sectarian [min] said to R. Ammi: 'Ye maintain that the dead will revive; but they turn to dust, and can dust come to life?' He [R. Ammi] replied: 'I will tell thee a parable... Yet, if thou doest not believe, go forth in the field and see a mouse, which today is but part flesh and part dust, and yet by tomorrow has developed and become all flesh.'⁵⁰

R. Ammi proved to the sectarian that the resurrection of the dead from dust is as natural as the formation of the mouse from the earth. As we pointed out at the onset of this chapter that resurrection is part and parcel of the metaphysical eschatological process of the world, R. Ammi may well have advanced proof to this effect from a well known creature which possessed similar metaphysical characteristics which is affected by the same developmental stages.

Another such well known metaphysical creature which was similarly advanced by the Rabbis as proof of the resurrection was the phoenix. The Talmud in Sanhedrin explains the reason for the immortality of this bird which Scripture refers to in Job:

"But I shall multiply my days as the phoenix."⁵¹

Some of the midrashic sources explain the immortality of the phoenix as a reward for its refusal to eat of the Tree of Knowledge. Some of these sources which enumerate the immortals who merited entry to Paradise during their lifetime, many of whom were reviewed in the earlier part of this work, include the phoenix.⁵²

The fact that all of the immortals enumerated in this list are real biblical characters who share in common the metaphysical dimension of immortality which they attained during their lifetimes, would indicate that the phoenix as well is a real rather than a legendary creature, except that it differs from other creatures in that it too has attained the metaphysical dimension of immortality to its existence. The reason why it is not known to exist today could probably be explained by the principle of metaphysical evolution which recognizes that metaphysical beings which were known to exist in earlier times, no longer exist today owing to various metaphysical universal changes. Except for one small problem. If the phoenix were in fact an immortal bird, why does it not exist today? By virtue of its immortality it should not have been affected by metaphysical evolution!

Here we come to one of the most interesting characteristics of this amazing bird. When he has lived a thousand years, his body shrinks and it sheds its feathers, until he is as small as an egg. This is the nucleus of the new bird.⁵³ It is this characteristic which is in fact the proof which is advanced for the resurrection of the soul which sheds its body and then forms a new body thousands of years later, during the Resurrection. Rashi alludes to this resurrectional characteristic of the phoenix in his commentary to the psalmist verse:

"So that thy youth is renewed like the eagle."⁵⁴

It is this incredible characteristic of the phoenix wherein lies the answer to our problem. Since shrinking to the size of an egg for an indefinite period of time to form the nucleus of the new bird is part of its metaphysical nature, the reason why this bird is not known to exist today may well be because it has reached this very stage of its metaphysical evolution. And as this bird continues to progressively undergo the further stages of its evolutionary development we will once again be able to positively identify it as in earlier

times, when its nucleus will have fully matured and grown new feathers. It's unperceived existence today does not disprove its reality but only fortifies its particular character.

It is this metaphysical existential feature which man shares with several other metaphysical characters, and which is part and parcel of the unique dimension of man's existential nature. Man is not alone in encountering the transcendental zone of life and thus man finds himself situated in the midst of its parameters in the good company of other metaphysical beings. The Talmud in Baba Kama similarly, describes yet another creature which like man begins life with a fully natural existence and subsequently undergoes a series of natural and metaphysical evolutions eventually transcending itself to a complete metaphysical being:

The male zabu'a [hyena] after seven years turns into a bat, the bat after seven years turns into an arpad [a species of bat], the arpad after seven years turns into kimmosh [a species of thorn], the kimmosh after seven years turns into a thorn, the thorn after seven years turns into a demon.⁵⁵

Another fascinating winged creature which appears in rabbinic literature and is no longer known to exist today is the barnacle goose. This bird was another example of spontaneous generation. It was believed to generate from the barnacle, a shell fish growing on a flexible stem, or from trees. The birds grow like fruit and hang by their beaks until they fall off. Responsa of R. Meir of Rothenberg (Maharam) considers the determination of this bird as fowl, or fruit, or plant. He discusses its legal status whether it is Kosher for consumption as permitted or forbidden food, as well as whether it requires ritual slaughter. If it is a plant it would not require ritual slaughter. Maharam's halakic treatment of this bird would seem to indicate that he considered this creature a real one and worthwhile discussing on a practical level. Its unperceived existence today may also be attributed either to natural or metaphysical evolution.⁵⁶

As the barnacle goose is attached to a tree by its bill so we find the Adne Sadeh (man of the mountain), or briefly Adam, which is fixed to the ground by its navel string. This animal has the form of a man whose life is dependent on its navel string and dies once the cord is snapped. Because of its human appearance this animal

is called "man." Adne Sadeh is mentioned in the Mishna in Kilyaim and is translated by the Jerusalem Talmud in Aramaic as bar nash deturah — man of the mountain. R. Israel b. Gedaliah Lipschutz in his commentary to the Mishna, Tiferet Yisrael:Yachin, identifies the Adne Sadeh as a species of ape known as Orangutang which has human appearance and can be taught to perform many human tricks such as chopping wood, drawing water, to dress in clothes exactly as a man, to sit at a table and eat with a knife and fork. Today this animal is only found in the vast forests of central Africa. However, in talmudic times it lived in the environs of Israel in the mountains of Lebanon and is hence rendered by Jerusalem Talmud as "man of the mountain."⁵⁷ However, according to the mishnaic commentaries of R. Obadiah of Bertinora and the Tosafist, R. Samson b. Abraham of Sens, this animal is fastened by its navel to the mountain and no creature may venture to approach within the radius of its cord, for he seizes and demolishes whatever comes in his reach. To kill him, one may not go near him, the navel string must be severed from a distance by means of a dart. This is in fact the Yideoni (Yaduah) referred to by Scripture whose bone is employed in magic rites, and is alluded to in Job:

"For thou shalt be in league with Avne ha-Sadeh."⁵⁸

According to this opinion, R. Lipschutz explains in his more piling commentary Bo'az, one need not wonder why it is no longer known to exist for one finds today fossils in the ground of many other animals which have long ago disappeared! Possibly because of their great danger to human survival they were annihilated by ancient man. One should also not wonder how it grows from the ground, as we also find the mouse which grows from the earth as is mentioned in Hullin.⁵⁹

The halakic issue of Adne Sadeh is debated in the Mishna of Kilayim as follows:

The Adne Sadeh are deemed as belonging to the category of Hayyah, [an animal of chase]. R. Jose said: when they are dead they [or part of their corpses] convey impurity [to men and to objects susceptible thereto which are] under the same roof.⁶⁰

R. Samson of Sens in his commentary to the Mishna, Rash, explains that according to the Jerusalem Talmud, R. Jose states that Adneh

Sadeh causes impurity under a roof because R. Jose considers Adneh Sadeh a species of man. The Rabbis, however, disagree with R. Jose because they consider Adneh Sadeh a Hayya, or more specifically a species of ape whose corpse does not impart impurity.⁶¹

While contemporary scientists may hitherto have regarded the mishnaic discussion of a seemingly hypothetical issue of this strange man-ape phenomenon with a great deal of scepticism, Halakists never had any problem in envisioning such a phenomenon, accepting it at face value and provided rational explanations in their commentaries. It is fascinating to note the recent development that scientists now for the first time, are beginning to accept the plausibility of such a bizarre notion with the emergence of "Baby Fae," a human infant whose heart was transplanted from a baboon. While scientists were grappling to determine her ultimate classifying as man or Hayyah and are at a complete loss of standardised normative criteria for making such a decision. Halakists for thousands of years have had an authoritative precedent and a source, for determining such an issue which has once again surfaced. If one accepts the theory of metaphysical development and that Adneh Sadeh was a metaphysical creature which has since evolved, then as in the case of Elijah and test tube babies, we have once again witnessed how halakic discussions pertaining to metaphysical realities have now found practical application on a natural plane. The stunning event of Baby Fae's receiving a simian heart was considered a medical sensation, since there has never been a successful cross-species transplant. The paediatric cardiac surgeon who treated Baby Fae, Dr. Leonard Bailey confidently disclosed:

"There is evidence that the chimpanzee, orangutang, or gorilla, may be a better donor."⁶²

Amazingly, R. Israel Lipschutz, in his mishnaic commentary, Tiferet Israel, made the association between the ape-man and the orangutang over two hundred years ago, in commenting on a phenomena which is reported by the Mishna fifteen hundred years ago.

It is significant to mention here the mishnaic commentators who described the Adneh Sadeh's life source through its attachment by its navel to the ground, thus resembling a plant-man. This understanding might pave the road for future scientific marvels, should

science develop a technique of sustaining human life by transplanting man with plant life, since we may already have an ancient authoritative halakic source dealing with this future phenomenon as well.

Similar to the Adneh Sadeh, the Midrash describes the mandrake (dudaim), a plant-man, which destroys whoever tries to uproot it. According to this Midrash it once happened that Reuben was tending his father's ass during the harvest and bound him to the root of dudaim (mandrake) and went his way. On returning he found the mandrake torn out of the ground and the ass lying dead beside it. The beast had uprooted it in trying to get loose and the plant has a peculiar quality that whoever tears it up must die.⁶³ The Midrash continues to relate that Reuben carried the plant home to his mother Leah. Rachel, who could not conceive, desired the mandrakes and bartered her evening with Jacob in exchange for the mandrakes. Because of the plant's human resemblance its roots were believed efficacious in expelling the demons which impede fertility. The mandrakes were coveted plants because of their quality to promote conception. Their non-effectiveness today may also be attributed to metaphysical evolution. Either the mandrake of today is not the same, or even if it is the same, its metaphysical properties have undergone evolutionary changes.

One need not search as far as Shibbetah, Zuggot, etc., to find examples of phenomena which have undergone metaphysical evolution. For we find far less remote examples in the well known phenomena of the Shamir, the Salamander, and the Tahash.

The fact that the Mishna in Aboth records that the Shamir was made at "twilight" on the sixth day of creation together with other extraordinary things indicates its metaphysical nature.⁶⁴ The Shamir possessed the remarkable property of cutting the hardest of diamonds. For this reason the Talmud relates that it was used for engraving the names of the twelve tribes on the stones in the breastplate worn by the High Priest. It was also used for hewing into shape the stones from which the Temple was built because the Halaka prohibited the use of iron tools for work in the Temple. The Talmud relates a fantastic aggadic account how King Solomon sent his chief man, Benaiah the son of Jehoiada to capture Ashmedai the king of the demons to reveal the secret of Shamir's hidden abode, so that Solomon could once again use the Shamir for Temple work as Moses had done in the Tabernacle in the past. The Mishna in Sotah relates that with

the destruction of the Temple the Shamir vanished. Although the medieval authorities such as Rashi, Maimonides and others, identified the Shamir as a worm, it is unclear from the old sources whether it was a mineral, a plant or an animal. The disappearance of this creature after the Temple is another instance of the many metaphysical beings which have long since undergone metaphysical changes.⁶⁵

A similar fate overtook the Tahash which had been created only that its skin might be used for the Tabernacle. Once the Tabernacle was completed, the Tahash vanished. It had a horn on its forehead, was gaily coloured, and belonged to the class of clean animals.⁶⁶

The Salamander is a marvelous reptile. According to Rashi, it originates from a fire of myrtle wood which has been kept burning for seven years by means of magic. The Talmud relates that it possesses the property that one who smears himself with its blood is invulnerable and that the web woven by it acts as a talisman against fire. According to the Talmud in Sanhedrin, King Hezekiah owed his life to the Salamander. His wicked father, King Ahaz, had delivered him into the fires of Moloch, and he would have been burnt, had his mother not painted him with the blood of the Salamander, so that the fire could do him no harm.⁶⁷

The fact that the Salamander is discussed by non-Jewish sources such as Aristotle and Pliny and that many of the other creatures of spontaneous generation appear in earlier gentile scientific sources and were claimed to have been seen, such as the mouse which is half earth half flesh, would indicate that at least as far as the ancient world was concerned, these creatures were universal phenomena which existed in reality.⁶⁸

The difference between such metaphysical phenomena as Zuggot and Shibbeta and creatures such as the phoenix, Adne Sadeh, Salamander, and Shamir is that while the former category is entirely metaphysical the latter creatures are physical beings with metaphysical properties. Man himself may well be another such creature belonging to the latter category in that he is a physical being possessing inherent metaphysical properties. Man's eschatological nature in which he will eventually become resurrected is just one of these many properties. Man's participation in metaphysical development may be no different than any other being. The Halaka dealt with the entire

gamut of metaphysical phenomena because of the many properties which man shares in common with them. This 'halakification' of Aggada would invariably shed light in clarifying man's halakic status whenever he steps upon the threshold of the twilight zone and encounters similar experiences to the phenomena described in this chapter.

In view of the substantial evidence confirming metaphysical development, it is now apparent that our earlier distinction between natural metaphysical science and supernatural metaphysical mythology (i.e., as in Astral Science versus Astral Mythology etc.) is not an absolute one. Since many elements belonging to the former category have themselves undergone metaphysical change, they have thus become transformed from veritable realities to mythological abstractions. Thus a great deal of aggadic and folkloristic literature which scientists and rationalists dismiss as outright mythology, if it can at all be regarded and classified as such, it is only because of the metaphysical evolutionary stages they have undergone in terms of our present reality.

In a brilliant essay, Rabbi Dr. Chaim Zimmerman describes how contrary to the popularly held notion that the progress of civilisation is a result of the evolution of science and technology the very opposite is true. That is, in proportion that mankind becomes more civilised, in the same proportion man is allowed, by means of Divine Providence (Hashgaha Peratit), to develop science and technology. R. Zimmerman explains that if Julius Caesar would have had modern explosive weapons he would have destroyed the world. If Ivan Gruznei or Hitler would have had the atomic bomb, the devastation of the world would have been unimaginable. If the medieval tyrants would have had modern rocketry, there would have been a complete holocaust. R. Zimmerman continues to prove that Divine Providence permits the flow of science and technology only in proportion to the civilisation of mankind. Hence progress is not a result of science and technology but rather technology is a result of human civilisation.⁶⁹

As R. Zimmerman's theory is undoubtedly true regarding science and technology the same thesis is equally valid regarding metaphysics. In proportion to the degree that man's epistemological perspective changes the metaphysical realities which man encounters are caused

by Divine Providence to undergo change. We no longer experience overt miracles with the same degree of frequency as the ancient Hebrews because the modern world is no longer submerged in the magical arts. Therefore, miracles are no longer necessary to counter them, as in the confrontation between Moses and the Egyptian sorcerers. Neither are the pseudo-magical Mitzvot and sacrificial ritual predominant factors of practical Jewish Law today because the universal concepts and practices of the ancient world are no longer prevalent in modern society. Thus, contemporary Judaism has no need to challenge them with similar features of its own.⁷⁰

One thing is still certain however, the process of metaphysical development has not terminated. We are as much in the midst of it today as the Tosafists of the medieval period discovered they were in comparison to talmudic times. Metaphysical concepts and phenomena which are totally mythological and might never have existed even in ancient days may still surface in the future. Today's baboon-human heart transplant may well be just one phase in the eventual spontaneous generation of such a creature. We have no way of knowing. The brilliant celestial light of creation enabling man to see from one end of the world to another, and the Leviathan, which were removed from this world before man arrived on the scene, the resplendence of First Man's countenance and his tall stature, longevity of days far exceeding that of Methusalleh, the banquet of Behemoth (the wild ox or Shor ha-Bar) in Jerusalem under the canopy of Leviathan's skin, may well be in store for us in the future.⁷¹

No matter what tidings the future may bring, however, Halakic-man, need not worry and has no cause for consternation. The eternal system of Halaka has already bequeathed man the necessary tools, expertise and precedents, to properly equip and condition him to effectively resolve every twilight occurrence which he is yet to experience. In comparison to the level of human existence two thousand years from now man is still at a very primitive stage of his existence. Nevertheless, the Jewish legalist is already capable today, of extracting halakic principles concerning the perennial metathesis of universal man by discussing parallel changes in the life of plants, animals, demons, constellations and any other physical or metaphysical sphere.

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These halakic principles concerning the countless situations and experiences which man shares in common with these twilight areas, are sufficiently able to ground him whenever he enters and encounters the transcendental zone in life. This relationship, in the comparison between metaphysical phylogeny — the development of metaphysical species, and ontogeny — the development of the individual, provides the trans-logical reasoning which Halaka requires to guide transcendental man towards the total fulfillment of a practical and meaningful existential experience vix-a-vis his Maker.

XI. SUMMARY AND CONCLUSIONS

The main purpose of this chapter is to present a type of codicil which concisely reviews selected instances throughout this work where metaphysical concepts and data are operative in the halakic process. As well as to formulate some observations, principles, and conclusions regarding its value and usages.

We began our Introduction by describing the development of the history of Halaka from its inception — long before the Sinaitic instructions regarding religious performances — when the study of metaphysical and Divine sciences constituted the main components of Halaka. The halakic system continually developed and adapted itself to preserve the macro-halakic approach which it embraced. This series of transitions and safe-guards were built into the structure of Torah Law so that Halaka should be constantly relevant and accessible to men of all levels of intelligence. We explained that despite the obvious existence of Theonomy — whereby the Torah, Midrashim and the Talmuds, legislated theology in the form of normative Halakot — the reasons for its rare appearance in the Codes is attributable to the great difficulty of codifying this qualitative dimension of the Law with the same degree of precision as legal and ritualistic laws. Nevertheless we demonstrated that the existence of the metaphysical component of Halaka is discernable and skillfully woven throughout many of the works of the main compilers of Jewish Law and that great Jewish thinkers and Halakists like Maimonides and Rav Nachman of Bratslav overtly incorporated their macro-halakic Weltanschauung within the main structure of their Codes. Indeed the historian Yitzkhak Baer purports that the eventual emergence of kabbalistic theosophy was not a new development in Judaism but rather that the Kabbalists simply rediscovered the mystical dimension of Halaka which had been in existence since its earliest stages.

One of the main principles operative in the computing of metaphysical data within the Halakic process is the extent that this material can be assimilated logically and trans-logically according to the majority reason. We saw that this ultra-rationalistic integrity of Halaka

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served as a basis for admitting not only esoteric Aggadot, but even the postulates of Gentile scientists. Since the principal aim of Halaka is to uncover truth, once the postulates are proven correct according to reason, Halaka accepts this truth on its own merit regardless of origin. In fact, the very demonstration of the truths of various theological categories such as proofs of G-d's existence, unity, etc., is itself a halakic process and activity in fulfilling the first commandment of Knowing G-d. Notwithstanding, our paper concentrated on documenting those supra-mundane issues which lead to definite practical results.

In Chapter II we introduced our first metaphysical issue with Terumat ha-Deshen's responsum concerning whether Elijah's wife requires divorce. We saw that this question is part of a much broader ideological problem of divorce. That is, whether Elijah's person may be divorced from relations which emanate from him and whether the commandments based on Elijah's relationships vis-a-vis G-d may be divorced from his relationships vis-a-vis his fellow men. The resolution of these broader questions essentially depends on whether Elijah is classified as dead or alive. Such a decision could not be determined before turning to an in depth analyses of the nature of Elijah's essence.

In discussing Elijah's origin in Chapter III.1 we encountered our next metaphysical responsum concerning the Resurrection issue. Here we noted how Halaka encompasses transphysical science. For even the performance of a supernatural act involving the saving of a life is not permitted unless it fully conforms to the requirements of Halaka. Radbaz's explanation of the issuing of a "special dispensation" which enabled Elijah to defer certain details of the Halaka due to extenuating circumstances of achieving a higher worth as in case of Elijah at Mount Carmel, demonstrates the buoyancy of Halaka in adapting itself to recognize "special" circumstances. Moreover, R. Bleich discusses the practical consequences of the Resurrection issue in terms of Halakot involving continued medical treatment to resuscitate a patient the moment after he has been determined clinically dead and the consequences of any patient who temporarily ceases to function as alive.

We further showed how according to R. Michaelson, the Halakot emerging from the Resurrection issue would change according to the different

methods employed in producing variant forms of resurrectional existence. We also saw how Hatam Sofer utilizes these distinctions in discussing whether a synagogue may be converted to a house of study. Radbaz's theosophic solution of Elijah's metempsychosis which maintains that the origin of Elijah's soul is divorced from his biological origin, is useful to verify the ideological categories of divorce mentioned earlier, as well as resolving many other obscurities resulting from the Elijah issue which become neatly clarified by this theory. We further compared Maharalbach's responsum concerning the acceptability of theosophic notions in halakic process, to our discussion of rationalism as a necessary criteria for determining Halaka in Chapter I.

We concluded this section with a discussion of the practical relevance of the Sages being almost overly concerned with Elijah's origin and found this question to be of great consequence during the Bar Cokhba period. Here all the Halakot pertaining to identifying the Messiah and coipso exposing the pretentious impostor become imminently germane. It is conceivable to suggest that the application of these halakic criteria at various intervals of Jewish history, radically influenced the face of Jewish experience whenever times of Messianic expectations were exceptionally high. In this context we saw how the question of whether the manifestation of Messiah will materialize via natural or supernatural means greatly influenced the Halakot contingent on identifying the Messiah. It was in the interpretation of the metaphysical events and components of these Halakot that R. Akiba differed from his colleagues.

Having investigated the question of Elijah's origin in section 1, we turned towards a halakic evaluation of the mysterious events surrounding Elijah's ascension in section 2. The R. Sofer-R. Kluger school forwarded a theory that Elijah leads a quasi-schizophrenic existence. In human form he adheres to commandments whereas in spirit form he is absolved, while vacillating continually, from one form to another. It was halakically essential for Rabbis Sofer and Kluger to consider Elijah's metaphysical reality in order to determine such problems as the performance of a circumcision on the Sabbath, or during the week in a room where a corpse lay as well as verifying certain aspects pertaining to the laws of the Sabbath Limits. We

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We observed an important distinction between the R. Sofer-R. Kluger school and R. Falcon-R. Attiah school in terms of the "obligating element" responsible for determining commandment observance in general. While the former school considers Elijah's existential state and mode of appearance as main criteria responsible for commandment activity the latter school considers the various relations and relationships which Elijah pursues as the main factors which affect commandment observance. In the course of our paper we indicated several Halakot which are contingent on this dichotomy.

In sections 3 and 4, we turned our discussion to an in depth analysis of the various philosophical, theological and metaphysical considerations over which these schools were consistently divided and were responsible for them maintaining their different halakic positions. These considerations include such classical dilemmas as the Aristotelean doctrine of an eternal and primordial world versus Creation in time, the theory of generation and corruption versus G-d's Will and His ability to suspend its laws, an effort to deny or ignore any relation between Elijah's ascension and Jesus, the various angeological ranks and the problem whether angels are considered higher or lower than pious men. We showed how these debates emerged from and were intricately worded in the earliest sources themselves. The respondents merely elucidated these age-old concepts and gave them a more tangible form by analysing them in their halakic context. In addition, these motifs were seen to equally involve several other important biblical characters such as Melchizedek, Enoch, Moses, David, and Messiah and pertain to many of them not only regarding the question whether they ascended to become immortal or angels but whether they originated as immortal men or angels even before the beginning of their earthly careers. With respect to Messiah, the question of a pre-existing Messiah has profound halakic significance in the process of his identification in terms of whether the Messiah is an angel or a human endowed with a special spirit.

In the course of these discussions we encountered several other Halakot contingent on these motifs such as Avnei Nezer's responsum concerning impurity of the righteous, Tzitz Eliezer's ruling on whether a priest may undergo plastic surgery to restore a dead limb, the Responsa of the Geonim concerning liturgical supplications in Aramaic, Radbaz's

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analysis into the psychology behind Adam's ethical conduct and its influence over his actions, and R. Reischer's responsum concerning the Law of Conformity. The Law of Conformity also demonstrates the pliancy of Halaka as it exposes this law as a supercommandment in that, like Pikuach Nefesh (saving a life) and Hora'at Sha'ah (the issuing of special dispensations), under certain circumstances halakic details will be waived in order to achieve the higher halakic ethic of conformity and the prevention of quarrels. In other situations, Halakot which were originally not practiced, may suddenly become enforced in order to preserve this same ethic. The vast amount of Halakot which are dependent and vary according to the custom of one's place (Minhag ha-Makom), further evinces the pliancy of the halakic system in exercising moderation or stringencies in order to achieve the higher halakic goal of Darkhei Shalom — ways of maintaining (local) peace.

Even the school that maintains that Elijah continues to exist as a man, technically obligated to obey commandments, may find that he is constrained not to observe them in order to conform to the practice of angels among whom he communes. Conversely, even if he is an angel absolved of commandments, he may be obligated to observe them when consorting among humans in order not to deviate from our practices. Thus the resolution of whether Elijah's wife requires divorce, may well depend not on Elijah himself but rather upon the environment where he associates. Since Elijah constantly fluctuates between the environment of angels and humans, the question is essentially an extension of the problem of determining the halakic requirements of a person who continuously commutes from one town to another, where the practices in each town (minhagei ha-makom) differ.

In Chapter IV we saw that it was this question of whether Elijah's hovering between angelhood and manhood is a complete or only partial transformation which was the main variable in processing the motifs of Chapter III, and implementing the dictum "among the dead I am free" in the stages of the respondents arriving at their rulings. Our comparative analysis of the various stages of computing metaphysical data in halakic process by the main schools revealed the necessity to provide precise criteria for defining the parameters of life and death, and how these criteria themselves were influenced by the various philoso-

phical positions of these schools. Thus R. Isserlein's responsum was seen to bear considerable value in precipitating and bringing to the fore the discussion of establishing definite criteria for determining the parameters of life and death. Man's commandment obligation is a direct consequence of these considerations.

As mentioned in our summary of Chapter III there are instances when the place where one resides is an important element in determining one's commandment responsibility. In analysing the relationship between the Future Worlds and This World, in Chapter V, we saw the respondent R. Goldbaum considers the "place" as the main factor in determining one's halakic activity. He arrives at this conclusion in the course of investigating Elijah's commandment obligations in Paradise. Thus, the extent of Elijah's pursuit of commandments in the next world affects the halakic status of his wife in this world. Sedei Hemed contests R. Goldbaum's thesis that the non-requirement of divorce in the case of Elijah's wife proves the invalidation of commandments in Paradise. For Sedei Hemed claims that divorce may simply be irrelevant in Paradise while other commandments may well pertain there, just as the commandments contingent on the Land of Israel are irrelevant in the Diaspora while the bulk of commandments still apply there. Thus the many Halakot contingent on the circumstances of transcendental man may not necessarily require as much as an exemption from existing commandment obligations when simple irrelevancies can more easily be established. This is an important aspect in the modification of Halaka. That is, the very recognition within the halakic system of situations, places, and circumstances where many of its laws may be entirely irrelevant.

Sedei Hemed further develops the concept of different degrees of commandment involvement commensurate with different levels of personhood. Pious men (Zadikim), for example incur commandment obligation after death while ordinary men do not. Similarly a Priest has a different responsibility towards commandments than an Israelite. An Israelite male is involved in more commandments than a female or a male-slave. These latter two have a different degree of commandment responsibility than a minor or a sick person. And so on. It is entirely conceivable that somewhere among these many gradations, exists yet another rung which transcendental man occupies on his own. This level is equally

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recognized by Halaka as any other. Since all men possess a transcendental component all men share this category in common, in addition to their own particular levels. As man continually discovered more and more latent transcendental trends within himself, it became all the more necessary for the respondents to define this category and establish the exact requirements pertaining to it. All of the laws contingent on the Future Worlds are relevant in illuminating the parameters of this category in this world.

Man's absolvment from commandments in the Time to Come poses a potential problem, according to R. Elhanan Wasserman, in leading man to believe that it is the element of "time" which causes this absolvment and that laws can become "outdated" and irrelevant in time. R. Wasserman proves that the ephemeral nature of commandments is due to Scripture's ordaining that commandments are terminal upon death, rather than a result of their becoming obsolete in time. For belief in the eternality and immutable nature of Torah is a fundamental principle of faith. However, we documented several halakic authorities who question the evidence with which he substantiates his thesis and accordingly, maintain that it is the element of time rather than death, which is principally responsible for the irrelevance of commandments in the Time to Come. Therefore there is room within the Halaka for recognizing a "twilight period" when commandments become invalid, without refuting the eternal nature of Torah. The principles and criteria as outlined by Maharam Shick and others in Chapter X, for accepting the concept of "Nature and Times Undergo Change" (nishtanu ha-tevaim vaha-itim), as a halakic premise, fall within the general rubric of such a period. Moreover these rules demonstrate the need for specific halakic guidelines to interpret the features of such a period and apply them to twilight occurrences in the modern world. Again, all Halakot concerning Future Worlds are instructive in enabling Halakists to construct a twilight model that will serve as a basis for applying the rules of this model to similar situations which occur in the modern world. Man's rapidly increasing ability to penetrate extra-solar environments is creating an even more pressing need for halakists to develop this model further.

In discussing the various factors which cause obligation or absolvment

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in commandments we saw that the "degree of death" forms an important consideration. While Hida compares the state of any particular death to the "death of all men," R. Joseph Hayyim inspects the extent of biological decomposition undergone by the deceased. These considerations factor as further determinants for establishing criteria for death. According to certain criteria, death may not necessarily be pronounced upon cessation of life but rather only after continued state of remaining dead. These criteria are extremely valuable in the field of Medical Ethics. In a footnote we recorded how R. Zimmerman included the scientific resources available to man at each point in time within his criteria for defining death, rather than focusing on the state of death of the human body.

In that chapter we further saw how the resumption of one's marital status in the Future Worlds has several consequences for current marital laws concerning all widows in this world. Especially in verifying whether the religious institution of marriage effectively describes the psychological emotional relationship between husband and wife, or the physical bond which unites them. We considered several opinions concerning this issue. According to R. Aszod, the mechanics involving future marital status is not only an outgrowth of R. Isserlein's responsum, but in fact served as a basis for determining his ruling concerning the present circumstances of the enquiry. According to R. Aszod the resolvment of the reality of events concurrent with the eventual Resurrection, described by the classical medieval debate whether man will be resurrected in body or soul, etc, directly influence the outcome of R. Isserlein's ruling.

In addition we considered the concept of Darkhei Noam (Ways of Pleasantness) as an important halakic principle in applying, in certain "difficult" situations, those Halakot that would cause as little personal unpleasantness as possible. This could be an important avenue in tackling certain twilight issues which, because of their special nature, cause complications which need to be abated and neutralised with the greatest amount of sensitivity possible. We suggested the possibility that it may even be the principle of Darkhei Noam itself which is primarily responsible for the absolvment of commandments in the Time to Come — simply because of the vast number of remarkable complexities and practically unfathomable contradictions of Halaka reviewed in that chapter — which will inevitably

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surface in the future. In any event, the unpleasantness and difficulties which may complicate one's circumstances in the future often motivate the application of Darkhei Noam principle in the present.

After considering the philosophical, theological, and metaphysical dimension of the Elijah issue we turned our discussion in Chapter VI to examine whether any direct practical halakic value could be derived from Terumat ha-Deshen's ruling. Here we documented how R. Hirschler found the responsum instructive in resolving the complex halakic problem concerning the ascertainment of the identity and status of test tube babies. R. Hirschler confirms the necessity of researching the psychological, neurological, and other behavioural sciences in ascertaining the essential characteristics that comprise a profile of humanhood and thereby contribute to Halaka in arriving at a definition of man. For although test tube creations show signs of possessing qualities similar to humans, they may be mere semblances of men that are in effect nothing other than sophisticated plants, or a sub-category of angels. Thus an ontological definition of persona is essential for verifying their halakic status. Immediate halakic consequences arise from this issue such as whether a scientist is permitted to "wash out" an undersirable test tube experiment or whether this constitutes manslaughter, whether one is permitted to violate the Sabbath to save the life of a test tube being, and their obligation in commandments in general.

We saw how Hakham Zevi's responsum of the halakic status of a golem (homunculus automation) is pertinent in obtaining a definition of humanhood. His requirement of the "formation of a man within a man," is germane in establishing the halakic status of test tube creations. Our era is now witnessing the rapid advancement of the onset of the Computer Age with its ever increasing sophistication in perfecting the humanization of computers. Hakham Zevi's responsum on the status of automations will undoubtedly be an important source for Halakists who will soon be asked to render decisions concerning a very real issue.

We also saw how R. Isserlein's responsum was employed to establish the identity of ovarian, embryonic, and heart transplant recipients. Concerning heart transplant patients, R. Waldenberg dissertates how he consulted various existentialist writings in considering what ulti-

mately defines man as man. He deduces that although cardiac activity is the crucial indication of the presence of life; it is not the source of life, nor is it the hallmark of personhood. It is man's spirit which is primarily responsible for generating his "life force" and man's rational faculty which constitutes the dominant feature of his essence.

R. Waldenberg utilised Terumat ha-Deshen's responsum to determine the identity of a patient who has undergone trans-sexual surgery. The immediate question of whether such a patient is required to divorce his spouse is obviously germane. In a broader sense we saw how Terumat ha-Deshen's responsum is paradigmatic in resolving any issue involving existential change in which it is necessary to verify whether one takes on the pre-transitional or post-transitional identity. Even remote eschatological discussions such as one's future marital status upon the Resurrection is imminently germane as it equally clarifies whether man, who is destined to undergo a great existential change, will relate to his former identity or will take on a new identity with a new status. We noted that the different interpretations among respondents concerning the method that R. Isserlein employed to process these data and arrive at his ruling produced completely different results in the application of his ruling to the areas and issues we have now described.

Finally we considered the problem of the exact location of Paradise in light of the challenge that scientists have surveyed the entire face of earth and have verified its non-existence. R. Joseph Hayyim delineates how Paradise could well occupy a place on this earth and nevertheless still be unperceived by scientists. Just as science recognizes the existence of fourth, fifth and even an eleventh dimension in this world — although these dimensions remain imperceptible by ordinary vision — Paradise could have a similar nature. Just as the computer is now able to graph four dimensional constructs which the human mind hitherto was barely capable of grasping let alone visualize, the laws and location of Paradise serve a similar purpose. The halakic probing into the realities of Paradise may assist scientists in picturing multi-planer dimensions in a more tangible form.

Although R. Isserlein's responsum certainly bears inestimable relevance

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for dealing with a host of contemporary issues in a modern scientific society, in the next section we considered the relevance of Terumat ha-Deshen to Shulchan Arukh and his colleagues who cited this responsum many centuries before these modern issues surfaced. Here we saw that the codifiers found R. Isserlein's responsum invaluable in alleviating the plight of the Aguna woman in that it emphasizes the distinction between the definition of widowhood (Almana) from the Aguna and reviews the type of evidence necessary to enable Agunoth to change their status to Almanot. For Elijah's wife is a model of a woman whose husband disappeared, of whom there is no evidence of death, nay more, is assumed to be alive and yet, she is not classified as an Aguna. This leaves the status of Aguna open to redefinition on the bases of termination of her relationship with her husband rather than on the basis of his physical existence, as well as other considerations.

We further saw that the medieval codifiers found R. Isserlein's responsum instructive in resolving whether a divorce is necessary in many other cases besides the Aguna where an existing marriage suddenly reaches a point where the same couple would not be eligible to enter a new marriage with each other. These included such cases as the apostate, the Sotah, marriages which become invalidated because of a negative precept according to R. Akiba, dubious marriages, consanguineous relatives, and any other case in which the couple experience a change in marital status of the nature described. In addition we saw that the different interpretations among the codifiers in ascertaining the exact principles R. Isserlein employed in processing the various metaphysical data to obtain his ruling, produced substantially different results in practically all the above cases.

We concluded this section with a discussion of how R. Isserlein's responsum is instrumental in clarifying the status of a Katlanit woman. Similar to the Aguna, the Halaka was extremely sensitive in recognizing the plight of an unfortunate woman who as a result of the deaths of her husbands is barred from marrying a third time. The Halaka exercises great leniency in finding ways to prove that the woman does not qualify for Katlanit status. R. Isserlein's responsum probes the definition of a Katlanit in exploring whether she is responsible for the death of her husband or for the termination of the husband-wife

relationship. This verification opens avenues for uncovering even greater leniencies in alleviating the difficult circumstances of the Katlanit. The very issue of a Katlanit woman's Mazal metaphysically influencing the fate of her husband's is discussed at length in Chapter VII.

In the final section of this chapter we remarked that the many practical halakic consequences reviewed in the first two sections were essentially outgrowths of R. Isserlein's responsum. However, we did not as yet ascertain whether Terumat ha-Deshen himself was dealing with a real practical issue. This discussion led us to investigate the whole question of celibacy of angels, prophets, deities and their reproductive possibilities. The question of Elijah's reproductive possibilities is furthermore useful to illuminate another issue of great halakic sensitivity. Namely, the plight of a childless widow who must wait several years until her brother in law who is still a minor reaches maturity and becomes of age to grant her a Halizah (exemption from Levirate marriage) before enabling her to remarry. Since many of the codifiers ruled that Elijah's wife was exempted from undergoing Yibum (Levirate marriage), this opens further vistas of extracting halakic leniencies to ameliorate the plight of such women.

