

REVIEW ARTICLE:

Walter S. Wurzburger

The greatest part of Jewish religious history revolves not so much about Scripture as it does about *Torah she-be'al peh*, the Oral Law — that body of law and tradition which later was incorporated in the Talmud and its literature. The point of departure for most sectarians and schismatics in past religious polemics was the validity of the Oral Law and the rabbinic interpretations. That situation largely obtains today as well. In the current review, Rabbi Wurzburger, Vice President of the Rabbinical Council of America and spiritual leader of Shaarei Shomayim Congregation in Toronto, Canada, analyzes a leading Conservative spokesman's view of the Oral Law. Rabbi Wurzburger was ordained by Yeshiva University, and received his master's and doctor's degree in philosophy from Harvard University. He is the author of *Brentano's Theory of A Priori Judgments* and a study of Rabbi Hayim of Volozin. He has contributed extensively to philosophic as well as more popular Anglo-Jewish periodicals.

THE ORAL LAW AND THE CONSERVATIVE DILEMMA

*Law and Tradition in Judaism** represents a collection of scintillating studies which are offered by its erudite author as a contribution towards a "philosophy of Jewish religious law from the point of view of Historical-Traditional Judaism."

To this task Professor Boaz Cohen brings not merely the learn-

ing and perspective of an eminent scholar of Jewish and Roman law. His many years of service to the Rabbinical Assembly as chairman of its "Committee on Law" provided him with ample opportunity to step outside the cloistered walls of the academic ivory tower and to gain the vantage point of one who has grappled with the vexing

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and perplexing problems of religious observance in the modern Jewish world.

The author's deep reverence for Jewish tradition places him at the extreme right wing of the Conservative movement. Time and again he cautions his more liberal colleagues not to tamper with the Halakhah in order to accommodate popular pressures. With commendable frankness he concedes that many standard practices of Conservative congregations, such as mixed seating or riding to services on the Sabbath, cannot be condoned by Jewish law.

Yet one cannot help wonder whether Professor Cohen's love for Jewish tradition is not blind to the implications of his own theological position. It must be love that makes him blind to the fact that "the arguments which the historical interpretation of Judaism advances for submitting to the law and the commandments are less cogent and persuasive than the reasoning of Orthodoxy". Any impartial observer should be quick to recognize that the very foundation of all religious observance is bound to be corroded by the basic tenets of "Historic-Traditional" Judaism. From a logical point of view it hardly makes sense to expect a modern Jew to abide by ancient rules and regulations that were supposedly developed in response to the needs of a by-gone era. If, as the historical school contends, the development of the Oral Law represents merely a certain stage in the long evolutionary process of a Judaism that finds it-

self in a state of perpetual flux, there is no reason why we should acknowledge the authority of talmudic law. If the talmudic sages were entitled to change the Written Law to keep abreast with the requirements of their age, why should our generation feel constrained to uphold the immutability of the principles formulated by Talmudic Judaism? Does not Professor Gordis have logic on his side when he charges this specimen of historic Judaism with the creation of a dichotomy between "the creative past and the degenerate present?"

Professor Cohen's position becomes intelligible only in the light of the powerful influence exerted by the "logic of the heart" which so often triumphs over human reason. Marshall Sklare, the astute analyst of the Conservative movement, has called attention to the striking ambivalence in the attitudes of many Conservative scholars. Intellectually, they wholeheartedly embrace the "scientific," "positive-historical" approach. Emotionally, they cannot cut the umbilical cord which ties them to the practices of Orthodox Judaism.

Torn asunder by this inner conflict, Conservative scholars not only recoil from drawing those logical inferences from their premises that would undermine religious observance, but they are even impelled to make statements which are totally incompatible with their point of view. Thus Professor Cohen urges his colleagues "to cope with the problem of Jewish law in the spirit of . . . Rabbi

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Isaac Elchanan," in spite of the fact that the latter is one of the leading lights of a movement which in another chapter is accused of seeking to "freeze Judaism in a mold two centuries old." Conceivably, students of depth psychology may be able to unravel the mystery of how one can recommend that scholars, who are engaged in the "creative reinterpretation" of Judaism in the tradition of a Frankel, Geiger, and Schechter, should pattern themselves after an old fashioned rabbi exemplifying a school of thought that allegedly "has bogged down in a morass of stubborn literalism and dogmatism."

Be that as it may, there is no doubt that Professor Cohen goes overboard in compensating for whatever Orthodox leanings might be ascribed to him. In darkest colors imaginable, he portrays Orthodoxy as a hotbed of reaction, a victim of "smug complacency and spiritual inflation."

