

Halakhic Process

R. David Hartman and Religious Individualism

I. The Social Phenomenon of Religious Individualism

1. Thomas Luckmann – The Invisible Religion

We may say, in sum, that the individuation of consciousness and conscience occurs for historical individuals in the internalization of an already constructed world view rather than in the original creation of world views. The world view with its underlying hierarchy of significance becomes an individual system of relevance that is superimposed on the stream of consciousness. It is a constitutive element of personal identity. The personal identity of a historical individual, is, thus, the subjective expression of the objective significance of a historical world view. Earlier we defined the world view as a universal social form of religion. Correspondingly, we may not define personal identity as a universal form of individual religiosity (70).

The discrepancy between the subjective "autonomy" of the individual in modern society and the objective autonomy of the primary institution strikes us as critical. The primary social institutions have "emigrated" from the sacred cosmos. Their functional rationality is not part of a system that could be of "ultimate" significance to the individuals in the society...

The modern sacred cosmos legitimates the retreat of the individual into the "private sphere" and sanctifies his subjective "autonomy." Thus it inevitably reinforces the autonomous functioning of the primary institutions. By bestowing a sacred quality upon the increasing subjectivity of human existence it supports not only the secularization but also what we call the dehumanization of the social structure (115-116).

2. Robert Bellah – Habits of the Heart

Today religion in America is as private and diverse as New England colonial region was public and unified. One person we interviewed has actually named her religion (she calls it her "faith") after herself. This suggests the local possibility of over 220 million American religions, one for each of us. Sheila Larson is a young nurse who has received a good deal of therapy and who describes her faith as "Sheilaism." "I believe in God. I'm not a religious fanatic. I can't remember the last time I went to church. My faith has carried me a long way. It's Sheilaism. Just my own little voice." Sheila's faith has some tenets beyond belief in God, though not man. In defining "my own Sheilaism," she said: "It's just try to love yourself and be gentle with yourself. You know, I guess, take care of each other. I think He would want us to take care of each other." Like many others, Sheila would be willing to endorse few more specific injunctions. (220-221)

II. R. David Hartman's Judaism of Individualism

3. A Living Covenant

The unfolding of our rational and ethical capacities is implicit in the notion of the covenantal relationship with God. If covenantal mutuality is to be taken seriously, one's ethical and rational capacities must never be crushed, as Soloveitchik demands when he makes the Akedah the supreme paradigm of religious authenticity. In asking the Judaic community to interpret and expand the norms of Judaism to cover all aspects of life, the God of the covenant invites that community to trust its own ability to make rational and moral judgments (97-98).

For religious individuals shaped by the tradition of the covenant, ethics are not acted out in a spirit of human isolation. Such people are always acting in response to and within a relationship with their God. The point of departure for their perception of reality is always covenantal, and they always view themselves in the context of being in the presence of God. They do not live in Kant's ethical universe because they do not perceive human being as totally self-legislating individuals. They can never understand an "ought" in isolation from the presence of God. The heteronomous quality of revelation arises not from a need to compensate for the human failure of reason to provide justifiable reasons that would substantiate ethical obligations, but rather from the way covenantal ethical thinking reflects the building of a common life between community and God...

The Torah provides for a way of life, and everything that is part of the individual and communal existence is absorbed into the framework of halakhah. Covenantal spirituality contains both the devotional passion of prayer and the command of a God Who seeks to be sanctified in the midst of a community. Accordingly, the ethical and moral concerns found in the Torah are not an imperfect preliminary stage to be overcome in the act of unconditional surrender in the life of worship. Nor may our appreciation of what is considered just and fair ever be undermined through appeals to the absolute authority of halakhah [sic] (101).

4. Defender to Critic

The covenant is not only about the empowerment of human beings; it is also about the withdrawal of God's control. God's shift from the model of a singular will to the model of the covenant reflects a critical change in the way God relates to the world. God initiates creation, revelation, and the movement of history; then God calls upon human beings to complete the task and take responsibility for the areas of life once within God's purview. God presents us with the normative founding moment for building an ordered moral world and then steps back so that we can step forward, an act that can be understood as a manifestation of divine love (178).

