

Chapter Two

Halakhic Latitudinarianism: David Hartman on the commanded life

Anglican Impromptu

In late 17th century England, a growing confidence, settled pattern of life and relative prosperity on the island allowed the Anglican church, whose attentions had been directed to consolidation of its power and the usual shenanigans and meddling of the Crown, to turn to larger questions about itself. A prominent group of Anglican divines— most notable among the group was the Archbishop of Canterbury, John Tillotson—began repulsing the advances and advantages accrued by the Puritans under Cromwell and the persistence of High Church formalism. The Latitudinarians, as they came to be called,¹ emphasized a moderate temper, belief in science and progress, cultivation of virtues outside the dogmas of the Church, freedom of interpretation and reason. One of the major theological works produced by the Latitudinarians was Joseph Glanvill's *The Agreement of Reason and Religion*. They were involved in pluralistic dialogue of a sort centuries before it became the fashion. Presbyterians and even Non-Conformists were potential partners. But Latitudinarianism deemphasized the role of unified dogma and the conventions of ritual practice in Anglican theology, in favor of morality, reason and toleration as spiritual goals, moving them from their political, secular context into a theological dimension. Latitudinarians lacked the theological toughness and demand for standardized observance that marked the thought of William Laud, a High Churchman and Archbishop of Canterbury in the first half of the 17th century. Wordsworth's poem "Latitudinarianism," one of his *Ecclesiastical Sonnets*, sings of this division within Anglican

¹ Their name was originally applied to the Cambridge Platonists. See Aharon Lichtenstein's *Henry More* (1962) for more information on one of the most important Cambridge Platonists. The author of *Henry More* is, of all things, *rosh yeshiva* at Yeshivat Har Etzion in Jerusalem. Lichtenstein is the son-in-law of Rabbi Joseph Soloveitchik.

thought: “Yet Truth is keenly sought for, and the wind / Charged with rich words poured out in thought’s defence; / Whether the Church inspire that eloquence, / Or a Platonic Piety confined / To the sole temple of the inward mind.”² The question posed is this: is it the forms of worship and belief that the Church prescribes as divine writ what matters, or is it the reflections of a rational, autonomous mind that make up the religious life? Where does God’s Truth dwell, asks Wordsworth, with the Church or the individual?

The history of 17th century Anglicanism helps highlight some of the tensions within contemporary Jewish religious life. There is an association of ideas between, on the one hand, David Hartman’s philosophy of halakha and the Latitudinarians’ reconstruction of Christian life and, on the other, between Leibowitz’s observations on the forms and structures of the commanded life and the High Church emphasis on correct practice and belief.

Hartman, as we will argue, attempts to justify his brand of traditional Judaism while at the same keeping the faith contemporary with the changing mores, ideals and ideas of the times. As the Latitudinarian Edward Stillingfleet wrote in *Origines Sacrae*, there is a need “to give a statement of Christianity more satisfying to the present temper of this age.”³ Hartman’s entire philosophic enterprise, even if not explicitly stated, has the same aspiration for Judaism: to bring together religion with modernity, faith with reason, without losing any of the fundamentals of both. The conflicts that the *haredim* and the secularists perceive between Judaism and modern life are illusory, for Hartman justifies this claim by offering a rationalist interpretation of Maimonides, one that endorses Maimonides as a man of faith and a man of reason. The Rambam adhered to the Law without withdrawing from his times, and Hartman follows this path.

Prologue: Autonomy, Heteronomy and Authority in Kant

Although the hubs of Enlightenment were to be found in London, Edinburgh and Paris, its ideas clandestinely traveled to pockets of Central Europe and even St. Petersburg, the easternmost outpost of European thought.⁴ One of the places it took root was the study of a Königsberg professor, Immanuel Kant, whose contrast of autonomy and heteronomy in the *Critique of Practical Reason* is of central importance to our understanding of David Hartman’s

² William Wordsworth, “Latitudinarianism,” *The Ecclesiastical Sonnets of William Wordsworth*, ed. Abbie Findlay Potts. (New Haven: Yale University Press, 1922), 164

³ Edward Stillingfleet, “Preface to the Reader,” *Origines Sacrae* (London, 1666).

⁴ See Solomon Volkov’s *St. Petersburg: a cultural history* (1995) or Orlando Figes’ *Natasha’s Dance: a cultural history of Russia* (2002)

philosophy of halakha.⁵ In his *Critique* Kant outlined the distinctions of a free will that constituted its own law—Rousseau would say much the same⁶—and a coerced will that permitted itself to be commanded. Since man is a moral being, capable of making delicate separations between right and wrong, autonomy devolves upon his self once he matures into a creature of reason. There is, Kant asserts, “autonomy in the principle of morality by which reason determines the will to action.”⁷ Autonomy raises man above his passions, the narrows of belief and ideology, and positions him instead in the realms of universal moral law and reason, which cut across geography and historical context. Despite varying in particulars, the parameters of truth and ethical conduct, for Confucius in 6th century BCE China, Socrates in Athens or Kant in East Prussia, persist because they are universally available to all men of reason in the form of categorical imperatives. “Never choose,” Kant admonishes, “except in such a way that the maxims of the choice are comprehended in the same volition as a universal law.”⁸ Although the individual’s actions and choices are autonomous, independent of dry custom and theological fustiness, rational men, because they tap into the universal, will come to a rough consensus about the appropriate virtues, about what is permitted and what is forbidden.

But the reach of autonomy extends beyond choice. Only an autonomous man can be a moral man. Despite the contingencies of birth, environment and socio-economic conditions, an autonomous, rational morality does not blink before these same contingencies: a moral failing for a well-heeled aristocrat reckons as a moral failing amongst the impoverished as well. A morality centered on autonomy insures that the culpability for neglect of one’s moral duty to obey the categorical imperative falls upon the autonomous actor and not any divine cause or societal deficiency. The opposite holds true as well. If the autonomous actor’s moral life is praiseworthy, then all credit redounds to him. Lacking autonomy, the responsibility for moral lapses would be consigned to their abstract heteronomous sources: God, the nation-state et.al. “The autonomy of the will,” Kant maintains, “is the sole principle of all moral laws and of the duties conforming to them; heteronomy of choice, on the other hand, not only does not establish any obligation but is

⁵ For a sense of Hartman’s Kantianism—not integrated into this essay—see his new book on the Rav, *Love and Terror in the God Encounter: the theological legacy of Rabbi Joseph B. Soloveitchik* (volume 1), 56ff.

⁶ Rousseau writes in *The Social Contract*, Book 1, Chapter 8, that “obedience to a law which one has prescribed to himself is freedom.”

⁷ Immanuel Kant, *Critique of Practical Reason and other writings in moral philosophy*, ed. and tran., Lewis White Beck (Chicago: University of Chicago Press, 1949), 152. Hereafter shortened to *CPrR*.

⁸ *Ibid*, 97

opposed to the principle of duty and to the morality of the will.”⁹ The man who does not actuate his autonomy, then, not only acts irrationally but immorally too. (For Hartman, as we will detail, the happy convergence of autonomy and, with it, the possibility for a moral life cannot be separated out; they are interdependent.)

The seductions of heteronomy, of course, cannot be so easily dismissed. A life of ease, a life without the hardscrabble pull of idealism and compromise, would appear at first of finer quality. A man’s choices would already be preset; the limits on action would restrict him to a tapered range of theological, moral or political options—a Procrustean bed of other’s making. No great struggles with faith would ensue, no dank existential worry would trouble him, for he keeps to the well-trod path of the ancients—his ancestors, the king’s crown or religious community.¹⁰ Yet it is precisely this aspect of the heteronomous life that Kant cautions us against. To Kant, an autonomous self, a willing self, needs a stiff spine and must not be a soft wax upon which anyone or anything may inscribe its strange law. He instructs:

If the will seeks the law which is to determine it anywhere else than in the fitness of its maxims to its own universal legislation, and if it thus goes outside itself and seeks this law in the property of any of its objects, heteronomy always results. For then the will does give itself the law, but the object through its relation to the will gives the law to it.¹¹

And that is ultimately what autonomy is: a self creating its own law, through “the property of the will,”¹² that merges with and contributes to universal reason.