We discovered that the verification of Elijah's "wife" and his married life hinged upon many of the philosophical considerations of the main schools dissertated earlier who debated whether Elijah's existential reality was that of an immortal man or an actual angel. The former school considered Elijah's involvement in married life and propagating activity entirely possible, while the latter school established Elijah as being celibate.

In light of these considerations we saw that the question of Elijah's wife serves as an excellent method in gauging Elijah's polarisation to manhood or angelhood. If he retained his human characteristics upon ascension, he would continue to be attached to his wife. His marital relationship would halakically be regarded as 'human' and he would require a divorce to terminate it. If, however, he transcended to become in essence an angel, who has no functional attachment to a human wife, he would not require divorce, as divorce is a halakic concern of human relationships only.

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Hence, the question of whether Elijah's wife requires divorce is essentially a question of whether transcendental man continues to retain any functional and halakic association with ordinary human life and society.

Upon examining the historical conditions of R. Isserlein's period we saw that the question was posed as a direct challenge to the Hasidei Ashkenaz tradition which advocated asceticism and transcendental aspirations as supreme ideals.

The enquirer's remark "there would also be a practical difference if one were to merit a similar fate" reflects the paradox inherent in that form of hasidic theology. For the "practical difference" of one who was to "merit" a successful transcendental experience is the extremely "non-practical" consequences of almost total "divorce" from the halakically integrated communal way of life. There seems to be an utter contradiction between the aloof mystical seclusion of the Ish Hasid and the pragmatic integrated communal approach of Ish Halaka. R. Isserlein, who himself was the quintessence and embodiment of both, saw his responsum as immensely important in resolving the tension between hasidic philosophy and Halaka in determining the practical value that hasidic philosophy contributes to Halaka in general.

The responsum recognizes that ordinary man is not a totally finite and limited human being for whom transcendental matters are theoretical and unrealistic, as the enquirer conceived. For there does not exist a fine distinction between ordinary man and transcendental man. Ordinary man himself is by his very nature a transcendental being in intellect and soul — and therefore, possesses a real transcendental component which forms a part of his essence. Consequently an abundant overlap exists between ordinary man and transcendental man.

R. Isserlein's responsum adduces that whenever man undergoes transcendental experiences he continues to identify with his original status, and, consequently, is still very much bound to Halaka and the observance of Mitzvot. This is because Halaka itself is not only concerned with the finite and limited domain of ordinary man, since ordinary man himself is not a totally finite and limited being. There are numerous instances and moments during man's everyday life within

the community when ordinary man steps over the threshold of his human limitations and enters the transcendental zone. He suddenly finds himself at various stages of life in an undefined inexact situation of neither life nor death but somewhere in the parameters ranging between the two. The Aguna, whose husband has suddenly disappeared and not known to be either alive or dead, has found herself having to relate to her husband as having entered the transcendental zone between life and death. Today scientists are busy developing test tube babies who are also situated in the transcendental zone somewhere between life and death. Ordinary man is thus capable of transcending himself in encountering in life many transcendental experiences of this nature. R. Isserlein's responsum establishes that because of the great proximity and overlap between transcendental man and ordinary man, man can clarify and define with far greater exactitude much of his ordinary day to day halakic activities by investigating the metaphysical orbit of transcendental man.

In the first section of that chapter, we recalled how R. Hirschler musefully suggests that R. Isserlein entertained the Elijah issue because he prophetically envisioned a period in which test tube creations would be promenading the face of the earth. Our analysis has determined that R. Hirschler's suggestion should not be entirely regarded as museful. However, we need not go so far as R. Hirschler in saying that R. Isserlein "prophetically envisioned" a period of test tube babies. For R. Isserlein was very much aware of the many situations in life in which ordinary man enters the transcendental zone and clarifies his ordinary halakic activities by investigating the transcendental region and its ramifications upon halakic life. Test tube babies have now become just another illustration of a phenomenon that Terumat ha-Deshen was intimately familiar with already during the fifteenth century, although he was not necessarily familiar with the specific instance of test tube babies.¹

In Chapter VII we investigated the sphere of extra-terrestrial influences such as Mazalot and various other metaphysical bodies or agents over man's earthly circumstances. On the one hand the Torah proscribes Divination while on the other hand we see that many of the Sages endorsed various forms of Astrology. We examined the metaphysical variables operative in the Halakic process which enabled the Halakic system to sanction astrology and at the same time prohibit

divination. We saw that Maimonides rejected astrology because he relied completely on rationalism as a basis for accrediting other disciplines. Therefore he rejected as mythology any discipline which could not be rationally demonstrated. However, we saw, and as Baer ratifies, that while rationalism is an important criteria for admitting other disciplines in Halaka, it is not the only criterion. Even many natural phenomena such as the compass and magnetic force are not entirely understood rationally and share in common many of the same enigmas as metaphysics.² Here we developed several principles which provided the trans-logical reasoning that enabled the codifiers to recognize various forms of astrology as a veritable science which manifests itself in a natural metaphysical manner and to reject all phenomena which did not comply with these principles as supernatural mythology. Thus while Maimonides would have rejected any twilight occurrence that could not be proven rationally, many of the Sages and codifiers who followed them, formulated various halakic principles that provided the ultra-rational logic for accrediting twilight phenomena. In the course of this discussion we distinguished the biblical accounts which record the practices of Eliezer, Abraham's servant and Jonathan, and the Urim ve-Tumim, from divination. We investigated the difference between astral signs and augury omens and examined the nature of the relationship between signs and portended events as part of the halakic process of validating the custom of scheduling the consecration of a marriage under a full moon. In addition we documented an entire array of Halakot in the Shulchan Arukh which are contingent on astrological beliefs. Even contemporary Halakot such as whether it is permitted to induce labour are contingent on this issue.

We saw a similar value of astrological pursuit, as in Chapter V, in that the probing into the future educates man to discover much about himself and his circumstances in the present. Astrology is furthermore useful halakically in the intercalation of the calendar months. One of the Halakot which is most directly affected by planetary influences is the status of the Katalnit. Here we saw that the consideration of such theological and philosophical questions as Determinism and Predestination versus Free Choice, the special providential system of Israel, the "protection" of Mitzvoth, etc., are all computed in the process of determining the Katalnit's status and the resolution of any

one of these issues greatly affects her halakic status.

In Chapter VIII we saw that magic posed a much greater problem for religion than prognostics because magic involved a much greater degree of practical activities. Nevertheless we saw that the same principles which distinguished Astral Science from Astral Mythology in the previous chapter, to a large extent differentiated between prohibited magic of Gentiles from legitimate Jewish practise. Since magic was one of the main elements which separated Ammorite culture from Judaism, we further analysed the cultural requirements of religion which militate against the infiltration of some foreign cultural values into Judaism while Judaism can accept some specific facets of other communities. Halaka can exercise flexibility in allowing and possibly even encouraging such exposure. Many halakic principles which define the salient differences between Jewish and non-Jewish culture were derived from investigating the laws and practices of Ammorite Folkways. The distinction between acknowledging miracles and proscribing magical wonders was especially pertinent here.

This led us to examine the nature of the confrontation between Moses and the Egyptian sorcerers, the difference between biblical practices and pagan ritual, the amazing phenomena engendered by the Book of Creation and the like. Even once the miracles were authenticated they still had to conform to specific halakic guidelines before one reached a position to observe the laws which are contingent on miracles, such as reciting the blessing over miracles and celebrating a holiday marking miraculous events. These considerations led us to investigate the differences between ordinary and uncommon miracles, Zionism and the establishment of the state of Israel, the principle of "one may not rely on miracles," and its applications. In addition we observed that in certain instances, such as the "Oven of Aknai" incident, miracles do not affect halakic outcomes whereas in other situations they do. We postulated various rules for establishing their difference.

One of the areas most affected by magic was the field of medicine. We investigated the halakic guidelines which allow for administering "special" medications and treatments which have magical casts while forbidding others. We saw that many diseases were contacted by various metaphysical and psychological factors and they had to be combatted via the same media. One of the main problems in differen-

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tiating natural from special cures, is the absence of a clear dividing line which determines the exact point at which the natural becomes unnatural. Many seemingly natural phenomena are swelled in the unknown while other unnatural phenomena recur with such regularity and are so commonplace they become practically naturalised through experience. Moreover, the same properties of the one, often govern the other. It is here that probing into twilight Halakot is beneficial in helping to locate the dividing line.

This discussion led us to investigate such questions as whether it is permissible to violate the Shabbat to administer special remedies, the difference between incantations and prayer, whether hypnotism is a natural therapeutic technique or considered magic, etc. All these issues were essentially resolved by undergoing virtually the identical halakic process of striving to uncover the exact demarcation between the sphere of the natural and the supernatural.

In the same chapter we saw the metaphysical effect of names upon one's life and we investigated many of the Halakot that are contingent on names. With regards to the Ineffable Name we saw that the study of Divine Names is primarily a study of the essential features and truths of G-d.

Specific guidelines and principles were developed in this chapter to differentiate Jewish religious practices from non-Jewish magic; Nevertheless, because of the similarities between them, we concluded the chapter by proposing various theories as to why the Bible did not avoid this confusion by excluding ritual which bore magical casts, and what purpose its inclusion served the religion. Yitzchak Baer shows that the analogy with which R. Johanan ben Zakkai dismissed the Gentile between the red heifer ritual and magic was based on R. Johanan b. Zakkai's own understanding of the mystical elements of this law.³

In the next chapter on pneumatology, we dealt with the Halakot contingent on spiritual beings and other spiritual phenomena. We began our discussion with a study of spirits. We investigated the halakic criteria for approving the engagement in various forms of demonology while proscribing others. We documented numerous Halakot in Shulchan Arukh which developed from belief in evil spirits and the harmful effects of coming in contact with them.

Demons bore a much stronger resemblance to humans than angels. Demons were outgrowths of seminal pollution and intercourse with the spirits. Demons possessed sex differentiation which was unknown among angels and were capable of reproduction. Their appearance often resembled that of men. The very nature of demons' connection to evil bore a powerful similarity to man's inclination for sin. Because man bore possibly an even stronger resemblance to demons than to angels, the category of transcendental man could be more easily clarified by further comparing man's spiritual affinity to demons rather than considering angels only. For this reason, questions which emerged in the Responsa literature such as whether a woman who had intercourse with a spirit requires a divorce from her husband should not be dismissed as a rehashing of the Elijah issue, because R. Isserlein's ruling concerning angels may well have little or no application to demons. Man's contact with demons affects him wholly otherwise than his association with angels. For this reason the question of the inheritance rights of spirits who are of human offspring must also be considered. Namely, to elucidate the exact halakic parameters of transcendental man for every area that ordinary man manifests metaphysical qualities which he shares in common with this category.

We related many of these Halakot as being instructive in enabling man to overcome evil by analysing the exact mechanics of how evil affects man on a practical level, as well as serving the important educative purpose of keeping man constantly vigilant. In our discussion of the Evil Eye we saw how thought process alone can generate various realities without any other action. By concentrating on piercing thoughts until they become almost visual, the thoughts themselves can become actualised in a tangible manner. We further saw how the laws of Evil Eye are also beneficial in circumscribing man's moral and ethical behaviour.

Other spirits aside from demons, that man communicated with were the spirits of the deceased, and we investigated the media in which it is permitted to contact the spiritual world and when such consultation was prohibited as necromancy. Many of the halakic principles which we saw in Chapters VII and VIII which differentiated acts of religious devotion from mythology were pertinent here.

Even planetary bodies were believed to possess intellect and spirit and we investigated whether man's recent landing on the moon disproved these notions, as well as whether the ability of the spiritual powers of planets to affect man's circumstances constrains his freedom of choice. The resolution of this latter question had important bearings on determining the extent in which man is bound by Halaka.

An important spiritual consideration discussed in this chapter is whether the Laws of Saving of Life pertain only to physical life or to preserving spiritual welfare as well, even when one's physical condition is not endangered. This led us to investigate halakic criteria for assessing spiritual loss and to evaluate the spiritual quantum of commandments in deciding which commandments could be deferred to preserve one's spiritual welfare. Here we noted how halakic criteria are necessary to ascertain the net spiritual loss engendered by submitting to one's circumstances as compared to the loss sustained by waiving the laws that may enhance one's predicament. We observed that since Pikuach Nefesh essentially involves saving a Nefesh, i.e., the soul, it becomes even more important to analyse which commandments specifically concern one's physical circumstances, and which relate to one's spiritual condition as well.

As an example of this exercise, we investigated whether the priesthood is an indelible property and saw how the halakic consequences vary considerably depending on whether the laws of priesthood concern physical or spiritual priests.

In our last chapter we examined not only the influence of metaphysical phenomena upon man's halakic obligations, but more strikingly, the influence of change and development of metaphysical phenomena in halakic process. We proposed that the readiness of Halaka to recognize changing conditions within its system is an important element in the process of modifying Halaka to incorporate further changes in the future, and it is the same rules and principles analysed in this chapter in which changing metaphysical data are computed within halakic process, that can be applied in incorporating changing trends in the future.

We began this discussion by examining eschatology as a metaphysical development in incessant process in the world. We saw how many Halakot such as the prohibition of cremation, the burial of limbs,

the identification of the Messiah, various liturgical customs, depend on whether eschatology is a natural metaphysical process in its development or a supernatural one.

We saw that the phenomenon of transmigration of souls is a further eschatological concept concerning other metaphysical realities which are in the process of continuous development. Not only did later laws emerge based on this belief such as the prohibition of eating animal hearts, grafting of trees, prayers for blossoming of trees, the impurity laws in Elijah's case, etc., but in fact many of the Sinaitic laws were predicated initially upon the premise of reincarnation. Yitzchak Baer asserts that Sinaitic laws such as the Levirate Marriage, purity and impurity, were based upon the mystical, metaphysical obligation of the family to actively involve themselves with the responsibility of metaphysical realities such as life after death, transmigration of souls, etc.⁴ One of the main aims of his work is to prove that the Kabbalists did not begin a new trend in Halaka which must be treated with the same degree of suspicion as any new development, but rather the Torah ab initio contained these mystical elements as the basis of its Mitzvot which were well known to the early Sages, and were merely revived by the Kabbalists centuries later.⁵ Thus, according to Baer, the kabbalistic interpretation of Torah is not a separate branch of Jewish Law of a new dimension, superimposed over the halakic system, but rather the inevitable result of the pneumatic nature of Torah which was Divinely injected into the halakic system already at Sinai.

We saw various other issues related to the general concept of transmigration of souls which engendered halakic consequences such as Neshama Yeterah, Dybbuk, and Ibbur. We furthermore observed that the gilgul concept does concern not only the transmigration of souls in man, but also in trees, animals, and plant life as well. Thus, man is not alone as a transcendental being, but in a sense all of nature possesses a dynamic transcendental capacity, and Halaka therefore, governs man in his encounter with universal transcendentalism.

We turned our discussion from ongoing metaphysical changes which are in constant progress to metaphysical changes which seem to have disappeared in the course of time and the effects of these changes on the halakic system. We demonstrated this phenomena by investigating such

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issues as Zuggot, the evanescence of magic and many of the Ammorite folk practices, the nonefficacy of talmudic medicine today, and the question of whether one is permitted to use oil which contains a mixture of fish extract for fear of the talmudic danger of combining fish and meat comestibles. In all these cases we discussed the halakic rules and principles involved in accepting these changes. An interesting approach was postulated by R. Hagig who explains how the disappearance of many metaphysical phenomena in the past is directly related to the ongoing development of the metaphysical eschatological process in the present and the future.

Finally we considered the disappearance of many wonderful and amazing metaphysical creatures which no longer exist today. Many of these creatures engendered halakic consequences concerning the laws of impurity, the dietary laws of Kashrut and ritual slaughtering, and killing vermin which develop from spontaneous generation on the Sabbath. We proposed that the halakic discussions regarding these metaphysical phenomena are valuable in establishing authoritative precedents to guide man when he encounters similar situations which evolve in the future, either through science or ordinarily in the course of nature. As an example we suggested how the discussion concerning the halakic status of Adne Sadeh (man of the mountain) as man or monkey may have bearing on the issue of determining the halakic obligations of simian heart transplant patients. We further observed how man's own metaphysical experiences have much in common with other metaphysical creatures which display similar properties.

There is no question that as metaphysical phenomena continue to develop and change, man's epistemological comprehension of the universe is differently perceived; As a result his methods of computing metaphysical data in halakic process and their application become modified accordingly. This accounts for the difference in halakic rulings concerning numerous metaphysical issues during the talmudic era in comparison to their laws in the present, as seen in that chapter.

In a final observation one might agree that it is in good character for the scientist to dismiss the magician as a fraudulent adherent of pagan mythology. Never would he entertain the slightest imagination that science may well manifest itself as a modern form of ancient magic. Nonetheless, the magical feats produced by scientists undoub-

tedly mirror the great wonders of the magicians of old. For religion, both science and magic present similar problems. As we saw in Chapter VIII, it was not so much the magical techniques which Halaka admonished but rather the complete reliance on human wisdom and exclusion of G-d from the magical system. It was because of the basic Jewish beliefs which magicians sought to controvert rather than the actual practices which they performed that magic was considered a branch of idolatry. Likewise, it is the drawing of anti-theological conclusions by some scientists rather than their actual feats which pose a similar problem for idolatry. The same breath in which a scientist may denounce the miracles of G-d, together with the wonders of the magicians of old, either explaining them both away logically on the basis of scientific reason or else dismissing them both as utter fantasy, parallels the identical skepticism in which the Egyptian sorcerers who, thoroughly convinced in the efficacy of their own techniques, contested Moses' claim to faith in G-d and that all miracles were His. It is the challenge to faith based on an ability to perform marvelous feats which science and magic share in falling prey to the contagion of the supremacy of man and his creations over G-d. The Chief Rabbi of Great Britain, Sir Immanuel Jakobovits, sums it up well in an article.

Today the struggle between science and religion is no longer a competitive search for truth as in former times. It is a battle between excesses and controls, between the supremacy of man's creations and the supremacy of man himself.

In the past, the human inventive genius served mainly to aid nature in the amelioration of life. Now it bids fair to supplant nature, replacing it by an artificial synthetic existence in which the deepest mysteries of creation are not only laid bare but subjected to the arbitrary whims of mechanised man. The push of one button can now exterminate life by the millions; psychologically waged advertising campaigns can determine the eating habits of whole nations; chemical drugs can curb or release human emotions at will, and break down the most determined will power to extract confessions. The control over man's conscience, over procreation and extinction, over human existence itself is being wrested from nature and surrendered to scientists and technicians.

In this new dispensation the physician too, is playing an ever more vital role. Human life, which he can artificially generate out of a test-tube and terminate out of a syringe needle, is now at his bidding. Psychiatry may soon bring even human behaviour under his sway, almost like a robot plane guided by a remote radio operator. But who will control the physician and the growing army of other scientists? That is the crux of the moral dilemma of our time.⁶

In truth, there is no need for a confrontation between religion and science. For in the same way as we saw in Chapter VIII, that certain magical trends conformed to and were found compatible with Halaka, similarly there is room for Halaka to incorporate science within its four cubits expanse. Halaka has no problem in digesting scientific data, it is merely when the scientist over extends the area of his research in which alone he is skilled and implies moral and ethical judgements in which he has no training that he oversteps his mandate. While the scientist is competent to record various empirical laboratory observations regarding organisms, life, etc., the question of defining the essence of life is a religious question which the scientist is not qualified to decide. Science merely observes subjects and objects as physical entities. Religion, however, deals with the relationships which exist between subject and object. The scientist who recognizes this distinction in functions will not encounter any encroachment between the two domains. Religion will legitimise all scientific data which do not attempt to describe and impute conclusions about the relationships occurring between subject and object which it observes. Religion will embrace the scientist who, in addition to his research, perceives the 'miracles' of G-d which manifest themselves through the natural media which the scientist employs. Indeed, neither domain can operate in a vacuum without complete reciprocity between each other. Halaka can not cogently describe relationships existing between subject and object without taking into account scientific data regarding their physical states. At the same time, scientists are in dire need of moral and ethical guidance in the application of their findings. It is here that we discover the vast contribution that each field is capable of making to each other and that our paper has endeavoured to expand.

In terms of the contribution of science to Halaka, it is becoming increasingly manifest that experimental science is speedily bridging the gap between theory and actuality. Scientific technology is busily transforming yesterday's dream into today's reality. And therefore, the distinction which once existed between theory and fact has been narrowed by science. The more sophisticated scientific technology becomes, the more each theoretical notion and speculative whim of the mind is likely to present itself as a nafke mina le-ma'aseh (a practical halakic consequence). Here, the rapid growth of the

scientific era is thrusting Halakists deeper and deeper into intensified scientific and metaphysical research.

In medicine, science is able to prolong the state of life to extend beyond the original halakic criteria of the cessation of respiratory functioning and cardiac activity. In the area of psychology, psychologists have the tools to examine the influence of halakic principles such as "kol man dekapid kapdinan bei" (whoever is particular will be affected in particular) upon the psyche. We are able to survey the statistics of Beth Din records throughout the world, and compute the great number of divorce bills in which spouses appear with like names which they share with in-laws, as discussed in Sefer Hasidim, and providing psychological counsel to young couples of the dangers of entering such a marriage as we would counsel them regarding certain genetic diseases that they may be carrying for their offspring.

Likewise, Halaka has a great deal to contribute to science. Firstly in providing the moral and ethical guidance to "control the physician and growing army of other scientists, who are finding human life at their bidding," and to control "psychiatry which is gradually bringing human behaviour under its sway" against "surrendering to scientists and technicians control over man's conscience and over human existence itself." Secondly, in providing precedents of golem, adne sadeh, treifa hayya, etc., in the event of science being able to produce human machines, man-animals, live-corpses, thus presenting the scientist with relevant material to further his research. And thirdly, the study of the halakic system is valuable in itself in relating rules for converting theoretics in applied directions. Quite apart from its humanitarian guidelines, Halaka can be regarded as an isolated area of academia which divulges principles for converting abstract sciences to applied sciences, which technology is compelling man to confront.

In Chapter I we mentioned an important difference between philosophy of practice and philosophy in practice. While the Halakot of the first category are unaffected by changing philosophical conceptions, metaphysical conditions and scientific data, the Halakot of the latter category are determined through the cognitive process of assimilating these data. Therefore, as man's epistemological perceptions of these

data change and become differently conceived, so too the Halakot which are contingent upon these understandings of necessity must also undergo change.

An important question arises as a result of our study: If Halaka accepts change, recognises evolution and will modify its definitions of machinations, organisms, life etc., in the light of modern scientific techniques, then the existential status of a golem, for example, which was halakically conferred by Hakham Zevi during the seventeenth century in absence of any knowledge and information regarding ordinary scientific technique today, what validity does the original definition have? In which way does it serve as a relevant precedent? Other significantly related questions are, what are the halakic criteria for modifying original halakic positions? And furthermore, if science is currently transforming the entire twilight area of Halaka uncovered in this study into normal occurrences, then what happens to this vast area of twilight Halaka? Is man really a twilight being in possession of transcendental dimensions after all, as we claimed throughout this work?

Clearly, it is understood that whatever science has not yet discovered or produced is still very much in the dark and enshrouded in the twilight zone. One of the main purposes of twilight Halakot are to assist men of science to overcome this barrier and further their discoveries in naturalising these occurrences by expanding the scientist's imagination, providing him with abundant precedents, and ample resources, with which to transform the opaque twilight into bright and everyday features of life. It is precisely because man is a twilight being in possession of transcendental dimensions that man is constantly motivated to discover, convert and thereby realise in a concrete and tangible manner, this fundamental aspect of his nature. The scientist who recognises his limitations and understands the relationship between twilight laws and science will be providentially assisted to succeed in his goal of eventually mastering the entire twilight zone and converting it to an ordinary feature of everyday life. The scientist who oversteps his bounds and plays the role of G-d (much like the pagan magical god) and denies this relationship, will remain groping in the dark and perforce relate to the twilight zone on the level of science fiction and myth. As we have already seen how G-d's providence will allow man access to new vistas of knowledge only at a proportionate rate to which he can properly

assimilate such knowledge.⁷

Generally it can be stated that Halaka will allow for change and modification where the sciences, be they physical, metaphysical, philosophical, psychological or whatever, work in the same direction as Halaka. However, Halaka will resist any change in which science attempts to undermine religion. A clear application of both the above conditions is demonstrated in a Responsum of Maharam Schick discussed in Chapter X, in which he formulates two rules for accepting or resisting change. According to Maharam Schick we find two kinds of Halakot. The first type are Halakot which are derived through R. Ishmael's thirteen hermeneutic principles and the traditions communicated orally as Halakot to Moses from Sinai. These Halakot can not change because they were communicated by G-d as eternal truths which are absolute for all time. Halaka will energetically resist any attempt by scientists in all fields to undermine religion by denying the validity of these traditions. In our Introduction we saw how one of the major purposes of Sinai was to disclose fundamental axiomatic principles regarding G-d which philosophic speculation was forbidden to controvert. All of science are bound by these same axioms. The scientist who seeks to subvert any of these principles will immediately encounter a violent confrontation with religion.

There is another category of Halakot. Those which were not communicated as Halakot to Moses of Sinai or derived via the hermeneutic rules, and as such, are in a sense metahermeneutic. These Halakot are derived through the cogitative process of assimilating natural, metaphysical, philosophical, data which man observes in his encounter with the universe. As those observational data become subject to changing conditions such as evolution, different philosophic and scientific orientations etc., then the Halakot which are contingent upon these data will also become modified. The halakic system will endorse such change since no essential truths were controverted in the process. Thus, the scientist who co-operates with religion will discover to his surprise considerable flexibility in religion.

Even the first category of Halakot does not manifest a closed and narrow system of law stubbornly refusing to acquiesce in light of current trends which seem to be contrary to certain Sinaitic notions. For it is this very rigidity which may advance scientific exploration further. Every science recognises that its axioms are

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correct only as long as they haven't been disproved and that each of its facts is based on probability alone. Thus all of science is essentially in experimental stages. Since Halakot of the former category are revealed Divine truths which are absolute, then if these Halakot establish truisms which seem contrary to scientific fact, this serves as a monitor and an aid to the experimental science that it has not yet arrived at the truth and that the research must go on. Thus the Halakot of this category can act as a check and balance system for science, redirecting it towards the correct path whenever it goes astray.

The fact that this paper has demonstrated that many twilight Halakot were derived by applying the hermeneutic principles of the first category reveals an important distinction between twilight Halakot and experimental sciences. Namely, that despite the vast degree of similarity between twilight Halakot and the experimental sciences, the Halakot themselves are not in an experimental stage but are every bit as resolute, precise, tangible and eternal as the Sinaitic laws themselves. Thus they serve as superb guides in providing unshakable precedents to further scientific exploration and discovery.

On the other hand, because many Halakot of Torah belonging to the second category are also derivatives of probability laws such as rov and hazaka, Maharam Schick rules that those Halakot will invariably change once it is empirically and experientially proven that the probabilities have changed. Here again, science can contribute to Halaka by providing the necessary facilities and expertise to be able to test and trace changes in probability trends. In fact, R. Zimmerman considers natural (scientific) probabilities to be more certain than technical (halakic) probabilities and uses this principle to explain why situations involving life and death (Pikuach Nefesh) take precedence over technical probabilities but not over natural probabilities.⁸ Thus science is superbly equipped to examine potential changes in Halakot based on probability conditions.

Even with regards to the first category of Halakot communciated to Moses from Sinai we find great room for flexibility and that even these are not altogether immutable. For example, according to many authoritites since these Halakot are essentially traditions which are not found explicitly mentioned in the Torah, they do not carry the same weight or status as Penteteuchal (de'oraitah) laws. Therefore,

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if a situation of doubt or uncertainty (safek) arose, the question might be resolved most leniently — applying the greatest degree of flexibility, in accordance with the principle of safek de-oraita le-humra ve-safek de-rabbanon le-kula.⁹ Moreover we find that penalties such as lashes were not enforced for transgressing Halakot of this category.¹⁰ According to many authorities, the Halakot to Moses from Sinai were only communicated in a general sense. However, their details were not specified and are therefore, not bound by the same degree of immutability as the general laws themselves. For example, Moses was told of eight general categories of treifa animals. However, the exact details concerning these general categories were developed by the Rabbis.¹¹ Therefore, a great deal of flexibility could be applied to the details even if the general categories themselves appeared largely entrenched. Indeed we find that in certain instances the Halakot to Moses from Sinai uprooted Pentateuchal laws!¹² This demonstrates flexibility even on the part of Pentateuchal laws where one would have expected utter inextricability when confronted by the lesser level of traditions communicated to Moses. In some cases we find that traditions were recorded as Halakot to Moses from Sinai while in fact they were not: Such as the talmudic statements that the restriction against eating in pairs (Zuggot) is a Halaka to Moses from Sinai; and, that it is a Halaka to Moses from Sinai that Elijah will not come to pronounce purity or impurity, to put away or bring near, but to put away those brought near by force and to bring near those put away by force; and others.¹³

From all the above it is greatly evident that even in the case of Halakot to Moses from Sinai where Maharam Schick rules that there can be no vacillating in Halaka despite changing conditions in nature, nevertheless there is still room within its own confines for ample flexibility and leniency.

The very fact that the expression of Halaka to Moses from Sinai was employed concerning twilight Halakot such as Zuggot and Elijah, demonstrates both considerations. Namely the need to approach the intangible, metaphysical areas of Halaka with the same degree of definiteness, exactitude and concreteness as the Sinaitic traditions themselves on the one hand. And, at the same time, the need to expand the resilience of the Sinaitic traditions by broadening this category to include

within its sphere, twilight situations which would illuminate its parameters and thereby allow for greater room for flexibility. There is an undeniable paramountcy of the Halaka's incessantly striving to incorporate greater leniencies within its precincts expressed in the Halakic principle:

"The power for permitting is greater [than that of prohibition]."¹⁴ R. Israel Meir ha-Kohen in his introduction to his Mishna Berurah on the laws of Sabbath writes that one of the main values of studying the Sabbath laws is not so much to learn of the proscriptions of the Sabbath but rather to learn of the permissible forms of activities on the Sabbath — such as how to save one's animals in case they escape without trapping them, or how to extinguish a fire which suddenly erupts in one's household, etc. We find whole areas of Halaka operating under explicit directives to exercise the greatest measure of leniency possible in resolving various issues, such as "Halaka is decided according to the lenient opinion in matters of mourning" and "Halaka is decided according to the lenient opinion in manners of Erubin."¹⁵ This same attitude was adopted with regards to the stainings of the menstruant woman in deciding whether she may be permitted to her husband. The halakic principle of Darkhei Noam is also based on the recognition of the purpose of Halaka and its deep appreciation for augmenting and enhancing the pleasantness of life rather than making life stressful and awkward. There were areas of Halaka which were particularly sensitive and demanded an especially delicate approach to Halaka to seek leniencies wherever possible. These were issues such as the attempt to purify the bastard and explore means of making him eligible for marriage. The same consideration applied equally, if not more, for the Aguna woman. The Halaka labouriously strove to stretch over backwards and find any means possible to ameliorate the difficult conditions of the Aguna woman, even to extent of accepting extremely poor evidence to establish the death of her missing husband.

The only means of prying open the sensitive issues and resolving these difficulties were on the basis of the hermeneutic principles and the Sinaitic traditions handed to Moses at Sinai, since these were the only available sources for researching the much needed room for elasticity of Halaka. The convening of the sessions of the Sanhedrin represented but a fleeting moment of Jewish history. Therefore,

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it was incumbent upon the codifiers to unearth these twilight issues and magnify the hermeneutic logic to incorporate the metaphysical dimension of Halaka, in order to extrapolate Sinaitic authority for a greater measure of leniency in the absence of a Sanhedrin. The resolvement of the Elijah issue, for example, could go far in making such headway which is vital for improving the conditions of the Aguna woman.

The rules for determining the criteria for change in Halaka were important not only in dealing with evolutionary changes in nature and metaphysics as seen in the Responsa of Maharam Schick and others, but more fundamenally in dealing with the process of the development and evolution of Halaka itself. Since the only source for the objective of modification was Halaka itself, of necessity, change could come only as an internal deveopment of Halaka exclusively. Thus it became essential to investigate evolutionary symptoms manifest in Halaka in order that the direction for change would organically flow out of Halaka itself. While the Reform movement and unskilled Jewish legalists impatiently tampered with Halaka from the outside in an effort to tag their views onto the Halaka and attain validity by forcing the Halaka in the direction of change they desired, the rabbinic codifiers patiently, expertly and resourcefully monitored change as it inherently flowed as a natural evolutionary process out of the halakic system, as evidenced by their research. Thus it was the applicaton of hermeneutic rules to metaphysical issues in the halakic process which provided the mechanics for monitoring halakic change. At the same time it provided authorative guidance in resolving twilight issues produced by science or any other means, where man requires assistance in concretising and assimilating intangible developments.

The halakic system in recognising and providing rules for change is able to provide much needed guidance to a world in which scientific discovery is compelling man to confront theoretics in applied directions. Thus, aside from its moral and ethical guidance, the study of the halakic system is therefore valuable as a field in itself which relates rules for converting abstract, hypothetical notions to applied sciences. The study of metaphysics on the other hand, contributes to Halaka in that the more halakic man soars to the heights of metaphysical speculation, the more he is able to transform religious beliefs into factual

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data. This is an important process in directing religion which was hitherto spurned by pragmatists concerned only with tangibles, to a practical feature of everyday life.

Nevertheless, despite the complete intercourse between them, there continues to exist a vociferous school within the rabbinic persuasion who persist in their attempt to utterly divorce philosophy and metaphysics from Halaka. The adherents of this school, in some cases carried on this paranoia even to the extent that pre-occupation with the former was absolutely forbidden: Whether it be the authorities who took issue and contested Maimonides and forbade the study of philosophy and metaphysics.¹⁶ Or whether it be the rationalistic approach which saw in theosophic pursuit a flagrant contradiction to halaka indicative in R. Soloveichick's statement: "The Halaka does not deal with metaphysical mysteries." Or whether it be the great number of Yeshivot today which continue to ban the study of philosophy and sciences.

This essay has endeavoured to expose that throughout rabbinic history Halaka was always as concerned with man's thoughts as it was with man's actions because it recognised that a great deal of the Halaka could only be arrived at through the process of applying philosophic and metaphysical principles. As science continues to narrow the gap between the theoretical and the actual, the study of Metaphysical Issues in Halakic Process, is becoming all the more urgent as science has enabled ordinary man to attain under normal conditions what was hitherto considered exclusively transcendental. It will soon become exceedingly obvious that latter day Halakists will not be able to even begin to approach halakic issues materialising as a result of science without being thoroughly educated in the disciplines of philosophy and metaphysics. For numerous laws pertaining to scientific man are deeply rooted in transcendental man.

It is a fact that brilliant Posekim (Decisors) such as R. Yechiel Michael ha-Levi Epstein (1829-1908) author of Arukh ha-Shulchan and others were unable to render proper halakic rulings as to whether one is permitted to flick on a light switch on Yom Tov (Festival Days) because they were not familiar with the process of generating electricity. The Jerusalem Institute for Science and Halaka was founded as a result of a growing realisation that unless today's Halakists intricately

familiarise themselves with the latest technical and scientific apparatus and become thoroughly knowledgeable in all the details of their operational activity Halakists will not be capable of rendering cogent rulings concerning their usages for example on Shabbat and Yom Tov.¹⁷ This fact has caused the ban outlawing scientific study to become lifted out of sheer necessity. Similarly, in the very near future, unless Halakists thoroughly familiarise themselves with the disciplines of philosophy and metaphysics, as did many of the halakic giants in the past who were reviewed in this paper, and unless the ban against these disciplines is altogether lifted as well, Halakists will soon find themselves unable to cope with fundamental halakic problems pertaining to everyday life.

Consequently, one of the conclusions of this paper is that if Yeshivot aspire to produce halakic authorities to lead the Jewish world through the coming era, it is hoped that this work will serve as testimony in demonstrating the dire need of implementing within the curriculum of even the most right-wing of Yeshivot the study of the erstwhile considered 'secular' disciplines of philosophy and metaphysics as a part and parcel of Talmud Torah. For the Halakist who is uninstructed in these disciplines will soon find himself as stifled and incompetent in his own field as tomorrow's uneducated individual who is illiterate in basic computer language. The introduction of our field of study into the curriculum of Jewish Educational Institutions would undoubtedly function as an invaluable instrument in integrating the vast and often hostile gap of intolerance which separates ultra-Orthodox zealots from secular Zionists in Israeli and Jewish contemporary society throughout the world today.

