

Fundamentals of Judaism

Basis for Rabbinic Authority

Core Premise: Divinity of the Torah / Torah Representative of Divine Will

Focus: What is the basis for Rabbinic authority?

Challenges: Sources of authority, validation of individuals, disputes/disagreements

I. Natural Law vs. Positive Law

1. Hans Kelsen (October 11, 1881 – April 19, 1973) – General Theory of Law and State

Pages 8-9

The will of God is – in the natural law doctrine – identical with nature in so far as nature is conceived of as created by God, and the laws of nature as expressing God's will. Consequently, the laws determining nature have, according to according to this doctrine, the same character as the legal rules issued by a legislator: they are commands directed to nature; and nature obeys these commands, the laws of nature, just as man obeys the laws issued by a legislator. Natural Law, according to its specific doctrine, is not created by the act of human will; it is not the artificial, arbitrary product of man. It can be and has to be deduced from nature by a mental operation. By carefully examining nature, especially the nature of man and his relations to other men, one can find the rules which regulate human behavior in a way corresponding to nature and hence perfectly just. The rights and duties of man, established by this natural law, are considered to be innate or inborn in man, because implanted by nature and not imposed or conferred upon him by a human legislator: and in so far as nature manifests God's will, these rights and duties are sacred.

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Law is always positive law, and its positivity lies in the fact that it is created and annulled by acts of human beings, thus being independent of morality and similar norm systems. This constitutes the difference between positive law and natural law, which, like morality, is deduced from a presumably self-evident basic norm which is considered to be the expression of the “will of nature” or of “pure reason.”

II. Biblical Justification

2. Deuteronomy 17

8 People will bring their cases to your courts. But some cases will be too hard for you to judge. They might be about murders, attacks or other crimes. Then take those hard cases to the place the Lord your God will choose. 9 Go to a priest, who is a Levite. And go to the judge who is in office at that time. Ask them for their decision. They will give it to you. 10 They'll hand down their decisions at the place the Lord will choose. You must do what they decide. Be careful to do everything they direct you to do. 11 Act in keeping with the laws they teach you. Accept the decisions they give you. Don't turn away from what they tell you. Don't turn to the right or the left. 12 Someone might willfully ignore the judge. Or he might make act presumptuously regarding the priest who serves the Lord your God at the place he will choose. If the man does that, he must be put to

2. דברים יז

(ח) כִּי יִפְּלֵא מִמֶּנּוּ דָבָר לְמִשְׁפָּט בֵּין דָּם לְדָם בֵּין דִּין לְדִין וּבֵין נֹגַע לְנֹגַע דְּבָרֵי רִיבֹת בְּשַׁעֲרֵיךָ וְקִמַּתְּ וְעִלִּיתְּ אֶל הַמָּקוֹם אֲשֶׁר יִבְחַר יְקֹנֵק אֱלֹהֶיךָ בּוֹ :
(ט) וּבֵאתָ אֶל הַכֹּהֲנִים הַלְוִיִּם וְאֶל הַשֹּׁפֵט אֲשֶׁר יִהְיֶה בְּיָמֶיךָ הֵהֵם וְדִרְשָׁתָּ וְהִגִּידוּ לְךָ אֶת דְּבַר הַמִּשְׁפָּט :
(י) וְעָשִׂיתָ עַל פִּי הַדָּבָר אֲשֶׁר יִגִּידוּ לְךָ מִן הַמָּקוֹם הַהוּא אֲשֶׁר יִבְחַר יְקֹנֵק וְשִׁמְרָתָּ לַעֲשׂוֹת כְּכֹל אֲשֶׁר יִוְרֹךְ :
(יא) עַל פִּי הַתּוֹרָה אֲשֶׁר יִוְרֹךְ וְעַל הַמִּשְׁפָּט אֲשֶׁר יֹאמְרוּ לְךָ תִּעָשֶׂה לֹא תִסּוּר מִן הַדְּבָר אֲשֶׁר יִגִּידוּ לְךָ יָמִין וּשְׂמֹאל :
(יב) וְהָאִישׁ אֲשֶׁר יַעֲשֶׂה בְּזָדוֹן לְבַלְתִּי שָׁמַע אֶל הַכֹּהֵן הָעֹמֵד לְשָׁרֵת שָׁם אֶת יְקֹנֵק אֱלֹהֶיךָ אוֹ אֶל הַשֹּׁפֵט וּמַת הָאִישׁ הַהוּא וּבַעֲרָתָהּ הָרַע מִיִּשְׂרָאֵל :
(יג) וְכָל הָעָם יִשְׁמְעוּ וְיִרְאוּ וְלֹא יִזְדוֹן עוֹד : ס

death. Remove that evil person from Israel. 13 All of the people of Israel will hear about it. And they will be afraid to act presumptuously [regarding of a judge or priest] again.	
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III. Divine Law in Human Hands