These opening remarks about Kant will frame our account of David Hartman’s philosophy of halakha, which is ostensibly constructed with the bricks of Maimonides’ thought and the mortar of Kantian autonomy. It is an attempt to integrate the emphases of modernity with the philosophical principles of the Rambam. His philosophy also represents the most comprehensive counter-argument to Yeshayahu Leibowitz. We will argue that Hartman’s

⁹ Ibid, 144

¹⁰ For Kant, the insidious nature of heteronomy can creep into a man’s life even when it appears that he makes rational choices. Beck, in his commentary to the *Critique*, points up this fact: “A reason which is the slave of the passions, a will which follows the promptings of desire and chooses laws of nature as its guide in satisfying them, a principle or maxim whose content is the condition of an act of choice, and the imperative which directs this choice of a specific action—all these can be called ‘heteronomous,’ even if the laws are laws of nature or even of God.” Louis White Beck, *A Commentary on Kant’s Critique of Practical Reason* (Chicago: University of Chicago Press, 1960), 102-03. Hartman will not travel this far with Kant. I believe that Hartman would see this as a kind of moral blind alley that potentially denies the emotive features of autonomy as well.

¹¹ Kant, *CPrR*, 97

¹² Ibid, 102

Maimonidean edifice is built on loose foundations, as his philosophy of halakha represents a distortion, however well-intentioned, of Maimonides' description of the Law.

In this chapter, we will open our discussion with some observations regarding his critical appraisal of Leibowitz's philosophical evaluation of the halakhic life, then point to three aspects of Hartman's philosophy of halakha that are of central importance in delineating this contrast to Leibowitz's position. We will lay out his ideas and then critique them point by point. These aspects concentrate on 1) pluralism within the details of halakhic adjudication and observance, 2) a religious rationalism that aspires to and seeks union with the universal sphere of human reason and 3) a singularly non-legal feature, an extra-halakhic ethical dimension that in Hebrew is known as *lifnim mi-shurat ha-din*, which is collapsed into religious life. Although Hartman's philosophy of Judaism cannot be reduced to three elements, these are the most evident in his philosophy of halakha. These values diverge sharply, both temperamentally and substantively, from Leibowitzian monism, non-rationalism and halakhic formalism. And it stands to reason that their appropriations of Maimonidean philosophy clash and rattle against each other as well. We will argue that Hartman's philosophy of halakha permits too much flexibility within the understanding and observance of the Law, that his rationalism is not Maimonides' rationalism, and that the supererogatory claims of *lifnim mi-shurat ha-din* siphons off the commandness of the Law and redirects it to the individual's discretion, a discretion that is untrustworthy within a system of Divine Law. And the claim is staked through our argument that Hartman is less faithfully Maimonides' son than Leibowitz, although both take great liberties with their master's work.

Hartman's Critique of Leibowitz

Hartman understands, as does Leibowitz, that traditional religious observance has declined and, despite a hardy but small *ba'al teshuvah* movement, there is little optimism that the tide will stem. But it is the issue of what to do with this sociological detail that divides Hartman and Leibowitz. The latter prefers to close ranks, as he recognizes that if the prophets of Israel could not reform a single soul, then how much less probable for contemporary Torah sages.¹³ A return to practice, for Leibowitz, relies exclusively on individual initiative. On the other hand, Hartman sees opportunity in crisis, a chance to expand the possibilities of traditional Jewish

¹³ See Leibowitz's response to Hartman in the latter's *Conflicting Visions: spiritual possibilities of modern Israel* (New York: Schocken Books, 1990), 86

religious life. In the face of “the weakening of Halakhah as the defining characteristic of Jewish experience,”¹⁴ the task of Jewish philosophy is to rework and renew the halakhic life. He wants to take the halakhic life seriously, but leaven it with an appreciation of pluralism, dialogue and political action. While Leibowitz may welcome pluralism, dialogue and political action as well in the secular sphere, they are to him foreign impositions, a kind of unwanted sortie on the halakhic life. There is the sacred—that is, halakha—and there is the profane; they do not speak to one another. As Leibowitz writes in “Religious Praxis”: “There is no holiness outside the sphere of divinity, which is the sphere shaped by divine imperative, not by human values; a sphere in which human action is dedicated to service of God.”¹⁵

Hartman notes that one of Leibowitz’s criticisms of his work turns on the question of the role of psychology in shaping religious law and life and the glossing of the psyche with a religious patina. Leibowitz’s worry is that at the heart of Hartman’s philosophy of halakhic life is the trumping of divine worship and the ascendancy of human values, no matter how beneficial they may be. Leibowitz asserts that Jewish law focuses man’s attention on worship and not the fulfillment of human want or desire. Hartman, conversely, sees rewarding contact between God and man in the Sinaitic relationship. “The crucial issue between Leibowitz and myself,” Hartman responds,

is whether worship of God and human self-realization are mutually exclusive. Leibowitz’s theocentric Akedah model of worship drives a wedge between consciousness of God and consciousness of self. There is no place for a covenantal religious consciousness in his system. The *mitzvot* are completely one-directional, representing solely the will of the individual to worship. It is because the covenant is abandoned in Leibowitz’s perception of Judaism that he can force one to choose between humankind and God, between the ethical and the *mitzvot*. But when, as in my view, the *mitzvot* are seen as embodying the full covenantal interaction of human beings with God, then our humanity remains an essential component of our relationship with God.¹⁶

The separation in halakhic attitudes comes down to their respective views on the comparative importance of what transpired on Mount Moriah and at the foot of Sinai. What happened at Sinai, for Hartman, was the formation of a political community, committed to divine service. The *akedah*, according to Leibowitz, confirms the abjuration of human values in worship. How else to explain Abraham’s willingness? Leibowitz, thus, separates out the worship of God from

¹⁴ David Hartman, “The Joy of Torah.” *Midstream*, (December 1979), 30

¹⁵ Leibowitz, “Religious Praxis,” 24

¹⁶ David Hartman, *A Living Covenant: the innovative spirit in traditional Judaism*, (New York: The Free Press, 1985), 110

human interests, as the *akedah* baldly demonstrates that God's ways are not our ways, His concerns not our concerns. Hartman calls this sort of halakhic valuation an "*akedah* consciousness, [notable for] its total unintelligibility."¹⁷ Leibowitz's anti-subjectivism, because it gestures toward the ineffable (although, it is vital to say, not the mystical), forswears any potential common religious understanding, which explains Leibowitz's emphasis on fixed religious practice. Feeling plays no part and, according to Hartman, nurtures "isolation."¹⁸ He further states that this *akedah* consciousness is an "exaggerated claim,"¹⁹ for it wrenches the human element out of the commandment, making it pure worship with little or no connection to lived experience or political undertaking. The exacting, and value-free, anti-subjectivism of Leibowitz stands in sharp contrast to Hartman's emphasis on the active role of human reason and emotion in shaping religious values, as we will see.

Hartman, certainly, demurs at Leibowitz's suggestion that human psychology, our sense of need and desire, share no part in halakhic consciousness. Hartman charges that the repudiation of the psychological features of halakhic study and practice permits no attainment of human aspirations, that the Torah serves no purpose other than the limited, immanent logic of divine worship. He answers Leibowitz's charge thusly:

My own philosophy of Judaism characterizes the covenant not only in strictly legal terms as constituting the normative conditions binding a person to Halakhah, but also in terms of a full interaction of God and the human being such that his or her humanity is neither denied nor ignored, but remains an essential component of the God-human relationship embodied in Halakhah.²⁰

Between God and man in Hartman's philosophy of halakha is an expansive dialogical filiation, a sense of interdependence that is missing in Leibowitz, who stresses the absolute transcendent otherness of God, a God who can only be worshiped, not known, within the four cubits of halakhic life. It will be essential to keep this distinction in mind.