Since, by the author's definition, Orthodoxy is a petrified fossil that is out of touch with life, it follows by a remarkable specimen of circular reasoning that the neo-Orthodox rabbis flout the tenets of pristine Orthodoxy when they pursue secular studies or preach in English. That these self-same practices belie the stereotyped image of Orthodoxy as a stagnant, inflexible relic of the past is something that simply does not occur to one who feels constrained to equate Orthodoxy with "the form in which Judaism was crystallized during the eighteenth century."

Professor Cohen's ambivalence towards Orthodoxy is matched by his ambiguity in the exposition of his own views. There is no way of gleaning from his writings whether he subscribes to the rabbinic doctrine that the words of the Pentateuch were "literally" inspired. Although committed to "the divine origin of the Law," the author leaves us considerable doubt whether he is prepared to regard Moses as anything more than an "inspired Lawgiver."

Even more puzzling is his attitude towards the nature of the Oral Law. On the one hand, he implies that the Rabbis were cognizant of the fact that their ingenious methods of interpretation constituted an actual modification of the original law. Accordingly, they devised the hermeneutical rules and developed the Midrashic exegesis as a subterfuge, because they wanted to conceal under the guise of interpretation what, in point of fact, amounted to a deliberate modification of religious law. On the other hand, he suggests that it was only naiveté born out of unfamiliarity with history and philology that made it possible for the talmudic sages to delude themselves into thinking that their forced interpretations were not distortions but elucidations of the real intent of the biblical text.

Either of the two alternatives abounds with unsavory features. If the Rabbis deliberately took liberties with the original law and merely pretended that their bold innovations represented legitimate interpretations, then, at the very

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least, they must be charged with misinterpretation. If, however, the operations of the rabbinic mind reflect sheer naiveté in matters historical or philological, it is difficult to see why sophisticated scholars should feel constrained to uphold the authority of religious leaders whose rulings were predicated upon gross ignorance of pertinent and relevant data. In either case, we would have ample grounds for disqualifying the teachers of old from serving as mentors for our age.

This painful dilemma arises, of course, not out of incidental defects in Professor Cohen's exposition, but out of the pitfalls and self-contradictions inherent in the Conservative approach, which credits the talmudic sages with the *creation* of the Oral Law. Unless one is prepared to accept the traditional view which establishes an organic connection between the Written and the Oral Law, regarding the latter not as a subsequent modification but a concomitant elucidation of the former, one cannot help but impugn either the intellectual honesty or competence of the framers of the Oral Law.

It cannot be argued that these unpleasant alternatives are the necessary price we must pay for an approach to Jewish law that reckons with its dynamic, evolutionary character. Nothing would be further from the truth than the belief that the positive-historical school has a monopoly on progress and development. As a matter of fact, any data (in contradistinction to mere theories and constructions)

adduced by the champions of "Historical" Judaism can easily fit into the conceptual framework of the traditionalist. The point in issue between the two schools is *not* at all whether, or to what degree, Jewish law has undergone modifications over the ages. The real issue is this: were the changes and developments that occurred during the talmudic period the result of the creation of an Oral Law that was superimposed upon biblical Judaism, or did the Rabbis, employing principles that ultimately derived from divine revelation on Mt. Sinai, interpret both the Written and the Oral Torah in the light of the historic conditions of their time? The traditionalist maintains that since "Torah has seventy faces," as the Rabbis put it, the meaning of a given law may be affected by variations in historic realities. Developments in the law, therefore, reflect not the abrogation of "the" original meaning but the application of divinely revealed or sanctioned processes that enable us to interpret an eternally binding law in accordance with the specific requirements of a given generation.

This process of interpretation, in so far as the traditionalist is concerned, is, by no means, as Professor Cohen implies, merely "a mechanical application of pre-existing rules." Long before the advent of the Historical school, the traditionalists fully recognized that they were entrusted with a *Torat Chayyim*—a living Law. Halakhic problems are not the kind that can be solved by advances in the field of cybernetics. Halakhic questions call

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for a creative approach; they cannot be answered by some electronic calculator which grinds out its answers the way an electrical brain finds the solution to a complex differential equation.

It is precisely this creative aspect of the halakhic process that led the sages to the remarkable statement "both these and these are the words of the living God," that at times even conflicting halakhic opinions represent, in the final analysis, legitimate elucidations of the word of God. The Torah "is not in Heaven"; it must be interpreted by the proper authorities of each generation. Since no human being can completely guard himself against the intrusion of personal value judgments in the selection, interpretation, or application of relevant texts to concrete situations, a halakhic opinion inevitably contains some subjective components. But however tinged it may be by subjectivity, its legitimacy as a halakhic opinion is assured as long as it has been evolved by *bona fide* halakhic procedures.