...God's presence in the world becomes conditional in a deep sense on human beings sharing the burden of history. Instead of a total welfare state, God decides to allow people to become responsible for themselves and for each other on a volunteer basis. Covenantal theology is defined by humanity's assumption of moral responsibility, encapsulated in the following famous passage in Deuteronomy: "I have put before you life and death, blessing and curse. Choose life" (Deuteronomy 30:19).

Uvacharta, "You must choose," is the a priori commandment, the mitzvah that, in a sense, informs all others. Choosing life is the precondition upon which rests the observance of all other commandments. In asserting the most basic value of human life and dignity, *Uvacharta* reflects the first stage of the covenantal relationship in which we are responsible for implementing the mitzvot (181).

The covenant experience truly emerges when the people of Israel turn the written word into an open-ended creative word. The covenant, which is predicated on human responsibility, is strengthened when the Jewish people feel adequate to expand the implications of the spiritual guidance that began at Sinai. Revelation at Sinai then becomes a *derekh* – a pointing, a direction – and not the final consummation of the word of God. Cognitive dignity and intellectual adequacy transform the individual from a passive recipient into an active shaper of the future direction of Torah (183).

...we are responsible not only for maintaining our own moral conscience and for taking on the role of interpreting God's law for our time and place, but we are also responsible for stepping outside of ourselves and outside of the borders of our own reality, to take an active role in shaping our destiny (184).

Abraham's moral confrontation with God at Sodom is the central paradigm for my philosophy of Judaism. The legitimacy of Abraham's claims – and God's fundamental acceptance of these claims – clearly illustrates for me the precept that our relationship with God must empower us to take responsibility for and trust our innermost convictions. The most important lesson we learn from our forefather Abraham is the legitimacy of personal moral intuition.

Yet taking seriously this intuition can, at times, bring us into direct conflict with the halakhah. Often, we find ourselves faced with two conflicting impulses: the impulse, on the one hand, rooted in our ethical conscience, to innovate; and the impulse, on the other hand, rooted in our need to be part of a viable community, to maintain the rhythm of tradition as it has been practiced throughout the generations.

What do we do when we find ourselves presented with these simultaneously legitimate and contradictory impulses? Over the years, I have found myself struggling with the question of whether Judaism provides a way to express a person's moral convictions or whether it deems those very convictions illegitimate. It has never been my aim to undermine the semblance of halakhic authority; my goal is to see whether there is room *within* the halakhic structure to reconcile my personal moral instincts with the imperatives of the tradition.

I maintain that there are two perspectives from which to approach this question: from the perspective of my obligation as an individual, and from the perspective of my obligation as a member of the Jewish collective invested in the continuity of this way of life. As an individual, my job is to trust my inner moral voice; as a member of the community, my task is to see whether there is room in the canon to arrive at an alternative interpretation. As an individual, my instinct is to categorically reject halakhic rulings that are predicated on a view of humanity that foregrounds their moral limitations instead of their moral potential. Yet, as a member of the Jewish collective and as someone deeply committed to the Jewish people's continuity, I have felt obligated to delve deep into our texts – to study, to prove, and to struggle – in the effort to demonstrate that the tradition does make room for the moral outrage we experience. And the way it makes room is by using methods of interpretation to neutralize morally problematic texts (228).

5. The God who Hates Lies

Another area in which tradition often comes into conflict with ethical intuition concerns the role and treatment of women within traditional Jewish frameworks. To take one example that is literally close to home, several years ago my daughter Tova helped to found an egalitarian Orthodox synagogue in Jerusalem dedicated to infusing the prayer community with a feminist ethos...When asked by an ultra-Orthodox nephew how I justify my presence at my daughter's shul, I told him, "I feel the shekhina [i.e. the feminine emanation of God's presence] singing with the women's voices." My nephew responded in kind, answering that if there is one thing he is certain of, it is that the shekhina is not in that place (10-11).

Authority, for most modern Jews, is simply a dead-letter issue. Halakhah is not rejected because modern enlightened Jews reject the theological premise that it was given by God. They never get to the point of asking questions about its origins, dismissing it long before such questions might arise because of the difficulty of divining God in the lifestyle it seems to cultivate and obligate. Indifference to halakhah most commonly derives from an inability of most Jews to find religious values within the system (28).

Truth must grow out of lived experience, not claims of truth based on authority...The lived experience of the community must be the validation of their religious language (33).