Moving from the psychology of the believer, Hartman turns his critique to the more public concerns of halakhic intention and legitimation and institutional prayer. He begins by

¹⁷ David Hartman, "Halakhah as a Ground for Creating a Shared Political Dialogue among Contemporary Jews." *Kinship and Consent: the Jewish political tradition and its contemporary uses*, ed. Daniel Elazar, 2nd Edition, (New Brunswick and London: Transaction Publishers, 1997), 539

¹⁸ Ibid.

¹⁹ Ibid, 555. He goes on to note that "for Leibowitz, anything that deviates from the model of the *akedah* is self-worship, i.e., idolatry. It is doubtful whether his understanding of Judaism can illuminate a tradition which recognized stages of growth in man's religious development, and allowed for a variety of motives in the performance of *mitzvot*. Given the tradition's uncompromising attitude toward idolatry, this tolerance toward practice is not understandable within Leibowitz's categories."

²⁰ Hartman, *Conflicting Visions*, 95

making a key discrimination within the commanded life. *Kavanah*, intention, can be understood in two senses: *kavanah latzet* and *kavanah ha-lev*. The former is simply the discharge of halakhic obligation—one prays, for example, because commanded to pray, not out of some inner, personal need. Even if the desire to perform the *mitzvot* is wanting, the Sages instruct, one performs them regardless. But this sort of formalism, for Hartman, withers in the face of the richness and pluralism of halakhic life, where he finds that intention—human autonomy or *kavanah ha-lev*—is considered a supreme value. Viewing the *mitzvot*, in particular those regulating prayer, as concerned solely with the worship of God as obligation is to open a fissure between the commandments and the covenant. “Leibowitz,” Hartman writes,

in recognizing only *kavanah latset* and subsuming all *mitzvot* under the rubric of the Kantian notion of duty, ignores the important distinction between relational intimacy and normative responsibility. The *mitzvot* that express relational intimacy demand of the individual a distinct *kavanah* and invite the bringing of all his or her individual yearnings into the practice of the *halakhah*. It is not the will alone that is invited to be active in such *mitzvot*, but the human being as a total personality. Even though the individual Jew hears all *mitzvot* within the context of community, nevertheless *mitzvot* such as prayer and the Shema, which structure the relational dimension of covenantal immediacy, must be appropriated in a personal individual way. Behavioral conformity, acting from a sense of duty and commitment to halakhic rules, suffices only when relational dimension is not the dominant spirit of the *mitzvah*.²¹

Hartman shuns what he sees as submissiveness to traditional authority—a kind of heteronomous thinking—in this view. He wants to open up the potentialities intrinsic to the halakha, and hitch them to both an individual’s moral sense and sense of self-value, which can only be realized in a loosening of the yoke of the commandments. Maimonides himself suggests that the yoke is not heavy: “For these are manners of worship in which there is no burden or excess...”²² This is not to say that Hartman desires to have the commandments discarded and debased—indeed he does not—but rather make them a joy, a sentiment of passion missing in the rigorous legalism of Leibowitz. This legalism, Hartman maintains, gives rise to an apathetic attitude toward the commandments. About prayer, he says, “it matters little to Leibowitz if the worshipper is bored by the prayers or fails to identify with their content. On the contrary, indifference to what is being said may in fact be requisite for authentic worship. The form is what matters, not the specific details—entreaties for rain, good health or an untroubled soul, for instance—embedded

²¹ Hartman, *A Living Covenant*, 165-66

²² *Guide* 2.39, 380

within the form.²³ The formalism here draws principally from *Guide* 3.26 where Maimonides, in a general discussion of *ta'amei ha-mitzvot*, notes, inter alia, that it is a fool's hunt to seek out why, in the sacrifices, "seven lambs and not eight have been prescribed."²⁴ Leibowitz, therefore, refuses to disentangle the particulars of prayer from their structure, because structure lends consistency to a halakhic community devoted to the worship of God, a community that would dissolve if halakhic adjudicators considered individual preference and desire. To Hartman, there's a whiff of the inhuman in these thoughts, as human concerns are immaterial to proper prayer.

Perhaps, thinks Hartman, there can be a middle way between Leibowitz's formalism that permits no individual expression and the quid pro quo faith of those who expect a commensurate relationship between man's prayers and actions and God's bestowal of gifts upon man—a kind of cosmic benefits package. He affirms a "third type [who] offer prayer because they seek to express their faith in God's covenantal concern and acceptance."²⁵ Leibowitz, on the other hand, is unwilling to consider human need as a criterion of prayer. The error in that view, Hartman writes, consists in the "fail[ure] to

distinguish between two kinds of need. There is the need of a helpless dependent person who cries out for help in economic distress or asks the doctor to heal his sick child. Different from this, at least potentially, is the need of lovers to share with each other the situations of vulnerability that either may experience. When you discuss your needs in a love relationship, you do not necessarily expect your beloved to solve your problems. Reassurance and comfort may be gained simply through knowing that your beloved listens to you in your anguish and that you are not alone in your plight. I understand petitionary prayer as expressing the need of covenantal lovers of God to share their total human situation with God.²⁶

Moreover, only by such an understanding can a Jew realize his autonomy, his facility for independent reasoning that gives license to personal prayer. Halakhically prescribed prayer only initiates the life of prayer. If Leibowitz is correct about the mandate of commanded worship, he maintains, then this "is a sign that obligatory prayer has crushed something essential to the prayer experience."²⁷

²³ What Robert Frost said about free verse applies to Leibowitz's thoughts on the importance of form. Frost famously maintained that free form poetry is like playing tennis without a net. It may look like tennis, but whatever it is, it ain't tennis. Meaning is represented in form.

²⁴ *Guide* 3.26, 509 and Hartman, *A Living Covenant*, 162

²⁵ Hartman, *A Living Covenant*, 164

²⁶ *Ibid.*

²⁷ *Ibid.*, 170

Leibowitz's model of prayer as pure divine worship, a moment when the supplicant is a vessel for the halakha and not an independent value apart from the moment of worship, is part of a larger construction of the commanded life as one without the assistance of *ta'amei ha-mitzvot* (reasons for the commandments, an assistance even Maimonides draws on in his philosophy, which Leibowitz papers over in an attempt to remake the Rambam into a halakhic formalist. The inner, human logic of the commandments does not diminish the Torah, according to Hartman, but instead frees up motivations, a wider space for the exercise of Kantian autonomy, for the performance of the *mitzvot*. Observance of Shabbat, for instance, does not involve man bending his autonomous will—after all, he is a thinking reed, Pascal observed—in submission to God's centrally generated law. Shabbat means more than the application of Law to life:

...I may observe the laws of the Sabbath in order to awaken a sense of my creatureliness—that is, in order to become fully conscious of the fact that God alone is Creator of the universe and that no human individual may relate as absolute master to anything created by God. By abstaining from acts prohibited on the Sabbath, I become conscious of the implications of the concept of a Creator God, namely, that humankind is not the absolute master of nature who can exploit it without restriction.²⁸

From the crudities of submission evolves a deeper, more grounded alertness and responsiveness to God's Law, attuned to the specifics of individual context. Unwilling to imagine a creative human role in giving meaning to and, if necessary, modifying the Law, Leibowitz's philosophy of halakha²⁹ remains outside the pale of options for modern Jews.³⁰

Pluralism and Halakhic Individuation

Central to David Hartman's philosophy of halakha is the extension of individual interpretation and control of the Law and—affiliated with this assertion—the flowering of a pluralist approach to the commanded life. By pluralism, we mean a philosophical-practical move to widen, or make flexible, halakha; inclusion in the place of exclusion. But the cost Hartman's