A final conclusion of this work, which is especially born out of Chapter VI.3, is that we find in the Responsa literature discussions which seem to be totally theoretical and of no practical consequence whatsoever. Yet, it is most instructive to analyse carefully the socio-political conditions during the period of the respondent's lifetime, the character and biography of the respondent himself, and the exchange of ideas and philosophies current in his time. We must investigate the factors which were most instrumental in motivating and inspiring the respondent to delve into seemingly totally theoretical issues because of the practical implications and relevancies which the respondent saw emanating from these particular inquiries

to the period in which he lived.

According to Yitzchak Baer, it was the metaphysical feature of Judaism, which remained the central force responsible for maintaining the Jewish people after the destruction of the Second Temple:

From that time on [i.e., the destruction of the Second Temple], there did not remain with nation except broken fossils and memories of that great metaphysical system which bound the terrestrial world to the heavenly world. It is those broken fossils which were to maintain the nation in the future in the generations after the destruciton.¹⁸

Baer concludes his work by reiterating his contention that it was the metaphysical *Weltanschauung* of the Sages which moulded and preserved the historical character of the people:

In the end, there will remain from the metaphysical-historical-structure of the ancient people some great pillars, which the first Hasidim drove into the soil of the Land of Israel, and they are planted in the heart of every man, and through them will be earmarked in the future the place of Israel among nations.¹⁹

We conclude this paper with a popular aggadic maxim which concludes a tractate of the Talmud:

The Tanna debe Elijah taught: Whoever learns Halakot daily is destined to become a denizen of the World to Come, for it is said: 'His goings [Halikot] are to eternity' [Habakuk 3:6]. Read not Halikot [goings, ways] but rather Halakot.²⁰

The baraita attributed to Elijah taught that the Halikot (philosophic ways) converge with Halakot (deeds) and therefore can be used interchangeably. For both Halikot and Halakot are symptomatic of "eternity." Halikot are the end goals and Halakot are the means. The Halikot must initially be interchanged with Halakot ("Don't read Halikot etc.") because it is the Halakot which lead to the Halikot. Keeping this causal relationship in mind in one's "daily" halakic activities ("Whoever learns halakot daily etc.") one will eventually reach a point where the Halakot and Halikot converge and become one and the same. This is the point where Maimonides culminates his halakic opus - a future world which is "replete with philosophic knowledge of G-d" - the epitome of the halakic experience. This is the ultimate destination of mankind, the same transcendental zone where Elijah abides, where all mankind are to become permanent rather than transient denizens. Here Halakot will once again coalesce with the Halikot which are stated in Habakuk. Hence, the interchangeability is complete.

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In our Introduction we discussed how the Halikot, i.e., the philosophic ways, were characteristic of pre-Mosaic man's halakic activity. At Sinai the Halakot, i.e., the deeds, were introduced in order to bind the post-Mosaic community and propel it towards realising the end goal of Halaka, the Halikot. We saw how Maimonides structured his Code Juris Mosaici following the same pattern of Halikot (Yesodei ha-Torah), Halakot (main body of Code), Halikot (conclusion of Code). The above aggadic maxim describes that the halakic system itself mandates that it must evolve through various stages of transformation and change: from Halikot (pre-Sinai) to Halakot (Sinai, post-Sinai) and back to Halikot (post-Sinai, Messianic period), in order to complete the metaphysical transformation in man which the system aspires to realise. That is the realisation of the Day which the Haggadist summons G-d to "bring near the Day which is neither day nor night" – but rather twilight – when the dark of night is as light as day. As the Haggadist concludes: "Make Thou light as the day the dark of night – and it came to pass at midnight."²¹

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¹Prof. E. Rackman has expressed this teleological approach of Torah in several articles. See also Hirsch, Samson Raphael, "Intro. by tr., Hirsch's Weltanschauung," Horeb, tr. by Grunfeld, I., (New York: Soncino Press, 1962), pp. xli-xliii.

²See Adret, Solomon, Responsa of Rashba, (Venice, 1544), Nos. 614-618;
Asher b. Yehiel, Responsa of Rosh, (Venice, 1552), Part IV, No. 9;
Isaac b. Sheshet, Responsa of Rivash, (Levov, 1805), No. 45;
Isserles, Moshe, Responsa of Rema, (Cracow, 1640), No. 7;
Sirkes, Joel, Responsa of Bach, (Frankfurt, 1717), No. 4;
Bachrach, Yair, Responsa Havot Yair, (Frankfurt, 1719), No. 125.

³See Maim., Yad ha-Hazaka, (std. eds.) Talmud Torah, i, 12, and Yesodei ha-Torah, iv, 13; Isserles, Moshe, Haggahot ha-Rema, (printed in std. eds. of Sh.Ar), YD, Talmud Torah, 246:4.

⁴Caro, Joseph, Shulchan Arukh, YD, ibid. Caro's methodology was to exclude any law which did not directly instruct a practical activity. See Twersky, Isadore, "The Shulchan Arukh, Enduring Code of Jewish Law," Judaism, (Philadelphia: American Jewish Congress, 1967), XVI, 152. On Caro's objection to Maim.'s inclusion of Pardes, see Caro, Joseph, Kesef Mishne, (printed in std. eds. of Maim.'s Yad) comm. to Yad, Yesodei ha-Torah, iv, 13.

⁵As in: "A man's four cubits acquires for him everywhere." B.M. 10a.

⁶For this reason Maim. included ethics, psychology, dietetics, astrology, physics, metaphysics, the history of religion, etc., within his Code. Precisely because he regarded these disciplines as comprised within the four cubits range. See Reischer, Jacob, Iyyun Ya'akov, (Wilhelmsdorf, 1729), and other aggadic comms. to Ber. 8a, who discuss the significance of the four cubits parameters.

⁷Lichtenstein, Ahron, "Does Jewish Tradition Recognize an Ethic Independent of Halaka?" Modern Jewish Ethics, ed. Fox, M., (Ohio: Ohio State Univ. Press, 1975), pp. 63-88.

⁸Strauss Leo, Persecution and the Art of Writing, (Glencoe, Illinois: The Free Press, 1952), pp. 19, 40-43; "How to Begin to Study the Guide to the Perplexed," The Guide to the Perplexed, tr. by Pines, S., (Chicago: Univ. of Chicago Press, 1963), p. civ.

⁹Scholem, Gershom, Major Trends in Jewish Mysticism, (New York Schocken Books, 1941), pp. 28-29.

¹⁰Twersky, Isadore, Introduction to the Code of Maimonides, (New Haven: Yale Univ. Press, 1980); Hartman, David, Maimonides: Torah and the Philosophic Quest, (Philadelphia: JPS, 1976).

- ¹¹Lichtenstein, A., op.cit., p. 83, n. 2.
- ¹²The opinion of Maharal (R. Judah Loew b. Bezalel), cited by Lichtenstein, ibid., p.63.
- ¹³Ibid.
- ¹⁴Maimonides, Introduction to the Commentary on the Mishna, notes and translation into Hebrew by Rabinowitz, M.D., (Jerusalem: Mossad ha-Rav Kook, 1960), p. 72.
- ¹⁵Ibid.
- ¹⁶Hartman, op.cit., p. 39.
- ¹⁷Ibid., p. 41.
- ¹⁸Ibid., p. 48.
- ¹⁹Hartman, ibid., pp. 52,222, n.22, remarks that the Orthodox Jew would reject the notion that philosophy is of greater significance than the study of Torah as Maim. implies in Yad, Yesodei ha-Torah, iv,13. However, a careful reading of Maim., ibid., reveals that he does not contrast the study of Halaka with non-halaka, but rather distinguishes between two aspects of Halaka. Even Caro, Kesef Mishne, and Krakovski, Menachem, Avodat ha-Melekh, (Jerusalem: Mossad ha-Rav Kook, 1971), in their comms. to Maim., Yad, ibid., whom Hartman cites to evince the "rejection of Orthodox Jews" do not object to Maim.'s separation of philosophy from deed, but rather they oppose the weight and importance that Maim. attached to philosophic - Halaka over ritualistic-Halaka.
- ²⁰Hartman, op.cit., p. 41.
- ²¹Ibid., p.219, n. 29.
- ²²Maimonides, The Guide to the Perplexed, tr. by Pines, S., (Chicago: Univ. of Chicago Press, 1963), Part II, ch. xxxix.
- ²³Gen. R. states that the Torah preceeded Creation by 2,000 years and that G-d used the Torah as His blueprint for creating the universe. Genesis Rabbah, (standard editions), viii,2, and i,1.
- ²⁴Guide, loc.cit.
- ²⁵Ibid., Part II, ch. l.iii.
- ²⁶See Midrash Tanhumah, (Jerusalem: Eshkol, 1975), Genesis, Vayigash, no. 22, p. 182: "From where did Abraham learn the Torah?... R. Levi said, from himself he learned the Torah as it is written, 'The dissembler in heart shall have his fill from his own ways, and a good man shall be satisfied from himself' Prov. 14:14." See also Hanokh Zundel b. Joseph, Eitz Yosef, comm. to Tanh., ibid., ad loc., who explains "from himself" as referring to deductive reasoning (sevara). Mirkin, Moshe, ed. Genesis Rabbah, (Tel Aviv: Yavneh Press, 1972), vol. IV, ch.xlv, no. 3, p. 163, is even more

explicit in saying: "Abraham learned Torah by himself according to logic, for there are numerous commandments which man can arrive at through logic."

²⁷On the difference between the Sinaitic commandments and the seven Noahide commandments, see Bloch, Elijah Meir, Shiurei Da'at, (Jerusalem: Feldheim, 1975), II, 117-24; Rashi, B.K. 28a; and our ensuing discussion.

²⁸Hartman, op.cit., p. 57.

²⁹Ibid., p. 225, n. 83.

³⁰Gen. 9:4.

³¹Yad, Melakhim, iv, 1.

³²Mak. 23b.

³³Maim., Commentary on the Mishnayoth, (printed in std. eds. of the Talmud), Hul., vii, 6.

³⁴Hartman, op.cit., p. 59; Gen. 26:5; Kid. 82a, Yom. 28b; See also Tanh., Vayigash, no. 11.

³⁵See Abraham b. Moses Di Buton, Lehem Mishne, and Abraham b. David of Posquierres, Hassagot ha-Rabad, (printed in std. eds. of Yad), comm. to Yad, loc.cit. See also Hediah, Obadiah, Ebed ha-Melekh, (Jerusalem, 1941), comm. to Yad, ibid., and supra, n. 27. Furthermore, Maim. himself writes in Yad, Avoda Zara, i, 13, "And Jacob our Patriarch, taught all his children and separated Levi and appointed him to sit at the Head of the Academy to instruct the way of G-d and to observe the statutes of Abraham." If Abraham had only introduced circumcision, Maim. should have written statute in the singular rather than in the plural.

³⁶Hartman, op.cit., p. 58.

³⁷Supra, n. 26.

³⁸Hartman, op.cit., p. 220, n. 45. To prove this assumption Hartman cites Maim., Yad, Shemita ve-Yovel, xiii, 12-13. However, when one traces this source, one finds that Maim., postulates exactly the reverse. Maim. explains the exemption of the Levite tribe from civil affairs because of its distinctive task of being separated for the worship of G-d and to disseminate His teachings. Although Maim. offers this role to people "from all walks of the world," i.e., Gentiles included, and informs them that they too are welcome to embrace this glorious task. Maim. stipulates very clearly, in no uncertain terms, exactly what this task entails: "To become separate, to stand before G-d, to serve, and to worship, to know G-d, and to walk righteously as the Lord made him [Halaka 13]." Hartman remarks that Spinoza, Herman Cohen and Leo Strauss never refer to this important law of Maim. regarding their discussion on Maim.'s attitude to the possibility of a spiritual way which is independent of belief in Sinaitic revelation. From our explanation

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of Maim. it is self evident why it never occurred to them to bring any evidence from here. Maim. stressed both "to know G-d" i.e., philosophic activity, and "to worship G-d", i.e., ritualistic (commandment) activity. Both of these together constitute "to serve G-d," i.e., halakic activity. That is what Maim means by "to serve G-d, to worship G-d, and to know G-d". Namely, that his halakic activity must be comprised of both adherence to commandments and philosophic activity. Maim. corroborates this notion in his Introduction to the Commentary on the Mishna which we will soon see. If this were not enough Maim. states explicitly in Halaka 12 (which Hartman also cites) regarding the task of disseminating G-d's teachings which the Gentiles, mentioned in Halaka 13, are welcome to join: "Because he [the Levite] is separated to worship G-d, to serve Him, and to teach His upright ways and His righteous statutes to the populace as it is written: 'They shall teach Jacob thy statutes and Israel thy Law' (Deut. 33:10)." Maim. would certainly not have quoted a biblical text which advocates the teachings of His statutes and laws, were he intending to describe a way of life independent of Halaka.

³⁹See Shab. 88a, and A.Z. 2b, "'They stood under the mount' (Ex. 19:17). R. Abdimi b. Hama b. Hasa said, 'This teaches that the Holy One Blessed be He, suspended the mountain over them like a vault and said to them, 'If ye accept the Torah it is well; but if not, there shall be your burial'." This curious Aggada could quite possibly be explained in the same way. Namely, that the distinguishing trait which earmarked Sinaitic Law apart from pre-Sinaitic Law was in the mandatory nature of the covenant in which the people became bound to G-d.

⁴⁰Intro. to the Comm. on the Mishna, p. 83.

⁴¹Kid. 40b.

⁴²Maim. in fact defines knowledge as philosophy earlier on: "What I mean to say by 'knowledge' - to draft in one's mind the truth of things as they are to him and to understand all that is possible for him to understand." Intro. to the Comm. on the Mishna, p. 78.

⁴³Ibid., p. 79.

⁴⁴Guide, Part III, ch. li, p. 619.

⁴⁵Ibid.

⁴⁶Pines, Shlomo, Forward, Maimonides: Torah and Philosophic Quest, by Hartman, David, p. xiii.

⁴⁷Maimonides, Abraham, Milchamot ha-Shem, ed. Margaliyot, R., (Jerusalem: Mossad ha-Rav Kook, 1953), p. 53.

⁴⁸Maim.'s own definition of a Divine Law and its difference to man-made Law takes into account the type of Halaka which existed prior to Sinai:

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"Accordingly, if you find a Law the whole end of which and the whole purpose thereof, who determined the actions required by it, are exclusively toward the ordering of the city and its circumstances and the abolition in it of injustice and oppression; If in that Law attention is not at all directed toward speculative matters, if no heed is given to the perfecting of the rational faculty, and no regard is accorded to opinions being correct or faulty - the whole purpose of that Law being, on the contrary, the arrangement, in whatever way this may be brought about, of the circumstances of people in their relations with one another and provision for their obtaining, in accordance with the opinion of that chief, a certain something deemed to be happiness - you must know that, that Law is a nomos and that the men who laid it down belong, as we have mentioned, to the third class, I mean to those who are perfect only in their imaginative faculty.

If, on the other hand, you find a Law, all of whose ordinances are due to attention being paid, as was stated before, to the soundness of the circumstances pertaining to the body and also to the soundness of belief - a Law that takes pains to inculcate correct opinions with regard to G-d, may He be exalted in the first place, and with regard to the angels, and that desires to make man wise, to give him understanding, and to awaken his attention so that he should know the whole of that which exists in its true form - you must know that this guidance comes from Him, may He be exalted, and that this Law is divine." Guide, Part II, ch. xl, pp. 383-84.

⁴⁹Supra, n. 31.

⁵⁰See Twersky, Intro. to the Code of Maim., The Historical Dimension, pp. 220-28. So important was this intellectual pre-occupation with natural sciences which led the Patriarchs to halakic practices that the Torah, in Maim.'s view, recounted this system of Halaka as a prerequisite for the Sinaitic system. As Maim. writes:

G-d, may His mention be exalted, wished us to be perfected and the state of our societies to be improved by His Laws regarding actions. Now this can come about only after the adoption of intellectual beliefs, the first of which being His apprehension, may He be exalted, according to our capacity. This, in turn cannot come about except through Divine Science, and this Divine Science cannot become actual except after a study of natural science. This is so since natural science borders on Divine Science in time as has been made clear to whomever has engaged in speculation on these matters. Hence G-d, may He be exalted, caused his book to open with the 'Account of the Beginning' which we have made clear, is natural Science. Guide, Intro. to the First Part, pp. 8-9.

Rabbi Shem Tov. in his commentary to the Guide, explains that it was the structure of Torah itself which induced Maimonides to incorporate Divine Science within his own definition of a Divine Law:

"Do you not see that our Torah, the Torah of G-d, may He be exalted, began with the Account of the Beginning first which is the knowledge of the existence as much as one can make

known. And during the special 'stance' [ma'amad], at Sinai. He began to impart His reality and that He is unity and is not corporeal and that it is not worthy to worship another [deity], and that the one worships another [deity] denies all of Torah. And afterwards He ordained [laws concerning] our bodily activities. And therefore the tablets of the covenant were two; first in conveying correct opinions, and secondly, the correcting of bodily matters." Maimonides, Moreh Nevukhim, tr. into Hebrew by Samuel Ibn Tibbon, with five commentaries: Efodi, Shem Tov, Crescas, Abrabanel and Hanarboni, (New York: On Publishing Co., 1946).

⁵¹Yad, Avoda Zara, ch.i.

⁵²See Nahmanides' remarks to Maim.'s first commandment, Nahmanides, Moses b. Nahman, and Maimonides, Moses, Sefer ha-Mitzvot Im Hassagot ha-Ramban, ed. Chavel, C., (Jerusalem: Mossad ha-Rav Kook, 1981), pp. 151-53.

⁵³This is the meaning of the Midrashim which remarked upon how the word "tablets" (luchot) appears in Scripture in singular form (i.e., without the Hebrew letter vav), viz., two which are one. On the unity of the Decalogue see Ginzberg, Louis, Legends of the Jews, (Philadelphia: JPS, 1968), Vol. III, p. 104.

⁵⁴Hartman, op.cit., p. 64.

⁵⁵So has he stated in various lectures he has given on his book, Theology in the Responsa, (London: Routledge and Kegan Paul, 1975).

⁵⁶Hartman, op.cit.

⁵⁷David Ibn Abi Zimra (Radbaz), New Responsa of Radbaz, reproduced from MSS, (Bnei Berak, 1975), No. 1.

⁵⁸Igras, Joseph, Shomer Emunim, (Amsterdam, 1736), 201:33.

⁵⁹Sefer ha-Mitzvot, ed. Chavel C., p. 151.

⁶⁰Yad, Yesodei ha-Torah, i,1. And again in i,6: "And the knowledge of this truth is an affirmative precept etc."

⁶¹Hediah, Ebed ha-Melekh, comm. to Yad, Yesodei ha-Torah, i,1. See also Stern, Shemuel Tuvia, Responsa ha-Shavit, (Jerusalem, 1970), novellae on Yad, ibid., who draws the same distinction in answer to how G-d can command a knowledge which itself is unattainable. Belief, he writes, continues where the limits of one's knowledge ends.

⁶²Aaron ha-Levi of Barcelona, putative author, Sefer ha-Hinnukh, (Venice, 1523, rpt. Jerusalem: Eshkol, n.d.), Mitzvah 25.

⁶³"And all of this concerns the matter of fulfilling the commandment, and the commandment is to be actively fulfilled by knowing this." Eliezer Menachem of Shakh, Abi Ezri, (Jerusalem, 1948), comm. to Yad, Yesodei ha-Torah, i,7.

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⁶⁴Twersky, I., "Some Non-Halakic Aspects of the Mishne Torah," Jewish Medieval and Renaissance Studies, ed. Altman A., (Cambridge, Harvard Univ. Press, 1967), pp. 95-118.

⁶⁵Ibid., p. 99.

⁶⁶Ibid., n. 13.

⁶⁷Kesef Mishne, comm. to Yad, Melakhim, xi,1.

⁶⁸Sanh. 93b.

⁶⁹Lam. 2:2.

⁷⁰Sanh. 91b.

⁷¹Kesef Mishne parenthetically concludes: "Nevertheless, what he wrote that R. Akiba bore his armour requires investigation from which [source] he brings it."

⁷²See infra., notes to ch. iii.1, end.

⁷³Intro. to Maim. Code., p. 298.

⁷⁴Soloveichik, Joseph B., Ish ha-Halaka, (Jerusalem: Alpha Press, 1979), p. 31.

⁷⁵Deut. 17:11, 28:14.

⁷⁶Lev. 18:30.

⁷⁷Trani, Moses b. Joseph, Kiryat Sefer, (Venice, 1551), comm. to Yad, Melakim, xii, p. 576.

⁷⁸"Some Non-Halakic Aspects....," p. 115.

⁷⁹Maim. himself refers to a tripartate division of the Law: "Thus all [the commandments] are bound up with three things; opinions, moral qualities, and political action." Guide, Part III, ch. xxi. Twersky, however, in recapitulating Maimonides with subtle variation writes: "Maimonides submits a threefold classification of the philosophic virtues: intellectual, moral and practical." "Some Non-Halakic Aspects....," p. 104.

Twersky further combines the moral and practical virtues thus obtaining a twofold intention of the law: philosophic and halakic. (Ibid, p. 115). However, Maim. himself does not contrast his own first category of "opinions" (corresponding to Twersky's classification of philosophy) against Twersky's combined category of moral and practical-halakic virtues, as Twersky recapitulates. For were Maim.'s first category non-practical and non-halakic, he would not have included the laws of repentance, sacrifices and fasts, within his first category. Guide, Part III, ch. xxxvi, end.

⁸⁰See "Halaka," Talmudic Encyclopedia, (Jerusalem: Emet Press, 1973), Vol. IX; Ginzberg, Legends, Vol. VI, p. 448; J.T. Shek. 5. It is interesting to note that Rashi, comm. to Kid. 49a, explains

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the term "Midrash" as: "Sifra and Sifri which are the Halakot of [the homiletical interpretations of] the verses."

⁸¹"Some Non-Halakic Aspects...", p. 114. See also Rabinowitz comm. to Maim., Intro. to the Comm. on the Mishna, p. 83, n. 6: "Because Halaka in it's broad sense includes cognitive wisdom and practical wisdom together. And so Maimonides does not distinguish between cognitive commandments and practical commandments and taught them all in the form of halakic rulings."

⁸²T.E., loc.cit.

⁸³For this reason Maim. rules that commandments require intention (mitzvot tzerichot kavannah), Yad, Keriat Shema, ii,1, Tefilla, x,1, iv,14,15; Soloveichik, Hayyim ha-Levi, Hiddushei R. Hayyim ha-Levi, (Brisk, 1936), comm. to Yad, Tefilla iv,1. The halakic authorities who ruled that commandments do not need intention (mitzvot ein tzerichot kavannah) opted for the micro-halakic approach in which ritualistic-Halaka is completely divorced from intellection as an obligation. This latter view is consistent with Caro's approach to Halaka in general as we will see further and consequently he also ruled mitzvot ein tzerichot kavannah, OH, Sh. Ar., 60:4.

⁸⁴Soloveichik, Joseph B., Al ha-Teshuva, ed. Peli, P., (Jerusalem: Alpha Press, 1979), p. 44.

⁸⁵Isa. 11:9; Yad, Melakhim, xii,5.

⁸⁶Maim. began with his Sefer ha-Mitzvot (Book of Commandments), which lists the beliefs and rules that were communicated at Sinai. These beliefs and rules were all specifically aimed at setting G-d in the forefront in every action (Yad, Me'zuzah, vi,13). Sequentially, Maim. embarked upon his Code beginning with Sefer Maddah (Book of Knowledge), whose aim was twofold: Firstly in instructing one towards internalising the Sinaitic beliefs through concentrated intellection until belief in G-d becomes demonstrative knowledge of G-d. This process of internalisation is the 'Halaka' of that commandment. Secondly, since it is knowledge which leads to deeds and not deeds which lead to knowledge and since "incorrect beliefs will lead to incorrect actions," Maim. regarded his Sefer Maddah as an overall exordial presentation of the ways of Halaka precursory to the rules of Halaka. ("For if knowledge is not achieved, no right action and no correct opinion can be achieved" [Guide, Part III, ch. xxxvi]). The remainder of the Code deals primarily with rules and halakic ritual. However, Maimonides was keenly aware how overpreoccupation with ritual can alienate one from the general purpose and intention of the law and may well produce "a student of Halaka [who] can become an expert in legal matters and a pagan in matters of belief" (Hartman, op.cit., p. 64). Therefore, Maim. diligently employed chapter titles and other devices such as perorations, exegetical comments, interpretive embellishments, parenthetical explanations and assorted pretexts, to skilfully interweave the rules together with the ways throughout the Code until the Code itself ultimately reaches a crescendo in a climatic restoration of the rules together with the ways to the extent that the "entire earth is filled with knowledge of G-d." See Twersky, Intro. to Maim. Code, p. 372.

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⁸⁷See Rosenbaum, Asher b. Abraham, Shevilei Asher, (Tel Aviv, 1960), comm. to Yad, Melakhim, xii, who remarks on the educative goal which connects the first and last laws of Maim.'s Code.

⁸⁸Guide, Part III, ch. xiii.

⁸⁹

Intro. to Maim. Code, p. 372.

⁹⁰"Knowledge leads to practice" Maim., Intro. to the Comm. on the Mishna, p. 79; Twersky, Intro. to Maim. Code, p. 511, n. 390.

⁹¹See Yad, Mezuza, vi, 13; and Guide, Part III, ch. xxxvi, for Maim.'s reason for including the laws of repentance, sacrifices and fasts in his Sefer Maddah; and Twersky's illustration of the Sabbath, Intro. to Maim. Code, p. 360, n. 18.

⁹²Lev. 19-20; Ex. 21-24.

⁹³Ish ha-Halaka, p. 84. See also Rashi and Sifra, ed. Weiss, (Vienna, 1862), comms. to Lev. 25:3, "'If ye walk in my ordinances; one might think that this denotes the fulfillment of the commandments, but when Scripture states, 'And ye shall keep my commandments and do them,' it is plain that in this passage there is mentioned the fulfillment of the commandments. How then must I explain 'If ye walk in my commandments?' As an admonition that you should study the Torah labouriously. See also Twersky who in explanation of the influence of Maim. on R. Moses of Coucy (Sefer Mitzvot Gadol) writes: "Study per se is 'practical' and need not anchor itself in an external and self-transcending view. The word of G-d has its own enduring relevance, its own continuity and integrity. If by studying divine law one is 'thinking G-d thoughts' eternity and temporality meet and there is no room for a present oriented slopism." Intro. to Maim. Code, p. 210.

⁹⁴"The Shulhan 'Aruk," p. 153.

⁹⁵Ibid., p. 154.

⁹⁶Ibid., p. 153, n. 35, end.

⁹⁷Sh.Ar., OH, 1:1. See also Rema's concluding guideline to OH: "But he that is of a merry heart hath a continuing feast" (Prov. 15:15), as a halakic basis for indulging in special merriment and festive repasts on the 14th day of the first month of Adar during a leap year, because of the continual miracles that recur in our times. In the same way that Rema concluded OH with an ethical Halaka (rather than simply on a pleasing note) so did Rema naturally begin OH with an ethical Halaka as well. See Ha-Kohen, Israel Meir, Mishna Berura, (Warsaw, 1892-98, rpt. New York: Edison, n.d.), OH, 697:1.[5] and Margolis, Mordechai, Sha'arei Teshuva, (Printed in std. eds. of Sh.Ar.), OH, ad loc. See also Nissim, Yitzchak, Responsa Yein ha-Tov, (Jerusalem, 1947), OH, No. 1, who discusses Rema's principle as a Halaka rather than simply a preamble. Specifically regarding whether this Halaka of Rema applies only during prayer or at other times as well.

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⁹⁸Guide, Part III, ch. lii; It is significant to note Rema's editing of the Guide excerpt, which indicates a somewhat different intention from Maim.

⁹⁹See Movsowitz, Mordekhai Solomon, Salmei Mordekhai, (Tel Aviv, 1973), comm. to Yad, Yesodei ha-Torah, i.

¹⁰⁰Aboth, ch. v; Ps. 57:9; Sh.Ar., OH, 1:1.

¹⁰¹Even Ganzfried, Solomon b. Joseph, Kitzur Shulchan Arukh, (Levov, 1860), whose purpose was to "abridge" the Shulchan Arukh, found it impossible to omit the Laws of Ethics and therefore included them in his condensed version despite Caro's omission of these Laws.

¹⁰²"The Shulhan 'Aruk," p. 142, n. 2.

¹⁰³Scholem, Gershom, Major Trends in Jewish Mysticism, (New York: Schocken Books, 1941), p. 95.

¹⁰⁴Yad, Mezuzah, vi, 13: "For if knowledge is not achieved, no right action and no correct opinion can be achieved." Guide, Part III, ch. xxxvi.

¹⁰⁵"You know that I have said that opinions do not last unless they are accompanied by actions that strengthen them, make them known, etc." Guide, Part II, ch. xxxi. See also Hartman's discussion how Halaka for the philosopher differs in quality than Halaka for others, Philos. Quest, pp. 126, 195: and Hartman's description of how the halakic Jew relates all his activities to G-d, ibid., p. 87. See also Guide, Part III, ch. li, "Know that all the practices of the worship, such as the reading of the Torah, prayer and the performance of other commandments, have only the end of training you to occupy yourself with His commandments, may He be exalted, but not with that which is other than He." See Twersky's discussion of this quote, Intro. to Maim. Code, pp. 394-7, and p. 511, n. 390.

¹⁰⁶See also Stern, op.cit., who distinguishes between commandments in which fulfilling the activity of the commandment leads one to greater wisdom yet does not in itself constitute wisdom and the first commandment in which the fulfillment of its activity itself involves wisdom and hence is described by Maim. as a pillar of wisdom (amud hokhma).

¹⁰⁷Twersky himself elaborates far more extensively on the influence of law upon philosophy than on the influence in the reverse direction of philosophy upon law throughout his discussion of reciprocity between the two disciplines.

¹⁰⁸Intro. to Maim. Code, pp. 298, 198.

¹⁰⁹Several instances which manifest this phenomenon will be mentioned briefly in the remaining portion of this Exordium and throughout the work we will document fully how the Rabbis employed a kind of "Rabbinic logic" in applying philosophical and metaphysical data to resolve halakic issues.

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¹¹⁰Flourished in beginning of the second century. Sifra 1, intro. See also Tosefta, Sanh.viiend, which records that Hillel the Elder had seven norms of interpretation. (Second half of the first century B.C.E.) Rules for interpretation in general, however, are older than the revelation of the Law at Sinai. See Lieberman, Saul, Hellenism in Jewish Palestine, (New York: Jewish Theological Seminary Pub., 1962).

¹¹¹Mishnat R. Eliezer, ed. Enelow, H.G., (New York, 1933).

¹¹²Guide, Part III, ch. lii.

¹¹³Ibid., Part I, ch. ii; See Hartman, loc.cit., p. 263, n. 55.

¹¹⁴Guide, Part III, ch. xxxvi.

¹¹⁵Hartman, loc.cit., p. 63, n. 55, based on Guide, Part III, chs. viii-xiv. See also Hartman, ibid., p. 93 for examples of how philosophic knowledge of the Hasid influences his activities in going from din to lifnim mi-shurat ha-din.

¹¹⁶Englehard, Yitzchak, "Mysticism and Law," Mishpat ha-Ivri Yearbook, (Jerusalem, 1979-80), Vols. VI, VII, pp. 12-15; Nachman of Bratslav, Likkutei Halakot, (Levov, 1859), Vol. II.

¹¹⁷Guide, Part III, ch. ii: "For although cognition of truth, enmity and hatred are removed and the infliction of harm by people on one another is abolished. It holds out this promise saying: 'And the wolf shall dwell with the lamb.' (Isa. 11:6)... Then it gives the reason for this saying that the cause of the abolition of these enemies, these discords, and these tyrannies, will be the knowledge that men will have concerning the true reality of the Deity. For it is said: They shall not hurt nor destroy in all My holy mountain; for the earth shall be full of the knowledge of the Lord, as the waters of the sea.

¹¹⁸Englehard, loc.cit.

¹¹⁹J.T. Peah 2:4, Hag. 1:8; Shemuel b. Meir - Rashbam, (printed in std. eds. of the Talmud), comm. to B.B. 130b, s.v. ad sheyomru; Heller, Yom Tov Lipmann b. Nathan ha-Levi, Tosafoth Yom Tov, (printed in most std. eds. of the Mishna), Ber. v, 4; Landau, Yehezkel, Nodah bi-Yehuda, (Prague, 1776), Mahadura Tinyana, YD, No. 161; Medini, Hayyim Hizkiyahu, Sedei Hemed, (Warsaw 1896, rpt. New York: Friedman, n.d.), Vol. I, Ma'arekhet Aleph, Nos. 95-97; T.E., Vol. IX, p. 252.

¹²⁰B.M. 59b.

¹²¹Engelhard, "Oven of Aknai," Mishpat ha-Ivri Yearbook, (Jerusalem, 1974), Vol. I, p. 49.

¹²²Azulai, Hayyim David (Hida), Yair Ozen, (Levorno, 1793), 1:54; Rabenu Tam, Sefer ha-Yashar, (Vienna, 1811), No. 619; Tosaf., Ber. 48a; Hezekia b. David da Silva, Peri Hadash, (printed in most

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std. eds. of Sh.Ar.), OH, 128; Reischer, Jacob, Shebut Ya'akov, (Halle, 1710), Vol. II, No. 198; Tosaf., A.Z. 33b; Asher b. Jehiel, Hilkot ha-Rosh, (printed in std. eds. of the Talmud), Git., ch. iv; T.E., Vol. IX, p. 254, nn. 186-88. Cf., Landau, op.cit.

¹²³ Chajes, Zevi Hirsch, "Torat Neviim," Darkhei Hora'ah, (Zolkiew, 1893), Part II, pp. 251-53.

¹²⁴ Ibid.

¹²⁵ Lieberman, Saul, ed., Introduction, Hilkot ha-Yerushalmi, (New York: Jewish Theological Seminary, 1947).

¹²⁶ Intro. to Maim. Code, p. 348, n. 48.

¹²⁷ Elon, Menachem, Ha-Mishpat Ha-Ivri, (Jerusalem: Magnes Press, 1981), Vol. I, p. 145, and n. 14.

¹²⁸ Sifri, (Venice, 1546), Beha'alotkha, 9:1; Rashi, Gen. 33:3

¹²⁹ Mishna, Eduy. 8:7.

¹³⁰ Tchernowitz, Hayyim (Rav Zair), Toledoth ha-Posekim: History of the Jewish Codes, Jubilee Committee, (New York, 1946), Vol. I, pp. 24-29.

¹³¹ The Talmud and Midrash which preceded it, "immersed Aggada and Halaka together in the same dough," ibid.

¹³² Mikilta, attributed to Rabbi Yishmael, (Amsterdam, 1712), Mishpatim, ch. xiii.

¹³³ Rav Zair, op.cit., p. 29, n. 9.

¹³⁴ Samuel Ha-Nagid, Introduction to the Talmud, "Halikot Olam, Joshua b. Joseph ha-Levi, (Venice, 1545).

¹³⁵ Erub. 13b.

¹³⁶ Our analysis of the talmudic incident is essentially similar to those of Joseph b. David of Pinczow, Rosh Yosef, (Amsterdam, 1707), B.M. 59b; Josef of Candia, Ta'alumoth Hokhma, (Bascilla, 1639), pp. 22ff; Maharal, Be'er ha-Golah, (Prague, 1598), Part IV. See also Aryeh Leib ha-Kohen Heller of Stry, Introduction, Ketzoth ha-Hoshen, (Lemberg, 1788-96): "And the Torah was given to us according to the determining of human reasoning even though it [the conclusions] may not be true... Therefore, one can invent a complete novelty provided that it can be truthfully proven according to human reason... so that truth may arise from the land, the truth being determined by agreement of the Sages according to human reason." See also Elon, op.cit., p. 231, n. 31.

¹³⁷ Yad, Kidush ha-Hodesh, xi, 1-4, xvii, 24; Guide, Part II ch. viii; Hartman, op.cit., pp. 126-27: [According to Maim.,] once a truth has been established through demonstrative reason, it ceases to have a logically significant relation with the one who established

it." See Twersky, Intro. to Maim. Code, p. 367, n. 33, and pp. 218-20.