For those seeking an experiential encounter with the Jewish tradition to gain a sense of the tradition as it is lived, halakhah should be engaged as an open-ended educational framework rather than a binding normative one. This approach should not be mistaken for a form of apologetics, as it is based upon an understanding of halakhah's essential purpose: the cultivation of individual and communal God-consciousness (50).

It is extremely important that we create a space within our theology, and within our communities for the legitimate (though not exclusive) positive understanding of halakhah as a selective educational system and not only as a legal system. For modern Jews who seek access to the lived experience of the Jewish community, it is not merely a "tactical" mistake to present halakhah in terms of principles of authority, obligations, and the sinful consequences of failure to uphold all of the mitzvot. It is a failure of the religious imagination and ultimately a failure of the Jewish community. The legalistic weight of halakhah should be lifted completely and without theological compunction.

Legalism and authoritarianism are not the best ways to educate a person to begin a way of life, and the overemphasis upon absolute authority claims and legalistic minutiae so prevalent among many Orthodox Jews today belies halakha's essence and does a grave disservice to the profound potential it holds for today's diverse Jewish population. Halakhah, derived from the Hebrew root that means "walking," should be framed as a religious path, a process of ever-evolving spiritual sensitivity. Though traditionally halakhah has predominantly been represented as a legal-normative system requiring total commitment, we need not necessarily related to it that way (51).

III. The Torah on Moral / Religious Individualism

6. Exodus 15:26 He said, “If you listen carefully to the Lord your God and do what is right in his eyes, if you pay attention to his commands and keep all his decrees, I will not bring on you any of the diseases I brought on the Egyptians, for I am the Lord, who heals you.”	6. שמות טו:כט וַיֹּאמֶר אָם שְׁמֹועַ תִּשְׁמַע לִקְול יְקֻנָּךְ אֱלֹהִיךְ וְהַיֵּשֶׁר בְּעֵינְיו תַּשְׁמַע תְּעַשָּׂה וְהַזְוֹגָתָה לְמִצְוֹתָיו וְשִׁמְרַתָּה כָּל חֲקִיו כָּל הַפְּנִילָה אֲשֶׁר שִׁמְתִּי בְמִצְרָיִם לֹא אֲשֶׁר עַלְךָ כִּי אַנְיִי יְקֻנָּךְ רְפָאֶךָ :
7. Deuteronomy 6:18 Do what is right and good in the Lord's sight, so that it may go well with you and you may go in and take over the good land the Lord promised on oath to your ancestors.	7. דברים ו:יח וְעַשֵּׂית הַיִשְׁרָב בְּעֵינְיו יְקֻנָּךְ לְמַעַן יִטְבֶּלךְ וּבְאַת וַיַּרְשָׁת אֶת הָאָרֶץ הַטְבָּה אֲשֶׁר נִשְׁבַּע יְקֻנָּךְ לְאַבְתָּיךְ :
8. Deuteronomy 12:28 Be careful to obey all these regulations I am giving you, so that it may always go well with you and your children after you, because you will be doing what is good and right in the eyes of the Lord your God.	8. דברים יב:כח שְׁמַר וְשִׁמְעַת אֶת כָּל הַדְבָּרִים הַאֲלֹהִים אֲשֶׁר אָנֹכִי מְצֻוֹּךְ לְמַעַן יִטְבֶּלךְ וְלִבְנֶיךְ אַחֲרֶיךְ עַד עוֹלָם כִּי תַּעֲשֶׂה הַטְבָּה וְהַיִשְׁרָב בְּעֵינְיו יְקֻנָּךְ אֱלֹהִיךְ :
9. Deuteronomy 13:19 Because you obey the Lord your God by keeping all his commands that I am giving you today and doing what is right in his eyes.	9. דברים יג:יט כִּי תִשְׁמַע בְּקוֹל יְקֻנָּךְ אֱלֹהִיךְ לְשִׁמְרָה אֶת כָּל מִצְוֹתָיו אֲשֶׁר אָנֹכִי מְצֻוֹּךְ הַיּוֹם לְעֹשֹׂת הַיִשְׁרָב בְּעֵינְיו יְקֻנָּךְ אֱלֹהִיךְ :
10. Deuteronomy 12:8 You are not to do as we do here today, everyone doing what is right in their own eyes.	10. דברים יב:ח לَا תַּעֲשֶׂה כָּל אֲשֶׁר אָנֹחָנוּ עֲשִׂים פְּהַיּוֹם אִישׁ כָּל הַיִשְׁרָב בְּעֵינְיו :
11a. Judges 19:22-30 22 While they were enjoying themselves, some of the wicked men of the city surrounded the house. Pounding on the door, they shouted to the old man who owned the house, “Bring out the man who came to your house so we can have sex with him.” 23 The owner of the house went outside and said	11. שופטים יט, כב-ל (כב) הַמָּה מִתְּבִיבִים אֶת לְבָם וְהַנִּהְנִהְנָה אֲנָשִׁי הָעִיר אֲנָשִׁי בְּנֵי בְּלִילָל גַּסְבוּ אֶת הַבָּתִים מִתְּדַפְּקִים עַל הַדָּלָת וַיֹּאמְרוּ אֶל הָאִישׁ בַּעַל הַבָּתִים הַזָּקָן לְאָמֵר הַצִּא אֶת הָאִישׁ אֲשֶׁר בָּא אֶל בֵּיתְךָ וְנִדְעָנוּ :