²⁸ Hartman, *Conflicting Visions*, 96

²⁹ One of Hartman's more cogent criticisms of Leibowitz (and one I believe seriously underdeveloped) is the latter's use of Maimonidean philosophy of halakha. Leibowitz, writes Hartman, divorces Maimonides from the medieval philosophy upon which the Rambam cut his teeth. The anti-metaphysics of Leibowitz denies the possibility of knowledge of God and nature. "This modern epistemological framework, however, cannot be used to understand Maimonides. It is not his world. For him, the view of the world seen from the vantage point of Aristotelian physics and astronomy has ultimate religious significance. For Leibowitz, it cannot have this role. Leibowitz, therefore, is reduced to making *halakhah* the exclusive vessel of the life of faith and worship. (*Halakhah* must become an essential constituent of the notion of worship). Since all truths claims lack any cognitive value, the only one left over from Maimonides for Leibowitz is the yearning to worship. Leibowitz compresses the Maimonidean passion into the will to worship, but in doing so he cuts off that passion from the intellectual roots that nourished it." *A Living Covenant*, 121

³⁰ In addition, see David Singer's "The Unmodern Jew," in the journal *First Things* (June/July 1991)

philosophy may be too high. That is, by cutting off top-down authority—the *poskim* and their mandate to adjudicate and enact divine Law—a diverse and unregulated set of practices and beliefs are likely to fill the vacuum. Despite this complication, to which Hartman does not give sufficient weight, he asserts that modern Jewish observance, following the breakdown of the *kehila* after the Enlightenment and most normative religio-cultural arrangements, must permit opportunity for an individual “to cultivate his independent reason; he cannot be asked to submit uncritically to the claims of authority.”³¹ Halakha needs to rise to meet the challenges of the day, the challenges that take place in the contested spaces of modernity. And one of the most pressing is pluralism.

Lacking a central authority like the papacy, Hartman argues, Judaism can make room for a diversity of practice and observance. It is essential, in fact, if the rift between the religious, the semi-religious and the religiously indifferent (and the divisions in the groups themselves) is not to become total. He understands that there will always be necessary disagreements, but that the points of contact are, or should be, stronger than points of difference.³² Within the Law itself there is a multiplicity of religious beliefs. “One who has a deep appreciation of the logic of the *halakhic* system can never be certain that his actions represent the only possible cognitive response to the Torah of God. Alternate ways of practice are present in a system that applies *Torah mi-Sinai* to its everyday life.”³³ Hartman goes on to quote the Talmudic dictum, “these and these are the words of the living God,”³⁴ to demonstrate the varieties of Judaism among even the Sages. Although the ultimate authority is vested in God’s Torah, the responsibility for the determination of its exercise is not in heaven, but ascertained by human capacities that are apt to fail and misapply. Hartman holds up this halakhic pluralism as a model for a reconstructed Jewish communal polity. With the wealth of alternatives in the secular world, Jewish religious

³¹ David Hartman, *Maimonides: Torah and Philosophic Quest*, (Philadelphia: Jewish Publication Society of America, 1976), 103

³² Solomon Spiro, in an incisive critique of Hartman’s pluralism, notes that “a halakhic person can share a common language with his non-halakhic counterpart, but not a common *spiritual* language. The halakhic person, for example, will love his neighbor because God has commanded it. There is a spiritual motivation and context for the entire concept and practice of this commandment. The non-halakhic person will subscribe to the concept and practice of loving his neighbor for a variety of reasons: the good of society, a commitment to love of humanity, or a very utilitarian or Hobbesian self-interest. Both the halakhic and non-halakhic are sincere in expressing their love of their neighbors, but their motivations are different: one is spiritual, the other secular.” Solomon Spiro, “Halakha as a Ground for Creating a Shared Spiritual Language—a Rejoinder,” *Tradition* 16, no. 3 (Spring 1977), 55

³³ Hartman, “Halakhah as a Ground for Creating a Shared Political Dialogue among Contemporary Jews,” 537

³⁴ B.T. Eruvin 13b

life must find for itself new sources of thinking that confront honestly, or perhaps accommodate, the enticements of modernity.

Surely, however, neither pluralism nor individualism participate conspicuously within the observant life. Halakhic pluralism, based on a reading of *ta'amei ha-mitzvot*, implies a multiplicity of observances, yet this multiplicity comes at too high a cost: the estrangement from normative rabbinic practice. And the benefits from multiplicity are slight: “the rich adventure of being exposed to multiple points of view.”³⁵ There are variances in, say, Sephardic and Ashkenazi communities, but they are not variances in the demand for uniformity of practices. Each may dine on different food for Shabbat, but the food is kosher. A larger question needs to be asked: what is gained by pluralism? Certainly not an increase in practice. It stands to reason that if a kind of relativism creeps into the observant life, then that life, and its norms in particular, ceases being a life that demands compliance with the duties inherent in halakhic regulation. In fact, the sense of duty falls away altogether and what remains are rights³⁶—the individual’s right to inscribe his own halakha, no matter the absence of his halakhic knowledge. Halakhic life knows limits—that is of one of its defining features—and seeks them out through the rabbinic application of Divine law. Pluralism, at least Hartman’s, doesn’t buffer any external imposition on Jewish religious practice that an individual chooses to bring in. Autonomy, the very source of pluralism and individualism, in the secular sphere is sensible and noble, but run amok in the halakhic life it debases.

Because the rabbis can make no final claim upon halakhic certainty, this means that “a rational foundation for the development of a pluralistic sensibility”³⁷ can be established. Extending from this “pluralistic sensibility” is the meeting-point of dialogue in Judaism. As no decision is final, arrogance is set aside and pluralism prospers. Yet all is not well. Instead of attending to dialogue many Orthodox partisans have employed halakha as a cudgel against other Jews, “an instrument for divisiveness, subtle aggression, and spiritual isolation. Instead of *mitzvah* awakening the individual to embrace *klal yisrael*, it is often, and mistakenly, viewed as calling for the isolation of the individual from the community.”³⁸ These men, among whom he

³⁵ Hartman, “Halakhah as a Ground for Creating a Shared Political Dialogue among Contemporary Jews,” 538

³⁶ For a critique of rights talk in general, see MacIntyre’s *After Virtue*. “The truth is plain,” he asserts, “there are no such rights, and belief in them is one with belief in witches and unicorns.” Alasdair MacIntyre, *After Virtue: a study of moral theory* (Notre Dame, Ind.: University of Notre Dame Press, 1984), 67

³⁷ Hartman, “Halakhah as a Ground for Creating a Shared Political Dialogue among Contemporary Jews,” 537

³⁸ *Ibid*, 548

includes Leibowitz, restrict halakha to the codes, the formal laws of halakhic life, severed from its spirit and covenantal intimacy with God. Hartman would go so far as to forbid halakhic instruction centered on the *Kitzur Shulhan Arukh*, the indispensable guide to observance for Orthodox Judaism. The *Kitzur* does not sanction multiple construals of the Law, presenting only a sort of mitnagdic Judaism. A “rote catechism,”³⁹ he scolds, a Thirty-Nine Articles of the Jewish faith, if you will.⁴⁰ The dismissal of a pluralistic sensibility withers the creative impulse so necessary to the maintenance of the Law and denies the individual Jew his interpretative privileges. It cripples the emotional life. Teaching only one approach to halakha, as is done in most *yeshivot*, “inhibits the growth of a religious personality capable of engaging seriously and totally in the creative adventure of discovering new-yet-old vistas in one’s religious life.”⁴¹

But the contention that intra-Jewish dialogue and halakhic creativity/pluralism firms up support for the Law seems flawed. It’s what the recently deceased Daniel Patrick Moynihan, in a different context, called defining deviancy down.⁴² By Hartman’s line of argument a greater appreciation for the Law will grow out of these elements and, by extension, greater observance. He writes in *A Living Covenant*: “a human sensibility that is open to and appreciative of the possibilities of pluralism is the foundation from which one can build a new epistemological understanding of revelation and *halakhah*.”⁴³ Yet this calls for compromise, a compulsory watering down of the force of the commandments in the observant life. With the exception of matters of intra-communal concern such as the status of the state of Israel, which is a secular matter, there is little to be gained by halakhic Jews—and I do not mean Orthodox Jews alone—engaged in dialogue. A greater comprehension of other views, perhaps. But an acceptance of these views?—out of the question. And while Hartman calls upon observant communities to endeavor towards a broad toleration, he is guilty of his own small tyranny. Hartman’s allegedly pluralistic sensibility does not permit the continued study and use of the *Kitzur Shulhan Arukh*,

³⁹ Ibid, 538. He goes on to give an odd analogy. Compare the *Kitzur* to the Talmud, Hartman says. The *Kitzur* “is like a bath tub as against an ocean. When swimming in an ocean, multiple strokes in various directions are possible. In a bathtub you immerse yourself and passively soak in water without having much maneuverability. There is a spiritual adventure and diversity in the ocean of Talmud. There is limiting spiritual monism and religious passivity in the study of the *Kitzur Shulhan Arukh*.” Some of those “various directions” beloved by Hartman may be wrong directions, proscribed by Torah. In the ocean a man, if going the wrong way, will drown—unlikely in a bathtub.