A. Retrieval from Sinai

<p>3. M. Avot 1:1 Moses received the Torah from Sinai and transmitted it to Joshua; Joshua to the elders; the elders to the prophets; and the prophets handed it down to the men of the Great Assembly. They said three things: Be deliberate in judgment, raise up many disciples, and make a fence around the Torah.</p>	<p>3. משנה אבות א משנה א משה קבל תורה מסיני ומסרה ליהושע ויהושע לזקנים וזקנים לנביאים ונביאים מסרוה לאנשי כנסת הגדולה הם אמרו שלשה דברים הוו מתונים בדין והעמידו תלמידים הרבה ועשו סייג לתורה:</p>
<p>4. B. Eiruvין 54b Our Rabbis learned: What was the procedure of the instruction in the oral law? <u>Moses learned from the mouth of the Omnipotent</u>. Then Aaron entered and Moses taught him his lesson. Aaron then moved aside and sat down on Moses' left. Thereupon Aaron's sons entered and Moses taught them their lesson. His sons then moved aside, Eleazar taking his seat on Moses' right and Ithamar on Aaron's left. R. Judah stated: Aaron was always on Moses right. Thereupon the elders entered and Moses taught them their lesson, and when the elders moved aside all the people entered and Moses taught them their lesson. It thus followed that Aaron heard the lesson four times, his sons heard it three times, the elders twice and all the people once. At this stage Moses departed and Aaron taught them his lesson. Then Aaron departed and his sons taught them their lesson. His sons then departed and the elders taught them their lesson. It thus followed that everybody heard the lesson four times. From here R. Eliezer inferred: It is a man's duty to teach his pupil [his lesson] four times. For this is arrived at a minori ad majus: Aaron who learned from Moses who had it from the Omnipotent had to learn his lesson four times how much more so an ordinary pupil who learns from an ordinary teacher.</p>	<p>4. תלמוד בבלי עירובין נד:ב תנו רבנן, כיצד סדר משנה? <u>משה למד מפי הגבורה</u>, נכנס אהרן ושנה לו משה פירקו. נסתלק אהרן וישב לשמאל משה. נכנסו בניו ושנה להן משה פירקו, נסתלקו בניו, אלעזר ישב לימין משה ואיתמר לשמאל אהרן. רבי יהודה אומר: לעולם אהרן לימין משה חוזר. נכנסו זקנים ושנה להן משה פירקו, נסתלקו זקנים, נכנסו כל העם ושנה להן משה פירקו. נמצאו ביד אהרן ארבעה, ביד בניו שלשה, וביד הזקנים שנים, וביד כל העם אחד. נסתלק משה, ושנה להן אהרן פירקו. נסתלק אהרן שנו להן בניו פירקו. נסתלקו בניו, שנו להן זקנים פירקו. נמצא ביד הכל ארבעה. מכאן אמר רבי אליעזר: חייב אדם לשנות לתלמידו ארבעה פעמים. וקל וחומר, ומה אהרן שלמד מפי משה, ומשה מפי הגבורה - כך, הדיוט מפי הדיוט - על אחת כמה וכמה.</p>