¹³⁸Sedei Hemed, Ma'arekhet Aleph, No. 11; Igras, Joseph, Divrei Josef, (Levorno, 1742), No. 27; Yosef, Obadiah, Yabia Omer, (Jerusalem, 1938), No. 41, end: "Certainly we may rely on the wisdom of Elijah for he is a great sage. It is only on his prophesy which we do not rely [to determine Halaka]." Yosef cites Maim., Hida, Rashba, and Chajes, in support of his view; Margaliot, Reuben, ed., Introduction, Responsa from Heaven, Jacob of Marvege, (Jerusalem: Mossad ha-Rav Kook, 1957), pp. 3-41; "Bat Kol," T.E., Vol. V.

¹³⁹"Law and Mysticism," loc.cit.

¹⁴⁰Ta'alumoth Hokhma, loc.cit.

¹⁴¹Ber. 3a; B.M. 114 a-b.

¹⁴²Ha-Mishpat Ha-Ivri, Vol. I, p. 141, Vol. II, pp. 1215ff; Elon, "More About Research into Jewish Law," Modern Research in Law, ed. Jackson, (Jerusalem, 1980), pp. 94-95.

¹⁴³Moellin, Jacob of Mainz (Maharil), Responsa of Maharil, (Venice, 1549), No. 72.

¹⁴⁴Shab. 75b; Responsa of Maimonides, ed. Friman, A., (Jerusalem, Tel Aviv, 1934), No. 347. See also Tosaf., Sanh. 15b, s.v. ibaye lehu: And if you shall ask what is the practical difference? That which has passed has passed! Perhaps it is necessary to explain the verse." According to Tosaf., the understanding of the intention of the verse, even though its time has passed, is itself a practical difference. See supra, n. 93.

¹⁴⁵Jacobs, op.cit., p.x.

¹⁴⁶Ibid., pp. 345-46.

¹⁴⁷Grunfeld, Intro., Horeb, pp. xliv-xlv.

¹⁴⁸Pirkei de Rabbi Eliezer, attributed to Eliezer ha-Gadol b. Hyrcanus, (Constantinople, 1514), ch. xvi, end.

¹⁴⁹Sonnenfeld, Joseph Hayyim, Salmat Hayyim, (Jerusalem, 1938), Part I. No. 40.

¹⁵⁰See for example Vidal, Maggid Mishna, (printed in std. eds. of Yad), comm. to Shekhenim, xiv, 5, who comments on the law of dina debar metzra: "With regards to all this, it would not have been proper to command [about] details. For the Torah's commands apply at all times, in every period and under all circumstances, whereas man's characteristics and his behaviour vary depending upon the time and the individual." If this be the case regarding man's ethical actions, how much more difficult would it be to command details regarding man's religious thinking.

¹⁵¹"Does Jewish Tradition Recognize..." p. 68.

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¹⁵²This fact is quite possibly a modern day manifestation of: "They shall not find a clear Halaka or clear Mishna in any place." Shab. 139a.

¹⁵³Jacobs, op.cit., p. x.

¹⁵⁴Baer, Yitzchak, Yisrael ba-Ammim, (Jerusalem: Mossad Bialik, 1955), ch. vi and p. 39.

¹⁵⁵Ibid. pp. 103-4, p. 112 and p. 102.

¹⁵⁶See examples of laws of charity ibid., pp. 41-44; laws of purity, ibid., p. 52; laws of halipin (acquisition through symbolic exchange), ibid., p. 44, and many others.

¹⁵⁷Baer, (ibid., p. 44), shows that the evangelical preaching against the non-believers who worry today about tomorrow's food, in Sermon on the Mountain, originates in ancient Jewish teachings; so do the institutions of monasteries, asceticism, and Naziritism, ibid., p. 48. On stoic influence, see ibid., p. 37.

¹⁵⁸Even regarding philosophy of practice Baer writes, (ibid., p. 10): "The rationales of the laws are not, according to this, matters of Judaism exclusively for esoteric groups which do not decide [the law]." (Emphasis added.) Possibly Baer included philosophy in practice under the former category.

¹⁵⁹Hartman, op.cit., p. 26; Baer, op.cit., p. 103.

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¹Derekh Eretz Zuta, (printed in std. eds. of the Talmud), ch. i. Other sources have enumerated various totals consisting of different names. For a full bibliography and discussion on this topic see Higger, Michael, Mesekthoth Zeirot (Minor Tractates), (New York: Bloch Publishing, 1929), pp. 129-31; Higger, Tractate Derekh Erez. (New York: Debay Rabanan, 1935), p. 63, n. 49 and pp. 68-69, nn. 49-51.

²Ezek. 34:31; Rashi, ad loc., states that the term "men" is used in connection with the laws of impurity based on the text in Numb. 19:14, "When a 'man' dieth in a tent"; B.M. 114b.

³Nid. 70b. The wife of Lot became a pillar of salt in Gen. 19:26; Elisha restored the son of the Shunamite to life in I Kings 4:35. Rashi, Nid., ad loc., discusses whether the child conveyed impurity before or after his restoration to life.

⁴Presumably it could have been any of the nine cited in DEZ, loc.cit. This is implied in the query.

⁵R. Isserlein is also called Nesi ha-Nesim, Chief of Chiefs, see Mintz, Moses, Responsa of Moses Mintz, (Thessalonike: M. Nahman and D. Yisraligah, 1802), No. 12.

⁶Edels, Samuel Eliezer b. Judah ha-Levi, Maharsha, Hiddushei Maharsha, (printed in std. eds. of the Talmud), ad loc., explains that the talmudic authorities disagreed with the philosophers of their times concerning Creation and natural phenomena. Therefore the talmudic authorities considered three of the questions raised by Alexandrians (who were the followers of the philosophers) as, "nonsense."

⁷Lev. 20:10.

⁸Erub. 43a-b. Terumat ha-Deshen, (Warsaw: N. Schriftgisser, 1882), Pesakim u'Ketavim, Part II, No. 102, p. 22. Generally the questions in TD were posed by R. Isserlein himself and may have had practical implications. However, the question in our text involved an actual case presented to R. Isserlein for a decision. This fact emerges from Ha-Cohen, Malakhi, Yad Malakhi, (New York: Beit ha-Sefer, 1974), Part II, p. 203, who states that the Shakh (Ha-Cohen, Shabbetai b. Meir, printed in std. eds. of Sh.Ar.) stated that the questions in Part I of TD were provided by R. Isserlein himself whereas the questions Part II of TD were actual cases. See also Shakh, comm. to Sh.Ar., YD, 196:11.[20].

⁹Kesef Mishne, Yad, Mamrim, ii, 1. Compare Kesef Mishne's explanation on the "sealing of the Talmud" to that of Karelitz, Abraham Isaiah (Chazon Ish), Iggeroth, (Jerusalem: S. Greiniman, 1954-55), Part II, No. 24. This matter is also discussed by Rabinowitz, Abraham Hirsch, The Jewish Mind, (Jerusalem: Hillel Press, 1978),

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p. 208, n. 38; and Hartman, Philos. Quest, p. 125.

¹⁰The first passage in M.K. is treated in the ensuing discussion. The second passage in Kid. 13b, will be dealt with infra, Ch. vi. For a complete list of the halakic works which noted the variance between R. Isserlein's ruling and these two passages see Ozar ha-Posekim, ed. Herzog, Isaac ha-Levi, (Jerusalem, 1947, comm. to Sh.Ar., EE, 17:1.

¹¹Falcon, David, Bnei David, (Constantinople: Jonah b. Jacob, 1738), novellae to Yad, Yesodei ha-Torah, ix, 1.

¹²Other eds. of M.K. state, "who taught him Torah." See Rabinovicz, Raphaelo, ed. Dikdukei Soferim, (New York: M.P. Press, 1976), M.K. 26a.

¹³II Kings 2:12.

¹⁴Elijah constantly reappears from time to time commencing with saintly persons. How can this be the guiding instance for rending on a loss by death. See Soncino Talmud, M.K. 26a, p. 164, n.6.

¹⁵M.K., loc.cit.

¹⁶Maim., Comm. to the Mishna, Hul., vii,7.

¹⁷Yom 28b; Kid. 82a.

¹⁸II Kings 2:16.

¹⁹II Chron. 21:12; Rashi, Radak (Kimchi, David), and Malbim (Meir Loeb b. Jehiel Michael), Chron., ad loc. all state that the letter was written after Elijah's ascension. The comms. of Rashi, Radak, and Malbim are printed in most standard editions of the Bible.

²⁰Radak and Altschuler, David, Metzudat David, (printed in std. eds. of the Bible), Chron. ad loc., offer an alternate explanation. Elijah dictated the letter in a prophesy to one of the prophets. The prophet in turn, wrote the letter, not Elijah. See our discussion on this point infra, ch. iii.3.

²¹Attiah, Isaac b. Isaiah, Zera Yitzchak, (Leghorn: Yaakov Nunes Wise and Raphael Mildola, 1793), Pilpelet Kol She-hu, No. 11.

²²Shab. 30a.

²³See Menachem b. Solomon (Meiri), Beit ha-Bechira, ed. Sterlitz, S., (Jerusalem, 1937), comm. to M.K. loc.cit.: "One may only rend in the event of death and not for the living, even if one were to be certain of never seeing his master again. Although the Talmud asserts that Elisha rent despite Elijah's remaining alive the Talmud interjects that since Elisha saw Elijah no more Elijah were as dead to him, the secret of the Lord is on those who fear Him (Ps. 25:14)." It is plain from here that Meiri's usage of the psalmist's expression, "the secret," means that although he arrives at a similar conclusion to R. Attiah, he had great difficulty in doing so.

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¹II Kings 2:1

²I Kings 17:1

³We have cognomenced the author of this responsum anonymously since this responsum does not exist in any of the published material available to date on the Responsa of the Geonim and consequently we are unable to ascertain his correct identity. Tosaf., B.M. 114b, s.v. mahu, seem to be the sole source for the existence of this responsum.

⁴See infra., n. 7.

⁵I Chron. 8:27.

⁶I Chron. 17:3; the inference being that since Elijah was a priest it was incumbent upon her to first give him "challah" - priestly share of dough.

⁷The widow is a symbolic reference to Israel (Lam.1), who are in exile (Babylon) separated from her husband the Almighty. Elijah's request to the widow to prepare his cake before her own was not because as a priest he was entitled to challah, (supra, n. 6), but rather he was intimating that he would appear before the Messiah; Seder Elijahu Rabbah, ed. Friedmann, Meir (Ish Shalom), (Jerusalem: Wahrman books, 1969), ch. xviii, pp. 97,98. The words. "why are you so distressed over this matter," appear in Seder Elijah Zuta, ed. Friedmann, ibid., ch. xv, p. 199. Other eds. have: "They asked him: 'Give us a sign for what you have imparted.' He said to them: 'Is it not written, etc.'" Friedmann, SER, ibid. In his introduction to SER, Friedmann points out that this responsum is of great historical value in dating the authorship of SER. The style of language proves that this passage is not from the original SER, but from a later ed. This is evident by the fact that in all the narratives related in SER Elijah himself is the narrator. Here, however, rather than saying: "I came and stood before them," it says: "Elijah appeared and stood before them." Notwithstanding Friedmann's comment, other eds. of SER have the rendition "I came to them and stood before them and I said to them." See SER, ed. Salant, Uri Ze'ev, (Lemberg, 1870). On the problem of dating the authorship of SER, see Friedmann, Intro. to SER, and Zunz-Albeck, Derashot, cited in "Tanna De-Vei Eliyahu," Encyclopedia Judaica, Vol. XV.

⁸Tosaf., B.M. loc. cit. See also Asher b. Yehiel, Tosaf ha-Rosh, ed. Hirschler, M., (Jerusalem, 1959), B.M. ibid., who states explicitly that one must necessarily conclude that Elijah did not subscribe either to his refutation of Rabba b. Abbaha, B.M. ibid., or to his refutation of the Sages in SER, loc.cit. See also Chajes, Z.H., Novellae to Ta'an 3a, and Tosaf., Ta'an., ibid.

⁹See Chajes, B.M. loc.cit.; Jacob b. Samuel, Beit Ya'akov, (Dyhernfurth, 1696), No. 130; Rappaport, Judah ha-Kohen, Battei Kehuna, (Izmir, 1736), Beth Din. No. 23; see the solution of Spira, Nathan Nata, Matzoth Shimurim, (Venice, 1680), Isa. 41:27, and cf. to solutions of Radbaz and ha-Ari, infra, n. 28.

¹⁰Rashi, B.M., loc.cit.; Rashi's source seems to be PdRE, ch. xxix. Michaelson, Ezekiel Zevi, Tirosh ve-Yitzhar, (Lublin, 1936), No. 71, bibliographs PdRE, loc.cit., as a source for Elijah's identity with Phinehas. Friedmann, Intro. to SER, comments that Rashi probably preferred this source to PdRE ch. xlix where the Phinehas - Elijah identity is even more explicit because it appears as a generally accepted opinion in PdRE ch. xxix. Yalkut Shimoni, (std. eds.), Numb. 25, is also similar to Rashi. However, it is unlikely Yalk. ibid., was Rashi's source as the Yalk. was unknown to Rashi, according to Zunz - Albeck, Derashot, cited in "Yalkut," E.J., Vol. XVI.

¹¹Midrash Mishle, ed. Buber, (Wilna, 1893), Prov., ch. ix; Michaelson, op.cit.

¹²I Kings 17; Tosaf. B.M. 114b, s.v. amar.

¹³Radak, I Kings 17:17; Peretz b. Elijah of Corbeil, Tosaf. Rabbenu Peretz, (Jerusalem, 1969-70), B.M. loc.cit.; Guide, Part I, ch. xlii; Ashkenazi, Bezalel, Shitta Mekubbezet, (Amsterdam, 1721), B.M., loc.cit.; Landau, Ezekiel ha-Levi, Doresh Le-Zion, (Prague, 1817), p. 9.

¹⁴Nid. 70b.

¹⁵Kings, loc.cit., vs. 18,23.

¹⁶Luria, David Biur ha-Radal, comm. to PdRE, ch. xxxiii, [4], elaborates on this point.

¹⁷J.T. Suk., ch. v; Gen. R., ch. xcvi; Midrash Shocher Tov, ed. Buber, (Vilna 1891), ch. xxvi, 7.

¹⁸This remonstrance is not difficult. Scripture's reference to Amittai—"the son of truthfulness," could be referring to Jonah's mother, a non-Jewess herself a convert, who declared; "Now I know... that the word of the Lord in thy mouth is truth," I Kings 17:24; see Zohar, Ex. p. 197a, cited in Radal, PdRE, ch. xxxiii, [10]. Moreover, the son of truthfulness might refer to Jonah's stature as a prophet. He was also known as the person of truth because his prophecy concerning the restoration of Israel's borders under Jerobam: "from the entering of Hamath unto the sea of the plain" (II Kings 14:25), was explicitly fulfilled. See Jonah, (New York, Mesorah Pub., 1980), Art Scroll Series, p. 49, n. 1. Finally, it is feasible that Jonah's resurrection became proof that Elijah was the prophet of truth. Indeed that concept was imbedded in his own name. See "Overview," Jonah, Art Scroll. If Jonah's mother was herself a convert, Radbaz's next question is answered as well.

¹⁹Kings, loc.cit., v. 12.

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²⁰Tosaf., B.M. 114b, s.v. amar, based on the principle, "There is nothing that can stand before the duty of saving a life." Yom. 62a, 65b, and Shab. 132a.

²¹Pes. 64b; J.T. Shek. 6:3; J.T. Yom. 1:4; see also "Ein Somchin al ha-Nes," T.E., Vol. I, on the exposition of this principle.

²²I.e., since his own act would be inconsequential.

²³See Radak, I Kings 17:21.

²⁴Kings, loc.cit., v. 19.

²⁵The penalty of sacrificing outside the Temple, is subject to death by Divine Visitation (kareth) which was lifted because Elijah issued a special dispensation for the sake of sanctifying G-d's name. See also Sifri, Deut. 18:15, ed. Friedmann, (Vienna, 1864); Yeb. 9; Yad, Yesodei ha-Torah, ix,3. For exposition of this rule see "Hora'at Sha'ah," T.E., Vol. VIII. Although in this instance Elijah received a special dispensation by the word of G-d, as it is written: "I have done all these things at thy word" I Kings 18:36, (Rashi ad loc; J.T. Meg. 1:11; Numb. R., ch. xiv; Lev. R. ch. xxii; Lechem Mishne, comm. to Yad, Yesodei ha-Torah, ix,3), we are nevertheless enjoined to hearken his command even if he himself issued the dispensation independently. See Tosaf., Yeb. 90b; Tosaf., Sanh. 89b. Were Elijah to issue the dispensation because of such a receipt by the word of G-d, he would have been authorised to issue the dispensation not only temporarily but permanently as well, even if not for the purpose of sanctifying His name. See Tosaf., Sanh. ibid., Tosaf Yom Tov, Yeb. 90b, s.v. kemo. See also Chajes, Torat Neviim, ch. iii, who disagrees. However, Babad, Joseph, Minchat Hinnukh, (Levov, 1869), 51b, is of the opinion that according to Maim., Yad, Yesodei ha-Tora, loc.cit., a prophet is authorised to issue a special dispensation only if received by word of G-d. See also Tosaf. R. Peretz, B.M. 114b, s.v. amar who seems to accord with Minchat Hinnukh.

²⁶Kings, loc.cit., vs. 18, 24.

²⁷Ber. 19b, 20a; Naz. 47b, 48a; Meg. 36; B.K. 81a.

²⁸Therefore, Elijah preferred to allow Rabba b. Abbuha to believe he was actually a priest rather than simply the reincarnation of one. Responsa of Radbaz, (Venice, 1749), Part VI, No. 2203. Luriah, Isaac b. Solomon (ha-Ari), also resolves the contradiction of Elijah's different genealogy's by employing the theory of Elijah's metempsychosis. See Vital, Hayyim, "Sefer ha-Gilgulim," Ez Hayyim, (Jerusalem, 1912), chs. li-lij, and "Sha'ar ha-Gilgulim," Shemonah Sha'arim, (Jerusalem, 1863), Intro. 32.

²⁹Bleich, J. David, Contemporary Halakic Problems, (New York: Yeshiva Univ. Press, 1977), Vol. I, pp. 389-91.

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³⁰See Me'iri, Perush le-Sefer Tehilim, (Jerusalem, 1936), comm. to Ps. 119:26; Yom. 79a; Me'iri, Beit ha-Bechira, notes by Hirschenson, (Jerusalem, 1885), Yom. ibid.; See Rashi Yom., ibid., s.v. eis; Ber. 63a; Rashi, Ber. ibid.; See Rashi and Radak comms. to Ps. loc.cit., who interpret the verse: "Now when it is time to act in the Lord's cause, they have destroyed Thy teaching," in its reversed order: "They destroyed Thy teaching [i.e., Torah] because now is the time to act in the Lord's cause." Thus they applied the verse in its reversed order as pertaining to the phenomenon of the special dispensation.

³¹Meg. 27a. See Sofer, Moses, Responsa Hatam Sofer, (Pressbourg, 1885), OH, No. 98.

³²See Resp. Hatam Sofer, ibid.; Rashi, Sanh. 65b, s.v. ibara gavra; Freedman, H., notes to Soncino ed. Sanh. ibid., p. 446, nn. 8-9.

³³Michaelson, op.cit.

³⁴Elijah b. Moshe Hayyim, Midrash Eliyaha, (Levorno, 1862), Derush III. Michaelson proves that the righteous do not defile others from Ket. 103b: "On the day that Rabbi died priesthood ceased." (Although Michaelson employs the term "priesthood," in Ket. ibid., the term "holiness" is used.) Tosaf., Ket. ibid., s.v. otto relates that R. Hayyim the Priest said that he had been present during Rabbenu Tam's death, he would have occupied himself with the latter's burial.

³⁵Supra, n. 31. The accepted halakic ruling, however, accords with the opinion of R. Joshua b. levi who differs with R. Johanan, Meg., loc.cit., and maintains that a house of study is of a greater level of sanctity than a synagogue, and therefore a synagogue may be converted to a house of study.

³⁶II Kings 25:9.

³⁷Sanh. 65b; Ashkenazi, Zevi Hirsch, Responsa Hakham Zevi, (Amsterdam, 1712), No. 93 - this responsum will be discussed at length, supra, ch. vi.1; Halakot Gedolot, attributed to Yehudai Geon and/or Simeon Kayyara, (Vienna, 1811), 61a.

³⁸Although some of the commentators to SER attempted to resolve the question by suggesting that those Sages who argued that Elijah was a descendant of Leah were referring to Levi son of Leah, and those same Sages asked the sequent question whether Elijah was a priest. However, this reasoning is entirely erroneous. For the same excerpt in SER is quoted practically verbatim in Yalk., Kings, 208 with the following variation: "Once our Rabbis differed [concerning Elijah's ancestry]. There were those who said he was from Gad and those who said he was from Benjamin. He [Elijah] came and appeared before them saying: Rabbis, why do you argue. I am from the children of Rachel. They said to him. Are thou not a Priest? etc." Likewise, in Gen. R., ch. lxxi, 8, we find: "On one occasion our Rabbis debated about him, some maintaining that he belonged to Gad, others, to the tribe of Benjamin. Whereupon Elijah appeared to them saying: Rabbis I am a descendant of Rachel."

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And in Ex. R., ch. xl, 4, "R. Eliezar b. Pedat said: Elijah was a Jerusalmite, a member of the Chamber of the Hewn Stone, from the city of Judah." See comm. of Mirkin, Ex. R., *ibid.* Friedmann, Intro.

to SER, quotes other instances where Elijah's ancestry relates to Gad. This is also exact in the wording of some of the eds. of SER, i.e., ed. Salant, (Lemberg, 1870; Lublin, 1899, Warsaw, 1873), which have: "This one said that Elijah was a descendant of Leah and this one said that he was a descendant of Rachel. Elijah appeared to them saying: Rabbis, why do you quarrel? I am a descendant from none other than Rachel. [Thereupon] they asked [Elijah]: Are thou not a Priest?" The transition from singular to plural suggests that even those who advocated Elijah's descentance from Rachel asked whether Elijah was a priest. Our conclusion is also born out of Vital, Sefer ha-Gilgulim, ch. xxxv, p. 52. R. Vital identifies Elijah as a descendant of Gad the son of Leah and Benjamin the son of Rachel. It is quite surprising that Friedmann, who devoted an entire introductory chapter to a discourse on Elijah's ancestry, was unaware of this problem.

³⁹There is room to say that the Sages disputed Elijah's origin along two separate categories, one concerning his body and the other concerning his soul. Indeed we find R. Heida divulges that the Sages disputed Elijah's origin along two categories, one concerning his human feature, the other concerning his angel feature. See Heida, Samuel, Zikkukin de-Nura, comm. to SEZ (Prague, 1676), ch. xv. Heida's treatment of the said dispute will be elaborated upon *infra*, ch. ix.

⁴⁰J.T. Suk. 5:1; Yalk., Jonah 350; PdRE, ch. xxxiii; Radal, Intro. to PdRE, [2].

⁴¹See Zikkukin de-Nura, ch. xviii, and Israel b. Benjamin of Belzec, Yalkut Hadash, (Lublin, 1648,) No. 12, s.v. Elijah.

⁴²Mishnat Rabbi Eliezer, ch. viii. The Mishna reads: "Jonah was vouchsafed great stature in that he was equalled to Elijah. This is so because G-d commissioned Elijah, 'And Jehu the son of Nima [thou shalt annoint him to be King over Israel.]' (I Kings 19:160)]. Elijah [in turn] commissioned Elisha and Elisha assigned Jonah to annoint him [Jehu] as it is written 'And Elisha the prophet called one of the sons of the prophets [identified in Seder Olam Rabbah with Jonah]...and look out there for Jehu...then take the vial of oil, etc. [II Kings 9:1-4]. From here one learns that a man's agent is equivalent to himself [Ber. 34b]."

⁴³Although the Mishna relates that Jonah was equalled to Elijah because Jonah executed a perfunctory task initially commissioned to Elijah (see previous note), this is merely an indication of their equality, however, the Mishna does not disclose what the essence of their equality was based on.

⁴⁴See Midrash Shocher Tov, ch. xxvi, 7: "Jonah the son of the widow of Zaraphath entered Paradise during his lifetime and in his glory." And Yalk. Hadash, *loc.cit.*, no.3: "Jonah feared that since he was the son of Joseph, the people of Ninve would wage against him the war of Gog and Magog and subsequently he would be killed."

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⁴⁵ See supra n. 10, where we explained Rashi's preference in sourcing Elijah's priesthood to PdRE, ch. xxix, rather than to R. Eliezer's statement in PdRE, ch. xlvi, because the statement in ch. xxix is brought as a generally accepted opinion by the author of PdRE. Although the author of PdRE is unknown, its putative author is R. Eliezer b. Hyrcanus. See Radal, Intro. to PdRE; PdRE, ed. G. Friedlander, Intro., (London, 1911), p. xiii; Zunz-Albeck, ha-Derashot be-Yisrael, (Jerusalem: Mossad Bialik, 1947), pp. 134-40. Even if one were to contest R. Eliezer's authorship of PdRE thereby disqualifying him as the originator of the statement in ch. xxix, in ch. xlvi however, R. Eliezer is quoted explicitly as relating Elijah to Phinehas the priest.

⁴⁶ Albeck, Hanokh, ed. Genesis Rabbah (Berlin-Jer., 1902-1940), Vol. II, ch. lxxi, 8, p. 833, cites Yalk., Arukh (R. Nathan b. Yeheil), and Midrash ha-Gadol all of which retain "R. Eliezer." However, Albeck, cites other editions which retain "R. Eleazar." One might have pointed out the contradiction we have alighted upon in R. Eliezer as proof that the editions which retain R. Eliezer are erroneous and that "R. Eleazar" is the correct retention, thus solving the contradiction. However, according to this unique explanation of Radbaz, one can maintain all the editions as being correct as R. Eliezer could also have related Elijah's provenience to Benjamin despite his relating Elijah to Levi elsewhere.

⁴⁷ Ibn Habib, Levi (Maharalbach), Responsa of Maharalbach, Venice, 1565, No. 8.

⁴⁸ Elijah's reproach: "Rabbis, why are you so distressed over this matter," is indicative of a fervently heated debate; see supra, n. 7.

⁴⁹ See supra, n. 46.

⁵⁰ I Chron. 8:27; I Kings 17:1; Gen.R., ch. lxxi, 9; Yalk., Kings 208; see supra, n. 38.

⁵¹ "Whenever R. Eliezer is mentioned with no other surname, this refers to R. Eliezer b. Hyrcanus." Hyman, Aaron, Toledot Tannaim ve-Amoraim, (London, 1901-1911), Vol. I, p. 161. R. Eliezer studied under the tutelage of R. Johanan b. Zakkai upon the advice of Elijah who appeared to him. The Romans were well aware that R. Johanan b. Zakkai sought to reconcile peacefully with the Roman government and when R. Johanan wished to travel to Rome before the Emperor Vespasian, it was R. Eliezer and R. Joshua who bore his bed. R. Eliezer lived a long life and was already a Gadol hador (title given to an outstanding personality of his generation), at the age of forty during the time of the destruction of the Second Temple which he saw with his own eyes. He died after the Bar Cokhba revolt was defeated at Beitar by Emperor Hadrian in 132 BCE, 61 years after the destruction. Rashi, Git. 57a. Although R. Akiba was his disciple for 13 years prior to the Temple's destruction, we find that R. Akiba argues with R. Eliezer in 28 instances in the Mishna. It is due to their close comradeship that when R. Eliezer was placed under ban (B.M. 59b) it was R. Akiba who was chosen to deliver it to him. Hyman, TTA, ibid., pp. 161-167. On R. Eleazar referring to

R. Eleazar b. Shemoa, a disciple of R. Akiba, see Hyman, TTA, ibid., p. 205; Rashi, Shab. 19b, Erub. 38b, Yeb. 72b; Albeck, Gen. R., loc.cit., p. 833, n. 4. R. Eleazar b. Shemoa the priest was a disciple of R. Akiba (Yeb. 62). He argued with R. Eliezer (Tem. 3:3), and with R. Meir (Naz. 7:4, Git. 4:7, B.K. 1:4). He lived a long life (Meg. 27b, Sot. 39b), and died of martyrdom (Lam. R. ch. ii, Hyman, TTA, loc.cit., pp. 205-210).

⁵²Naz. 5a. Erub. 13b, states: "His name was not R. Meir but R. Nehorai." Hyman, TTA, Vol. III, p. 865, questions how R. Meir could have been the selfsame R. Nehorai, as we find R. Meir and R. Nehorai disputing one another in Kid, end and in Sanh. 98b, which proves that they must have been two separate Tannaim. Hyman resolves this by suggesting that R. Meir's contemporary was also called R. Nehorai, so in order to avoid confusing R. Meir with his contemporary they preferred not to call him Nehorai and therefore renamed him Meir thereby retaining the original meaning of his name (the Enlightner). In TTA, Vol. III, p. 918, Hyman identifies R. Meir's contemporary R. Nehorai as one of the Sages of Usha, a disciple of R. Joshua, in Naz. 5a. Hyman also identifies R. Nehorai as R. Nehemia, in Shab. 147b, a disciple of R. Akiba and colleague of R. Meir. However, this seems to contradict Hyman's above resolution since if R. Meir's contemporary R. Nehorai was the selfsame R. Nehemia, there would be no confusion with R. Meir. Unless perhaps, R. Nehemia was renamed for the same reason. According to other opinions in Shab. 147b, Erub. 23b, R. Nehorai was the selfsame R. Eleazar b. Arak, the most prominent of R. Johanan b. Zakkai's disciples. See TTA, ibid., and in Vol. I, p. 191. Each of these Tannaim who are identified with R. Nehorai were contemporaries of R. Akiba. On R. Akiba, a student of R. Joshua see Ber. 62b, J.T. Sanh. 1:2.

⁵³Although Hyman, TTA, Vol. III, p. 919, identifies R. Nehorai of our dispute as an Ammora no conclusive evidence exists whatsoever that such an Ammora even existed. Probably Hyman designated R. Nehorai as an Ammora because he thought that R. Eleazar refers to R. Eleazar b. Pedat the Ammora. However, Albeck identifies R. Eleazar as R. Eleazar b. Shemoa the Tanna — not to mention all the editions of Gen. R. which read R. Eliezar who unquestionably refers to R. Eliezar b. Hyrcanus the Tanna. See supra nn. 45, 46. The only possible evidence to classify this as an ammoraitic dispute is from R. Phillipi mentioned in the same passage in Gen. R. ibid., who challenges R. Nehorai. However, R. Phillipi does not appear anywhere else, see Albeck, op.cit., and Hyman, TTA, Vol. III, p. 1011. It is therefore inconclusive to identify R. Phillipi as either an Ammora or a Tanna.

^{53*}This account is a condensed version of various excerpts from Urbach, Ephraim, The Sages: Their Concepts and Beliefs, (Jerusalem: Magnes Press, 1979), ch. xvii, pp. 658-73. The incidents concerning R. Johanan ben Zakai are found in Avoth de-Rabbi Nathan, J.T., A.Z., and Sanh. 94, respectively and are cited in Sages, ibid., nn. 55, 61, 62.

⁵⁴B.B. 60b.

⁵⁵Sot. 11b, MS Munich, cited in Sages, loc.cit., n. 75.

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⁵⁶These facts are condensed from excerpts in Finkelstein, Louis, Akiva; Scholar, Saint and Martyr, (Cleveland: World Pub. Co., 1936/1962), pp. 266-71; as well as from Sages, loc.cit.

⁵⁷Urbach describes the controversy over Messiah's lineage as politically biased and a direct result of an increased Messianic consciousness. Sages, p. 662.

⁵⁸Sanh. 108a; Isa. 60:22.

⁵⁹Gen. 48,49; Deut. 33; see comms. on Gen. and Deut., ibid., ad.loc.

⁶⁰Rachel exemplified benevolence in transferring to Leah the signs that Jacob gave her, thus enabling Jacob to mistaken Leah for Rachel. Rashi, Gen. 29:25; Meg. 13b; B.B. 123a.

⁶¹The men of the tribe of Gad marched before all the armed men during the conquest of the Land. Rashi, Deut. 33:21. See also Epstein, Kalonymus Kalman of Cracow, Ma'or ve-Shemesh, (Breslau, 1842), comm on Gen. 49:19.

⁶²Jer. 31:14-17.

⁶³See Friedmann, Intro. to SER, p. 9; n. 1, who dates the origin of the concept of Messiah b. Joseph to the period subsequent to the split of David's Kingdom into the House of Judah and the House of Ephraim, specifically, the end of the Rule of Ephraim. Just as in Judah it was their belief that the Messiah would emerge from the House of David similarly the other tribes of the Northern Kingdom believed that the Messiah would emerge from the House of Joseph the son of Rachel. Only much later in the time of Bar Cokhba were both traditions accepted. However, it is entirely possible that the belief that the Messiah would emerge from the offspring of Rachel began already during the reign of Saul, much prior to the split in David's Kingdom. Saul, being the first King of Israel, and a descendant of Benjamin the son of Rachel was probably interpreted by many as an indication that the Ultimate King would also be a descendant of Rachel. Once David married Michal, the daughter of Saul, he united the two concepts. With the division of David's Kingdom during the reign of Jeroboam, arose a renewal of the ancient dispute among the tribes over who the greater Matriarch was and from whose offspring would the Messiah emerge. Hatam Sofer, Part VI, Resp. no. 98, explains that because of the split in the kingdom of David to the House of David and the House of Joseph, Messiah b. Joseph will eventually emerge from the House of Joseph and will fight the wars of G-d related in Zech. He will ultimately be killed thus enabling David to regain his complete Kingdom over the entire Israel. The death of Messiah son of Joseph will atone for the historic division of David's Kingdom. Schlesinger, Joseph Akiba, Tosafoth b. Yehiel, (Jerusalem, 1905), comm. to SER, loc.cit., even goes so far as to say that the different rites of liturgy of Ashkenaz and Sefard originated in the Matriarchs. For homology between versions of liturgy and the tribes, see Gombiner, Avraham Abele b. Hayyim ha-Levi, Magen Avraham, comm to Sh.Ar., OH, 68.

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Ashkenaz, being the older tradition originated in Rachel who was first in having a king (Saul) from her descent. Sefard, whose old tradition was revised by the saintly R. Isaac b. Solomon Luriah (ha-Ari) originated in Leah whose descendant David only later (after Saul) ascended the throne. Elijah's response that he descended from Rachel confirms this thesis as we find that Elijah himself prayed in the old Ashkenaz liturgy rite, in SER, ch.xxi: "Each day one should rise up early and say, 'Sovereign of all worlds, Not because of our righteous acts do we lay our supplications before thee etc.'" This liturgy is absent in the Sefardic rite. See Jacob ben Asher, Arba'ah Turim, (standard editions), OH, 41. It is noteworthy to mention that R. Luriah himself was a descendant of the House of David.

Tosaf. b. Yehiel, SER., ibid., comments that the episode of Elijah's baking instructions was an intimation that the virtue of observing the ordinance of tithes would effect the arrival of redemption.

⁶⁴J.T. Ta'an., ch.iv,5; Lam. R., ch. ii,2; Numb. 24:17; Urbach, loc.cit., n. 82.

⁶⁵Mishna, Sanh., ch. x,3; Sages, p. 673.

⁶⁶This is the conclusion of the Talmud, Erub. 43b and Maim., Yad, Melakhim, xii, 2 according to the opinion of Eybeschütz, Jonathan, Kereiti u-Fleti, (Vienna, 1819), end of Beit ha-Saphek. See also Levi Isaac of Berdichev, Kuntres mi-Gedolei ha-Hasidut, ed. Gutman M., (Belgorod, 1930-35), explanation of Ps. 95:7 according to Sanh. 98a. Although R. Akiba preceded the Ammora, R. Joshua b. Levi, nevertheless, R. Joshua's exposition of the verse in Isaiah was probably well known to the Tannaim.

⁶⁷Zech. 13:6; Mikhilta de-Rabbi Ishmael, Yitro, Messekhta de-baHodesh cited in Finkelstein, op.cit., p. 270 and in Urbach, op.cit., p. 674.

⁶⁸This does not accord with Maharsha, Sanh. 97b, who comments that R. Akiba applied the apocalyptic verse in Haggai 2:6 to Bar Cokhba upon calculation of the verse corresponding to a fixed date.

⁶⁹When R. Eliezer's pupils asked him "What shall a man do to save himself from the throes of Messiah's coming?" He replied: "Let him occupy himself with the study of Torah and with the practice of benevolence (Sanh. 98b)." The printed editions read Eleazar, however Dikdukei Soferim has R. Eliezer. In both cases our Tanna in SER is R. Eliezer or R. Eleazar (see supra, nn. 46,51), and hence this view is in accord with either Tanna.