⁴⁰ See E. Shochetman’s “On the Contradictions in the Shulhan Arukh, and the Nature and Aims of this Work” (Hebrew) *Assufot* 3. Shochetman argues that even in Karo’s concise compilation of Laws there are multiple rulings on the same *mitzvot*.

⁴¹ Hartman, “Halakhah as a Ground for Creating a Shared Political Dialogue among Contemporary Jews,” 536

⁴² See Moynihan’s “Defining Deviancy Down,” *American Scholar* (Winter 1993).

⁴³ Hartman, *A Living Covenant*, 18

even though many Jewish communities have chosen it as the normative shorthand guide to halakhic practice.

In addition to being selectively applied, Hartman's pluralism relativizes the forms or structures that make up those paths are simply not as important as the effort to make one's way to God. A private, spiritual and *autonomous* understanding of the commandments links up in harmony with the larger community. There is no essential tension between the inner drive of the spirit and communal forms of worship. Although the external modes of observance and public understandings of the commandments cannot be dispensed with, the internal, personal meaning of *ta'amei ha-mitzvot* is what gives them force. For Hartman, only an individuated appreciation of the Law permits a sense of personal responsibility towards God's commands. Each Jew is invited to do more than the perfunctory observances; he is not an automaton. In the personal experience of religion a Jew becomes a true halakhic man. The subjective, independent and creative impulses that exist under the surface of the Law diminish the need for Leibowitz's tedious legalism. An individual mitzvah is not a barren legal detail that needs only application. In fact, Hartman argues,⁴⁴ true application of the commandments occurs only after thoughtful reflection and the understanding that follows that reflection. No nervous worry need result if a diversity of reasons for the mitzvot are developed, as each individual Jew finds comfort and security in the knowledge that he has thought through the meanings, private and public, of God's Law. The Jewish people are one, but their Law, its individual comprehension and application, is many.

What might worry someone about Hartman's point is the anthropocentrism intrinsic to his thought. Does a focus on the individual's needs "direct his heart to heaven"⁴⁵ or will he fashion an idol of out of his own psychology? Sensitivity to creative capacities and pluralistic visions has little to do with the worship of God. It is inner-directed rather than outer-directed. Human creation and legal pluralism are human values with no attachment to the source of actual Creation and Law: the God of Israel. Hartman's philosophy ultimately ends up in subjectivity. This is not a value statement, but a consequence of his thought. All halakhic matters, according to Hartman, center on the subject, not the ostensible object of halakha.

⁴⁴ Ibid., chapter three *passim*

⁴⁵ Yeshayahu Leibowitz in his response found in Hartman's *Conflicting Visions*, 89

Hartman further maintains that the individual understandings of the commandments are the transition points in halakhic pluralism—“a bridge from behavioral separation to cognitive communication,”⁴⁶ a space for the cultivation of individual intellectualization. While this may well form a bridge, it is, from a Maimonidean point of view, unsound. Twersky argues in his *Introduction to the Mishneh Torah* that the Rambam did not perceive *ta'amei ha-mitzvot* as a space for complete intellectual freedom. (He points specifically to the beginning of Maimonides' discussion of the reasons for the Law [3.26].)“...At least in part, [it] is as precise and objective as any scientific discipline. Ample knowledge, judiciously interpreted and applied, yields precise reasons. This is not hubris or bumptious reliance on one's opinions, but disciplined and constructive use of intellect and insight.”⁴⁷ Therefore, reliance on multiple construals of the Law without an acknowledgement that there is a philosophic method, with principles to be applied, to *ta'amei ha-mitzvot* reduces Hartman's contention to, at worst, mere chatter, or, at best, hope (for pluralism and dialogue) in the place of philosophically cogent arguments. Nowhere does Maimonides state that the reasons for the commandments have plural understandings, although they are (theoretically) rational. The equation (*r* equals *p*) of rationality (*r*) with plurality (*p*) is a false equivalence: no solid evidence from the data set of medieval Jewish philosophy permits such an evaluation.

Modern Maimonidean Rationalism

David Hartman is Maimonides' son most obviously in the sphere of philosophic rationalism. It is Hartman's particular brand of ethical rationalism that numbers him among the disciples of Kant,⁴⁸ as well. His work attempts to update rationalism to be compatible with modernity. Of Maimonides yoking together Torah and the Greek philosophical tradition, Hartman writes: “...he tries to show pious Jews how their commitment to Halakhah can be enriched by a philosophical understanding of God. Maimonides leads the halakhic Jew toward a unification of the particularity of Torah and the universality of philosophy. This goal constitutes the core of his concern as a Jewish philosopher.”⁴⁹ It is not the contemplative rationalism of Maimonides that Hartman draws on, but instead it is the Rambam's emphasis on reason's role in the shaping of halakhic life that makes his philosophy attractive to moderns like Hartman.

⁴⁶ Hartman, “Halakhah as a Ground for Creating a Shared Political Dialogue among Contemporary Jews,” 541

⁴⁷ Twersky, *Introduction to the Code of Maimonides*, 402

⁴⁸ Kant himself noted that he learned his ethical rationalism from Rousseau.

⁴⁹ Hartman, *Maimonides*, 66

Fidelity to Jewish practice is possible only when rationally understood. “True loyalty to God,” Hartman writes in his book on Maimonides, ‘is manifest by one who trusts his reason and refuses to follow authority indiscriminately.’⁵⁰ As this statement demonstrates, Hartman prefers a selective interpretation of Maimonides in place of a detailed examination of the particulars of Maimonides’ philosophy and legal decisions. (Maimonides surely expected the majority of the Egyptian community, which he oversaw, to follow his adjudications of divine Law. Not everyone could master philosophy and the intricacies of halakha—and then integrate them.) David Singer supports this: “...[Hartman] does not limit himself to a ‘strict constructionist’ reading of the Maimonidean legacy. On the contrary, he is happy to invoke the ‘spirit of Maimonides’ and then develop a position of his own.”⁵¹ This selective reading is certainly permissible and understandable: the immediate concerns of medieval Jews are not identical to those of modern Jews. Hartman does not map Maimonides’ worldview onto his own. Instead, he takes Maimonides’ core thoughts about the relationship of reason to Law and revelation and situates them in a modern context.

At times, the rationalism of Hartman is of a negative sort. Reason reduces itself to merely being the opposite of authority. Obedience produces “authoritarian” types, where reason produces types defined by “independence.”⁵² For Maimonides, Aristotelian rationalism anchors his philosophy, gives to Judaism the speculative backbone it needs to inquire into first things, causation, creation and moral conduct; that is, some of the pertinent foundations of the true halakhic life as Maimonides saw it. Reason, in Hartman, exists as a necessary counterbalance to the undercurrents of heteronomous discourse in much of contemporary observant Judaism rather than a fully fleshed out philosophical principle. Reason de-emphasizes the emotionally ossified legalism of Leibowitz, though it does not eliminate the divine character of ritual law, and instead touts the merits of “rational discernment”—a faculty possessed by the Maimonidean philosophic rationalist of *Guide* 3.51-54—that guides men to “a reflective, sensitive, and critical moral disposition.”⁵³ And this disposition is not a worked up shape of our own vain imagining, but a divine gift. For Hartman, the Covenant between God and the Jewish people involves the trust He has in their ability to apply the energies of reason in sanctifying the profane. Through a rational-

⁵⁰ Ibid, 106

⁵¹ David Singer, “The New Orthodox Theology.” *Modern Judaism* 9, no. 1 (February 1989), 41

⁵² Hartman, *Maimonides*, 104

⁵³ Hartman, *A Living Covenant*, 184

ethical devotion to God's commandments Jews create religious community, not by the cloister of *haredi* Talmud study (although study is vital) or the stern, school-marmish formalism of Leibowitz.