Because the halakhic process is characterized by a continuous interaction between subjective and objective components, it is natural that changes in historical conditions will lead to far reaching repercussions in the realm of Halakhah. This is not all a question of "adapting" or "adjusting" the law to meet novel conditions, but of interpreting and applying it within the frame of reference of new circumstances. When, according to the Aggadah, Rabbi Akiba found in the Torah meanings that had eluded Moses, he was not creating a new

Torah. What he did was something altogether different. Reading the Torah in the light of the conditions of an entirely different age, he discovered *chidushei Torah*, *new meanings* of the Torah. Yet, in spite of their manifest novelty, they were implicitly contained in the Torah as received by Moses on Mount Sinai. It must be borne in mind that this dynamic character of the law is an integral part of the *Massorah*, the chain of Tradition dating back to Sinai, not something that was grafted upon the Torah later on to prevent its obsolescence and decay. To employ the well known rabbinic simile, just as different sparks are emitted when a hammer breaks a rock into pieces, so does the word of God yield numerous meanings. And it is the function of the Halakhah scholar, employing creative halakhic processes, to unravel the specific meaning which the timeless message of Sinai holds for his own time.

Obviously, this view is a far cry from the historic position which dwells upon the distinction between essential and contingent aspects of the law. Thus, in the words of Professor Cohen, "Jewish law has undergone a long and eventful process of evolution without altering its original essence or nature, or modifying its pristine principles and purposes." Because Traditional Judaism is committed to the divinely revealed law in its totality, it must object to the cavalier treatment accorded to the minutiae of the law. Alterations cannot be condoned on the ground that they allegedly affect not the essence but only relatively trivial details. Tra-

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ditional Judaism cannot brook any departure from the divine will. Developments in the law are legitimate only if, down to the last detail, they conform to the canons of interpretation by which the law is applied to the ever changing historic realities.

Apart from the basic weakness of the position which is set forth with so much grace and charm in *Law and Tradition in Judaism*, there are a number of other serious flaws. Thus Professor Cohen is guilty of a logical non-sequitur when, from the premise that the Rabbis knew the difference between *peshat* and *derash*, he draws the conclusion that they were conscious of changing the letter of the law when they employed the method of *derash*. This reasoning is obviously faulty, for the Rabbis always emphasized that *peshat* was only one of many approaches to the meaning of the Torah. Similarly, we may question the propriety of characterizing *asmakhta* as a "legal fiction" since the Rabbis never pretended that laws derived by this process (in contradistinction to a genuine *derashah*) possessed more than purely rabbinic sanction. One may also take exception to the categorical statement that in case of conversion the presence of the court at the immersion was not required by the Talmud, since numerous authorities interpret the relevant talmudic texts in a different fashion. "That covering the head during a religious service is merely a custom" runs counter the talmudic law requiring *ituf* for at least some occasions of prayer.

To turn to less legalistic matters,

we are struck by the author's persistent attempt to downgrade the concept of duty in Jewish thought. That conscience is to be conceived "as a moral impulse implanted in the heart rather than a sense of duty" can hardly be substantiated on the flimsy evidence that in describing conscience both Scripture and Talmud employ terms that refer to the heart. Moreover, we must bear in mind that in ancient Jewish writings the term "heart" does not possess the emotional overtones of our present day usage. In classical Jewish terminology, the heart is conceived as the seat of the intellect, whereas the kidneys (not the heart) are regarded as the source of sentiments. This being the case, references to the heart hardly warrant the conclusion that Jewish ethics is based on moral sentiment rather than a sense of duty. The author also completely disregards the famous dictum, *gadol metzueh ve'oseh mi-mi she-eno metzueh ve'oseh* which implies that an act motivated by a sense of duty ranks higher than one prompted by moral sentiment.

Conceivably, this glorification of sentiment at the expense of duty is symptomatic of the entire approach of the author, whose position can be vindicated only by what since the days of Pascal is known as "the logic of the heart." Recent developments in the Conservative camp clearly show that the movement cannot be halted on the level of reverence and regard for Jewish law that still characterizes the writings of Professor Cohen. Driven by its own dynamics, the Conservative movement is gradually

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reaching the logical conclusions of its system, and advocates radical revisions that go far beyond the pale of the "creative interpretation" espoused by Professor Cohen. Thus, *Law and Tradition in*

Judaism serves as a monument to an untenable approach to Jewish law, which is becoming obsolete because, for all its brilliance and scholarship, it contains within itself the seeds of its own destruction.