⁷⁰"R. Eliezer said: If Israel repents, they will be redeemed. But if not they will not be redeemed. Said. R. Joshua to him: If they do not repent they will not be redeemed? Nay the Holy One Blessed be He will raise up for them a King whose decrees will be as brutal as those of Haman and Israel will repent (Sanh. 97b)." Urbach, loc.cit., p. 260, interprets this argument as a dispute over a Predetermined End. According to R. Eliezer, there is no fixed date for redemption as redemption is dependent solely upon repentance. If Israel does not repent there will be no redemption.

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Furthermore, Urbach contends, R. Eliezer was silent on R. Joshua's defiance from the apocalyptic verse in Dan. 12:7, which explicitly establishes a predetermined date for redemption, because it was precisely this view that R. Eliezer opposed.

Obviously such an interpretation of the dispute is far fetched. R. Eliezer could not possibly contest Daniel's prophecy. R. Eliezer was simply indicating that the hastening of Messiah before his "due time" is dependent upon repentance. If Israel does not repent they will not succeed in hastening the Messiah, nor in revoking the catastrophic events concurrent with the Messianic period. This is congruous to R. Eliezer's latter statement in Sanh. 98b, that the study of Torah and the performance of benevolent acts can save one from the throes of Messiah (see supra, n. 69). However, should Israel procrastinate their repentance until the "due time," then they will be redeemed irregardless of their repentance as prophesized by Daniel. The reason R. Eliezer was silent on R. Joshua's protest from Daniel was twofold: Firstly because Daniel's prophecy makes no mention of repentance and therefore is difficult to R. Joshua himself who asseverated Israel's forced repentance. Furthermore, Daniel's silence on repentance is supportive of R. Eliezer who maintains that should Israel procrastinate their repentance until the "due time" they will be redeemed irregardless of their repentance. Secondly, R. Eliezer indicated that Israel's voluntary repentance would succeed in hastening Messiah before his "due time." R. Joshua's defiance from Daniel was irrelevant to this premise. In R. Eliezer's view, the verse in Daniel is only relevant to the redemption at "due time" to which R. Eliezer was in accord, and hence, his silence. See also David b. Naftali Fraenkel, Korban Edah, (printed in std. eds. of J.T.), comm. to J.T., Ta'an., ch. i,1, s.v. istalik: "R. Eliezer agreed with R. Joshua concerning a predetermined end."

Moreover J.T. Ta'an., ibid., attributes the statement "The Holy One Blessed be He will raise up a King whose decrees will be as brutal as Haman's and Israel will repent" to R. Eliezer and not to R. Joshua. This clearly supports our thesis that R. Eliezer himself accepted Daniel's prophecy of a predetermined end. Should Israel voluntarily repent they would succeed in hastening Messiah before his "due time" and in revoking the catastrophic events concurrent with that period. However, should they procrastinate that repentance until the "due time" they would repent forcibly and suffer the throes of the Messianic period. Urbach, however, in order to buttress his insinuation that R. Eliezer did not believe in an independent "due time" alters our retentions of J.T., Ta'an., ibid., claiming R. Eliezer's statement to be in error, based on an inconclusive Tanhuma. See Sages, p. 996., n. 63.

⁷¹Tosaf. b. Yehiel, comm to SER, ch. xv, n. 2.

⁷²"All the Sages of R. Akiba's generation were of the opinion that Bar Cokhba was the Messiah." Maim., Yad, Melakhim, ch. xi,3.

⁷³R.H. 11a; Tosaf., R.H. ibid., s.v. beRosh.

⁷⁴Our presentation of the dispute concerning which month the Israelites are destined to be redeemed is diametrically opposite to Urbach (Sages, pp. 271-72). R. Eliezer maintained, according to

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Urbach, that the future redemption will occur in the month of Tishri, the first day of which was the anniversary of Creation, the Day of Judgement, and the Day of Repentance. That is to say, without repentance there will be no redemption. This is, in Urbach's view, consistent with R. Eliezer in Sanh. 92, who maintains that there is no Predetermined End - contrary to Daniel's prophecy. In supra, n. 70, we demonstrated that it is far fetched to suggest that R. Eliezer contested Daniel's prognostication of a Predetermined End. Rather, the redemption of Tishri, the anniversary of Creation, signifies the natural order of the world, which G-d bestowed upon this universe during Creation. Contrary to Urbach, it is precisely a fixed date for redemption evolving along its natural course which R. Eliezer signified by the Tishri redemption.

R. Joshua maintained, in Urbach's opinion, that just as the redemption from Egypt occurred on a date fixed at the Covenant of Pieces, so also would it be in the coming redemption. Urbach, however, ignores the fact that whether the Egyptian redemption actually occurred on a fixed date depends on the interpretation of this verse in "Covenant of Pieces": "They will be a stranger in a strange land, and will serve them and afflict them 400 years" (Gen. 15:13). If the 400 year period refers to the former part of the verse, i.e. that they will be strangers for a period of 400 years, then the Egyptian redemption occurred on a fixed date (see Nahmanides, comm. to Gen, ibid.). If, however, the 400 year period refers to the latter part of the verse, i.e., that the enslavement and affliction will be sustained for 400 years - we find in fact that their actual enslavement was sustained for only 210 years (Rashi, Gen. 42:2; Yalk, Bo, 190; Malbim, beShalach, beginning), in which case the Egyptian redemption transpired before its fixed date. The Pentateuchal commentators are divided on this issue and there is not the slightest indication in R. Joshua's statement that he held the former view, as Urbach contends, over the latter. In fact, the opposite seems more plausible. As we have demonstrated (supra, n. 70), that R. Eliezer himself conceived of a Predetermined End, it is illogical to assume that R. Joshua adduced the Nisan redemption as proof of a fixed date in defial of R. Eliezer. Rather it is more reasonable to assume that R. Joshua held the latter view, that the Nisan redemption of Egypt ensued prematurely, prior to its fixed date. According to R. Joshua this was probably just another miraculous incident among many of which were characteristic of the supernatural redemption of Nisan. It is to this redemption that R. Joshua likens the future redemption.

⁷⁵According to most retentions of SER which have R. Eliezer. See supra, n. 46.

⁷⁶See supra, n. 52

⁷⁷Although R. Eliezer maintains that a voluntary redemption is capable of hastening the Messiah and even revoking the catastrophic events concurrent with the Messianic Era (see supra nn. 69,70), he is silent to whether it is capable of procuring Messiah prior to Elijah. Elijah's emergence from Rachel suggests this minimal consistency. Accordingly, the ability of Israel's voluntary repentance to hasten Messiah and revoke the Messianic throes is also part of the natural process signified by the Tishri redemption (see supra, n. 74).

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The view that Elijah's advent must precede even the hastened arrival of Messiah is maintained by Gunzberg, Aryeh Leib b. Asher, Turei Even, (Metz, 1781), Novellae to R.H. 11b.

⁷⁸Maim., Yad, Melakhim, ch. xii, 2, initially asserts unequivocally that Elijah will arrive at the onset of the Messianic Era. However, subsequently, he continues to say that only some Sages opine that Elijah will antecede Messiah. Eybeschütz, Kereti u-Fleti (supra n. 66), resolves this difficulty by postulating that in the event of Messiah's early arrival, he will not be preceded by Elijah. R. Eybeschütz, however, is forced to concede that the Talmud in Erub. 43b, reversed its original position. It is possible that R. Eliezer maintained that the Talmud, Erub. ibid, did not reverse its original position and that the Talmud's conclusion is consistent with its original position in that Elijah will precede the Messiah even in the event of a premature redemption.

⁷⁹This explanation of R. Nehorai's position accords with Eybeschütz's explication of Maim. See supra, nn. 66, 78.

⁸⁰See Sanh. 97b.

⁸¹Urbach, Sages p. 899, n. 82 states: "there is not the slightest evidence that Bar Cokhba claimed to be related to the house of David." However, Maim, Yad, Melakhim, ch. xi, 1-2, implicates that Bar Cokhba was of the House of David. Kasher, Menachem in ha-Tekufa ha-Gedolah, ch. xxi, postulates that R. Akiba believed Bar Cokhba to be Messiah b. Joseph. This seems to be Rashi's view as well. See Sanh. 93b, Rashi s.v. Ben Koziba. See also Arieli, Gershon (Jerusalem, 1958), comm to Maim., Yad, Melakhim, ch. xi, 3.

⁸²See Tosaf Yom Tov, comm. to Mishna, Ma'as Sh.

⁸³See Maim., Yad, Melakhim, xi, 3; supra, n. 64.

⁸⁴Ex. 3:9.

⁸⁵I Sam. 10:6,9.

⁸⁶Responsa Hatam Sofer, Likkutim, Vol. VI, No. 98.

⁸⁷I Sam. 10:9.

⁸⁸Sanh. 93b. Seder 'Olam Rabbah, however, (according to the reading of Dei Rossi), affirms the length of Bar Cokhba's reign as three and a half years. It is possible that the last year marking the disastrous siege of Bethar was omitted in the talmudic statement from the length of his "reign." See Freedman, comm. to Sanh., Soncino ed., p. 627, n. 4; and Halevi, L, Dorot ha-Rishonim, (Jerusalem, 1919), 1:5, p. 614.

⁸⁹J.T. Ta'an, 4:5; also recorded fully in Lam. R., ch. ii, 4, and briefly in Yalk., Ha'azinu, 94b.

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⁹⁰Zech. 11:17.

⁹¹Yalk. and Lam. R., loc.cit., have a "a Goth," instead of a "Cuthean." An alternate account is recorded in Sanh. 93b: "Bar Cokhba reigned for two and half years and said to the Rabbis, 'I am the Messiah.' They answered, 'Of Messiah it is written that he smells and judges [Isa. 11:2] let us see whether he [Bar Cokhba] is able to do so.' When they saw that he was unable to judge by the scent they slew him." Kesef Mishne, comm. to Yad, Melakhim, ch. xi,³ and David Abi Zimra, Radbaz, (printed in std. eds. of Yad), comm. to Yad, ibid., in his second explanation, both contend that the Babylonian Talmud account and the Jerusalem Talmud account are variant sources which discord one another. Lechem Mishne, comm. to Yad, ibid., comments that the Babylonian Talmud records a controversy between R. Alexandri and Rabba on the exposition of the verse in Isa. 11:3 in the passage immediately preceding the Bar Cokhba account. The Jerusalem Talmud account follows R. Alexandri's exposition whereas the Babylonian Talmud account accords with Rabba.

Margaliot, however, ingeniously merges the two accounts by procuring that Bar Cokhba's suspicion of R. Eleazar of Modiim resulted in Bar Cokhba's death (as related in the J.T. account). In that Bar Cokhba should have realised by "judging through the scent" (as related in B.T. account) that there was no reason to suspect R. Eleazar of Modiim. His failure to do so caused him to be slain. See Margaliot R., Margaliot ha-Yam, (Jerusalem: Mossad ha-Rav Kook, 1971), p. 144.

⁹²I Sam. 18:10; see Rashi and Radak comms, ad.loc.

⁹³It is no mere coincidence that Bar Cokhba's reign of two and half years lasted exactly as long as Saul's reign of two and half years. See Ta'an. 5b; Seder Olam Rabbah; Margaliot ha-Yam, Sanh., loc.cit.

In order to establish conclusively that Bar Cokhba matched Hatam Sofer's depiction of the Messiah it is necessary to confirm whether Bar Cokhba possessed the Divine spirit intrinsic to Redeemers. Here one must ask whether the "regal spirit and Divine overflow" which Hatam Sofer cites from Scripture in relation to Saul (see citation in main text: "Consequent to [Saul's] annointment, the spirit of rulership and Divine inspiration descended upon him etc.," and supra, n. 85), was particular only to Saul, or rather Scripture merely related this of Saul, since Saul was the first king but in actuality he shared this trait with all virtuous redeemers. Maim. seems to contradict himself regarding this issue. In Yad, Yesodei ha-Torah, vii,¹ Maim. discusses the various attributes necessary for attaining prophecy. He points to Saul as a paragon whose virtues enables him to merit the Divine spirit rest upon him and whose soul mingled with the angels called ishim, citing I Sam. 10:6, "and thou shalt prophesy with them and shall be turned to another man." From here it is clear that this trait was particular only to Saul as one may not assume that other redeemers by virtue of their rulership mingled with the angels. However, in Guide, Part II, ch. xlv, Maim. discusses the first degree of prophesy whereby an individual receives Divine help that activates him to an important action, such as the deliverance of a community. Maim. categorically states, thereon, that whenever Scripture relates "the spirit of the Lord rested upon him,"

this degree refers to all Judges and all the virtuous Messiahs of Israel. He continues to illustrate by pointing to Jephthah, Samson, Amazia and Saul as examples of this, citing in Saul's case I Sam. 11:6, "And the spirit of G-d came unto Saul when he heard those tidings." Here it is clear that this trait was not particular to Saul as this is the degree of all Judges and all virtuous Messiahs! The resolution of this seeming contradiction resides in the fact that in the Guide, when speaking of Saul's prophesy Maim. cites I Sam. 11:6, in reference to the spirit of regal power, which is the first degree of prophesy whereby an individual receives Divine help that activates him to an important action - such as delivery of a community. This degree is shared by all redeemers by virtue of their rulership alone. (See Radak and Targum Onkelos, [printed in std. eds. of Bible], comms. to Sam. ibid.) In Yad, Yesodei ha-Torah, however, when speaking of Saul's prophesy Maim. cites I Sam. 10:6 in reference to the second degree of prophesy of actually prophesizing by speaking with angels (compare to Yad, Yesodei Torah ii,7). This second degree of prophesy was particular to Saul and unattainable by virtue of his rulership alone. See Abrabanel, Isaac b. Judah, Abrabanel: Commentary to the Prophets (Jerusalem: Torah ve-Da'at Pub., 1955), Sam, loc.cit., who relates I Sam. 11:6 to Guide, loc.cit., as referring to Saul's regal spirit, while in I Sam. 10:6, Abrabanel discusses Saul's prophetic spirit. Rashi on I Sam: 10:6 also makes a distinction between Saul's regal spirit in v.9 and his prophetic spirit in v.6. See also Malbim, Sam., ibid., ad loc. Therefore one can safely assume that Bar Cokhba, by virtue of his rulership alone at least attained the regal spirit which would have accrued automatically upon his accession.

⁹⁴Yad, Melakhim, xi,3.

⁹⁵This is precisely the point of contention between Maim. and Rabad, in Yad, Melakhim, ch. xi,3. Maim. states: "Do not think that King Messiah will have to perform signs and wonders, bring anything new into being, or do similar things. It is not so." Rabad, refutes this on the basis of the Babylonian Talmud which relates Bar Cokhba was killed because he was unable to judge by the scent (see supra, n. 91). The phenomenon of judging by the scent is certainly a marvel. Kesef Mishne, Yad, ibid. resolves that Maim. follows the Jerusalem Talmud account whereas Rabad follows the Babylonian account (supra, n. 91). Ibn Gaon Shem Tov b. Avraham, Migdal Oz, (printed in std. eds. of Yad), comm. to Yad, ibid., explains that Rabad's refutation is invalid, as whether or not Messiah should be expected to judge by the scent was a matter of disputation among the Sages. Margaliot masterfully merges the two accounts procuring that since Bar Cokhba was unable to judge by the scent, he erroneously suspected R. Eleazar of betrayal and consequently sinned in killing him resulting in his own death. See supra, n. 91, end.

Rabad's contention could be explained as follows: Rabad opined that the phenomenon of judging by the scent must necessarily preclude one's propensity to sin. (See Maharsha's explanation of moreach ve-dayan, Sanh. ibid.) Were Bar Cokhba able to judge by the scent he would have realised there were no grounds for suspecting R. Eleazar, thereby enabling him to avert his sin. Since the propensity

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to sin is a natural inclination, the precluding of this inclination is beyond the natural. Hence the entire phenomenon of judging by the scent is a sign and a wonder.

Maim., as R. Margalioth claims, agrees with the B.T. account that Messiah must be able to judge by the scent. However, this phenomenon does not preclude the Messiah's propensity to sin. Just as Moses and Saul's ability to prophesize did not avert their propensity to sin, similarly Bar Cokhba's ability to judge by the scent could not avert his sin of suspecting and killing R. Eleazar. Hence the phenomenon of judging by the scent is a natural phenomenon and is neither a sign nor a wonder.

Alternatively, developing Migdal Oz's theory, one might posit that Maim. and Rabad disagreed over the meaning of "judging by the scent" itself. Maim. maintained that this refers to the spirit of regal power which is neither a sign nor a wonder. Rabad however, contends that this refers to the prophetic spirit which is a marvel. See supra n. 93.

Maim., in Pe'er Hador, ed. Tamma, Mordechai, (Levov, 1859), Resp. no. 225, confirms Margalioth's theory that he followed the B.T. account. However, the responsum itself is in complete contradiction to Yad, loc.cit. See also Bornstein, Avraham Joshua Herschel, Sanhedri Ketana, (Piotrkow, 1903), comm. to Sanh., loc.cit., who accords with Rabad that the phenomenon of judging by the scent is wondrous.

Finally one could explain that Maim. and Rabad argued over whether the Messiah is a prophet. According to Maim., Messiah is not a prophet and consequently has no need to show signs or wonders to certify his prophesy. According to Rabad, Messiah is at least a prophet and therefore must show signs to certify himself as a true prophet. See Rashi, Sanh. 89b, s.v. hai gavra.

⁹⁶Rabad, loc.cit., who maintains that the divine overflow conferred upon the Messiah necessarily precludes Messiah's propensity to sin (see supra, n. 95), must identify this overflow of a different type than that of Moses and Saul. Possibly this is intimated by Hatam Sofer, "the spirit of Messiah which is hidden on high and preserved for his coming," cited supra, in main text.

⁹⁷Sanh. 98b, 99a.

⁹⁸Rashi, Sanh. 99a, s.v. ein. Cf., however, Rashi, Sanh. 98b, s.v. ein. Possibly the difference between these two Rashis is attributable to the slight variation in Hillel's statement from ein Massiah le-Yisroel (Sanh. 98b), to ein Lahem Massiah le-Yisroel (Sanh. 99a). Rashi implies from the word Lahem (to them) that Messiah will not materialise from them (i.e., Yisroel) but from G-d. The reason being, as Rashi explains on Sanh. 98b, that Hezekia was the most suited human candidate likely to become the Messiah yet he did not succeed. Consequently no human will redeem them (Yisroel) except the Almighty Himself. Although certain eds. of Sanh. 98b, have ein lahem le-Yisroel, it is clear from Rashi's entry caption that he did not have the ed. of lahem.

⁹⁹R. Isserlein also used this source as proof that Elijah heeds all commandments in his responsum in TD cited supra, ch. ii.

¹⁰⁰The source for this custom is Sefer ha-Zohar, ed. Margaliot, R., 5th ed., (Jerusalem: Mossad ha-Rav Kook, 1970), Vol. I, Lech Lecho; and PdRE, ch. xxviii, end. Lorberbaum, (Jacob of Lissa, Siddur Derekh ha-Hayyim, [Berlin, 1860]), and Werdiger, (Jacob, Siddur Tzeluta [Zelota] de-Avraham [n.p., 1957-62], in accordance with the usage of Landau, Abraham, "Service of the circumcision), bring the kabbalistic liturgical comms. of Toldot Ya'akov and Horowitz, Isaac b. Abraham ha-Levi, Siddur ha-Sheleah who maintain that if this statement is not proclaimed, Elijah will not participate.

¹⁰¹Tur, OH 295, end, comments: "It is stated in Erub., 'Israel has long ago been assured that Elijah would not come either on the Sabbath eves or on festival eves owing to the people's pre-occupation." Rashi thereon explains that people are preoccupied with their preparations for the following Sabbath or festival which must be completed before the holy day beings. (His arrival and the subsequent bustle and welcome would intervene with these preparations [comm. by Epstein to Erub. ibid., Soncino ed. of the Talmud]. Tur continues: "Therefore, since the Sabbath has departed and Elijah is now permitted to come, we pray that Elijah should come, bringing tidings of redemption [with him]." Rema, Haggahot to Sh.Ar., OH, loc.cit., comments; "It is customary to remember Elijah on the outgoing of the Sabbath and we pray that he will come and bring with him tidings of redemption." Weil, Jacob, in his Torat Shabbat, (Karlsruhe, 1840), comm. to Sh.Ar., ibid., contests this reason and offers alternative explanations, see thereon.

¹⁰²B.B. 121b; Midrash Shemuel, ed. Buber, (Cracow, 1893), ch. viii; Yalk, Kings, loc.cit.

¹⁰³Shab. 30a.

¹⁰⁴See Tosaf, Erub. 45b, s.v. leima; Ishbili, Yom Tov (Ritba), Hiddushei ha-Ritba, (Jerusalem: Pe'er, 1969), novellae to Erub. ibid.; Di Trani, Isaiah b. Mali the Elder, Tosaf. Rid, (New York: Saphrograph Co., 1953), Erub., ibid.

¹⁰⁵Shab. 104a; Yad, Yesodei ha-Torah, ix,1; Rashi, Shab. 108a, s.v. mai; A.Z. 26a; Yeb. 102a; Maim., Comm. to the Mishna, Eduy., ch. viii,7.

¹⁰⁶This is the opinion of R. Joshua, B.M. 59b. See, however, Erub.13b. and J.T. Yeb., ch. i, end, where a halakic ruling was rendered based on a Heavenly Voice. For different explanations reconciling this to R. Joshua's opinion in B.M., loc.cit., see "Bat Kol," T.E., Vol. V.

¹⁰⁷Literally, a Heavenly Echo, so called because the Heavenly Voice itself is not audible, only the sound of its reflection is heard. See Tosaf., Sanh. 11a, s.v. bat kol; Guide, Part II, ch. xlii; Ha-Levi, Judah, Kuzari, (New York: Schocken Books, 1964), Part III, chs. xi, xli, lxxiii; Nahmanides, Perush al ha-Torah, ed. Chavel, C., (Jerusalem: Mossad ha-Rav Kook, 1960), comm. to Ex. 28:30; Chajes, Z.H., Responsa of Maharaz Chajes, (Zolkiew, 1849-50), Part II, No. 6 - all of whom are of the opinion that the Heavenly Echo continued even after the cessation of the Heavenly Spirit during the Second Temple (Yom. 21b). For a comparison of the difference between

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the phenomena of a Heavenly Echo and Prophecy see Alfasi, Isaac (Rif), Responsa of Rif, (Levorno, 1781), No. 1, and Tosaf. Yom Tov, Mishna, Yeb., ch. xvii,6.

¹⁰⁸I Kings 17:1; Mishna, Eduy., ch. viii,1: "R. Simeon said, [Elijah will come] to conciliate disputations." Tosaf Yom Tov, Eduy. ibid., confirms this Mishna as the source of the epithet that Teku (lit., Let it stand, i.e., the question remains undecided) in the Talmud is an acrostic for, "the Tishbite will resolve etc." See also Horowitz, Isaiah, Shenei Luchot ha-Brit, (Warsaw, 1930), Section on the Oral Law; Azulai Hayyim David (Hida), Mar'it ha-Eiyin, (Levorno, 1804), Yeb. 96a; Emden, Jacob (Yavez), Lechem Shamayim, (Muncasz, 1905), Eduy. end; and Arukh ha-Shalem, ed. Kohut, H., (Vienna-New York, 1878-92), s.v. Teku.

¹⁰⁹See Habib, Joseph, Nimmukei Yosef, (printed in std. eds. of Talmud), comm. to Rif, B.M. ch. ix, s.v. gamar Micha Micha and Rashba cited in Shitta Mekubbezet, B.M. 114a. See also Chajes, Torat Neviim ch. ii, and the appendix to his Darkhei Hora'ah, who contends that when Elijah functions in the capacity of Prophet we may rely on his prophesy in determining doubtful questions in reality. However, in determining doubtful questions in Din (law) we may rely solely upon the wisdom he demonstrates in his capacity of Sage. See also Rosanes, Judah Mishneh le-Melekh, (printed in std. eds. of Yad), comm. to Yad, Ishut, ix,6.

¹¹⁰B.M. 114b; Erub. 43a; Hatam Sofer, loc.cit.

¹¹¹II Kings 11:1,11.

¹¹²Ber. 25b.

¹¹³Kluger quotes Terumat ha-Deshen in his responsum.

¹¹⁴B.M. 114b; in which case the presence of a dead corpse would prevent Elijah from attending the circumcision lest he become defiled.

¹¹⁵Nid. 61b.

¹¹⁶Kluger quotes Maharil (i.e., Jacob b. Moses Moellin) rather than Isserlein, which he copied exactly from Samuel b. Uri Shraga Phoebus, Beit Shemuel, (printed in std. eds. of Sh.Ar.), comm. to Sh.Ar., EE, 17.[II]. However Maharil in Beit Shemuel appears as a misprint. The Hebrew aleph in Maharil (aleph for Isserlein) became erroneously transcribed to lamed rendering Maharil (Moellin). Maharil does not discuss this issue.

¹¹⁷These words are italicized because they do not appear in Isserlein's responsum and is Kluger's own interpretation. The interpretation is significant as Isserlein explicitly states that Elijah does observe commandments. This difficulty was raised supra ch. ii, and will be discussed further on.

¹¹⁸Shab. 32.

¹¹⁹Suk. 25a; Kluger continues: "granted the principle that one who is engaged in one religious duty is free from any other, applies only to positive commandments and not to be free of negative commandments [i.e., defilement, the prohibition of] nonetheless, that is only if he is obligated in the negative commandment when he can fulfill both commandments [i.e., positive and negative]. However, when he is not obligated [i.e., Elijah]; then, a negative commandment is no better than a positive one. And when he is engaged in one religious duty [i.e., circumcision] he is free from the other [i.e., defilement] which he fulfills as one who is not obligated yet fulfills willfully.

¹²⁰Kluger, Tuv Ta'am ve-Da'at, 3rd ed., (Podgorze, 1900), Part II, YD, Hilkhot Aveilut (Laws of Mourning), No. 234.

¹²¹II Chron. 21:12; Levi b. Gershom (Gersonides), Perush ha-Ralbag, (printed in standard editions of the Bible), commentary to I Kings 17:1.

¹²²See Seder Olam Rabbah, ed. Ratner, Dov Ber, (Vilna, 1894), ch. xvii; Rashi and Radak comms. to Chron., ibid.

¹²³Nahmanides, comm. to Lev. 18:4.

¹²⁴Nahmanides, Writings and Discourses (Kitvei Ramban), ed. Chavel, (Jerusalem: Mossad ha-Rav Kook, 1964), Vol. II, "Gate of Reward," p. 304.

¹²⁵Radak, comm. to II Kings 2:1,11, and Mal. 3:23.

¹²⁶Mal., ibid.

¹²⁷Abudarham ha-Shalem, (Jerusalem, according to the Warsaw ed. of 1878); Abudarham, (Piotrkow, 1930).

¹²⁸Chron., loc.cit.

¹²⁹Radak, comm. to II Chron. 21:2.

¹³⁰It is quite remarkable that all opinions are in agreement that Elijah's letter could only have been written in human form. Yet, although Elijah has a long record of being a scribe (viz., Lev. R., ch. xxxiv; Ruth R., ch. v; Kid. 70b; Zohar Hadash, ed. Margaliot, 2nd ed. [Jerusalem: Mossad ha-Rav Kook, 1978], p. 29; Ginzberg "Index," Legends, Vol. VII, s.v. Elijah "scribe"), not one opinion utilizes Elijah's profession of scribe as proof of Elijah's existence in human form. Consequently we must conclude that Elijah's vocation in Scripture can only be interpreted as allegorical. This conclusion seems to be born out from Radak himself in his comm. to Mal. 3:16, "'A book of remembrance was written before Him,' This is an allegory, employing colloquialism, as in angels writing a book of remembrance. I.e., there is no forgetfulness [before Him]." See Hirsch, Samson Raphael, "Phinehas-Elijah," Judaism Eternal, ed. Grunfeld I., (London: Soncino Press, 1959), Vol. II, p. 299, on the allegorical significance of Elijah's vocation as chronicler.

III. NOTES

¹³¹Gen. 5:24; Arama, Akedat Yitzchak, (Salonika, 1522), ch. cv.

¹³²Suk. 5a.

¹³³SOR, ch. i, end; See Ratner, SOR, ibid., n. 53 and Ratner's note from ARN. See also Friedmann, "Intro. to SER," p. 16: "the plain meaning of 'and is still existing' means in body and in soul." Cf. also, Pesikta, ed. Friedmann, (Vienna, 1880), ch. ix, 76a, Lev. R., ch. xxvii, 4; Midrash Tanhuma, ed. Buber, (Wilna, 1885), ch. iii, 90; Tanh., Emor ix; all of which retain Hai ve-Kayyam = alive and existing. The identical capitulation of R. Jose in SOR, is recorded anonymously in B.B. 121b.

¹³⁴SOR, ch. xvii.

¹³⁵Friedmann, "Intro. to SER," p. 16; although Ratner, SOR loc.cit., n. 12, interprets nignaz as referring both to body and soul, and Ginzberg, Legends, Vol. VI, p. 323, n. 32, remarks: "Friedmann's statement that the old sources [i.e., SOR], refer to the transition of Elijah's soul but not to his body, is a rationalistic conception entirely alien to the old sources," nevertheless, Friedmann's presumption is entirely convincing and seems the only possible way to resolve R. Jose's usage of the term nignaz to its classical connotation.

¹³⁶Shab. 88b; B.M. 86b.

¹³⁷Suk., loc.cit.; Maharsha, B.M., loc.cit.; see also infra, n. 161.

¹³⁸It is recorded in Pesikta Rabbati, ch. v, p. 15,16 and appears also in Midrash Mishle, and Numb. R.: "R. Tanhum b. Abbah expounded, 'Who hath ascended up to Heaven' [Prov. 30:4], [this refers to] Elijah for it is written 'And Elijah went up by a whirlwind into heaven' [II Kings 2:11]." Friedmann posits (Intro. to SER, p. 18), that R. Tanhum's opinion is commensurate with the opinion that Elijah lives uniformly in body and soul — since the same proverbial verse is expounded upon in another opinion as referring to Moses. One must conclude, says Friedmann, that just as Moses ascended in body so did Elijah. Friedmann's reasoning however, is invalidated by the opinion that Moses' ascent to heaven was also in form of soul. This point will be discussed further in chapter iii.4.

¹³⁹Radak, II Kings 2:1.

¹⁴⁰R. Jose's statement in Mekhilta, ba-Hodesh, ch. iv: "Moses and Elijah never ascended on high etc.," is also given to interpretation according to each remonstrance of R. Jose in Suk.

¹⁴¹Supra, n. 125.

¹⁴²Supra, n. 123 and Nach., Gen. 2:17.

¹⁴³Responsa Hatam Sofer, Likkutim, Vol. VI, No. 104. Sofer devoted this entire responsum to elucidate Nach.'s position in Gen., ibid.

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¹⁴⁴Koh. Rab., ch. iii, 18. See Bahya b. Asher b. Hlava, "Kad ha-Kemakh," Kitvei Rabbenu Bachya, ed. Chavel, (Jerusalem: Mossad ha-Rav Kook, 1970), s.v. Abel, who asserts that the eternal existence of Elijah and Enoch is testimony that had Adam not sinned he would have attained eternity likewise.

¹⁴⁵See previous note.

¹⁴⁶Prov. 30:4; Ex. 24:13; II Kings 2:11; Ex. 19:20; Ex. 24:18, 17; Zohar, Ex. 187a. Ashlag, Judah Leib ha-Levi, Perush ha-Sullam, (London, Jerusalem; n.p., 1975), Zohar, ibid., Vol. V, p. 455, explains that the words, "Here too," refer to the verse, "And to Moses He said, come up to the Eternal," Ex. 24:1.

¹⁴⁷On celestial garments see Scholem, "Garment of the Souls," Tarbiz, ed. Epstein, J.N., (Jerusalem, 1955), Vol. XXIV; Zohar, Va-Yakhei, p. 210; "Garments of the Soul," Sha'arei Zohar, ed. Margaliot, R., 2nd ed. (Jerusalem: Mossad ha-Rav Kook, 1978), p. 134.

¹⁴⁸See previous note.

¹⁴⁹It is somewhat intriguing to note that Hatam Sofer devoted an entire responsum to explain in detail Nach.'s dismissal of the contention of the Aristotelean philosophers (supra, n. 143) yet nevertheless he was able to suggest a schism in an earlier responsum (see supra, ch. iii.1) whereby Elijah's body separated itself from soul - a conclusion which is virtually unacceptable to Nach. - apparently posed no contradiction to R. Sofer.

¹⁵⁰"... for the heavenly soul gives eternal life and the Divine Will which was with it during its emanation will adhere to it forever and will maintain it eternally." Nach., Gen. 2:17.

¹⁵¹This is the theory that body and mind are linked together by an inner envelope of the soul, which is less material than fleshy body and survives its dissolution, yet has not the pure immateriality of mind. Dodds, E.R., ed., Proclus Lycius surnamed Diadochus: The Elements of Theology, 2nd ed., (Oxford: Clarendon Press, 1963), Appendix II, "The Astral Body in Neoplatonism," p. 313.

¹⁵²'Eratosthenes and Ptolemy the Platonist' followed by Iamblichus and Hierocles. This view connects itself with Aristotelean psychology. Dodds, Proclus, p. 320, n. 7.

¹⁵³Plotinus, Prophecy and the Chaldean Oracles. This latter view connects itself with 'Himmelfahrt' and astral mysticism, Dodds, Proclus, p. 320, n. 1. This is also closely related to the zoharitic view in Gen. 81a: "Upon death, man's ruach leaves this world and detaches itself from its nefesh which remains hovering over the grave and enters Paradise of this world. And there [Paradise] it [ruach] enclothes itself in the air of Paradise as the heavenly angels who descend this world dress themselves in the air of this world as they descend upon it."

¹⁵⁴Gen. 2:17; Zohar Hadash, Gen. 18a.

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¹⁵⁵Zohar, Numb., Shlach Lecho 59a; See also Zohar, Ex., beShalach 55a: "I found in the book of Enoch, that after G-d caused him [Enoch] to ascend and showed him all the King's treasures of above and below, He showed him [Enoch] the Tree of Life and the tree that was forbidden to Adam. And He showed him Adam's place in the Garden of Eden. And he [Enoch] saw that had Adam kept this one commandment he could have attained eternal life and lived there forever. [However, since] he did not observe the Lord's command; he went out in trial and was punished."

¹⁵⁶This observation is in fact indicative in our excerpt from Zohar, supra n. 155: "Behold, had Adam not sinned he would not have savoured the taste of death in this world..." In this world he would not have savoured death, however, his passage to another world have resulted in death. See Perush ha-Sullam, Zohar, ibid.

¹⁵⁷Lev. R., ch. xxvii, 4; also in Pesikta, ch. ix, 76a; Tanh. B., xc; Tanh., Emor, ix.

¹⁵⁸'Rishonim,' literally means the early authorities. The term serves to indicate the standing and authority of preceding scholars, between the period of the Geonim and the Rabbinate (Aharonim), in relation to the scholars at the time in the domain of halakic ruling and interpretation of Torah. Although this period is a more or less well defined period in the history of rabbinic literature, the exact dates of these periods are not precise and unchallenged. See "Rishonim," E.J., Vol. XIV, p. 191.

¹⁵⁹Gen. 2:17; Responsa of Radbaz, Part I, No. 256.

¹⁶⁰See Rabinovitch, Nachum L., "Halacha and Other Systems of Ethics," Modern Jewish Ethics, ed. Fox, pp. 89ff.

¹⁶¹In fact Chajes, comm. to Suk 5a, cites R. Joshua b. Levi's statement in Shab. 88b: "When Moses ascended on High, the Ministering Angels spoke before the Holy One Blessed be He, 'Sovereign of the Universe, What business has one born of woman among us?' in evidence that Elijah and Moses were not transformed to angels upon their ascensions. For had they been transformed to angels, what possible objection could they have to Moses' presence among them. See also Sofer, Moses, Torat Moshe, Mahadura Telitai, 3rd ed., (Jerusalem: Hatam Sofer Inst., 1977), Numb., Naso, p. 55, s.v. velo, who states that Elijah's ascension into the whirlwind would not automatically render him an angel.

¹⁶²R. Isserlein's ruling "the wife of his fellow man is prohibited and not the wives of angels," was rendered in regards to both Elijah and R. Joshua b. Levi. Although there are various traditions which report that Elijah became in reality an angel, there isn't a tradition other than DEZ, based on Ket. 77b, which states that R. Joshua b. Levi entered Paradise during his lifetime. Thus, it would appear that R. Isserlein considered the immortals of DEZ to have attained the status of angels by virtue of their evasion of death, rather than their becoming in reality as such.