to them, “No, my friends, don’t be so vile. Since this man is my guest, don’t do this outrageous thing. 24 Look, here is my virgin daughter, and his concubine. I will bring them out to you now, and you can use them and do to them whatever you wish. But as for this man, don’t do such an outrageous thing.” 25 But the men would not listen to him. So the man took his concubine and sent her outside to them, and they raped her and abused her throughout the night, and at dawn they let her go. 26 At daybreak the woman went back to the house where her master was staying, fell down at the door and lay there until daylight. 27 When her master got up in the morning and opened the door of the house and stepped out to continue on his way, there lay his concubine, fallen in the doorway of the house, with her hands on the threshold. 28 He said to her, “Get up; let’s go.” But there was no answer. Then the man put her on his donkey and set out for home. 29 When he reached home, he took a knife and cut up his concubine, limb by limb, into twelve parts and sent them into all the areas of Israel. 30 Everyone who saw it was saying to one another, “Such a thing has never been seen or done, not since the day the Israelites came up out of Egypt. Just imagine! We must do something! So speak up!”

11b. Judges 21:25

In those days Israel had no king; everyone did what was right in their own eyes.

12a. I Sam 15:1-3

Samuel said to Saul, “I am the one the Lord sent to anoint you king over his people Israel; so listen now to the message from the Lord. 2 This is what the Lord Almighty says: I will punish the Amalekites for what they did to Israel when they waylaid them as they came up from Egypt. 3 Now go, attack the Amalekites and totally destroy[a] all that belongs to them. Do not spare them; put to death men and women, children and infants, cattle and sheep, camels and donkeys.”

12b. I Samuel 15:8-9

8 He took Agag king of the Amalekites alive, and all his people he totally destroyed with the sword. 9 But Saul and the army spared Agag and the best of the sheep and cattle, the fat calves[b] and lambs—everything that was good. These they were unwilling to destroy completely, but everything that was despised and weak they totally destroyed.

12c. I Samuel 15:19-23

19 Why did you not obey the Lord? Why did you pounce on the plunder and do evil in the eyes of the Lord?” 20 “But I did obey the Lord,” Saul said. “I went on the mission the Lord assigned me. I completely destroyed the Amalekites and brought back Agag their king. 21 The soldiers took sheep and

(ב) ויצא אליהם האיש בעל הבית ויאמר אליהם אל אחיך אל פרעו נא אחרי אשר בא האיש הזה אל بيתי אל תעשו את הנבל הזאת: (כד) הנה בת הבטולה ופילגשו אוציאה נא אוטם ענו אותו וענו לחים הטוב בעיניכם ולא יש הזה לא תעשו דבר הנבל הזאת: (כה) ולא ابو האיש בפלגשו ואיזה אלים חוויך וידעו אותה ויתעללו בה כל מלילה עד הבקר וישלחו בעלות בענות הבקר וגופל פתח בית האיש אשר אדויה שם עד האור: (כו) ויקם אדנית בברך ויפתח דלתות הבית ונצא לכת לדרכו והנה האשה פילגשו פלחת פתח הבית יזדינה על הסף: (כח) ויאמר אלה קומי ונולכה ואינו ענה וייחוך על חממו ויקם האיש וילך למוקמו: (כט) ויבא אל ביתו וייחוך את המאכלת וייזק בפילגשו וינתקה לעצמיה לשנים עשר נתחים וישלחן בכל גבול ישראל: (לו) והיה כל הראה ואמר לא נהיתה ולא נאתה זאת למים עלות בני ישראל מארץ מצרים עד היום הזה שינו לךם עליה עזו ודברו:

שופטים כא:כה
בימים קם אין מלך בישראל איש הישר בעיניו יעשה:

12. שמואל א טו, א-ג
(א) ויאמר שמואל אל שאול אתי שלח יקוק למשיח למלך על עמו על ישראל עיטה שמע לקול דברי יקוק: ס (ב) כי אמר יקוק צבאות קדתי את אשר עשה עמלק לישראל אשר שם לו בذرך בעלתו ממצרים: (ג) עתה לך והכיתה את עמלך והחרמתם את כל אשר לו ולא תחמל עליו והמתה מאיש עד אשה מעלה ועד יונק משור ונע שה מגמל ועד חמור:

שמואל א טו, ח-ט
(ח) ויתפש את אגג מלך עמלק כי ואת כל העם החררים לפניו חרב: (ט) יוחמך שאול והעם על אגג ועל מיטב הязן והבקר והפשדים ועל הברים ועל כל הטוב ולא ابو החרים וכל המלאכה נבזה ונמס אתה החרים:

שמואל א טו, יט-כג
(יט) ולמה לא שמעת בקול יקוק וטע אל השלל ותעש הרע בעיני יקוק: ס (כ) ויאמר שאול אל שמואל אשר שמעתי בקול יקוק ולאך בذرך אשר שלחני יקוק ואביה את אגג מלך עמלק ואת מלך החרמות: (כא)

<p>cattle from the plunder, the best of what was devoted to God, in order to sacrifice them to the Lord your God at Gilgal.” 22 <u>But Samuel replied: “Does the Lord delight in burnt offerings and sacrifices as much as in obeying the Lord? To obey is better than sacrifice, and to heed is better than the fat of rams.</u> 23 For rebellion is like the sin of divination, and arrogance like the evil of idolatry. Because you have rejected the word of the Lord, he has rejected you as king.”</p>	<p>ויקח הָעַם מִהְלֵל צָאן וּבָקָר רָאשִׁית הַחֲרִים לְזִבְחָם לִיקֹוק אֱלֹהִיךְ בְּגַלְגָּל: (כב) וַיֹּאמֶר שָׁמֹואֵל חַפֵּץ לִיקֹוק <u>בְּעֻלוֹת וּזְבָחִים פְּשָׁמָעַ בְּקֹל יִקּוֹק הַנֶּגֶה</u> <u>שָׁמָעַ מִזְבֵּחַ טֹוב לְהַקְשִׁיב מַחְלֵב</u> <u>אַיִלִים :</u> (כג) כִּי מְתָאֵת קָסֶם מְרִי וְאַנוּ וְתַּרְפִּים הַפְּצִיר יִעַן מְאַסֵּת אֶת דָּבָר יִקּוֹק וּיִמְאַסֵּךְ מִפְלָךְ:</p>
<p>13. M. Avot 2:4</p> <p>He used to say: Do His will as if it was your will that He may do your will as if it was His will. Make your will of no effect before His will that He may make the will of others of no effect before your will.</p>	<p>13. משנה אבות ב:ד</p> <p>הוּא [רָבָן גַּמְלָיאֵל בֶּן שֶׁל רַבִּי יְהוֹדָה הַנְּשִׂיאָה] הָיָה אָמֵר עַשְׂה רְצׁוֹנוֹ כְּرְצׁוֹנוֹ כִּדְיַעֲשֵׂה רְצׁוֹנוֹ כְּרְצׁוֹנוֹ בֶּטֶל רְצׁוֹנוֹ מִפְנֵי רְצׁוֹנוֹ כִּדְיַעֲשֵׂה שִׁיבְטָל רְצׁוֹנוֹ אֶחָרִים מִפְנֵי רְצׁוֹנוֹ.</p>

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