The problems with Hartman's rationalism in his philosophy of halakha are not nearly as remarkable as we saw in his pluralism. He employs the 'essence' of Maimonidean rationalism but does not follow the Rambam to his philosophic conclusions: that rationalism, fastened to Talmudic learning, sets man on the path to intellectual perfection, the perfecting of the intellect which leads to true knowledge of God. Although Hartman views his rationalism as of a piece with his philosophy of halakha, I wonder, as suggested above, if it is nothing but the exploit of reason to combat unquestioned authority. That is, Hartman's rationalism is standard common sense: be discriminate in assessing the powers of authority, the extent of tolerance, the middle path, the golden rule—Enlightenment rationality writ large. At best, Hartman's rationalism endeavors to demonstrate that we are reasonable creatures, and that very reasonableness is an indispensable attitude that one must cultivate in order to lay the foundations for a halakhic life. What is missing is the Maimonidean admission, which occurs in a chapter long on philosophical speculation, that "man's intellect indubitably has a limit at which it stops. There are therefore things regarding which it has become clear to man that it is impossible to apprehend them."⁵⁴ Whereas Hartman insists that we take counsel with reason, Maimonides, according to Marvin Fox, maintains that reason has a stopping-point, "not primarily [as] a matter of religious dogma, but simply sound philosophy to know and have regard for the limits of human reason."⁵⁵ We will see the limitations of reason in our analysis of non-rational ordinances, the *hukim*.⁵⁶

Hartman notes that his rationalism derives from the *Guide*'s insistence that God discloses His attributes of action—rational action, to be sure—in the workings of nature: that there are rational laws ordered to man's purpose and life and beneficial to him as well. That the Law is rational, that something about God's intentionality in the world can be known, is at the heart of both Maimonides' and Hartman's philosophy of halakha. The entirety of the Law, not just the *mishpatim* (rational ordinances) but the *hukim* (non-rational ordinances) too, has determinate intent: nothing in God's giving of the Law falls outside reason's broad purview. "One of Maimonides' theological innovations," Hartman maintains, 'was to transform this distinction into

⁵⁴ *Guide* 1.31, 65

⁵⁵ Fox, *Interpreting Maimonides*, 38

⁵⁶ See Fox, *Interpreting Maimonides*, 43ff.

one between those *mitzvot* whose rational purpose was self-evident and those whose rational purpose could be discerned only after careful reflection. All the *mitzvot*, then, were rational and could in principle be justified in terms acceptable to medieval philosophers, Jewish or non-Jewish.”⁵⁷ All those who utilize their autonomy and their reason will notice that the world is overseen by a munificent God, whose stable Laws demonstrate that order reigns rather than incoherence or divine indifference. As Hartman points out, rationalism *cum* universalism is not only evident in the *Guide*. In his explication of the Mishna, Maimonides asserts that the seemingly obscure beliefs concerning *ma’aseh bereshit* (the story of creation) and *ma’aseh merkavah* (the story of the Chariot) are linked “with the cognitive disciplines of physics and metaphysics. This identification denies any intrinsic mystery to the hidden teachings. In principle, these teachings are capable of being understood by all men of reason because, according to Maimonides, the criteria upon which they are based are universal criteria of knowledge.”⁵⁸ In order to understand the particulars of halakhic life, then, one must have access to general human knowledge—the hard sciences such as astronomy and the humanistic sciences such as philosophy. A single-minded approach to study—that is, one limited to *Talmud Torah*—weakens comprehension of the Law. In the study of the sciences, fresh strategies in the understanding of halakha emerge. Only when one abandons, as Maimonides did, religious parochialism, can rationalism, and thus a non-submissive halakhic stance, flourish.

The only problem in this element of Hartman’s rationalism, and it is as much Maimonides’ problem, centers on the assertion that *ta’amei ha-mitzvot* can be a constituent of general philosophy. The contention that non-rational ordinances, the *hukim*, can be rationally understood, along with the *mishpatim*, in the idiom of Aristotle—a key claim of medieval Jewish philosophy from Saadiah onwards—smacks of accommodationism, an opening gesture towards assimilation, and not the rigors of speculative thought. Only if the Laws are rational can Jews participate in the larger world culture, so the argument goes. This very notion seems implausible, however. Take, for example, most of the Laws codified in Maimonides’ own *Sefer Ha-Mitzvot*. Among the negative commandments (*mitzvot lo ta’aseh*) is “the exhortation against eating parched grain of the new crop before the passage of the sixteenth of Nissan. As the Exalted One said: ‘And bread, and parched grain, and fresh ears you shall not eat, etc.’ One who eats an olive-

⁵⁷ Hartman, *A Living Covenant*, 90

⁵⁸ Hartman, *Maimonides*, 30

size of it receives stripes.”⁵⁹ Nothing in this commandment commends itself to medieval rationalism, Kantian universalism or Hartman’s update of Maimonides. Due to this fact, some scholars have attempted, with notable success, to show that Maimonides acknowledged a ceiling for rationalism, that there was a point at which it ceased.⁶⁰ One can point to the final *mitzvah* in *Sefer Ha-Mitzvot (mitzvot lo ta’aseh)* where Maimonides concedes, with both philosophical and halakhic integrity intact, that reasons for the Law can undercut the Law as well as strengthen it. In *Sanhedrin* (21b), Solomon, due to the “greatness of his knowledge and wisdom,” felt that if he knew the reasons for the commandments, then he “would find some way to get around them. For even this most perfect of men erred in this and could not see his acts in any way leading to transgression.”⁶¹ Maimonides further asserts, in the *Guide*, that “God hid the causes for the commandments in order that they should not be held in little esteem, as happened to Solomon...”⁶² What Maimonides is doing here, claims Josef Stern, is “hint[ing] at a still stronger constraint on *possible* human knowledge of causes for particulars.”⁶³ Every commandment may have a reason, but those reasons may not be known to us. More importantly, the status of the commandments is not contingent:

In view of this consideration, it also will not be possible that the laws be dependent on changes in the circumstances of the individuals and of the times, as is the case with regard to medical treatment, which is particularized for every individual in conformity with his present temperament. On the contrary, governance of the Law ought to be absolute and universal, including everyone, even if it is suitable only for certain individuals and not suitable for others; for if it were made to fit individuals, the whole world would be corrupted and *you would make out of it something that varies*. For this reason, matters that are primarily

⁵⁹ M.T. *Sefer Ha-Mitzvot: Mitzvot Lo Ta’aseh* (Mitzvah 191), trans. Shraga Silverstein (New York and Jerusalem: Moznaim Publishing Corporation, 1993). The scriptural quotation is from Leviticus 23:14.