¹⁶³Mirkin comments: "It is permitted to exaggerate for the sake of peace," comm. to Gen. R., ch. lxxi, 9, "Elijah the Prophet is alive and exists. In glory and in self he appeared before the Sages." Mirkin's remark, is not substantiated by either school. Even the school which purports that Elijah's body died, still maintained that Elijah occasionally appeared before the Sages in human form. Joseph Hayyim ben Elijah al-Hakham of Baghdad, Rav Pe'alim: Sod Yesharim, (Jerusalem: Hanzur Pub., 1970), No. 2, also ascribes to this view, stating that Elijah's own body died. He appeared before the Tannaim in various other bodies. See also Stern, Joseph Zechariah, Tahalukhot ha-Aggada, (Warsaw, 1902), ch. vii, pp. 26-28.

¹⁶⁴Zohar, Numb., Shelach, supra, n. 155, and Resp. of Radbaz, supra, n. 159.

¹⁶⁵Yalk., Prov. 14:1; Eger, Akiba ben Moses Guens, Gilyon ha-Shas, (printed in std. eds. of Talmud), B.M. 114b.

¹⁶⁶Attar, Hayyim b. Moses, Ohr ha-Hayyim, (printed in std. editions of the Pentateuch), Numb. 21:20.

¹⁶⁷Bornstein, Avnei Nezer, (Piotrkow, 1912), OH, No. 466.

¹⁶⁸Waldenberg, Tzitz Eliezer, (Jerusalem, n.d.), Vol. XIII, No. 90. Abraham-Sofer Abraham is author of Lev Avraham: Medical Halaka, (Jerusalem: Feldheim, 1977-78).

¹⁶⁹Responsa Hatam Sofer, YD, No. 337.

¹⁷⁰See also Teomim, Abraham, Responsa Hesed Avraham, (Levov, 1938), EE, no. 14, in which he maintains, according to same passage in Nid. 70b, that although the deceased conveys impurity to others, the deceased does not necessarily possess intrinsic impurity of its own and therefore would not defile itself upon resurrection. Teomim's responsum will be dealt with further in chs. v, and vi.1.

¹⁷¹The question only pertains to those instances where plastic surgery does not involve the saving of human life. For wherever saving of human life is involved, the impurity laws are waived. Towards the conclusion of his responsum, R. Waldenberg finds other reasons to permit the priest to undergo plastic surgery of this nature. Nevertheless, the question of whether a corpse or limb possesses intrinsic impurity was an important consideration in resolving this issue.

¹⁷²Zikkukim de-Nura, SER, ch. xv, [22]; Responsa Tirosh ve-Yitzhar, No. 70, p. 179. Other sources which Michaelson cites in support of this opinion are: Book of Emanation (Azilut), printed in Aggadat Bereshit, (Vilna, 1802), 52b; Zohar Ruth, 100b, s.v. R. Johanan said, 'He belongs to the tribe of Gad.' The page of the last source cited by Michaelson appears to be in error and is found in the Levorno, 1866, ed. of Zohar page 103 and in the Ashlag ed., Vol. X, p. 99, no. 444.

¹⁷³I Chron. 16:22, R. Isserlein's source that Elijah's wife is not classified as eshet reiyehu (a fellow man's wife) is probably based on the logic of this verse; Prov. 30:4; on Zohar citation see previous note.

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174 Gen. 1:26; Midbar Kedemoth, Ma'arekhet Aleph, (Levorno, 1792), No. 27. Hida's source is Yalkut Reuveni, (Amsterdam, 1700), 9d, on the verse "Let us make man," Gen. 1:26. Hida refers to the words included in brackets as "etc." Our citation follows the quote as it appears in Yalk. Reuveni.

175 Dan. 8:12; Midrash Talpiyyot, ed. ha-Itamari, Elijah ha-Cohen, (Smyrna, 1736), s.v. Elijah.

176 Bacharach, Naphtali, Emek ha-Melekh, (Amsterdam 1648); Cordovero, Moses, Pardes Rimmonim, (Cracow, 1592), Part XXIV, ch. xiv; Margaliot, Reuben, Malakhei Elyon, (Jerusalem: Mossad ha-Rav Kook, 1945), p. 154, n. 26; Legends, Vol. IV, pp. 201-02; Hag. 13b.

177 Kid. 70a.

178 Cordovero, loc.cit., p. 53

179 See aslo Numb. R., xvii, 1, which relates that Phinehas who is Elijah was able to make himself invisible because he was an angel. Since this incident occurred long before Elijah's ascension and his transcendence to angel, this source must be of the opinion that Elijah originated as an angel.

180 See Laniado, Samuel, Keli Yakar, (Venice, 1603), comm. to II Kings 2:1; and Hida, op.cit.

181 Ber. 5b; Pardes, loc.cit.

182 See Sha'arei Zohar, Ber. 4b, s.v. Elijah be-arbah.

183 Petah Einayim, (Jerusalem, 1959), comm. to B.B., Vol. II, ch. viii, 109b.

184 Michaelson, op.cit.; Zikkukim de-Nura, SEZ, ch. xiv, [22].

185 Shab. 12b; Teshuvot ha-Geonim, ed. Harkavy, A., (Berlin, 1885), No. 373, p. 189; Ozar ha-Geonim, ed. Levine, Benjamin, (Haifa-Jerusalem, 1928-42), Shab. 12b.

186 Harkavy, op.cit., p. 372, n. 189.

187 See Chajes, Suk., cited supra, n. 161.

188 See Friedmann, "Intro. to SER," p. 18, who compares the two ascensions saying: "Just as Moses ascended in body so did Elijah." Were the ascensions different in nature, they would not have been compared with each other.

189 Deut. 33:1; I Kings 17:18; II Kings 2:1; Ex. 24:16; Pesikta iv, p. 2; Yalk., Kings, no. 209. The citation lists no less than 27 separate incidents of which Moses and Elijah were completely alike. See Pesikta and Yalk, ibid., in entirety.

190 Yalk., Ex., 406, p. 238; see also Yalk., Ex., 363; Gen. R., ch. xlviii; Ex. R., ch. xlvii, 4; Numb. R., ch. x, 6. For Moses on the mountain, see Ex. 34:28. On, "Do we deduce the impossible from the possible?" see Suk. 50b; "Do we deduce the possible from the impossible?" The bread from heaven is described in Ex. 16:4. Moses is called an Ish Elokim in Deut. 33:1. Reischer, Shebut Ya'akov, No.9.

¹⁹¹This explanation is identical to Maharsha, B.M. 86a, and Ashkenazi, Samuel Jaffe, Yafeh To'ar, (printed in std. eds. of Midrash Rabbah), Ex. R., ch. cxxvi, 5.

¹⁹²Although Jacobs, Theology in the Responsa, p. 192, prefers to translate hiddud as "playful" rather than "witty", remarking: "not to be taken seriously", we will see further on that Reischer was indeed serious. In fact, this second explanation of Reischer is identical with the plain meaning of the Midrash given by Einhorn, Ze'ev Wolf b. Israel Isser, Maharzu, (printed in std. eds. of Midrash Rabbah), comm. to Ex. R., ch. xlvi, 5. The comparison between Moses' angelhood to Elijah the angel is strengthened by the fact the Midrash recorded the angels' partaking in Abraham's repast in addition to Moses' ascension. According to Spira, Berakh, (Zera Berakh, [Amsterdam, 1730], Gen. 2:18), Elijah the angel appeared to man in the identical form in which the angels appeared to Abraham. See also Laniado, Keli Yakar, II Kings 2.

¹⁹³Jacobs, op.cit., p. 191.

¹⁹⁴Nid. 69b.

¹⁹⁵See infra, n. 197.

¹⁹⁶Sh. Ar., OH, 468:4.

¹⁹⁷That the edict, "when you come to a town, behave as its inhabitants do," is synonymous with the edict, "One should never break away from the local custom [B.M. 86b]," is born out from the fact that both sources use identical examples to establish their respective edicts. Furthermore, Reischer, in his aggadic comm. Iyyun Ya'akov on the above passage, speaks of these edicts interchangeably. The edict appears in DEZ as, "One must not break away from the custom of the people." It is furthermore evident that our Midrash is demonstrating the Law of Conformity from Maharal (Gur Aryeh, [Prague, 1578-79], comm. to Rashi, Gen. 18:8),: "Nevertheless, if not for the law that one must not deviate from local custom, G-d would not have sent the angels to him [Abraham] since it is not their custom to eat." Yalk., Ex. 406, includes the incident of the angels' descent to Abraham to demonstrate the same Law of Conformity in addition to the incident of Moses' ascent to the angels.

¹⁹⁸Sh. Ar., loc.cit.

¹⁹⁹Deut. 14:1. Although the verse is usually translated as, "You shall not cut yourself," the Talmud in Yeb. 13b takes on a form of the world eged - to bind, implying the formation of separate groups.

²⁰⁰Sofer, Kaf-ha-Hayyim, (Jerusalem, n.d.), Sh.Ar., OH, 468:4.[55].

²⁰¹Jaffe, Mordekhai, Levush ha-Techelet, (Lublin, 1590), Sh. Ar., OH, 2:4 and Pallagi, Rachamim Isaac, Yaffe la-Lev, (Izmir, 1872), Vol. II, no. 468:3.

²⁰²Gen. 18:2; see comms., ad.loc.

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²⁰³See Bahya b. Asher b. Hlava, Perush Rabbenu Bachya al ha-Torah, ed. Chavel, (Jerusalem: Mossad ha-Rav Kook, 1974), comm. to Gen. 18:8; and Tosaf., B.M. 86b, s.v. nirim.

²⁰⁴Ber. 25b.

²⁰⁵One should not, however conclude from here that a Jew who ventures into a Gentile society should become absolved of commandments in order to conform to the local custom of that society. There is no inherent value in a Jew's conforming to Gentile practice. Indeed, it is even proscribed: "Ye shall not walk in their ordinances." Lev. 18:3.

²⁰⁶Sifri, Deut. 34:5; Midrash Tannaim, ed. Hoffmann, David Zevi, (Berlin, 1908-9); Sot. 13b; Ginzberg, Legends, Vol. VI, p. 161, n. 951.

²⁰⁷Deut. 34:5,6., Reischer, Iyyun Ya'akov, Sot. 13b; See also Reisher's comm. to Ta'an.5b where he similarly reconciles the opinion that "Jacob, our Patriarch, is not dead," despite Genesis' explicit statement that Jacob was bewailed, embalmed, and buried. Reischer supports his explanation by referring to Ket. 103a which relates that Rabbi desisted from revisiting his home every Sabbath eve after his death in order not to cause discredit to the earlier righteous men who were denied the privilege of revisiting their homes. See also Epstein, Barukh, Torah Temima, (Vilna, 1904), Deut. 34:5, who asks why the Talmud did not object to the opinion that "Moses did not die" by challenging: "Was it for naught that he was bewailed and embalmed and buried?" as it objected to the opinion "Jacob, the Patriarch, is not dead," in Ta'an., loc.cit. Epstein resolves that there is no question regarding embalming, since G-d attended to Moses' body. However, Jacob's children attended to Jacob's body and therefore, embalmed him. The bewailing of Moses by the children of Israel is not difficult either as they did not bewail Moses' death, but rather bewailed his departure. Just as people bewail one who leaves his native country, although he is still alive.

See also Maharsha, comm. to Sot., loc.cit., who explains the opinion that Moses never died resulted in response to the Talmud's query in B.B. 15b: "How is it possible that Moses being dead could have written the words: 'And Moses died there?' [Deut. 34:5]."

²⁰⁸Gen. 14:18; Epistle to the Hebrews, 7:1-7; Justin Martyr Dialogue, 33 and 96; "Melchizedek," E.J., Vol. XI, p. 1287.

²⁰⁹See Ginzberg, Legends, Vol. VI, p. 325.

²¹⁰Ned. 32b; Gen. 14:19; Legends, Vol. V, p. 226, n. 104. See also "Act of Pilate," in New Testament Apocrypha, ed. Henneke, E., (London: SCM Press, 1964), p. 464, where the Elijah ascension is related to Jesus.

²¹¹Ginzberg, op.cit., Vol. V, p. 225, n. 102, lists all sources which identify Melchizedek with Shem.

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²¹²Zech. 2:3; Suk. 52b, Munich codex of the Talmud. See also Song R., ch. ii,10: "And the Lord showed me four craftsmen: And these are them, Elijah, the King-Messiah, Melchizedek, and the annointed one for War." Other uses of Suk., loc.cit., retain "Cohen Zedek" (in lieu of Melchizedek). He is identified by Rashi as Melchizedek the son of Shem who is designated as a carpenter because he assisted Moses in building the ark.

Since Rashi belongs to the school which opposed Elijah's origination as an angel, it is surprising to find that Rashi identified "Cohen Zedek" as Melchizedek. Friedmann, in "Intro. to SER," p. 8 makes the following comment concerning Rashi's explanation: "who would not agree that this [Rashi's] explanation is far fetched...And they were called carpenters because of their future activity and not because of their past activities [i.e., building the ark]." It is clear from Friedmann's comment that Rashi intentionally assigned Melchizedek a past experience of being a carpenter rather than the more obvious futuristic connotation. Possibly then, Rashi assigned Melchizedek a past activity in order to strip Melchizedek of all eschatological and soteriological character.

It is furthermore plausible that other MSS of the Talmud retained "Cohen Zedek" (i.e., Phinehas, see Friedmann, "Intro. to SER," p. 9) rather than Melchizedek because of the said opposition to the doctrine of the Melchizedekites.

²¹³Gen. 5:24; II Kings 2:3; Ezek. 24:16; Gen. R., ch. xv,1.

²¹⁴Targum Onkelos, (printed in std. eds. of the Bible), Gen. loc.cit. Alternate renditions of Onkelos read: "And he was forever, for the Lord did not slay him," see Hezekiah b. Manoach, Hizzekuni, (Cremona, 1559), Gen., ibid; Kasher, Menahem, Torah Shelemah, (Jerusalem, 1926), Gen., ibid., p. 357. However, Adler, Nathan Marcus, Netina le-Ger, (Vilna, 1875), comm. on Targum Onkelos, loc.cit.; Tosaf., Yeb. 16b, s.v. pasuk; David b. Samuel ha-Levi, Divrei David, ed., Chavel, (Jerusalem: Mossad ha-Rav Kook, 1978), comm. to Rashi, Gen., loc.cit., all confirm our citation as the correct rendition. The identical problem of opposite renditions concerns the Targum Yerushalmi to Gen., ibid. Many of the editions of Targum Yerushalmi were rendered as our citation of Targum Onkelos. See Sabionite ed. of Targum Yerushalmi; Hizzekuni, loc.cit.; Tosaf., loc.cit., Berkowitz, Ben Zion Judah, Lehem ve-Simlah, (Vilna, 1850), comm. to Targum Onkelos, loc.cit. Rapoport, Solomon Judah Leib, (Iggeroth Shir, Letters to Samuel David Luzzato, ed. Braeber, S.E., [Przemsyl: Shatiel Isaac Gruber, 1885], Letter no. 3), establishes the correct reading of Targum Yerushalmi as, "and he was no more."

²¹⁵See continuation of Gen. R., loc.cit., "A matron asked R. Jose etc.," and Samuel b. Meir, Rashbam, (printed in std. eds. of Talmud), B.B. 121b, s.v. kiplu.

²¹⁶Yalk., Chron., no. 1082; see Rashi, Gen., loc.cit., who maintains that G-d slew Enoch prematurely because his mind was easily induced to turn from his righteous ways and become evil. See also Zohar, Gen. 56b, and Zohar Hadash, Gen. 19b.

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²¹⁷Legends, Vol. V, p. 156, n. 58. Enoch is conspicuously absent from the Talmud's list of the seven righteous shepherds; see Suk. 52b.

²¹⁸Gen., loc.cit.; Deut. 33:1; II Kings 2:1; Midrash ha-Gadol ed. Margulies, Mordekhai, (Jerusalem: Mossad ha-Rav Kook, 1947), Gen. 5:24, p. 132. Although MHG quotes this as a supposed tannaitic source ("A Tanna taught..."), we find no author for this source in the entire tannaitic literature. We must therefore assume that the source of this tannaitic citation disappeared. See MHG, ibid., n. 8.

²¹⁹Targum Yerushalmi and Targum Yonathan b. Uziel, (printed in std. eds. of Bible), Gen, loc.cit. Although there are opposite renditions of Targum Yerushalmi, (supra, n. 214), nevertheless the comms. of Radak, Luzzato, (Samuel David, Ohav Ger, [Cracow, 1895]), Krinsky, (Judah, Mehokkekai Yehudah, [Pietrkow, 1907]), Bahya, Gen. loc.cit., all maintain that the correct rendition of the Targum Yerushalmi corresponds to our citation of Jonathan b. Uziel. Septuagint is also very likely to be understood that Enoch ascended heaven; see Legends, Vol. V, p. 157, n. 58.

²²⁰"R. Ishmael said: 'I said to Metatron, Why are you called in the name of your Maker by seventy names, and you are higher than all angels and are more beloved than all the ministers and more glorious than all the hosts and greater than all the powerful rulers in greatness and in glory. And why are you called in the Upper Heavens youth?' He answered and told me: 'Because I am Enoch the son of Yered etc.'" Heikaloth, known as the Book of Enoch, in Beit ha-Midrash, ed. Jellinek, A., (Leipsic, 1853-77), Part V.

²²¹Tosaf., Yeb. 16b, s.v. pasuk; Rashbam, B.B. 121a, s.v. kiplu; Shitta Mekubbetzet, B.B., ibid.

²²²Midrash Aggadah, ed. Buber, (Vienna, 1893), Gen., loc.cit.: "Because he [Enoch] was righteous the Lord took him away from among men and made him an angel, who is Metatron. And there is a controversy between R. Akiba and his colleagues concerning this matter. And the Sages say that Enoch was at times righteous and at times wicked. The Lord said: 'Whilst he is still righteous I will remove him from the world. In other words, I will slay him.' And it is written 'Behold I will take from thee the desire of thine eyes with a stroke [Ezek. 24:16]." The viewpoint in Midrash Aggadah which attests Enoch's transcendence to an angel is confirmed as the opinion of R. Akiba, which parallels the opinion of the heretics quoted in Gen. R., loc.cit.

²²³Gen. 5:23; Maim., Perakim be-Hatzlacha, ed. Davidovitch, S.Z., notes by Bennet, D.Z., (Jerusalem, 1939), Gerim, ch. iii, quoted in Krinsky, op.cit., Karnei Ohr. See supra, n.207, on similar discussion concerning the opinions that Moses and Jacob never died despite the Torah's recording of their death and years.

²²⁴Ziyyoni, Menahem, Sefer Ziyyoni, (Cremona, 1559), quoted by Kasher, Torah Shelemah, Gen., loc.cit., p. 360, n. 65; Radak, Ibn Ezra, Abraham (printed in std. eds. of Bible), Gen. ibid., Ginzberg,

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op.cit., Vol. V, p. 157, avers: "The official doctrine of the Synagogue is that Enoch came to heaven after his death."

²²⁵Radak, in his second explanation to Gen., loc.cit.; Bahya, Gen., ibid.; Nach., Lev. 18:4.

²²⁶See supra, n. 223.

²²⁷Legends, Vol. V, p. 156, n. 58.

²²⁸Wisdom 15:11; Philo, Quaestiones in Gen. 1, 82-86; De Abrahamo 3; and De Praemiis 3. These sources are noted by Ginzberg, op.cit.

²²⁹The view of R. Akiba as quoted in Midrash Aggada, loc.cit. Nach. refers to MHG as proof that Enoch attained eternal life. See Perush Nach., ed. Chavel, Lev. 18:4, p. 100, n. 40. It has been remarked that the later midrashic literature which upheld Enoch's ascension, was largely influenced by the pseudepigraphic view of Enoch. For example Midrash Aggada to Genesis relates: "Together with angels Enoch walked. For three hundred years he was together with them in Paradise. And from them he learned the science of intercalation, the periods of the equinox, the constellations and numerous sciences." Kasher, (Torah Shelema, Gen., loc.cit., p. 357, n. 58), annotates the identical view expounded upon in the pseudepigraphic work, the Book of Jubilees, and the Hebrew book of Hanoch.

²³⁰Tosaf., Hul. 60a, s.v. pasuk.

²³¹Hul. ibid; see Ba'alei ha-Tosafoth, (Jerusalem: Levin Epstein, 1967), Gen. 1:12, p. 2; and Malakhei Elyon, p. 79, n. 3, in entirety.

²³²Torah Shelema, loc.cit.

²³³This reservation is expressed by Zikkukin de-Nura, DEZ, ch. xv.[22].

²³⁴Legends, Vol. VI, p. 325, n. 40.

²³⁵Abrabanel, comm. to Gen., loc.cit.

²³⁶Sanh. '98a.

²³⁷Isa. 53:5; Midrash Bereshit Rabbati, Ex libro Moshe ha-Darshan, ed. Albeck, H., (Jerusalem, 1940), pp. 96-97. See "Disputation of Nach. v.s. the Apostate Pablo Christiani," Writings and Discourses of Nach., p. 312, where Pablo challenged that this Messiah refers to Jesus. See Nach.'s refutation thereon. For a parallel account of Messiah in Paradise who suffers the sufferings of Israel, see Zohar, Ex., Va-Yakhel, 212a, and Menahem Azaria of Fano, Asarah Ma'amaroth, (Cracow, 1640), Ma'amar Hikkur Din, Part II, ch. v.

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²³⁸See Rashi, Sanh., loc.cit., who identifies the "city gates" where Messiah sat as that part of Paradise directly above the city gates of Rome.

²³⁹Zohar, Ex., 76.

²⁴⁰Ps. 2:7; Vital, Zohar ha-Raki'a, (Korets, 1785), p. 49.

²⁴¹Midrash Lamentations, ed. Buber, (Wilna, 1899), ch. i, pp. 89-90; Ber. 2,5a; Aggadat Bereshit, ed. Buber (Cracow, 1902), ch. lxvii, p. 133; Vital, op.cit.

²⁴²If R. Sofer had one of the numerous renditions of DEZ where Messiah is omitted there would be no difficulty. See our discussion on the various renditions of DEZ, further on.

²⁴³See Margaliot, Sha'arei Zohar, Gen. R., p. 141, and Vital, Zohar ha-Raki'a, loc.cit. Vital's first explanation is identical with our exposition of Hatam Sofer.

Alternatively one could resolve that in effect there will eventuate two Messiahs. One who already pre-exists in Paradise and another, of greater stature, who will succeed him and is to be born in the future. This alternative explanation is similar to the talmudic position that G-d will raise up in the future another David, while the former David will be an emperor and a viceroy, Sanh. 98b. In fact, Menachem Azaria of Fano identifies David as the one who suffered the woes of his people near the city Gates of Rome, who abodes in Paradise. See supra n. 237.

²⁴⁴See supra, ch. iii.1, end, and notes thereon, especially with regards to Messiah's propensity to sin and his ability to judge by the scent.

²⁴⁵Although Midrash Bereshit Rabbati speaks of Messiah's forefathers —the Kings of the House of David— and many other sources speak of Messiah being an offspring of David, this merely refers to the genealogy of Messiah's body but not to the genealogy of Messiah's essence. See our earlier discussion on Elijah's metempsychosis, supra, ch. iii.1.

²⁴⁶Dan. 7:13; Zech. 9:7; Sanh. 98a.

²⁴⁷See Margaliot, Margaliot ha-Yam, comm. to Sanh., ibid., who comments that Messiah's coming from the "clouds of heaven" symbolizes Heavenly supervision. By the same token one could also say that the "clouds of heaven" represents Messiah's heavenly character.

²⁴⁸Targum to I Chron. 3:24; Tanh. B., ch. i, 140; Yalk. Zech., no. 571; Legends, Vol. VI, p. 381, n. 136. See also Sanh. 96b, "Bar Nafle" as designation of Messiah, assumed to represent the Greek "son of the clouds." Freedman, Soncino ed., Sanh., p. 654, n. 2. Margaliot ha-Yam, loc.cit., comments that nefel in Aramaic also denotes 'star' and for this reason Bar Cokhba, who was assumed to be the Messiah was so called, which means "son of the star." See also Cordovero Sefer Pardes, ch. xiv: "For this reason it is

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written 'Anani', i.e., referring to Elijah who was an angel from the beginning of creation."

²⁴⁹ See Margalio, op.cit., who says "riding on an ass" represents the aspect of being a free man rather than Kingship. By the same token one could say that this represents humility and human character.

²⁵⁰ Landau, Eliezer, Derekh Hayyim, (Tel Aviv, 1971), comm. to DEZ, identifies the Messiah who entered Paradise during his lifetime as King David, based on the epithet "David King of Israel lives forever." Landau's explanation is curious, since this epithet, in the context which it is found in R.H. 25a, simply refers to the restoration of David's Kingdom and does not indicate that King David himself is still alive. In fact, Shab. 30a,b, specifically recounts the circumstances leading to David's death. There are, however, Midrashim which relate of David's soul in Paradise, viz., Perek Gan Eden, ed. Jellinek, Bet ha-Midrash, Part II, (Leipsic, 1853-77), cited in Legends, Vol. V, p. 31, n. 90. See also "David in Paradise," Legends, Vol. IV, pp. 114-116, and Vol. V, p. 32. It is possible that Landau sided with the Sofer-Kluger school and maintained a schism whereby David's soul separated from body and entered Paradise. Possibly still, the expression "David King of Israel lives forever," induced Landau to interpret DEZ in its literal sense, i.e., that David entered Paradise during his lifetime in body and soul. In which case DEZ disputes the aggadic account of David's death related in Shab., loc.cit. According to this view, David - the future Messiah - already exists in body and in soul in Paradise. It then follows that the entire discussion concerning the controversy over the existential reality of Elijah, Enoch and Messiah, including which form he will take on upon his eventuation, is equally relevant to David. It is not alarming to find that DEZ and the epithet "David King of Israel lives forever" discord with the talmudic account of David's death, as virtually the identical account of Elijah's death is related of Elijah in SER, ed. Friedmann, ch. v, p. 23, despite the expression "Elijah the Prophet lives forever." See supra, n. 133. See also Friedmann's discussion on the association of the similarity between the two deaths, "Intro to SER," pp. 16,17. On the identity of David as the promised Messiah see Legends Vol. VI, p. 272, n. 128.

²⁵¹ On the sources which identify Elijah as the Messiah, see Legends, Vol. VI, p. 339, n. 105, and Ginzberg's comment thereon.

²⁵² Yalk, Ezek., no. 367.

²⁵³ Supra, n. 131.

²⁵⁴ Alphabeitum Siraeidis, ed. Steinschneider, (Berolini, 1858), p. 28b and MS reading, p. 36a; 2 Alphabet of Ben Sira, (Berlin, 1858), MS. reading p. 36a. Ginzberg remarks that the renditions which begin, "others say" rather than "eleven," is an obvious error due to an incorrect reading of the Hebrew abbreviation of the number eleven which was incorrectly transposed to "others say" rather than to eleven. Legends, Vol. V, p. 95, n. 67.

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²⁵⁵ See previous note. Messiah and Elijah are also absent from the list of immortals in Mann, Jacob, Texts and Studies, (New York, 1972), Vol. I, p. 512. Messiah is absent from the list of immortals in MS of Pirkei Rabbenu ha-Kadosh, and in the list of Bereshit Rabbati, Gen. 24:27, cited in Epstein, Abraham, Mi-Kadmoniyyoth ha-Yehudim, (Jerusalem: Mossad ha-Rav Kook, 1957), p. 102, n. 4.

²⁵⁶ This is provable in that even the editions of Alphabet of Ben Sira, loc.cit., which retain Elijah and Messiah, begin with "others escaped death with them and are living in Eden," rather than "people of the sons of men, etc."

²⁵⁷ See DEZ, ed. Tawrogi, A., (Konigsberg, 1885), p. 9, nn. 1, 1a; and Mahzor Vitri, ed. Wertheimer, (Berlin, 1889), cited in Legends, Vol. V, p. 164.

²⁵⁸ Pirkei Rabbenu ha-Kadosh, ed. Gruenhut, (Lemberg, 1877), Likkutum, Perek Assaroth; Torah Shelema, Gen. 5:25, p. 358, n. 60.

²⁵⁹ Yalk., Ezek., no. 367; Pirkei Rabbenu ha-Kadosh, loc.cit.; Dhamari, Sa'id b. David, Midrash ha-Be'ur, cited in Torah Shelema, loc.cit., end; Marx, Alexander, "Arabishe-Bustanai Bereicht," Sefer ha-Zikkaron, in homage to Dr. Poznanski, Adler Codex, p. 80; Bereshit Rabbati, Gen. 2:7; Mi-Kadmoniyyoth ha-Yehudim, loc.cit.

²⁶⁰ Orah le-Hayyim, (Jerusalem, 1960), comm. to Numb., Pinchas, p. 324.

²⁶¹ Supra, n. 254.

²⁶² Perush Radak al ha-Torah, ed. Kamelhar, (Jerusalem: Mossad ha-Rav Kook, 1970), Gen. 5:24.

²⁶³ Mehokkekai Yehuda, Yahel Ohr, Gen. 5:24.

²⁶⁴ This identical thesis is promoted by Umberto Cassuto in his discussion of the "taking" or "receiving" of Enoch: "That also in the Bible there is a more important parallel, namely, 'But G-d will ransom my soul from the power of Sheol, for he will receive me' (Ps. 56:15). The Torah's intention, apparently is not to convey that Enoch did not die, but only that his death was not like the death of other people, and when he died he did not descend to Sheol, but G-d redeemed him from the power of Sheol." Cassuto, Commentary on Genesis, (Jerusalem: Magnes Press, 1978), Gen. 5:24, p. 286. This contention of escaping the power of Sheol is substantiated by R. Bahya in his description of the various categories of death merited by the righteous in his comm. to Gen. 25:9, end, ed. Chavell, pp. 218-19.

²⁶⁵ See Tawrogi, op.cit., p. 8, n. 1a, who brings both renditions.

²⁶⁶ In Mann, Texts and Studies, Vol. I, p. 512, Messiah and Elijah are absent from the list of nine immortals who merited Paradise and in their stead, are included Kilav the son of David, and Benjamin the son of Jacob. Mann comments that although Kilav and

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Benjamin are absent from all texts cited by Tawrogi, they are nevertheless among the four related in B.B. 17a who died by reason of the original sin. To this extent, the omission of Messiah and Elijah, and their substitution by Kilav and Benjamin is quite significant. Since Benjamin and Kilav are related in B.B., ibid. to have died, it might have been felt that this same fate was shared by the other seven, who like Kilav and Benjamin, only merited entry to Paradise in soul. This, however, was not the case for Elijah and Messiah and consequently their names were substituted. The difficulty with this explanation, however, as pointed out in the main text, is that since the same philosophical considerations concern all the immortals equally, the existential reality or any one should be identical with the others.

²⁶⁷Louis Ginzberg approximates the date of compilation of the last four chs. of DEZ to the 9th century. However, the first four chs. of DEZ of which our quotation is included, date from a much earlier period. These first four chs. are an independent collection which were already in existence during the tannaitic period. See Ginzberg, "DEZ," J.E., (1901-06), Vol. IV, p. 529.

²⁶⁸Sages, pp. 155 ff. Urbach brings Sifri, Numb. 103 and its parallel sources in support of the views that man was placed as an "elite above the angels."

²⁶⁹Legends, Vol. I, p. 61; Sages, p. 155.

²⁷⁰Legends, Vol. V, p. 24, n. 66, and p. 65, n. 6; Gen. R., ch. xxi,5, and ch. xiv, 3,4.

²⁷¹Ex. 22:8; Dan. 3:25; Sanh. 93a; Maharsha, Sanh., ibid. For parallel sources on "the righteous are greater than angels," see Gen. R. lxxxviii, 1; Midrash Tehillim, ed. Buber, (Vilna, 1891), ch. xci, p. 398 and ch. ciii, 438; J.T. Shab. 6; Deut. R. ch. i, 12; Tanh. B., 1; Midrash Tannaim, Einhorn, Ze'ev Wolfe (Wilna, 1859), ch. xxxiii, 18; Legends, loc.cit.; Margaliot ha-Yam, Sanh., loc.cit.

²⁷²Sages, Vol. I, pp. 158-59.

²⁷³Gen. 20:7; Beit Yosef, comm. of Caro, Joseph, to Tur, EE, 17; Beit Shemuel, comm. of Samuel b. Uri Shraga Phoebus to Sh. Ar., EE, ibid.; Ibn Paguda, Bahya b. Joseph, Hovoth ha-Levavoth, tr. by Ibn Tibbon, Judah b. Shaul, (Venice, 1548), Josh. 5:14; Gen. 23:6; Zech. 3:5, 7; Landau, Israel Jonah, Me'on ha-Berakoth, (Dyhernfurth, 1816), comm. to Ber. 10b, p. 246.

²⁷⁴The Midrash to the psalmist verse, "Bless the Lord ye angels of His," relates that "angels" in this verse refers to the prophets, as the Midrash equates the prophets with the angels. Midrash Tehillim, Ps. 103, p. 438, no. 17. In another Midrash we read: "From whence do we know that the prophets are like angels?" Numb. R., ch. xvii,1. In fact, in Maim.'s division of the various levels among angels, the division of angels which communicates to the prophets is called ishim (manlike), because they are so closely attached to the level of man's intellect. When Saul received prophetic spirit he attained the angel level of ishim and therefore

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is described as an ish a her (man unlike other men), Yad, Yesodei ha-Torah, ii 7, vii, 1. In other words, according to Maim., not only do prophets carry angel status, the angels themselves of this level are called ishim (manlike). Moreover, Maharsha has pointed out that the wise men are called Elokim, whereas the angels are of a lower level, as they hold the inferior rank of Bar Elokim, supra., n.271.

²⁷⁵ Margaliot ha-Yam, Sanh. 98b.

²⁷⁶ Ber. 4b.

²⁷⁷ See Friedmann, "Intro to SER," p. 16.

²⁷⁸ Sefer Pardes, Hekhaloth, Part XXIV, ch. xii.

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¹Shab. 30a.

²Cited supra, ch. iii.2.

³Cited supra, ch. iii.2.

⁴Ibid.

⁵Falcon differs from Kluger in that Kluger understands that Elijah observes the commandments willfully because he is not entirely "free of Torah and Mitzvot" since in reality he did not die as other men. Falcon, on the other hand, considers Elijah entirely "free." The only justification he can find for Elijah's adherence is that he willfully observes the commandments.

⁶Zera Yitchak, Pileplet Kol She-hu, No. 11.

⁷This view is supported by Bordjel, Joseph, Va-Yikken Yosef, (Levorno, 1852), No. 30:1, p. 108, who explicitly states that R. Isserlein intentionally did not apply the dictum to Elijah as Elijah is still considered alive. However, with regards to divorce, since Elijah became an angel, his wife is no longer the "wife of one's fellow man" and therefore she is permitted to other men.

⁸See the practical application of this question regarding the Law of Conformity, supra, ch. iii.4.

⁹Ber. 18a,b; J.T. Ber. 2:3; Eccles. R., ch. ix,4; Zohar, Gen. 168.

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¹Lev. 18:5; Shab. 30a; Isserles, Darkhei Moshe (printed in standard editions of Tur), comm. to Tur, EE, 17.[5]; Beit Shemuel, Sh. Ar., EE, 17.[11]; Goldbaum, Responsa Birkath Shalom, (Warsaw, 1889), No. 5, p. 21.

²Sedei Hemed, Ma'arekhet Gimel, no. 18, p. 44.

³Ket. 103a; Judah ben Samuel he-Hasid, Sefer Hasidim, ed. Margaliot, R., (Jerusalem: Mossad ha-Rav Kook, 1957), no. 1129, p. 564.

⁴Hida, Berit Olam, comm. to Sefer Hasidim, ibid., ad.loc.

⁵Sedei Hemed discusses several sources which seem to imply that even the righteous are absolved of commandments after death and he dismisses each source in turn by reinterpreting them otherwise.

⁶Although Ashkenazi, Nissim Abraham b. Raphael, (Nehmad le-Mareh, [Salonika, 1732], J.T. Kil., p. 103), contests this claiming that the pious observe the commandments only to the extent of those who fulfill them volitionally out of zeal and are not enjoined, Sedei Hemed, loc.cit., dismisses Ashkenazi's contention.

⁷Mishna, Yeb., ch. iv,13.

⁸See Lipman, Isaac Benjamin Wolf b. Eliezer, Nahalat Binyamin, (Amsterdam, 1682), p. 52.

⁹See Palache, Rachamim Isaac, Yaffe la-Lev, (Izmir, 1872), OH, no. 32.