B. Divine Sanction

<p>5. B. Bava Metzia 59b On that day R. Eliezer brought forward every imaginable argument, but they did not accept them. Said he to them: 'If the halachah agrees with me, let</p>	<p>5. תלמוד בבלי בבא מציעא נט:ב תנא: באותו היום השיב רבי אליעזר כל תשובות שבעולם ולא קיבלו הימנו. אמר להם: אם הלכה כמותי - חרוב זה יוכיח. נעקר חרוב ממקומו מאה אמה, ואמרי לה: ארבע</p>
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<p>this carob-tree prove it!' Thereupon the carob-tree was torn a hundred cubits out of its place — others affirm, four hundred cubits. 'No proof can be brought from a carob-tree,' they retorted. Again he said to them: 'If the halachah agrees with me, let the stream of water prove it!' Whereupon the stream of water flowed backwards — 'No proof can be brought from a stream of water,' they rejoined. Again he urged: 'If the halachah agrees with me, let the walls of the schoolhouse prove it,' whereupon the walls inclined to fall. But R. Joshua rebuked them, saying: 'When scholars are engaged in a halachic dispute, what have ye to interfere?' Hence they did not fall, in honour of R. Joshua, nor did they resume the upright, in honour of R. Eliezer; and they are still standing thus inclined. Again he said to them: 'If the halachah agrees with me, let it be proved from Heaven!' Whereupon a Heavenly Voice cried out: 'Why do ye dispute with R. Eliezer, seeing that in all matters the halachah agrees with him!' <u>But R. Joshua arose and exclaimed: 'It is not in heaven.'</u> <u>What did he mean by this? — Said R. Jeremiah: That the Torah had already been given at Mount Sinai; we pay no attention to a Heavenly Voice, because Thou hast long since written in the Torah at Mount Sinai, After the majority must one incline.</u> R. Nathan met Elijah and asked him: What did the Holy One, Blessed be He, do in that hour? — He laughed [with joy], he replied, saying, 'My sons have defeated Me, My sons have defeated Me.'</p>	<p>מאות אמה : אמרו לו : אין מביאין ראיה מן החרוב. חזר ואמר להם : אם הלכה כמותי - אמת המים יוכיחו. חזרו אמת המים לאחוריהם. אמרו לו : אין מביאין ראיה מאמת המים. חזר ואמר להם : אם הלכה כמותי - כותלי בית המדרש יוכיחו. הטו כותלי בית המדרש ליפול. גער בהם רבי יהושע, אמר להם : אם תלמידי חכמים מנצחים זה את זה בהלכה - אתם מה טיבכם? לא נפלו מפני כבודו של רבי יהושע, ולא זקפו מפני כבודו של רבי אליעזר, ועדין מטיין ועומדין. חזר ואמר להם : אם הלכה כמותי - מן השמים יוכיחו. יצאתה בת קול ואמרה : מה לכם אצל רבי אליעזר שהלכה כמותו בכל מקום! <u>עמד רבי יהושע על רגליו ואמר : לא בשמים היא. - מאי + דברים לי? + לא בשמים היא? - אמר רבי ירמיה : שכבר נתנה תורה מהר סיני, אין אנו משגיחין בבת קול, שכבר כתבת בהר סיני בתורה + שמות כ"ג + אחרי רבים להטת. - אשכחיה רבי נתן לאליהו, אמר ליה : מאי עביד קודשא בריך הוא בההיא שעתא? - אמר ליה : קא חייך ואמר נצחוני בני, נצחוני בני.</u></p>
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C. Divine Intervention

<p>6. Ramban Deut. 17:11 s.v. <i>Yamin Usemol</i> (Gerona, Spain 1194 – Israel, 1270) Even if it appears to you that [the sages] confuse the right with the left, and certainly if it appears to you that what they call "right" is in fact "right," <u>for the spirit of God rests on his holy servants and they will be forever protected from mistakes and stumbling</u></p>	<p>6. רמב"ן דברים יז:יא אפילו יהיה בעיניך כמחליף הימין בשמאל, וכל שכן שיש לך לחשוב שהם אומרים על ימין שהוא ימין, <u>כי רוח השם על משרתי מקדשו ולא יעזוב את חסידיו, לעולם נשמרו מן הטעות ומן המכשול.</u></p>
<p>7. Tertullian De Pudicita, 21 (Bettenson Early Christian Fathers p. 113) Carthage (c. 160 – c. 220 AD) For the Church is properly and primarily the Spirit, in whom is the trinity of the one divinity, the Father, the Son, and the Holy Spirit. <u>The Spirit makes the assembly of the Church, which the Lord established in three persons.</u> And thus, the whole number of those who have leagued together in this faith is given the status of the Church by the Church's author and consecrator...<u>For the right of judgment belongs to the Lord, not to the servant; to God himself, not to the priest.</u></p>	