⁶⁰ See Shlomo Pines, “The Limitations of Human Knowledge According to Al-Farabi, ibn Bajja, and Maimonides,” *Studies in Medieval Jewish History and Literature*, ed. Isadore Twersky (Cambridge, Mass.: Harvard University Press, 1979); Alexander Altmann, “Maimonides on the Intellect and the Scope of Metaphysics,” *Von der mittelalterlichen zur modernen Aufklärung: Studien zur jüdischen Geistesgeschichte*, (Tübingen: J.C.B. Mohr 1987); and Twersky’s *Introduction to the Code of Maimonides*, 391-397, 401-403 and 458-459. Simon Rawidowicz, however, noted that the turn in some scholar’s work to the non-rationalist underpinnings of Maimonides likely will not have larger consequences for the discipline as a whole. “While this trend to re-discover the non-rationalistic elements of Maimonides’ philosophy, or at least to keep the proper balance between the various motives in his system, in order to free it from a too one-sided rationalistic interpretation, may gain ground in the field of the history of Jewish philosophy, it will probably for a long time to come have to reckon with strong resistance. For Maimonides’ ‘rationalism’ is too established an axiom—from the older generation till Samuel David Luzzato on the one hand and Ahad Ha’Am and his followers on the other—to yield its ground, or even to accept its modifications.” Quoted in Fox, *Interpreting Maimonides*, 36

⁶¹ M.T. *Sefer Ha-Mitzvot: Mitzvot Lo Ta’aseh*, Mitzvah 365, p. 220

⁶² *Guide*, 3.26, 507-08

⁶³ Josef Stern, *Problems and Parables of Law: Maimonides and Nahmanides on Reasons for the Commandments* (Albany: State University of New York Press, 1998), 31

intended in the Law ought not to be dependent on time and place; but the decrees ought to be absolute and universal, according to what He...says: *As for the congregation, there shall be one statute for you.*⁶⁴

Stern comments:

Here Maimonides makes three claims: (1) The Law, unlike medicine, cannot be made to fit every need of every individual in every circumstance. (2) Precisely for this reason, the *first* intentions of the Law (“matters that are primarily intended”) should be independent of time and place; that is, they should be purposes that are appropriate ends to seek in all circumstances, or reasons that are beyond the *changing* contingencies of time and place. (3) However, the decrees or commandments themselves...are to be absolutely—that is, unconditionally—and universally—that is, without exception—binding despite the fact that they are the products of *second* (in addition to first) intentions that generally are appropriate only in some times and places and take into account historical conditions that change.⁶⁵

It is a noble effort to place the whole of Jewish life and thought alongside that of other religions and other cultures, and it partially works. Yet the *hukim* do not have reasons—they can be given contingent reasons, but Maimonides maintains that contingency is false substantiation—that are immediately evident to the rational mind, and to maintain that all the Laws are rational—that is, available to the human mind after reflection—is an insult to their Author, to reason itself and to Jewish philosophy. Jewish philosophy, even a Jewish philosophy of halakha, is possible without suggesting that Divine ordinances are part of universal thought or that without *ta'amei ha-mitzvot* the Law would wither.

Lifnim mi-shurat ha-din

In order to understand the centrality of extra-halakhic considerations in Hartman’s philosophy, it is imperative to remember that the idea of *lifnim mi-shurat ha-din* (the ethical aspects of Judaism outside of the formal *halakhot*) did not first propose itself to him as a speculative principle but as an experience. As a *yeshiva bokhur* and later in his training for the rabbinate, Hartman recoiled at the idea that prayer, his personal prayer to the God of Israel, was constrained by the time-structure of petitional life and the fact that the halakha prescribed the “ruling that required one to pray even when one was unable to concentrate and bring the proper devotional attitude to the prayer service.”⁶⁶ His teachers assured him that halakha stipulated proper observance and not the intentions attached to that observance. Appropriate sentiments are commendable; sentiments, however, do not fulfill the Law. For Hartman, as for most Jews, this emotional minimalism will not hold. The autonomous self, the independent cognitive being, gets

⁶⁴ *Guide*, 3.34, 534-35

⁶⁵ Stern, *Problems and Parables of Law*, 40

⁶⁶ Hartman, *A Living Covenant*, 160

lost in the homogeneity of halakhic performance as does a concern for the emotional-religious maturation of the individual Jew. This sort of halakhic nominalism squanders the animating energies of the spiritual life, a life that should take formal communal worship seriously but recognize that it is not the terminal point of spiritual existence: it should be a catalyst for the inner workings of the spirit. Moreover, halakhic minimalism focuses the believer's attention on the discharge of his obligation in place of a concentration on "one's personal relationship to God. If that were the only way of understanding prayer in Judaism, it would seem to be a factor undermining the critical independent spirit I believe is necessary for the full flowering of a mature covenantal relationship with God."⁶⁷ This relationship wilts in the face of much contemporary observant practice, according to Hartman.

From Maimonides, Hartman draws out a constituent part of the love of God that is not rooted in the commandment to love and fear God. This element of love was not that expressed in the acceptance of the Covenant, rather it articulates itself in one's individuated reflections on the majesty of God's creation, the grandeur of His rule over all created things. The *mitzvot* are not the complete and final manifestations of religious life, as halakhic positivists believe. Hartman argues, as he claims Maimonides argues, "that experience of the God of being is not exhausted by notions of covenantal mutuality..."⁶⁸ It evokes thoughts of the perfected man of *Guide* 3.54 who utilizes the Law as a necessary stimulus to greater knowledge of God, which is extra-halakhic and man's greatest glory. Jewish religious life contains the commanded life, but is not constrained by it. Observance of the Law becomes one part of the knowledge of God, but by no means the entirety. According to Hartman, the application and performance of halakhic decrees was not primary in Maimonides' thinking. The formalist's service to God through the commandments alone left out one of the Rambam's central teachings about why one worships—that is to say, loves—God: "His perfection."⁶⁹ This rational knowledge of God and His perfection leavens the seeming harshness of halakhic restriction with the free play of the reasoning mind, a mind that, like the halakha, is a gift from God. For Hartman and Hartman's Maimonides there is a fortunate congruence between divine Law and "a spiritual life dedicated to philosophic knowledge of God"⁷⁰—that is, *lifnim mi-shurat ha-din*. To support this contention

⁶⁷ Ibid, 161

⁶⁸ Hartman, *A Living Covenant*, 267

⁶⁹ Hartman, *Maimonides*, 94

⁷⁰ Ibid, 104

that an essential symmetry—or, at worst, a lack of necessary conflict—emerges from a healthy equilibrium of legal obligation and extra-halakhic principles, Hartman points to Maimonides’ use of Biblical and Talmudic quotations in the *Guide* and the *Mishneh Torah*. The *Mishneh Torah*, ostensibly a compendium of juridical details concerning the duties of halakhic life, opens “with a treatment of various philosophical themes. Is this not a strange way to begin a strictly legal codification? Does it not suggest that Halakhah demands more than the obedient readiness to follow norms,” asks Hartman?⁷¹ He points also out that the *mitzvot* of prayer outlined in the *Mishneh Torah* are found in the *Guide* too. But in the *Guide* they do not appear as straightforward commandments. In the *Guide*—more precisely, the end of the *Guide*—these *mitzvot* point to “the highest form of worship as contemplative love of God based upon the valid apprehension of Him and His acts.”⁷² Out of the contemplative form of petitionary prayer, Hartman is able to make his argument that it is the individual’s prayer—Maimonides’ “service of the heart”⁷³—that is paramount in creating intimacy with God, while communal prayer is consigned to a secondary if still vital role. Service of the heart, then, is perhaps the most obvious manifestation of *lifnim mi-shurat ha-din* in Hartman’s oeuvre. This non-halakhic formulation, finally, allows for the cultivation of individual, spiritual capacities outside of the suffocation of halakhic positivism. It is not a replacement of the Law, but an important element in the stimulation of religious growth.