¹⁰Indeed, Ben Zion Firrer in the 1970 issue of Noam, (annual halakic publication, ed. Kasher, Menahem, [Jerusalem, 1970]), opines that Mitzvot are incumbent upon man only in his terrestrial habitat earth. Therefore, man is not obligated to observe Mitzvot on the moon since Mitzvah observance is specifically a function of the place of man's terrestrial abode - earth. See however, Bleich, J. David, "Mitzvot on the Moon," Contemporary Halachic Problems, (New York: Yeshiva Univ. Press, 1977), Vol. I, pp. 221-12, in which he brings the contrary opinion of Menachem Kasher who declares that halakic obligations are personal ones and are incumbent upon Jews in any and all places where they may find themselves. In the same article Bleich records the view of Shelomo Goren who opines that Mitzvot are a function of time rather than place, and since time is measured by twenty four hour day night sequences, these do not exist on celestial bodies. Therefore, man is exempt from commandments on the moon - not because of the place factor but rather because of time factor. Kasher disputes this argument as well.

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- ¹¹See Maharsha, Shab. 30a.
- ¹²See opinions of Hida et.al., in Sedei Hemed, loc.cit.
- ¹³Kluger's view is identical with the view of Nehmad le-Mareh, loc.cit.
- ¹⁴Palache, op.cit. According to Nahalat Binyamin (Mitzvah 104, p. 136) however, the injunction not to eat from the Tree of Knowledge was based on the 613 commandments. As according to the opinion that the forbidden fruit was a grain of wheat, and the opinion that the world was created in the month of Nisan, Adam was forbidden to eat from the new grain (hadash) until after bringing an omer of the first fruits; Lev. 23:10-14. See Tosaf., Sanh. 56b, s.v. lo nitztaveh.
- ¹⁵Nid. 61b; a halakic consequence of this opinion is that the dead are permitted to be buried in shrouds made from Kilayim (a wool and linen mixture).
- ¹⁶Ezek. 27; Kovetz Chiurim, (Baranowicze, 1944), no. 29, p. 52.
- ¹⁷Wasserman, ibid. See also Albo, Joseph, Sefer ha-Ikkarim, ed. Husik, I., (Philadelphia: Jewish Publication Society, 1946), Part III, ch. xvi, in which Albo disputes Maim.'s contention that belief in the eternity of Mitzvot is one of the thirteen articles of faith.
- ¹⁸Yet, the opinion which contends that the commandments will be abolished in time, included the righteous as well. Unless one contends as Ritba, (Hiddushei ha-Ritba), and Rashba (Hiddushei ha-Rashba, [Warsaw, 1922]), novellae to Nid., loc.cit., that the opinion which maintains that the commandments will be abolished in the time to come, only maintains this regarding the dead while they are dead and not once they are restored to life.
- ¹⁹Meg. 7b; Hida, Birkei Yosef, (Vienna, 1860), Sh. Ar., EE, 17.
- ²⁰Unless Hida was referring to the marriage laws concerning R. Zeira's wife only. This however, is not intimated anywhere by Hida.
- ²¹Sanh. 92b: "R. Eliezer the son of R. Jose the Galilean said: 'The dead whom Ezekiel revived went up to Palestine, married wives and begat sons and daughters.' R. Judah b. Bathyra rose up and said: 'I am one of their descendants, and these are the tefillin which my grandfather left me as a heirloom for them.'" See Rashba and Ritba, Novellae to Nid., loc.cit.
- ²²See supra, n. 17.
- ²³Deut. 24:4; Al-Hakham, Sod Yesharim, No. 2; cf. Luke 20:28-36.
- ²⁴See Responsa Hatam Sofer, YD, No. 336.
- ²⁵Bordjel draws the identical distinction between the two types of death in va-Yikken Yosef, p. 108b.

²⁶See Zimmerman, Chaim, who writes in his work, Torah and Reason: "What is required is not the definition of death but rather the definition of life... The definition of life is that as long as there is any qualitative functioning of life observable in the realm of our mundane life – he is alive.

"The means available for bringing a man back to observable qualitative functioning of life change from generation to generation. For example, in the case of a man who was considered dead a thousand years ago, if the case were presented to us now and we could revive him with medical techniques then for us he would be considered alive. But since there were no means whatever available then for bringing him back to observable functioning of life, the man was halachically dead. He was no longer a living being in relation to olam haze. The issur of Retzicha [prohibition of murder] did not apply...and the same is with Pikuach Nefesh [saving a life]...

"The above definition is therefore operational and practical. From it follows that the status of Retzicha and the application of Pikuach Nefesh change from generation to generation. The same man dying under same circumstances today, where we have means – technological, medical, chemical or therapeutic – to bring him back to a quantitative functioning of life as indicated by observation, is halachically determined to be alive. If we kill him we take away his life – Retzicha. The mitzva of Pikuach Nefesh also applies and demands that we use all those modern means to indeed bring him back to observable functioning of life.

"The usefulness of our definition is manifest in that it establishes the principle that the Halacha does not find in the human body a state of life – or a state of death – that is absolute fixed and independant. Rather the Halacha deals with observational life in the human body. Therefore, the Halacha of Pikuach Nefesh and Retzicha includes the requirement to use all available technology. This is the proper treatment of the problem." (Emphasis added.) Torah and Reason, (Jerusalem: Hed Press, 1979), ch. iv, "Torah Data and Scientific Discovery," pp. 32-34.

Zimmerman's definition of life is an extension of Hida's version that death is not determined by the state of the individual corpse but rather by the state of death experienced by all men. Zimmerman expands Hida's definition to include the scientific resources available to all men at every point in history.

²⁷Nevertheless he must be treated as dead upon the cessation of life since one doesn't know at the time of death whether or not he will return to dust.

²⁸See supra, n. 25.

²⁹Gen. 3:19.

³⁰Pardo, Jacob b. David, (Appel Zutre, [Venice, 1797], EE, 17:1), writes that alternatively, the possible intention of Birkei Yosef was to distinguish between a resurrexion which takes place before burial to one which occurs afterwards. If one is miraculously restored after the burial then the matrimony (ishut) has already terminated and is not resumed. However, if restoration occurs before

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burial the ishut remains. This distinction however, would require clear cut proofs.

³¹Waks, Responsa Nefesh Hayyah, (Pietrkow, 1876), No. 3.

³²See Tosaf., Kid. 45b, s.v. be-pheirush.

³³Bornstein bolsters his argument by citing Rema, YD, 267:65, who employs this principle in a similar case. Avnei Nezer, EE, No. 56.

³⁴Teomim, Hesed Avraham, EE, No. 14. See supra ch. iii.2, n.170.

³⁵"Benveniste," E.J., Vol. II, p. 559.

³⁶Benveniste, Keneset ha-Gedolah, (Lemberg, 1861), Sh. Ar., EE, 17.[2].

³⁷Our explanation of Benveniste concurs with Ozar ha-Posekim, Sh. Ar., EE, 17:1.[4].

³⁸Shab. 112b; Erub. 24a; B.K. 96b; Sod Yesharim, loc.cit.

³⁹This is evident from the fact that Benveniste proves that in the time to come the original marriage partners will return to one another because if a dead partner were to be miraculously resurrected at present the marital status would automatically resume.

⁴⁰See following note.

⁴¹Various instances are related in the Talmud which indicate a continuous relationship between husband and wife even after the death of one of the partners. To wit: Yeb. 55b, expounds the word "carnally" in Lev. 18:20, "Thou shalt not lie carnally with thy neighbours wife," to exclude the case of intercourse with a dead woman who died a married woman. Since a wife even after her death is described as "his kin" (she'ero), Lev. 21:2, one would have assumed that one should be as guilty for having intercourse with such a woman as with a married woman. Rashi, Lev., ad.loc., explains that the word "carnally" teaches that although the kinship remains after death, one is nevertheless exonerated from having intercourse with such a woman. Tosaf., Yeb., loc.cit., s.v. le-achor, however, explains that the word "carnally" teaches that the kinship does not continue after death.

It is possible that the argument between Benveniste and Teomim is the same argument of Rashi and Tosaf. In that Benveniste learned that although the matrimony (ishut) is frozen upon death, the kinship (she'er) relationship nevertheless remains. Teomim however, held like Tosaf., that both matrimony and kinship lapse together with death. For without matrimony there is no longer kinship. Polotsky, Meir Dan, (Keli Hemdah, [Piotrkow-Warsaw, 1900-38], Parshat Va-yigash), avers that the controversy between Maim. and Nach. on whether the Laws of Mourning between husband and wife are Pentateuchal or Rabbinic is also contingent on whether the she'er relationship continues after death. There is evidence of a continued relationship between husband and wife even after divorce. To wit: J.T.,

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Ket., ch. xi,3: "R. Jacob b. Aha in the name of R. Johanan, R. Hila in the name of R. Leazer said: Just as a man spares the honour of his widow so must he spare the honour of his divorcee, as it is written, 'And thou hide not thyself from thy own flesh' Isa. 58:7." From here we see that even in the case of a divorcee there remains enough of a kinship after divorce for her to still be referred to as "thy flesh," despite her matrimony being completely terminated. Gen. R., ch. xvii,3 and Yalk., Vol. I, nos. 23, 665, also apply the words "thy flesh" from Isa. to one's divorcee. Again it may be argued that "thy flesh" refers to her status prior to divorce; see Margolies, Moses, Penei Moshe, (printed in std. eds. of Jerusalem Talmud), J.T., Ket., loc.cit. Or else, she may still be considered "thy flesh" to forbid him from marrying her mother or sister; see Sod Yesharim, loc.cit., end.

⁴²Deut. 22:19; Landau, Urah Shazar, (Przemysl, 1882), No. 1, [86]; Lebovic, Shulchan ha-Ezer, (Dees-Berehovo, 1929-32), No. 1: 26.[3].

⁴³As for example in Yeb. 87b, where a woman, who because she bore a son from her deceased husband was exempted from undergoing a levirate marriage, and after her remarriage a brother is suddenly born. Tosaf., Yeb. 17b. On the principle of darkhei noam see "Darkehi Noam," T.E., Vol. VII, p. 712.

⁴⁴Although the Sages expressed the belief that, "the Tishbite will resolve quandaries and disputations" (see Tosaf. Yom Tov, Eduy., end), it is doubtful whether they had in mind anything so highly involved as this. If they did, it is no small wonder that they regarded Elijah's heralding that period as absolutely essential.

⁴⁵Mishna Kid., ch. i,1; Kid. 13b; Isa. 26:19; Ezek. 37:13; Aszod, Yehudah Ya'aleh, (Levov-Pressburg, 1873), EE, No. 4. On the principle of "we may only rise to a higher level of sanctity but may not degrade to a lower level," see Ber. 28a; Shek., ch. vi, 3; Eccles. R., ch. xi,7; Men. 98b.

⁴⁶Although Aszod does attempt an alternative explanation in reconciling Terumat ha-Deshen, it is this explanation which he relies upon and considers in the main. This is indicative in his appending the words "So it seems to me" to the end of this explanation.

⁴⁷See Hartman, Philos. Quest, p. 70, how knowledge of the World to Come influences actions in this world. See also ibid., p. 81: "Olam Ha-ba is a description not only of the future life of the disembodied intellect, but also of an individual's evaluation of the significance of his everyday religious behaviour."

⁴⁸See Nach., Writings and Discourses, Vol. II, "The Gate of Reward."

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¹Hirschler, "Halakic Problems with a Test Tube Baby," Halaka and Medicine, ed. Hirschler, (Jerusalem-Chicago: Regensberg Inst., 1980), Vol. I, p. 312 ff.

²Sanh. 65b; Gen. 9:6; Hakham Zevi, No. 93. See our discussion concerning Hatam Sofer's application of this responsum, supra, ch. iii.2.

³Hirschler proves from Terumat ha-Deshen that the existence of life is insufficient qualification for a definition of manhood since Elijah is alive and is nevertheless classified as dead. Sedei Hemed, Vol. I, Ma'arekhet Aleph, no. 151, p. 293, however, reports an opinion that the definition of manhood (odam) remains after death. According to this opinion, even if Elijah were considered dead, he could still qualify for a definition of manhood, and Hirschler would have no proof. We may, however, suggest the following distinction: When a person originally qualified as a 'man' he retains this definition even after death. However, if whilst he is still alive he loses his definition of manhood, then he would no longer retain this definition when later considered dead.

⁴See our elaboration on this in our concluding chapter.

⁵Isa. 54:1.

⁶Sacks, "Test Tube Babies," South Africa Zionist Record and South Africa Jewish Chronicle, 30 April 1982.

⁷Friedrich, Otto, "A Legal, Moral, Social Nightmare," Time, 10 September, 1984, no. 37. The above statements were made by Capron, Freed, and Gorovitz, respectively.

⁸Zimmerman, (Torah and Reason, ch. iv, "The Truth of Torah Data and its Precedence for Scientific Discovery," pp. 29-49), specifies several examples which evince how modern scientific developments which have only recently been discovered, had already found clear cut halakic precedents in the ancient rabbinic writings.

⁹Tzitz Eliezer, Vol. X, (Jerusalem, 1970), No. 26, p. 165.

¹⁰See Guide, Part I, ch. lxxii.

¹¹Duran, Simeon b. Zemah (Rashbaz), Yavin Shem'uah, (Levorno, 1744), No. 7; Beit David, No. 40, cited in Waldenberg, op.cit.

¹²See Abrabanel, comm. to Guide, Part I, ch. xxxix.

¹³Zohar, Numb. 161.

¹⁴Jer. 2:27.

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- ¹⁵Guide, Part I, ch. lxxii.
- ¹⁶Wiess, Benjamin Aryeh ha-Kohen, Responsa Eben Yekarah, (Levov, 1894), Vol. III, No. 29; Horowitz, Abraham Jacob, Responsa Tzur Ya'akov, (Bilgoraj, 1932), No. 28.
- ¹⁷Torat Moshe, Gen., Lech Lecha, and va-Yishlach.
- ¹⁸Guide, Part I, chs. lxxii, xxix; Waldenberg, op.cit.
- ¹⁹Yalk., beginning of Prov.
- ²⁰Nefesh ha-Hayyim, (Vilna, 1824), Part I, ch. xiv.
- ²¹Miranda, Yad Ne'eman, (Salonika, 1804), Likkutim, YD, no. 64.
- ²²Palache, Joseph, Yosef Et Echav, (Izmir, 1894), Ma'arekhet, no. 5.
- ²³Singer S., ed., "Morning Service," Daily Prayer Book, (London: H.M. Printers, 1962), p. 7.
- ²⁴Minhat Hinnukh, No. 203.
- ²⁵Tendler, Moses and Rosner, Fred, Practical Medical Halaka, (Jerusalem-New York: Feldheim Publishers, 1980), p. 44. See also Kluger, Hokhmat Shelomo (printed in std. eds. of Sh. Ar.), Sh. Ar., EE, 17.[1], who understood Isserlein as saying that Elijah relates to his new status. However, Kluger disagrees with Isserlein and rules that Elijah retains his former status with all its halakic ramifications. This would also account for the variant ruling concerning transsexual surgery. It is surprising to note that in Tuv Ta'am ve-Da'at (see supra, ch. iii.2) Kluger accepts Isserlein's ruling yet in Hokhmat Shelomo rejects him.
- ²⁶See supra, n. 8.
- ²⁷Lev. 21:14, Mishna, Kid., ch. i,1.
- ²⁸Kid. 13b.
- ²⁹See previous note.
- ³⁰See B.M. 38b: "I know that their wives shall be widows and their children fatherless; why then is it written, 'and your wives shall be almanot etc.?' This teaches that their wives will seek to remarry and not be permitted." Thus the Talmud applies the term 'Almanot' to describe Agunot. See also II Sam. 20: "So they were shut up unto the day of their death, in widowhood [Almanot] with their husbands alive."
- ³¹See Al-Hakham, Responsa Rav Pe'alim, Vol. II, No. 1.
- ³²See previous note.
- ³³Sh. Ar., EE, 17, glosses and comms, ad loc.

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³⁴Tur, EE, 17.

³⁵Darkhei Moshe, (printed in std. eds. of Tur), Tur, EE, 17.[5].

³⁶Sh. Ar., EE, 17:3.

³⁷Beit Shemu'el, Sh. Ar., 17:3[11].

³⁸Rabbi Professor E.J. Duschinski shared this remarkable insight with me.

³⁹Sh. Ar., EE, 17:1; see glosses and comms. of Ashkenazi, Judah, Ba'er Heitev, (printed in std. eds. of Sh. Ar.); Eisenstadt, Abraham Hirsch ben Jacob, Pitchei Teshuva, (printed in std. eds. of Sh. Ar.); Hokhmat Shelomo; Ozar he-Posekim; Sh. Ar., ibid. See the remainder of this law in Sh. Ar. thereon.

⁴⁰Tur, EE, 44; Minhat Hinnukh, loc.cit.

⁴¹Responsa Igra Rama, (Warsaw, 1885), EE, No. 28; Kid. 41b. Sh. Ar., EE, 123:2, 141:31,33, 35:6; Beit Shemu'el, EE, 141:33.[47] end.

⁴²Yeb. 49b.

⁴³Avnei Millu'im, rpt. (Jerusalem, 1970), EE, no. 18, p. 39.

⁴⁴Yeb. 79a.

⁴⁵Tosaf., Yeb. 9b, s.v. harei. On the halizah ceremony of removing the shoe in the law of levirate see Deut. 24:5-9.

⁴⁶Sh. Ar., EE, 15:13. The additional qualification of permitting the raped woman's daughter only after the woman's death is a rabbinical injunction which was regulated as a precautionary measure to prevent the man from coming in further contact with this woman who would invariably frequent her daughter's home.

⁴⁷Sanh. 76b.

⁴⁸Sefer Yehoshua, (Zolkiew, 1829), No. 332.

⁴⁹Namely: 1) One could not infer from the Shulchan Arukh that if the original party with whom the marriage was in effect reached a stage where marriage to the same party could not take effect - were the marriage entered into at that point - that there would be no need for divorce. Elijah's case is exceptional; His original marriage did not become invalidated upon his becoming an angel with whom marriage is not effective. But rather because of his transcendence, he is considered halakically dead.

2) According to the opinion that marriage to an apostate cannot take effect, there would be a difference between contracting a marriage with an apostate for the first time and a valid marriage in which one of the partners apostatized.

3) Even if the Torah had not required divorce for a Sotah, the same

difference as above would exist between a Sotah who wished to enter a new marriage and a woman whose marriage was previously valid and who subsequently became a Sotah.

4) Tosaf.'s question which Avnei Nezer claims to have resolved would remain difficult.

5) R. Joshua Babad's own law that Sh. Ar.'s prohibition and the maximum Torah penalty would not apply in a case where a man pursued illicit relations with a woman and her daughter where his marriage to one of them was originally valid and subsequently became invalidated. As according to the opposers of this view, his marriage cannot become automatically invalidated. Moreover, the mother or daughter to whom he was never married would no longer be eligible to him in marriage.

⁵⁰Supra, n. 25.

⁵¹Bleich attributes this position to Rabbenu Chananel, in Contemporary Halakic Problems, "Transsexual Surgery," p. 104. R. Chananel opines that gender is irreversibly determined at birth and that one's existential status is not affected halakically by surgical procedures. Sexual identity therefore, does not depend on the presence of genital organs. Similarly R. Shlomo Goren, in an article reported by Hayyim Firkas in Hatzopfeh, (Feb. 1984), rules that in the case of an ovarian transplant which was fertilized by the husband of the recipient, the fetus takes on the existential identity of the donor mother. It's status is not affected by the new environment of the recipient and therefore, acquires no new existential properties. If the donor was a Gentile and the recipient Jewish, the fetus's identity will be non-Jewish. However, Bleich relates that according to R. Yekutiel Aryeh Kamelhar the source of specific organs has no bearing on the identity of the fetus since the transplanted organ acquires the identity of the recipient. Bleich, loc.cit., "Host Mothers," pp. 107,8, n. 12. R. Kamelhar's ruling concurs with the positions of R. Waldenberg and Minchat Hinnukh, discussed above.

⁵²Sh. Ar., EE, 9:1.

⁵³Supra, ch. v, n. 42.

⁵⁴Supra, ch. ii, n. 8.

⁵⁵Legends, Vol. VI, p. 316.

⁵⁶Prov. 30:4; Teshuvot ha-Geonim, (Lyck, 1864), No. 45, p. 19.

⁵⁷I Chron. 16:22; Zohar Hadash, Midrash Ruth, Ruth 2:1, p. 103. See supra, ch. iii.4, n. 172.

⁵⁸See Tosaf., Shab. 87a, s.v. ve-ata.

⁵⁹Va-Yikken Yosef, p. 107b.

⁶⁰Shulchan ha-Ezer, loc.cit.; Sh. Ar., EE, 13:1; Yeb. 21a.

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- ⁶¹Gen. 2:18; Yeb. 63a.
- ⁶²Anaf Yosef, (printed in Ein Ya'akov, rpt. [Jerusalem: Pe'er, 1976], Vol. II), Yeb., ibid.
- ⁶³Shab. 87a; Tosaf., ibid., s.v. ve'ata.
- ⁶⁴Hoeschke, Yalkut Reuveni, Ex. 3:5; Legends, Vol. V, p. 418.
- ⁶⁵I Kings 17:18; Yalk., Vol. II, no. 209.
- ⁶⁶Yeb. 37b, Yom 18b; Zayyit Ra'anan, (printed in most std. eds. of Yalk.), Yalk., loc.cit.
- ⁶⁷Tosefta, Sot., ch. iv,8, (printed in std. eds. of the Talmud); Legends, Vol. VI, p. 317, n. 3.
- ⁶⁸Epistle of Titus, the Disciple of Paul, "On the State of Chastity," New Testament Apocrypha, ed. Henneke, Vol. II, p. 153.
- ⁶⁹See also ibid., p. 152.
- ⁷⁰Ibid, p. 151; Gen. 6:2.
- ⁷¹Kid. 70a; see our discussion of this passage supra, ch. iii.4.
- ⁷²Gen. 2:18.
- ⁷³Rashi, Gen., ibid.
- ⁷⁴PdRE, ch. xii.
- ⁷⁵Gen. 2:4; Gen. R., ch. xii,7.
- ⁷⁶Jehiel Michael ben Uzziel, Nezer ha-Kodesh, (Yesnif, 1719), comm. to Gen. R., ibid.
- ⁷⁷See Yefat To'ar, comm. to Gen. R., ibid.
- ⁷⁸See Legends, Vol. VI, p. 293.
- ⁷⁹Ibid., Vol. I, p. 151. The concept of incubus and succubus is manifest among demons but not angels. See also ibid, Vol. V, p. 108, where sex differentiation and offspring are described among demons but not among angels. Cf., however, Zohar, Vol. I, 119b, Vol. II, 4b, and Israel of Belzec, Zohar Hadash, (Lublin, 1648), nos. 63, 93.
- ⁸⁰See Mirkin, Gen. R., loc.cit, p. 87.
- ⁸¹Sod Yesharim, Vol. I, no. 1.
- ⁸²By examining Elijah's relationship with his wife we can determine this polarization. If he were more closely polarized to his human state, he would still be in need of a helpmeet to attain unity and could well have siblings. Thus his relationship would

halakically be regarded as "human," and he would require a divorce to terminate it. On the other hand, his propagating activity would subject him to the effects of death and decomposition and if Elijah is believed to be eternal, then by virtue of his eternity he must be "separate" from wife and children. As he is a self-contained unit which does not require a wife, and being immune to the effects of death, he does not beget children. Hence he does not require a divorce, which is a feature of human relationships only, since he is regarded halakically according to his latter angel status.

⁸³The historical information in this section is a concise synthethis of: Baron, Salo, A Social and Religious History of the Jews, (New York: Columbia Univ. Press, 1969), Vol. XIII, pp. 211-16; Margolis, Max L., and Marx, Alexander, A History of the Jewish People, (Philadelphia: JPS, 1945), pp. 408-16; Dubnov, Simon, History of the Jews, (New Jersey: Yoseloff Pub., 1969), Vol. III, pp. 263, 269, 275, 288; Lowenthal, M., The Jews of Germany, (New York, 1936), pp. 132-37.

⁸⁴Cf., however, Baron, op.cit., Vol. X, p. 117.

⁸⁵In fact, the Hussites themselves entertained Messianic expectations. Likewise, Luther, was later exaggeratedly equated by his contemporaries with Elijah, the harbinger of the Messiah. Although Jews obviously rejected these absurd notions, nevertheless Messianism and the advent of Elijah seemed to be prevalent in the minds of both the Jewish and the non-Jewish worlds alike. Indeed, the transformation of the concept of Antichrist from an individual external protagonist to a collective internal Christian phenomenon may well have intensified the general Christian anticipation of Messiah.

⁸⁶Joseph b. Moses, Leket Yosher, ed. Friedmann, J., (Berlin, 1903-04); "Isserlein," E.J. Vol. IX, p. 1080.

⁸⁷Scholem, "Kabbalah," E.J., Vol. X, p. 514.

⁸⁸Ibid., p. 519. Although hasidic tradition grew independently of the kabbalistic literature which developed during that period (ibid., p. 516), nevertheless, contacts were made between Spanish Kabbalists and Hasidei Ashkenaz (ibid., p. 535). Judah ha-Hasid's great grandson, Moses b. Eleazar, also a Kabbalist, tried to harmonize Ashkenazi - hasidic teachings with Kabbalah, ("Judah ben Samuel ha-Hasid," E.J., Vol. X, p. 352).

⁸⁹See supra, n. 85.

⁹⁰Indeed, the Jewish people throughout the ages in every country of their dispersion have always expressed their expectancy of a visitation of Elijah in numerous practices. I.e., the setting aside of Elijah's seat at the circumcision, and opening the door at the conclusion of the Passover Seder ritual in anticipation of the Redemption.

⁹¹Such as Abraham Klausner's Sefer ha-Minhagim (Riva di Trento, 1558), Jacob Moellin's Minhagei Maharil, (Sabionetta, 1556), the

Responsa of Jacob Weil, (Venice, 1523), and Isserlein's, Terumat ha-Deshen.

⁹²It takes into account the special characteristic of everyone, the psychology of the person discussed, the historical and economic situation and the person's special relationship with other people. This pragmatic approach consequently rendered Sefer Hasidim as a most important historical source for the study of everyday Jewish life in medieval Germany. The book describes some actual incidents which clarify the situation in Germany during and after the disasters brought by the crusades on German Jews; see "Hasidim, Sefer," E.J. Vol. VII, p. 1389.

⁹³"Kabbalah," loc.cit., p. 514.

⁹⁴Ish Halaka, pp. 24, 40, 41.

⁹⁵Ibid., p. 65.

⁹⁶Shab. 88b; B.M. 88b; Ish Halaka, pp. 35-38, 42.

⁹⁷Ibid., pp. 44, 46, 48, 52, 72, 72; Aboth, ch. ii,1; Deut. 30:12; B.M. 59b.

⁹⁸Ish Halaka, pp. 74-76.

⁹⁹See supra, ch. v, n. 3.

¹⁰⁰See Hartman's discussion in ch. ii of his Philos. Quest, how philosophic knowledge of the Hasid, in the Maimonidean oeuvre, adds qualitative dimension to his halakic activity. We have already belabored this point in our Introduction concerning the influence of philosophic knowledge upon one's halakic activities. In a similar process, the same sphere of influence and scope exists between the transcendentalist aspirations of the Hasid in the tradition of Hasidei Ashkenaz and his halakic activity.

¹⁰¹"Kabbalah," loc.cit., p. 533.

¹⁰²Sefer Hasidim, nos. 1477, 984.

¹⁰³Sefer ha-Bahir, (Amsterdam, 1651); see "Kabbalah," loc.cit., p. 539.

¹⁰⁴Responsa of Rashba, Vol. I, Nos. 93, 94.

¹⁰⁵Ish Halaka, p. 45.

¹⁰⁶Yisrael ba-Ammim, ch. vi, p. 108.

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¹Sifri, Deut. 18:13.

²See Tosaf., Shab. 156b.

³Ibid.

⁴Pes. 113b.

⁵See comms. of Rashi, Malbim (Meir Loeb b. Yehiel Michael, Perush Malbim [printed in standard editions of the Bible]), Hirsch, S.R., (Commentary on the Bible, tr. by Levy, I., [London: L. Honig and Sons, 1962]), Deut., loc.cit. Malbim thereon explains that the talmudic position adds force to the former Sifri except in that it postulates providence not only in the form of a condition, i.e., "if...then," but rather as a full commandment.

⁶Biur ha-Gra, (printed in std. eds. of Shulchan Arukh), Sh. Ar., YD., 179:2.[7].

⁷Targum, II Chron. 12:32; Shab. 156a; Teshuvot ha-Ramban, (Zolkiew, 1798), No. 282; Caro, Beit Yosef, (printed in std. eds. of Tur), Tur, YD, 179.

⁸Lev. 19:26; Sanh. 66a, 65b; Git. 45a; Nimmukei Yosef, Sanh., ch. vii, end.

⁹A mystical theory which explains how birds gain the knowledge which they pass on is that there is a type of spirit which flits about in the upper atmosphere listening surreptitiously on the conversations of the "princes of the stars." The "princes of the stars" are responsible for earthly events and are therefore aware of what is to transpire on earth. The spirits then gossip about what they have overheard, and the birds, flying among them, pick up bits of information which they unwittingly disclose to men. Trachtenberg, Joshua, Jewish Magic and Superstition, (New York: Atheneum, 1939), ch. xiv, p. 211. See also Gottlieb, D., Yad Ketana, (Levov, 1868), comm. to Yad, Avoda Zara; ch. vi,[29].

¹⁰Yad, Avoda Zara, ch. xi,8,9,16; Sefer ha-Mitzvot, negative commandment no. 32; Comm. on the Mishna, A.Z. 54b; Responsa of Maim., ed. Fishman-Maimon, p. 94.

¹¹Biur ha-Gra, YD, 179:6.[13].

¹²Nach., op.cit.

¹³Maim., Yad, loc.cit.

¹⁴Sanh. 95a; Habiba, op.cit.

¹⁵Nimmukei Yosef's sequel remarks: "However, our Sages warned against man occupying his thoughts with these things and one should rely on He Who Spoke and the World Came into Being etc.", does not mean that he discourages this study, but rather warns against depending on stars (rather than on G-d) as a result of the study.

¹⁶Leket Yosher, II, 17-18; Trachtenberg, op.cit., p. 252.

¹⁷Kaufman, The Religion of Israel, tr. and abridged by Greenberg, M., (London: George Allen and Unwin Ltd., 1961), pp. 91, 87-93. See also Yad Ketana, loc.cit., p. 217.

¹⁸Hul. 95b.

¹⁹Ibid.; see Gen 24:14 for the Eliezer incident and I Sam. 14:9,¹⁰ For Jonathan.

²⁰Tosaf., Semag, and Maim., consider this augury whereas Rabad allows it. See Beit Yosef, Tur, YD, 179.

²¹Ran, (printed in std. eds. of Talmud), Hul., loc.cit.; also quoted in Kesef Mishne, Yad, Avoza Zara, ch. xi,4.

²²Sefer Yereim, (Venice, 1566), no. 91; also quoted in Sirkes, Joel, Comm. of Bach, (printed in std. eds. of Tur), Tur, loc.cit.

²³Radak, I Sam. 14:9.

²⁴Darkhei Moshe, Tur, loc.cit., [2].

²⁵Hul., loc.cit.

²⁶Rabad, Yad, Avoda Zara, ch. xi,5. see Lehem Mishna, Yad, ibid., who writes: "Bad is not bad and good is not good unless it occurs thrice."

²⁷Falk, Perisha, (printed in std. eds. of Tur), Tur, loc.cit., [10].

²⁸Shapira, Zevi Hirsch, Dakhei Teshuva, rpt. (New York: Talpiyyoth Pub., 1959), YD, 179.[4],[28].

²⁹Kaufman, op.cit., p. 44.

³⁰Sh. Ar., YD., 179:2.

³¹"R. Aba b. Hanina also said: 'Whoever pronounces the benediction over the new moon in its due time welcomes, as it were, the presence of the Shekinah.'" Sanh. 41a, see also talmudic comms. ad loc.

³²Shakh, comm. to Sh. Ar., YD, 189:6.[13]; Nid. 38a, "the Shofar [i.e., the trumpet that proclaims the New Month] causes"; Sedei Hemed, Vol. VII, Ma'arekhet Hatan ve-Kalah, no. 21, pp. 40-51.

³³Kid. 29b; Aszod's responsum is cited in Sedei Hemed, ibid.

³⁴Ori ve-Yishi is also cited in Sedei Hemed, ibid.

³⁵See Shab. 156a. I have not been able to locate Feinstein's ruling in his Responsa and it seems to be a tradition reported in his name. For other treatments of inducing labour see Bleich, Contemporary Halakic Problems, Vol. I, pp. 142-43, and Vol. II (1983), pp. 84-86; Tendler, Practical Medical Halaka, p. 31.

³⁶Ber. 20a; Rema, Sh. Ar., YD, 198:48; Shakh, Sh. Ar., ibid., [61]; see also Elhanan b. Shemuel Zangwill (Sanville?), Sidrei Tahara, (printed in most std. eds. of Sh. Ar.), Sh. Ar, ibid., [91].

³⁷Sh. Ar., OH, 615:2; see comms., ibid., who explain that seminal pollution is not an omen when he caused it through his own actions by eating spicy foods or indulging in evil thoughts; Rema, Sh. Ar., OH, 664:1.

³⁸Sh. Ar., 563:1,2; see also Darkhei Teshuva, Sh. Ar., YD, 179:3.[23].

³⁹Gen. R., ch. xlv,9; PdRE, ch. lii; Legends, Vol. V, p. 364, n. 357.

⁴⁰Ber. 34b.

⁴¹Supra, n. 1.

⁴²Semag, cited by Beit Yosef, in Tur, YD, 179.

⁴³Sanh. 17a; Josh. 7; I Sam. 14; I Chron. 25:8.

⁴⁴Prov. 18:18, 16:33; see Baron, A Social and Religious History of the Jews, Vol. I, p. 329, n. 23.

⁴⁵Havot Yair, No. 61.

⁴⁶Responsa of the Geonim, (Vilna, 1885), No. 57; see publisher's comment, ad loc.

⁴⁷The Religion of Israel, pp. 92-93.

⁴⁸Ned. 8a; Sh. Ar., YD, 334:35; Margaliot, R., ed., "Introduction," Responsa from Heaven, (communicated to) Jacob of Marvege, (Jerusalem: Mossad ha-Rav Kook, 1957), pp. 4-24; Sanh. 30a; Tur and Sh. Ar., HM, 255:9; Ber. 55b; "Divrei halomot," T.E., Vol. VII; "Hatavat halom," T.E., Vol. VIII.

⁴⁹Trachtenberg, op.cit., p. 307, n. 17 and p. 308, n. 26.

⁵⁰Yad, Avoda Zara, ch. xi,15; Responsa of Maimonides, ed. Blau, Joshua, (Jerusalem, 1957-61), No. 173.

⁵¹Yeb. 64b.

⁵²Responsa of Rosh, Rule 53, no. 8.

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- ⁵³Luriah, Biurei Maharshal, comm. to Semag, (Jerusalem: Brodie-Katz, 1973), Negative Commandments, no. 126, p. 95.
- ⁵⁴Nodah be-Yehudah, No. 9.
- ⁵⁵Responsa Hatam Sofer, EE, No. 24.
- ⁵⁶Ozar ha-Posekim, EE, 9,2.[2].
- ⁵⁷Ibid., 2.[3].
- ⁵⁸Ibid., 14.[3], 16.[3].
- ⁵⁹Ibid., 4.[4].
- ⁶⁰Luriah, op.cit.; see answer given by Pardo, Jacob, Apei Zutrei, Sh. Ar., EE, 9.[4]. p. 48.
- ⁶¹TD, No. 211.
- ⁶²Ozar ha-Posekim, loc.cit., 15.[1].
- ⁶³TD, loc.cit.
- ⁶⁴B.M. 75b; Responsa of Rashba, No. 19.
- ⁶⁵Pes. 49a; Ozar ha-Posekim, loc.cit., 16.[2].
- ⁶⁶Hochmat Shelomo, Sh. Ar., EE, 9.[2].
- ⁶⁷Ozar ha-Posekim, loc.cit., 4.[1].
- ⁶⁸Ibid., 4.[3].
- ⁶⁹Ibid., 4.[4].
- ⁷⁰Shab. 156b, M.K. 28a; Responsa of Rosh, loc.cit.
- ⁷¹Jer. 10:23; Responsa of Radbaz, No. 716.
- ⁷²Sot. 2a, M.K. 18b.
- ⁷³Responsa of Maimonides, ed. Blau, No. 436; See Duran's treatment of this issue in Responsa of Tashbetz, (Amsterdam, 1738-41), Vo. II, No. 1.
- ⁷⁴Divrei Hayyim, (Lemberg, 1875), EE, Vol. II, No. 26.
- ⁷⁵Ozar ha-Posekim, loc.cit., 16.[1].
- ⁷⁶Shab. 156a; Responsa of Rashba, No. 19; Duran, Solomon b. Simeon, Responsa of Rashbash, (Leghorn, 1742), No. 525.
- ⁷⁷Lev. 18:3; Sifra, Lev. 18:3.

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⁷⁸Rashi, Shab. 67a, s.v. darkhei; Rashi, Hul. 77a, s.v. darkhei; Ran, Hul., ibid; Joshua Boaz b. Simeon Barukh, Shiltei ha-Giborim, on Rif, (printed in std. eds. of the Talmud), Shab., loc.cit.; Colon, Joseph ben Solomon, Maharik, comm. on Senag, (Munkacs, 1899), Shoresh 88.

⁷⁹Ran, Sanh. 52b, A.Z. 11a; Maharik, loc.cit.; Guide, Part III, ch. xxxvii; "Darkhei Emori," TE., Vol. VII.

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¹Jewish Magic and Superstition, pp. 15-17. His words are substantially abridged here. For an exact citation see thereon.

²Isa. 65:11, Sh. Ar., OH, 180:2; see also Sh. Ar., YD, 178:3.

³See Radak and Metzudah comms. to Isa., loc.cit., who identify Gad as Jupiter (Zedek), and Luzzato, Samuel David (Perush Shadal, [Tel Aviv: D'vir Pub., 1970], Isa., ibid., p. 43), who describes Jupiter as the Mazal of luck and success.

⁴Zohar states that blessings require material substances in order to become realised. Zohar, Yitro 86b, Terumah 157b; Magen Avraham, Sh. Ar., loc.cit.

⁵Rema, YD, 178:3.

⁶Shakh, YD, ibid., [6].

⁷Sh. Ar., YD, 179:15.

⁸Darkhei Moshe, Tur, YD, 179.[5].

⁹Teomim-Fraenkel Responsa Gur Aryeh Yehudah, (Zolkiew, 1827), No. 78; Sanh. 67b.

¹⁰Anakawa, Shemen ha-Mor, Leghorn, 1869), No. 3.

¹¹Maharik, cited in Kesef Mishne, comm. to Maim., Yad, Avoda Zara, ch. xi, 9, 15.

¹²Beit Yosef, Tur, YD, 178.

¹³Hirsch, comm. to Lev. 18:3, pp. 475-77.

¹⁴Rema, YD, 178:1; Darkhei Moshe, Tur, YD, 178.[1].

¹⁵Hul. 77a; Margaliot, Margaliot ha-Yam, Sanh. 52b; see also Guide, Part III, ch. xxxvii.

¹⁶Sanh., loc.cit.

¹⁷Numb. 5:11-31, 21:9, 27:21; Lev. 16; II Kings 18:4; Yom. 67a, 68b.

¹⁸Urbach, Sages, p. 98; see also Baer, Yisrael be-Annim, pp. 106-7

¹⁹Mishna, Ta'an. ch. iii, 8; Sages, p. 103; Trachtenberg, op.cit., p. 121.

²⁰Avoth, ch. v, 6. For a brilliant explanation how miracles fall within the purview of the laws of nature and do not contradict them, see Zimmerman, Torah and Reason, pp. 357-60.

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- ²¹Supra, n. 4.
- ²²Shab. 53b; Sages, p. 110.
- ²³Ozar ha-Geonim, ed. Lewin, Responsum of Rav Hai Gaon.
- ²⁴Ber. 20a.
- ²⁵Sages, p. 108.
- ²⁶Ex. 17:15.
- ²⁷Ber. 54a; Mishna Berura, Sh. Ar., OH, 697:1.[2].
- ²⁸Biur ha-Gra, Sh. Ar., OH, 218.
- ²⁹Chajes, Maharaz Hayes, (printed in std. eds. of Talmud), comm. to Shab. 21b.
- ³⁰Neriah, quoted by Yisraeli, Shaul, in Ha-Torah ve-Ha-Medina, (Tel Aviv, 1950), pp. 228-40
- ³¹Sh. Ar., OH, 218:9; Abudraham, cited in Beit Yosef, Tur, OH, 218, end; Resposna of Rivash, No. 337, cited in Beit Yosef, Tur, OH, 219 end.
- ³²Bleich, Contemporary Halakic Problems, Vol. II, pp. 222-32.
- ³³Hida, Hayyim Sheal, (Lemberg, 1886), Part I, No. 43.[2]; "Ein somchim," T.E., Vol. I; Tan. 21a, B.B. 119b, Ber. 33a.
- ³⁴See Najjar, Judah (Limudei Hashem, [Levorno, 1787], B.M., no.112), who writes: "Since he [Elijah] was a prophet, certainly he had clear knowledge. For if not because of prophesy, it would not even constitute a doubtful possibility. From where is he [Elijah] to know that he [the child] will live?" The laws of Pikuach Nefesh only apply where one may be effective in saving a life through human efforts. In this case, however, Elijah was merely being used as an agent through which G-d would perform a miraculous restoration.
- ³⁵Maim., Yad, Avoda Zara, ch. xi,1, Beit Yosef, Tur, 178.
- ³⁶David b. Samuel ha-Levi, Taz, (printed in std. eds of Sh. Ar.), Sh. Ar., YD, 178.[1].
- ³⁷Lev. 18:3, 20:26; Semag, negative commandments, no. 50; see also Perisha, Tur, YD, 178.[2].
- ³⁸Mekhilta, Bo, ch. v, 5a; Est. R., ch. xvii,85.
- ³⁹Sh. Ar., YD, 178:2.
- ⁴⁰See Sirkes, (Bach, Tur, YD, 178), who brings the opinion of his Rabbis who permitted Jews to wear Gentile garb during times of danger in order to disguise their identity.

- ⁴¹Darkhei Teshuva, Sh. Ar., YD, 178.[2], [44], [5], [15]; Minchat Hinnukh, Mitzvah 25.[1].
- ⁴²Darkhei Teshuva, ibid., [6], [8], [14].
- ⁴³Sh. Ar., OH, 433:7; Trachtenberg, op.cit., pp. 2-3.
- ⁴⁴Shab. 67a; Guide, Part III, ch. xxxvii.
- ⁴⁵Ex. 21:19; B.K. 65b; Responsa of Rashba, No. 413.
- ⁴⁶Tan. 20b; Minchat Hinnukh, no. 205; Rashba, op.cit.
- ⁴⁷Derashoth ha-Ran, ed. Feldman, Leon A., (Jerusalem: Shalem Inst., 1973), pp. 220-22.
- ⁴⁸Ibid; see also Talmid ha-Ran, ed. Feldman, Leon A., (Jerusalem: Shalem Inst., 1970), comm. to the Pentateuch, pp. 120-24.
- ⁴⁹Darkhei Moshe, Tur, YD, 178.[3]. Darkhei Moshe's exposition of Maim.'s view seems to conflict with Maim., Yad, Shabbat, ch. xix, 14. Furthermore, Maim. does not specifically speak of amulets in Yad, Avoda Zara, ch. xi,11, which is the source of Darkhei Moshe's exposition. That which Maim. writes of amulets, however, in Yad, Tefillin, ch. v,4, and in Guide, Part I, ch. lvi, does not refer to expert amulets.
- ⁵⁰Shab. 60a; Noibert, Shemirat Shabbat ke-Hilkata, (Jerusalem: Moriah Pub., 1979), ch. xxxiv, no. 28.[108], p. 479.
- ⁵¹See Kesef Mishne, Yad, Shabbat, ch. xix, 14; and entire discussion in Beit Yosef, Tur, OH, 301.
- ⁵²Birkei Yosef, Sh. Ar., OH, 301.[6].
- ⁵³Yom. 83.
- ⁵⁴Maim., Comm to the Mishna, Yom., ibid.
- ⁵⁵Mizrachi, Admat Kodesh, (Salonika, 1757).
- ⁵⁶Spector, Be'er Yitzchak, (New York, 1948), OH, No. 17; see also Sonnenfeld, Asher, Nezer ha-Rosh, (Jerusalem, 1982), no. 14.
- ⁵⁷Prov. 3:32, 11:11; Maim, Yad, Avoda Zara, ch. xi,12.
- ⁵⁸Shebu. 15b.
- ⁵⁹Mishna, Ber. ch. ix,3.
- ⁶⁰Torah and Reason, ch. xxix, pp. 342-68.
- ⁶¹Maim., Yad, loc.cit.
- ⁶²Sefer Hinnukh, Deut., Mitzvah 512.

- ⁶³Darkhei Teshuva, Sh. Ar., YD, 179:8.[30].
- ⁶⁴Responsa of Jacob Weil, No. 74a; Trachtenberg, op.cit., p. 47.
- ⁶⁵Ettlinger, Binyan Zion, (Altona, 1878), Part I, No. 67; see Darkhei Teshuva, Sh. Ar., YD, 179:1.[6].
- ⁶⁶Feistein, Iggeroth Moshe, (New York: Moriah, 1982), Vol. VI, YD, Part III, No. 44, p. 279.
- ⁶⁷See however Ahronson, Nissan (Atzei Levona, [Levov, 1861], Sh. Ar., YD, 179.[7]), who maintains that the novelty of Taz (Sh. Ar., ibid.[47]), is that in certain instances one would be permitted to save a life even in the event of committing the three cardinal transgressions. However, Darkhei Teshuva, (Sh. Ar., ibid.[29]), quotes many authorities who dispute Ahronson.
- ⁶⁸Gloss from Mordekhai MS of Paris Rabbinical School, cited by Wellesz, J., Mitteilungen Zur Judischen Volkskunde, (1910), Vol. XXXV, pp. 117-18; see Trachtenberg, op.cit., p. 200, and p. 304, n. 15.
- ⁶⁹Trachtenberg, "Borrowed Names," op.cit., pp. 100-3; see Jacobson, Yissokhor, (Netiv Binah, [Tel Aviv: Sinai Pub., 1976], Vol. II, pp. 114-16), who cites the objections of Yavetz (Jacob Emden), Hayyim Volozhiner, and others in his comm. to the Siddur. See also Sofer's objection to the angelic supplication of Machnisei Rahamim, Responsa Hatam Sofer, OH, No. 165.
- ⁷⁰Sefer Hasidim, Bologna version, (Lemberg, 1863-67), 1150; Ps. 46:9; Ber. 7b.
- ⁷¹Sedei Hemed, Vol. VII, Ma'arekhet Hatan ve-Kalah; Trachtenberg op. cit., pp. 41-42.
- ⁷²Sages, p. 124.
- ⁷³Maim. however, denounces the mystical names of G-d in Guide Part I, chs. lxi-lxii.
- ⁷⁴Aaron b. Jacob ha-Cohen, Orchot Hayyim (Florence, 1750), Laws of Erev Yom Kippur, No. 1. Responsa of Rashba, No. 505. See also Epstein, Jehiel Michal, Arukh ha-Shulchan, (std. eds.), OH, 605:1; Beit Yosef, Tur, OH, 605; Mordekhai b. Hillel, (printed in std. eds. of Talmud), Mordekhai, beginning of comm. to Yom.
- ⁷⁵Responsa Hatam Sofer, YD, No. 138; Pitchei Teshuva, Sh. Ar., Yd, 179.[4]; Darkhei Teshuva, Sh. Ar., YD, 179:3.[26], 179:8.[30].
- ⁷⁶Pesikta de-Rav Kahana. ed. Mandelbaum, (New York, 1962), Parshat Para, p. 44; Zech. 13:2.
- ⁷⁷See Baer's analysis that R. Johanan b. Zakkai's rejoinder which he dismissed the Gentile with straw, "was based on mystical concepts which R. Johanan himself accepted and which were known to him from his study of Chariot Mysticism." Yisrael ba-Ammim, p. 111.

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⁷⁸Guide, Part III, ch. xlvi.

⁷⁹Maim. explains the ritual of offering salt and the prohibition against eating blood based on the Jewish transformation of similar ritual which were practiced by nations to which Jews were exposed in Guide, ibid. See also Maim.'s description of pagan sacrifices to the sun, moon and constellations, ibid.

⁸⁰See Baer's remark on the comparison between Temple ritual and the worship of other nations. Yisrael ba-Ammim, p. 108.

⁸¹Nach., comm. to Lev. 1:9.

⁸²Shab. 67a; Sages, p. 102; see supra, n. 77.

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¹Sanh. 67b; see Nach.'s distinction between legitimate demonology and legitimate magic, infra, in main text.

²Torah Temima, Ex. 7:1i; see also Margaliot ha-Yam, Sanh., loc.cit.

³Responsa of Rashba, No. 413.

⁴Resp. of Nach., cited by Rashba, ibid.

⁵Sanh., loc.cit.; the opinions of Rosh, Beit Yosef and Tur are found in Tur, YD, 179.

⁶Git 68a; Eliezer of Metz is cited by Rabbenu Yeruham, see Beit Yosef, Tur, ibid.

⁷Ramah, recorded in Beit Yosef, ibid.

⁸Responsa of Radbaz, No. 848.

⁹Tishbi, Mishnat ha-Zohar, (Jerusalem: Bialik Inst., 1975), Vol. I, pp. 361-62.

¹⁰Kaidanover, Zevi Hirsch, Kab ha-Yashar, (Sulzback, 1805), 69; Trachtenberg, op.cit., pp. 52-54.

¹¹Isaac b. Moses, Or Zarua, (Zitomir, 1862), Vol. I, No. 124; Responsa of Maharam, (Warsaw, 1881), No. 116; the same question is discussed much later by Uziel, Ben Zion, in Mishpatei Uziel, (Jerusalem, 1964), EE, No. 11.

¹²Pitchei Teshuva, Sh. Ar., YD, 194:3.[5].

¹³Deut. 32:34; Shibbolei ha-Leket, ed. Buber, S., (Vilna, 1886), 1:203; Sh. Ar., OH, 551:18; Shapira, Elijah ben Wolf, Elijah Rabbah, (Sulzback, 1757), Sh. Ar., ibid.

¹⁴Tosaf, Nid. 14b; Shab.108b; Sh. Ar., OH, 4: Tosaf., Yom. 77b. On Shibbeta, see Yom., ibid.; Hul. 107b.

¹⁵Sh. Ar., OH, 613:2; Tosaf, Yom., ibid.; Sh. Ar., YD, 339:5; Tashbetz, recorded in Shakh, Sh. Ar., YD, ibid., [9].

¹⁶Mordekhai, Pes., ch. x.

¹⁷Rema, Sh. Ar., OH, 291:2.

¹⁸Sh. Ar., YD, 263:5.

¹⁹Trachtenberg, op.cit., p. 47, n. 6.

²⁰Sh. Ar.; YD, 339:1, Rema and Taz, ad.loc.; Meir of Rothenberg, Responsa of Maharam, (Cremona, 1557), No. 108; Luria, Amudei Shelomo, comm. to Semag, Vol. II, no. 23; Taz, Sh. Ar., YD, 286:10.[9]; B.K. 21a.

²¹Shakh, Sh. Ar., YD, 277:1.[1].

- ²²Trachtenberg, op.cit., p. 50.
- ²³Menasseh b. Israel, Nishmat Hayyim, (Leipzig, 1862), III, 27; Sefer Hasidim, ed. Wistinetzki, (Frankfort, 1924), nos. 534, 981, 1823; Maharal, Netivot Olam, (Zitomir, 1867), 107d.
- ²⁴Rema, Sh. Ar., EE, 62:3.[1]; Beit Shemu'el, Sh. Ar., ibid.,[3]; Sh. Ar., OH, 141:6; YD, 165:5.
- ²⁵B.M. 30a; Tan. 8b.
- ²⁶Deut. 18:11,10.
- ²⁷Sanh. 65b.
- ²⁸Maim., Yad, Avoda Zara, ch. xi,³.
- ²⁹The opinion of R. Eliezer is cited in Meir ha-Kohen's Haggahot Maimuniyyot and recorded in Beit Yosef, Tur, YD, 179.
- ³⁰Ibid., Ber. 18b, M.K. 28b.
- ³¹See Beit Yosef, ibid., Darkhei Moshe, Tur, ibid.,[4]; Rema, Sh. Ar., YD, 179:15.
- ³²Perisha, Tur, ibid.,[23].
- ³³Rashi, Sanh. 65b.
- ³⁴I Sam. 28.
- ³⁵Sot. 34b; Magen Avraham, Sh. Ar., OH, 581.[16].
- ³⁶Darkhei Teshuva, YD, 179.[36]; Trachtenberg, op.cit., p. 65, and p. 285,n. 6.
- ³⁷Yisraeli, Shaul "Pikuach Nefesh in Spiritual Danger," Tehumim.
- ³⁸Shab. 4a; Resp. of Rashba, cited in Beit Yosef, Tur, OH, 306.
- ³⁹Tosaf, Shab., ibid., s.v. ve-khi; Beit Yosef, ibid.
- ⁴⁰Sh. Ar., OH, ibid.; Magen Avraham, Sh. Ar., ibid.[28]; Taz, Sh. Ar., ibid.[5].
- ⁴¹Yom. 65.
- ⁴²Ibid.
- ⁴³See Tucaschinski, Jehiel Michal, Gesher ha-Hayyim, 2nd ed. (Jerusalem; n.p.; 1960), Vol. II, ch. xiii.
- ⁴⁴Weiss, Isaac Jacob. Minchat Yitzchak, (London-Jerusalem, 1969-72).
- ⁴⁵Ex. 12:16; Deut. 24:7.

⁴⁶Supra, ch. vii, n. 57.

⁴⁷Nid. 16b; Derashot ha-Ran, p. 136.

⁴⁸Maim., Yad, Yesodei ha-Torah, ch. iii, 9; Guide, Part II, ch. v.

⁴⁹Kasher, The Man on the Moon — in the light of Torah and Faith, (Jerusalem: n.p., n.d.), ch. iv.

⁵⁰Resp. of Radbaz, Part I, No. 107; Pithei Teshuva, Sh. Ar., YD, 357:1.[2]; Sh. Ar., YD, 363:1 and comms. ad loc.

⁵¹Mal. 2:7.

⁵²See comms. of Rashi, Radak, Ibn Ezra, Metzuda, to Mal., ibid, ad loc.

⁵³The different retentions of Sifri can be explained in this manner: Sifri and Yalk., which have the retention "Beloved are priests, for [when] He calls them He doesn't call them except by the Ministering Angels, as it is written: 'For the priest's lips... for he is an angel of the Lord of hosts'", understood the identity of priests with ministering angels in its literal sense. Vilna Gaon, however, whose alternate rendition reads: "Beloved are priests, for He calls them like the Ministering Angels, as it is written: 'For the priest's lips etc.'", understood the priest-angel identity as allegorical. See Sifri, ed. Berlin, Naftali Zevi Judah (Naziv), (Jerusalem, 1977), Numb., (Korah), Piska 4, p. 114; Yalk., Numb., no. 756.

⁵⁴Lev. 16:7; Lev. R., ch. xxii,¹², comms. ad loc. The Midrash also appears in Yalk, Lev., no. 571, and Pesikta de-Rav Kahana, ed. Buber, (Lyck, 1860), no. 27, end.

⁵⁵Yom. 18a, Yeb. 61a.

⁵⁶Numb. R. ch. xvii,1; see also Epstein, Ma'or ve-Shemesh, Numb., Pinchas.

⁵⁷Zohar, Numb., Naso 145. Isaac b. Meir of Berdichev in Kedushat ha-Levi, (Munkacs, 1938), Parshat Pinchas, explains "celestial grace" as referring to the arousing of G-d's grace. Michael arouses G-d's grace in the same manner as the High Priest evokes G-d's grace by atoning for Israel.

⁵⁸On Michael the 'Prince of Grace' see Zohar, Gen., 235b and Tikkunei Zohar. On Michael the High Priest sacrificing the souls of the righteous see Zohar, Gen., 80a, and "Michael the High Priest," Malakhei Elyon.

⁵⁹"Weil," E.J., Vol XVI, p. 395.

⁶⁰Responsa of Jacob Weil, Hilkot Yom Kippur, No. 192.

⁶¹Akedat Yizchak, Lev., Emor, ch. lxvi.

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⁶²Batte Midrashoth, ed. Wertheimer, (Jerusalem, 1893-97), IV, 32; Sifri, Numb, 131; Numb. R., ch. xxxi,3; Tanh., Pinchas, no. 1; see Legends, Vol. III, p. 389, and Vol. VI, p. 138, n. 803.

⁶³The Targum transcribes the verse, "For a bird of the skies shall carry the voice" (Eccl. 10:20), as meaning: "Elijah, the great Priest goes off and flies in the winds of heaven as an eagle."

⁶⁴Ex. 14:2; Deut. 34:6; Isa. 60:12, 66:15; Numb. 31:23; Sanh. 39a. See Zeb. 102a, and Zohar, Vol. III, Lev., 17a, 49b, and Nizzozei, comm. of Margalioth to Zohar, ibid., ad loc., where references are made to G-d, the Priest.

⁶⁵With the exception of Reischer, (Iyyun Ya'akov, Sanh., ibid.), who rejects the notion of G-d's priesthood, virtually all the comms. accord that G-d possesses at least the minimal level of sanctity of priesthood.

⁶⁶See supra, n. 64.

⁶⁷See Sanh. 59b, "Nothing of impurity descends from Heaven."

⁶⁸Maharsha, Rashi, Abulafia, Meir b. Todros ha-Levi (Yad Rama, [Warsaw, 1895]), comms. to Sanh. 39a.

⁶⁹"For the Eternal G-d is a consuming fire" Deut. 4:24; see also Deut. 9:3, and Yom 21b: "Our Rabbis taught: there are six kinds of fire... 'A fire which eats fire,' [is] that of Shekhinah."

⁷⁰Maharal, Hiddushei Aggadot, (Jerusalem, 1972), Sanh. 39a; Iyyun Ya'akov, loc.cit.; Heida, Zikkukin de-Nura, SER, ch. i.

⁷¹In Elijah's case, however, this would not make any difference as Elijah is also described in Yom., loc.cit., as a consuming fire: ['A fire which] eats and drinks'; that of Elijah, for it is written: 'And licked up the water that was in the trench' (I Kings 18:38)."

⁷²Va-Yikken Yosef, no. 30, p. 108b.

⁷³Unless they held that Elijah is also a consuming fire, see supra, n.69.

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- ¹Sanh. 91, Ber. 34b.
- ²See our discussion on "Miracles," supra, ch. viii; Sh. Ar., OH, 111; Tur, OH, 559.
- ³Tucaschinski, Gesher ha-Hayyim, Vol. II, ch. xiii.
- ⁴Ibid, and Vol. I, ch. xvi,2.
- ⁵Charles, Eschatology: The Doctrine of a Future Life in Israel, Judaism and Christianity, A Critical History, (New York: Schocken Books, 1963), p. 89.
- ⁶Deut. 25.
- ⁷Zohar, Emor; Trachtenberg, op.cit., p. 275, n. 12.
- ⁸Tur and Sh. Ar., YD, 194.
- ⁹TD, No. 211
- ¹⁰Ex. 31:17; Bez. 16a, Tan. 27b.
- ¹¹Tur and Sh. Ar., OH, 297:1.
- ¹²Tosaf., Bez. 33; Bach, comm. to Tur, ibid.; Tosaf., Pes. 102b.
- ¹³Margoliot, Match Ephraim, (Zolkiew, 1835), 625:36.
- ¹⁴Radbaz, Metzudat David, Zolkiew, 1862; Luriah, Shulchan Arukh ha-Ari, (Prague, 1660), nos. 8, 9; Magen Avraham, Sh. Ar. OH, 170:13. [19]; Shakh, Sh. Ar., YD, 71:1.[2]; Darkhei Teshuva, Sh. Ar., YD, 72.[5]; Zemah, Lehem min ha-Shamayim, (Munkacs, 1905); Yosef, Obadiah, Yehave Da'at, (Jer., 1977) Vol. I, Nos. 1, 2, pp. 5-8. Sh. Ar., OH, 226; Alkali, Abraham, Zekhor le-Avraham, (Saloniki, 1798); Sofer, Kaf ha-Hayyim, (Jerusalem, n.d.), Sh. Ar., OH, 226.[6].
- ¹⁵See Baer, Yisrael ba-Ammim, p. 109.
- ¹⁶J.T., Shab., ch. i, 3, 3b.
- ¹⁷Ex. 12:42; Pes. 109b.
- ¹⁸Tosaf., Yom. 77b, s.v. mishum.
- ¹⁹Arukh, (Levov, 1853), s.v. asparagus.
- ²⁰Pes. 110b; the wording "were not particular about pairs," rather than, "were not concerned altogether," seems to indicate that the phenomena of Zugot nevertheless partially existed in Israel but not as commonly as in Babylon. On the different spiritual conditions

of Israel and its affect on Halaka, see our discussion of the Katanit woman, supra, ch. vii.

²¹Pes., ibid.

²²Arukh ha-Shulchan, YD, 116:30.

²³Bachrach, in Havot Yair, No. 233, offers a rational explanation for the earlier existence of the Zuggot phenomenon.

²⁴Ashkenazi, Ba'er Heitev, (printed in std. eds. of Sh. Ar.), Sh. Ar., YD, 179:1.[1].

²⁵Hagiz, Ez ha-Hayyim, (Leghorn, 1652-56); Zech. 3:2.

²⁶M.K. 11a; Tosaf., M.K., ibid., s.v. kavra.

²⁷Keseph Mishne, Yad, Deiot, ch. iv, 18; Sedei Hemed, Vol. IV, Ma-arekhet ha-Reish, Rule (Kelal) 54, p. 506.

²⁸Sedei Hemed, ibid.

²⁹Sofer, Hashav Sofer, (Jerusalem: Da'at Sofer Inst., 1967), YD, No. 8.

³⁰Magen Avraham, Sh. Ar., OH, 173:2.[1].

³¹Responsa Hatam Sofer, YD, No. 101.

³²Pes. 76b. On the identification of "something else" with leprosy see comms. of Rashi and R. Hananel, ad loc.

³³Shab. 97a; Ar. 16a; Lev. R. ch. xvii.

³⁴Sedei Hemed, Vol. III, Ma'arekhet ha-Tet, Rule (Kelal) 5, pp. 7-8; Rema, Sh. Ar., EE, 156:8; Pitchei Teshuva, Sh. Ar., ibid.; Nid. 38b; Tosaf., Hul. 47a, s.v. kol hani, A.Z. 24b, s.v. parah.

³⁵Hul. 43; Schick, Responsa Maharam Schick, (Munkacs, 1881), YD, No. 244.

³⁶Mishna, Bek., ch. iii, 1; Bek. 19b; Numb. 18:5; A.Z. 24b; Tosaf., A.Z. ibid., s.v. parah; Sh. Ar., YD, 316:1.

³⁷Rema, Sh. Ar., YD, 316:3.

³⁸Responsa Hatam Sofer, EE, No. 6.

³⁹Hul. 126b; Trachtenberg, op.cit., pp. 182-83.

⁴⁰Lev. 11:29.

⁴¹Hul. 127a.

⁴²Shab. 107b; see also Shab. 12b, and Rashi, ad loc.

⁴³Maim., Yad, Shabbat, ch. xi,2.

⁴⁴Sh. Ar., OH, 316:9.

⁴⁵Ha-Kohen, "Biur Halaka," Mishna Berura, Vol. III, Sh. Ar., ibid., s.v. lehargo.

⁴⁶Kasher, Man on the Moon, ch. iv, end, p. 50; Kasher, Torah Shelema, (Jerusalem, 1917), Vol. I.

⁴⁷See Bi'ur Halaka, loc.cit., who cites Nahmanides' proof from Bez. 7a that chicken eggs which fructify through friction with the earth can not produce further chickens. Bi'ur Halaka states that Maim. could reject this proof on the scientific grounds that the natural birth of chickens is from a male and female. Therefore, its egg, which is not fertilised from a male and female does not have the ability to form a male or female. However, fleas and other insects who are born naturally each day from non male and female have the ability to reproduce further without male.

⁴⁸Maim., Comm. to the Mishna, ch. ix,6.

⁴⁹Man on the Moon, loc.cit.

⁵⁰Sanh. 91a.

⁵¹Job 29:18; Sanh. 108b.

⁵²Gen. R., ch. xix,5; Tanh., intro., 155:2; 2 Alphabet Ben Sira, 27a, 28b, 29a-29b; Bereshit Rabbati, BHM VI, 12, n. 4; cited in Legends, Vol. V, p. 51, n. 151, and p. 95, n. 67. See also Legends, Vol. I, p. 74.

⁵³Legends, ibid., and Vol. I, p. 32.

⁵⁴Ps. 103:5, Rashi, ad loc.

⁵⁵B.K. 16a.

⁵⁶Legends, Vol. I, p. 32; Trachtenberg, op.cit., p. 183; Responsa of Maharam, No. 160.

⁵⁷Legends, Vol. I, pp. 31-32; Mishna, Kil., ch. viii,5; J.T., Kil., ibid., 31c; Lipschutz, Tiferet Yisrael, (printed in most std. eds. of the Mishna), Mishna, Kil., ibid., "Yachin,"[32].

⁵⁸Obadiah of Bertinora, Perush, (printed in std. eds. of Mishna), Mishna, Kil., ibid.; Samson b. Abraham of Sens (Rash), Perush Rash (printed in std. eds. of Talmud), Seder Zeraim, Kil., ibid., where Rash cites opinion of Meir Kalonymus of Speyer; Lev. 20:27, Deut. 18:11; Job 5:23.

⁵⁹Lipschutz, op.cit., "Boaz,"[23].

⁶⁰Mishna, Kil., loc.cit.; see Mishna, Kil., ch. viii,2, regarding the laws of re-yoking pertaining to Hayyah which are subject to the Laws of Kilayim.

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⁶¹Rash, op.cit.; Rashi, comm. to Job, loc.cit.; and Ephraim Yitzchak of Permislow, Mishna Rishona, (printed in most standard editions of the Mishna), Mishna, Kil., ch. viii,3.

⁶²"Medicine: Baby Fae Stuns the World," Time, by Claudia Wallis, 12 Nov., 1984, pp. 84-86. See supra, ch. vi, n. 8, and our discussion in the main text thereon.

⁶³Midrash Aggada, Gen. 49:14, cited in Legends, Vol. I, p. 366 and Vol. V, p. 297, n. 189.

⁶⁴Mishna, Avoth, ch. v,6; See also Sifra, Deut., 355; Midrash Tannaim 219; Avoth de-Rabbi Nathan, II, 37, 95; PdRE, ch. xix; cited in Legends, Vol. V, p. 52, n. 162.

⁶⁵Sot. 48b; J.T. Sot., ch. ix, 20d; Tosefta, Sot., xv, 1; Legends, Vol. I, p. 34, and Vol. VI, pp. 166-69; Mishna, Sot., ch. ix, 12; Tosaf., Zeb. 54b, s.v. avanim; Rashi, Pes. 54a; Maim., Comm. to Avoth, loc.cit.; Mahzor Vitri, 540; Legends, Vol. VI, p. 299, n. 82.

⁶⁶Shab. 28b; J.T. Shab., 4d; Pesikta Rabbati, ch. xxxiii, 154d; Legends, Vol. I, p. 34.

⁶⁷Hul. 127a, Rashi, ad loc.; Hag., end; Sanh. 63b; and many other midrashic and zoharitic sources cited in Legends, Vol. V, p. 53 nn. 157-58.

⁶⁸See Legends, Vol. V, p. 52, n. 157.

⁶⁹Torah and Reason, "Laws of Nature and History," ch. xi, pp 141-43.

⁷⁰For Nach.'s rebuff against this Maimonidean contention, see supra, ch. viii, n. 81, and our discussion in the main text thereon.

⁷¹On celestial light, see Rashi, Gen., 1:4; Hag. 12a; J.T., Ber., ch. viii,6; Gen. R., chs. ii,6, xi,2, xii,6; Ex. R., chs. xviii,1 xxxv,1. On Leviathan, see Legends, Vol. I, pp. 27, 28, and Vol. V, pp. 41-46, nn. 116-28. On First Man, see Legends, Vol. V, pp. 113-14, n. 105, as well as a complete list of Adam's forfeited gifts, Legends, ibid. On the banquet of Behemoth, see Job 40; Legends, Vol. V, p. 47, n. 36, p. 49, n. 143 and referances on celestial light, supra.

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¹In a similar vein one could argue that John Milton, who wrote about 300 years ago in Paradise Lost, (London: George Routledge and Sons, 1887), p. 265:

Oh! why did G-d,
Creator wise, that peopled highest heaven
With spirits masculine, create at last
This novelty on earth, this fair defect
Of nature, and not fill the world at once
With men, as angels, without feminine;
Or some other way to generate Mankind? (Emphasis added),

that in the expression, "or some other way to generate mankind," Milton did not envisage test tube babies. Nevertheless he acknowledged possible alternative forms of generating life.

Milton compares the merit of creating "woman" against those alternatives. Similarly Terumat ha-Deshen clarifies man's ordinary halakic activities by comparing him to transcendental man. Terumat ha-Deshen, of course, had an added halakic incentive for doing so, because of the many instances in which ordinary man enters the transcendental zone.

²Yisrael be-Ammim, ch. vi, especially pp. 103, 105, ff.

³Ibid., pp. 110-111.

⁴Ibid., p. 56 and pp. 126-27, n. 48.

⁵Ibid., p. 109.

⁶Jakobovitz, "The Dissection of the Dead in Jewish Law," Tradition, ed. Lamm, N. and Wurzburger, S., (New York: Hebrew Pub. Co., 1967), pp. 285-86.

⁷See supra, ch. x, n.69 and discussion in main text thereon.

⁸Torah and Reason, ch. xxix, pp. 349-53.

⁹"Halaka le-Moshe mi-Sinai," T.E., Vol. IX, p. 373, n. 113, and p. 378, nn. 178, 182, and p. 375, n. 142.

¹⁰Ibid., p. 376, nn. 153-58.

¹¹Ibid., p. 371, nn. 75-76.

¹²Ibid., p. 382, nn. 234, 238, 240, 241.

¹³Pes. 110b; Mishna, Eduy., ch., viii,7; supra, ch. i, n. 129; T.E., ibid., pp. 369, 370, nn. 56-60, 64.

¹⁴Ber. 60a, Erub. 72, Bez. 2b, Kid. 60b, Git. 41b, Hul. 58, Nid. 59b.

¹⁵Sedei Hemed, Vol. II, Ma'arekhet ha-Heh, p. 160, no. 4, and p. 161, no. 9.

¹⁶See supra, ch. i, nn. 2,4.

¹⁷See supra, ch. x, n.45, and the discussion thereon regarding the scientific argument between Maim. and Nach. over whether vermin which develop through spontaneous generation are capable of reproduction. The resolution of this dispute is of consequence regarding the prohibition or premission to kill such species on the Sabbath.

¹⁸Yisrael ba-Ammim, p. 19. See also ibid., p. 110: "According to this spiritual outlook, Israel's position in this world is explained as an agent who is sent from the Upper World to establish a truthful society in the Lower World. On the bases of these assumptions one can understand the place of Israel in the history of the Second Temple period, and it is in this measure that one must evaluate the role which was placed upon her during the period of exile."

¹⁹Ibid., p. 117.

²⁰Nid. 66a, also recited at the conclusion of the Musaf service in the Ein ke-Elokeinu liturgy.

²¹Kasher, ed., Israel Passover Haggadah, tr. by Greenbaum, A., (New York: n.p., 1950), p. 218.

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This bibliography comprises a selective list of the main works referred to in the notes and main text of our thesis. The vast majority of works included in the bibliography appear in our paper. However, in several instances, an entire work is mentioned despite our citation of only certain of its details, since the work as a whole is relevant to our field of research. Complete works are additionally bibliographed in instances where specific citations are too numerous to list; so, for example, the Responsa of Rashba, Hatam Sofer, and the commentaries to many sections of Maimonides' Code. Furthermore, only commentators on scriptural verses and talmudic passages are bibliographed. However, the scriptural and talmudic sources themselves are too numerous to itemize.

Because the bulk of our references were published prior to 1910, when as a rule, the name of the publisher or press was not printed, we usually cite the place and year of publication only, rather than the customary n.p. The same style is followed for works printed after 1910 where the publisher is uncommon or not available. Finally, in order to avoid frequent use of italics, the works referred to in abbreviated form (see Abbreviations) which are generally well known, are not italicized in the notes or the bibliography.

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