For example, Hartman gives the reader an aggadic reading of *lifnim mi-shurat ha-din* out of the sources of Maimonides’ *Mishneh Torah*. If a righteous man, a *hasid*, witnesses an animal’s burden fall from his back, then the righteous man, no matter his social station, is obligated to help the animal’s owner restore the load to the animal’s back, “whether the burden is suited to it or too heavy for it.”⁷⁴ The *hasid* here demonstrates “in this act the capacity of meekness” because “he waives his exemption from a task that compromises his dignity.”⁷⁵ And this is what separates the *hasid*, who forms part of an elite, from the multitude of believers. Anyone can perform the perfunctory duties of the Law, but only by going beyond the letter can one demonstrate his imitation, and therefore love, of God. Requirements are just that: a pre-arranged

⁷¹ Ibid, 48-9

⁷² Hartman, *A Living Covenant*, p. 178

⁷³ See Deuteronomy 11:13, M.T. Laws of Prayer 1:1, *Guide* 3.32, B.T. Ta’anit 2a, P.T. Berakhot 4a, and Hartman, *A Living Covenant*, p. 178

⁷⁴ Qtd. in Hartman, *Maimonides*, p. 91

⁷⁵ Robert Eisen, “*Lifnim mi-shurat ha-din* in Maimonides’ *Mishneh Torah*.” *The Jewish Quarterly Review* 89, no. 3-4 (January-April 1999), 305

responsibility, which says nothing of the Jew’s philosophical reflections on God’s role in world, His love, mercy and justice. “The halakhic category,’ Hartman writes, ‘of *lifnim mi-shurat ha-din* reflects the behavior of one who has transcended self-interest and legal obligations based upon reciprocity.’”⁷⁶ Louis Newman, however, who outlines all of the Talmudic uses of the term in a helpful essay, suggests that *lifnim mi-shurat ha-din* is not some fuzzy overcoming of the self and its interests and certainly not a lifting out of the legal personality. After laying out the Talmudic examples of *lifnim mi-shurat ha-din*, Newman concludes: “It is particularly important to note that in no case does acting *lifnim mi-shurat ha-din* entail violating a legal duty... The term does not encompass acts of conscientious objection, for example, by which one violates the recognized law out of a duty felt to a higher authority. In short, the concept of *lifnim mi-shurat ha-din* sanctions certain actions which the law does not require, but never those which the law does not permit.”⁷⁷ The equivalent of *lifnim mi-shurat ha-din* in Anglosphere jurisprudence is the waiver, which is “a voluntary relinquishment or renunciation of some right, a foregoing or giving up of some benefit or advantage, which, but for such a waiver, a party would have enjoyed.”⁷⁸ Simply put, *lifnim mi-shurat ha-din* allows a refusal of a positive right, and as such does not constitute a supererogatory ethic.

Hartman correctly notes that the *Mishneh Torah* begins with Maimonides’ thought on important philosophic concerns. Although it is shot through with philosophical notions, these notions are not by themselves manifestations of extra-halakhic reflections within the *Mishneh Torah*. Rather, I would argue, the philosophy of Maimonides’ codes are part of the building blocks of a comprehensive understanding of the halakhic life and, as with Leibowitz’s feedback mechanism, “law is both cause and consequence, catalyst and crystallization, of the cognitive goal, just as it is both stimulus and sequel to love of God.”⁷⁹ Linking the supererogatory claim of *lifnim mi-shurat ha-din* with the *Guide* has some merit (consider the extra-halakhic bases of 3.54

⁷⁶ Hartman, *Maimonides*, 94

⁷⁷ Louis E. Newman, “Law, Virtue and Supererogation in the Halakha: the problem of ‘*lifnim mi-shurat ha-din*’ reconsidered,” *Journal of Jewish Studies* 40, no. 1 (Spring 1989), 74. Although Newman does not do so, it is worthwhile to ask if *lifnim mi-shurat ha-din* is of particular importance in Talmudic thinking. It appears only nine times in the Babylonian Talmud (Bava Kama 99b, Bava Metzia 30b (twice), Ketubot 97a, Bava Metzia 24b, Berakhot 45b, Berkahot 7a, Avodah Zarah 4b, and in Mekhilta de Rabbi Shimon bar Yohaia collection of midrashim. Despite its appearance in Maimonides, this concept only seems to be materially substantive—that is, taking the role of some controlling assumption—in modern Jewish thought, where an anxious worry about the merit of its undertaking relative to general philosophy and culture threatens at times to overwhelm it.

⁷⁸ Renzo Bowers, *A Treatise on the Law of Waiver* (Denver: W.H. Courtwright Co., 1914), 19

⁷⁹ Twersky, *Introduction to the Code of Maimonides*, 363

in particular), but it is simply too limited in the *Mishneh Torah* for it to have wider application. *Lifnim mi-shurat ha-din* is, as Louis Newman has pointed out, a morality “which is entirely voluntary...a form of saintly behavior that is optional—and not even necessarily desirable in comparison with behavior according to the mean.”⁸⁰ It is voluntary because *lifnim mi-shurat ha-din* is applied in proportion to a man’s “great[ness]” which is found in a character that is above reproach and “devot[ed] to the study of Torah,”⁸¹ and greatness is an aspiration that is achieved through diligence and reflection, but even earnest attempts may fall short. Hartman attempts to force through a reading of *Mishneh Torah* that makes the realizations of “spiritual capacities” by an individual a marking point for the legal initiation of *Lifnim mi-shurat ha-din*. Working from *Hilkhot Yesodei ha-Torah*, Hartman maintains that if an excellent man discovers lost property that is not his own, he is obligated to return it to his owner, even if it is below his dignity to be seen carrying objects.⁸² Newman proposes, on the other hand, that this action is not mandatory, because it deviates from the middle path, even if it is a laudable deviation such as excessive piety. “In [Maimonides’] view, such actions are in no way required, for in general people do not have the ability, much less the duty, to become saints. Indeed...[it] is generally not even desirable.”⁸³ Maimonides himself severely limits the actionable space of *lifnim mi-shurat ha-din*. It is commendable, but, for the most part, superfluous. “The ancient saints trained their dispositions away from the exact mean toward the extremes; in regard to one disposition in one direction; in regard to another in the opposite direction. This was supererogation. We are bidden to walk in the middle paths which are the right and proper ways, as it is said, ‘and you shall walk in His ways.’”⁸⁴

Coda

There is no need to reiterate Hartman’s positions or our critiques of those positions, but a few final, general comments are in order. Hartman’s importance in this work is to show the extreme counterweight in modern Jewish religious thought to Leibowitz. As we noted in the introduction, his thought is, for the greater part, everything that Leibowitz’s is not. But, irony of ironies, both men grudgingly respected each other and both were (Hartman is still alive)

⁸⁰ Newman, “Law, Virtue and Supererogation in the Halakha: the problem of ‘*lifnim mi-shurat ha-din*’ reconsidered,” 77-78

⁸¹ M.T. Foundations of the Torah, 5:11

⁸² Ibid.

⁸³ Newman, “Law, Virtue and Supererogation in the Halakha: the problem of ‘*lifnim mi-shurat ha-din*’ reconsidered,” 78

⁸⁴ M.T. Laws of Belief, 1:5

observant. And, whether for good or ill, Hartman's philosophy of halakha is in the ascendant, while Leibowitz's may simply not be possible for modern Jews, although a few do lean heavily on it in their own philosophy of the commanded life. Hartman, *in fine*, has managed a large task: reconciling liberalism with halakha, reason with the Covenant and the placing of extra-halakhic considerations in the forefront of Jewish religious life. It will be interesting to follow the continuation of Hartman's thought and the possibility that it could come into major conflict with thinkers who stress a more formalist account of the halakhic life. All the same, our objections to Hartman's philosophy of halakha remain. The role of autonomy in the halakhic life is simply not as expansive as Hartman would have his readers believe. The directives of religion defined by and through its Law cannot rest on a shaky pluralist foundation. Additionally, Maimonides is not the rationalist that Hartman wishes him to be. His rationalism is the rationalism of Aristotle; that is, metaphysical rationalism. Maimonides did not storm the fortress of authority; he was authority. But that does not entail creative aridness—authority is not necessarily a stultifying force, as we shall see in the following chapter.

The final thinker that will be considered in these chapters, Joseph Soloveitchik, may appear at first glance to emphasize that same formalist description of halakhic life, but as we shall see he struck out on a radically new—and, in many ways, radically strange—path, one distinct from both the positivism of Leibowitz and the rationalism of Hartman. His Maimonides is a whirlwind of creative vitality.